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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 unravel. 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 andin 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 escalates

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.

#### Law of armed conflict controls deterrence—collapse causes global WMD conflict

Delahunty, associate prof – U St. Thomas Law, and Yoo, law prof – UC Berkeley, ‘10

(Robert and John, 59 DePaul L. Rev. 803)

Finally, the extension of IHRL to armed conflict may have significant consequences for the success of international law in advancing global welfare. Rules of the LOAC represent the delicate balancing between the imperatives of combat and the humanitarian goals in wartime. The LOAC has been remarkably successful in achieving compliance from warring nations in obeying these rules. This is most likely due to the reciprocal nature of the obligations involved. Nations treat prisoners of war well in order to guarantee that their own captive soldiers will be treated well by the enemy; nations will refrain from usingweapons of mass destruction because they are deterred by their enemy's possession of the same weapons. It has been one of the triumphs of international law to increase the restrictions on the use of unnecessarily destructive and cruel weapons, and to advance the norms of distinction and the humane treatment of combatants and civilians in wartime.

IHRL norms, on the other hand, may suffer from much lower rates of compliance. This may be due, in part, to the non-reciprocal nature of the obligations. One nation's refusal to observe freedom of speech, for example, will not cause another country to respond by depriving its own citizens of their rights. If IHRL norms--which were developed without much, if any, consideration of the imperatives of combat--merge into the LOAC, it will be likely that compliance with international law will decline. If nations must balance their security [\*849] needs against ever more restrictive and out-of-place international rules supplied by IHRL, we hazard to guess that the latter will give way. Rather than attempt to superimpose rules for peacetime civilian affairs on the unique circumstances of the "war on terror," a better strategy for encouraging compliance with international law would be to adapt the legal system already specifically designed for armed conflict.

#### Adherence to LOAC key to instill environmental protections in warfighting

Malviya, 1

(Law Prof-Banaras Hindu University, “Laws Of Armed Conflict And Environmental Protection: An Analysis Of Their Inter-Relationship,” http://www.worldlii.org/int/journals/ISILYBIHRL/2001/5.html)

Developing through customs and treaties, two important regimes of law have come into existence: International Law of Environmental Protection and International Law of War or International Law of Armed Conflict.[1] The law of environmental protection has developed primarily in the twentieth century, whereas the international law of war or armed conflict has evolved over many centuries. But it has only recently developed characteristics similar to the law of environmental protection. **Today, the laws of war contain a number of limitations on environmentally disruptive activities during hostilities**. Some of these limitations are rooted in what Schafer calls “environmental considerations” or “environmental ethics”.[2] There exists an environmental ethic in both the regimes of law which is indicative of a common philosophy or common value system shared by them. Attacking environment as a means of waging war is not a novel concept. There are a number of wars in which attempts have been made to annihilate the enemy by assaulting the environment.[3]Also, harnessing the powers of nature to manipulate the environment as a means of waging war has been evidenced, e.g., in the Vietnam War.[4] **Environment represents the hope and future of every society. Destroying the environment means destroying the society itself**. Today’s wars are deadlier wars. Brutal disregard for humanitarian norms and for the Geneva Conventions’ rules of warfare now extends to environment which is attacked during conflicts. Therefore, the issue of destruction of the environment is one of the most disturbing aspects of armed conflicts today. [5] Greater environmental destruction in modern warfare and the development of the technological capacity for greater destruction of the environment in the modern age are the two dangerous trends. Therefore, the need to understand the international laws that govern the means and methods of warfare is **greater than ever.**

#### Extinction—unchecked military destruction of the environment triggers every environmental catastrophe

Alduaij, 2

(Professor-Kuwait University, “Environmental Law of Armed Conflict,” http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1000&context=lawdissertations)

