## 1AC

### plan

The United States federal government should limit the war power authority of the president for self-defense targeted killings to outside an armed conflict.

### adv

The advantage is legal regimes

US targeted killing derives authority from both armed conflict (jus in bello) and self-defense (jus ad bellum) legal regimes—that authority overlap conflates the legal regimes

Laurie Blank, Director, International Humanitarian Law Clinic, Emory Law School, 2012, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf

For the past several years, the United States has relied on both armed conflict and self-defense as legal justifications for targeted strikes outside of the zone of active combat in Afghanistan. A host of interesting questions arise from both the use of targeted strikes and the expansive U.S. justifications for such strikes, including the use of force in self-defense against non-state actors, the use of force across state boundaries, the nature and content of state consent to such operations, the use of targeted killing as a lawful and effective counterterrorism measure, and others.7 Furthermore, each of the justifications—armed conflict and self-defense—raises its own challenging questions regarding the appropriate application of the law and the parameters of the legal paradigm at issue. For example, if the existence of an armed conflict is the justification for certain targeted strikes, the immediate follow-on questions include the determination of a legitimate target within an armed conflict with a terrorist group and the geography of the battlefield. Within the self-defense paradigm, key questions include the very contours of the right to use force in self-defense against individuals and the implementation of the concepts of necessity and imminence, among many others.

However, **equally fundamental questions arise from the use of both justifications at the same time, without** careful **distinction delimiting the boundaries** between when one applies and when the other applies. From the perspective of the policymaker, the use of both justifications without further distinction surely offers greater flexibility and potential for action in a range of circumstances.8 To the extent such flexibility does not impact the implementation of the relevant law or hinder the development and enforcement of that law in the future, it may well be an acceptable goal. **In the case of targeted strikes in the current international environment of armed conflict and counterterrorism operations occurring at the same time, however,** the mixing of legal justifications raises significant concerns **about both current implementation and future development of the law**.

One overarching concern is the conflation in general of jus ad bellum and jus in bello. The former is the law governing the resort to force—sometimes called the law of self-defense—and the latter is the law regulating the conduct of hostilities and the protection of persons in conflict—generally called the law of war, the law of armed conflict, or international humanitarian law. International law reinforces a strict separation between the two bodies of law, ensuring that all parties have the same obligations and rights during armed conflict to ensure that all persons and property benefit from the protection of the laws of war. For example, the Nuremberg Tribunal repeatedly held that Germany’s crime of aggression neither rendered all German acts unlawful nor prevented German soldiers from benefitting from the protections of the jus in bello.9 More recently, the Special Court for Sierra Leone refused to reduce the sentences of Civil Defense Forces fighters on the grounds that they fought in a “legitimate war” to protect the government against the rebels.10 The basic principle that the rights and obligations of jus in bello apply regardless of the justness or unjustness of the overall military operation thus remains firmly entrenched. Indeed, if the cause at arms influenced a state’s obligation to abide by the laws regulating the means and methods of warfare and requiring protection of civilians and persons hors de combat, states would justify all departures from jus in bello with reference to the purported justness of their cause. The result: an invitation to unregulated warfare.11

Authority overlap destroys both the self-defense and armed conflict legal regimes

Laurie Blank, Director, International Humanitarian Law Clinic, Emory Law School, 2012, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf

In contrast, human rights law’s requirement that force only be used as a last resort when absolutely necessary for the protection of innocent victims of an attack creates an obligation to attempt to capture a suspected terrorist before any lethal targeting.101 A state using force in self-defense against a terrorist cannot therefore target him or her as a first resort but can only do so if there are no alternatives—meaning that an offer of surrender or an attempt at capture has been made or is entirely unfeasible in the circumstances. Thus, if non-forceful measures can foil the terrorist attack without the use of deadly force, then the state may not use force in self-defense.102 The supremacy of the right to life means that “even the most dangerous individual must be captured, rather than killed, so long as it is practically feasible to do so, bearing in mind all of the circumstances.”103 No more, this obligation to capture first rather than kill is not dependent on the target’s efforts to surrender; the obligation actually works the other way: the forces may not use deadly force except if absolutely necessary to protect themselves or innocent persons from immediate danger, that is, self-defense or defense of others. As with any law enforcement operation, “the intended result . . . is the arrest of the suspect,”104 and therefore every attempt must be made to capture before resorting to lethal force.

In the abstract, the differences in the obligations regarding surrender and capture seem straightforward. The use of both armed conflict and self-defense justifications for all targeted strikes without differentiation runs the risk of conflating the two very different approaches to capture in the course of a targeting operation. This conflation, in turn, is likely to either emasculate human rights law’s greater protections or undermine the LOAC’s greater permissiveness in the use of force, **either of which is a problematic result**. An oft-cited example of the conflation of the LOAC and human rights principles appears in the 2006 targeted killings case before the Israeli Supreme Court. In analyzing the lawfulness of the Israeli government’s policy of “targeted frustration,” the Court held, inter alia, that [a] civilian taking a direct part in hostilities cannot be attacked at such time as he is doing so, if a less harmful means can be employed. . . . Indeed, among the military means, one must choose the means whose harm to the human rights of the harmed person is smallest. Thus, if a terrorist taking a direct part in hostilities can be arrested, interrogated, and tried, those are the means which should be employed.105

The Israeli Supreme Court’s finding that targeting is only lawful if no less harmful means are available—even in the context of an armed conflict—“impose[s] a requirement not based in [the LOAC].”106 Indeed, the Israeli Supreme Court “used the kernel of a human rights rule—that necessity must be shown for any intentional deprivation of life, to restrict the application of [a LOAC] rule—that in armed conflict no necessity need be shown for the killing of combatants or civilians taking a direct part in hostilities.”107 Although the holding is specific to Israel and likely influenced greatly by the added layer of belligerent occupation relevant to the targeted strikes at issue in the case,108 it demonstrates some of the challenges of conflating the two paradigms.

First, if this added obligation of less harmful means was understood to form part of the law applicable to targeted strikes in armed conflict, **the result would be to** disrupt the delicate balance of military necessity and humanity and the equality of arms at the heart of the LOAC. Civilians taking direct part in hostilities—who are legitimate targets at least for the time they do so—would suddenly merit a greater level of protection than persons who are lawful combatants, a result not contemplated in the LOAC.109

Second, soldiers faced with an obligation to always use less harmful means may well either refrain from attacking the target—**leaving** the innocent **victims of the terrorist’s planned attack unprotected**—**or disregard the law as unrealistic** and ineffective. Neither option is appealing. The former undermines the protection of innocent civilians from unlawful attack, one of the core purposes of the LOAC. The latter weakens respect for the value and role of the LOAC altogether during conflict, a central component of the protection of all persons in wartime.

From the opposing perspective, if the armed conflict rules for capture and surrender were to bleed into the human rights and law enforcement paradigm, the **restrictions on the use of force in selfdefense would diminish**. Persons suspected of terrorist attacks and planning future terrorist attacks are entitled to the same set of rights as other persons under human rights law and a relaxed set of standards will only minimize and infringe on those rights. Although there is no evidence that targeted strikes using drones are being used in situations where there is an obligation to seek capture and arrest, it is not hard to imagine a scenario in which the combination of the extraordinary capabilities of drones and the conflation of standards can lead to exactly that scenario. **If states begin to use lethal force as a first resort against individuals outside of armed conflict, the established framework for the protection of the right to life would begin to unrave**l. Not only would targeted individuals suffer from reduced rights, but innocent individuals in the vicinity would be subject to significantly greater risk of injury and death as a consequence of the broadening use of force outside of armed conflict.

This degrades the entire collective security structure resulting in widespread interstate war

Craig Martin, Associate Professor of Law at Washburn University School of Law, 2011, GOING MEDIEVAL: TARGETED KILLING, SELFDEFENSE AND THE JUS AD BELLUM REGIME, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1956141

The United States has been engaging in this practice of using drone-mounted missile systems to kill targeted individuals since at least 2002.98 An increasing number of countries are developing drone capabilities, and other countries have employed different methods of targeted killing that constitute a use of force under jus ad bellum.99 The evidence suggests that the United States intends to continue and indeed expand the program, and there is a growing body of scholarly literature that either defends the policy’s legality, or advocates adjustment in international law to permit such action. There is, therefore, a real prospect that the practice could become more widespread, and that **customary international law could begin to shift to reflect the principles implicit in the U.S. justification and** in accordance with the **rationales developed to support it.**

Some of the implications of such an adjustment in the jus ad bellum regime are obvious from the foregoing analysis. As discussed, there would be a rejection of the narrow principle of self-defense in favor of something much closer to the Grotian concept of defensive war, encompassing punitive measures in response to past attacks and preventative uses of force to halt the development of future threats. **The current conditions for a legitimate use of force in self-defense,** namely the occurrence or imminence of an armed attack, necessity, and proportionality, **would be** significantly diluted or abandoned. Not only the doctrine of self-defense, but other aspects of the collective security system would be relaxed as well. Harkening back to Grotian notions of law enforcement constituting a just cause for war, the adjusted jus ad bellum regime would potentially permit the unilateral use of force against and within states for the purpose of attacking NSAs as such, in effect to enforce international law in jurisdictions that were incapable of doing so themselves.100 This would not only further undermine the concept of self-defense, but would undermine the exclusive jurisdiction that the U.N. Security Council currently has to authorize the use of force for purposes of “law enforcement” under Chapter VII of the Charter. Thus, both of the exceptions to the Article 2(4) prohibition on the use of force would be expanded.

In addition, however, the targeted killing policy threatens to create other holes in the jus ad bellum regime. This less obvious injury would arise from changes that would be similarly required of the IHL regime, and the resulting modifications to the fundamental relationship between the two regimes. These changes could lead to a complete severance of the remaining connection between the two regimes. Indeed, Ken Anderson, a scholar who has testified more than once on this subject before the U.S. Congress,101 has advocated just such a position, suggesting that the United States should assert that its use of force against other states in the process of targeted killings, while justified by the right to self-defense, does not rise to such a level that it would trigger the existence of an international armed conflict or the operation of IHL principles.102 If customary international law evolved along such lines, reverting to gradations in the types of use of force, the change would destroy the unity of the system comprised of the jus ad bellum and IHL regimes, and there would be legal “black holes” in which states could use force without being subject to the limitations and conditions imposed by the IHL regime.

**The structure of** Harold **Koh’s** two-pronged justification similarly **implies a severance of this relationship between jus ad bellum and IHL**, albeit **in** a different and **even more troubling way**. His policy justification consists of two apparently independent and alternative arguments—that the United States is in an armed conflict with Al Qaeda and associated groups; and that the actions are justified as an exercise of self-defense. The suggestion seems to be that the United States is entitled on either basis to use armed force not just against the individuals targeted, but also against states in which the terrorist members are located. In other words, the first prong of the argument is that the use of force against another sovereign state, for the purposes of targeting Al Qaeda members, is justified by the existence of an armed conflict with Al Qaeda. If this is indeed what is intended by the policy justification, it represents an extraordinary move, not just because it purports to create a new category of armed conflict (that is, a “transnational” armed conflict without geographic limitation),103 but because it also suggests that there need be no jus ad bellum justification at all for a use of force against another state. Rather, the implication of Koh’s rationale is that the existence of an armed conflict under IHL can by itself provide grounds for exemption from the prohibition against the threat or use of force under the jus ad bellum regime.

This interpretation of the justifications cannot be pressed too far on the basis of the language of Mr. Koh’s speech alone, which he hastened to explain at the time was not a legal opinion.104 The two justifications could be explained as being supplementary rather than independent and alternative in nature. But the conduct of the United States in the prosecution of the policy would appear to confirm that it is based on these two independent justifications.105 The strikes against groups and states unrelated to the 9/11 attacks could be explained in part by the novel idea that force can be used against NSAs as such, wherever they may be situated. But even assuming some sort of strict liability for states in which guilty NSAs are found, that explanation still does not entirely account for the failure to tie the use of force against the different groups to specific armed attacks launched by each such group. This suggests that the United States is also relying quite independently on the argument that it is engaged in an armed conflict with all of these groups, and that the existence of such an armed conflict provides an independent justification for the use of force against the states in which the groups may be operating.

While the initial use of force in jus ad bellum terms is currently understood to bring into existence an international armed conflict and trigger the operation of IHL, the changes suggested by the policy would turn this on its head, by permitting the alleged existence of a “transnational” armed conflict to justify the initial use of force against third states. Whereas the two regimes currently operate as two components of an overall legal system relating to war, with one regime governing the use of force and the other the conduct of hostilities in the resulting armed conflict, the move attempted by the U.S. policy would terminate these independent but inter-related roles within a single system, and expand the role and scope of IHL to essentially replace aspects of the jus ad bellum regime. This would not only radically erode the jus ad bellum regime’s control over the state use of force, but it could potentially undermine the core idea that war, or in more modern terms the use of force and armed conflict, constitutes a legal state that triggers the operation of special laws that govern the various aspects of the phenomenon. There is a risk of return to a pre-Grotian perspective in which “war” was simply a term used to describe certain kinds of organized violence, rather than constituting a legal institution characterized by a coherent system of laws designed to govern and constrain all aspects of its operation.

There is a tendency in the U.S. approach to the so-called “global war on terror” to cherry-pick principles of the laws of war and to apply them in ways and in circumstances that are inconsistent with the very criteria within that legal system that determine when and how it is to operate. This reflects a certain disdain for the idea that the laws of war constitute an internally coherent system of law.106 In short, the advocated changes to the jus ad bellum regime and to the relationship between it and the IHL regime, and thus to the laws of war system as a whole,107 would constitute marked departures from the trajectory the system has been on during its development over the past century, and would be a repudiation of deliberate decisions that were made in creating the U.N. system after the Second World War.108

The premise of my argument is not that any return to past principles is inherently regressive. A rejection of recent innovations in favor of certain past practices might be attractive to some in the face of new transnational threats. The argument here is not even to deny the idea that the international law system may have to adapt to respond to the transnational terrorist threat. The point, rather, is that **the kind of changes to the international law system that are implicit in the targeted killing policy**, and which are advocated by its supporters, **would serve to** radically reduce the limitations and constraints on the use of force **by states against states**. The modern principles that are being abandoned were created for the purpose of limiting the use of force and thus reducing the incidence of armed conflict among nations. **The rejection of those ideas** and a return to older concepts relating to the law of war **would restore aspects of a system in which war was a legitimate tool of statecraft, and international armed conflict was** thus far more frequent and widespread.109

The entire debate on targeted killing is so narrowly focused on the particular problems posed by transnational terrorist threats, and how to manipulate the legal limitations that tend to frustrate some of the desired policy choices, that there is insufficient reflection on the broader context, and the consequences that proposed changes to the legal constraints would have on the wider legal system of which they are a part. It may serve the immediate requirements of the American government, in order to legitimize the killing of AQAP members in Yemen, to expand the concept of self-defense, and to suggest that states can use force on the basis of a putative “transnational” armed conflict with NSAs. The problem is that the jus ad bellum regime applies to all state use of force, and it is not being adjusted in some tailored way to deal with terrorism alone. If the doctrine of self-defense is expanded to include preventative and punitive elements, it will be so expanded for all jus ad bellum purposes. The expanded doctrine of self-defense will not only justify the use of force to kill individual terrorists alleged to be plotting future attacks, but to strike the military facilities of states suspected of preparing for future aggression. If the threshold for use of force against states “harboring” NSAs is significantly reduced, the gap between state responsibility and the criteria for use of force will be reduced for all purposes. If the relationship between jus ad bellum and IHL is severed or altered, so as to create justifications for the use of force that are entirely independent of the jus ad bellum regime, then states will be entitled to use force against other states under the pretext of self-proclaimed armed conflict with NSAs generally.

We may think about each of these innovations as being related specifically to operations against terrorist groups that have been responsible for heinous attacks, and applied to states that have proven uniquely unwilling or unable to take the actions necessary to deal with the terrorists operating within their territory. But no clear criteria or qualifications are in fact tied to the modifications that are being advanced by the targeted killing policy. Relaxing the current legal constraints on the use of force and introducing new but poorly defined standards, will open up opportunities for states to use force against other states for reasons that have nothing to do with anti-terrorist objectives. Along the lines that Jeremy Waldron argues in chapter 4 in this volume,110 more careful thought ought to be given to the general norms that we are at risk of developing in the interest of justifying the very specific targeted killing policy. Ultimately, war between nations is a far greater threat, and is a potential source of so much more human suffering than the danger posed by transnational terrorism. This is not to trivialize the risks that terrorism represents, particularly in an age when Al Qaeda and others have sought nuclear weapons. But we must be careful not to undermine the system designed to constrain the use of force and reduce the incidence of international armed conflict, in order to address a threat that is much less serious in the grand scheme of things.

Robust support for the impact—legal regime conflation results in uncontrollable conflict escalation

Ryan Goodman, Anne and Joel Ehrenkranz Professor of Law, New York University School of Law, December 2009, CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO, Yearbook of International Humanitarian Law / Volume 12

A substantial literature exists on the conflation of jus ad bellum and jus in bello. However, the **consequences for** the former side of the equation – the **resort to war** – **is** generally **under-examined**. Instead, academic commentary has focused on the effects of compliance with humanitarian rules in armed conflict and, in particular, the equality of application principle. In this section, I attempt to help correct that imbalance.

In the following analysis, I use the (admittedly provocative) short-hand labels of ‘desirable’ and ‘undesirable’ wars. The former consists of efforts that aim to promote the general welfare of foreign populations such as humanitarian interventions and, on some accounts, peacekeeping operations. The latter – undesirable wars – include conflicts that result from security spirals that serve neither state’s interest and also include predatory acts of aggression.

4.1.1 Decreased likelihood of ‘desirable wars’

A central question in debates about humanitarian intervention is whether the international community should be more concerned about the prospect of future Kosovos – ambitious military actions without clear legal authority – or future Rwandas – inaction and deadlock at the Security Council. Indeed, various institutional designs will tend to favor one of those outcomes over the other. In 1999, Kofi Annan delivered a powerful statement that appeared to consider the prospect of repeat Rwandas the greater concern; and he issued a call to arms to support the ‘developing international norm in favor of intervention to protect civilians from wholesale slaughter’.95 Ifoneassumesthatthereis,indeed,aneedforcontinuedorgreatersupport for humanitarian uses of force, Type I erosions of the separation principle pose a serious threat to that vision. And the threat is not limited to unilateral uses of force. It also applies to military operations authorized by the Security Council. In short, all ‘interventions to protect civilians from wholesale slaughter’ are affected.

Two developments render desirable interventions less likely. First, consider implications of the Kosovo Commission/ICISS approach. The scheme imposes greater requirements on armed forces engaged in a humanitarian mission with respect to safeguarding civilian ives.96 If that scheme is intended to smoke out illicit intent,97 it is likely to have perverse effects: suppressing sincere humanitarian efforts at least on the margins. Actors engaged in a bona fide humanitarian intervention generally tend to be more protective of their own armed forces than in other conflicts. It is instructive to consider, for instance, the precipitous US withdrawal from the UN mission in Somalia – code-named Operation Restore Hope – after the loss of eighteen American soldiers in the Battle of Mogadishu in 1993, and the ‘lesson’ that policymakers drew from that conflict.98 Additionally, the Kosovoc ampaign – code-named Operation Noble Anvil – was designed to be a ‘zero-casualty war’ for US soldiers, because domestic public support for the campaign was shallow and unstable. The important point is that the Kosovo Commission/ICISS approach would impose additional costs on genuine humanitarian efforts, for which it is already difficult to build and sustain popular support. As a result, we can expect to see fewer bona fide interventions to protect civilians from atrocities.99 Notably, such results are more likely to affect two types of states: states with robust, democratic institutions that effectively reflect public opinion and states that highly value compliance with jus in bello. Both of those are the very states that one would most want to incentivize to initiate and participate in humanitarian interventions.

The second development shares many of these same consequences. Consider the implications of the British House of Lords decision in Al-Jedda which cast doubt on the validity of derogations taken in peacekeeping operations as well as other military efforts in which the homeland is not directly at stake and the state could similarly withdraw. The scheme imposes a tax on such interventions by precluding the government from adopting measures that would otherwise be considered lawful and necessary to meet exigent circumstances related to the conflict. Such extraordinary constraints in wartime may very well temper the resolve to engage in altruistic intervention and military efforts that involve similar forms of voluntarism on the part of the state. Such a legal scheme may thus yield fewer such operations and the participation of fewer states in such multilateral efforts. And, the impact of the scheme should disproportionately affect the very states that take international human rights obligations most seriously.

Notably, in these cases, the disincentives might weigh most heavily on third parties: states that decide whether and to what degree to participate in a coalition with the principal intervener. It is to be expected that the commitment on the part of the principal intervener will be stronger, and thus not as easily shifted by the erosion of the separation principle. The ability, however, to hold together a coalition of states is made much more difficult by these added burdens. Indeed, as the United States learned in the Kosovo campaign, important European allies were wary about the intervention, in part due to its lack of an international legal pedigree. And the weakness of the alliance, including German and Italian calls for an early suspension of the bombing campaign, impeded the ability to wage war in the first place. It may be these third party states and their decision whether to join a humanitarian intervention where the international legal regime matters most. Without such backing of important allies, the intervention itself is less likely to occur. It is also those states – the more democratic, the more rights respecting, and the more law abiding – that the international regime should prefer to be involved in these kinds of interventions.

The **developments regulating jus ad bellum through jus in bello** also **threaten to make ‘undesirable wars’ more likely**. In previous writing, I argue that encouraging states to frame their resort to force through humanitarian objectives rather than other rationales would, in the aggregate, reduce the overall level of disputes that result in uncontrolled escalation and war.100 A reverse relationship also holds true. That is, encouraging states to forego humanitarian rationales in favor of other justifications for using force may culminate in more international disputes ending in uncontrolled escalation and war. This outcome is especially likely to result from the pressures created by Type I **erosions of the separation principle**.

First, increasing the tax on humanitarian interventions (the Kosovo Commission/ICISS approach) and ‘wars of choice’ (the Al-Jedda approach) would encourage states to justify their resort to force on alternative grounds. For example, states would be incentivized to invoke other legitimated frameworks – such as security rationales involving the right to self-defense, collective self-defense, anticipatory self-defense, and traditional threats to international peace and security. And, even if military action is pursued through the Security Council, states may be reluctant to adopt language (in resolutions and the like) espousing or emphasizing humanitarian objectives.

Second, the elevation of self-regarding – security and strategic – frameworks over humanitarian ones is more likely to lead to uncontrolled escalation and war. A growing body of social science scholarship demonstrates that the type of issue in dispute can constitute an important variable in **shaping the course of interstate hostilities**. The first generation of empirical scholarship on the origins of war did not consider this dimension. Political scientists instead concentrated on features of the international system (for example, the distribution of power among states) and on the characteristics of states (for example, forms of domestic governance structures) as the key explanatory variables. Research agendas broadened considerably, however, in subsequent years. More recently, ‘[s]everal studies have identified substantial differences in conflict behavior over different types of issues’.101 The available evidence shows that states are significantly more inclined to fight over particular types of issues that are elevated in a dispute, despite likely overall material and strategic losses.102 Academic studies have also illuminated possible causal explanations for these empirical patterns. Specifically, domestic (popular and elite) constituencies more readily support bellicose behavior by their government when certain salient cultural or ideological issues are in contention. Particular issue areas may also determine the expert communities (humanitarian versus security mindsets) that gain influence in governmental circles – a development that can shape the hard-line or soft-line strategies adopted in the course of the dispute. In short, these links between domestic political processes and the framing of international disputes exert significant influence on whether conflicts will eventually culminate in war.

