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### Battlefield norms

#### Executive legal discretion for drone use outside active hostilities gets modeled and makes conflict inevitable

Rosa Brooks, Professor of Law, Georgetown University Law Center, Bernard L. Schwartz Senior Fellow, New America Foundation, 4/23/13, The Constitutional and Counterterrorism Implications of Targeted Killing, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

Mr. Chairman, I would like to turn now to the legal framework applicable to US drone strikes. Both the United States and the international community have long had rules governing armed conflicts and the use of force in national self-defense. These rules apply whether the lethal force at issue involves knives, handguns, grenades or weaponized drones. When drone technologies are used in traditional armed conflicts—on “hot battlefields” such as those in Afghanistan, Iraq or Libya, for instance – they pose no new legal issues. As Administration officials have stated, their use is subject to the same requirements as the use of other lawful means and methods of warfare.28

But if drones used in traditional armed conflicts or traditional self-defense situations present no “new” legal issues, some of the activities and policies enabled and facilitated by drone technologies pose significant challenges to existing legal frameworks.

As I have discussed above, the availability of perceived low cost of drone technologies makes it far easier for the US to “expand the battlefield,” striking targets in places where it would be too dangerous or too politically controversial to send troops. Specifically, drone technologies enable the United States to strike targets deep inside foreign states, and do so quickly, efficiently and deniably. As a result, drones have become the tool of choice for so-called “targeted killing” – the deliberate targeting of an individual or group of individuals, whether known by name or targeted based on patterns of activity, inside the borders of a foreign country. It is when drones are used in targeted killings outside of traditional or “hot” battlefields that their use challenges existing legal frameworks.

Law is almost always out of date: we make legal rules based on existing conditions and technologies, perhaps with a small nod in the direction of predicted future changes. As societies and technologies change, law increasingly becomes an exercise in jamming square pegs into round holes. Eventually, that process begins to do damage to existing law: it gets stretched out of shape, or broken. Right now, I would argue, US drone policy is on the verge of doing significant damage to the rule of law.

A. The Rule of Law

At root, the idea of “rule of law” is fairly simple, and well understood by Americans familiar with the foundational documents that established our nation, such as the Declaration of Independence, the Constitution and the Bill of Rights. The rule of law requires that governments follow transparent, clearly defined and universally applicable laws and procedures. The goal of the rule of law is to ensure predictability and stability, and to prevent the arbitrary exercise of power. In a society committed to the rule of law, the government cannot fine you, lock you up, or kill you on a whim -- it can restrict your liberty or take your property or life only in accordance with pre-established processes and rules that reflect basic notions of justice, humanity and fairness.

Precisely what constitutes a fair process is debatable, but most would agree that at a minimum, fairness requires that individuals have reasonable notice of what constitutes the applicable law, reasonable notice that they are suspected of violating the law, a reasonable opportunity to rebut any allegations against them, and a reasonable opportunity to have the outcome of any procedures or actions against them reviewed by some objective person or body. These core values are enshrined both in the US Constitution and in international human rights law instruments such as the International Covenant on Civil and Political Rights, to which the United States is a party.

In ordinary circumstances, this bundle of universally acknowledged rights (together with international law principles of sovereignty) means it is clearly unlawful for one state to target and kill an individual inside the borders of another state. Recall, for instance, the 1976 killing of Chilean dissident Orlando Letelier in Washington DC. When Chilean government intelligence operatives planted a car bomb in the car used by Letelier, killing him and a US citizen accompanying him, the United States government called this an act of murder—an unlawful political assassination.

B. Targeted Killing and the Law of Armed Conflict

Of course, sometimes the “ordinary” legal rules do not apply. In war, the willful killing of human beings is permitted, whether the means of killing is a gun, a bomb, or a long-distance drone strike. The law of armed conflict permits a wide range of behaviors that would be unlawful in the absence of an armed conflict. Generally speaking, the intentional destruction of private property and severe restrictions on individual liberties are impermissible in peacetime, but acceptable in wartime, for instance. Even actions that a combatant knows will cause civilian deaths are lawful when consistent with the principles of necessity, humanity, proportionality,29 and distinction.30

It is worth briefly explaining these principles. The principle of necessity requires parties to a conflict to limit their actions to those that are indispensible for securing the complete submission of the enemy as soon as possible (and that are otherwise permitted by international law). The principle of humanity forbids parties to a conflict to inflict gratuitous violence or employ methods calculated to cause unnecessary suffering. The principle of proportionality requires parties to ensure that the anticipated loss of life or property incidental to an attack is not excessive in relation to the concrete and direct military advantage expected to be gained.

Finally, the principle of discrimination or distinction requires that parties to a conflict direct their actions only against combatants and military objectives, and take appropriate steps to distinguish between combatants and non-combatants.31

This is a radical oversimplification of a very complex body of law.32 But as with the rule of law, the basic idea is pretty simple. When there is no war -- when ordinary, peacetime law applies -- agents of the state aren't supposed to lock people up, take their property or kill them, unless they have jumped through a whole lot of legal hoops first. When there is an armed conflict, however, everything changes. War is not a legal free-for-all33 -- torture, rape are always crimes under the law of war, as is killing that is willful, wanton and not justified by military necessity34 -- but there are far fewer constraints on state behavior.

Technically, the law of war is referred to using the Latin term “lex specialis” – special law. It is applicable in—and only in -- special circumstances (in this case, armed conflict), and in those special circumstances, it supersedes “ordinary law,” or “lex generalis,” the “general law” that prevails in peacetime. We have one set of laws for “normal” situations, and another, more flexible set of laws for “extraordinary” situations, such as armed conflicts.

None of this poses any inherent problem for the rule of law. Having one body of rules that tightly restricts the use of force and another body of rules that is far more permissive does not fundamentally undermine the rule of law, as long as we have a reasonable degree of consensus on what circumstances trigger the “special” law, and as long as the “special law” doesn’t end up undermining the general law.

To put it a little differently, war, with its very different rules, does not challenge ordinary law as long as war is the exception, not the norm -- as long as we can all agree on what constitutes a war -- as long as we can tell when the war begins and ends -- and as long as we all know how to tell the difference between a combatant and a civilian, and between places where there's war and places where there's no war.

Let me return now to the question of drones and targeted killings. When all these distinctions I just mentioned are clear, the use of drones in targeted killings does not necessarily present any great or novel problem. In Libya, for instance, a state of armed conflict clearly existed inside the borders of Libya between Libyan government forces and NATO states. In that context, the use of drones to strike Libyan military targets is no more controversial than the use of manned aircraft.

That is because our core rule of law concerns have mostly been satisfied: we know there is an armed conflict, in part because all parties to it agree that there is an armed conflict, in part because observers (such as international journalists) can easily verify the presence of uniformed military personnel engaged in using force, and in part because the violence is, from an objective perspective, widespread and sustained: it is not a mere skirmish or riot or criminal law enforcement situation that got out of control. We know who the “enemy” is: Libyan government forces. We know where the conflict is and is not: the conflict was in Libya, but not in neighboring Algeria or Egypt. We know when the conflict began, we know who authorized the use of force (the UN Security Council) and, just as crucially, we know whom to hold accountable in the event of error or abuse (the various governments involved).35

Once you take targeted killings outside hot battlefields, it’s a different story. The Obama Administration is currently using drones to strike terror suspects in Pakistan, Somalia, Yemen, and –perhaps—Mali and the Philippines as well. Defenders of the administration's increasing reliance on drone strikes in such places assert that the US is in an armed conflict with “al Qaeda and its associates,” and on that basis, they assert that the law of war is applicable -- in any place and at any time -- with regard to any person the administration deems a combatant.

The trouble is, no one outside a very small group within the US executive branch has any ability to evaluate who is and who isn’t a combatant. The war against al Qaeda and its associates is not like World War II, or Libya, or even Afghanistan: it is an open-ended conflict with an inchoate, undefined adversary (who exactly are al Qaeda’s “associates”?). What is more, targeting decisions in this nebulous “war” are based largely on classified intelligence reporting. As a result, Administration assertions about who is a combatant and what constitutes a threat are entirely non-falsifiable, because they're based wholly on undisclosed evidence. Add to this still another problem: most of these strikes are considered covert action, so although the US sometimes takes public credit for the deaths of alleged terrorist leaders, most of the time, the US will not even officially acknowledge targeted killings.

This leaves all the key rule-of-law questions related to the ongoing war against al Qaeda and its "associates" unanswered.36 Based on what criteria might someone be considered a combatant or directly participating in hostilities? What constitutes “hostilities” in the context of an armed conflict against a non-state actor, and what does it mean to participate in them? And just where is the war? Does the war (and thus the law of war) somehow "travel" with combatants? Does the US have a “right” to target enemy combatants anywhere on earth, or does it depend on the consent of the state at issue? Who in the United States government is authorized to make such determinations, and what is the precise chain of command for such decisions?

I think the rule of law problem here is obvious: when “armed conflict” becomes a term flexible enough to be applied both to World War II and to the relations between the United States and “associates” of al Qaeda such as Somalia’s al Shabaab, the concept of armed conflict is not very useful anymore. And when we lack clarity and consensus on how to recognize “armed conflict,” we no longer have a clear or principled basis for deciding how to categorize US targeted killings. Are they, as the US government argues, legal under the laws of war? Or are they, as some human rights groups have argued, unlawful murder?

C. Targeted Killing and the International Law of Self-Defense

When faced with criticisms of the law of war framework as a justification for targeted killing, Obama Administration representatives often shift tack, arguing that international law rules on national self-defense provide an alternative or additional legal justification for US targeted killings. Here, the argument is that if a person located in a foreign state poses an "imminent threat of violent attack" against the United States, the US can lawfully use force in self-defense, provided that the defensive force used is otherwise consistent with law of war principles.

Like law of war-based arguments, this general principle is superficially uncontroversial: if someone overseas is about to launch a nuclear weapon at New York City, no one can doubt that the United States has a perfect right (and the president has a constitutional duty) to use force if needed to prevent that attack, regardless of the attacker's nationality.

But once again, the devil is in the details. To start with, what constitutes an "imminent" threat? Traditionally, both international law and domestic criminal law understand that term narrowly: 37 to be "imminent," a threat cannot be distant or speculative.38 But much like the Bush Administration before it, the Obama Administration has put forward an interpretation of the word “imminent” that bears little relation to traditional legal concepts.

According to a leaked 2011 Justice Department white paper39—the most detailed legal justification that has yet become public-- the requirement of imminence "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future." This seems, in itself, like a substantial departure from accepted international law definitions of imminence.

But the White Paper goes even further, stating that "certain members of al Qaeda are continually plotting attacks...and would engage in such attacks regularly [if] they were able to do so, [and] the US government may not be aware of all... plots as they are developing and thus cannot be confident that none is about to occur." For this reason, it concludes, anyone deemed to be an operational leader of al Qaeda or its "associated forces" presents, by definition, an imminent threat even in the absence of any evidence whatsoever relating to immediate or future attack plans. In effect, the concept of "imminent threat" (part of the international law relating to self-defense) becomes conflated with identity or status (a familiar part of the law of armed conflict).

That concept of imminence has been called Orwellian, and although that is an overused epithet, in this context it seems fairly appropriate. According to the Obama Administration, “imminent” no longer means “immediate,” and in fact the very absence of clear evidence indicating specific present or future attack plans becomes, paradoxically, the basis for assuming that attack may perpetually be “imminent.”

The 2011 Justice Department White Paper notes that the use of force in self-defense must comply with general law of war principles of necessity, proportionality, humanity, and distinction. The White Paper offers no guidance on the specific criteria for determining when an individual is a combatant (or a civilian participating directly in hostilities), however. It also offers no guidance on how to determine if a use of force is necessary or proportionate.

From a traditional international law perspective, this necessity and proportionality inquiry relates both to imminence and to the gravity of the threat itself, but so far there has been no public Administration statement as to how the administration interprets these requirements. Is any threat of "violent attack" sufficient to justify killing someone in a foreign country, including a U.S. citizen? Is every potential suicide bomber targetable, or does it depend on the gravity of the threat? Are we justified in drone strikes against targets who might, if they get a chance at some unspecified future point, place an IED that might, if successful, kill one person? Ten people? Twenty? 2,000? How grave a threat must there be to justify the use of lethal force against an American citizen abroad -- or against non-citizens, for that matter?

As I have noted, it is impossible for outsiders to fully evaluate US drone strikes, since so much vital information remains classified. In most cases, we know little about the identities; activities or future plans of those targeted. Nevertheless, given the increased frequency of US targeted killings in recent years, it seems reasonable to wonder whether the Administration conducts a rigorous necessity or proportionality analysis in all cases.

So far, the leaked 2011 Justice Department White Paper represents the most detailed legal analysis of targeted killings available to the public. It is worth noting, incidentally, that this White Paper addresses only the question of whether and when it is lawful for the US government to target US citizens abroad. We do not know what legal standards the Administration believes apply to the targeting of non-citizens. It seems reasonable to assume, however, that the standards applicable to non-citizens are less exacting than those the Administration views as applicable to citizens.

Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41

No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should not depend solely on the good faith and benevolence of government officials.

As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness.

The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable?

5. Setting Troubling International Precedents

Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice.

Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder.

Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack."

The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular.

It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem.