“Modern armaments can dissipate their destructive energy or introduce their destructive agents on the land or in the sea, in the air or in the space above it. The ecosystems at risk may be either terrestrial or oceanic and either arctic, temperate or tropical. The terrestrial ones may be continental or insular, either forest, grassland or desert, the oceanic ones may be estuarine, littoral (near shore), over the continental shelves or within ocean basins. Damage may be inflicted either directly or indirectly and range from subtle to dramatic.” There is renewed evidence that warfare involves conflicts not only between the combatants, but also between man and nature. The ability of modern warfare to devastate the natural environment has become ever more obvious: animal species become extinct, forests become deserts, fertile farmland becomes a minefield, water becomes contaminated and native vegetation disappears. Attacks on the environment become more savage as technology develops. Environmental destruction has become an inevitable result of modern warfare and military tactics. The nuclear, chemical, and biological weapons that emerged during the late twentieth century **present threats to life itself; but short of that apocalypse, modern weapons can cause or hasten a host of environmental disasters, such as deforestation and erosion, global warming, desertification, or holes in the ozone layer**. The devastating effects of military weapons on the environment is reflected throughout the history of the twentieth century, in World War I, World War II, the Korean and Vietnam wars, the Cambodian civil war, Gulf wars I and II, the Afghan civil war, and the Kosovo conflict. The Science for Peace Institute at the University of Toronto estimates that 10 to 30 percent of all environmental degradation in the world is a direct result of the various militaries. Military operations can affect land, air, wildlife, and water resources. A German report concluded that six to ten percent of the world’s air pollution is a result of military activity, and that the world’s military is also responsible for the emission of approximately two-thirds of all chlorofluorocarbon-113 released into the atmosphere. In modern warfare, environmental destruction can be a primary means of threatening or defeating one’s enemies. War itself can, and often does, mean war against the natural environment.

## 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.

## 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 United States 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.

## case

Representations of nuclear war are key broad based activism

Susan T. **Fiske**, Department of Psychology, Tobin Hall, University of Massachusetts, Amherst, **1987**, “People's Reactions to Nuclear War: Implications for Psychologists” American Psychologist Issue: Volume 42(3), March 1987, p 207–217

As defined here, even the antinuclear activist's typical activities are few and modest: writing congressional representatives and donating money to an antinuclear group. Nevertheless, this is far more than the average person does and far more than people's usual levels of political activity. Even this humble degree of antinuclear protest is worth examining. Factors that motivate antinuclear protest most centrally include an extreme chronic salience of the issue and an unusual sense of political efficacy, as well as some attitudinal and demographic factors. Chronic personal salience of the nuclear issue clearly distinguishes the activist. Antinuclear activists report frequently thinking about the issue (Fiske et al., 1983; Hamilton, Chavez, & Keilin, 1986; Pavelchak & Schofield, 1985), on the order of several minutes a day. Having the issue on their minds apparently creates **detailed and concrete images of nuclear war** (Fiske et al., 1983; Milburn & Watanabe, 1985) like those mentioned earlier: images of **dismembered bodies, people screaming, buildings on fire, miles of rubble, and barren landscapes**. Presumably, their uniquely salient concreteimages **are motivating for antinuclear activists**. Moreover, **the combination of high perceived severity and high perceived likelihood of nuclear war is a good predictor of intent to become involved in antinuclear activity** (Wolf et al., 1986). A strong sense of political efficacy also distinguishes the activist (Garrett, 1985; Flamenbaum, Hunter, Silverstein, & Yatani, 1985; Hamilton et al., 1985; Milburn & Watanabe, 1985; Oskamp et al., 1985; Tyler & McGraw, 1983); this is true of political activists in general (Nie & Verba, 1975). The antinuclear activist believes that nuclear war is preventable, not inevitable, and that citizens working together can influence government action to decrease the chance of a nuclear war. **The** antinuclear **activist is** specifically **motivated by a sense of personal** political **capability combined with a belief in the efficacy of political action** (Wolf et al., 1986). The correlation between political efficacy and behavioral intent is substantial by social science standards (Schofield & Pavelchak, 1984; Wolf et al., 1986). Moreover, although activists believe that governments create the risk of nuclear war, they also believe that citizens can and should be responsible for preventing it (Tyler & McGraw, 1983). Not surprisingly, **considering their strong** sense of **political efficacy, antinuclear activists tend to participate in other types of political activity as well** (Fiske et al., 1983; Milburn & Watanabe, 1985; Oskamp et al., 1985). Thus, their antinuclear activity is not a special case.