Third, a large body of empirical research demonstrates that states will routinely engage in interstate disputes with rivals and that those disputes which are framed through security and strategic rationales are more likely to escalate to war. Indeed, **the inclusion of a humanitarian rationale provides windows of opportunity to control and deescalate a conflict**. **Thus, eliminating or demoting a humanitarian rationale from a** mix of justifications (even if it is not replaced by another rationale) can be independently destabilizing. Espousing or promoting security rationales, on the other hand, is more likely to culminate in public demands for increased bellicosity, unintended security spirals, and military violence.103

Importantly, **these effects may result** even if one is skeptical **about the power of international law** to influence state behavior directly. It is reasonable to assume that international law is unlikely to alter the determination of a state to wage war, and that international law is far more likely to influence only the justificatory discourse states employ while proceeding down the warpath. However, as I argue in my earlier work, leaders (of democratic and nondemocratic) states become caught in their official justifications for military campaigns. Consequently, framing the resort to force as a pursuit of security objectives, or adding such issues to an ongoing conflict, can reshape domestic political arrangements, which narrows the subsequent range of policy options. Issues that initially enter a conflict due to disingenuous representations by political leaders can become an authentic part of the dispute over time. Indeed, the available social science research, primarily qualitative case studies, is even more relevant here. A range of empirical studies demonstrate such unintended consequences primarily in the case of leaders employing security-based and strategic rationales to justify bellicose behavior.104 A central finding is that pretextual and superficial justifications can meaningfully influence later stages of the process that shape popular and elite conceptions of the international dispute. And **it is those understandings that affect national security strategies and the ladder of escalation to war.** Indeed, one set of studies – of empires – suggests these are mechanisms for powerful states entering into disastrous military campaigns that their leaders did not initially intend.

Self-defense regime collapse causes global war—US TK legal regime key—only Congress solves international norm development

Beau Barnes, J.D., Boston University School of Law, Spring 2012, REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE, https://www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/20a66345129fe3d885256e5b00571830/b7396120928e9d5e85257a700042abb5/$FILE/By%20Beau%20D.%20Barnes.pdf

Therefore, the more likely result is that the Executive Branch, grappling with the absence of explicit legal authority for a critical policy, would need to make increasingly strained legal arguments to support its actions.121 Thus, the Obama Administration will soon be forced to rationalize ongoing operations under existing legal authorities, which, I argue below, will have significant harmful consequences for the United States. Indeed, the administration faces a Catch-22—its efforts to destroy Al Qaeda as a functioning organization will lead directly to the vitiation of the AUMF. The administration is “starting with a result and finding the legal and policy justifications for it,” which often leads to poor policy formulation.122 Potential legal rationales would perforce rest on exceedingly strained legal arguments based on the AUMF itself, the President’s Commander in Chief powers, or the international law of selfdefense.123 Besides the inherent damage to U.S. credibility attendant to unconvincing legal rationales, each alternative option would prove legally fragile, destabilizing to the international political order, or both.

1. Effect on Domestic Law and Policy

Congress’s failure to reauthorize military force would lead to bad domestic law and even worse national security policy. First, a legal rationale based on the AUMF itself will increasingly be difficult to sustain. Fewer and fewer terrorists will have any plausible connection to the September 11 attacks or Al Qaeda, and arguments for finding those connections are already logically attenuated. The definition of those individuals who may lawfully be targeted and detained could be expanded incrementally from the current definition, defining more and more groups as Al Qaeda’s “co-belligerents” and “associated forces.”124 But this approach, apart from its obvious logical weakness, would likely be rejected by the courts at some point.125 The policy of the United States should not be to continue to rely on the September 18, 2001, AUMF.

Second, basing U.S. counterterrorism efforts on the President’s constitutional authority as Commander in Chief is legally unstable, and therefore unsound national security policy, because a combination of legal difficulties and political considerations make it unlikely that such a rationale could be sustained. This type of strategy would likely run afoul of the courts and risk destabilizing judicial intervention,126 because the Supreme Court has shown a willingness to step in and assert a more proactive role to strike down excessive claims of presidential authority.127 Politically, using an overly robust theory of the Commander in Chief’s powers to justify counterterrorism efforts would, ultimately, be difficult to sustain. President Obama, who ran for office in large part on the promise of repudiating the excesses of the Bush Administration, and indeed any president, would likely face political pressure to reject the claims of executive authority made “politically toxic” by the writings of John Yoo.128 Because of the likely judicial resistance and political difficulties, claiming increased executive authority to prosecute the armed conflict against Al Qaeda would prove a specious and ultimately futile legal strategy. Simply put, forcing the Supreme Court to intervene and overrule the Executive’s national security policy is anathema to good public policy. In such a world**, U.S. national security policy would lack stability—confounding cooperation with allies and hindering negotiations with adversaries**.

There are, of course, many situations where the president’s position as Commander in Chief provides entirely uncontroversial authority for military actions against terrorists. In 1998, President Clinton ordered cruise missile strikes against Al Qaeda-related targets in Afghanistan and Sudan in response to the embassy bombings in Kenya and Tanzania. In 1986, President Reagan ordered air strikes against Libyan targets after U.S. intelligence linked the bombing of a Berlin discotheque to Libyan operatives.129 Executive authority to launch these operations without congressional approval was not seriously questioned, and no congressional approval was sought.130 To be sure, many of the targeted killing operations carried out today fall squarely within the precedent of past practice supplied by these and other valid exercises of presidential authority. Notwithstanding disagreement about the scope of Congress’s and the president’s “war powers,” few would disagree with the proposition that the president needs no authorization to act in selfdefense on behalf of the country. However, it is equally clear that not all terrorists pose such a threat to the United States, and thus the on terror,”137 further distancing counterterrorism operations from democratic oversight would exacerbate this problem.138 Indeed, congressional oversight of covert operations—which, presumably, operates with full information—is already considered insufficient by many.139 By operating entirely on a covert basis, “the Executive can initiate more conflict than the public might otherwise [be] willing to support.”140

In a world without a valid AUMF, the United States could base its continued worldwide counterterrorism operations on various alternative domestic legal authorities. All of these alternative bases, however, carry with them significant costs—detrimental to U.S. security and democracy. The foreign and national security policy of the United States should rest on “a comprehensive legal regime to support its actions, one that [has] the blessings of Congress and to which a court would defer as the collective judgment of the American political system about a novel set of problems.”141 **Only then can the President’s efforts be sustained and legitimate**.

2. Effect on the International Law of Self-Defense

A failure to reauthorize military force would lead to significant negative consequences on the international level as well. Denying the Executive Branch the authority to carry out military operations in the armed conflict against Al Qaeda would force the President to find authorization elsewhere, most likely in the international law of selfdefense—the jus ad bellum.142 Finding sufficient legal authority for the United States’s ongoing counterterrorism operations in the international law of self-defense, however, is problematic for several reasons. As a preliminary matter, relying on this rationale usurps Congress’s role in regulating the contours of U.S. foreign and national security policy. If the Executive Branch can assert “self-defense against a continuing threat” to target and detain terrorists worldwide, it will almost always be able to find such a threat.143 Indeed, the Obama Administration’s broad understanding of the concept of “imminence” illustrates the danger of allowing the executive to rely on a self-defense authorization alone.144

This approach also would inevitably lead to dangerous “slippery slopes.” Once the President authorizes a targeted killing of an individual who does not pose an imminent threat in the strict law enforcement sense of “imminence,”145 there are few potential targets that would be off-limits to the Executive Branch. Overly malleable concepts are not the proper bases for the consistent use of military force in a democracy. Although the Obama Administration has disclaimed this manner of broad authority because the AUMF “does not authorize military force against anyone the Executive labels a ‘terrorist,’”146 **relying** solely **on** the international law of **self defense would likely lead to precisely such a result.**

The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos.”148

Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration’s national security policy, sapping U.S. credibility. The Administration’s National Security Strategy emphasizes U.S. “moral leadership,” basing its approach to U.S. security in large part on “pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests.”149 Defense Department General Counsel Jeh Johnson has argued that “[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.”150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States “must not make [legal authority] up to suit the moment.”151 The Obama Administration’s global counterterrorism strategy is to “adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy” of “turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation.”152

Widely accepted legal arguments also facilitate cooperation from U.S. allies, especially from the United States’ European allies, who have been wary of expansive U.S. legal interpretations.153 Moreover, U.S. strategy vis-à-vis China focuses on binding that nation to international norms as it gains power in East Asia.154 The United States is an international “standard-bearer” that “sets norms that are mimicked by others,”155 and the Obama Administration acknowledges that its drone strikes act in a quasi-precedential fashion.156 Risking the obsolescence of the AUMF would force the United States into an “aggressive interpretation” of international legal authority,157 not just discrediting its own rationale, but facilitating that rationale’s destabilizing adoption by nations around the world.158

TK self-defense norms modeled globally --- causes global war

Fisk & Ramos 13 (Kerstin Fisk --- PhD in Political Science focusing on interstate war @ Claremont Graduate University, Jennifer M. Ramos-- PhD in Polisci and Professor @ Loyola Marymount focusing on norms and foreign policy, including drone warfare and preventative use of force, “Actions Speak Louder Than Words: Preventive Self-Defense as a Cascading Norm” 15 APR 2013, International Studies Perspectives (2013), 1–23)

Conclusion

Preventive self-defense entails waging a war or an attack by choice, in order to prevent a suspected enemy from changing the status quo in an unfavorable direction. Prevention is acting in anticipation of a suspected latent threat that might fully emerge someday. One might rightfully point out that preventive strikes are nothing new—the Iraq War is simply a more recent example in a long history of the preventive use of force. The strategic theorist Colin Gray (2007:27), for example, argues that “far from being a rare and awful crime against an historical norm, preventive war is, and has always been, so common, that its occurrence seems remarkable only to those who do not know their history.” Prevention may be common throughout history, but this does not change the fact that it became increasingly difficult to justify after World War II, as the international community developed a core set of normative principles to guide state behavior, including war as a last resort. The threshold for war was set high, imposing a stringent standard for states acting in self-defense. Gray concedes that there has been a “slow and erratic, but nevertheless genuine, growth of a global norm that regards the resort to war as an extraordinary and even desperate measure” and that the Iraq war set a “dangerous precedent” (44). Although our cases do not provide a definitive answer for whether a preventive self-defense norm is diffusing, they do provide some initial evidence that states are re-orienting their military and strategic doctrines toward offense. In addition, these states have all either acquired or developed unmanned aerial vehicles for the purposes of reconnaissance, surveillance, and/or precision targeting.

Thus, the results of our plausibility probe provide some evidence that the global norm regarding the use of force as a last resort is waning, and that **a preventive self-defense norm is emerging and cascading following the example set by the U**nited **S**tates. At the same time, there is variation among our cases in the extent to which they apply the strategy of self-defense. China, for example, has limited their adaption of this strategy to targeted killings, while Russia has declared their strategy to include the possibility of a preventive nuclear war. Yet, the preventive self-defense strategy is not just for powerful actors. Lesser powers may choose to adopt it as well, though perhaps only implementing the strategy against actors with equal or lesser power. Research in this vein would compliment our analyses herein.

With the proliferation of technology in a globalized world, it seems only a matter of time before countries that do not have drone technology are in the minority. While preventive self-defense strategies and drones are not inherently linked, current rhetoric and practice do tie them together. Though it is likely far into the future**, it is all the more important to consider the final stage of norm evolution—internalization—for this particular norm**. While scholars tend to think of norms as “good,” this one is not so clear-cut. If the preventive self-defense norm is taken for granted, integrated into practice without further consideration, it inherently changes the functioning of international relations. And unmanned aerial vehicles, by reducing the costs of war, make claims of preventive self-defense more palatable to the public. Yet **a global norm of preventive self-defense is likely to be** destabilizing**,** leading to more war **in the international system**, not less. It clearly violates notions of just war principles—jus ad bellum. **The U**nited **S**tates **has set a dangerous precedent, and by continuing its preventive strike policy it continues to provide other states with the justification to do the same.**

Causes escalation everywhere

William Bradford, Assistant Professor of Law, Indiana University School of Law, July 2004, SYMPOSIUM: THE CHANGING LAWS OF WAR: DO WE NEED A NEW LEGAL REGIME AFTER SEPTEMBER 11?: "THE DUTY TO DEFEND THEM": n1 A NATURAL LAW JUSTIFICATION FOR THE BUSH DOCTRINE OF PREVENTIVE WAR, 79 Notre Dame L. Rev. 1365

For restrictivists, n67 anticipatory self-defense, despite its pedigree, is "fertile ground for torturing the self-defense concept" n68 and a dangerous warrant for manipulative, self-serving states to engage in prima facie illegal aggression while cloaking their actions under the guise of anticipatory self-defense and claiming legal legitimacy. n69 Analysis of the legitimacy of an act of anticipatory self-defense requires replacing the objectively verifiable prerequisite of an "armed attack" under Article 51 with the subjective perception of a "threat" of such an attack as perceived by the state believing itself a target, and thus determination of whether a state has demonstrated imminence before engaging in anticipatory self-defense lends itself to post hoc judgments of an infinite number of potential scenarios, spanning a continuum from the most innocuous of putatively civilian acts, including building roads and performing scientific research, to the most threatening, including the overt marshaling of thousands of combat troops in offensive dispositions along a contested border. Establishing the necessity of anticipatory self-defense in response to a pattern of isolated incidents over a period of time is an equally subjective task susceptible to multiple determinations and without empirical standards to guide judgment. n70 History is replete with examples of aggression masquerading as anticipatory self-defense, n71 including the Japanese invasion of Manchuria in [\*1385] 1931 n72 and the German invasion of Poland in 1939, n73 and by simply recharacterizing their actions as anticipatory self-defense rather than aggression dedicated to territorial revanchism or fulfillment of religious obligations, **self-interested states such as China, North Korea, Pakistan, or members of the Arab League,** restrictivists warn, **might claim the legal entitlement to attack**, respectively, **Taiwan, South Korea, India, and Israel**. n74 Moreover, taken to its logical extreme the doctrine of anticipatory self-defense might be interpreted as authorizing a state under the leadership of a paranoid decisionmaker to attack the entire world on the false suspicion of threats emanating from every corner. n75

China models US self-defense precedent --- they’ll strike in the South China Sea

Fisk & Ramos 13 (Kerstin Fisk --- PhD in Political Science focusing on interstate war @ Claremont Graduate University, Jennifer M. Ramos PhD in Polisci and Professor @ Loyola Marymount focusing on norms and foreign policy, including drone warfare and preventative use of force, “Actions Speak Louder Than Words: Preventive Self-Defense as a Cascading Norm” 15 APR 2013, International Studies Perspectives (2013), 1–23)

China

Though scholars debate the strategic culture of China, the dominant view has been one that emphasizes the defensive nature of Chinese military strategy (for an alternative view, see Johnston 1995; Feng 2007; Silverstone 2009). In this view, China prefers diplomacy over the use of force to achieve its objectives, and is more focused on defending against aggressors than acting as one. Seemingly consistent with this view, in 2003, China publically declared its position against states seeking to legitimize preventive self-defense. From China's perspective, the US-led war in Iraq was an example of America's hegemonic lust for power (Silverstone 2009). It was an act of aggression that violated the international norm that China holds dear—the norm of sovereignty. **However, the country's position on this may be evolving**, or at least **contingent on its own geo-political interests**. In 2005, the People's Congress of China passed an anti-secession law, clearly with an eye toward Taiwan. This law includes language that allows “non-peaceful means” in the case that reunification goals are not achieved (Reisman and Armstrong 2006). This suggests that China leaves open the possibility of some kind of military action to thwart Taiwan's formal secession—a preventive move. Still, China considers the Taiwan “problem” a domestic issue, thus the anti-secession law is not compelling evidence that China is buying into the norm of preventive self-defense.

Indeed, a year later (in 2006), China released a national defense report that articulates a strategy of “active defense” for the twenty-first century, in which China moves to an offensive defensive strategy (Yang 2008). Within this report, China declares a policy that prohibits the first use of nuclear weapons “at any time and under any circumstances.” This is consistent with its general orientation against preventive strikes, though it only specifies this idea with regard to nuclear weapons, and may leave the door open to a first use strategy with other types of weapons, but it is not clear from the report. China is likely to be tested in several key areas beyond the Taiwan situation mentioned earlier.71 **China is quite aggressive regarding its claims to territories in the South China Sea**. One of the most hotly disputed assertions is its sovereignty over the Spratly Islands and areas close to the Philippine island of Palawan, which is contested by the Philippines among other countries (Beckman 2012). With Chinese Premier Wen Jiabao's recent statement regarding the necessity of possessing a military that could win “local wars under information age conditions,” it is not surprising that **states in the region are on edge**.72 Last October, **Chinese news reported that states with which China has territorial disputes should “mentally prepare for the** sounds of cannons.”73

Beyond the territorial disputes, also consider the recent terrorist attacks within China and their connection to Pakistan and Afghanistan. The East Turkistan Islamic Movement (ETIM) is responsible for several deadly attacks in the Chinese province of Xinjiang, driving Chinese officials to “go all out to counter the violence” that originates from both ETIM terrorist training camps in Pakistan and remote areas in Xinjiang.74 The significance of these threats to China is reflected in its continuing military modernization efforts, including increasing defense spending by more than 11%.75 Amid investment in aircraft carriers and stealth fighter jets, **China is focused on the development of drone technology, hoping to rival that of the U**nited **S**tates.76 Such technology would likely be used in preventive self-defense against terrorists along China's borders.77 Reports suggest that after seeing the critical use of drones by the United States in its engagements abroad, **China has prioritized drone technology acquisition and production**. 78 In sum, these developments in Chinese defense strategy point to a quite offensive posture—one consistent with a commitment to a norm of preventive use of force (though not as clear-cut as in the India and Russia cases).

In each of the cases under review, **the military has shifted in its orientation from defense to offense**. In India, for example, where UAV development is further along compared to the other cases, there have been notable changes in defense strategy. The strategies in all four cases are tied to a concurrent trend toward states’ acquiring unmanned systems, or drones for precision strikes and real-time surveillance. Political and military elites have demonstrated a desire to successfully harness sophisticated new RMA technology, after having observed US success in this area.

Alongside our analysis of state rhetoric, **these changes in strategies** and high-tech tactical weaponry **suggest the diffusion of a preventive use of force norm** across cases, though to varying degrees, depending on their geostrategic interests. India is largely focused on fighting terrorism abroad, whereas Russia's main terrorist concern is within its own borders. China is concerned about terrorism from domestic and foreign sources. Thus, India is more compelled to espouse the norm of preventive self-defense as a legitimate norm governing international state behavior than Russia. China's commitment to such a norm is evolving, perhaps somewhere in between that of Russia and India. Unlike the cases of India, Russia, and China, Germany's military modernization and interest in drones stems largely from pressure from the United States to take on a larger, global role in promoting security and stability, particularly within NATO. In 2008, for example, US Secretary of Defense Robert Gates scolded “defensive players” who “sometimes…have to focus on offense.”79 At the time, Germany had troops in Afghanistan—but they were located in the safest part of the country (the north) while the United States, Canada and Britain fought in the volatile south. Directing his criticism toward Germany in particular, Gates stated, “In NATO, some allies ought not to have the luxury of opting only for stability and civilian operations, thus forcing other allies to bear a disproportionate share of the fighting and dying.”79 As stated above, one of the ways in which norm entrepreneurs promote norms is by invoking a state's reputation or “international image.” This has certainly been the case with Germany, which took on a direct role in combat operations in Afghanistan in 2009—by borrowing American drones.

Taken together, though, in terms of their position on the idea of preventive self-defense, our findings suggest two similarities. First, **in all** four **cases** reviewed here, leaders invoked the US example to justify their actions. Particularly in India, similarities to 9/11 were drawn in an effort to legitimize moves toward offensive strategies. Second, asymmetric tactics are not only a tool of the weak, but also of stronger states**. We found a strong correlation between strategies of preventive self-defense and the acquisition of drone technology. Because of their precision-strike capability, drones are an obvious choice for states committed to preventive self-defense.**

SCS conflict causes extinction

Wittner 11 (Lawrence S. Wittner, Emeritus Professor of History at the State University of New York/Albany, Wittner is the author of eight books, the editor or co-editor of another four, and the author of over 250 published articles and book reviews. From 1984 to 1987, he edited Peace & Change, a journal of peace research., 11/28/2011, "Is a Nuclear War With China Possible?", [www.huntingtonnews.net/14446](http://www.huntingtonnews.net/14446))

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction.

### solvency

Solvency

Congressional limits of self-defense authority within armed conflict is necessary to resolve legal ambiguity

Mark David Maxwell, Colonel, Judge Advocate with the U.S. Army, Winter 2012, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

In the wake of the attacks by al Qaeda on September 11, 2001, an analogous phenomenon of feeling safe has occurred in a recent U.S. national security policy: America’s explicit use of targeted killings to eliminate terrorists, under the legal doctrines of selfdefense and the law of war. Legal scholars define targeted killing as the use of lethal force by a state4 or its agents with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.5 In layman’s terms, targeted killing is used by the United States to eliminate individuals it views as a threat.6 Targeted killings, for better or for worse, have become “a defining doctrine of American strategic policy.”7 Although many U.S. Presidents have reserved the right to use targeted killings in unique circumstances, **making this option a formal part of American foreign policy incurs risks that,** unless adroitly controlled and defined in concert with Congress**, could drive our practices in the use of force in a direction that is not wise for the long-term health of the rule of law**.

This article traces the history of targeted killing from a U.S. perspective. It next explains how terrorism has traditionally been handled as a domestic law enforcement action within the United States and why this departure in policy to handle terrorists like al Qaeda under the law of war—that is, declaring war against a terrorist organization—is novel. While this policy is not an ill-conceived course of action given the global nature of al Qaeda, there are practical limitations on how this war against terrorism can be conducted under the orders of the President. Within the authority to target individuals who are terrorists, there are two facets of Presidential power that the United States must grapple with: first, how narrow and tailored the President’s authority should be when ordering a targeted killing under the rubric of self-defense; and second, whether the President must adhere to concepts within the law of war, specifically the targeting of individuals who do not don a uniform. **The gatekeeper of these Presidential powers and the prevention of their overreach is** Congress. The Constitution demands nothing less, but thus far, **Congress’s silence is deafening**.