This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent t hreat and who constitutes a targetable enemy combatant in an ill- defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

#### That lowers the threshold for agression and undermines strategy

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But the advantages of drones are as overstated and misunderstood as the problems they pose — and in some ways, their very perceived advantages cause new problems. Drone technologies temptingly lower or disguise the costs of lethal force, but their availability can blind us to the potentially dangerous longer - term costs and consequences of our strategic choices. Armed drones lower the perceived costs of using lethal force in at least three ways. First, drones reduce the dollar cost of using lethal force inside foreign countries. 13 Most drones are economical compared with the available alternatives. 14 Manned aircraft, for instance, are quite expensive: 15 Lockheed Martin's F - 22 fighter jets cost about $150 million each; F - 35s are $90 million; and F - 16s are $55 million. But the 2011 price of a Reaper drone was approximately $28.4 million, while Predator drones cost only about $5 million to make. 16 As with so many things, putting a dollar figure on drones is difficult; it depends what costs are counted, and what time frame is used. Nevertheless, drones continue to be perceived as cheaper by government decision - makers. Second, relying on drone strikes rather than alternative means reduces the domestic political costs of using lethal force. Sending manned aircraft or special operations forces after a suspected terrorist places the lives of U.S. personnel at risk, and full - scale invasions and occupations endanger even more American lives. In contrast, using armed drones eliminates all short - term risks to the lives of U.S. personnel involved in the operations. Third, by reducing accidental civilian casualties, 17 precision drone technologies reduce the perceived moral and reputational costs of using lethal force. The US government is extraordinarily concerned about avoiding unnecessary civilian casualties, and rightly so. There are moral and legal reasons for this concern, and there are also pragmatic reasons: civilian casualties cause pain and resentment within local populations and host - country governments and alienate the international community It is of course not a bad thing to possess military technologies that are cost little, protect American lives and enable us to minimize civilian casualties. When new technologies appear to reduce the costs of using lethal force, however, the threshold for deciding to use lethal force correspondingly drops, and officials will be tempted to use lethal force with greater frequency and less wisdom. Over the last decade, we have seen US drone strikes evolve from a tool used in extremely limited circumstances to go after specifically identified high - ranking al Qaeda officials to a tool relied on in an increasing number of countries to go after an eternally lengthening list of putative bad actors, with increasingly tenuous links to grave or imminent threats to the United States. Some of these suspected terrorists have been identified by name and specifically targeted, while others are increasingly targeted on the basis of suspicious behavior patterns. Increasingly, drones strikes have targeted militants who are lower and lower down the terrorist food chain, 18 rather than terrorist masterminds. 19 Although drone strikes are believed to have killed more than 3,000 people since 2004, 20 analysis by the New America Foundation and more recently by a the McClatchy newspaper s suggests that only a small fraction of the dead appear to have been so - called "high - value targets." 21 What’s more, drone strikes have spread ever further from "hot" battlefields, migrating from Pakistan to Yemen to Somalia (and perhaps to Mali 22 and the Philippines as well). 23

#### Results in great power war—traditional checks don’t apply

Eric Posner 13, a professor at the University of Chicago Law School, May 15th, 2013, "The Killer Robot War is Coming," Slate, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/drone\_warfare\_and\_spying\_we\_need\_new\_laws.html

Drones have existed for decades, but in recent years they have become ubiquitous. Some people celebrate drones as an effective and humane weapon because they can be used with precision to slay enemies and spare civilians, and argue that they pose no special risks that cannot be handled by existing law. Indeed, drones, far more than any other weapon, enable governments to comply with international humanitarian law by avoiding civilian casualties when attacking enemies. Drone defenders also mocked Rand Paul for demanding that the Obama administration declare whether it believed that it could kill people with drones on American territory. Existing law permits the police to shoot criminals who pose an imminent threat to others; if police can gun down hostage takers and rampaging shooters, why can’t they drone them down too? While there is much to be said in favor of these arguments, drone technology poses a paradox that its defenders have not confronted. Because drones are cheap, effective, riskless for their operators, and adept at minimizing civilian casualties, governments may be tempted to use them too frequently. Indeed, a panic has already arisen that the government will use drones to place the public under surveillance. Many municipalities have passed laws prohibiting such spying even though it has not yet taken place. Why can’t we just assume that existing privacy laws and constitutional rights are sufficient to prevent abuses? To see why, consider U.S. v. Jones, a 2012 case in which the Supreme Court held that the police must get a search warrant before attaching a GPS tracking device to a car, because the physical attachment of the device trespassed on property rights. Justice Samuel Alito argued that this protection was insufficient, because the government could still spy on people from the air. While piloted aircraft are too expensive to use routinely, drones are not, or will not be. One might argue that if the police can observe and follow you in public without obtaining a search warrant, they should be able to do the same thing with drones. But when the cost of surveillance declines, more surveillance takes place. If police face manpower limits, then they will spy only when strong suspicions justify the intrusion on targets’ privacy. If police can launch limitless drones, then we may fear that police will be tempted to shadow ordinary people without good reason. Similarly, we may be comfortable with giving the president authority to use military force on his own when he must put soldiers into harm’s way, knowing that he will not risk lives lightly. Presidents have learned through hard experience that the public will not tolerate even a handful of casualties if it does not believe that the mission is justified. But when drones eliminate the risk of casualties, the president is more likely to launch wars too often. The same problem arises internationally. The international laws that predate drones assume that military intervention across borders risks significant casualties. Since that check normally kept the peace, international law could give a lot of leeway for using military force to chase down terrorists. But if the risk of casualties disappears, then nations might too eagerly attack, resulting in blowback and retaliation. Ironically, the reduced threat to civilians in tactical operations could wind up destabilizing relationships between countries, including even major powers like the United States and China, making the long-term threat to human life much greater. These three scenarios illustrate the same lesson: that law and technology work in tandem. When technological barriers limit the risk of government abuse, legal restrictions on governmental action can be looser. When those technological barriers fall, legal restrictions may need to be tightened.

#### These conflicts go nuclear

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89\_1/89\_1Boyle.pdf

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.

#### Unrestricted drone use causes 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.”

#### Nuclear war

Blank 2k—Stephen, Prof. Research at Strategic Studies Inst. @ US Army War College [“U.S. Military Engagement with Transcaucasia and Central Asia”, www.strategicstudiesinstitute.army.mil/pdffiles/pub113.pdf]

Washington’s burgeoning military-political-economic involvement seeks, inter alia, to demonstrate the U.S. ability to project military power even into this region or for that matter, into Ukraine where NATO recently held exercises that clearly originated as an anti-Russian scenario. Secretary of Defense William Cohen has discussed strengthening U.S.-Azerbaijani military cooperation and even training the Azerbaijani army, certainly alarming Armenia and Russia.69 And Washington is also training Georgia’s new Coast Guard. 70 However, Washington’s well-known ambivalence about committing force to Third World ethnopolitical conflicts suggests that U.S. military power will not be easily committed to saving its economic investment. But this ambivalence about committing forces and the dangerous situation, where Turkey is allied to Azerbaijan and Armenia is bound to Russia, create the potential for wider and more protracted regional conflicts among local forces. In that connection, Azerbaijan and Georgia’s growing efforts to secure NATO’s lasting involvement in the region, coupled with Russia’s determination to exclude other rivals, foster a polarization along very traditional lines.71 In 1993 Moscow even threatened World War III to deter Turkish intervention on behalf of Azerbaijan. Yet the new Russo-Armenian Treaty and Azeri-Turkish treaty suggest that Russia and Turkey could be dragged into a confrontation to rescue their allies from defeat. 72 Thus many of the conditions for conventional war or protracted ethnic conflict in which third parties intervene are present in the Transcaucasus. For example, many Third World conflicts generated by local structural factors have a great potential for unintended escalation. Big powers often feel obliged to rescue their lesser proteges and proxies. One or another big power may fail to grasp the other side’s stakes since interests here are not as clear as in Europe. Hence commitments involving the use of nuclear weapons to prevent a client’s defeat are not as well established or apparent. Clarity about the nature of the threat could prevent the kind of rapid and almost uncontrolled escalation we saw in 1993 when Turkish noises about intervening on behalf of Azerbaijan led Russian leaders to threaten a nuclear war in that case. 73 Precisely because Turkey is a NATO ally, Russian nuclear threats could trigger a potential nuclear blow (not a small possibility given the erratic nature of Russia’s declared nuclear strategies). The real threat of a Russian nuclear strike against Turkey to defend Moscow’s interests and forces in the Transcaucasus makes the danger of major war there higher than almost everywhere else. As Richard Betts has observed, The greatest danger lies in areas where (1) the potential for serious instability is high; (2) both superpowers perceive vital interests; (3) neither recognizes that the other’s perceived interest or commitment is as great as its own; (4) both have the capability to inject conventional forces; and, (5) neither has willing proxies capable of settling the situation.74 that preclude its easy attainment of regional hegemony. And even the perceptions of waning power are difficult to accept and translate into Russian policy. In many cases, Russia still has not truly or fully accepted how limited its capabilities for securing its vital interests are. 76 While this hardly means that Russia can succeed at will regionally, it does mean that for any regional balance, either on energy or other major security issues, to be realized, someone else must lend power to the smaller Caspian littoral states to anchor that balance. Whoever effects that balance must be willing to play a protracted and potentially even military role in the region for a long time and risk the kind of conflict which Betts described. There is little to suggest that the United States can or will play this role, yet that is what we are now attempting to do. This suggests that ultimately its bluff can be called. That is, Russia could sabotage many if not all of the forthcoming energy projects by relatively simple and tested means and there is not much we could do absent a strong and lasting regional commitment.

#### Plan solves—explicit legal distinctions foster international consensus-building

Daskal 13 [Copyright (c) 2013 University of Pennsylvania Law Review University of Pennsylvania Law Review April, 2013 University of Pennsylvania Law Review 161 U. Pa. L. Rev. 1165 LENGTH: 24961 words ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE NAME: Jennifer C. Daskal, p. lexis]

Conclusion Legal scholars, policymakers, and state actors are embroiled in a heated debate about whether the conflict with al Qaeda is concentrated within specific geographic boundaries or extends to wherever al Qaeda members and associated forces may go. The United States' expansive view of the conflict, coupled with its broad definition of the enemy, has led to a legitimate concern about the creep of war. Conversely, the European and human rights view, which confines the conflict to a limited geographic region, ignores the potentially global nature of the threat and unduly constrains the state's ability to respond. Neither the law of international armed conflict (governing conflicts between states) nor the law of noninternational armed conflict (traditionally understood to govern intrastate conflicts) provides the answers that are so desperately needed. The zone approach proposed by this Article fills the international law gap, effectively mediating the multifaceted liberty and security interests at stake. It recognizes the broad sweep of the conflict, but distinguishes between zones of active hostilities and other areas in determining which rules apply. Specifically, it offers a set of standards that would both limit and legitimize the use of out-of-battlefield targeted killings and law of war-based detentions, subjecting their use to an individualized threat assessment, a least-harmful-means test, and significant procedural safeguards. This [\*1234] approach confines the use of out-of-battlefield targeted killings and detention without charge to extraordinary situations in which the security of the state so demands. It thus limits the use of force as a first resort, protects against the unnecessary erosion of peacetime norms and institutions, and safeguards individual liberty. At the same time, the zone approach ensures that the state can effectively respond to grave threats to its security, wherever those threats are based. The United States has already adopted a number of policies that distinguish between zones of active hostilities and elsewhere, implicitly recognizing the importance of this distinction. By adopting the proposed framework as a matter of law, the United States can begin to set the standards and build an international consensus as to the rules that ought to apply, not only to this conflict, but to future conflicts. The likely reputational, security, and foreign policy gains make acceptance of this framework a worthy endeavor.

### Europe advantage

#### Plan is already squo policy - but only legal codification solves European cooperation and international norms

Dworkin 12

Anthony Dworkin is a Senior Policy Fellow at the European Council on Foreign Relations, European Council on Foreign Relations, June 19, 2012, "Obama’s Drone Attacks: How the EU Should Respond", http://ecfr.eu/content/entry/commentary\_obamas\_drone\_attacks\_how\_the\_eu\_should\_respond

Obama’s Concession to European Views

In a speech on the subject last autumn, Obama’s chief counter-terrorism advisor John Brennan gave a glimpse into the administration’s discussions with some of its European allies. Brennan acknowledged that a number of the United States’ closest partners took a different view about the scope of the armed conflict against al-Qaeda, rejecting the use of force outside battlefield situations except when it was the only way to prevent the imminent threat of a terrorist attack. He went on to say that the United States depended on the assistance and cooperation of its allies in fighting terrorism, and that this was much easier to obtain when there was a convergence between their respective legal views. Increasingly, Brennan argued, such convergence was taking place as a matter of practice, as the United States chose to pursue an approach to targeting that was aligned with its partners’ vision.

In a further speech this year, Brennan developed this point. He said that even though the United States believed in general it had a legal right under the laws of war to shoot to kill anyone who was part of al-Qaeda, the Taliban or associated forces, in practice it followed a more restrictive approach. “We do not engage in lethal action in order to eliminate every single member of al-Qaeda in the world,” Brennan said. “Rather, we conduct targeted strikes because they are necessary to mitigate an actual ongoing threat – to stop plots, prevent future attacks, and save American lives.” In other words, the Obama administration presents itself as following a policy of voluntary restraint – deliberately confining its use of targeted killing to those cases where officials believe it is necessary to prevent an imminent attack, in part out of respect for its allies’ sensibilities and to make cooperation easier.