The alt ignores history South China sea is based on historical and cultural tensions

Sterling Folker and Shinko 5 (Jennifer Sterling-Folker Poli Sci @ Connecticut (Stamford) And Rosemary Shinko IR @ Connecticut (Stamford) ‘5 “Discourses of Power: Traversing the Realist-Postmodern Divide” Millennium 33 (3) p. 658-660)

Granting that postmodernism is seeking out the sources for radical change in and of the Westphalian sovereign system, how else are sources for reinscripting to become translated into change in the Chinese-Taiwanese relationship except via the nations of China and Taiwan, their respective states, and the strategic relationship they share with the US? Doesn't the Taiwanese state also protect identity difference from Chinese repression? Collective identities may be socially-constructed, but their content can still be zero-sum**.** What would it have meant for the individuals of Taiwan in the 1970s to have refused the national, territorial security discourses of realism and to have embraced identity tolerance with China instead? Certainly the latter could only have been achieved by embracing China on its own terms, and so it would have involved the political and economic subjugation of the Taiwanese people to Beijing. The vast majority of Taiwanese were already victims of identity intolerance at, the hands of the Nationalist KMT, but they were neither Mandarin-speaking, nor did they identify with the Chinese mainland. Although the KMT were initially welcomed by the Taiwanese population as liberators from the Japanese occupation, Soong notes that 'the expectation that Taiwanese could now share power with their "mainland brothers" was crushed by the KMT'." Clashes and civil unrest ensued over KMT authoritarianism, corruption, and favoritism, and in 1947 the KMT declared martial law. The formation of political parties was banned, the military was given considerable legal and censorship powers, thousands of opponents were executed, and for the next thirty-five years Taiwan became a virtual police state dominated by Mainlanders who insisted that Mandarin be the official language. While the KMT remained obsessed with returning to mainland China, it was not a goal shared by many Taiwanese. Those who dreamt of Taiwanese independence from China developed underground or overseas movements that later evolved into the DPP. There was little desire among the majority of Taiwanese to embrace identity tolerance with China on the latter's terms. Simultaneously, there was the possibility of greater participation in the political institutions of Taiwan itself. For the Taiwanese, at that moment, to have refused the national, territorial security discourses of IR in favor of ambiguity and tolerance would have been to refuse the very identity and goals that distinguished them from the KMT and mainland Chinese (and for which many of them had suffered). It would have meant a refusal of themselves, which hardly seems likely or even desirable. As Elshtain puts it, 'we are dealing with identities, remember, not easily sloughed off external garments'." To say that if the Taiwanese stop thinking of China as a problem then tensions will dissolve is true in an abstract sense but not in any practical sense for the vast majority of people who live these identities. It was the Taiwanese desire to embrace statehood and the Parameters of the Westphalian system that, along with **US strategic deterrence, prevented a Chinese invasion of Taiwan.** To argue that the individuals of Taiwan would be safer if they refused statehood is to ignore the Chinese commitment since 1949 to subjugate Taiwan according to its own identity parameters. It is also to ignore the desire of the vast majority of Taiwanese not to be subjugated according to those parameters. The ROC would not even exist if it had not been for classic balance-of-power politics between two nation-states, the US and China, in the context of the early Cold War. Its evolution into a democracy is just as indebted to its relationship with the US, since it was the US decision to improve its relations with China in the 1970s that forced the KMT to pursue democratisation as means of national consciousness. Simultaneously, the goal of Taiwanese nation-state building was to confirm for other nation-states that the ROC had a legitimate claim to sovereignty (in opposition to China's claim that it is only a province), because the ROC government has the legitimate support of its population. Hence the increasing identity tolerance between Taiwan and China has only been realised through the avenues and mechanisms of national identity politics and the governing institutions of China and Taiwan, not outside or beyond them. Certainly nations have the option of refusing to become nation-states, but it would make little sense for nations and the individuals who comprise them to do so, when those parameters promise control over a specified territory via intra-national decision-making institutions. This is why civil wars are endemic to the Westphalian system and why nations will pursue statehood even when they are, in relative terms, politically and economically comfortable. If we don't examine particular, historical contexts, identities, and institutions — that is, if we insist upon, in Morgenthau's words, the 'neglect of the contingencies of history and of the concreteness of historical situations'" — then we will miss the way in which radical ideas work through and shape existing institutions and practices, and are in turn shaped by them. Thus we will miss the most essential link between that which changes (namely, history), and what remains the same (namely, structure).