History of Targeted Killing During the Cold War, the United States used covert operations to target certain political leaders with deadly force.8 These covert operations, such as assassination plots against Fidel Castro of Cuba and Ngo Dinh Diem of South Vietnam, came to light in the waning days of the Richard Nixon administration in 1974. In response to the public outrage at this tactic, the Senate created a select committee in 1975, chaired by Senator Frank Church of Idaho, to “Study Government Operations with Respect to Intelligence Activities.”9 This committee, which took the name of its chairman, harshly condemned such targeting, which is referred to in the report as assassination: “We condemn assassination and reject it as an instrument of American policy.”10 In response to the Church Committee’s findings, President Gerald R. Ford issued an Executive order in 1976 prohibiting assassinations: “No employee of the United States Government shall engage in, or conspire to engage in political assassination.”11 The order, which is still in force today as Executive Order 12333, “was issued primarily to preempt pending congressional legislation banning political assassination.”12 President Ford did not want legislation that would impinge upon his unilateral ability as Commander in Chief to decide on the measures that were necessary for national security. 13 In the end, no legislation on assassinations was passed; national security remained under the President’s purview. Congress did mandate, however, that the President submit findings to select Members of Congress before a covert operation commences or in a timely fashion afterward.14 This requirement remains to this day. Targeted killings have again come to center stage with the Barack Obama administration’s extraordinary step of acknowledging the targeting of the radical Muslim cleric Anwar al-Awlaki, a U.S. citizen who lived in Yemen and was a member of an Islamic terrorist organization, al Qaeda in the Arabian Peninsula.15 Al-Awlaki played a significant role in an attack conducted by Umar Farouk Abdulmutallab, the Nigerian Muslim who attempted to blow up a Northwest Airlines flight bound for Detroit on Christmas Day 2009.16 According to U.S. officials, al-Awlaki was no longer merely encouraging terrorist activities against the United States; he was “acting for or on behalf of al-Qaeda in the Arabian Peninsula . . . and providing financial, material or technological support for . . . acts of terrorism.”17 Al-Awlaki’s involvement in these activities, according to the United States, made him a belligerent and therefore a legitimate target. The context of the fierce debates in the 1970s is different from the al-Awlaki debate. The targeted killing of an individual for a political purpose, as investigated by the Church Committee, was the use of lethal force during peacetime, not during an armed conflict. During armed conflict, the use of targeted killing is quite expansive.18 But in peacetime, the use of any lethal force is highly governed and limited by both domestic law and international legal norms. The presumption is that, in peacetime, all use of force by the state, especially lethal force, must be necessary. The Law Enforcement Paradigm Before 9/11, the United States treated terrorists under the law enforcement paradigm—that is, as suspected criminals.19 This meant that a terrorist was protected from lethal force so long as his or her conduct did not require the state to respond to a threat or the indication of one. The law enforcement paradigm assumes that the preference is not to use lethal force but rather to arrest the terrorist and then to investigate and try him before a court of law.20 The presumption during peacetime is that the use of lethal force by a state is not justified unless necessary. Necessity assumes that “only the amount of force required to meet the threat and restore the status quo ante may be employed against [the] source of the threat, thereby limiting the force that may be lawfully applied by the state actor.”21 The taking of life in peacetime is only justified “when lesser means for reducing the threat were ineffective.”22 Under both domestic and international law, the civilian population has the right to be free from arbitrary deprivation of life. Geoff Corn makes this point by highlighting that a law enforcement officer could not use deadly force “against suspected criminals based solely on a determination an individual was a member of a criminal group.”23 Under the law enforcement paradigm, “a country cannot target any individual in its own territory unless there is no other way to avert a great danger.”24 It is the individual’s conduct at the time of the threat that gives the state the right to respond with lethal force. The state’s responding force must be reasonable given the situation known at the time. This reasonableness standard is a “commonsense evaluation of what an objectively reasonable officer might have done in the same circumstances.”25 The U.S. Supreme Court has opined that this reasonableness is subjective: “[t]he calculus of reasonableness must embody allowances for the fact that police officers often are forced to make split-second judgments . . . about the amount of force that is necessary in a particular situation.”26 The law enforcement paradigm attempts to “minimize the use of lethal force to the extent feasible in the circumstances.”27 This approach is the starting point for many commentators when discussing targeted killing: “It may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but the goal of the operation, from its inception, should not be to kill.”28 The presumption is that intentional killing by the state is unlawful unless it is necessary for self-defense or defense of others.29 Like the soldier who acts under the authority of self-defense, if one acts reasonably based on the nature of the threat, the action is justified and legal. What the law enforcement paradigm never contemplates is a terrorist who works outside the state and cannot be arrested. These terrorists hide in areas of the world where law enforcement is weak or nonexistent. The terrorists behind 9/11 were lethal and lived in ungovernable areas; these factors compelled the United States to rethink its law enforcement paradigm. The Law of War Paradigm The damage wrought by the 9/11 terrorists gave President George W. Bush the political capital to ask Congress for authorization to go to war with these architects of terror, namely al Qaeda. Seven days later, Congress gave the President the Authorization for the Use of Military Force (AUMF) against those “nations, organizations, or persons [the President] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.”30 For the first time in modern U.S. history, the country was engaged in an armed conflict with members of an organization, al Qaeda, versus a state. The legal justification to use force, which includes targeted killings, against al Qaeda, the Taliban, and associated forces is twofold: self-defense and the law of war.31 In armed conflict, the rules governing when an individual can be killed are starkly different than in peacetime. The law enforcement paradigm does not apply in armed conflict. Rather, designated terrorists may be targeted and killed because of their status as enemy belligerents. That status is determined solely by the President under the AUMF. Unlike the law enforcement paradigm, the law of war requires neither a certain conduct nor an analysis of the reasonable amount of force to engage belligerents. In armed conflict, it is wholly permissible to inflict “death on enemy personnel irrespective of the actual risk they present.”32 Killing enemy belligerents is legal unless specifically prohibited—for example, enemy personnel out of combat like the wounded, the sick, or the shipwrecked.33 Armed conflict also negates the law enforcement presumption that lethal force against an individual is justified only when necessary. If an individual is an enemy, then “soldiers are not constrained by the law of war from applying the full range of lawful weapons.”34 Now the soldier is told by the state that an enemy is hostile and he may engage that individual without any consideration of the threat currently posed. The enemy is declared hostile; the enemy is now targetable. Anticipatory Self-defense

This paradigm shift is novel for the United States. The President’s authority to order targeted killings is clear under domestic law; it stems from the AUMF. Legal ambiguity of the U.S. authority to order targeted killings emerges, however, when it is required to interpret international legal norms like self-defense and the law of war. The United States has been a historic champion of these international norms, but now they are hampering its desires to target and kill terrorists.

Skeptics of targeted killing admit that “[t]he decision to target specific individuals with lethal force after September 11 was neither unprecedented nor surprising.”35 Mary Ellen O’Connell has conceded, for example, that targeted killing against enemy combatants in Afghanistan is not an issue because “[t]he United States is currently engaged in an armed conflict” there.36 But when the United States targets individuals outside a zone of conflict, as it did with alAwlaki in Yemen,37 it runs into turbulence because a state of war does not exist between the United States and Yemen.38 A formidable fault line that is emerging between the Obama administration’s position and many academics, international organizations,39 and even some foreign governments40 is where these targeted killings can be conducted.41

According to the U.S. critics, if armed conflict between the states is not present at a location, then the law of war is never triggered, and the state reverts to a peacetime paradigm. In other words, the targeted individual cannot be killed merely because of his or her status as an enemy, since there is no armed conflict. Instead, the United States, as in peacetime, must look to the threat the individual possesses at the time of the targeting. There is a profound shift of the burden upon the state: the presumption now is that the targeted killing must be necessary. When, for example, the United States targeted and killed six al Qaeda members in Yemen in 2002, the international reaction was extremely negative: the strike constituted “a clear case of extrajudicial killing.”42

The Obama administration, like its predecessor, disagrees. Its legal justification for targeted killings outside a current zone of armed conflict is anticipatory self-defense. The administration cites the inherent and unilateral right every nation has to engage in anticipatory self-defense. This right is codified in the United Nations charter43 and is also part of the U.S. interpretation of customary international law stemming from the Caroline case in 1837. A British warship entered U.S. territory and destroyed an American steamboat, the Caroline. In response, U.S. Secretary of State Daniel Webster articulated the lasting acid test for anticipatory self-defense: “[N]ecessity of self defense [must be] instant, overwhelming, leaving no choice of means and no moment for deliberation . . . [and] the necessity of self defense, must be limited by that necessity and kept clearly within it.”44

A state can act under the guise of anticipatory self-defense. This truism, however, leaves domestic policymakers to struggle with two critical quandaries: first, the factual predicate required by the state to invoke anticipatory self-defense, on the one hand; and second, the protections the state’s soldiers possess when they act under this authority, on the other. As to the first issue, there is simply no guidance from Congress to the President; the threshold for triggering anticipatory self-defense is ad hoc. As to the second issue, under the law of war, a soldier who kills an enemy has immunity for these precapture or warlike acts.45 This “combatant immunity” attaches only when the law of war has been triggered. Does combatant immunity attach when the stated legal authority is self-defense? There is no clear answer.

The administration is blurring the contours of the right of the state to act in Yemen under self-defense and the law of war protections afforded its soldiers when so acting. Therefore, what protections do U.S. Airmen enjoy when operating the drone that killed an individual in Yemen, Somalia, or Libya?

If they are indicted by a Spanish court for murder, what is the defense? Under the law of war, it is combatant immunity. But if the law of war is not triggered because the killing occurred outside the zone of armed conflict, the policy could expose Airmen to prosecution for murder. In order to alleviate both of these quandaries, Congress must step in with legislative guidance. Congress has the constitutional obligation to fund and oversee military operations.46 **The goal of congressional action must not be to thwart the President from protecting the U**nited **S**tates **from the dangers of a very hostile world**. As the debates of the Church Committee demonstrated, **however,** the President’s unfettered authority **in the realm of national security is a cause for concern**. Clarification is required **because the AUMF gave the President a blank check to use targeted killing** under domestic law, **but it never set parameters on the President’s authority when international legal norms intersect and** potentially **conflict with measures stemming from domestic law.**

That clarity over legal authority is necessary to solve

Laurie Blank, Director, International Humanitarian Law Clinic, Emory Law School, 2012, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf

As noted in the introduction to this article, **maintaining the separation between and independence of jus ad bellum and jus in bello is vital for the effective application** of the law and protection of persons in conflict. The discussion that follows will refer to both the LOAC and the law of self-defense extensively in a range of situations in order to analyze and highlight the risks of blurring the lines between the two paradigms. However, it is important to note that the purpose here is not to conflate the two paradigms, but to emphasize the risks inherent in blurring these lines. **Preserving the historic separation remains** central to the application of both bodies of law**, to the** maintenance of international security, **and to the** regulation of the conduct of hostilities.

III. BLURRING THE LINES

The nature of the terrorist threat the United States and other states face does indeed raise the possibility that both the armed conflict and the self-defense paradigms are relevant to the use of targeted strikes overall. The United States has maintained for the past ten years that it is engaged in an armed conflict with al Qaeda66 and, notwithstanding continued resistance to the notion of an armed conflict between a state and a transnational terrorist group in certain quarters, there is general acceptance that the scope of armed conflict can indeed encompass such a state versus non-state conflict. Not all U.S. counterterrorism measures fit within the confines of this armed conflict, however, with the result that many of the U.S. targeted strikes over the past several years may well fit more appropriately within the self-defense paradigm. The existence of both paradigms as relevant to targeted strikes is not inherently problematic. It is the United States’ insistence on using reference to both paradigms as justification for individual attacks and the broader program of targeted strikes that raises significant concerns for the use of international law and the protection of individuals by blurring the lines between the key parameters of the two paradigms.

A. Location of Attacks: International Law and the Scope of the Battlefield

The distinct differences between the targeting regimes in armed conflict and in self-defense and who can be targeted in which circumstances makes understanding the differentiation between the two paradigms essential to lawful conduct in both situations. The United States has launched targeted strikes in Afghanistan, Pakistan, Yemen, Somalia, and Syria during the past several years. The broad geographic range of the strike locations has produced significant questions—as yet mostly unanswered— and debate regarding the parameters of the conflict with al Qaeda.67 The U.S. armed conflict with al Qaeda and other terrorist groups has focused on Afghanistan and the border regions of Pakistan, but the United States has launched an extensive campaign of targeted strikes in Yemen and some strikes in Somalia in the past year as well. In the early days of the conflict, the United States seemed to trumpet the notion of a global battlefield, in which the conflict with al Qaeda extended to every corner of the world.68 Others have argued that conflict, even one with a transnational terrorist group, can only take place in limited, defined geographic areas.69 At present, the United States has stepped back from the notion of a global battlefield, although there is little guidance to determine precisely what factors influence the parameters of the zone of combat in the conflict with al Qaeda.70

Traditionally, the law of neutrality provided the guiding framework for the parameters of the battlespace in an international armed conflict. When two or more states are fighting and certain other states remain neutral, the line between the two forms the divider between the application of the laws of war and the law of neutrality.71 The law of neutrality is based on the fundamental principle that neutral territory is inviolable72 and focuses on three main goals: (1) contain the spread of hostilities, particularly by keeping down the number of participants; (2) define the legal rights of parties and nonparties to the conflict; and (3) limit the impact of war on nonparticipants, especially with regard to commerce.73 In this way, neutrality law leads to a geographic-based framework in which belligerents can fight on belligerent territory or the commons, but must refrain from any operations on neutral territory. In essence, the battlespace in a traditional armed conflict between two or more states is anywhere outside the sovereign territory of any of the neutral states.74 The language of the Geneva Conventions tracks this concept fairly closely. Common Article 2, which sets forth the definition of international armed conflict, states that such conflict occurs in “all cases of declared war or . . . any other armed conflict which may arise between two or more of the High Contracting Parties.”75 In Common Article 3, noninternational armed conflicts include conflicts between a state and non-state armed groups that are “occurring in the territory of one of the High Contracting Parties.”76 Both of these formulations tie the location of the armed conflict directly to the territory of one or more belligerent parties.

The neutrality framework as a geographic parameter is left wanting in today’s conflicts with terrorist groups, however. First, as a formal matter, the law of neutrality technically only applies in cases of international armed conflict.77 Even analogizing to the situations we face today is highly problematic, however, because today’s conflicts not only pit states against non-state actors, but because those actors and groups often do not have any territorial nexus beyond wherever they can find safe haven from government intrusion. As state and non-state actors have often shifted unpredictably and irregularly between acts characteristic of wartime and those characteristic of not-wartime[, t]he unpredictable and irregular nature of these shifts makes it difficult to know whether at any given moment one should understand them as armies and their enemies or as police forces and their criminal adversaries.78

Simply locating terrorist groups and operatives does not therefore identify the parameters of the battlefield—the fact that the United States and other states use a combination of military operations and law enforcement measures to combat terrorism blurs the lines one might look for in defining the battlefield. In many situations, “the fight against transnational jihadi groups . . . largely takes place away from any recognizable battlefield.”79

Second, a look at U.S. jurisprudence in the past and today demonstrates a clear break between the framework applied in past wars and the views courts are taking today. U.S. courts during World War I viewed “the port of New York [as] within the field of active [military] operations.”80 Similarly, a 1942 decision upholding the lawfulness of an order evacuating JapaneseAmericans to a military area stated plainly that the field of military operation is not confined to the scene of actual physical combat. Our cities and transportation systems, our coastline, our harbors, and even our agricultural areas are all vitally important in the all-out war effort in which our country must engage if our form of government is to survive.81

In each of those cases, the United States was a belligerent in an international armed conflict; the law of neutrality mandated that U.S. territory was belligerent territory and therefore part of the battlefield or combat zone. The courts take a decidedly different view in today’s conflicts, however, consistently referring to the United States as “outside a zone of combat,”82 “distant from a zone of combat,”83 or not within any “active [or formal] theater of war,”84 even while recognizing the novel geographic nature of the conflict. Even more recently, in Al Maqaleh v. Gates, both the District Court and the Court of Appeals distinguished between Afghanistan, “a theater of active military combat,”85 and other areas (including the United States), which are described as “far removed from any battlefield.”86 In a traditional belligerency-neutrality framework, one would expect to see U.S. territory viewed as part of the battlefield; the fact that courts consistently trend the other way highlights both the difference in approach and the uncertainty involved in defining today’s conflicts.

The current U.S. approach of using both the armed conflict paradigm and the self-defense paradigm as justifications for targeted strikes without further clarification serves to exacerbate the legal challenges posed by the geography of the conflict, at both a theoretical and a practical level. First, at the most fundamental level, uncertainty regarding the parameters of the battlefield has significant consequences for the safety and security of individuals. During armed conflict, the LOAC authorizes the use of force as a first resort against those identified as the enemy, whether insurgents, terrorists or the armed forces of another state. In contrast, human rights law, which would be the dominant legal framework in areas where there is no armed conflict, authorizes the use of force only as a last resort.87 Apart from questions regarding the application of human rights law during times of war, which are outside the scope of this article, the distinction between the two regimes is nonetheless starkest in this regard. The former permits targeting of individuals based on their status as members of a hostile force; the latter—human rights law—permits lethal force against individuals only on the basis of their conduct posing a direct threat at that time. The LOAC also accepts the incidental loss of civilian lives as collateral damage, within the bounds of the principle of proportionality;88 human rights law contemplates no such casualties. These contrasts can literally mean the difference between life and death in many situations. Indeed, “If it is often permissible to deliberately kill large numbers of humans in times of armed conflict, even though such an act would be considered mass murder in times of peace, then it is essential that politicians and courts be able to distinguish readily between conflict and nonconflict, between war and peace.”89 However, the overreliance on flexibility at present means that U.S. officials do not distinguish between conflict and non-conflict areas but rather simply use the broad sweep of armed conflict and/or self-defense to cover all areas without further delineation.

Second, on a broader level of legal application and interpretation, the **development of the law itself is affected by the failure to delineate between relevant legal paradigms**. “Emerging technologies of potentially great geographic reach raise the issue of what regime of law regulates these activities as they spread,”90 and emphasize the need to foster, rather than hinder, development of the law in these areas. Many argue that the ability to use armed drones across state borders without risk to personnel who could be shot down or captured across those borders has an expansive effect on the location of conflict and hostilities. In effect, they suggest that it is somehow “easier” to send unmanned aircraft across sovereign borders because there is no risk of a pilot being shot down and captured, making the escalation and spillover of conflict more likely.91 Understanding the parameters of a conflict with terrorist groups is important, for a variety of reasons, none perhaps more important than the life-and-death issues detailed above. By the same measure, understanding the authorities **for and limits on a state’s use of force** in self-defense **is essential to maintaining orderly relations between states and to the ability of states to defend against attacks**, from whatever quarter. The extensive debates in the academic and policy worlds highlight the fundamental nature of both inquiries. However, the repeated assurances from the U.S. government that targeted strikes are lawful in the course of armed conflict or in exercise of the legitimate right of self-defense—without further elaboration and specificity—allows for a significantly less nuanced approach. As long as a strike seems to fit into the overarching framework of helping to defend the United States against terrorism, there no longer would be a need to carefully delineate the parameters of armed conflict and self-defense, where the outer boundaries of each lie and how they differ from each other. From a purely theoretical standpoint, this limits the development and implementation of the law. Even from a more practical policy standpoint, the United States may well find that the blurred lines prove detrimental in the future when it seeks sharper delineations for other purposes.

The aff does not legitimize war

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The just war tradition is riddled with ambiguities. It speaks of a single human community bounded by universal moral laws, as it recognizes and, under certain conditions, legitimates the division of that community into enemy factions in violation of those laws. It recognizes the inevitability of war while speaking of the demands of peace. It sets up reason as the arbiter of wartime strategies, while noting that armed conflicts, once begun, may not be amenable to the rule of reason. Given these ambiguities, a result of the ways in which just war theory attempts to negotiate the competing demands of justice and the politics of power, it is no accident that the just war tradition has been ridiculed by power "realists" for its utopian naïveté and dismissed by pacifists for sacrificing the principles of peace to the demands of war.

Twentiethand twenty-first-century war waging has bolstered "realist" and pacifist critiques of the just war doctrine. The trench warfare strategy of World War I, the Allied bombing strategies of World War II, the genocidal evil of Nazi Germany, and the nuclear capacities of the United States and the USSR mocked the just war premise that war could be morally and rationally [End Page 72] constrained. Ironically, the cold-war policy of mutual assured destruction, with its acronym MAD, made the case for the pacifist argument that a just war in a world of nuclear weapons was impossible. MAD did not, however, create the conditions for peace envisioned by just war advocates.

The twenty-first century, young as it is, has managed to establish itself as an heir to the twentieth century's mockery of the idea of a just war. Erasing the "never again" post–World War II just war promise with multiple spectacles of genocides, betraying the promise of a post–cold-war world of peaceful coexistence with the reality of a world dominated by ideological wars of terror, a U.S.–declared war on terrorism, and the proliferation of nuclear and biological weapons, **this century has made it increasingly difficult for the just war tradition to establish itself as a counterweight to the politics of violence**.

Given the destructive powers of modern weaponry and the absolutist ideologies of contemporary conflicts, and given the fact that the just war tradition is historically tied to the idea of the sovereign state as the sole legitimate source of war and to Western notions of natural law and rights, it might seem time to declare the very idea of a just war a relic of more manageable and naïve times, and a symptom of Eurocentric ideology. It might seem time to face the fact that politically motivated violence is more chaotic than envisioned by just war advocates, and less amenable to the rule of reason required by just war restrictions.

Before writing the just war obituary, however, we need to note the ways in which institutional responses to the evils of unbridled violence—war crimes tribunals, a body of international laws and treaties delineating the particulars of war crimes and crimes against humanity, the development of human rights laws—speak the language of just war theory. For these institutions and laws insist that political and military officials are bound by just war morality and hold military and political actors punishably responsible for failing to adhere to the moral obligations of the just war code. These developments suggest that despite the antipathy between current technologies and ideologies of war and the principles of just war doctrines, **the just war insistence that the political and moral worlds are tethered remains relevant**.

To see whether just war theory can meet the challenges of its origins and of our times we need to see how it fares against the criticisms of power-politics advocates, such as Carl von Clausewitz (1780–1831), and how it stands up to pacifist and nonviolent rejections of all forms of political violence.

In his classic text, On War, Clausewitz argued that even when/if the original objectives of war are limited, war, once begun, cannot escape its absolutist logic.1 According to Clausewitz, as an act of force intended to compel an enemy to surrender, war is subject to the rules of unintended consequences and escalation that no rule of justice can counter (Shaw 2003, 19). In advancing his thesis of reality politics, Clausewitz analyzed the very idea of the just war, the thesis [End Page 73] that war could and should be limited both in its objectives and in its conduct. He made it clear that it is the logic of war, not the technologies of warfare, that constitute its inherent peril. He anticipated Rwanda. Machetes were all the Hutu needed to perpetuate genocide.

Clausewitz's argument against the just war premise of rule-governed war has been joined by two other arguments that point to serious loopholes in just war theory. The first of these arguments demonstrates the ways in which the logic of just war itself can become a justification for unlimited war waging. The point of just war doctrine is to distinguish morally justifiable from morally unjustifiable political violence. Thus, just war doctrine can be invoked to establish the righteousness of certain types of war (for example, holy wars, wars to make the world safe for democracy, wars to liberate the proletariat from the exploitations of capitalism, or wars to create democratic states). Once appealed to in this way, however, just war principles, far from limiting or preventing war, become a war-enhancing tool, a (self-) righteous justification of unlimited war (Coates 1997, 2–3). The second objection concerns the authority to declare war. Just war thinking assumes that war is the province of legitimate states. It presumes that legitimate states have some interest in limiting wars. The logic of this link among legitimate states, war making, and limited war is less than compelling. It is, however, thoroughly undermined in our postmodern world of international conglomerates, paramilitary armies, and "rogue" states, where legitimate states no longer monopolize the power of war making (Coates 1997, 6; Shaw 2003, 63).

Arguments against the just war premise that war can be contained both in its objectives and its conduct do not necessarily make the "realist" case for unrestrained power politics, however. Instead of linking the failed logic of just war thinking to the inevitable amorality of politics, pacifists, among whom we may include such eighteenth-century advocates of perpetual peace as Immanuel Kant, and those who would limit the fight against injustice to nonviolent methods argue that the failures of just war theory alert us to our moral obligation to reject the very idea of war. They see the fact of the inevitability of unlimited war as requiring us to reject of all forms of politically sanctioned violence. Sara Ruddick, for example, recommends a suspicion of the "rhetoric and reason of deliberate collective violence" and advocates developing nonviolent methods of resistance to violence (Ruddick 1990, 232).

Power-politics advocates, nonviolence proponents, and perpetual-peace defenders agree that once political violence begins it cannot be controlled. Their differences concern how to deal with this absolute trajectory of war. Power-politics realists argue that it renders all talk of war and justice superfluous. Pacificists argue that it renders all recourse to war unjustifiable. Just war theorists reject the idea that political violence is always either self-interested or unjust. **They find that rules of war have and can be observed, and that our desires and** [End Page 74] **behaviors are better accounted for by the ambiguous logic of justice and war than the clear-cut justice or war logic of power-politics and pacifist advocates**.

Between the ambiguous agenda of the just war tradition and its realist and pacifist critics, we are confronted with the violence of war, the realities of injustice, the moral demand of peace with justice, and the question of how to counter the violence of injustice without unleashing the absolute logic of war. **Different as they are in their prescriptions for international order, political realists and nonviolent pacifists find the demands of power politics radically incompatible with the demands of morality**. Whether it is the realists accusing nonviolence proponents of a naïve utopianism, or the pacifists finding the realists lacking in moral courage and imagination, both agree that the just war tradition is fundamentally misguided in its attempt to tether a politics that accepts the legitimacy of violence to the moral demands of justice. It seems to me, however, that it is precisely this ambiguity of the just war tradition that constitutes its value for the feminist pursuit of global justice; for in invoking the utopian imagination and yoking the realities of violence to the demands for justice, **it puts injustice on trial within the context of the dialectics of power politics**. **The ambiguity of the just war tradition signals its commitment to the intersection of the ethical and the political**. Its strength lies in the ways in which it looks to the moral imagination to set the political agenda. Rather than severing the political from the moral, or finding current visions of politics morally impossible, it looks for ways to translate moral discourses into (imperfect) political strategies.