There are two reasons why this concession, on its own, is unlikely to – and ought not to – satisfy European concerns. It is true that many European states would accept that the use of lethal force is permissible when it is the only way to prevent the imminent loss of innocent life. Indeed the European Court of Human Rights endorsed such a standard several years ago in an influential ruling on the shooting by British special forces of three IRA members in Gibraltar. But if the United States is indeed following the principle of imminent threat in making targeting decisions outside the “hot battlefield” of Afghanistan and the Pakistani border region, it seems to interpret the concept of imminence in a rather more permissive way than most Europeans would be comfortable with. The sheer number of strikes testifies to the accommodating nature of the administration’s analysis: the New America Foundation estimates that there have been 265 drone strikes in Pakistan and 28 in Yemen since Obama took office. Moreover, in both Pakistan and now Yemen, Obama has reportedly given permission for so-called “signature strikes” in which attacks are carried against targets on the basis of a pattern of behavior that is indicative of terrorist activity without identifying the individuals involved – a policy that seems particularly hard to justify under an imminence test outside battlefield conditions.

Over time, the United States and its European allies might be able move closer to a common understanding of the concept of imminence through a process of discussion. But in any case there is an independent reason why the Obama administration’s policy of claiming expansive legal powers, while limiting them in practice on a voluntary basis, is a dangerous one. Precisely because he has greater international credibility than President Bush, the claims that Obama makes are likely to be influential in setting global standards for the use of the use of this new and potentially widely available technology. The United States is currently the only country that uses armed drones for targeted killing outside the battlefield, but several other countries already have remotely controlled pilotless aircraft or are in the process of acquiring them. The United States is unlikely to remain alone in this practice for long. At the same time, there have been several other examples in recent years of countries engaging in military campaigns against non-state groups outside their borders – as with Israel in Lebanon and Ethiopia in Somalia. For this reason, there is a strong international interest in trying to establish clear and agreed legal rules (not merely a kind of pragmatic best practice) to govern the use of targeted killing of non-state fighters.

#### T-TIP is uniquely 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 , “The Transatlantic Journey – TTIP & Cautious Optimism,” Bursting the Bubble, 2 September 2013, 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, 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” — 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.

#### AND, ignoring European concerns forces it to become a counterweight. We will also control the internal link to every impact in the debate

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 Middle 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 Middle 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 European 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 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 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 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.

### Plan/solvency

#### The United States Federal Government should restrict the President’s war powers authority for targeted killing as a first resort outside zones of active hostilities.

#### Only congressional action on the scope of hostilities sends a clear signal that the US abides by the laws of armed conflict

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• First, the United States government urgently needs publicly to declare the legal rationale behind its use of drones, and defend that legal rationale in the international community, which is increasingly convinced that parts, if not all, of its use is a violation of international law.

• Second, the legal rationale offered by the United States government needs to take account, not only of the use of drones on traditional battlefields by the US military, but also of the Obama administration’s signature use of drones by the CIA in operations outside of traditionally conceived zones of armed conflict, whether in Pakistan, or further afield, in Somalia or Yemen or beyond. This legal rationale must be certain to protect, in plain and unmistakable language, the lawfulness of the CIA’s participation in drone-related uses of force as it takes place today, and to protect officials and personnel from moves, in the United States or abroad, to treat them as engaged in unlawful activity. It must also be broad enough to encompass the use of drones (under the statutory arrangements long set forth in United States domestic law) by covert civilian agents of the CIA, in operations in the future, involving future presidents, future conflicts, and future reasons for using force that have no relationship to the current situation.

• Third, the proper legal rationale for the use of force in drone operations in special, sometimes covert, operations outside of traditional zones of armed conflict is the customary international law doctrine of self-defense, rather than the narrower law of armed conflict.

• Fourth, Congress has vital roles to play here, mostly in asserting the legality of the use of drones. These include: (i) Plain assertion of the legality of the programs as currently used by the Obama administration, as a signal to courts in the US as well as the international community and other interested actors, that the two political branches are united on an issue of vital national security and foreign policy. (ii) Congressional oversight mechanisms should also be strengthened in ensuring Congress’s meaningful knowledge and ability to make its views known. (iii) Congress also should consider legislation to clarify once and for all that that covert use of force is lawful under US law and international law of self-defense, and undertake legislation to make clear the legal protection of individual officers. (iv) Congress should also strongly encourage the administration to put a public position on the record. In my view, that public justification ought to be something (self-defense, in my view) that will ensure the availability of targeted killing for future administrations outside the context of conflict with Al Qaeda – and protect against its legal erosion by acquiescing or agreeing to interpretations of international law that would accept, even by implication, that targeted killing by the civilian CIA using drones is per se an unlawful act of extrajudicial execution.

The Multiple Strategic Uses of Drones and Their Legal Rationales

4. Seen through the lens of legal policy, drones as a mechanism for using force are evolving in several different strategic and technological directions, with different legal implications for their regulation and lawful use. From my conversations and research with various actors involved in drone warfare, the situation is a little bit like the blind men and the elephant – each sees only the part, including the legal regulation, that pertains to a particular kind of use, and assumes that it covers the whole. The whole, however, is more complicated and heterogeneous. They range from traditional tactical battlefield uses in overt war to covert strikes against non-state terrorist actors hidden in failed states, ungoverned, or hostile states in the world providing safe haven to terrorist groups. They include use by uniformed military in ordinary battle but also use by the covert civilian service.

5. Although well-known, perhaps it bears re-stating the when this discussion refers to drones and unmanned vehicle systems, the system is not “unmanned” in the sense that human beings are not in the decision or control loop. Rather, “unmanned” here refers solely to “remote-piloted,” in which the pilot and weapons controllers are not physically on board the aircraft. (“Autonomous” firing systems, in which machines might make decisions about the firing of weapons, raise entirely separate issues not covered by this discussion because they are not at issue in current debates over UA Vs.)

6. Drones on traditional battlefields. The least legally complicated or controversial use of drones is on traditional battlefields, by the uniformed military, in ordinary and traditional roles of air power and air support. From the standpoint of military officers involved in such traditional operations in Afghanistan, for example, the use of drones is functionally identical to the use of missile fired from a standoff fighter plane that is many miles from the target and frequently over-the-horizon. Controllers of UAVs often have a much better idea of targeting than a pilot with limited input in the cockpit. From a legal standpoint, the use of a missile fired from a drone aircraft versus one fired from some remote platform with a human pilot makes no difference in battle as ordinarily understood. The legal rules for assessing the lawfulness of the target and anticipated collateral damage are identical.

7. Drones used in Pakistan’s border region. Drones used as part of the on-going armed conflict in Afghanistan, in which the fighting has spilled over – by Taliban and Al Qaeda flight to safe havens, particularly – into neighboring areas of Pakistan likewise raise relatively few questions about their use, on the assumption that the armed conflict has spilled, as is often the case of armed conflict, across an international boundary. There are no doubt important international and diplomatic questions raised about the use of force across the border – and that is presumably one of the major reasons why the US and Pakistan have both preferred the use of drones by the CIA with a rather shredded fig leaf, as it were, of deniability, rather than US military presence on the ground in Pakistan. The legal questions are important, but (unless one takes the view that the use of force by the CIA is always and per se illegal under international law, even when treated as part of the armed forces of a state in what is unquestionably an armed conflict) there is nothing legally special about UAVs that would distinguish them from other standoff weapons platforms.

8. Drones used in Pakistan outside of the border region. The use of drones to target Al Qaeda and Taliban leadership outside of places in which it is factually plain that hostilities are underway begins to invoke the current legal debates over drone warfare. From a strategic standpoint, of course, the essence of much fighting against a raiding enemy is to deny it safe haven; as safe havens in the border regions are denied, then the enemy moves to deeper cover. The strategic rationale for targeting these leaders (certainly in the view of the Obama administration) is overwhelming. Within the United States, and even more without, arguments are underway as to whether Pakistan beyond the border regions into which overt fighting has spilled can justify reach to the law of armed conflict as a basis and justification for drone strikes.

9. Drones used against Al Qaeda affiliates outside of AfPak – Somalia, Yemen or beyond. The President, in several major addresses, has stressed that the United States will take the fight to the enemy, and pointedly included places that are outside of any traditionally conceived zone of hostilities in Iraq or AfPak – Somalia and Yemen have each been specifically mentioned. And indeed, the US has undertaken uses of force in those places, either by means of drones or else by human agents. The Obama administration has made clear – entirely correctly, in my view – that it will deny safe haven to terrorists. As the president said in an address at West Point in fall 2009, we “cannot tolerate a safe-haven for terrorists whose location is known, and whose intentions are clear.”1 In this, the President follows the long-standing, traditional view of the US government endorsing, as then-State Department Legal Advisor Abraham Sofaer put it in a speech in 1989, the “right of a State to strike terrorists within the territory of another State where terrorists are using that territory as a location from which to launch terrorist attacks and where the State involved has failed to respond effectively to a demand that the attacks be stopped.”2

10. The United States might assert in these cases that the armed conflict goes where the combatants go, in the case particularly of an armed conflict (with non-state actors) that is already acknowledged to be underway. In that case, those that it targets are, in its view, combats that can lawfully be targeted, subject to the usual armed conflict rules of collateral damage. One says this without knowing for certain whether this is, in fact, the US view – although the Obama administration is under pressure for failing to articulate a public legal view, this was equally the case for the preceding two administrations. In any case, however, that view is sharply contested as a legal matter. The three main contending legal views at this point are as follows:

• One legal view (the traditional view and that presumably taken by the Obama administration, except that we do not know for certain, given its reticence) is that we are in an armed conflict. Wherever the enemy goes, we are entitled to follow and attack him as a combatant. Geography and location – important for diplomatic reasons and raising questions about the territorial integrity of states, true – are irrelevant to the question of whether it is lawful to target under the laws of war; the war goes where the combatant goes. We must do so consistent with the laws of war and attention to collateral damage, and other legal and diplomatic concerns would of course constrain us if, for example, the targets fled to London or Istanbul. But the fundamental right to attack a combatant, other things being equal, surely cannot be at issue.

• A second legal view directly contradicts the first, and says that the legal rights of armed conflict are limited to a particular theatre of hostilities, not to wherever combatants might flee throughout the world. This creates a peculiar question as to how, lawfully, hostilities against a non-state actor might ever get underway. But the general legal policy response is that if there is no geographic constraint consisting of a “theatre” of hostilities, then the very special legal regime of the laws of armed conflict might suddenly, and without any warning, apply – and overturn – ordinary laws of human rights that prohibit extrajudicial execution, and certainly do not allow attacks subject merely to collateral damage rules, with complete surprise and no order to it. Armed conflict is defined by its theatres of hostilities, on this view, as a mechanism for limiting the scope of war and, importantly, the reach of the laws of armed conflict insofar as the displace (with a lower standard of protection) ordinary human rights law. Again, this leaves a deep concern that this view, in effect, empowers the fleeing side, which can flee to some place where, to some extent, it is protected against attack.

• A third legal view (to which I subscribe) says that armed conflict under the laws of war, both treaty law of the Geneva Conventions and customary law, indeed accepts that non-international armed conflict is defined, and therefore limited by, the presence of persistent, sustained, intense hostilities. In that sense, then, an armed conflict to which the laws of war apply exists only in particular places where those conditions are met. That is not the end of the legal story, however. Armed conflict as defined under the Geneva Conventions (common articles 2 and 3) is not the only international law basis for governing the use of force. The international law of self-defense is a broader basis for the use of force in, paradoxically, more limited ways that do not rise to the sustained levels of fighting that legally define hostilities.

• Why is self-defense the appropriate legal doctrine for attacks taking place away from active hostilities? From a strategic perspective, a large reason for ordering a limited, pinprick, covert strike is in order to avoid, if possible, an escalation of the fighting to the level of overt intensity that would invoke the laws of war – the intent of the use of force is to avoid a wider war. Given that application of the laws of war, in other words, requires a certain level of sustained and intense hostilities, that is not always a good thing. It is often bad and precisely what covert action seeks to avoid. The legal basis for such an attack is not armed conflict as a formal legal matter – the fighting with a non-state actor does not rise to the sustained levels required under the law’s threshold definition – but instead the law of self-defense.

• Is self-defense law simply a standardless license wantonly to kill? This invocation of self-defense law should not be construed as meaning that it is without limits or constraining standards. On the contrary, it is not standardless, even though it does not take on all the detailed provisions of the laws of war governing “overt” warfare, including the details of prison camp life and so on. It must conform to the customary law standards of necessity and proportionality – necessity in determining whom to target, and proportionality in considering collateral damage. The standards in those cases should essentially conform to military standards under the law of war, and in some cases the standards should be still higher.

11. The United States government seems, to judge by its lack of public statements, remarkably indifferent to the increasingly vehement and pronounced rejection of the first view, in particular, that the US can simply follow combatants anywhere and attack them. The issue is not simply collateral damage in places where no one had any reason to think there was a war underway; prominent voices in the international legal community question, at a minimum, the lawfulness of even attacking what they regard as merely alleged terrorists. In the view of important voices in international law, the practice outside of a traditional battlefield is a violation of international human rights law guarantees against extrajudicial execution and, at bottom, is just simple murder. On this view, the US has a human rights obligation to seek to arrest and then charge under some law; it cannot simply launch missiles at those it says are its terrorist enemies. It shows increasing impatience with US government silence on this issue, and with the apparent – but quite undeclared – presumption that the armed conflict goes wherever the combatants go.