Scientific pragmatism is a reliable way of building knowledge

Jean **Bricmont 1**, professor of theoretical physics at the University of Louvain, “Defense of a Modest Scientific Realism”, September 23, <http://www.physics.nyu.edu/faculty/sokal/bielefeld_final.pdf>

Given that instrumentalism is not defensible when it is formulated as a rigid doctrine, and since redefining truth leads us from bad to worse, what should one do? A hint of one sensible response is provided by the following comment of Einstein: Science without epistemology is insofar as it is thinkable at all primitive and muddled. However, no sooner has the epistemologist, who is seeking a clear system, fought his way through such a system, than he is inclined to interpret the thought-content of science in the sense of his system and to reject whatever does not fit into his system. The scientist, however, cannot afford to carry his striving epistemological systematic that far. ... He therefore must appeal to the systematic epistemologist as an unscrupulous opportunist.'1'1 So let us try epistemological opportunism. We are, in some sense, "screened'' from reality (we have no immediate access to it, radical skepticism cannot be refuted, etc.). There are no absolutely secure foundations on which to base our knowledge. Nevertheless, we all assume implicitly that we can obtain some reasonably reliable knowledge of reality, at least in everyday life. Let us try to go farther, putting to work all the resources of our fallible and finite minds: observations, experiments, reasoning. And then let us see how far we can go. In fact, the most surprising thing, shown by the development of modern science, is how far we seem to be able to go. Unless one is a solipsism or a radical skeptic which nobody really is one has to be a realist about something: about objects in everyday life, or about the past, dinosaurs, stars, viruses, whatever. But there is no natural border where one could somehow radically change one's basic attitude and become thoroughly instrumentalist or pragmatist (say. about atoms or quarks or whatever). There are many differences between quarks and chairs, both in the nature of the evidence supporting their existence and in the way we give meaning to those words, but they are basically differences of degree. Instrumentalists are right to point out that the meaning of statements involving unobservable entities (like "quark'') is in part related to the implications of such statements for direct observations. But only in part: though it is difficult to say exactly how we give meaning to scientific expressions, it seems plausible that we do it by combining direct observations with mental pictures and mathematical formulations, and there is no good reason to restrict oneself to only one of these. Likewise, conventionalists like Poincare are right to observe that some scientific "choices", like the preference for inertial over noninertial reference frames, are made for pragmatic rather than objective reasons. In all these senses, we have to be epistemological "opportunists". But a problem worse than the disease arises when any of these ideas are taken as rigid doctrines replacing 'realism". A friend of ours once said: "I am a naive realist. But I admit that knowledge is difficult." This is the root of the problem. Knowing how things really are is the goal of science; this goal is difficult to reach, but not impossible (at least for some parts of reality and to some degrees of approximation). If we change the goal if, for example, we seek instead a consensus, or (less radically) aim only at empirical adequacy then of course things become much easier; but as Bert rand Russell observed in a similar context, this has all the advantages of theft over honest toil. Moreover, the underdetermination thesis, far from undermining scientific objectivity, actually makes the success of science all the more remarkable. Indeed, what is difficult is not to find a story that "fits the data'\*, but to find even one non-crazy such story. How does one know that it is non-crazy7 A combination of factors: its predictive power, its explanatory value, its breadth and simplicity, etc. Nothing in the (Quinean) underdetermiiiation thesis tells us how to find inequivalent theories with some or all of these properties. In fact, there are vast domains in physics, chemistry and biology where there is only one"18 known non-crazy theory that accounts for Unknown facts and where many alternative theories have been tried and failed because their predictions contradicted experiments. In those domains, one can reasonably think that our present-day theories are at least approximately true, in some sense or other. An important (and difficult) problem for the philosophy of science is to clarify the meaning of “approximately true'" and its implications for the ontological status of unobservable theoretical entities. We do not claim to have a solution to this problem, but we would like to offer a few ideas that might prove useful.

Complexity incentivizes innovation, which solves collapse – the aff is a good example of how this can occur

Jeroen C.J.M. van den Bergh 3, Department of Spatial Economics, Faculty of Economics and Business Administration, Institute for Environmental Studies, Vrije Universiteit Amsterdam, and Tinbergen Institute, Evolutionary Analysis of the Relationship between Economic Growth, Environmental Quality and Resource Scarcity, June, <http://dare2.ubvu.vu.nl/bitstream/handle/1871/9611/04048.pdf?sequence=1>

An important question in the context of growth is whether technical innovation is subject to diminishing returns to scale? If one regards technical change as retrieving innovations from a limited set of potential innovations, then it would be subject to diminishing returns. One can, however, doubt whether this is true, notably when taking seriously the idea of Potts (2001) that evolution means additional connections and higher levels in systems. Hence, there does not seem to be a scarcity of innovations. Moreover, various strategies can counter diminishing returns, such as learning, enlarging the scale of activity, opening new markets, or seeking new applications. In addition, market mechanisms and profit seeking help solving problems of diminishing returns. When marginal returns from additional innovation and perfecting a product or process start to fall rapidly, firms will shift to new lines of R&D (product life cycle or technological regime; Nelson and Winter, 1982, p.258), be selected against (exit), or be taken over.