My sympathy for the project of the just war tradition owes much to Simone de Beauvoir and her principle of ambiguity, which, in part at least, requires that we tie our "impossible" visions of justice to the concrete realities of human existence. Specifically, Beauvoir reminds us that violence and evil are part of the horizon of our world. The complexity of our condition and tragedy of our situation is such that violence, though never morally justified, is sometimes morally necessary (Beauvoir 1947/1991). Violence is never moral because it is an assault on our humanity. Invoking it, however, is sometimes necessary to preserve our humanity. **When injustice cannot be rectified in any other way, the resort to violence is justified**. As justified, however, it remains tragic. Beauvoir's concept of the tragic here is crucial; for it stops the logic of justified war from sliding into a doctrine of (self-) righteous, absolute war. Though The Second Sex is notable for its refusal to include violent revolution in the arsenal of liberatory strategies to be taken up by women, it nowhere calls upon women to renounce violence. Further, when Beauvoir discusses the liberatory meanings of violence available to patriarchal men but not women and calls women's exclusion from certain violent practices a curse, she makes it clear that, although she is not renouncing her Ethics of Ambiguity assessment of the tragic relationship between violence and justice, she finds the turn to violence, under certain circumstances, an affirmation of one's dignity. [End Page 75]

Between her discussions of what must be done when confronted by the Nazi soldier in The Ethics of Ambiguity and her invocation of the power of the imagination in her defense of the slave and the harem women who do not rebel in The Second Sex, we find Beauvoir validating the utopian imagination as an antidote to passivity in the face of injustice and accepting the idea of legitimate war/violence. By joining the utopian demands for justice with the acceptance of violence through the idea of the tragic, however, she rejects the legitimacy of unrestrained violence. **However legitimate the cause, absolute war is never legitimated**. Here, she and just war advocates share common ground. Both find that the intersecting demands of politics and ethics require a logic of ambiguity rather than a logic of the either/or. In posing the question of feminist justice in the context of the question of war, peace, and human rights, I take up the ambiguities of this common ground.

Simulated 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.

**Simulating the plan creates unique pedagogical benefits by forcing us to build expertise on the details of national security policy—the simulation iself activates agency and enables change—it also builds problem-solving and decision-making skills**

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2. Factual Chaos and Uncertainty

One of the most important skills for students going into national security law is the ability to deal with factual chaos. The presentation of factual chaos significantly differs from the traditional model of legal education, in which students are provided a set of facts which they must analyze. Lawyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determine which information is reliable and relevant, and proceed with analysis and recommendations. Their recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government lawyers as it is for those outside of governmental structures. They must be aware of what is known, what is unsure, what is unknown, and the possibility of changing circumstances, and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis alters.

a. Chaos. Concern about information overload in the national security environment is not new: in the 1970s scholars discussed and debated how to handle the sequential phases of intelligence gathering and analysis in a manner that yielded an optimal result.132 But the digital revolution has exponentially transformed the quantitative terms of reference, the technical means of collection and analysis, and the volume of information available. The number of sources of information – not least in the online world – is staggering.

Added to this is the rapid expansion in national security law itself: myriad new Executive Orders, Presidential Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean that national security law itself is rapidly changing. Lawyers inside and outside of government must keep abreast of constantly evolving authorities.

The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G-7/G-8, and other countries, introduce new instruments whose reach includes U.S. interests. Rapid geopolitical changes relating to critical national security concerns, such as worldwide financial flows, the Middle East, the Arab Spring, South American drug cartels, North Korea, the former Soviet Union, China, and other issues require lawyers to keep up on what is happening globally as a way of understanding domestic concerns. Further expanding the information overload is the changing nature of what constitutes national security itself.133

In sum, the sheer amount of information the national security lawyer needs to assimilate is significant. The basic skills required in the 1970s thus may be similar – such as the ability (a) to know where to look for relevant and reliable information; (b) to obtain the necessary information in the most efficient manner possible; (c) to quickly discern reliable from unreliable information; (d) to know what data is critical; and (e) to ascertain what is as yet unknown or contingent on other conditions. But the volume of information, the diversity of information sources, and the heavy reliance on technology requires lawyers to develop new skills. They must be able to obtain the right information and to ignore chaos to focus on the critical issues. These features point in opposite directions – i.e., a broadening of knowledge and a narrowing of focus.

A law school system built on the gradual and incremental advance of law, bolstered or defeated by judicial decisions and solidified through the adhesive nature of stare decisis appears particularly inapposite for this rapidly-changing environment. An important question that will thus confront students upon leaving the legal academy is how to keep abreast of rapidly changing national security and geopolitical concerns in an information-rich world in a manner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand.

Staying ahead of the curve requires developing a sense of timing – when to respond to important legal and factual shifts – and identifying the best means of doing so. Again, this applies to government and non-government employees. How should students prioritize certain information and then act upon it? This, too, is an aspect of information overload.

b. Uncertainty. National security law proves an information-rich, factuallydriven environment. The ability to deal with such chaos may be hampered by gaps in the information available and the difficulty of engaging in complex fact-finding – a skill often under-taught in law school. Investigation of relevant information may need to reach far afield in order to generate careful legal analysis. Uncertainty here plays a key role.

In determining, for instance, the contours of quarantine authority, lawyers may need to understand how the pandemic in question works, where there have been outbreaks, how it will spread, what treatments are available, which social distancing measures may prove most effective, what steps are being taken locally, at a state-level, and internationally, and the like. Lawyers in non-profit organizations, legal academics, in-house attorneys, and others, in turn, working in the field, must learn how to find out the relevant information before commenting on new programs and initiatives, agreeing to contractual terms, or advising clients on the best course of action. For both government and non-government lawyers, the secrecy inherent in the field is of great consequence. The key here is learning to ask intelligent questions to generate the best legal analysis possible.

It may be the case that national security lawyers are not aware of the facts they are missing – facts that would be central to legal analysis. This phenomenon front-loads the type of advice and discussions in which national security lawyers must engage. It means that analysis must be given in a transparent manner, contingent on a set of facts currently known, with indication given up front as to how that analysis might change, should the factual basis shift. This is particularly true of government attorneys, who may be advising policymakers who may or may not have a background in the law and who may have access to more information than the attorney. Signaling the key facts on which the legal decision rests with the caveat that the legal analysis of the situation might change if the facts change, provides for more robust consideration of critically important issues.

c. Creative Problem Solving. Part of dealing with factual uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admittedly, much has been made in the academy about the importance of problem-based learning as a method in developing students’ critical thinking skills.134 Problem-solving, however, is not merely a method of teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means-ends distinction is an important one to make here. Problemsolving in a classroom environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem-solving as an end suggests the accumulation of a broader set of tools, such as familiarity with multidisciplinary approaches, creativity and originality, sequencing, collaboration, identification of contributors’ expertise, and how to leverage each skill set.

This goal presents itself in the context of fact-finding, but it draws equally on strong understanding of legal authorities and practices, the Washington context, and policy considerations. Similarly, like the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must operate. Time may not be a commodity in surplus. This means that national security legal education must not only develop students’ complex fact-finding skills and their ability to provide contingent analysis, but it must teach them how to swiftly and efficiently engage in these activities.

3. Critical Distance

As was recognized more than a century ago, analytical skills by themselves are insufficient training for individuals moving into the legal profession.135 Critical thinking provides the necessary distance from the law that is required in order to move the legal system forward. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such constructs as well.

Scholars and educators disagree, of course, on what exactly critical thinking entails.136 For purposes of our present discussion, I understand it as the metaconversation in the law. Whereas legal analysis and substantive knowledge focus on the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual and potential constructs of law. It is inherently reflective.

For the purpose of practicing national security law, critical thought is paramount. This is true partly because of the unique conditions that tend to accompany the introduction of national security provisions: these are often introduced in the midst of an emergency. Their creation of new powers frequently has significant implications for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights.137 Constitutional implications demand careful scrutiny.

Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond.138 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make any new powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built.139 In order to withdraw them, legislators must demonstrate either that the provisions are not effective or that no violence will ensue upon their withdrawal (either way, a demanding proof). Alternatively, legislators would have to acknowledge that some level of violence may be tolerated – a step no politician is willing to take.

Any new powers, introduced in the heat of the moment, may become a permanent part of the statutory and regulatory regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner. They may have unintended and detrimental consequences. Therefore, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through them outside of the contemporary context.

There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to recognize problems, articulate underlying assumptions and values, understand how language is being used, assess whether argument is logical, test conclusions, and determine and analyze pertinent information depends on critical thinking skills. Indeed, one could draw argue that **it is the goal of higher education to build the capacity to engage in critical thought**. Deeply humanistic theories underlie this approach. The ability to develop discerning judgment – the very meaning of the Greek term, 􏰀􏰁􏰂􏰃􏰄􏰅􏰆 – provides the basis for advancing the human condition through reason and intellectual engagement.

Critical thought as used in practicing national security law may seem somewhat antithetical to the general legal enterprise in certain particulars. For government lawyers and consultants, there may be times in which not providing legal advice, when asked for it, may be as important as providing it. That is, it may be important not to put certain options on the table, with legal justifications behind them. Questions whether to advise or not to advise are bound up in considerations of policy, professional responsibility, and ethics. They may also relate to questions as to who one’s client is in the world of national security law.140 It may be unclear whether and at what point one’s client is a supervisor, the legal (or political) head of an agency, a cross-agency organization, the White House, the Constitution, or the American public. Depending upon this determination, the national security lawyer may or may not want to provide legal advice to one of the potential clients. Alternatively, such a lawyer may want to call attention to certain analyses to other clients. Determining when and how to act in these circumstances requires critical distance.

4. Nontraditional Written and Oral Communication Skills

Law schools have long focused on written and oral communication skills that are central to the practice of law. Brief writing, scholarly analysis, criminal complaints, contractual agreements, trial advocacy, and appellate arguments constitute standard fare. What is perhaps unique about the way communication skills are used in the national security world is the importance of non-traditional modes of legal communication such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting changed circumstances, and communications built on swiftly evolving and uncertain information.

For many of these types of communications speed may be of the essence – and unlike the significant amounts of time that accompany preparation of lengthy legal documents (and the painstaking preparation for oral argument that marks moot court preparations.) Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closest to the issues have exceedingly short amounts of time to deliver the key points to those with the authority to exercise government power. Unexpected events, shifting conditions on the ground, and deadlines require immediate input, without the opportunity for lengthy consideration of the different facets of the issue presented. This is a different type of activity from the preparation of an appellate brief, for instance, involving a fuller exposition of the issues involved. It is closer to a blend of Supreme Court oral argument and witness crossexamination – although national security lawyers often may not have the luxury of the months, indeed, years, that cases take to evolve to address the myriad legal questions involved.

Facts on which the legal analysis rests, moreover, as discussed above, may not be known. This has substantive implications for written and oral communications. Tension between the level of legal analysis possible and the national security process itself may lead to a different norm than in other areas of the law. Chief Judge Baker explains,

If lawyers insist on knowing all the facts all the time, before they are willing to render advice, or, if they insist on preparing a written legal opinion in response to every question, then national security process would become dysfunctional. The delay alone would cause the policymaker to avoid, and perhaps evade, legal review.141

Simultaneously, lawyers cannot function without some opportunity to look carefully at the questions presented and to consult authoritative sources. “The art of lawyering in such context,” Baker explains, “lies in spotting the issue, accurately identifying the timeline for decision, and applying a meaningful degree of formal or informal review in response.”142 The lawyer providing advice must resist the pressure of the moment and yet still be responsive to the demand for swift action. The resulting written and oral communications thus may be shaped in different ways. Unwilling to bind clients’ hands, particularly in light of rapidly-changing facts and conditions, the potential for nuance to be lost is considerable.

The political and historical overlay of national security law here matters. In some circumstances, even where written advice is not formally required, it may be in the national security lawyer’s best interests to commit informal advice to paper in the form of an email, notation, or short memo. The process may serve to provide an external check on the pressures that have been internalized, by allowing the lawyer to separate from the material and read it. It may give the lawyer the opportunity to have someone subject it to scrutiny. Baker suggests that “on issues of importance, even where the law is clear, as well as situations where novel positions are taken, lawyers should record their informal advice in a formal manner so that they may be held accountable for what they say, and what they don’t say.”143

Written and oral communication may occur at highly irregular moments – yet it is at these moments (in the elevator, during an email exchange, at a meeting, in the course of a telephone call), that critical legal and constitutional decisions are made. This model departs from the formalized nature of legal writing and research. Yet it is important that students are prepared for these types of written and oral communication as an ends in and of themselves.

5. Leadership, Integrity and Good Judgment

National security law often takes place in a high stakes environment. There is tremendous pressure on attorneys operating in the field – not least because of the coercive nature of the authorities in question. The classified environment also plays a key role: many of the decisions made will never be known publicly, nor will they be examined outside of a small group of individuals – much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount.

The types of powers at issue in national security law are among the most coercive authorities available to the government. Decisions may result in the death of one or many human beings, the abridgment of rights, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which this situation places attorneys is of a higher magnitude than many other areas of the law. Added to this pressure is the highly political nature of national security law and the necessity of understanding the broader Washington context, within which individual decision-making, power relations, and institutional authorities compete. Policy concerns similarly dominate the landscape. It is not enough for national security attorneys to claim that they simply deal in legal advice. Their analyses carry consequences for those exercising power, for those who are the targets of such power, and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances.

Equally critical in the national security realm is the classified nature of so much of what is done in national security law. All data, for instance, relating to the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of nuclear material in the production of energy is classified from birth.144 NSI, the bread and butter of the practice of national security law, is similarly classified. U.S. law defines NSI as “information which pertains to the national defense and foreign relations (National Security) of the United States and is classified in accordance with an Executive Order.” Nine primary Executive Orders and two subsidiary orders have been issued in this realm.145

The sheer amount of information incorporated within the classification scheme is here relevant. While original classification authorities have steadily decreased since 1980, and the number of original classification decisions is beginning to fall, the numbers are still high: in fiscal year 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification decisions.146

The classification realm, moreover, in which national security lawyers are most active, is expanding. Derivative classification decisions – classification resulting from the incorporation, paraphrasing, restating, or generation of classified information in some new form – is increasing. In FY 2010, there were more than seventy-six million such decisions made.147 This number is triple what it was in FY 2008. Legal decisions and advice tend to be based on information already classified relating to programs, initiatives, facts, intelligence, and previously classified legal opinions.

The key issue here is that with so much of the essential information, decisionmaking, and executive branch jurisprudence necessarily secret, lawyers are limited in their opportunity for outside appraisal and review.

Even within the executive branch, stove-piping occurs. The use of secure compartmentalized information (SCI) further compounds this problem as only a limited number of individuals – much less lawyers – may be read into a program. This diminishes the opportunity to identify and correct errors or to engage in debate and discussion over the law. Once a legal opinion is drafted, the opportunity to expose it to other lawyers may be restricted. The effect may be felt for decades, as successive Administrations reference prior legal decisions within certain agencies. The Office of Legal Counsel, for instance, has an entire body of jurisprudence that has never been made public, which continues to inform the legal analysis provided to the President. Only a handful of people at OLC may be aware of the previous decisions. They are prevented by classification authorities from revealing these decisions. This results in a sort of generational secret jurisprudence. Questions related to professional responsibility thus place the national security lawyer in a difficult position: not only may opportunities to check factual data or to consult with other attorneys be limited, but the impact of legal advice rendered may be felt for years to come.

The problem extends beyond the executive branch. There are limited opportunities, for instance, for external judicial review. Two elements are at work here: first, very few cases involving national security concerns make it into court. Much of what is happening is simply not known. Even when it is known, it may be impossible to demonstrate standing – a persistent problem with regard to challenging, for instance, surveillance programs. Second, courts have historically proved particularly reluctant to intervene in national security matters. Judicially-created devices such as political question doctrine and state secrets underscore the reluctance of the judiciary to second-guess the executive in this realm. The exercise of these doctrines is increasing in the post-9/11 environment. Consider state secrets. While much was made of some five to seven state secrets cases that came to court during the Bush administration, in more than 100 cases the executive branch formally invoked state secrets, which the courts accepted.148 Many times judges did not even bother to look at the evidence in question before blocking it and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted – even where the doctrine had not been formally invoked.149

In light of these pressures – the profound consequences of many national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review – the practice of national security law requires a particularly rigorous and committed adherence to ethical standards and professional responsibility. This is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordance with high standards. It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that national security attorneys may face, and to address the types of questions related to professional responsibility that will confront them in the course of their careers.

Good judgment and leadership similarly stand paramount. These skills, like many of those discussed, may also be relevant to other areas of the law; however, the way in which they become manifest in national security law may be different in important ways. Good judgment, for instance, may mean any number of things, depending upon the attorney’s position within the political hierarchy. Policymaking positions will be considerably different from the provision of legal advice to policymakers. Leadership, too, may mean something different in this field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, or resigning when faced by unethical situations. It may mean creating new bureaucratic structures to more effectively respond to threats. It may mean holding off clients until the attorneys within one’s group have the opportunity to look at issues while still being sensitive to the political needs of the institution. Recourse in such situations may be political, either through public statements and use of the media, or by going to different branches of government for a solution.

6. Creating Opportunities for Learning

In addition to the above skills, national security lawyers must be able to engage in continuous self-learning in order to improve their performance. They must be able to identify new and emerging legal and political authorities and processes, systems for handling factual chaos and uncertainty, mechanisms to ensure critical distance, evaluating written and oral performance, and analyzing leadership skills. Law schools do not traditionally focus on how to teach students to continue their learning beyond the walls of academia. Yet it is vital for their future success to give students the ability to create conditions of learning.

## 2AC

### at: pan

**View the debate through a lens of specificity – rigid rejection of “China threat” gets warped into a new orthodoxy and fuels extremism. Recognizing plural interpretations and linkages is more productive.**

Callahan 5 (William A., Professor of Politics – University of Manchester, “How to Understand China: The Dangers and Opportunities of Being a Rising Power”, Review of International Studies, 31)

Although ‘China threat theory’ is ascribed to the Cold War thinking of foreigners who suffer from an enemy deprivation syndrome, the use of containment as a response to threats in Chinese texts suggests that Chinese strategists are also seeking to fill the symbolic gap left by the collapse of the Soviet Union, which was the key threat to the PRC after 1960. Refutations of ‘China threat theory’ do not seek to deconstruct the discourse of ‘threat’ as part of critical security studies. Rather they are expressions of a geopolitical identity politics because they refute ‘Chinese’ threats as a way of facilitating the production of an America threat, a Japan threat, an India threat, and so on. Uniting to fight these foreign threats affirms China’s national identity. Unfortunately, by refuting China threat in this bellicose way – that is by generating a new series of threats – the China threat theory texts end up confirming the threat that they seek to deny: Japan, India and Southeast Asia are increasingly threatened by China’s protests of peace.43 Moreover, the estrangement produced and circulated in China threat theory is not just among nation-states. The recent shift in the focus of the discourse from security issues to more economic and cultural issues suggests that China is estranged from the ‘international standards’ of the ‘international community’. After a long process of difficult negotiations, China entered the WTO in December 2001. Joining the WTO was not just an economic or a political event; it was an issue of Chinese identity.44 As Breslin, Shih and Zha describe in their articles in this Forum, this process was painful for China as WTO membership subjects the PRC to binding rules that are not the product of Chinese diplomacy or culture. Thus although China enters international organisations like the WTO based on shared values and rules, China also needs to distinguish itself from the undifferentiated mass of the globalised world. Since 2002, a large proportion of the China threat theory articles have been published in economics, trade, investment, and general business journals – rather than in international politics, area studies and ideological journals as in the 1990s. Hence China threat theory is one way to differentiate China from these international standards, which critics see as neo-colonial.45 Another way is for China to assert ownership over international standards to affirm its national identity through participation in globalisation.46 Lastly, some China threat theory articles go beyond criticising the ignorance and bad intentions of the offending texts to conclude that those who promote China threat must be crazy: ‘There is a consensus within mainland academic circles that there is hardly any reasonable logic to explain the views and practices of the United States toward China in the past few years. It can only be summed up in a word: ‘‘Madness’’ ’.47 Indians likewise are said to suffer from a ‘China threat theory syndrome’.48 This brings us back to Foucault’s logic of ‘rationality’ being constructed through the exclusion of a range of activities that are labelled as ‘madness’. The rationality of the rise of China depends upon distinguishing it from the madness of those who question it. Like Joseph Nye’s concern that warnings of a China threat could become a self-fulfilling prophesy, China threat theory texts vigorously reproduce the dangers of the very threat they seek to deny. Rather than adding to the debate, they end up policing what Chinese and foreigners can rationally say. Conclusion The argument of this essay is not that China is a threat. Rather, it has examined the productive linkages that knit together the image of China as a peacefully rising power and the discourse of China as a threat to the economic and military stability of East Asia. It would be easy to join the chorus of those who denounce ‘China threat theory’ as the misguided product of the Blue Team, as do many in China and the West. But that would be a mistake, because depending on circumstances anything – from rising powers to civilian aircraft – can be interpreted as a threat. The purpose is not to argue that interpretations are false in relation to some reality (such as that China is fundamentally peaceful rather than war-like), but that it is necessary to unpack the political and historical context of each perception of threat. Indeed, ‘China threat’ has never described a unified American understanding of the PRC: it has always been one position among many in debates among academics, public intellectuals and policymakers. Rather than inflate extremist positions (in both the West and China) into irrefutable truth, it is more interesting to examine the debates that produced the threat/opportunity dynamic.

### at: carceras

#### They also say cap is good, resources are China primary motivation in foreign policy, and that oil + nationalism trumps other sources of cooperation – star this card – bankrupts their scholarship

Caceras & Earl 12 (Sigfrido Burgos, UN Food and Agriculture Organization (FAO), Rome, Italy, and Sophal, U.S. Naval Postgraduate School “The Geopolitics of China's Global Resources Quest” Geopolitics, Vol. 17.1)

The principal aim of China's quest for global resources is to lock up the energy sources, natural elements (rare earths) and raw materials to sustain economic growth, stimulate job creation at home, and reduce its vulnerability to fuel shortages or price shocks. More recently, and in line with supporting evidence of China's increasing international presence presented herewith, Kean Fan Lim delivers an elegant and nuanced perspective on the drivers and rationale of Chinese economic expansion overseas by making detailed connections to broader changes taking place in global capitalism, especially the failure of classical hegemonic powers (i.e., the US and EU) to maintain public confidence in their currencies after the fallout of interconnected financial systems. Kean Fan Lim narrows two developments that are intricately related to China's broader aim to attain and secure domestic economic security. The first are the multiple policies to extend the global reach of the Chinese Yuan to sustain the slow evolution of a variegated global system of capitalism. The second is the preponderant and assertive roles of Chinese state-owned enterprises and the China Investment Corporation, an influential sovereign wealth fund, with specific mandates of accessing new markets worldwide to buy essential inputs and to sell Chinese outputs. These phenomena, Kean Fan Lim argues, are linked to Beijing's financial and monetary calculations given its vast holdings of dollar reserves and its macroeconomic constraints through the maintenance of a fixed-rate regime of foreign exchange that needs to be tactically harmonised to a dynamic political economy that is ensconced within the contemporary finance-driven global economy. 9 When we start to account for the geopolitical and socioeconomic implications of China's sights on faraway lands, foreign affairs and its implementation of a “Go Abroad” policy, it becomes clear that Beijing embraces a multipronged approach to economic growth.

In pursuing this aim of seeking resources globally to spur domestic employment, better the lives of its citizenry and sustain vibrant economic growth, the Chinese government enjoys considerable support: it is backed by the pride of a nation that is finally, after centuries of decline and humiliation, returning to global pre-eminence. 10 To this end, scholars have raised the theme of “humiliation” as an important tool of social and political mobilisation in China. An engaging piece by William Callahan notes that national humiliation is a common and recurring theme in Chinese public culture, as well as in domestic and international politics; one that is invoked in a diverse set of circumstances according to specific needs. The liberalisation of markets around the globe and a denationalisation of industry have been accompanied by this notion of “nationalisation of shame”, as it is also called. In China, for example, national humiliation seems to be a purely domestic discourse, but its salient notion of the “rightful position” of China in world affairs continues to penetrate and inform Chinese foreign policy in both elite and popular discourse. The transformation of humiliation and shame into vindication and salvation has been an integral part of the construction of Chinese nationalism that is now catapulted up and down throughout social strata by the Communist Party of China as a source of pride and as a conveniently expedient justification for national and international actions. 11

Paradoxically, China's emerging status as a dynamically evolving nation-state lays out the new growth formula of transformative capitalism 12 while staying largely autocratic. 13 This growth formula is now termed the “China Model” and countries like Vietnam are implementing some of its most successful features. The notion of a China Model can be best described by its most commonly identified components: one-party rule, an open approach to free markets and a preponderant role for state-owned enterprises in domestic and foreign economic affairs. 14 Experts and scholars express astonishment at how, in the last two decades, China's polity managed to move from a centrally planned economic system to a capitalist free-market society largely without having any sort of grand master plan. 15 Other assessments explore the transformative rise of contemporary China. For example, through the lens of critical geopolitics, a Western scholar argues that a contradictory amalgam of Western-style nationalism and a traditional totalistic conception of world order that is reactive to and dependent on current world politics have helped shape China's rise to a position of influential world power. 16 This rationale seems to debunk the conventional world political views of emergence through a natural process of guided, sequential, linear succession. Indeed, any reading of Chinese history over the millennia would recognise the “return” of China and not simply its “rise”.