12. Thus, for example, the UN special rapporteur on extrajudicial execution, NYU law professor Philip Alston, has asked in increasingly strong terms that, at a minimum, the US government explain its legal rationales for targeted killing using drones. The American Civil Liberties Union in February 2010 filed an extensive FOIA request (since re-filed as a lawsuit), seeking information on the legal rationales (but including requests for many operational facts) for all parts of the drones programs, carefully delineating military battlefield programs and CIA programs outside of the ordinary theatres of hostilities. Others have gone much further than simply requests that the US declare its legal views and have condemned them as extrajudicial execution – as Amnesty International did with respect to one of the earliest uses of force by drones, the 2002 Yemen attack on Al Qaeda members. The addition of US citizens to the kill-or-capture list, under the authorization of the President, has raised the stakes still further. The stakes, in this case, are highly unlikely to involve President Obama or Vice-President Biden or senior Obama officials. They are far more likely to involve lower level agency counsel, at the CIA or NSC, who create the target lists and make determinations of lawful engagement in any particular circumstance. It is they who would most likely be investigated, indicted, or prosecuted in a foreign court as, the US should take careful note, has already happened to Israeli officials in connection with operations against Hamas. The reticence of the US government on this matter is frankly hard to justify, at this point; this is not a criticism per se of the Obama administration, because the George W. Bush and Clinton administrations were equally unforthcoming. But this is the Obama administration, and public silence on the legal legitimacy of targeted killings especially in places and ways that are not obviously by the military in obvious battlespaces is increasingly problematic.

13. Drones used in future circumstances by future presidents against new non-state terrorists. A government official with whom I once spoke about drones as used by the CIA to launch pinpoint attacks on targets in far-away places described them, in strategic terms, as the “lightest of the light cavalry.” He noted that if terrorism, understood strategically, is a “raiding strategy” launched largely against “logistical” rather than “combat” targets – treating civilian and political will as a “logistical target” in this strategic sense – then how should we see drone attacks conducted in places like Somalia or Yemen or beyond? We should understand them, he said, as a “counter-raiding” strategy, aimed not at logistical targets, but instead at combat targets, the terrorists themselves. Although I do not regard this use of “combat” as a legal term – because, as suggested above, the proper legal frame for these strikes is self-defense rather than “armed conflict” full-on – as a strategic description, this is apt.

14. This blunt description suggests, however, that it is a profound mistake to think that the importance of drones lies principally on the traditional battlefield, as a tactical support weapon, or even in the “spillover” areas of hostilities. In those situations, it is perhaps cheaper than the alternatives of manned systems, but is mostly a substitute for accepted and existing military capabilities. Drone attacks become genuinely special as a form of strategic, yet paradoxically discrete, air power outside of overt, ordinary, traditional hostilities – the farthest project of discrete force by the lightest of the light cavalry. As these capabilities develop in several different technological direction – on the one hand, smaller vehicles, more contained and limited kinetic weaponry, and improved sensors and, on the other hand, large-scale drone aircraft capable of going after infrastructure targets as the Israelis have done with their Heron UAVs – it is highly likely that they will become a weapon of choice for future presidents, future administrations, in future conflicts and circumstances of self- defense and vital national security of the United States. Not all the enemies of the United States, including transnational terrorists and non-state actors, will be Al Qaeda or the authors of 9/11. Future presidents will need these technologies and strategies – and will need to know that they have sound, publicly and firmly asserted legal defenses of their use, including both their use and their limits in law.

#### That solves global war – US precedent is key

Kristen Roberts 13, news editor for the National Journal, master in security studies from Georgetown, “When the Whole World Has Drones”, March 22, http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321

The proliferation of drone technology has moved well beyond the control of the United States government and its closest allies. The aircraft are too easy to obtain, with barriers to entry on the production side crumbling too quickly to place limits on the spread of a technology that promises to transform warfare on a global scale. Already, more than 75 countries have remote piloted aircraft. More than 50 nations are building a total of nearly a thousand types. At its last display at a trade show in Beijing, China showed off 25 different unmanned aerial vehicles. Not toys or models, but real flying machines.

It’s a classic and common phase in the life cycle of a military innovation: An advanced country and its weapons developers create a tool, and then others learn how to make their own. But what makes this case rare, and dangerous, is the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use. This technology is snowballing through a global arena where the main precedent for its application is the one set by the United States; it’s a precedent Washington does not want anyone following.

America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts.

To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order.

Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan.

This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself that would at minimum create a globally relevant standard for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation.

THE WRONG QUESTION

The United States is the indisputable leader in drone technology and long-range strike. Remote-piloted aircraft have given Washington an extraordinary ability to wage war with far greater precision, improved effect, and fewer unintended casualties than conventional warfare. The drones allow U.S. forces to establish ever greater control over combat areas, and the Pentagon sees the technology as an efficient and judicious force of the future. And it should, given the billions of dollars that have gone into establishing and maintaining such a capability.

That level of superiority leads some national security officials to downplay concerns about other nations’ unmanned systems and to too narrowly define potential threats to the homeland. As proof, they argue that American dominance in drone warfare is due only in part to the aircraft itself, which offers the ability to travel great distances and loiter for long periods, not to mention carry and launch Hellfire missiles. The drone itself, they argue, is just a tool and, yes, one that is being copied aggressively by allies and adversaries alike. The real edge, they say, is in the unparalleled intelligence-collection and data-analysis underpinning the aircraft’s mission.

“There is what I think is just an unconstrained focus on a tool as opposed to the subject of the issue, the tool of remotely piloted aircraft that in fact provide for greater degrees of surety before you employ force than anything else we use,” said retired Lt. Gen. David Deptula, the Air Force’s first deputy chief of staff for intelligence, surveillance, and reconnaissance. “I think people don’t realize that for the medium altitude aircraft—the MQ-1 [Predator] and MQ-9 [Reaper] that are generally written about in the press—there are over 200 people involved in just one orbit of those aircraft.… The majority of those people are analysts who are interpreting the information that’s coming off the sensors on the aircraft.”

The analysts are part of the global architecture that makes precision strikes, and targeted killing, possible. At the front end, obviously, intelligence—military, CIA, and local—inform target decisions. But in as near-real time as technologically possible, intel analysts in Nevada, Texas, Virginia, and other locations watch the data flood in from the aircraft and make calls on what’s happening on target. They monitor the footage, listen to audio, and analyze signals, giving decision-makers time to adjust an operation if the risks (often counted in potential civilian deaths) outweigh the reward (judged by the value of the threat eliminated).

“Is that a shovel or a rifle? Is that a Taliban member or is this a farmer? The way that warfare has advanced is that we are much more exquisite in our ability to discern,” Maj. Gen. Robert Otto, commander of the Air Force Intelligence, Surveillance, and Reconnaissance Agency, told National Journal at Nellis Air Force Base in Nevada. “We’re not overhead for 15 minutes with a fighter that’s about to run out of gas, and we have to make a decision. We can orbit long enough to be pretty sure about our target.”

Other countries, groups, and even individuals can and do fly drones. But no state or group has nearly the sophisticated network of intelligence and data analysis that gives the United States its strategic advantage. Although it would be foolish to dismiss the notion that potential U.S. adversaries aspire to attain that type of war-from-afar, pinpoint-strike capability, they have neither the income nor the perceived need to do so.

That’s true, at least today. It’s also irrelevant. Others who employ drones are likely to carry a different agenda, one more concerned with employing a relatively inexpensive and ruthlessly efficient tool to dispatch an enemy close at hand.

“It would be very difficult for them to create the global-strike architecture we have, to have a control cell in Nevada flying a plane over Afghanistan. The reality is that most nations don’t want or need that,” said Peter Singer, director of the Brookings Institution’s Center for 21st Century Security and Intelligence and one of the foremost experts in advanced military technology. “Turkey’s not looking to conduct strikes into the Philippines.... But Turkey is looking to be able to carry out long-duration surveillance and potentially strike inside and right on its border.”

And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir?

“We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.”

LOWERING THE BAR

Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this.

In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.)

When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time.

The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not.

“If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?”

But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan.

And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft.

“The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.”

The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge.

Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.”

BEHIND CLOSED DOORS

The argument against public debate is easy enough to understand: Operational secrecy is necessary, and total opacity is easier. “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things,” said Dennis Blair, Obama’s former director of national intelligence. “The reason it’s not been undertaken by the administration is that they just make a cold-blooded calculation that it’s better to hunker down and take the criticism than it is to get into the public debate, which is going to be a hard one to win.”

But by keeping legal and policy positions secret, only partially sharing information even with congressional oversight committees, and declining to open a public discussion about drone use, the president and his team are asking the world to just trust that America is getting this right. While some will, many people, especially outside the United States, will see that approach as hypocritical, coming from a government that calls for transparency and the rule of law elsewhere.

“I know these people, and I know how much they really, really attend to the most important details of the job,” said Barry Pavel, a former defense and security official in the Bush and Obama administrations who is director of the Brent Scowcroft Center on International Security at the Atlantic Council. “If I didn’t have that personal knowledge and because there isn’t that much really in the press, then I would be giving you a different rendering, and much more uncertain rendering.”

That’s only part of the problem with the White House’s trust-us approach. The other resides in the vast distance between the criteria and authorization the administration says it uses in the combat drone program and the reality on the ground. For example, according to administration officials, before a person is added to the targeted strike list, specific criteria should be met. The target should be a 1) senior, 2) operational 3) leader of al-Qaida or an affiliated group who presents 4) an imminent threat of violent attack 5) against the United States.

But that’s not who is being targeted.

Setting aside the administration’s redefining of “imminence” beyond all recognition, the majority of the 3,500-plus people killed by U.S. drones worldwide were not leaders of al-Qaida or the Taliban; they were low- or mid-level foot soldiers. Most were not plotting attacks against the United States. In Yemen and North Africa, the Obama administration is deploying weaponized drones to take out targets who are more of a threat to local governments than to Washington, according to defense and regional security experts who closely track unrest in those areas. In some cases, Washington appears to be in the business of using its drone capabilities mostly to assist other countries, not to deter strikes against the United States (another precedent that might be eagerly seized upon in the future).

U.S. defense and intelligence officials reject any suggestion that the targets are not legitimate. One thing they do not contest, however, is that the administration’s reliance on the post-9/11 Authorization for Use of Military Force as legal cover for a drone-strike program that has extended well beyond al-Qaida in Afghanistan or Pakistan is dodgy. The threat that the United States is trying to deal with today has an ever more tenuous connection to Sept. 11. (None of the intelligence officials reached for this article would speak on the record.) But instead of asking Congress to consider extending its authorization, as some officials have mulled, the administration’s legal counsel has chosen instead to rely on Nixon administration adviser John Stevenson’s 1970 justification of the bombing of Cambodia during the Vietnam War, an action new Secretary of State John Kerry criticized during his confirmation hearing this year.

Human-rights groups might be loudest in their criticism of both the program and the opaque policy surrounding it, but even the few lawmakers who have access to the intelligence the administration shares have a hard time coping with the dearth of information. “We can’t always assume we’re going to have responsible people with whom we agree and trust in these positions,” said Sen. Angus King, I-Maine, who sits on the Senate Intelligence Committee. “The essence of the Constitution is, it shouldn’t matter who is in charge; they’re still constrained by principles and rules of the Constitution and of the Bill of Rights.”

PEER PRESSURE

Obama promised in his 2013 State of the Union to increase the drone program’s transparency. “In the months ahead, I will continue to engage Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world,” the president said on Feb. 12. Since then, the administration, under pressure from allies on Senate Intelligence, agreed to release all of the legal memos the Justice Department drafted in support of targeted killing.

But, beyond that, it’s not certain Obama will do anything more to shine light on this program. Except in situations where leaks help it tell a politically expedient story of its skill at killing bad guys, the administration has done little to make a case to the public and the world at large for its use of armed drones.

Already, what’s become apparent is that the White House is not interested in changing much about the way it communicates strike policy. (It took Sen. Rand Paul’s 13-hour filibuster of CIA Director John Brennan’s nomination to force the administration to concede that it doesn’t have the right to use drones to kill noncombatant Americans on U.S. soil.) And government officials, as well as their surrogates on security issues, are actively trying to squash expectations that the administration would agree to bring the judicial branch into the oversight mix. Indeed, judicial review of any piece of the program is largely off the table now, according to intelligence officials and committee members.

Under discussion within the administration and on Capitol Hill is a potential program takeover by the Pentagon, removing the CIA from its post-9/11 role of executing military-like strikes. Ostensibly, that shift could help lift the secret-by-association-with-CIA attribute of the program that some officials say has kept them from more freely talking about the legitimate military use of drones for counterterrorism operations. But such a fix would provide no guarantee of greater transparency for the public, or even Congress.

And if the administration is not willing to share with lawmakers who are security-cleared to know, it certainly is not prepared to engage in a sensitive discussion, even among allies, that might begin to set the rules on use for a technology that could upend stability in already fragile and strategically significant places around the globe. Time is running out to do so.

“The history of technology development like this is, you never maintain your lead very long. Somebody always gets it,” said David Berteau, director of the International Security Program at the Center for Strategic and International Studies. “They’re going to become cheaper. They’re going to become easier. They’re going to become interoperable,” he said. “The destabilizing effects are very, very serious.”

Berteau is not alone. Zenko, of the Council on Foreign Relations, has urged officials to quickly establish norms. Singer, at Brookings, argues that the window of opportunity for the United States to create stability-supporting precedent is quickly closing. The problem is, the administration is not thinking far enough down the line, according to a Senate Intelligence aide. Administration officials “are thinking about the next four years, and we’re thinking about the next 40 years. And those two different angles on this question are why you see them in conflict right now.”