## 2ac must prohibit

We meet – we prohibit the current authority to strike using BOTH self defense and armed conflict authority

“Restrictions” are on time, place, and manner

Lobel, professor of law at the University of Pittsburgh, 2008

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf)

Throughout American history, Congress has placed restrictions on the President’s power as Commander in Chief to conduct warfare. On numerous occasions, **Congress has authorized the President to conduct warfare but placed significant restrictions on the time**, **place and manner of warfare**. Congress has regulated the tactics the President could employ, the armed forces he could deploy, the geographical area in which those forces could be utilized, and the time period and specific purposes for which the President was authorized to use force. Its regulations have both swept broadly and set forth detailed instructions and procedures for the President to follow. This historical practice is consistent with the Constitution’s text and Framers’ intent, which made clear that the President was not to have the broad powers of the British King, but was subject to the control and oversight of Congress in the conduct of warfare.

“On” means there’s no limits disad

Dictionary.com, http://dictionary.reference.com/browse/on

On

preposition

1.so as to be or remain supported by or suspended from: Put your package down on the table; Hang your coat on the hook.

2.so as to be attached to or unified with: Hang the picture on the wall. Paste the label on the package.

In means within – meriam websters no date

Their interp’s arbitrary – all prohibitions limit activity in specific circumstances

Restrict modified War powers authority not targeted killing authority means they are resoultionally unpredictable – that’s key to aff construction and research

That also means they overlimit – only allow the ban TK aff, and more broadly 4 affs on the topic – causes staleness and kills research.

Self- defense authority means no topical affs – eliminating armed conflict authority leaves SDA to do the same operation so no armed conflict aff is topical.

Prefer reasonability – competing interpretations causes a race to the bottom and over incentivizes going for T

## k3

The ballot should simulate the effects of the 1AC—key to fairness and relevant decision making

Donohue 13 [2013 Nation al Security Pedagogy: The Role of Simulations, Associate Professor of Law, Georgetown Law, <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2172&context=facpub>]

C ONCLUDING R EMARKS The legal academy has, of late, been swept up in concern about the econom ic conditions that affect the placement of law school graduates. The image being conveyed , however, does not resonate in every legal field. I t is particularly inapposite to the burgeoning opportunities presented to students in national security. That th e 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 this realm. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselv es. This does not mean that the goals identified are exclusive to, for instance, national security law , but it does suggest a greater nuance with regard to how the pedagogical skills present. With this approach in mind, I have here suggested six pedagogical goals for national security . For following graduation, s tudents must be able to perform in each of the areas identified — i.e., (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, ensuring that they will be most effective when they enter the field. The problem with the current structures in l egal education is that they fall short, in important ways, from helping students to obtain 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 exercises49 These are important devices to introduce into the classroom. T he 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 allows 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, here may provide an important way forward. Such simulations also help to address 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 The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within it . I t 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 t he years to come.model above. NSL Sim 2.0 ce rtainly is not the only solution, but it does provide a starting point for moving forward.

Their model causes conservative fill-in

Jean **Bricmont 2**, professor of theoretical physics at the University of Louvain, “Postmodernism and its problems with science”, March 6, <http://www.dogma.lu/txt/JB-Postmodernism.pdf>

Another issue is the broader effect on the general culture of this kind of fraudulent work25: if almost anything can be said about the sciences, why should they be taken seriously? Epistemic and cultural relativism and sloppy thinking about the sciences strengthen each other. We fear that skepticism and hostility to science and reason, if unchecked, will ultimately lead to cultural disasters: pure skepticism won't last, and religious fundamentalism or other forms of deep irrationalism will take its place. As pointed out by Weinberg: As I mentioned earlier, our civilization has been powerfully affected by the discovery that nature is strictly governed by impersonal laws. As an example I like to quote the remark of Hugh Trevor-Roper that one of the early effect of this discovery was to reduce the enthusiasm for burning witches. We will need to confirm and strengthen the vision of a rationally understandable world if we are to protect ourselves from the irrational tendencies that still beset humanity. [Weinberg (1996a).]