The existence or non-existence of a compass to guide a functional capitalistic approach underplays some of the most significant drivers of production and consumption. Let us look at the facts: China hosts 1.35 billion people; the net income of the economically active population is rising; it is the world's biggest energy user; 17 the world's fastest growing market for automobiles; the world's second-largest importer of oil – closely following the United States – and it is by far the largest importer of aluminium, coal, copper, iron ore, nickel and steel. 18 To further underscore these facts, in August 2010, China overtook Japan as the world's second-largest economy. 19 Red-flagging China's capitalistic success, mostly by stereotyped Western critics, as if it were merely an exporter of plastic trinkets that got lucky with globalisation fails to incorporate the fact that its economy benefits from massive domestic consumption and purchasing capacity that is poised to look inwards as incomes continue to rise and as infrastructure continues to develop.

In spite of its newfound economic success and long-sought international recognition, the Chinese Communist Party is constantly being challenged domestically by increased pollution in cities, corruption allegations, rising inequality, restricted freedoms and environmental damages, to name a few. Despite these challenges, the power-hold of China's political elite is likely to remain secure so long as it can continue to develop China's economy while creating jobs. 20 This grasp on its citizenry has attracted comments by economists and political scientists who posit that China has to grow at a bare minimum of 7 to 8% to avoid destabilising unemployment, deter popular discontent, and most importantly, to maintain the stronghold of a single-party government system. 21 In summary, Chinese economic as well as energy concerns arise from four factors: (1) a growing population, (2) insufficient indigenous resources and raw materials to sustain growth over the long term, (3) policy limitations, and (4) ideological contestation.

As a whole, the reformulation of China's rise as a world power and as a preponderant geopolitical actor outside of the conventional paradigms of realism and Chinese particularity provide an alternative view to scholars and practitioners wishing to more broadly understand the contextual scenarios and procedural avenues confronted by nation-states manoeuvering through a protracted transitional phase from bipolar to multipolar order. This essay fits quite well into this camp. Also, this essay stands as a critique of the way Western analysts understand China's actions. In doing so it takes the position of viewing China (a) sympathetically for the courage to take control of its destiny and the ways it tries to accomplish this repositioning while remaining tactfully aware of shifting international milieus, as well as for venturing into difficult locations where foreign resource conglomerates will not go, thus increasing global supplies of oil, gas, coal and other critical resources that could end up setting prices at affordable levels for a little longer, and (b) critically for not assigning more importance to environmental and ecological degradation issues, lack of regard for good governance in partner countries, insufficient enmeshing with and leverage of international institutions to tackle common global threats, and its itinerant silence on criticisms levelled by neighbours and allies in relation to its involvement in rising regional tensions, emerging armed conflicts and pressures on ideological reforms.

Through a literature review that covers an array of books, reports, scholarly articles and media sources, this essay attempts to elucidate the geopolitics of China's global resources quest and the approaches it implements to achieve its goals. The deployment of economic, cultural, geographic, and historic as well as social science notions with reference to international politics to analyse China's activities abroad are herein applied to gain a deeper and richer understanding of Chinese relations to the world, in general, and to targeted resource-rich location, in particular. We start by laying out the overarching driver of Beijing's energy and foreign policy, which is that China knows no boundaries in its search for energy sources, natural resources and raw materials. This is immediately followed by a brief analysis of implications of resources usages, and identification and explanation of the most evident and visible approaches, tools and mechanisms applied in selected/targeted regions, and the potential outcomes of these actions. Then, without trying to reach any major conclusion on a rapidly evolving subject, we offer summarising thoughts, ideas and opinions on threats and opportunities in light of the information herewith provided. Lastly we reflect on what China's resource acquisition policy and energy diplomacy mean for contemporary geopolitics and political geography. We also offer an answer to the following question: how does the rise of China and its foreign resource policy impact our understanding of contemporary geopolitics?

Economic growth is intimately linked to the production quantities of goods and services, as well as the internal and external consumption of the goods and services produced. Since it is usually measured as the rate of change in GDP, countries such as China, which necessitate a rate of growth above a threshold to thrive, are under severe pressure to sustain these gains at any cost. 22 There are many multidimensional limitations to economic growth, but the most critical one is resource availability. Resources encompass everything from energy sources (coal, natural gas and oil) to raw materials (minerals, timber, rubber, steel, rare earths and other essential production inputs). Naturally, Beijing is acutely aware of the vulnerability of its budding economy if it should experience a shortage of resources – most importantly of energy – because manufacturing, modern living, industrial processes and transport depends on it. Simply put, a shortage of energy resources could represent economic suicide. 23 And this fact alone is what drives China's actions overseas; thus emerging as the overarching driver of Beijing's energy and foreign policy.

The vulnerability to energy shortages poses an imminent threat to China's economic well-being. Psychology – and also Chinese history – suggests that human populations are, for the most part, risk averse (or threat phobic), with some societies more so than others. Therefore, it seems reasonable that the Chinese Communist Party has responded to the threat of energy vulnerability with a three-pronged energy-securing strategy that is informed by geopolitical considerations: first, enhance domestic energy supply through new exploration and production in its territories; second, secure foreign energy supply through bilateral and multilateral distribution and transportation arrangements; and, third, diversify sources of energy supply from as many regions of the world as possible. 24 From a historical standpoint, it is worth noting that, in East Asia, Japan was the first to develop a ‘multiple sourcing strategy’ for very similar reasons. China is not at all unique in this regard and Western analysts could greatly benefit from looking at their maps for these cases before harping on Chinese policies and moves.

The third prong of the energy securing strategy places increasing importance on locking readily available and price-competitive foreign energy supplies as part of sustainable, long-term economic development prospects. To provide a numerical context to this approach, in 2009, for example, China imported nearly 4.0 million barrels of oil per day. Comparatively, this amount is 2.75 times lower than the United States, which imported 11.0 million barrels of oil daily. 25 Record crude oil imports in 2010 have only added impetus to Beijing's actions to reassess and reformulate its energy securing strategy; one that receives significant feedback from international energy markets and foreign political forums.

In these circumstances, the strategic combination of foreign and energy policies is most strongly applied in Africa, Central Asia, Latin America, the Middle East and Russia. There are three reasons for this. First, the remainder of confirmed world supplies of crude oil and natural gas lie in these regions; second, significant growth of energy imports to China are already coming from these countries and regions; and third, direct pipeline connections to transport crude oil and natural gas are operationally possible from some of these locations. 26

To gain objectivity in assessing China's global resources quest and comparative energy usage, it is worth noting that the current stage of China's economic development is one that is resource and energy intensive; however, the post-industrial economies of the West, along with Japan and South Korea (plus other selected states), have been able, through innovation, technological improvements and steep learning curves, to decouple economic growth from resource and energy consumption. According to Guan et al., who studied the driving forces behind China's recent carbon dioxide emissions surge, the growth in Chinese exports, especially of manufactured products, between 2002 and 2005 is the primary cause of China's emissions growth. Half of the total growth in Chinese carbon dioxide emissions in this time period can be attributed to the aggregate growth of developing countries and emerging market economies, excluding, of course, that of China itself. This is another good point for Western analysts to follow: the apportioning of blame and responsibility for emissions into the environment should be more evenly distributed among developed, transitioning and developing countries.

If newspapers and televised news say that the world has reached peak oil, then where is new oil coming from and how? Oxford economist Paul Collier notes that two major changes are taking place in the global geopolitics of oil. The first is that democracy is spreading to the oil economies. The second is that, with better exploration technologies, oil is being discovered in many low-income countries. As the world can attest, for example, the spread of democracy to the oil economies was, until recently, the overarching US agenda in the Middle East. Conversely, the discovery of oil in nascent democracies (and autocratic states) is a side-effect of the attempt to free rich countries' dependence on crude oil from Middle Eastern countries. To illustrate this case, new oil field discoveries have been made in a range of low-income countries, such as Cambodia, East Timor, Gambia, São Tomé and Principe, and Senegal, to name a few. 27

In some of these countries or territories where oil is being discovered, many of the top International Oil Companies (IOCs) are unable and unwilling to operate owing to technical difficulties, high risks, lack of interest or legal obstacles. Acknowledging this point is important because it counters President Bush's specific line of argument that China's National Oil Companies were crowding out oil production in new locations and aggravating global oil securing potential by keeping ‘fresh’ oil off the world market. We argue the opposite: China, by developing oil operations in places where such IOCs dare not go, in fact brings much more oil to the market. While it is true that a good percentage of the oil pumped out will not end up in the marketplace, by satisfying a large portion of China's demand for foreign oil it contributes, indirectly, to global oil security. Moreover, the oil that does go on trading operations in oil markets, which is a substantial amount, tends to put a lid on oil barrel prices that through downstream effects can, and do, lower diesel and gasoline prices at the pump. If this is indeed so, the West, suffering from an oil addiction that it is finding really hard to break, should be more receptive of Chinese overseas oil developments. To be sure, in an environment where oil is scarce and rivalries can be easily set aside, there is now evidence of alliances and partnerships developing between IOCs and Chinese (private and public) gas and oil firms.

As implied above, more advanced detection and exploration technologies are applied and used by energy companies resulting in newer natural gas and oil deposits being discovered every year deeper and further afield. These discoveries have economic and political implications for guest and host countries. Logically, as narrow interests converge, so does rapprochement. The resulting phenomenon of cordial relations between petroleum-rich countries and state-controlled oil companies is called ‘petrocapitalism.’ This term has been used liberally by Suzana Sawyer, Erin Freeland, Tony Hodges, Elmar Altvater, Thomas Friedman and William F. Mitchell, among others. Its origins can be traced back to the early attempts of political economists with thematic specialisations to understand the multidimensional links between petroleum, capitalism and the state. For the aims of this essay, petrocapitalism is said to operate successfully through an intertwined oil complex that is territorially constituted through oil concessions. This oil complex, once functional, generates substantial resource rents and has strong centralising effects at the levels of the state. 28 Both American and European scholars are not entirely convinced by the loose boundaries of petrocapitalism and prefer to understand it more as ‘petroimperialism’. In some academic circles the use of the word imperialism is a faux pas. This raises two questions. First, which empire? Second, when the empire falls, as all do, will the phenomenon cease to exist? Here, we do not explore these questions, but it is sufficient to say that the close energy-specific relations and deals between countries were in the near past called petrocapitalism and nowadays the more politically correct term ‘energy diplomacy’ is increasingly used to describe these variegated relationships.

Etymology aside, the art of energy diplomacy, however, has been quickly learned by energy analysts and strategists in Beijing. Admittedly, China's international energy relations have been studied in detail by Western academics since the early 1980s, 29 but it is not until recently that these energy-specific foreign relations have gathered enough geopolitical substance to merit serious attention. In relation to the symbiotic nature of petropolitics, 30 Western commentators worry that strict adherence to a backward looking policy of trying to maintain control over petroleum or its derivatives in oil producing countries purposefully delays and thwarts new innovations in high-end technologies, biotechnologies and renewable energy systems, which could potentially shift the world into a conservation economy. 31 What troubles Chinese government officials the most is that industrialised nations and other emerging market economies are vulnerable to random, unexpected events affecting global energy markets (e.g., natural disasters, financial meltdown, wars). Given that China is a net oil importer – at a rate of 1.5 billion barrels annually – and therefore bound to neighbourly camaraderie, it is expected by ‘logic and reason’ that it should bring its interests closer to those of the oil-dependent Western hemisphere, especially if it were to need bilateral or multilateral assistance during a brief energy shortfall. However, reason and logic do not always coincide with stated positions on foreign affairs or agreements on policy coordination. This tactically convenient alignment of interests is, indeed, only an option among others. China could also, for instance, easily decide to forge closer ties with major OPEC members of the Eastern Hemisphere. As European history of mid-seventeenth century and American history in the 1990s tells us, the dynamic evolution of geopolitics through time gives way to dramatic changes in stances that once held utmost validity. For example, in 1990, when the US mobilised an international coalition to drive out Iraqi troops from Kuwait, China abstained from participating in this military intervention. 32 Later, in 2007, at the UN Security Council, China vetoed a Western-backed draft resolution that called on Myanmar to release all political prisoners. 33 Alignments of tactical nature are indeed tricky, but circumstances alter cases.

Meanwhile, the United States, the European Union and Japan are lobbying an ambitious, resource-hungry China with the notion that securing energy supplies and raw materials for all requires a cooperative and coordinated energy and foreign policy. 34 To this end, the International Energy Agency (IEA), an energy forum composed of 28 advanced economies – to which China does not belong – could be a starting point to engage China. The IEA is committed to taking joint measures to meet oil supply emergencies. Also, the IEA member countries have agreed to share energy information, to coordinate their energy policies and to cooperate in the development of rational energy programmes that ensure energy security, encourage economic growth and protect the environment. By petitioning China to join in, the coping mechanisms to deal with global oil supply disruptions could be improved. While this is a wildly optimistic idea, it is unlikely that China will acquiesce. It seems that only after Beijing is granted a more predominant role in international affairs, future crises and disruptive episodes might elicit more supportive and sympathetic stances from China to concerns and issues that hold sway in the West. 35

In addition to recurrent lobbying, Beijing is reminded by national and international demographers that China's declining birth rate is limiting the supply of youngsters entering the labour force. This phenomenon carries geographic and socioeconomic implications. A shrinking labour market is not welcome news for a rapidly expanding economy: with fewer replacement workers available, employers can no longer threaten to fire workers en masse. Armed with bargaining power, Chinese industrial factory workers are no longer willing to accept bad working conditions and meagre wages for backbreaking labour. 36 Higher wages and better conditions could rapidly translate into higher production costs and lessened competitiveness of products abroad, especially since Southeast and South Asia are picking up speed where China has left off. Also, this can be a driver for illegal immigration that can spur ethnic strife as well as heavier fiscal burdens for the state in terms of health service and utilities provision. Older workforces turn wiser and more attuned to sensitive issues that creep into social circles; just as Chinese leaders are manoeuvring through information technologies creeping into mainland households while in the process sowing the seeds of imminent change.

In practice, and in consideration of the above, China's resource geopolitics are grounded on an acute need to match domestic resources demands with national and international supplies. In doing so it protects the very basic drivers of economic growth: consumption and production. The catch is that China is not alone in this high-speed race. It competes with its peers, namely Brazil, Russia, India and other in-transition economies, in addition to the usual suspects – Europe, Japan and the United States. In fact, experts say that the ensuing geopolitical rivalries represent one of the main obstacles standing in China's way to regional agreements on resources extraction. 37 Not everyone believes this to be true. In the midst of uncertainty, what seems to have a ring of truth is that a novel, forward-looking energy diplomacy, along with great power diplomacy and good neighbour diplomacy, constitutes Beijing's multilayered ‘new diplomatic approach.’ 38

### jackson

Exclusive method focus causes paradigm wars

**Jackson**, associate professor of IR – School of International Service @ American University, **‘11**

(Patrick Thadeus, The Conduct of Inquiry in International Relations, p. 57-59)

Perhaps the greatest irony of this instrumental, decontextualized importation of “falsification” and its critics into IR is the way that an entire line of thought that privileged disconfirmation and refutation—no matter how complicated that disconfirmation and refutation was in practice—has been transformed into a license to **worry endlessly about foundational assumptions.** At the very beginning of the effort to bring terms such as “paradigm” to bear on the study of politics, Albert O. **Hirschman** (1970b, 338) **noted this very danger**, suggesting that without “a little more ‘reverence for life’ and a little less straightjacketing of the future,” the focus on producing internally consistent packages of assumptions instead of actually examining complex empirical situations would result in scholarly paralysis. Here as elsewhere, Hirschman appears to have been quite prescient, inasmuch as the major effect of paradigm and research programme language in IR seems to have been a series of debates and discussions about whether the fundamentals of a given school of thought were sufficiently “scientific” in their construction. Thus **we have debates about how to evaluate scientific progress**, and attempts to propose one or another set of research design principles **as uniquely scientific**, and inventive, “reconstructions” of IR schools, such as Patrick James’ “elaborated structural realism,” supposedly for the purpose of placing them on a **firmer scientific footing** by making sure that they have all of the required elements of a basically Lakatosian19 model of science (James 2002, 67, 98–103).

The bet with all of this scholarly activity seems to be that if we can just get the fundamentals right, then scientific progress will inevitably ensue . . . even though this is the precise opposite of what Popper and Kuhn and Lakatos argued! In fact, all of this obsessive interest in foundations and starting-points is, in form if not in content, a lot closer to logical positivism than it is to the concerns of the falsificationist philosophers, despite the prominence of language about “hypothesis testing” and the concern to formulate testable hypotheses among IR scholars engaged in these endeavors. That, above all, is why I have labeled this methodology of scholarship neopositivist. While it takes much of its self justification as a science from criticisms of logical positivism, in overall sensibility it still operates in a visibly positivist way, attempting to construct knowledge from the ground up by getting its foundations in logical order before concentrating on how claims encounter the world in terms of their theoretical implications. This is by no means to say that neopositivism is not interested in hypothesis testing; on the contrary, neopositivists are extremely concerned with testing hypotheses, but **only after the fundamentals have been** soundly **established.** Certainty, not conjectural provisionality, seems to be the goal—a goal that, ironically, Popper and Kuhn and Lakatos would all reject.

### at: sovereignty k

**Legal restraints work – the theory of the exception is self-serving and wrong**

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

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: **Schmitt** occasionally **wants to define “political” conflicts as those irresolvable by legal** or juridical **devices in order** then **to argue against** **legal** or juridical **solutions** to them. **The claim** also **suffers from** a certain **vagueness** and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, **legal devices have undoubtedly played a positive role** **in taming** or at least minimizing the potential dangers of harsh **political antagonisms**. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22

Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.

This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, **it is by no means self-evident that trying to give coherent legal form to a transitional** political and social **moment is always doomed to fail**. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, **the general trend** towards extending basic protections to non-state actors **is** plausibly interpreted in a more **positive** – **and by no means incoherent** – light.24

Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).

As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet **one** possible **resolution** of the dilemma he describes **would be** to figure how **to reform the process** whereby rules of war are adapted to novel changes in military affairs in order **to minimize the danger of** anachronistic or **out-of-date law. Instead, Schmitt** simply **employs the dilemma of legal obsolescence as a battering ram** against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

**Legal norms don’t cause wars and the alt can’t effect liberalism**

David **Luban 10**, law prof at Georgetown, Beyond Traditional Concepts of Lawfare: Carl Schmitt and the Critique of Lawfare, 43 Case W. Res. J. Int'l L. 457

Among these associations is the positive, constructive side of politics, the very foundation of Aristotle's conception of politics, which Schmitt completely ignores. Politics, we often say, is the art of the possible. It is the medium for organizing all human cooperation. Peaceable civilization, civil institutions, and elemental tasks such as collecting the garbage and delivering food to hungry mouths all depend on politics. Of course, peering into the sausage factory of even such mundane municipal institutions as the town mayor's office will reveal plenty of nasty politicking, jockeying for position and patronage, and downright corruption. Schmitt sneers at these as "banal forms of politics, . . . all sorts of tactics and practices, competitions and intrigues" and dismisses them contemptuously as "parasite- and caricature-like formations." n55 The fact is that **Schmitt has nothing** whatever **to say about the constructive side of politics**, and his entire theory focuses on enemies, not friends. In my small community, political meetings debate issues as trivial as whether to close a street and divert the traffic to another street. It is hard to see mortal combat as even a remote possibility in such disputes, and so, in Schmitt's view, they would not count as politics, but merely administration. Yet issues like these are the stuff of peaceable human politics.

Schmitt, I have said, uses the word "political" polemically--in his sense, politically. I have suggested that his very choice of the word "political" to describe mortal enmity is tendentious, attaching to mortal enmity Aristotelian and republican associations quite foreign to it. But the more basic point is that Schmitt's critique of humanitarianism as political and polemical is itself political and polemical. In a word, the critique of lawfare is itself lawfare. It is self-undermining because to the extent that it succeeds in showing that lawfare is illegitimate, it de-legitimizes itself.

What about the merits of Schmitt's critique of humanitarianism? His argument is straightforward: either humanitarianism is toothless and [\*471] apolitical, in which case ruthless political actors will destroy the humanitarians; or else humanitarianism is a fighting faith, in which case it has succumbed to the political but made matters worse, because wars on behalf of humanity are the most inhuman wars of all. Liberal humanitarianism is either too weak or too savage.

The argument has obvious merit. When Schmitt wrote in 1932 that wars against "outlaws of humanity" would be the most horrible of all, it is hard not to salute him as a prophet of Hiroshima. The same is true when Schmitt writes about the League of Nations' resolution to use "economic sanctions and severance of the food supply," n56 which he calls "imperialism based on pure economic power." n57 Schmitt is no warmonger--he calls the killing of human beings for any reason other than warding off an existential threat "sinister and crazy" n58 --nor is he indifferent to human suffering.

But **international** humanitarian law **and criminal law are not the same thing as wars to end all war or humanitarian military interventions, so Schmitt's** important moral **warning** against ultimate military self-righteousness **does not** really **apply**. n59 Nor does "bracketing" war by humanitarian constraints on war-fighting presuppose a vanished order of European public law. The fact is that in nine years of conventional war, the United States has significantly bracketed war-fighting, even against enemies who do not recognize duties of reciprocity. n60 This may frustrate current lawfare critics who complain that American soldiers in Afghanistan are being forced to put down their guns. Bracketing warfare is a decision--Schmitt might call it an existential decision--that rests in part on values that transcend the friend-enemy distinction. **Liberal values are not alien extrusions into politics** or evasions of politics; **they are part of politics, and**, as Stephen Holmes argued against Schmitt, **liberalism has proven remarkably strong, not weak**. n61 We could choose to abandon liberal humanitarianism, and that would be a political decision. It would simply be a bad one.

### at: loac k

LOAC does not legitimize violence—alternative is militarized violence

Charles Kels, attorney for the Department of Homeland Security and a major in the Air Force Reserve, 12/6/12, THe Perilous Position of the Laws of War, harvardnsj.org/2012/12/the-perilous-position-of-the-laws-of-war/

The real nub of the current critique of U.S. policy, therefore, is that the Bush administration’s war on terror and the Obama administration’s war on al Qaeda and affiliates constitute a distinction without a difference. The latter may be less rhetorically inflammatory, but it is equally amorphous in application, enabling the United States to pursue non-state actors under an armed conflict paradigm. This criticism may have merit, but it is really about the use of force altogether, not the parameters that define how force is applied. It is, in other words, an ad bellum argument cloaked in the language of in bello.

LOAC is apolitical. **Adherence to it does not legitimize** an unlawful resort to **force**, **just as its violation**—unless systematic—**does not automatically render one’s cause unjust**. The answer for those who object to U.S. targeted killing and indefinite detention is not to apply a peace paradigm that would invalidate LOAC and undercut the belligerent immunity of soldiers, but to direct their arguments to the political leadership regarding the decision to use force in the first place. Attacking LOAC for its perceived leniency and demanding the “pristine purity” of HRL in military operations is actually quite dangerous and counterproductive from a humanitarian perspective, because there remains the distinct possibility that **the alternative to LOAC is not HRL but “lawlessness**.” While there are certainly examples of armies that have acquitted themselves quite well in law enforcement roles—and while most nations do not subscribe to the strict U.S. delineation between military and police forces—**the vast bulk of history indicates that in the context of armed hostilities, LOAC is by far the best case scenario, not the worst**.

Transnational terrorist networks pose unique security problems, among them the need to apply preexisting legal rubrics to an enemy who is dedicated to undermining and abusing them. Vital to meeting this challenge—of “building a durable framework for the struggle against al Qaeda that [draws] upon our deeply held values and traditions”—is to refrain from treating the deeply-ingrained tenets of honorable warfare as a mere mechanism for projecting force. The laws of war are much more than “lawyerly license” to kill and detain, subject to varying levels of application depending upon political outlook. They remain a bulwark against indiscriminate carnage, steeped in history and tried in battle.