That’s in part a symptom of the “technological optimism” that often plagues the U.S. security community when it establishes a lead over its competitors, noted Georgetown University’s Kai-Henrik Barth. After the 1945 bombing of Hiroshima and Nagasaki, the United States was sure it would be decades before the Soviets developed a nuclear-weapon capability. It took four years.

With drones, the question is how long before the dozens of states with the aircraft can arm and then operate a weaponized version. “Pretty much every nation has gone down the pathway of, ‘This is science fiction; we don’t want this stuff,’ to, ‘OK, we want them, but we’ll just use them for surveillance,’ to, ‘Hmm, they’re really useful when you see the bad guy and can do something about it, so we’ll arm them,’ ” Singer said. He listed the countries that have gone that route: the United States, Britain, Italy, Germany, China. “Consistently, nations have gone down the pathway of first only surveillance and then arming.”

The opportunity to write rules that might at least guide, if not restrain, the world’s view of acceptable drone use remains, not least because this is in essence a conventional arms-control issue. The international Missile Technology Control Regime attempts to restrict exports of unmanned vehicles capable of carrying weapons of mass destruction, but it is voluntary and nonbinding, and it’s under attack by the drone industry as a drag on business. Further, the technology itself, especially when coupled with data and real-time analytics, offers the luxury of time and distance that could allow officials to raise the evidentiary bar for strikes—to be closer to certain that their target is the right one.

But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions.

A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs.

Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “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,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists.

The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

#### The executive will comply. Obama is working closely with Congress to size down the AUMF.

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.

#### Best scholarship supports our theory of drone use---unless norms are established early, they’ll be ineffective

Robert Farley 11, assistant professor at the Patterson School of Diplomacy and International Commerce at the University of Kentucky, Over the Horizon: U.S. Drone Use Sets Global Precedent, October 12, <http://www.worldpoliticsreview.com/articles/10311/over-the-horizon-u-s-drone-use-sets-global-precedent>

Is the world about to see a "drone race" among the United States, China and several other major powers? Writing in the New York Times, Scott Shane argued that just such an arms race is already happening and that it is largely a result of the widespread use of drones in a counterterror role by the United States. Shane suggests that an international norm of drone usage is developing around how the United States has decided to employ drones. In the future, we may expect that China, Russia and India will employ advanced drone technologies against similar enemies, perhaps in Xinjiang or Chechnya. Kenneth Anderson agrees that the drone race is on, but disagrees about its cause, arguing that improvements in the various drone component technologies made such an arms race inevitable. Had the United States not pursued advanced drone technology or launched an aggressive drone campaign, some other country would have taken the lead in drone capabilities. ¶ So which is it? Has the United States sparked a drone race, or was a race with the Chinese and Russians inevitable? While there's truth on both sides, on balance Shane is correct. Arms races don't just "happen" because of outside technological developments. Rather, they are embedded in political dynamics associated with public perception, international prestige and bureaucratic conflict. China and Russia pursued the development of drones before the United States showed the world what the Predator could do, but they are pursuing capabilities more vigorously because of the U.S. example. Understanding this is necessary to developing expectations of what lies ahead as well as a strategy for regulating drone warfare.¶ States run arms races for a variety of reasons. The best-known reason is a sense of fear: The developing capabilities of an opponent leave a state feeling vulnerable. The Germany's build-up of battleships in the years prior to World War I made Britain feel vulnerable, necessitating the expansion of the Royal Navy, and vice versa. Similarly, the threat posed by Soviet missiles during the Cold War required an increase in U.S. nuclear capabilities, and so forth. However, states also "race" in response to public pressure, bureaucratic politics and the desire for prestige. Sometimes, for instance, states feel the need to procure the same type of weapon another state has developed in order to maintain their relative position, even if they do not feel directly threatened by the weapon. Alternatively, bureaucrats and generals might use the existence of foreign weapons to argue for their own pet systems. All of these reasons share common characteristics, however: They are both social and strategic, and they depend on the behavior of other countries. ¶ Improvements in technology do not make the procurement of any given weapon necessary; rather, geostrategic interest creates the need for a system. So while there's a degree of truth to Anderson's argument about the availability of drone technology, he ignores the degree to which dramatic precedent can affect state policy. The technologies that made HMS Dreadnought such a revolutionary warship in 1906 were available before it was built; its dramatic appearance nevertheless transformed the major naval powers' procurement plans. Similarly, the Soviet Union and the United States accelerated nuclear arms procurement following the Cuban Missile Crisis, with the USSR in particular increasing its missile forces by nearly 20 times, partially in response to perceptions of vulnerability. So while a drone "race" may have taken place even without the large-scale Predator and Reaper campaign in Pakistan, Yemen and Somalia, the extent and character of the race now on display has been driven by U.S. behavior. Other states, observing the effectiveness -- or at least the capabilities -- of U.S. drones will work to create their own counterparts with an enthusiasm that they would not have had in absence of the U.S. example.¶ What is undeniable, however, is that we face a drone race, which inevitably evokes the question of arms control. Because they vary widely in technical characteristics, appearance and even definition, drones are poor candidates for "traditional" arms control of the variety that places strict limits on number of vehicles constructed, fielded and so forth. Rather, to the extent that any regulation of drone warfare is likely, it will come through treaties limiting how drones are used. ¶ Such a treaty would require either deep concern on the part of the major powers that advances in drone capabilities threatened their interests and survival, or widespread revulsion among the global public against the practice of drone warfare. The latter is somewhat more likely than the former, as drone construction at this point seems unlikely to dominate state defense budgets to the same degree as battleships in the 1920s or nuclear weapons in the 1970s. However, for now, drones are used mainly to kill unpleasant people in places distant from media attention. So creating the public outrage necessary to force global elites to limit drone usage may also prove difficult, although the specter of "out of control robots" killing humans with impunity might change that. P.W. Singer, author of "Wired for War," argues that new robot technologies will require a new approach to the legal regulation of war. Robots, both in the sky and on the ground, not to mention in the sea, already have killing capabilities that rival those of humans. Any approach to legally managing drone warfare will likely come as part of a more general effort to regulate the operation of robots in war.¶ However, even in the unlikely event of global public outrage, any serious effort at regulating the use of drones will require U.S. acquiescence. Landmines are a remarkably unpopular form of weapon, but the United States continues to resist the Anti-Personnel Mine Ban Convention. If the United States sees unrestricted drone warfare as being to its advantage -- and it is likely to do so even if China, Russia and India develop similar drone capabilities -- then even global outrage may not be sufficient to make the U.S. budge on its position. This simply reaffirms the original point: Arms races don't just "happen," but rather are a direct, if unexpected outcome of state policy. Like it or not, the behavior of the United States right now is structuring how the world will think about, build and use drones for the foreseeable future. Given this, U.S. policymakers should perhaps devote a touch more attention to the precedent they're setting.

## \*\*\* 2AC

### AT: Chow

#### Zero risk of their Chow impact---instrumental knowledge production doesn’t cause violence and discursive criticism could never solve it anyway

Ken Hirschkop 7, Professor of English and Rhetoric at the University of Waterloo, July 25, 2007, “On Being Difficult,” Electronic Book Review, online: http://www.electronicbookreview.com/thread/criticalecologies/transitive

This defect - not being art - is one that theory should prolong and celebrate, not remedy. For the most egregious error Chow makes is to imagine that obstructing instrumentalism is somehow a desirable and effective route for left-wing politics. The case against instrumentalism is made in depth in the opening chapter, which argues with reference to Hiroshima and Nagasaki that "[t]he dropping of the atomic bombs effected what Michel Foucault would call a major shift in epistemes, a fundamental change in the organization, production and circulation of knowledge" (33). It initiates the "age of the world target" in which war becomes virtualized and knowledge militarized, particularly under the aegis of so-called "area studies".

It's hard not to see this as a Pacific version of the notorious argument that the Gulag and/or the Holocaust reveal the exhaustion of modernity. And the first thing one has to say is that this interpretation of war as no longer "the physical, mechanical struggles between combative oppositional groups" (33), as now transformed into a matter technology and vision, puts Chow in some uncomfortable intellectual company: like that of Donald Rumsfeld, whose recent humiliation is a timely reminder that wars continue to depend on the deployment of young men and women in fairly traditional forms of battle. Pace Chow, war can indeed be fought, and fought successfully, "without the skills of playing video games" (35) and this is proved, with grim results, every day.

But it's the title of this new epoch - the title of the book as well - that truly gives the game away. Heidegger's "Age of the World Picture" claimed that the distinguishing phenomena of what we like to call modernity - science, machine technology, secularization, the autonomy of art and culture - depended, in the last instance, on a particular metaphysics, that of the "world conceived of and grasped as a picture", as something prepared, if you like, for the manipulations of the subject. Against this vision of "sweeping global instrumentalism" Heidegger set not Mallarmé, but Hölderlin, and not just Hölderlin, but also "reflection", i.e., Heidegger's own philosophy.

It's a philosophical reprise of what Francis Mulhern has dubbed "metaculture", the discourse in which culture is invoked as a principle of social organization superior to the degraded machinations of "politics", degraded machinations which, at the time he was composing this essay, had led Heidegger to lower his expectations of what National Socialism might achieve. In the fog of metaphysics, every actually existing nation - America, the Soviet Union, Germany - looks just as grey, as does every conceivable form of politics. For the antithesis of the "world picture" is not a more just democratic politics, but no politics at all, and it is hard to see how this stance can serve as the starting point for a political critique.

If Chow decides to pursue this unpromising path anyhow, it is probably because turning exploitation, military conquest and prejudice into so many epiphenomena of a metaphysical "instrumentalism" grants philosophy and poetry a force and a role in revolutionising the world that would otherwise seem extravagant. Or it would do, if "instrumentalism" was, as Chow claims a "demotion of language", if language was somehow more at home exulting in its own plenitude than merely referring to things.

Poor old language. Apparently ignored for centuries, it only receives its due when poststructuralists force us to acknowledge it. In their hands, "language flexes its muscles and breaks the chains of its hitherto subordination to thought" and, as a consequence, "those who pursue poststructuralist theory in the critical writings find themselves permanently at war with those who expect, and insist on, the transparency - that is, the invisibility - of language as a tool of communication" (48).

We have been down this road before and will no doubt go down it again. In fact, it's fair to say this particular journey has become more or less the daily commute of critical theory, though few have thought it ought to be described in such openly military terms. There is good reason, however, to think Chow's chosen route will lead not to the promised land of resistance and emancipation, but to more Sisyphean frustration. In fact, there are several good reasons.

### T – WPA/Prohibitions

#### We meet--A restriction on war powers authority limits Presidential discretion---we meet

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### Authority is what the president may do not what the president can do – comes from AUMF, don’t specify in plan because we’d lose to PICs

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

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

### Critique

#### Simualted national security law debates inculcate agency and decision-making skills—that enables activism and avoids cooption

Laura K. Donohue, Associate Professor of Law, Georgetown Law, 4/11/13, National Security Law Pedagogy and the Role of Simulations, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

#### 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.

#### No root cause of war so changing existing norms alone fails– counter-cultural pressures require political agency that respects the power of dominant systems.