Threats are key to effective scenarios

Edward Borodzicz and Kees van Haperen 2, Edward is currently programme director for a new MSc in Corporate Risk and Security Management at Southampton University, Kees is a member of the governing council of the European Crisis Management Academy, Individual and Group Learning in Crisis Simulations, January, <http://eprints.soton.ac.uk/36126/1/M02-5.pdf>

‘Crises and disasters are complex events taking place within complicated environments and resulting in diverse responses. To represent those conditions adequately extensive preparation has to be undertaken to provide a training situation in which learning, understanding and added competence can result’ (Rolfe, 1998: 1415). Simulations should aim at reproducing reality as closely as possible so that participants can experience elements of the crisis management process that they will have to live through when a real crisis or disaster occurs. A distinction should be made here between physical and psychological fidelity. The former is often perceived to be more effective as a learning environment - this may even be true for emergency exercises - but for crisis situations it is the latter which provides the best learning environment. Gredler argues (1992: 80-81), effective crisis management simulations encourage participants to perceive the scenario as a threat, with time limitations for effective data gathering. Simulations should produce the similar reactions and feelings in participants as experienced in real life crisis events, e.g. tension, uncertainty, time pressure, sense of inadequate information and frustration (Ibid., 1992: 82). It is stressed that the characteristics of crises significantly differ from emergencies or disasters. Hence, this difference should be translated into the simulation design, and the simulated crisis should not be one perceived to be a low-threat, low-surprise event that may be resolved over a period of time (Gredler, 1992: 81). However, Loveluck (1994) notes that managers tend to require intricate and highly elaborate designs that are often intended to demonstrate the complexity of either their managerial function or their organisation. In practice, complex simulations are difficult to administer and may even prove poor learning vehicles. It is therefore stressed that ‘simulations should display an external simplicity which masks their internal complexity’ (Loveluck, 1994). He also argues, that in a business management context, trainers may place too much emphasis on the need for realism, possibly at the expense of running a good simulation; therefore ‘verisimilitude should be valued more highly than realism’(Loveluck 1994).

## k2

Method focus dooms the alt

**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.

And, strategic anthropomorphism – all creatures identify with similar beings – it’s inevitable, but we can make decisions for the benefit of other beings

Werner **Scholtz 5**, Associate Professor in Law – North-West University, “animal culling: a sustainable approach or anthropocentric atrocity?: issues of biodiversity and custodial sovereignty”, MqJICEL (2005) Vol 2