Oppositional views of the law and it’s use for war are inevitable – ONLY the permutation resolves academic conflict

Luban ’13 (David, University Professor in Law and Philosophy, Georgetown University Law Center, “Military Necessity and the Cultures of Military Law,” Leiden Journal of International Law, Volume 26, Issue 02, pp 315-349)

These arguments about military necessity are not meant as a ‘refutation’ of the LOAC version of the laws of war or anything resembling it. That would be silly. **Military necessities are real**, and law will not make them go away. The same is true of the other elements of the LOAC vision. States may no longer be the sole sources of international law, but we live in a world of states, which **remain the pre-eminent international lawmakers**. The laws of war must take the civilian point of view seriously, but it is still a long step from there to human rights. On all these points, humanitarian lawyers who pretend otherwise are fooling themselves both legally and practically. Legally, because the sources of law will not bear so much humanitarian weight, and practically because the only hope for the humanitarian project lies in militaries and military lawyers who believe in it and want to make it happen. Like it or not, the two legal cultures must live with each other, and that requires reasonableness, in the sense defined by John Rawls: a reciprocal desire for principles that could be accepted even by adherents of the other comprehensive view.

To illustrate with an example: Article 57 of AP I requires militaries to take all ‘feasible’ precautions to verify that their targets are legitimately military and to minimize civilian damage. Notoriously, there is no agreement on what ‘feasible’ means. Does it include anything technologically possible, regardless of cost or risk to the attacker? Alternatively, does it exclude anything that might increase military risk, no matter how slightly? Clearly, militaries could not reasonably accept the former, and humanitarians could not reasonably accept the latter – so, on my proposal, neither of these interpretations can be right, and lawyers should not advance them.

This conciliatory approach is not self-evident. In purely scientific pursuits, epistemologists offer powerful arguments that it is more rational both for individual researchers and for the scientific community at large if competing research programmes **forcefully press their own agendas**, even in cases when one programme is less likely than its rivals to be fruitful.101 Lawyers are, for obvious reasons, instinctively drawn to a similarly adversarial, competitive model of truth seeking. Why not let the LOAC and IHL versions of the law of war continue to compete for supremacy? Is that not the most likely way in which truth will out?

The obvious difference is that lawyers arguing about the interpretation of law are not pursuing hidden truths. They are not physicists hunting the Higgs boson or mathematicians vying for the honour of being first to solve a famous problem.102 They are trying to give concrete meaning to past lawmakers’ constructions**, in order to impose** discipline on violence **when collectivities go to war.** The obvious danger in an adversarial competition over who owns the law of war is one David Kennedy highlights: when legal interpretation turns into a political game, the players’ trust in each other's candour inevitably erodes, so that ‘as we use the discourse more, we believe it less – at least when spoken by others’.103 The result (Kennedy adds) is a law of armed combat that undermines itself and casts its own legitimacy into disrepute, even in the eyes of its practitioners. I wholeheartedly agree with this diagnosis, but not with Kennedy's cure, which is to downplay legality in favour of pure choice – to ‘be wary of treating the legal issues as the focal points for our ethics and politics’.104 In place of legalism, Kennedy calls for ‘recapturing the human experience of responsibility for the violence of war’ – accepting that ‘those who kill do “decide in the exception”, . . . [and] as men and women, our military, political, and legal experts are, in fact, free – free from the comfortable ethical and political analytics of expertise, but not from responsibility for the havoc they unleash’.105 His argument appears to be that debates over the laws of war are irredeemably strategic. Officers and political leaders – and, for that matter, humanitarians – find it all too convenient to fob responsibility onto lawyers and the law when in fact the law is ‘an elaborate discourse of evasion’.106

But suppose there were no LOAC or ICL. **Do we really believe that more responsible decisions would result, that fewer lives would be lost**, or that an alternative and better vocabulary than ‘the analytics of expertise’ would arise for deliberation? I see no reason to think so. Without some vocabulary for deliberation, the pure experience of responsibility floats in a vacuum and goes nowhere. Like it or not, and **no matter where we end up,** we must start with the vocabulary we have. **That is the legal vocabulary of the law of war**, heavily inflected with the just-war theory of past centuries. **Where else could we start?** In Quine's words, ‘We are like sailors who on the open sea must reconstruct their ship but are never able to start afresh from the bottom.’107

**The two cultures are stuck with each** other aboard the same wounded ship. The argument of this article has been that their differing comprehensive views arise from competing premises about the primacy of military necessity and human dignity. Both are reasonable premises, and mutual recognition that they are reasonable – more precisely, willingness to discard one's own interpretations if a similarly willing adherent to the alternative view could not possibly accept them – seems like a plausible canon of interpretation. It is also the most plausible strategy for achieving whatever convergence is humanly possible.

### at: threat con

**No impact to threat con**

Eric A. **Posner and** Adrian **Vermeule 3**, law profs at Chicago and Harvard, Accommodating Emergencies, September, <http://www.law.uchicago.edu/files/files/48.eap-av.emergency.pdf>

Against the view that panicked government officials overreact to an emergency, and unnecessarily curtail civil liberties, we suggest a more constructive theory of the role of fear. Before the emergency, government officials are complacent. They do not think clearly or vigorously about the potential threats faced by the nation. After the terrorist attack or military intervention, their complacency is replaced by fear. Fear stimulates them to action. Action may be based on good decisions or bad: fear might cause officials to exaggerate future threats, but it also might arouse them to threats that they would otherwise not perceive. **It is impossible to say in the abstract whether decisions and actions provoked by fear are likely to be better than decisions and actions made in a state of calm**. But our limited point is that there is no reason to think that the fear-inspired decisions are likely to be worse. For that reason, the existence of fear during emergencies does not support the antiaccommodation theory that the Constitution should be enforced as strictly during emergencies as during non-emergencies.

C. The Influence of Fear during Emergencies

Suppose now that the simple view of fear is correct, and that it is an unambiguously negative influence on government decisionmaking. Critics of accommodation argue that this negative influence of fear justifies skepticism about emergency policies and strict enforcement of the Constitution. However, this argument is implausible. It is doubtful that fear, so understood, has more influence on decisionmaking during emergencies than decisionmaking during non-emergencies.

The panic thesis, implicit in much scholarship though rarely discussed in detail, holds that citizens and officials respond to terrorism and war in the same way that an individual in the jungle responds to a tiger or snake. The national response to emergency, because it is a standard fear response, is characterized by the same circumvention of ordinary deliberative processes: thus, (i) the response is instinctive rather than reasoned, and thus subject to error; and (ii) the error will be biased in the direction of overreaction. While the flight reaction was a good evolutionary strategy on the savannah, in a complex modern society the flight response is not suitable and can only interfere with judgment. Its advantage—speed—has minimal value for social decisionmaking. No national emergency requires an immediate reaction—except by trained professionals who execute policies established earlier—but instead over days, months, or years people make complex judgments about the appropriate institutional response. And the asymmetrical nature of fear guarantees that people will, during a national emergency, overweight the threat and underweight other things that people value, such as civil liberties.

But if decisionmakers rarely act immediately, then the tiger story cannot bear the metaphoric weight that is placed on it. Indeed, the flight response has nothing to do with the political response to the bombing of Pearl Harbor or the attack on September 11. The people who were there—the citizens and soldiers beneath the bombs, the office workers in the World Trade Center—no doubt felt fear, and most of them probably responded in the classic way. They experienced the standard physiological effects, and (with the exception of trained soldiers and security officials) fled without stopping to think. It is also true that in the days and weeks after the attacks, many people felt fear, although not the sort that produces a irresistible urge to flee. **But this kind of fear is not the kind in which cognition shuts down**. (Some people did have more severe mental reactions and, for example, shut themselves in their houses, but these reactions were rare.) The fear is probably better described as a general anxiety or jumpiness, an anxiety that was probably shared by government officials as well as ordinary citizens.53

While, as we have noted, there is psychological research suggesting that normal cognition partly shuts down in response to an immediate threat, we are aware of no research suggesting that people who feel anxious about a non-immediate threat are incapable of thinking, or thinking properly, or systematically overweight the threat relative to other values. Indeed, it would be surprising to find research that clearly distinguished “anxious thinking” and “calm thinking,” given that anxiety is a pervasive aspect of life. People are anxious about their children; about their health; about their job prospects; about their vacation arrangements; about walking home at night. No one argues that people’s anxiety about their health causes them to take too many precautions—to get too much exercise, to diet too aggressively, to go to the doctor too frequently—and to undervalue other things like leisure. So it is hard to see why anxiety about more remote threats, from terrorists or unfriendly countries with nuclear weapons, should cause the public, or elected officials, to place more emphasis on security than is justified, and to sacrifice civil liberties.

Fear generated by immediate threats, then, causes instinctive responses that are not rational in the cognitive sense, not always desirable, and not a good basis for public policy, but it is not this kind of fear that leads to restrictions of civil liberties during wartime. The internment of Japanese Americans during World War II may have been due to racial animus, or to a mistaken assessment of the risks; it was not the direct result of panic; indeed there was a delay of weeks before the policy was seriously considered.54 Post-9/11 curtailments of civil liberties, aside from immediate detentions, came after a significant delay and much deliberation. The civil libertarians’ argument that fear produces bad policy trades on the ambiguity of the word “panic,” which refers both to real fear that undermines rationality, and to collectively harmful outcomes that are driven by rational decisions, such as a bank run, where it is rational for all depositors to withdraw funds if they believe that enough other depositors are withdrawing funds. Once we eliminate the false concern about fear, it becomes clear that the panic thesis is indistinguishable from the argument that during an emergency people are likely to make mistakes. But if the only concern is that during emergencies people make mistakes, there would be no reason for demanding that the constitution be enforced normally during emergencies. Political errors occur during emergencies and nonemergencies, but the stakes are higher during emergencies, and that is the conventional reason why constitutional constraints should be relaxed.

**One speech act doesn’t cause securitization – it’s an ongoing process**

**Ghughunishvili 10**

Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

As provided by the Copenhagen School securitization theory is comprised by speech act, acceptance of the audience and facilitating conditions or other non-securitizing actors contribute to a successful securitization. The causality or a one-way relationship between the speech act, the audience and securitizing actor, where politicians use the speech act first to justify exceptional measures, has been criticized by scholars, such as Balzacq. According to him, the one-directional relationship between the three factors, or some of them, is not the best approach. To fully grasp the dynamics, it will be more beneficial to “rather than looking for a one-directional relationship between some or all of the three factors highlighted, it could be profitable to focus on the degree of congruence between them. 26 Among other aspects of the Copenhagen School’s theoretical framework, which he criticizes, the thesis will rely on the criticism of the lack of context and the rejection of a ‘one-way causal’ relationship between the audience and the actor. The process of threat construction, according to him, can be clearer if external context, which stands independently from use of language, can be considered. 27 Balzacq opts for more context-oriented approach when it comes down to securitization through the speech act, where a single speech does not create the discourse, but it is created through a long process, where context is vital. 28 He indicates: In reality, the speech act itself, i.e. literally a single security articulation at a particular point in time, will at best only very rarely explain the entire social process that follows from it. In most cases a security scholar will rather be confronted with a process of articulations creating sequentially a threat text which turns sequentially into a securitization. 29 This type of approach seems more plausible in an empirical study, as it is more likely that a single speech will not be able to securitize an issue, but it is a lengthy process, where a the audience speaks the same language as the securitizing actors and can relate to their speeches.

The aff internal links turns threat construction – when states attempt to divine one another’s intentions, the question of escalation is dependent on expectations

Craig Martin, Associate Professor of Law at Washburn University School of Law, 2011, GOING MEDIEVAL: TARGETED KILLING, SELFDEFENSE AND THE JUS AD BELLUM REGIME, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1956141

It may be said in response that IHL has evolved such that states may, as a matter of law, become involved in armed conflict with armed groups that are not representatives of states—that is, in non-international armed conflict. And so, it will be said, in the context of the IHL regime, force is not limited to states or entities with formal legal personality. If IHL could adapt in this way, why not jus ad bellum? But one of the primary criteria for establishing that there is in fact a non-international armed conflict to which the IHL regime applies, is the requirement that the opposing force is an entity that is of sufficient organization and cohesion to constitute an armed group that can be identified by objectively verifiable criteria.74 In other words, there are limits built into the system for determining the kinds of NSA that may become a participant in hostilities. If jus ad bellum were to similarly adapt, there would nonetheless have to be serious consideration of the criteria that would be applied in determining the kinds of NSAs that might be subject to the regime. The question of whether states can use force against non-state entities as such, as a matter of jus ad bellum, is both analogous to and relates in some fundamental ways to the question of whether transnational military operations against terrorist organizations can qualify as an armed conflict for the purposes of IHL—an issue that is no less controversial in the debate over targeted killing. The problem with suggestions that international law should develop in order that a state could use force against an ill-defined collection of amorphous terrorist organizations, and that the state would thereby be in a global armed conflict with such organizations under IHL, is that such developments would undermine the objective criteria for defining both the limits on the use of armed force, and the parameters of armed conflict.

In sum, the proposition that states can use force against NSAs as such, and thereby against states with little responsibility for the NSAs actions, is not consistent with the current jus ad bellum system, and moreover there are good reasons why this is so. It will be objected that this tends to create something of an asymmetry, as well as to give rise to something of a paradox—for while under the current law a terrorist attack may constitute an armed attack in jus ad bellum terms, a response to the attack is not permissible if there was not sufficient state complicity in the NSAs operation. Thus, so the objection would go, the jus ad bellum regime recognizes that NSAs can mount armed attacks, but then it insulates them from the responding use of force in self-defense.75 There is thereby a recognition of a wrong, but the denial of a remedy. Of course, in response to this it must be pointed out that the current law exists precisely because the remedy sought would be inflicted on states that are not themselves guilty of the kind of wrong that legitimates the use of force against them. But even to this the detractors would argue that from a philosophical and moral perspective it might be entirely defensible to inflict a remedy on a not entirely blameless state. As between Utopia, the innocent victim of terrorist attacks, and Oceania, which while not sufficiently responsible for the attacks to justify a response in selfdefense is not blameless, surely we should permit harm to the latter.76 However, in response to this entire line of argument it has to be emphasized that the modern jus ad bellum regime is not primarily grounded in such moral balancing, or even in a sense of justice, but rather is founded on the **profound need to prevent war among states**. Permitting the use of force against states that have not assisted terrorists acting from within their territory would create a different and far more serious asymmetry, **which would distort and undermine the integrity of the jus ad bellum regime, and increase the risk of armed conflict among nations**.

**Such risk is not mere idle speculation**. In Columbian raids against NSAs in Ecuador in 2006, and Turkish attacks on Kurds in Iraq in 2007–08, there was a serious risk of escalation. Consider the ramifications if India had characterized the Mumbai attack of 2008 as an “armed attack” justifying the use of force in selfdefense against Lashkar-e-Taiba, quite independent of whether there was sufficient evidence to establish that its operations could be attributed to Pakistan. The use of force against the group within the territory of Pakistan would have nonetheless been viewed as an act of war by Pakistan, and there would have been a real risk of a full-blown armed conflict between nuclear powers.77

**Bare life is a bad theory because it can’t account for the effect of legal interventions like the aff**

Jef **Huysmans 8**, Senior Lecturer in the Department of Politics and International Studies (POLIS) at the Open University, UK, The Jargon of Exception—On Schmitt, Agamben and the Absence of Political Society, International Political Sociology (2008) 2, 165–183

Even if one would argue that **Agamben’s framing** of the current political conditions are valuable for understanding important changes that have taken place in the twentieth century and that are continuing in the twenty ﬁrst, they also **are** to a considerable extent **depoliticizing**. Agamben’s work tends to guide the analysis to unmediated, factual life. For example, some draw on Agamben to highlight the importance of bodily strategies of resistance. One of the key examples is individual refugees protesting against their detention by sewing up lips and eyes. They exemplify how individualized naked life resists by deploying their bodily, biological condition against sovereign biopolitical powers (for example, Edkins and Pin-Fat 2004:15–17). I follow Adorno and others, however, that such a conception of bodily, **naked life** is not political. It **ignores** how this life only exists and takes on political form through various socioeconomic, technological, scientiﬁc, **legal**, and other **mediations**. For example, the images of the sewed-up eyelids and lips of the individualized and biologized refugees have no political signiﬁcance without being mediated by public media, intense mobilizations on refugee and asylum questions, contestations of human rights in the courts, etc. **It is these mediations that are the object and structuring devices of political struggle**. Reading **the politics of exception** as the central lens onto modern conceptions of politics, as both Agamben and Schmitt do, **erases** from the concept of politics a rich and constitutive history of **sociopolitical struggles**, traditions of thought linked to this history, and key sites and temporalities of politics as well as the central processes through which individualized bodily resistances gain their sociopolitical signiﬁcance.

### at: drones k

**Doesn’t inherently lower the threshold for war**

**Etzioni 13** (Amitai Etzioni is a professor of international relations at George Washington University and author of Hot Spots: American Foreign Policy in a Post-Human-Rigid World., March-April 2013, "The Great Drone Debate", aladinrc.wrlc.org/bitstream/handle/1961/14729/Etzioni\_DroneDebate.pdf?sequence=1,)

Mary Dudziak of the University of Southern California’s Gould School of Law opines that “[d]rones are a technological step that further isolates the American people from military action, undermining political checks on . . . endless war.” Similarly, Noel Sharkey, in The Guardian, worries that drones represent “the ﬁnal step in the industrial revolution of war—a clean factory of slaughter with no physical blood on our hands and none of our own side killed.” This kind of cocktail-party sociology **does not stand up to even the most minimal critical examination**. Would the people of the United States, Afghanistan, and Pakistan be better off if terrorists were killed in “hot” blood—say, knifed by Special Forces, blood and brain matter splashing in their faces? Would they be better off if our troops, in order to reach the terrorists, had to go through improvised explosive devices blowing up their legs and arms and gauntlets of machinegun ﬁre and rocket-propelled grenades—traumatic experiences that turn some of them into psychopath-like killers? Perhaps if all or most ﬁghting were done in a cold-blooded, push-button way, it might well have the effects suggested above. However, as long as what we are talking about are a few hundred drone drivers, what they do or do not feel has no discernible effects on the nation or the leaders who declare war. Indeed, there is **no evidence** that the introduction of drones (and before that, high-level bombing and cruise missiles that were criticized on the same grounds) made going to war more likely or its extension more acceptable. Anybody who followed the American disengagement in Vietnam after the introduction of high-level bombing, or the U.S. withdrawal from Afghanistan (and Iraq)—despite the considerable increases in drone strikes—knows better. In effect, the **opposite argument may well hold**: if the United States could not draw on drones in Yemen and the other new theaters of the counterterrorism campaign, the nation might well have been forced to rely more on conventional troops and prolong our involvement in those areas, a choice which would **greatly increase our casualties and zones of warfare**. This line of criticism also neglects a potential upside of drones. As philosopher Bradley Strawser notes, this ability to deploy force abroad with minimal United States casualties may allow America to intervene in emerging humanitarian crises across the world with a greater degree of ﬂexibility and effectiveness.61 Rather than reliving another “Blackhawk down” scenario, the United States can follow the model of the Libya intervention, where drones were used by NATO forces to eliminate enemy armor and air defenses, paving the way for the highly successful air campaign which followed, as reported by The Guardian’s Nick Hopkins. As I see it, however, the main point of moral judgment comes earlier in the chain of action, well before we come to the question of which means are to be used to kill the enemy. The main turning point concerns the question of whether we should go to war at all. This is the crucial decision because once we engage in war, we must assume that there are going to be a large number of casualties on all sides—casualties that may well include innocent civilians. Often, discussions of targeted killings strike me as being written by people who yearn for a nice clean war, one in which only bad people will be killed using surgical strikes that inﬂict no collateral damage. Very few armed confrontations unfold in this way. Hence, when we deliberate whether or not to ﬁght, we should assume that once we step on this train, it is very likely to carry us to places we would rather not go. Drones are merely a new stepping stone on this woeful journey. Thus, we should carefully deliberate before we join or initiate any new armed ﬁghts, but draw on drones extensively, if ﬁght we must. They are more easily scrutinized and reviewed, and are more morally justiﬁed, than any other means of warfare available.

### allinson

Strong LOAC regime key to stable goldilocks on autonomous weapons systems - a total ban fails

Anderson and Waxman 11/5/13

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Computerized weapons capable of killing people sound like something from a dystopian film. So it's understandable why some, scared of the moral challenges such weapons present, would support a ban as the safest policy. In fact, a ban is unnecessary and dangerous.

No country has publicly revealed plans to use fully autonomous weapons, including drone-launched missiles, specifically designed to target humans. However, technologically advanced militaries have long used near-autonomous weapons for targeting other machines. The U.S. Navy's highly automated Aegis Combat System, for example, dates to the 1970s and defends against multiple incoming high-speed threats. Without them, a ship would be helpless against a swarm of missiles. Israel's Iron Dome missile-defense system similarly responds to threats faster than human reaction times permit.

Contrary to what some critics of autonomous weapons claim, there won't be an abrupt shift from human control to machine control in the coming years. Rather, the change will be incremental: Detecting, analyzing and firing on targets will become increasingly automated, and the contexts of when such force is used will expand. As the machines become increasingly adept, the role of humans will gradually shift from full command, to partial command, to oversight and so on.

This evolution is inevitable as sensors, computer analytics and machine learning improve; as states demand greater protection for their military personnel; and as similar technologies in civilian life prove that they are capable of complex tasks, such as driving cars or performing surgery, with greater safety than human operators.

But critics like the Campaign to Stop Killer Robots believe that governments must stop this process. They argue that artificial intelligence will never be capable of meeting the requirements of international law, which distinguishes between combatants and noncombatants and has rules to limit collateral damage. As a moral matter, critics do not believe that decisions to kill should ever be delegated to machines. As a practical matter, they believe that these systems may operate in unpredictable, ruthless ways.

Yet a ban is unlikely to work, especially in constraining states or actors most inclined to abuse these weapons. Those actors will not respect such an agreement, and the technological elements of highly automated weapons will proliferate.

Moreover, because the automation of weapons will happen gradually, it would be nearly impossible to design or enforce such a ban. Because the same system might be operable with or without effective human control or oversight, the line between legal weapons and illegal autonomous ones will not be clear-cut.

If the goal is to reduce suffering and protect human lives, a ban could prove counterproductive. In addition to the self-protective advantages to military forces that use them, autonomous machines may reduce risks to civilians by improving the precision of targeting decisions and better controlling decisions to fire. We know that humans are limited in their capacity to make sound decisions on the battlefield: Anger, panic, fatigue all contribute to mistakes or violations of rules. Autonomous weapons systems have the potential to address these human shortcomings.

No one can say with certainty how much automated capabilities might gradually reduce the harm of warfare, but it would be wrong not to pursue such gains, and it would be especially pernicious to ban research into such technologies.

That said, autonomous weapons warrant careful regulation. Each step toward automation needs to be reviewed carefully to ensure that the weapon complies with the laws of war in its design and permissible uses. Drawing on long-standing international legal rules requiring that weapons be capable of being used in a discriminating manner that limits collateral damage, the U.S. should set very high standards for assessing legally and ethically any research and development programs in this area. Standards should also be set for how these systems are to be used and in what combat environments.

If the past decade of the U.S. drone program has taught us anything, it's that it is crucial to engage the public about new types of weapons and the legal constraints on their design and use. The U.S. government's lack of early transparency about its drone program has made it difficult to defend, even when the alternatives would be less humane. Washington must recognize the strategic imperative to demonstrate new weapons' adherence to high legal and ethical standards.

This approach will not work if the U.S. goes it alone. America should gather a coalition of like-minded partners to adapt existing international legal standards and develop best practices for applying them to autonomous weapons. The British government, for example, has declared its opposition to a treaty ban on autonomous weapons but is urging responsible states to develop common standards for the weapons' use within the laws of war.

Autonomous weapons are not inherently unlawful or unethical. If we adapt legal and ethical norms to address robotic weapons, they can be used responsibly and effectively on the battlefield.