Jack **SNYDER** IR @ Columbia **’12** in *Power and Progress* p. 88-92

The end of the Cold War has given rise to hopes among many international relations scholars and public activists that a dramatic transformation in world politics is now unfolding. They contend that changes in norms, ideas, and culture have the power to tame the historically war-prone nature of international anarchy. ' This analysis and the prescriptions that follow from it exaggerate the autonomy of ideas and culture in shaping behavior in anarchy. A rich body of research on war by anthropologists suggests that ideas and culture are best understood not as autonomous but as embedded in complex social systems shaped by the interaction of material circumstances, institutional arrangements, and strategic choices, as well as by ideas and culture. Cultural prescriptions that ignore these multifaceted interactions will provide a poor road map to guide strategies of global change. Those who foresee substantial opportunities to transform the war-prone international system into a realm governed by benign norms contend that "anarchy is what states make of it."2 In their view, culture, defined as shared knowledge or symbols that create meaning within a social group, determines whether behavior in the absence of a common governing authority is bloody or benign. If more benign ideas and identities are effectively spread across the globe through cultural change and normative persuasion, then "ought" can be transformed into "is". Support for warlike dictators can be undermined, perpetrators of war crimes and atrocities can be held accountable, benign multicultural identities can be fostered, and international and civil wars w ill wane3 These academic concepts have a potent counterpart in the international human rights approach of activist organizations 4 In contrast, skeptics about such transformations argue that anarchy, whether among states coexisting in a self- help system or among contending groups inside collapsed states , gives rise to an inescapable logic of insecurity and competition that culture cannot trump5 These skeptics fear that a transformative attempt to supersede self-help behavior amounts to reckless overreaching that will create backlashes and quagmires. Ironically, in this view, the idealist vanguard of the new world order will need to rely increasingly on old-fashioned military and economic coercion in a futile effort to change world culture for the better.6 This is a debate of compelling intellectual and practical import. It lays bare the most fundamental assumptions about the nature of world politics that underpin real policy choices about the deployment of the vast military, economic, and moral resources of the United States and other wealthy democraci es. However, some of the leading voices in this debate, both in academic and broader public settings, overlook the decisive interplay between situational constraints and the creation of culture. Prophets of transformation sometimes assert that politics in anarchy and society is driven by " ideas almost all the way down." They dismiss as negligible what Alexander Wendt ca lls "rump" material constraints rooted in biology, the physical environment, or other circumstances unalterable through changes in symbolism.7 For them, "agency" by political actors committed to social change consists primarily in working to alter prevailing principled ideas, such as promoting the norm of universal jurisdiction in the case of crimes against humanity. In contrast, working for improved outcomes within existing constraints of material power, for example, by bargaining with still powerful human rights abusers, does not count for them as true "agency"; rather it is mere myopic "problem solving" within constraints8 Conversely, when prophets of continuity discuss culture at all, they treat it as a largely unchangeable force that may have some effect in constituting the units competing for security but that has at most a secondary effect on strategic interactions between those units, which are driven mainly by the logic of the anarchical situation9 This is an unnecessarily truncated menu of possibilities for imagining the relationship between anarchy and culture. Ironically, in light of the ambitiously activist agenda of the proponents of cultural approaches to international relations, their one-dimensional approach limits agents to a peculiarly circumscribed set of tools for promoting political change. A more promising approach would integrate the material, institutional, and cultural aspects of social change, drawing on the insights of theories of complex systems. Robert Jervis reminds us that the elements of complex systems, such as international anarchy, are highly interconnected and consequently the behavior of the system as a whole cannot be understood just by examining its separate parts.10 In a tightly coupled system, a change in one of its aspects, such as norms or ideas, is unlikely to have simple, linear effects . T he consequences of any change can be predicted only by considering its interaction with other attributes of the system. For example, whether the spread of the concept of national self-determination promotes peace or war may depend on the material and institutional setting in which it occurs. Negative feedback may cancel out a change that is at odds with the self-correcting logic of the system as a whole. Conversely, in unstable systems, positive feedback may amplify the effects of small changes. More complicated feedback effects may also be possible, depending on the nature of the system. Actions in a system may have different consequences when carried out in different sequences. In social systems, outcomes of an actor's plans depend on strategic interactions with the choices of other independent decision nl.akers. For example, projects for cultural change are likely to provoke cultural counterprojects from those threatened by them. Even in "games against nature," changes in behavior may transform the material setting in ways that foil actors' expectation s. For all these reasons, system effects are likely to skew or derail transformative efforts that focus narrowly on changing a single aspect of social life, such as norms and ideas. All of these system effects are relevant to understanding the effect of culture on conflict in anarchy. As I describe later, anthropological research on war shows that ideas, norms, and culture are typically interconnected with the material and institutional elements of anarchical social systems in ways that produce the full panoply of Jervis's system effects. In such systems, efforts to promote cultural transformation need to take into account the material and situational preconditions that sustain these developments; otherwise they are likely to produce unintended consequences. Underestimating situational constraints is just as dangerous and unwarranted as reifying them. Testing the effects of culture: insights from the anthropology of war Current debates about anarchy and culture have been carried out largely at the level of abstract philosophy and visceral morality. Ultimately, however, the impact of culture on war in anarchy is an empirical question. What evidence should be examined? To assess the claim that behavior in an anarchical system is what the units and their culture make of it, the obvious methodological move is to vary the culture of the units or of the system as a whole and then assess the effect on behavior. Reasonably enough, some scholars who see anarchical behavior as culturally constructed examine contemporary changes, such as the peaceful end of the Cold War, the emergence of the democratic peace, and the purported current strengthening of human rights norms. 11 In assessing such developments , it is difficult to distinguish the hopes of transitional moments from enduring trends . These kinds of tests, while not irrelevant , are not well designed to disentangle the effects of autonomous changes in ideas and culture from the effects of selfjustifying US hegemonic power, an ideological pattern that was quite familiar in the old world order. Other scholars try to show that the progenitor of the contemporary international system-the historical European balance-of-power system among sovereign states-was itself a by-product of ideas, such as the Protestant Reformation or analogies between sovereignty and individual property rights.12 The implication is that whatever has been established by ideas can also be dismantled by ideas. However, it is not a simple task to disentangle the effects of war, state formation, and ideological change on the emergence of the competitive states system. 13 Arguably, a comparison of the European system with behavior in other anarchical state systems offers a methodologically cleaner way to vary culture and assess its effects. However, when cultural constructivists do look at behavior in anarchies in cultural settings radically different from our own, they sometimes fail to exploit obvious opportunities for focused comparison. For example, Ian Johnston's prominent book Cultural Realism shows how the strategic wisdoms of the anarchical ancient Chinese Warring States system were passed down to future generations to constitute a warlike strategic "culture." His adherence to a cultural account of Chinese strategic practices remains untroubled by the fact that these ideas and practices are similar to those of the anarchic European balance- ofpower system, the ancient Greek city-states, and the ancient Indian states system described by Kautilya, a set of cultures diverse in almost every way except their strategic behavior. 14 At a first approximation, it would seem from this evidence that state behavior in anarchy is not fundamentally altered by variations in culture. This is not to deny that cultural differences may have influenced the meaning the actors imputed to their military behavior, some of the goals for which they fought, and some political features of these anarchical systems. Nonetheless, the evidence from historical state systems strongly suggests that the situational incentives of anarchy have significantly shaped strategic behavior in ways that transcend culture. Constructivists have paid less attention to another body of evidence ideally suited to assessing the effects of variations in culture on behavior in anarchy. For decades, anthropologists have been amassing a theoretically rich, empirically substantial, and methodologically self-aware body of statistical and case- study research on the relationship between war and culture in stateless societies and preindustrial anarchic systems. 15 Many of the causal factors and processes they examine will seem strikingly familiar to students of modern international relations-for example, security fears, economic rivalry between groups, economic interdependence, the institutionalization of cooperative ties across political units, the popular accountability of decision makers, and the nature of identities and cultural symbolism of the political units and of the anarchic system as a whole. Notwithstanding the familiarity of these categories, the kinds of societies anthropologists of war study differ vastly from contemporary, industrialized, bureaucratized societies, and thus research findings on the anthropological history of war can not simply be read off and applied to debates about the construction of culture in today's "new world order." Indeed, a central part of the constructivist claim is that the spread of a new democratic culture may be on the verge of making obsolete all those old cultural patterns, whether those of the Cold War, the ancient Chinese Warring States, or warring villages in the Venezuelan jungle. 16 Moreover, evidence based on technologically primitive societies, some of which lack the minimal economic resources needed for assured survival, may load the dice in favor of explanations based on material pressures. However, following the arguments ofDurkheim or Weber, one could also argue that this type of evidence is biased in favor of cultural explanations on the grounds that social solidarity in such societies is achieved more through cultural rituals than through differentiated, rational- legal institutions

#### Method focus fails---power/knowledge doesn’t cause everythingto be false, but having verifiable claims is important

**Kratochwil**, professor of international relations – European University Institute, **‘8**

(Friedrich, “The Puzzles of Politics,” pg. 200-213)

In what follows, I claim that the shift in focus from “demonstration” to science as practice provides strong prima facie reasons to choose pragmatic rather than traditional epistemological criteria in social analysis.

Irrespective of its various forms, the epistemological project includes an argument that all warranted knowledge has to satisfy certain field- independent criteria that are specified by philosophy (a “theory of know- ledge”). The real issue of how our concepts and the world relate to each other, and on which non-idiosyncratic grounds we are justified to hold on to our beliefs about the world, is “answered” by two metaphors. The first is that of an inconvertible ground, be it the nature of things, certain intuitions (Des- cartes’ “clear and distinct ideas”) or methods and inferences; the second is that of a “mirror” that shows what is the case.

There is no need to rehearse the arguments demonstrating that these under- lying beliefs and metaphors could not sustain the weight placed upon them. A “method” à la Descartes could not make good on its claims, as it depended ultimately on the guarantee of God that concepts and things in the outer world match. On the other hand, the empiricist belief in direct observation forgot that “facts” which become “data” are – as the term suggests – “made”. They are based on the judgements of the observer using cultural criteria, even if they appear to be based on direct perception, as is the case with colours.4

Besides, there had always been a sneaking suspicion that the epistemo- logical ideal of certainty and rigour did not quite fit the social world, an objection voiced first by humanists such as Vico, and later rehearsed in the continuing controversies about erklären and verstehen (Weber 1991; for a more recent treatment see Hollis 1994). In short, both the constitutive nature of our concepts, and the value interest in which they are embedded, raise peculiar issues of meaning and contestation that are quite different from those of description. As Vico (1947) suggested, we “understand” the social world because we have “made it”, a point raised again by Searle concerning both the crucial role played by ascriptions of meaning (x counts for y) in the social world and the distinction between institutional “facts” from “brute” or natural facts (Searle 1995). Similarly, since values are constitutive for our “interests”, the concepts we use always portray an action from a certain point of view; this involves appraisals and prevents us from accepting allegedly “neutral” descriptions that would be meaningless. Thus, when we say that someone “abandoned” another person and hence communicate a (contestable) appraisal, we want to call attention to certain important moral implica- tions of an act. Attempting to eliminate the value-tinge in the description and insisting that everything has to be cast in neutral, “objective”, observational language – such as “he opened the door and went through it” – would indeed make the statement “pointless”, even if it is (trivially) “true” (for a powerful statement of this point, see Connolly 1983).

The most devastating attack on the epistemological project, however, came from the history of science itself. It not only corrected the naive view of knowledge generation as mere accumulation of data, but it also cast increasing doubt on the viability of various field-independent “demarcation criteria”. This was, for the most part, derived from the old Humean argument that only sentences with empirical content were “meaningful”, while value statements had to be taken either as statements about individual preferences or as meaningless, since de gustibus non est disputandum. As the later dis- cussion in the Vienna circle showed, this distinction was utterly unhelpful (Popper 1965: ch. 2). It did not solve the problem of induction, and failed to acknowledge that not all meaningful theoretical sentences must correspond with natural facts.

Karl Popper’s ingenious solution of making “refutability” the logical cri- terion and interpreting empirical “tests” as a special mode of deduction (rather than as a way of increasing supporting evidence) seemed to respond to this epistemological quandary for a while. An “historical reconstruction” of science as a progressive development thus seemed possible, as did the specification of a pragmatic criterion for conducting research.

Yet again, studies in the history of science undermined both hopes. The different stages in Popper’s own intellectual development are, in fact, rather telling. He started out with a version of conjectures and refutations that was based on the notion of a more or less self-correcting demonstration. Con- fronted with the findings that scientists did not use the refutation criterion in their research, he emphasised then the role of the scientific community on which the task of “refutation” devolved. Since the individual scientist might not be ready to bite the bullet and admit that she or he might have been wrong, colleagues had to keep him or her honest. Finally, towards the end of his life, Popper began to rely less and less on the stock of knowledge or on the scientists’ shared theoretical understandings – simply devalued as the “myth of the framework” – and emphasised instead the processes of communica- tion and of “translation” among different schools of thought within a scien- tific community (Popper 1994). He still argued that these processes follow the pattern of “conjecture and refutation”, but the model was clearly no longer that of logic or of scientific demonstration, but one that he derived from his social theory – from his advocacy of an “open society” (Popper 1966). Thus a near total reversal of the ideal of knowledge had occurred. While formerly everything was measured in terms of the epistemological ideal derived from logic and physics, “knowledge” was now the result of deliberation and of certain procedural notions for assessing competing knowledge claims. Politics and law, rather than physics, now provided the template.

Thus the history of science has gradually moved away from the epistemo- logical ideal to focus increasingly on the actual practices of various scientific communities engaged in knowledge production, particularly on how they handle problems of scientific disagreement.5 This reorientation implied a move away from field-independent criteria and from the demonstrative ideal to one in which “**arguments” and the “weight” of evidence had to be appraised**. This, in turn, not only generated a bourgeoning field of “science studies” and their “social” epistemologies (see Fuller 1991), but also suggested more generally that the traditional understandings of knowledge production based on the model of “theory” were in need of revision.

If the history of **science** therefore **provides strong reasons for a pragmatic turn**, as the discussion above illustrates, what remains to be shown is how this turn relates to the historical, linguistic and constructivist turns that preceded it. To start with, from the above it should be clear that, in the social world, we are not dealing with natural kinds that exist and are awaiting, so to speak, prepackaged, their placement in the appropriate box. The objects we investi- gate are rather conceptual creations and they are intrinsically linked to the language through which the social world is constituted. Here “constructivists”, particularly those influenced by Wittgenstein and language philosophy, easily link up with “pragmatists” such as Rorty, who emphasises the product- ive and pragmatic role of “vocabularies” rather than conceiving of language as a “mirror of nature” (Rorty 1979).

Furthermore, precisely because social facts are not natural, but have to be reproduced through the actions of agents, any attempt to treat them like “brute” facts becomes doubly problematic. For one, even “natural” facts are not simply “there”; they are interpretations based on our theories. Secondly, different from the observation of natural facts, in which perceptions address a “thing” through a conceptually mediated form, social reality is entirely “arti- ficial” in the sense that it is dependent on the beliefs and practices of the actors themselves. This reproductive process, directed by norms, always engenders change either interstitially, when change is small-scale or adaptive – or more dramatically, when it becomes “transformative” – for instance when it produces a new system configuration, as after the advent of national- ism (Lapid and Kratochwil 1995) or after the demise of the Soviet Union (Koslowski and Kratochwil 1994). Consequently, any examination of the social world has to become in a way “historical” even if some “structuralist” theories attempt to minimise this dimension. [. . .]