The CBD recognizes that the value of the biosphere is integrated with the importance of conservation of the biosphere for human survival. Loss of biodiversity in nature may impact on man just as the actions of man impact on nature.49 The anthropocentric approach evoked responses from various scholars who have advocated that nature itself should be awarded subjective rights.5 In a previous publication the author introduced the so-called ‘qualitative approach’ in order to escape the dichotomy of subject (man) and object (nature). A holistic approach is needed whereby the two opposites are united in a single organism. Instead of arguing for or against an anthropocentric approach, one must favour and promote ‘quality’ of the organism as the goal which needs to be achieved.51 According to this viewpoint it is impossible to escape anthropocentrism. **Anthropocentrism is inevitable** even in the instance where human beings confer rights on natural objects. It is futile to engage in an approach which does not pay heed to this reality. The focus on quality reconciles the interests of both man and nature. Quality encompasses quality of life for man which requires quality of, for instance, the ecosystem of which humans are a part. The focus on quality provides one with a certain conceptual understanding of the relationship between man and the environment. The question which arises is whether the qualitative approach really addresses the criticism that sustainable development is anthropocentric and that the interests of nature may accordingly be disregarded in favour of human needs? The acknowledgement that one should focus on quality already manifests in the concept of diluted anthropocentrism. This diluted form of anthropocentrism may also be relevant for the notion of sustainable development. To illustrate this point one may refer to the precautionary approach which is one of the well-known principles of sustainable development. This approach requires that despite absence of scientific evidence that actions may harm the environment, protective and/or prohibitory measures must be taken. The broad scope of this approach implies that various factors must be taken into account. These may extend beyond human interests to include the interests of nature.52 This important principle or approach is indicative of the diluted anthropocentrism inherent in the ideal of sustainable development. If one also takes notice of intergenerational equity in addition to the precautionary approach sustainable development, then the line of reasoning is further strengthened as actions detrimental to nature may have negative effects on future generations. The quality of life of future generations may be diminished by a decrease in biodiversity through the actions of the present generation. The recognition of the qualitative approach may be of importance in decisionmaking in issues of sustainable development. Where a decision-maker needs to balance the three elements of sustainable development; namely ecological, developmental and societal needs; the qualitative approach implies that one does not change the values which need to be balanced. Rather, it is a case where the perceptions of the adjudicator are altered to accord with reality. This resulting decision would reflect the reality which does not support the ‘fiction’ that the human component can be disregarded as the ecocentric approach propounds. One of the presumptions on which the qualitative theory is built is that conservation and use can only be achieved from a homocentric approach and further, that alternative theories establish a fiction whereby the human adjudicator is disregarded by way of elimination. This does not reflect reality. For some commentators this presumption is unconvincing. For example, Gillespie contends that: … non-anthropocentric theorists are not claiming that it is possible to know exactly what it is to be a non-human piece of Nature, but only that it is still possible to make certain broad assumptions about the general interests of living entities. Without this ability, a male could not be non-sexist, or a Caucasian, non-racist.53 Gillespie’s viewpoint is not without merit, but does this mean that the qualitative approach is incorrect? That the human component in relation to environmental protection cannot be disregarded does not imply that humans cannot make decisions which are in the broad interests of biodiversity. By way of analogy, it would of course be absurd to state that a caucasian is incapable of being non-racist. These examples do not, however, suffice to explain the complex homocentric relationship between man and the environment. Caucasians may be non-racist, but in a society in which they dominate it is most probable that they may pursue their self-interest as a group in certain circumstances.54 This does not mean that the dominant group is unaware of the general interests of others, but rather pertains to the adjudication of interests. As such it is not a question of knowledge regarding the interest of other entities, but the issue pertains to the adjudication of interests. The examples provided by Gillespie furthermore differ from the situation between humans and nature. Objects of nature are incapable of voicing their concerns in the same way as humans. It is accordingly true that man may make certain assumptions regarding nature’s interests, but man will evaluate these interests from an anthropocentric perspective. The qualitative theory therefore attempts to ameliorate man’s selfinterest to accord with a more holistic approach in which the interests of man are more in line with the requirements of biodiversity, for instance.55 According to the qualitative approach, biodiversity needs to be conserved and used in a sustainable fashion because of its instrumental value. Biodiversity has a qualitative instrumental value which far exceeds the total of man’s self-interest. Self-interest, in this instance, presupposes a certain interest in non-human elements because of the linkage between man and environment.

The alt uses flawed knowledge – our framework creates actual change and solves the K

Trombetta 11 (Maria, PhD in International Politics and postdoctoral researcher at the department of Economics of. Infrastructures, “Rethinking the securitization of the environment: Old beliefs, new insights” 2011, Securitization Theory: How Security Problems Emerge and Dissolve, Chapter 7, pg 142, pg googlebooks//greenhill-au)

These considerations lead to the final peculiarity, which can also be considered as the solution adopted by the CS to deal with the problem that, within the environmental sector, several appeals to security have not brought about the logic of security and the practices associated with it. The third peculiarity is that many securitizing moves result in politicization. This is problematic for the School, which argues that "transcending a security problem by politicizing it cannot happen through thematization in security terms, only away from such terms" (Waver 1995: 56). For the School, once the enemy logic has been inscribed in a context, it is very difficult to return to an open debate. Nevertheless, the various politicizations of environmental issues that followed the appeal to security - those the CS dismissed as failed securitizations-seem to suggest that there is a tendency to politicize issues through their securitization. Securitization theory, for the CS, is meant to be descriptive; however, the environmental sector suggests that the focus on the formal aspect of the speech act security prevents it from providing an adequate instrument for analysis. A de-contextualized, self-referential approach to security underestimates two aspects: first, different contexts can have different logics and practices of security, and they can influence and challenge each other; this process is not one way only or from the military to the other sectors. A lot of work has been done on the implications of applying the (realist) logic of security to environmental issues, while little has been done on how the environmental logic (and which one; influences security practice. This transformation is likely to occur through securitizing moves - that is, through appeals to security in different contexts and for different needs - rather than away from them. Second, the logic of security itself can change, as new principles, actors, capabilities and threats gain relevance and different security discourses emerge (I Iuysmans 2002: 58). Environmental security is about transformation and this is the reason why the environmental sector is so problematic. In order to provide an account of the discursive formation of security issues and of the process of transformation that securitization implies, it is necessary to move away from the emphasis on the self-referential character of the speech act security to move into the realm of communicative action (Williams 2003: 512) and social change. This is in line with the suggestion proposed by de Wilde that securitization "triggers

The permutation’s weak anthropocentrism solves the K—their absolutism is internally contradictory.