### at: militarism

No one will accept major changes to the structure of sovereignty

Brooks ’12 (Rosa, Professor of Law at Georgetown University Law Center and a Bernard L. Schwartz Senior Fellow at the New America Foundation, “Strange Bedfellows: The Convergence of Sovereignty-Limiting Doctrines in Counterterrorist and Human Rights Discourse,” Law and Ethics Summer/Fall 2012)

None of these projects would be straightforward; each might be seen as facing barriers so high as to be virtually insurmountable. If the various institutional and legal “fixes” we might envision are unrealistic in the near term, is there any responsible way forward? The overall thrust of this essay has been to call for intellectual honesty about the logical implications of emerging sovereignty-limiting doctrines. But, perhaps, this is one of those areas where discretion—even disingenuousness—is the better part of valor, or at least the better part of preserving stability. Stephen Krasner makes a variant of this argument in some of his recent work. Krasner famously dubbed sovereignty “organized hypocrisy,” noting that while the notion of “sovereignty” has long been associated with clear legal criteria and rules, states have, for just as long, routinely ignored those rules when it suited them to do so.18 To Krasner, this organized hypocrisy is nonetheless functional—or at least **more functional than any available alternative.** In a 2010 essay on “The Durability of Organized Hypocrisy,” Krasner argues that this remains true today.19 He grants that emerging normative or legal doctrines will continue to challenge and delegitimize traditional notions of sovereignty, and significant “shocks”— such as “the possibility of mega-terrorist attacks”—might lead to radical change: “Governments in advanced countries would begin to reconfigure their bureaucratic structures to… [reflect] new rules and principles about responsibilities for territories or functions beyond national borders.” But, argues Krasner, “Such fundamental challenges to the existing sovereignty regime are not to be welcomed. Any new set of principles…would be contested. External actors, even if their claims were legitimated…would not find it easy to exercise the authority they had asserted…there are no formulaic solutions.” Krasner concludes, **“Sovereignty has worked very imperfectly but it has still worked better than any other structure that decision-makers have been able to envision**.”20 In other words: in the end, perhaps, when it comes to teasing out the implications of emerging sovereigntylimiting doctrines, organized hypocrisy is the best we can do.

They are a criticism of status quo legal practices – the aff’s restraint solves militarism

Brooks ’13 (Rosa, Professor of Law at Georgetown University Law Center and a Bernard L. Schwartz Senior Fellow at the New America Foundation, “Drones and Cognitive Dissonance,” chapter for *Drones, Remote Targeting And The Promise Of Law*, Peter Bergen and Daniel Rothenberg, Eds. Forthcoming, Cambridge University Press, 2013)

There is nothing mystical about drones. They are not inherently “evil,” and they’re not a panacea, either. Drone strikes are just another tactic in America’s lethal toolkit – just another means of delivering death, **not inherently any worse** or any better than any other way to kill people. From a narrow legal perspective, drones are also just “business as usual”. Both the United States and the international community **have long had rules** governing armed conflicts and the use of force in national selfdefense. These rules apply whether the lethal force at issue involves knives, assault weapons, grenades, tank-mounted machine guns, 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 challenges**, and can and should be regulated using the existing laws of war. But if drones used in traditional armed conflicts present no “new” legal issues, some of the activities and policies enabled and facilitated by drones pose enormous challenges to existing legal frameworks. For example, as discussed above, the availability of drone technologies makes it far easier for the United States to “expand the battlefield,” striking targets in places where it would be too dangerous or too politically controversial to send troops. Often this expansion challenges existing legal frameworks. For example, drones enable the United States to strike targets inside foreign states, and do so quickly, efficiently and deniably.37 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 recognized armed conflicts 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. Ideally, we update the laws before too much damage is done. Right now, US drone policy is on the verge of doing irreparable damage to the rule of law – and it’s not clear that either the President, Congress of the public cares. Understanding how US drone policy challenges existing legal ideas, systems and norms requires a consideration of the concept of “rule of law” as well as a review of the relationship between the laws of war and “ordinary” law.

### heg

#### Pursuit of hegemony’s locked-in

Zach Dorfman 12, assistant editor of Ethics and International Affairs, the journal of the Carnegie Council, and co-editor of the Montreal Review, “What We Talk About When We Talk About Isolationism”, May 18, <http://dissentmagazine.org/online.php?id=605>

The rise of China notwithstanding, the United States remains the world’s sole superpower. Its military (and, to a considerable extent, political) hegemony extends not just over North America or even the Western hemisphere, but also Europe, large swaths of Asia, and Africa. Its interests are global; nothing is outside its potential sphere of influence. There are an estimated 660 to 900 American military bases in roughly forty countries worldwide, although figures on the matter are notoriously difficult to ascertain, largely because of subterfuge on the part of the military. According to official data there are active-duty U.S. military personnel in 148 countries, or over 75 percent of the world’s states. The United States checks Russian power in Europe and Chinese power in South Korea and Japan and Iranian power in Iraq, Afghanistan, and Turkey. In order to maintain a frigid peace between Israel and Egypt, the American government hands the former $2.7 billion in military aid every year, and the latter $1.3 billion. It also gives Pakistan more than $400 million dollars in military aid annually (not including counterinsurgency operations, which would drive the total far higher), Jordan roughly $200 million, and Colombia over $55 million.

U.S. long-term military commitments are also manifold. It is one of the five permanent members of the UN Security Council, the only institution legally permitted to sanction the use of force to combat “threats to international peace and security.” In 1949 the United States helped found NATO, the first peacetime military alliance extending beyond North and South America in U.S. history, which now has twenty-eight member states. The United States also has a trilateral defense treaty with Australia and New Zealand, and bilateral mutual defense treaties with Japan, Taiwan, the Philippines, and South Korea. It is this sort of reach that led Madeleine Albright to call the United States the sole “indispensible power” on the world stage.

The idea that global military dominance and political hegemony is in the U.S. national interest—and the world’s interest—is generally taken for granted domestically. Opposition to it is limited to the libertarian Right and anti-imperialist Left, both groups on the margins of mainstream political discourse. Today, American supremacy is assumed rather than argued for: in an age of tremendous political division, it is a bipartisan first principle of foreign policy, a presupposition. In this area at least, one wishes for a little less agreement.

In Promise and Peril: America at the Dawn of a Global Age, Christopher McKnight Nichols provides an erudite account of a period before such a consensus existed, when ideas about America’s role on the world stage were fundamentally contested. As this year’s presidential election approaches, each side will portray the difference between the candidates’ positions on foreign policy as immense. Revisiting Promise and Peril shows us just how narrow the American worldview has become, and how our public discourse has become narrower still.

Nichols focuses on the years between 1890 and 1940, during America’s initial ascent as a global power. He gives special attention to the formative debates surrounding the Spanish-American War, U.S. entry into the First World War, and potential U.S. membership in the League of Nations—debates that were constitutive of larger battles over the nature of American society and its fragile political institutions and freedoms. During this period, foreign and domestic policy were often linked as part of a cohesive political vision for the country. Nichols illustrates this through intellectual profiles of some of the period’s most influential figures, including senators Henry Cabot Lodge and William Borah, socialist leader Eugene Debs, philosopher and psychologist William James, journalist Randolph Bourne, and the peace activist Emily Balch. Each of them interpreted isolationism and internationalism in distinct ways, sometimes deploying the concepts more for rhetorical purposes than as cornerstones of a particular worldview.

Today, isolationism is often portrayed as intellectually bankrupt, a redoubt for idealists, nationalists, xenophobes, and fools. Yet the term now used as a political epithet has deep roots in American political culture. Isolationist principles can be traced back to George Washington’s farewell address, during which he urged his countrymen to steer clear of “foreign entanglements” while actively seeking nonbinding commercial ties. (Whether economic commitments do in fact entail political commitments is another matter.) Thomas Jefferson echoed this sentiment when he urged for “commerce with all nations, [and] alliance with none.” Even the Monroe Doctrine, in which the United States declared itself the regional hegemon and demanded noninterference from European states in the Western hemisphere, was often viewed as a means of isolating the United States from Europe and its messy alliance system.

In Nichols’s telling, however, modern isolationism was born from the debates surrounding the Spanish-American War and the U.S. annexation of the Philippines. Here isolationism began to take on a much more explicitly anti-imperialist bent. Progressive isolationists such as William James found U.S. policy in the Philippines—which it had “liberated” from Spanish rule just to fight a bloody counterinsurgency against Philippine nationalists—anathema to American democratic traditions and ideas about national self-determination.

As Promise and Peril shows, however, “cosmopolitan isolationists” like James never called for “cultural, economic, or complete political separation from the rest of the world.” Rather, they wanted the United States to engage with other nations peacefully and without pretensions of domination. They saw the United States as a potential force for good in the world, but they also placed great value on neutrality and non-entanglement, and wanted America to focus on creating a more just domestic order. James’s anti-imperialism was directly related to his fear of the effects of “bigness.” He argued forcefully against all concentrations of power, especially those between business, political, and military interests. He knew that such vested interests would grow larger and more difficult to control if America became an overseas empire.

Others, such as “isolationist imperialist” Henry Cabot Lodge, the powerful senator from Massachusetts, argued that fighting the Spanish-American War and annexing the Philippines were isolationist actions to their core. First, banishing the Spanish from the Caribbean comported with the Monroe Doctrine; second, adding colonies such as the Philippines would lead to greater economic growth without exposing the United States to the vicissitudes of outside trade. Prior to the Spanish-American War, many feared that the American economy’s rapid growth would lead to a surplus of domestic goods and cause an economic disaster. New markets needed to be opened, and the best way to do so was to dominate a given market—that is, a country—politically. Lodge’s defense of this “large policy” was public and, by today’s standards, quite bald. Other proponents of this policy included Teddy Roosevelt (who also believed that war was good for the national character) and a significant portion of the business class. For Lodge and Roosevelt, “isolationism” meant what is commonly referred to today as “unilateralism”: the ability for the United States to do what it wants, when it wants.

Other “isolationists” espoused principles that we would today call internationalist. Randolph Bourne, a precocious journalist working for the New Republic, passionately opposed American entry into the First World War, much to the detriment of his writing career. He argued that hypernationalism would cause lasting damage to the American social fabric. He was especially repulsed by wartime campaigns to Americanize immigrants. Bourne instead envisioned a “transnational America”: a place that, because of its distinct cultural and political traditions and ethnic diversity, could become an example to the rest of the world. Its respect for plurality at home could influence other countries by example, but also by allowing it to mediate international disputes without becoming a party to them. Bourne wanted an America fully engaged with the world, but not embroiled in military conflicts or alliances.

This was also the case for William Borah, the progressive Republican senator from Idaho. Borah was an agrarian populist and something of a Jeffersonian: he believed axiomatically in local democracy and rejected many forms of federal encroachment. He was opposed to extensive immigration, but not “anti-immigrant.” Borah thought that America was strengthened by its complex ethnic makeup and that an imbalance tilted toward one group or another would have deleterious effects. But it is his famously isolationist foreign policy views for which Borah is best known. As Nichols writes:

He was consistent in an anti-imperialist stance against U.S. domination abroad; yet he was ambivalent in cases involving what he saw as involving obvious national interest….He also without fail argued that any open-ended military alliances were to be avoided at all costs, while arguing that to minimize war abroad as well as conflict at home should always be a top priority for American politicians.

Borah thus cautiously supported entry into the First World War on national interest grounds, but also led a group of senators known as “the irreconcilables” in their successful effort to prevent U.S. entry into the League of Nations. His paramount concern was the collective security agreement in the organization’s charter: he would not assent to a treaty that stipulated that the United States would be obligated to intervene in wars between distant powers where the country had no serious interest at stake.

Borah possessed an alternative vision for a more just and pacific international order. Less than a decade after he helped scuttle American accession to the League, he helped pass the Kellogg-Briand Pact (1928) in a nearly unanimous Senate vote. More than sixty states eventually became party to the pact, which outlawed war between its signatories and required them to settle their disputes through peaceful means. Today, realists sneer at the idealism of Kellogg-Briand, but the Senate was aware of the pact’s limitations and carved out clear exceptions for cases of national defense. Some supporters believed that, if nothing else, the law would help strengthen an emerging international norm against war. (Given what followed, this seems like a sad exercise in wish-fulfillment.) Unlike the League of Nations charter, the treaty faced almost no opposition from the isolationist bloc in the Senate, since it did not require the United States to enter into a collective security agreement or abrogate its sovereignty. This was a kind of internationalism Borah and his irreconcilables could proudly support.

The United States today looks very different from the country in which Borah, let alone William James, lived, both domestically (where political and civil freedoms have been extended to women, African Americans, and gays and lesbians) and internationally (with its leading role in many global institutions). But different strains of isolationism persist. Newt Gingrich has argued for a policy of total “energy independence” (in other words, domestic drilling) while fulminating against President Obama for “bowing” to the Saudi king. While recently driving through an agricultural region of rural Colorado, I saw a giant roadside billboard calling for American withdrawal from the UN.

Yet in the last decade, the Republican Party, with the partial exception of its Ron Paul/libertarian faction, has veered into such a belligerent unilateralism that its graybeards—one of whom, Senator Richard Lugar of Indiana, just lost a primary to a far-right challenger partly because of his reasonableness on foreign affairs—were barely able to ensure Senate ratification of a key nuclear arms reduction treaty with Russia. Many of these same people desire a unilateral war with Iran.

And it isn’t just Republicans. Drone attacks have intensified in Yemen, Pakistan, and elsewhere under the Obama administration. Massive troop deployments continue unabated. We spend over $600 billion dollars a year on our military budget; the next largest is China’s, at “only” around $100 billion. Administrations come and go, but the national security state appears here to stay.

### at: cap / movements

**Their impact evidence says solving capitalism via protest is key – can’t be done**

Jamie Peck 10, geography prof at the University of British Columbia, Postneoliberalism and its Malcontents, Antipode, Volume 41, Issue Supplement s1, pages 94–116

While Latin American experiences can and should spur the postneoliberal imagination, the region's lessons are also sobering ones. Here, audacious forms of neoliberalized accumulation by dispossession inadvertently prepared the ground for widespread social mobilization and radical resistance politics. And in the decade or so that followed, electoral realignments in Venezuela, Brazil, Argentina, Bolivia, Chile and elsewhere consolidated progressive gains, as a period of hegemonic dispute gave way to region-wide hegemonic instability (Sader 2009). **Moving purposefully in the direction of postneoliberal forms of governance has**, however, **been a challenge, even for the region's largest economies**. Global financial flows, trading regimes, and investment policies continue to be guided by logics of short-term, price competition—in the context of global overaccumulation—while progressive forms of multilateral coordination can only be negotiated in the long shadows of imperial and neoimperial power (Drake 2006). As Sader (2009:176) notes:

the deregulation fostered by neoliberal policies favoured the hegemony of financial capital in its speculative mode. In order to instate a different model, it would be necessary to introduce new forms of economic regulation, **which would be very difficult, even in the current crisis**, once deregulation has a foothold. **It could not come from a single country**, no matter what its importance, **because others would benefit from the flow of capital rejected in this country**. At the same time, **it would be hard to come to a large-scale international agreement, due to the different interests of the biggest powers and international corporations**.

**Whereas neoliberalism may have exposed the limits of financial capitalism, it has also undermined the strategic and organizational resources required for its transcendence**. In Sader's (2009) eyes, the root of the problem for progressive forces is what he characterizes as a “gulf” between the evident failures of neoliberalized capitalism and the potential of postneoliberal movements, forces, and interests. The short- and medium-term prospects for such forms of alternative politics will surely be structured (and to some extent constrained) by the neoliberalized terrains on which they must be prosecuted. **This is not simply a matter of contending with** (residual) **neoliberal power centers**, in economics ministries, in international financial institutions, in think tanks, in the media, and in much of the corporate sector. Perhaps more intractably, **it must also entail overcoming the profound reconstitution of** cross-national, interlocal, and cross-scalar **relations through** various forms of **market rule**, which facilitate the reproduction of neoliberalized logics of action, institutional routines, and political projects—both through the dull compulsion of competitive pressures and through the harsh imperatives of regulatory downloading.

### at: imperialism

Protests get crushed – need to tamper security dynamics

David Chandler 9, IR prof at the University of Westminster, Critiquing Liberal Cosmopolitanism? The Limits of the Biopolitical Approach, International Political Sociology (2009) 3, 53–70

Here, the universalism of liberal cosmopolitan theorists is ‘‘stood on its head’’ to argue that it is the universalizing interests of power, understood in vague terms of biopolitical, neoliberal, global governance, rather than the genuinely cosmopolitan ethics of empowerment, which drives the discursive practices of regimes of regulation and intervention in the international sphere. As the 1990s liberal discourse has been challenged by the 2000s poststructuralist discourse, we seem to be caught up in a contestation over which academics have the most progressive or radical understandings: of hierarchies of power—as a product of ‘‘statist’’ exercises of national self-interest or as a product of new global governmentalities; and of post-territorial political community—as a response and opposition to these hierarchies, either in the form of global civil society or multitude.

However, it is not clear whether the contestation—in terms of the ontological framings of the relations and dynamics of power or of alternative political subjects of post-territorial political community—reﬂects much more than the starting positions of the critical academic theorists concerned. It seems that the radical differences between those who espouse and those who critique global liberal ontologies—and thereby read post-territorial community in liberal or poststructuralist framings—are derived less from empirical investigations than from their own normative aspirations. For cosmopolitan theorists, their normative aspirations for a more ethical and engaged foreign policy agenda were given added legitimacy through linking their demands with those of activist NGOs and assertions of global civil society’s immanent existence. As Kaldor (1999:195) asserts, the concept of global or transnational civil society is used on the one hand as an analytical device, but on the other hand, it is also used to express ‘‘a political project.’’

Similarly, for poststructuralist critics, the struggle against ‘‘empire’’ is alleged to be more than mere philosophical idealism precisely because it is founded upon the immanent existence of the ‘‘multitude.’’ Just as with the concept of global civil society, Hardt and Negri’s (2006:221) multitude is partly framed as an abstract heuristic device. But more importantly it is also a normative project: ‘‘The multitude needs a political project to bring it into existence’’ (2006:212). As they state: ‘‘The proletariat is not what it used to be’’ (2001:53). Their task, therefore, is to discover a new form of global agency. They describe this mixture of academic investigation and normative aspiration as illustrating that multitude ‘‘has a strange double temporality: always-already and not-yet’’ (2006:222). It appears that the new post-territorial political communities, held to be coming into existence, conﬂate empirical and normative aspirations in the critique of the perceived hierarchies of power: either being seen as constituted against the narrow state-interests dominating international politics or against the biopolitics of global ‘‘empire.’’

At the level of discursive analysis (as we shall see) the choice between these two approaches can easily appear to be a purely subjective one. Neither one appears to satisfactorily ground the existence of a new emerging universal subject capable of constituting post-territorial political community—as the agent of cosmopolitical regimes or of post-cosmopolitical resistance to these regimes. In both, the subject—which is alleged to demonstrate both the lack and the presence of post-territorial political community—is grounded in a way that confuses normative political critique with empirical analysis. Both approaches suggest that traditional territorial political communities have been fundamentally undermined by the changing nature of social relations—by globalization or by biopolitical production processes. These changing social relations are held to have undermined territorial political community through the deconstruction of the unitary assumptions involved in modern liberal democratic political theory. However, they have been much less successful in demonstrating that new post-territorial forms of political community have been constructed in their stead.

What is clear is that, in the name of post-territorial political community, liberal and radical critics have sought to represent the crisis of legitimacy of representative political bodies as a product of political contestation emerging from post-territorial actors. In these frameworks of understanding global politics, the shift toward post-territorial community is seen as indicative of new lines of political struggle that have replaced those of the territorialized framework of Left and Right. For liberal and critical theorists, this is the struggle for cosmopolitan and human rights and for emancipation against the sovereign power of states. For poststructuralist theorists, this is seen as the struggle for autonomy and difference against the universalizing war waged ‘‘over ways of life itself’’ by neoliberal biopolitical governance (Reid 2006). However, these struggles remain immanent ones, in which global political social forces of progress are intimated but are yet to fully develop. There is a problem of the social agency, the collective political subject, which can give content to the theorizing of global struggle articulated by academic theorists. It seems that neither liberal nor poststructuralist theorists are able to envisage the possibility that we could live in a world where politics appears to have become deterritorialized, not as a result of the expanded nature of collective political engagement, but precisely because of the absence of political struggle (see further Chandler 2009).

### optimism

Quality of life is skyrocketing worldwide by all measures

Ridley, visiting professor at Cold Spring Harbor Laboratory, former science editor of *The Economist*, and award-winning science writer, 2010

(Matt, *The Rational Optimist*, pg. 13-15)

If my fictional family is not to your taste, perhaps you prefer statistics. Since 1800, the population of the world has multiplied six times, yet **average life expectancy has more than doubled and real income has risen more than nine times**. Taking a shorter perspective, in 2005, compared with 1955, the average human being on Planet Earth earned nearly three times as much money (corrected for inflation), ate one-third more calories of food, buried one-third as many of her children and could expect to live one-third longer. She was less likely to die as a result of war, murder, childbirth, accidents

, tornadoes, flooding, famine, whooping cough, tuberculosis, malaria, diphtheria, typhus, typhoid, measles, smallpox, scurvy or polio. She was less likely, at any given age, to get cancer, heart disease or stroke. She was more likely to be literate and to have finished school. She was more likely to own a telephone, a flush toilet, a refrigerator and a bicycle. All this during a half-century when the world population has more than doubled, so that far from being rationed by population pressure, the goods and services available to the people of the world have expanded. It is, by any standard, an astonishing human achievement. Averages conceal a lot. **But even if you break down the world into bits**, **it is hard to find any region that was worse off in 2005 than it was in 1955**. Over that half-century, real income per head ended a little lower in only six countries (Afghanistan, Haiti, Congo, Liberia, Sierra Leone and Somalia), life expectancy in three (Russia, Swaziland and Zimbabwe), and infant survival in none. In the rest they have rocketed upward. Africa’s rate of improvement has been distressingly slow and patchy compared with the rest of the world, and many southern African countries saw life expectancy plunge in the 1990s as the AIDS epidemic took hold (before recovering in recent years). There were also moments in the half-century when you could have caught countries in episodes of dreadful deterioration of living standards or life chances – China in the 1960s, Cambodia in the 1970s, Ethiopia in the 1980s, Rwanda in the 1990s, Congo in the 2000s, North Korea throughout. Argentina had a disappointingly stagnant twentieth century. But overall, after fifty years, **the outcome for the world is** remarkably, astonishingly, **dramatically positive**. The average South Korean lives twenty-six more years and earns fifteen times as much income each year as he did in 1955 (and earns fifteen times as much as his North Korean counter part). The average Mexican lives longer now than the average Briton did in 1955. The average Botswanan earns more than the average Finn did in 1955. **Infant mortality is lower today in Nepal than it was in Italy in 1951**. The proportion of Vietnamese living on less than $2 a day has dropped from 90 per cent to 30 per cent in twenty years. The rich have got richer, but the poor have done even better. **The poor in the developing world grew their consumption twice as fast as the world as a whole between 1980 and 2000**. The Chinese are ten times as rich, one-third as fecund and twenty-eight years longer-lived than they were fifty years ago. Even Nigerians are twice as rich, 25 per cent less fecund and nine years longer-lived than they were in 1955. **Despite a doubling of the world population**, even **the raw number of people living in absolute poverty** (defined as less than a 1985 dollar a day) **has fallen since the 1950s**. The percentage living in such absolute poverty has dropped by more than half – to less than 18 per cent. That number is, of course, still all too horribly high, but the trend is hardly a cause for despair: at the current rate of decline, it would hit zero around 2035 – though it probably won’t. The United Nations estimates that poverty was reduced more in the last fifty years than in the previous 500.

## 1AR

### at: nilsson

#### But speech acts don’t matter and China’s being aggressive too, increasing the chances of conflict – their author

Nilsson 12 (Fredrik, Lund University Graduate School in Poly Sci, “Securitizing China’s ‘Peaceful Rise’ An Empirical Study of the U.S. Approach to Chinese Trade Practices, Military Modernization and Territorial Disputes in the South China Sea”, <http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=2740544&fileOId=2743569>)

The U.S. approach to China under the Obama administration, this thesis argued, is characterized by increasing competition, failure to cooperate on vital issues due to the possibility of a looming power-shift, and difficulties to facilitate the important economic growth of China under its current premises. According to this, and with the facilitating conditions outlined throughout the study, the United States has securitized elements of China’s economic growth and military development to protect American exceptionalism, the ILEO, American jobs and naval supremacy. These ambitions strain the relationship and moves the two powers further apart. As a result, security in the Asia Pacific is not becoming stronger, but might result in increasing unpredictability.