**Therefore a pragmatic approach to social science and IR seems both necessary and promising**. On the one hand, it is substantiated by the failure of the epistemological project that has long dominated the field. On the other, it offers a **different positive heuristics** that challenges IR’s traditional disciplin- ary boundaries and methodological assumptions. Interest in pragmatism therefore does not seem to be just a passing fad – even if such an interpre- tation cannot entirely be discounted, given the incentives of academia to find, just like advertising agencies, “new and improved” versions of familiar products.

#### The system’s resilient and the alt fails

Gideon **Rose 12**, Editor of Foreign Affairs, “Making Modernity Work”, Foreign Affairs, January/February

The central question of modernity has been how to reconcile capitalism and mass democracy, and since the postwar order came up with a good answer, it has managed to weather all subsequent challenges. The upheavals of the late 1960s seemed poised to disrupt it. But despite what activists at the time thought, they had little to offer in terms of politics or economics, and so their lasting impact was on social life instead. This had the ironic effect of stabilizing the system rather than overturning it, helping it live up to its full potential by bringing previously subordinated or disenfranchised groups inside the castle walls. The neoliberal revolutionaries of the 1980s also had little luck, never managing to turn the clock back all that far. **All potential alternatives** in the developing world, meanwhile, **have proved to be either dead ends or temporary detours from the beaten path**. The much-ballyhooed "rise of the rest" has involved not the discrediting of the postwar order of Western political economy but its reinforcement: the countries that have risen have done so by embracing global capitalism while keeping some of its destabilizing attributes in check, and have liberalized their polities and societies along the way (and will founder unless they continue to do so). Although the structure still stands, however, it has seen better days. Poor management of public spending and fiscal policy has resulted in unsustainable levels of debt across the advanced industrial world, even as mature economies have found it difficult to generate dynamic growth and full employment in an ever more globalized environment. Lax regulation and oversight allowed reckless and predatory financial practices to drive leading economies to the brink of collapse. Economic inequality has increased as social mobility has declined. And a loss of broad-based social solidarity on both sides of the Atlantic has eroded public support for the active remedies needed to address these and other problems. Renovating the structure will be a slow and difficult project, the cost and duration of which remain unclear, as do the contractors involved. Still, at root, **this is not an ideological issue**. The question is not what to do but how to do it--how, under twenty-first-century conditions, to rise to the challenge Laski described, making the modern political economy provide enough solid benefit to the mass of men that they see its continuation as a matter of urgency to themselves. The old and new articles that follow trace this story from the totalitarian challenge of the interwar years, through the crisis of liberalism and the emergence of the postwar order, to that order's present difficulties and future prospects. Some of our authors are distinctly gloomy, and one need only glance at a newspaper to see why. But remembering the far greater obstacles that have been overcome in the past, **optimism would seem the better long-term bet**.

#### Fast capitalism solves the impact to its own environmental crisis, but sustainability is impossible because of complexity

Jason Potts 10 – date inferred, economics prof at the Royal Melbourne Institute of Technology, An entrepreneurial model of economic and environmental co-evolution, <http://www.uq.edu.au/economics/abstract/409.pdf>

The defining feature of this alternate perspective is that **the ‘fast’ evolutionary dynamics of the growth of knowledge process, manifested in**, for example, economic evolution and associated **creative destruction**, comes to dominate the ‘slow’ evolutionary dynamics of the ecosystem, weakening its resilience (Gual and Norgaard 2010). The knowledge-base of the economic order is ever changing and ‘restless’ (Metcalfe 1998). This creates a serviceable or ‘bounded environment’ that is sufficient for most purposes or ‘good enough’, but not more-so; it does not contain ‘slack’ or unexploited opportunities (cf. Leibenstein 1978). The properties of ecosystems are determined by revealed preferences for environmental qualities, services, etc, but not more-so. From this perspective, **the observation of growing environmental damage or the onset of an impending ecological collapse presents entrepreneurial opportunities**. Note that we specifically say ‘the onset of’, and do not refer to a final state of ecological collapse. This is because **those states do not** always **eventuate**, most notably **in those societies where entrepreneurial behaviour is encouraged**. The entrepreneurial mechanism, in appropriate conditions, can operate effectively on the basis of an expectation of an impending collapse. Entrepreneurs seek out ways to provide innovative solutions that can be traded profitably in newly created market mechanisms. What is **a ‘negative externality’ can be removed by entrepreneurial actions** that permit those who feel damaged by it to purchase goods and services that fix the problem, perhaps not entirely, but **enough to avert disaster**.

But entrepreneurship is not limited to the economic domain; such conditions can also present entrepreneurial opportunities in the political or the socio-cultural domains, or perhaps in both. Baumol and Strom (2010) cite historical evidence that much of entrepreneurship prior to the 18th Century was in these domains with rewards in the form of power and status. Entrepreneurial opportunities in the economic, political and cultural domains can thus lead to different forms of technological, behavioural and institutional change. **These integrate to produce complex adaptations in anticipation of environmental change**. Entrepreneurial action thus has a dual impact. Entrepreneurial success in introducing innovations and generating economic growth causes environmental stresses in an unintended manner but entrepreneurs also respond to the value creating opportunities that such stresses offer. Thus, we can have a process of cumulative causation where entrepreneurial activity, in states of uncertainty, leads to unintended negative **environmental affects** which, **when revealed, stimulate entrepreneurial activity that mitigates such effects**. And on it goes, with each new solution inducing new and different environmental problems that in turn create new economic opportunities. **Thus the notion of convergence upon a global ‘stationary state’ at an environmental limit is not** always **helpful**. Equally, it becomes difficult to know how to define what a long-period ‘sustainable economy’ (Krausmann et al 2009; cf. Gowdy 1994) is at any point in economy-environment co-evolution and what its stability properties might be. In complex systems, saying anything definite about long periods is difficult. For example, Malthus clearly under-estimated the power of innovating entrepreneurs but Diamond (2005) gives us several examples of societies that collapsed in the face of hard environmental constraints.

The historical evidence points to the fact that humans are both ecologically destructive (Penn 2003) as well as entrepreneurial in response to opportunities. But these tendencies are connected: a widespread expectation of ecological destruction alerts entrepreneurs to opportunities (Boons and Wagner 2009). This can happen in many ways. It is common, for example, in ecological economics to recognise the primacy of the incentive effect of environmental regulations on induced technical innovations and entrepreneurship (Rennings 2000; Beise and Rennings 2005). But there are other pathways via direct market signals, as well as indirectly via socio-cultural pathways, yielding multiple opportunities for entrepreneurial responses to ongoing challenges posed by environmental degradation. Regulatory adaptation is often slow, so these other pathways can be critical. Indeed, regulatory change can be an endogenous response to movements along these other pathways. If entrepreneurship is, indeed, responsive to environmental degradation, it can be argued that a co-evolutionary connection exists between economic and ecological systems. This coevolution centres upon the growth of knowledge about environmental degradation and the capacities of entrepreneurs to take the opportunities that are presented.

Environmental and ecological problems are omnipresent, but entrepreneurial actions can solve them if prevailing socioeconomic and cultural rules permit them to do so. **Entrepreneurs do not usually respond directly to information concerning degradation but**, instead, **react to information about its impacts upon human welfare and wellbeing**. Price signals often translate a problem into economic terms. For example, when overfishing seriously reduces fish stocks, fish prices usually rise to unprecedented levels. Entrepreneurs who anticipate that fish will be in short supply, either because of stock exhaustion or severe governmental restrictions on fishing, will see opportunities to invest in sustainable fish farming. This maintains fish supply while removing environmental pressure. However, this will not be possible without adequate flows of information, appropriate regulatory frameworks and the existence of viable market institutions. **Because we live in an uncertain world, there tends to be continuous lurching from one environmental crisis to the next**. **Each current ecological crisis** is the unintended consequence of previous economic innovations which, in turn, **can be resolved by new economic innovations**. So while Gowdy, van den Bergh and Buenstorf et al do correctly elucidate the benefits of integrating evolutionary economics and ecological economics, they nevertheless underplay the self-organizational feedback implications of entrepreneurial activity. Although governments can devise regulatory frameworks that facilitate the process of environmental protection and regeneration they cannot act as rapidly as entrepreneurs in introducing the necessary innovations and inducing the associated creative destruction. Governments are constrained and slowed by vested interests; entrepreneurs destroy such interests.

#### No risk of endless warfare

Gray 7—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

#### Maximizing all lives is the only way to affirm equality

Cummiskey 90—David, Professor of Philosophy, Bates [Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, JSTOR]

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. Persons may have "dignity, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), but, as rational beings, persons also have a fundamental equality which dictates that some must sometimes give way for the sake of others. The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

#### Ethical policymaking requires calculation of consequences

Gvosdev 5—Nikolas, Rhodes Scholar, PhD from St. Antony’s College, executive editor of The National Interest [“The Value(s) of Realism,” SAIS Review 25.1, Project Muse]

As the name implies, realists focus on promoting policies that are achievable and sustainable. In turn, the morality of a foreign policy action is judged by its results, not by the intentions of its framers. A foreign policymaker must weigh the consequences of any course of action and assess the resources at hand to carry out the proposed task. As Lippmann warned, Without the controlling principle that the nation must maintain its objectives and its power in equilibrium, its purposes within its means and its means equal to its purposes, its commitments related to its resources and its resources adequate to its commitments, it is impossible to think at all about foreign affairs.8 Commenting on this maxim, Owen Harries, founding editor of The National Interest, noted, "This is a truth of which Americans—more apt to focus on ends rather than means when it comes to dealing with the rest of the world—need always to be reminded."9 In fact, Morgenthau noted that "there can be no political morality without prudence."10 This virtue of prudence—which Morgenthau identified as the cornerstone of realism—should not be confused with expediency. Rather, it takes as its starting point that it is more moral to fulfill one's commitments than to make "empty" promises, and to seek solutions that minimize harm and produce sustainable results. Morgenthau concluded: [End Page 18] Political realism does not require, nor does it condone, indifference to political ideals and moral principles, but it requires indeed a sharp distinction between the desirable and the possible, between what is desirable everywhere and at all times and what is possible under the concrete circumstances of time and place.11 This is why, prior to the outbreak of fighting in the former Yugoslavia, U.S. and European realists urged that Bosnia be decentralized and partitioned into ethnically based cantons as a way to head off a destructive civil war. Realists felt this would be the best course of action, especially after the country's first free and fair elections had brought nationalist candidates to power at the expense of those calling for inter-ethnic cooperation. They had concluded—correctly, as it turned out—that the United States and Western Europe would be unwilling to invest the blood and treasure that would be required to craft a unitary Bosnian state and give it the wherewithal to function. Indeed, at a diplomatic conference in Lisbon in March 1992, the various factions in Bosnia had, reluctantly, endorsed the broad outlines of such a settlement. For the purveyors of moralpolitik, this was unacceptable. After all, for this plan to work, populations on the "wrong side" of the line would have to be transferred and resettled. Such a plan struck directly at the heart of the concept of multi-ethnicity—that different ethnic and religious groups could find a common political identity and work in common institutions. When the United States signaled it would not accept such a settlement, the fragile consensus collapsed. The United States, of course, cannot be held responsible for the war; this lies squarely on the shoulders of Bosnia's political leaders. Yet Washington fell victim to what Jonathan Clarke called "faux Wilsonianism," the belief that "high-flown words matter more than rational calculation" in formulating effective policy///

, which led U.S. policymakers to dispense with the equation of "balancing commitments and resources."12 Indeed, as he notes, the Clinton administration had criticized peace plans calling for decentralized partition in Bosnia "with lofty rhetoric without proposing a practical alternative." The subsequent war led to the deaths of tens of thousands and left more than a million people homeless. After three years of war, the Dayton Accords—hailed as a triumph of American diplomacy—created a complicated arrangement by which the federal union of two ethnic units, the Muslim-Croat Federation, was itself federated to a Bosnian Serb republic. Today, Bosnia requires thousands of foreign troops to patrol its internal borders and billions of dollars in foreign aid to keep its government and economy functioning. Was the aim of U.S. policymakers, academics and journalists—creating a multi-ethnic democracy in Bosnia—not worth pursuing? No, not at all, and this is not what the argument suggests. But aspirations were not matched with capabilities. As a result of holding out for the "most moral" outcome and encouraging the Muslim-led government in Sarajevo to pursue maximalist aims rather than finding a workable compromise that could have avoided bloodshed and produced more stable conditions, the peoples of Bosnia suffered greatly. In the end, the final settlement was very close [End Page 19] to the one that realists had initially proposed—and the one that had also been roundly condemned on moral grounds.

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#### We are war powers—even if tactics are topical we meet their interpretation

Kelly 93—Judge Advocate General's Corps @ US Army [Major Michael P. Kelly (JD from University of California-Davis (87) and Graduate of The Judge Advocate General's School (92), “Fixing The War Powers,” Military Law Review, 141 Mil. L. Rev. 83, Summer 1993]

First, the model for the war powers comports with the framers' intellectual foundations. They divided the powers between two coordinate branches to prevent accumulation of power. 193 They formulated a somewhat unique and experimental' check by dividing the war powers along functional lines-decisional and operational. To exercise the power, the two political branches would have to cooperate. The Congress could authorize war and the Executive would conduct war operations. This division of responsibility advanced the framers' goal of resurrecting balanced government.