Harvard’s card ends

7 Executive summary

The relationship between the United States and China has been labeled the most important of the 21st century. Not only has China impressed the world with its rapid economic growth. It has also begun to spur concern due to its dramatically increasing military spending. China’s military modernization is becoming increasingly advanced and it is arguably creating a power-shift in the Asia Pacific region. As a result, the states in the region are looking for ways to deal with the decision to either engage China or to hedge their bets and employ external and/or internal balancing of Chinas looming power.

A key worry in the region is largely due to the general lack of transparency in China’s developments. China is not explicit about its intentions, and when it claims that it is pursuing a peaceful rise, there are many surrounding states, as well as academics and reporters across the world that chose to believe otherwise. Some aspects of China’s rise affirm the peaceful rise strategy whereas several other aspects contradict it. Simultaneously, some aspects of China’s economic boom is seen, mainly by the United States, as based around unfair practices in trade and currency. These practices allow China to gain a competitive advantage that furthers its growth, whilst restraining others.

On its current trajectory, China is predicted to surpass the United States in terms of GDP sometime in the late 2020s. China is also getting closer to achieving sea-denial capabilities that can prevent the U.S. from aiding Taiwan in a potential armed confrontation. With these growing capabilities, and with a perception of U.S. weakness in the light of the 2008 financial crisis and the wars in the Middle East, China has also increasingly begun to assert its territorial claims in the South China Sea. These developments have created a situation in which the United States has taken a wide range of measures to maintain its influence, power, and economic ambitions in the Asia Pacific.

Against this background, the primary aim of the study was to shine light on the wider implications of the approach taken by the Obama administration since he took office in 2009. To achieve this objective, the research problem was tackled by conducting three different empirical studies of cases that have been prominent in contemporary affairs.

7.1 Theoretical approach

The theoretical framework chosen to guide the study derives from the works of the ‘Copenhagen school’. The securitization theory developed by the Copenhagen school seeks to extend the concept of security beyond the state. By employing their idea of securitization theory, whilst also maintaining a somewhat neorealist approach, the thesis set out to identify the specific instances where certain issues were lifted above ‘normal’ practice into the realm of security. This transformation of an issue into a security matter can take place in economics, politics, military, society and the environment. By approaching the study with slight modifications suggested by Stritzel (2007), the empirical application of the theory was enabled. The approach employs discourse analytical tools to identify when a speech act places something within an order of discourse pertaining to security. It looks at the embeddedness of a certain discourse, the performative force of the speech act, and the way that this speech act shapes social practice. By using this framework in the methodological approach, significant speech acts have been analyzed and the implications of the actions have been analyzed.

However, the so-called speech act, which is central to securitization theory, is not sufficient in its own right to account for a complex construction of security. Therefore, a certain emphasis was placed on facilitating conditions. Facilitating conditions are the specific circumstances that enable a successful securitization. They are grounded in historical background as well as in recent developments. In this study, theories of hegemony and power transition were employed to explain some of the more implicit facilitating conditions, whilst also discussing the significance of regional dynamics in securitization.

### K

### at: endless war

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**.

### 1ar fw

#### Their account of affect is hogwash – “vote for the good affect, reject the bad” is so reductive the concept becomes useless

Clare Hemmings 5, feminist theory prof at the London School of Economics, Invoking Affect, Cultural Studies Vol. 19, No. 5 September 2005, pp. 548 /567

While appreciative of a critical focus on the unusual, which is to say the non-socially-determined, not as a bid for group rights, but a bid for social transformation, I remain sceptical of what is often a theoretical celebration of affect as uniquely situated to achieve this end. This article explores my scepticism of such affective celebration through close engagement with Sedgwick’s (2003) and Massumi’s (2002) work on the subject. Both authors are well-respected contributors to contemporary cultural theory, and both have recently published monographs invoking affect as the way forward within that arena. For both authors it is affect’s difference from social structures that means it possesses, in itself, the capacity to restructure social meaning. But both authors are thereby presented with something of a problem. As prominent cultural theorists, they cannot fail to be aware of the myriad ways that affect manifests precisely not as difference, but as a central mechanism of social reproduction in the most glaring ways. The delights of consumerism, feelings of belonging attending fundamentalism or fascism, to suggest just several contexts, are affective responses that strengthen rather than challenge a dominant social order (Berlant 1997). Sedgwick and Massumi do both acknowledge this characteristic of affect in their work, but do not pursue it, interested instead as they both are in that ‘other affect’, the good affect that undoes the bad. It is difficult to maintain such an affective dichotomy of course, particularly in light of their own professed irritation with cultural theorists’ tendency to divide the world up into good and bad, repressive or subversive and so on, as I discuss in more detail below. But unfortunately neither author offers any explanation as to the relationship between these ‘two kinds’ of affect, which means the relationship remains dyadic.

Instead, both authors negotiate a way out of their own uncomfortable critical position by turning the question of affective freedom back onto the cultural critic, leaving it up to her or him to decide whether the direction they wish to pursue is one of the pessimism of social determinism (including bad affect) or the optimism of affective freedom (good affect). Two points come to mind at this point. Firstly, this question to the critic is hardly an open one. ‘Wouldn’t you rather be free?’ can hardly elicit a negative response in anyone but the most hardened cultural theorist, whose hardness is indeed evidenced by that response. Secondly, as part of persuading the critic that the question is a valid one, both the ills of cultural theory to date and the restorative power of affect need to be overstated. My overarching contention in this article, then, is that while affect may be an interesting and valuable critical focus in context, it often emerges as a rhetorical device whose ultimate goal is to persuade ‘paranoid theorists’ into a more productive frame of mind.

### AT: roleplaying bad

**Simulation allows us to influence state policy AND is key to agency**

**Eijkman 12**

The role of simulations in the authentic learning for national security policy development: Implications for Practice / Dr. Henk Simon Eijkman. [electronic resource] <http://nsc.anu.edu.au/test/documents/Sims_in_authentic_learning_report.pdf>. Dr Henk Eijkman is currently an independent consultant as well as visiting fellow at the University of New South Wales at the Australian Defence Force Academy and is Visiting Professor of Academic Development, Annasaheb Dange College of Engineering and Technology in India. As a sociologist he developed an active interest in tertiary learning and teaching with a focus on socially inclusive innovation and culture change. He has taught at various institutions in the social sciences and his work as an adult learning specialist has taken him to South Africa, Malaysia, Palestine, and India. He publishes widely in international journals, serves on Conference Committees and editorial boards of edited books and international journal

However, whether as an approach to learning, innovation, persuasion or culture shift, policy simulations derive their power from two central features: their combination of simulation and gaming (Geurts et al. 2007). 1. The simulation element: the unique combination of simulation with role-playing.The unique simulation/role-play mix enables participants to create **possible futures** relevant to the topic being studied. This is diametrically opposed to the more traditional, teacher-centric approaches in which a future is produced for them. In policy simulations, possible futures are much more than an object of tabletop discussion and verbal speculation. ‘**No other technique** allows a group of participants to engage in collective action in a safe environment to create and analyse the futures they want to explore’ (Geurts et al. 2007: 536). 2. **The game element:** the interactive and tailor-made modelling and design of the policy game. The actual run of the policy simulation is only one step, though a most important and visible one, in a collective process of investigation, communication, and evaluation of performance. In the context of a post-graduate course in public policy development, for example, a policy simulation is a dedicated game constructed in collaboration with practitioners to achieve a high level of proficiency in relevant aspects of the policy development process. To drill down to a level of finer detail, **policy development simulations**—as forms of interactive or participatory modelling— are particularly effective in developing participant knowledge and skills in the five key areas of the policy development process (and success criteria), namely: Complexity, Communication, Creativity, Consensus, and Commitment to action (‘the five Cs’). The capacity to provide effective learning support in these five categories has proved to be particularly helpful in strategic decision-making (Geurts et al. 2007). Annexure 2.5 contains a detailed description, in table format, of the synopsis below.

### galli

Galli’s an idiot

Stephen D. Krasner, Graham H. Stuart professor of international relations at Stanford University and is currently on leave as a fellow at the Wissenschaftskolleg of Berlin, 1/12001, “Think Again: Sovereignty,” http://www.foreignpolicy.com/articles/2001/01/01/think\_again\_sovereignty?page=0,1

**"The Sovereign State Is Just About Dead"**

Very wrong. Sovereignty was never quite as vibrant as many contemporary observers suggest. The conventional norms of sovereignty have **always been challenged**. A few states, most notably the United States, have had autonomy, control, and recognition for most of their existence, but most others have not. The polities of many weaker states have been persistently penetrated, and stronger nations have not been immune to external influence. China was occupied. The constitutional arrangements of Japan and Germany were directed by the United States after World War II. The United Kingdom, despite its rejection of the euro, is part of the European Union.

Even for weaker states -- whose domestic structures have been influenced by outside actors, and whose leaders have very little control over transborder movements or even activities within their own country -- **sovereignty remains attractive**. Although sovereignty might provide little more than international recognition, that recognition guarantees access to international organizations and sometimes to international finance. It offers status to individual leaders. While the great powers of Europe have eschewed many elements of sovereignty, the United States, China, and Japan have neither the interest nor the inclination to abandon their usually effective claims to domestic autonomy.

In various parts of the world, **national borders still represent the fault lines of conflict**, whether it is Israelis and Palestinians fighting over the status of Jerusalem, Indians and Pakistanis threatening to go nuclear over Kashmir, or Ethiopia and Eritrea clashing over disputed territories. Yet commentators nowadays are mostly concerned about the **erosion of national borders as a consequence of globalization**. Governments and activists alike complain that multilateral institutions such as the United Nations, the World Trade Organization, and the International Monetary Fund overstep their authority by promoting universal standards for everything from human rights and the environment to monetary policy and immigration. However, the most important impact of economic globalization and transnational norms will be to alter the scope of state authority rather than to generate some fundamentally new way to organize political life.

"Sovereignty Means Final Authority"

Not anymore, if ever. When philosophers Jean Bodin and Thomas Hobbes first elaborated the notion of sovereignty in the 16th and 17th centuries, they were concerned with establishing the legitimacy of a single hierarchy of domestic authority. Although Bodin and Hobbes accepted the existence of divine and natural law, they both (especially Hobbes) believed the word of the sovereign was law. Subjects had no right to revolt. Bodin and Hobbes realized that imbuing the sovereign with such overweening power invited tyranny, but they were predominately concerned with maintaining domestic order, without which they believed there could be no justice. Both were writing in a world riven by sectarian strife. Bodin was almost killed in religious riots in France in 1572. Hobbes published his seminal work, Leviathan, only a few years after parliament (composed of Britain's emerging wealthy middle class) had executed Charles I in a civil war that had sought to wrest state control from the monarchy.

This idea of supreme power was compelling, but irrelevant in practice. By the end of the 17th century, political authority in Britain was divided between king and parliament. In the United States, the Founding Fathers established a constitutional structure of checks and balances and multiple sovereignties distributed among local and national interests that were inconsistent with hierarchy and supremacy. The principles of justice, and especially order, so valued by Bodin and Hobbes, have best been provided by modern democratic states whose organizing principles are antithetical to the idea that sovereignty means uncontrolled domestic power.

If sovereignty does not mean a domestic order with a single hierarchy of authority, what does it mean? In the contemporary world, sovereignty primarily has been linked with the idea that states are autonomous and independent from each other. Within their own boundaries, the members of a polity are free to choose their own form of government. A necessary corollary of this claim is the principle of nonintervention: One state does not have a right to intervene in the internal affairs of another.

More recently, sovereignty has come to be associated with the idea of control **over transborder movements**. When contemporary observers assert that the sovereign state is just about dead**, they do not mean that constitutional structures are about to disappear.** Instead, they mean that technological change has made it very difficult, or perhaps impossible, for states to control movements across their borders of all kinds of material things (from coffee to cocaine) and not-so-material things (from Hollywood movies to capital flows).

Finally, sovereignty has meant that political authorities can enter into international agreements. They are free to endorse any contract they find attractive. Any treaty among states is legitimate provided that it has not been coerced.

**"The Peace of Westphalia Produced the Modern Sovereign State"**

No, it came later. Contemporary pundits often cite the 1648 Peace of Westphalia (actually two separate treaties, Münster and Osnabrück) as the political big bang that created the modern system of autonomous states. Westphalia -- which ended the Thirty Years' War against the hegemonic power of the Holy Roman Empire -- delegitimized the already waning transnational role of the Catholic Church and validated the idea that international relations should be driven by balance-of-power considerations rather than the ideals of Christendom. But Westphalia was **first and foremost a new constitution for the Holy Roman Empire**. The preexisting right of the principalities in the empire to make treaties was affirmed, but the Treaty of Münster stated that "such Alliances be not against the Emperor, and the Empire, nor against the Publick Peace, and this Treaty, and without prejudice to the Oath by which every one is bound to the Emperor and the Empire." The domestic political structures of the principalities remained embedded in the Holy Roman Empire. The Duke of Saxony, the Margrave of Brandenburg, the Count of Palatine, and the Duke of Bavaria were affirmed as electors who (along with the archbishops of Mainz, Trier, and Cologne) chose the emperor. They did not become or claim to be kings in their own right.

Perhaps most important, Westphalia established rules for religious tolerance in Germany. The treaties gave lip service to the principle (cuius regio, eius religio) that the prince could set the religion of his territory -- and then went on to violate this very principle through many specific provisions. The signatories agreed that the religious rules already in effect would stay in place. Catholics and Protestants in German cities with mixed populations would share offices. Religious issues had to be settled by a majority of both Catholics and Protestants in the diet and courts of the empire. None of the major political leaders in Europe endorsed religious toleration in principle, but they recognized that religious conflicts were so volatile that it was essential to contain rather than repress sectarian differences. All in all, Westphalia is a pretty medieval document, and its biggest explicit innovation -- provisions that undermined the power of princes to control religious affairs within their territories -- was antithetical to the ideas of national sovereignty that later became associated with the so-called Westphalian system.

**"Universal Human Rights Are an Unprecedented Challenge to Sovereignty"**

Wrong. The struggle to establish international rules that compel leaders to treat their subjects in a certain way has been going on for a long time. Over the centuries the emphasis has shifted from religious toleration, to minority rights (often focusing on specific ethnic groups in specific countries), to human rights (emphasizing rights enjoyed by all or broad classes of individuals). In a few instances states have voluntarily embraced international supervision, but generally the weak have acceded to the preferences of the strong: The Vienna settlement following the Napoleonic wars guaranteed religious toleration for Catholics in the Netherlands. All of the successor states of the Ottoman Empire, beginning with Greece in 1832 and ending with Albania in 1913, had to accept provisions for civic and political equality for religious minorities as a condition for international recognition. The peace settlements following World War I included extensive provisions for the protection of minorities. Poland, for instance, agreed to refrain from holding elections on Saturday because such balloting would have violated the Jewish Sabbath. Individuals could bring complaints against governments through a minority rights bureau established within the League of Nations.

### at: death drive

**The death drive’s a useless label**

Havi **Carel 6**, Senior Lecturer in Philosophy at the University of the West of England, “Life and Death in Freud and Heidegger”, googlebooks

Freud introduces the death drive in order to explain all behaviour that is not in accordance with the pleasure principle. He does so by offering a theoretical construct in the form of an aggressive drive but also posits the Nirvana principle as the aim of all organic systems to rid themselves of excitation and strive towards complete rest. This leads to contradictory formulations of the death drive. Part of the function of the death drive is to unify a variety of aggressive phenomena such as destructiveness, sadism, masochism and hate. But Freud is also proposing a more general metaphysical speculation about life as a conflict between life and death drives. This position raises serious problems: 1. **Positing the death drive reduces all forms of aggression to one source**. Could a single drive explain all types of aggression and destructiveness? Or are there vital details in the individual origins and characteristics of each aggressive phenomenon that are subsumed by the reductive hypothesis of the death drive? 2. **Even if we were to accept such a reductive concept, its explanatory value is not clear**. What does the notion of the death drive add to the already unifying concept of aggression? **Assembling various forces under the auspices of the death drive makes it an unstable category whose meaning can only be derived from the specific context of its application**. The death drive has no autonomous meaning. Since the death drive derives its meaning from the concrete situation, it does not contribute to an understanding of the given phenomenon (aggression or destructiveness). Rather, **it is the death drive that gets explained by its instances, but it ultimately lacks autonomous content**. Freud subsumes under the concept of the death drive two essentially contradictory tendencies: the Nirvana principle striving to eliminate all tension, and aggression creating tension. How can the death drive explain both the tendency towards elimination of tension and aggression that increases tension? A more specific problem is that of masochism (discussed in The Economic Problem of Masochism). If masochism is a manifestation of the death drive as self-directed aggression aiming at unpleasure, how does that square with Freud's view that the death drive is equivalent to the Nirvana principle, which aims to discharge all tension? Freud's attempts to posit a two-drive model arc unsuccessful both theoretically and empirically. Is there really a difference between Eros and Thanatos? If so, why do they keep collapsing into one another?

### 2ac value to life

**Life is always valuable**

**Torchia 2**, Professor of Philosophy, Providence College, Phd in Philosophy, Fordham College (Joseph, “Postmodernism and the Persistent Vegetative State,” The National Catholic Bioethics Quarterly Summer 2002, Vol. 2, No. 2, <http://www.lifeissues.net/writers/torc/torc_01postmodernismandpvs1.html>)

Ultimately, Aquinas' theory of personhood requires a metaphysical explanation that is rooted in an understanding of the primacy of the existence or esse of the human person. For humans beings, the upshot of this position is clear: while human personhood is intimately connected with a broad range of actions (including consciousness of oneself and others), the definition of personhood is not based upon any specific activity or capacity for action, but upon the primacy of esse. Indeed, human actions would have neither a cause nor any referent in the absence of a stable, abiding self that is rooted in the person's very being. A commitment to the primacy of esse, then, allows for an adequate recognition of the importance of actions in human life, while providing a principle for the unification and stabilizing of these behavioral features. In this respect, the human person is defined as a dynamic being which actualizes the potentiality for certain behavior or operations unique to his or her own existence. Esse thereby embraces all that the person is and is capable of doing.

In the final analysis, **any attempt to define the person in terms of a single attribute, activity, or capability** (e.g., consciousness) flies in the face of the depth and multi-dimensionality which is part and parcel of personhood itself. To do so **would abdicate the ontological core of the person and the very center which renders human activities intelligible**. And Aquinas' anthropology, I submit, provides an effective philosophical lens through which the depth and profundity of the human reality comes into sharp focus. In this respect, Kenneth Schmitz draws an illuminating distinction between "person" (a term which conveys such hidden depth and profundity) and "personality" (a term which pertains to surface impressions and one's public image).40 The preoccupation with the latter term, he shows, is very much an outgrowth of the eighteenth century emphasis upon a human individuality that is understood in terms of autonomy and privacy. This notion of the isolated, atomistic individual was closely linked with a subjective focus whereby the "self" became the ultimate referent for judging reality. By extension, such a presupposition led to the conviction that only self-consciousness provides a means of validating any claims to personhood and membership in a community of free moral agents capable of responsibilities and worthy of rights.

In contrast to such an isolated and enclosed conception (i.e., whereby one is a person by virtue of being "set apart" from others as a privatized entity), Schmitz focuses upon an intimacy which presupposes a certain relation between persons. From this standpoint, intimacy is only possible through genuine self-disclosure, and the sharing of self-disclosure that allows for an intimate knowledge of the other.41 For Schmitz, such a revelation of one's inner self transcends any specific attributes or any overt capacity the individual might possess.42 Ultimately, Schmitz argues, intimacy is rooted in the unique act of presencing, whereby the person reveals his or her personal existence. But such a mystery only admits of a metphysical explanation, rather than an epistemological theory of meaning which confines itself to what is observable on the basis of perception or sense experience. Intimacy, then, discloses a level of being that transcends any distinctive properties. Because intimacy has a unique capacity to disclose being, it places us in touch with the very core of personhood. Metaphysically speaking, intimacy is not grounded in the recognition of this or that characteristic a person has, but rather in the simple unqualified presence the person is.43

### More affect

#### This directly implicates their prioritization arguments – everything that isn’t Massumi’s alternative is flattened into one emotionless failure that only his affect can solve

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In positing affect as the critical new for the noughts, both Sedgwick and Massumi invariably overstate the problems of poststructuralism, as well as and in order to herald affect’s unique capacity to resolve contemporary critical dilemmas, much as advocates of poststructuralism overstated the ills of the seventies and early eighties. In Touching Feeling, the weight of Sedgwick’s dismissal of poststructuralist epistemology is carried by her reading of only two texts: Judith Butler’s Gender Trouble and D. A. Miller’s The Novel and the Police. Published in 1990 and 1988 respectively, despite the fact that both arguments are ones that their authors have subsequently developed in different directions. It seems odd to rest the case for needing new theoretical frameworks on texts that have already prompted just such revisions from their authors, and indeed that are either side of fifteen years old. Surely if the need for affect is so urgently felt, the problem could be found in more contemporary texts?

Massumi’s dismissal of cultural theory rests on more slender evidence still. At no point in Parables For the Virtual does Massumi engage directly with any of the theorists responsible for what he insists is theory’s terrible state of critical affairs, although the scattered but persistent references to ‘performance’ could be taken as similarly implicating Butler. Instead of critical dialogue, Massumi persuades his reader of the need for restorative attention to affect by positioning him or her as a co-conspirator who already knows what the problems of cultural theory are but just needs a little coaxing. Rather than tracing the thinking of particular authors, Massumi objectifies critical thinking, referring to it in the third person throughout. The following passage is typical:

Critical thinking disavows its own inventiveness as much as possible. Because it sees itself as uncovering something it desires to subtract from the world, it clings to a basically descriptive and justificatory modus operandi. However strenuously it might debunk concepts like ‘representation,’ it carries on as if it mirrored something outside of itself and with which it had no complicity, no unmediated processual involvement, and thus could justifiably oppose. (2002, p. 12)

‘Critical thinking’ is unreflexive, childish, stubborn, arrogant and, as suggested, unauthored. Presumably, the reader can be expected to want to be an adult, for who among us would want to ‘cling to a . . . descriptive . . . modus operandi’, let alone ‘disavow[. . . our] own inventiveness’. Our rejection of such juvenile attachment to the theoretical status quo is in the end all just part of growing up. As the wise father, Massumi counsels that this has ‘nothing to do with morals or moralizing. [It is] just pragmatic’ (2002, p. 13). In both Sedgwick and Massumi, I want to stress that these citation issues are more than simply omission. They construct a critical history at the same time as they dismiss it. Positing affect as a ‘way out’ requires that poststructuralist epistemology have ignored embodiment, investment and emotion, § Marked 17:08 § and that the academic reader recognize their own prior complicity and current boredom with Theory’s straight-jacketing of thought.

If poststructuralist epistemology is the problem, it is perhaps not enormously surprising that a post-deconstructivist ontology is offered as the solution. Both Sedgwick and Massumi progress from asserting the absolutely flawed nature of epistemology to insisting on the unequivocal good of ontology. For Sedgwick, it is self-evidently horrific that critical thought is dominated by epistemological approaches that consider ‘the quality of affect . . . of [no] more consequence than the color of the airplane used to speed a person to a destination’ (2003, p. 18). This horror underwrites her conviction that only a turn to ontology can redress the over-emphasis of truth and knowledge at the expense of individual experience. In Massumi, signification is (passive) death, and ontology is (active) life. Even where theorists stress multiplicity of social location, for Massumi (2002, p. 3) this continues to fix difference: ‘The sites, it is true, are multiple. But aren’t they still combinatorial permutations on an overarching definitional framework?’ While all social meaning is already fully known, already ‘[nothing] more than a local embodiment of ideology’ (2002, p. 3), ontology on the other hand heroically carries the very difference that ideology, and cultural theory, would minimize or ignore (2002, p. 5). The epistemological past is grey, flat and predictable, the ontological future is bright, many-faceted and surprising. That future could be ours too (again, who would not want it to be?), if . . . and only if . . . we break free of our paranoid attachment to unfreedom and turn towards the possibilities offered by feeling. It may seem perverse to resist, but as with the issues of citation discussed above, the ‘problem of epistemology’ only materializes in the moment that it is chronologically and intellectually separated from ontology. Ontology thus resolves the problem its advocates invent.