Second, the model for the war powers fits the framers' desire to match institutional strengths with specific functions.' 9 5 By nature, the war power could be bifurcated along functional lines; the framers perceived the need for a policy level decision-maker and a responsive commander. From historical antecedents, the framers realized that the legislative branch would be a safe repository for decision-making of such great national importance, 9 6 and that the executive branch would be the ideal executor. Thus, the framers achieved their goal of effective war powers, at least from a functional perspective.

Third, the model for the war powers was politically acceptable to the public, and it increased the Constitution's chances of ratification. The framers were pragmatists; they knew that the most efficient government they could create would probably be unacceptable. 197 Legislative domination of the executive by making the latter subject to the former's decisional power was necessary to secure ratification.

Finally, the model for the war powers divided power along functional lines. The power was not originally concurrent or overlapping, 198 making competition for power each branch's destiny. Each branch had an assigned primary function within the partnership. At the fringes there would be overlap, but not enough to generate interbranch warfare. Thus, the framers did not originally send out "an invitation to struggle," 199 but rather an invitation to cooperate in solving America's national security problems. Pg. 120-121

### US s Norms

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

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

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

### AT: Roleplaying

#### One state action doesn’t legitimize it

Mervyn **Frost**, U of Kent, **1996**, Ethics in Int’l Relations, p. 90-1

A first objection which seems inherent in Donelan’s approach is that utilizing the modern state domain of discourse in effect sanctifies the state: it assumes that people will always live in states and that it is not possible within such a language to consider alternatives to the system. This objection is not well founded, by having recourse to the ordinary language of international relations I am not thereby committed to argue that the state system as it exists is the best mode of human political organization or that people ought always to live in states as we know them. As I have said, my argument is that whatever proposals for piecemeal or large-scale reform of the state system are made, they must of necessity be made in the language of the modern state. Whatever proposals are made, whether in justification or in criticism of the state system, will have to make use of concepts which are at present part and parcel of the theory of states. Thus,for example. any proposal for a new global institutional arrangement superseding the state system will itself have to be justified, and that justification will have to include within it reference to a new and good form of individual citizenship, reference to a new legislative machinery equipped with satisfactory checks and balances, reference to satisfactory law enforcement procedures, reference to a satisfactory arrangement for distributing the goods produced in the world, and so on. All of these notions are notions which have been developed and finely honed within the theory of the modern state. It is not possible to imagine a justification of a new world order succeeding which used, for example, feudal, or traditional/tribal, discourse. More generally there is no worldwide language of political morality which is not completely shot through with state-related notions such as citizenship, rights under law, representative government and so on.

#### We don’t call for role-playing, only policy-analysis---that’s effective and productive

Shulock 99 Nancy, PROFESSOR OF PUBLIC POLICY --- professor of Public Policy and Administration and director of the Institute for Higher Education Leadership & Policy (IHELP) at Sacramento State University, The Paradox of Policy Analysis: If It Is Not Used, Why Do We Produce So Much of It?, Journal of Policy Analysis and Management, Vol. 18, No. 2, 226–244 (1999)

In my view, none of these radical changes is necessary. As interesting as our politics might be with the kinds of changes outlined by proponents of participatory and critical policy analysis, we do not need these changes to justify our investment in policy analysis. Policy analysis already involves discourse, introduces ideas into politics, and affects policy outcomes. The problem is not that policymakers refuse to understand the value of traditional policy analysis or that policy analysts have not learned to be properly interactive with stakeholders and reflective of multiple and nontechnocratic perspectives. The problem, in my view, is only that policy analysts, policymakers, and observers alike do not recognize policy analysis for what it is. Policy analysis has changed, right along with the policy process, to become the provider of ideas and frames, to help sustain the discourse that shapes citizen preferences, and to provide the appearance of rationality in an increasingly complex political environment. Regardless of what the textbooks say, there does not need to be a client in order for ideas from policy analysis to resonate through the policy environment.10¶ Certainly there is room to make our politics more inclusive. But those critics who see policy analysis as a tool of the power elite might be less concerned if they understood that analysts are only adding to the debate—they are unlikely to be handing ready-made policy solutions to elite decisionmakers for implementation. Analysts themselves might be more contented if they started appreciating the appropriation of their ideas by the whole gamut of policy participants and stopped counting the number of times their clients acted upon their proposed solutions. And the cynics disdainful of the purported objectivism of analysis might relax if analysts themselves would acknowledge that they are seeking not truth, but to elevate the level of debate with a compelling, evidence-based presentation of their perspectives. Whereas critics call, unrealistically in my view, for analysts to present competing perspectives on an issue or to “design a discourse among multiple perspectives,” I see no reason why an individual analyst must do this when multiple perspectives are already in abundance, brought by multiple analysts. If we would acknowledge that policy analysis does not occur under a private, contractual process whereby hired hands advise only their clients, we would not worry that clients get only one perspective.¶ Policy analysis is used, far more extensively than is commonly believed. Its use could be appreciated and expanded if policymakers, citizens, and analysts themselves began to present it more accurately, not as a comprehensive, problem-solving, scientific enterprise, but as a contributor to informed discourse. For years Lindblom [1965, 1968, 1979, 1986, 1990] has argued that we should understand policy analysis for the limited tool that it is—just one of several routes to social problem solving, and an inferior route at that. Although I have learned much from Lindblom on this odyssey from traditional to interpretive policy analysis, my point is different. Lindblom sees analysis as having a very limited impact on policy change due to its ill-conceived reliance on science and its deluded attempts to impose comprehensive rationality on an incremental policy process. I, with the benefit of recent insights of Baumgartner, Jones, and others into the dynamics of policy change, see that even with these limitations, policy analysis can have a major impact on policy. Ideas, aided by institutions and embraced by citizens, can reshape the policy landscape. Policy analysis can supply the ideas.

### AT: TK Link

#### Their impact is wrong – debate over even the most technical issues improves decision-making and advocacy

Orna **Ben-Naftali**, Head of the International Law Division and of the Law and Culture Division, The Law School, The College of Management Academic Studies, Spring 200**3**, ARTICLE: 'We Must Not Make a Scarecrow of the Law': A Legal Analysis of the Israeli Policy of Targeted Killings, 36 Cornell Int'l L.J. 233

Our analysis concludes that while a specific act of preemptive killing may be legal if it meets the above-specified requirements, the policy of state targeted preemptive killings is not. Furthermore, some specific acts of targeted killings may generate state responsibility, while others may constitute a war crime entailing criminal accountability. These conclusions, emanating from the reading of the three legal texts applicable to the context, and informed by a sensibility that coheres them, do not rest on a negation of the importance of the national interest in security. On the contrary, these conclusions incorporate and express the way it should be balanced with a minimum standard of humanity and against the relevant context.

This delicate, ever precarious balance is at the heart of the democratic discourse. A democratic state is not a meek state. True, it is fighting with "one hand tied behind its back,"n342 as soberly observed by Chief Justice Barak of the Israeli Supreme Court, but democratic sensibilities internalize this limitation on State power, not as a source of weakness but as a sign of strength. Democracies require a public discourse forever alert to the importance of human rights, suspicious of the way power is used, and committed to the rule of law. The legal culture, in turn, while not a substitute for this public discourse, is never absent from it and indeed serves as a catalyst for its development.

We therefore reject the notion that the policy of targeted killings, designed by Israel as a way to combat terrorist attacks, is beyond the purview of the rule of law.n343 We also deny the purist position suggesting that the legalistic nitty-gritty preoccupation with details entailed in the above discussion is likely to obscure and legitimize a harrowing policy; n344 one that, on principle, should be condemned. n345 This position in fact maintains that the legality or illegality of targeted state killings is not a legitimate issue of discussion; that while an emergency situation may exceptionally necessitate the deed, it should never be elevated to the sphere of the Word. n346 We appreciate the sensibility of this position, but, alas, do not find it sensible. Indeed, nor would the people who consider themselves victims of the policy of targeted killings, and appeal to the courts to intervene. n347 Purity belongs to the Platonic world of ideas; it is a necessary ideal to strive for, even if forever unachievable in this all too fallible City of Man. n348 In the best of all possible worlds law would be superfluous; in this world, it is a necessary, albeit insufficient means to achieve some possible betterment. This article hopes to contribute to this modest goal.

### AT: Norms Links

#### States choose to follow LOAC based on a system of incentives – studies prove that solves violence

Prorock and Appel 13 (Alyssa, and Benjamin, Department of Political Science, Michigan State University, “Compliance with International Humanitarian Law: Democratic Third Parties and Civilian Targeting in Interstate War,” Journal of Conflict Resolution 00(0) 1-28)

Coercion is a strategy of statecraft involving the threat or use of positive inducements and negative sanctions to alter a target state’s behavior. It influences the decision making of governments by altering the payoffs of pursuing various policies. Recent studies demonstrate, for example, that third-party states have used the carrot of preferential trade agreements (PTAs) to induce better human rights outcomes in target states (Hafner-Burton 2005, 2009), while the World Bank has withheld aid to states with poor human rights records as a form of coercive punishment (Lebovic and Voeten 2009).

We focus theoretically and empirically on the **expectation of coercion**. As Thompson (2009) argues, coercion has already failed once an actor has to carry through on its coercive threat. Thus, an accurate understanding of coercion’s impact must account for the expectation rather than the implementation **of overt penalties** or benefits. It follows that leaders likely incorporate the expected reactions of third parties into their decision making when they weigh the costs/benefits of complying with international law (Goodliffe and Hawkins 2009; Goodliffe et al. 2012). Because governments care about the ‘‘economic, security, and political goods their network partners provide, they anticipate likely reactions of their partners and behave in ways they expect their partners will approve’’ (Goodliffe et al. 2012, 132).8 Anticipated positive third-party reactions for compliance increase the expected payoffs for adhering to legal obligations, while anticipated negative responses to violation decrease the expected payoffs for that course of action. Coercion succeeds, therefore, when states comply with the law because the expected reactions of third parties alter payoffs such that compliance has a higher utility than violating the law. Based on this logic, we focus on the conditions under which states expect third parties to engage in coercive statecraft. We identify when combatant states will anticipate coercion and when that expectation will alter payoffs sufficiently to induce compliance with the law.

While a **growing body of literature** recognizes that international coercion can **induce compliance and contribute to international cooperation** more generally (Goldsmith and Posner 2005; Hafner-Burton 2005; Thompson 2009; Von Stein 2010), many scholars remain skeptical about coercion’s effectiveness as an enforcement mechanism. Skeptics argue that coercion is costly to implement; third parties value the economic, political, and military ties they share with target states and may suffer along with the target from cutting those ties. This may undermine the credibility of coercive threats and a third party’s ability to induce compliance through this enforcement mechanism.

While acknowledging this critique of coercion, we argue that it can act as an **effective enforcement mechanism** under certain conditions. Specifically, successful coercion requires that third parties have (1) the incentive to commit to and implement their coercive threats and (2) sufficient leverage over target states in order to meaningfully alter payoffs for compliance. This suggests that only some third parties can engage in successful coercion and that it is necessary to identify the specific conditions under which third parties can generate credible coercive threats to enforce compliance with international humanitarian law. In the following sections, we argue that third-party states are most likely to effectively use coercion to alter the behavior of combatants when they have both the willingness and opportunity to coerce (e.g., Most and Starr 1989; Siverson and Starr 1990; Starr 1978).

Willingness: Clarity, Democracy, and the Salience of International Humanitarian Law

Enforcement through the coercion mechanism is only likely when at least one third-party state has a substantial enough interest in another party’s compliance that it is willing to act (Von Stein 2010). Third-party willingness, in turn, depends upon two conditions: (1) legal principles must be clearly defined, making violations easily identifiable and (2) third parties must regard the legal obligation as highly salient.

First, scholars have long recognized that there is significant variation in the precision and clarity of legal rules, and that clarity contributes to compliance with the law (e.g., Abbott et al. 2000; Huth, Croco, and Appel 2011; Morrow 2007; Wallace 2013**).** Precise rules **increase the effectiveness of the law** by **narrowing the range of possible interpretations///**

and allowing all states to clearly identify acceptable versus unacceptable conduct. By clearly proscribing unacceptable behavior, clear legal obligations allow states to more precisely respond to compliant versus noncompliant behavior. In contrast, **ambiguous legal principle**s often lead to **multiple interpretations** among relevant actors, **impeding a convergence of expectations** and increasing uncertainty about the payoffs for violating (complying with) the law. Thus, the clarity of the law shapes states’ expectations by allowing them to predict the reactions of other states with greater confidence. In particular, they can expect **greater cooperation and rewards following compliance** and more punishment and sanctions for violating the law when legal obligations are clearly defined.

While some bodies of law are imprecise, i**nternational humanitarian law establishes a comprehensive code of conduct** regarding the intentional targeting of noncombatants during war (e.g., Murphy 2006; Shaw 2003). Starting with the 1899 and 1907 Hague Conventions and continuing through the 1949 Geneva Convention (Protocol IV), the law clearly prohibits the intentional targeting of noncombatants in war.

This clarity **allows international humanitarian law to** serve as a “bright line” **that coordinates the expectations of both war combatants and third parties** (Morrow 2007). By creating a **common set of standards,** it reduces uncertainty, narrowing the range of interpretations of the law and allowing both combatants and third parties to readily recognize violations of these standards. Third parties are, as a result, more likely to expend resources to punish conduct that transgresses legal standards or to support behavior in accordance with them. This, in turn, alters the expectations of war combatants who can expect greater support for abiding by the law and greater punishment for violating it when the clarity condition is met.