Lee ‘8

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(Wendy Lynne, “Environmental Pragmatism Revisited: Human-Centeredness, Language, and the Future of Aesthetic Experience,” Environmental Philosophy 5:1)

In 1984 pragmatist Bryan Norton published a landmark essay in environmental theory entitled "Environmental Ethics and Weak Anthropocentrism." In it he argues that the long-standing debate between anthropocentrists (those for whom all assignments of value accrue to human-centered instrumental interests) and nonanthropocentrists (those for whom nonhuman animals and ecosystems have a value intrinsic to and independent of human use, including some of Kirkman's speculative environmentalists) "is far less important than is usually assumed" (Norton 2003, 163). Norton argues that the debate itself is mired in confusion over the concept "anthropocentrism," and that clarifying its meaning will show, first, that nonanthropocentrism is at least implausible if not incoherent**,** and second, that anthropocentrism properly understood need not yield the human chauvinism attributed to it. For the nonanthropocentrist there are at least some living (and possibly nonliving) things whose value inheres in them in such fashion that we must regard this value (and hence the entity) as independent of any use we might otherwise make of them. It is, then, immoral to treat merely instrumental^ anything that can be shown to have such a value. However morally attractive a notion, **intrinsic value's conceptual difficulties are many**, not the least of which, as Norton suggests, is whether it can be shown that there exists any such entity or quality in the universe (Norton 2003, 164-5). As anthropocentrists are quick to point out, the concept of intrinsic value is inherently vague: To what does it apply? Only individuals? Species? Ecosystems? According to what criteria? How do we know? It is hard to imagine satisfactory answersto these questions, especially since **we may be likely to apply the concept to Giant Pandas but deny it to the Avian Bird Flu.** What counts, moreover, as an individual, a species, or an ecosystem is itself less a truth about nature than an artifact of human-made nomenclature. Lastly, even if we could determine a method for recognizing intrinsic value, it is not clear it matters much. After all, the power to enslave and exploit is still on our side. Tuming then to anthropocentrism, what a proper understanding of the concept requires, argues Norton, is a distinction between what he calls "felt preferences," namely, "any desire or need of a human individual that can at least temporarily be sated by some specifiable experience of that individual," and "considered preferences," that is, "any desire or need that a human individual would express after careful deliberation, including judgment that the desire or need is consistent with a rationally adopted world view" (Norton 2003, 164). A felt preference, then, might be to satiate thirst, while a considered preference might direct itself to a particular lager or porter. That is, **felt preferences are** represented by **survival interests** and basic desires while considered preferences are constructed from these interests and informed by tbe contexts within which they are satisfied. Given this distinction, Norton goes on to identify two forms of anthropocentrism: A value theory is strongly anthropocentric if all value countenanced by it is explained by reference to satisfaction of felt preferences of human individuals. A value theory is weakly anthropocentric if all value countenanced by it is explained by reference to satisfaction of some felt preference of a human individual or by reference to its bearing upon the ideals which exist as elements in a world view essential to determinations of considered preferences. (Norton 2003, 165) It is important to note that while strong anthropocentrism differs a good deal fi'om weak with respect to the role played by felt preferences in detenTiining and justifying human action, it does share in common with the nonanthropocentrist a concept of human-centeredness defined in terms of human entitlement. What the strong anthropocentrist endorses, the nonanthropocentrist excoriates. If, for example, "humans have a strongly consumptive human value system, then their 'interests,'" notes Norton, "dictate that nature will be used in an exploitive manner" (Norton 2003, 165). Strong anthropocentrists endorse this view, arguing that environmental conservation need take into account only those species and systems whose usefulness to human welfare, present or future, can be calculated in terms of costs and benefits to human beings. Nonanthropocentrists insist, however, that it is precisely this fundamentally chauvinistic aftitude that is producing the environmental crises we now face. The nonanthropocentrist is right to claim that environmental deterioration owes a good deal to unrestrained human excess; few deny the connection between global warming and the production of greenhouse gases, or the link between the loss of habitat and the escalation of species extinction. Nonetheless, deterioration need not follow from human-centeredness**,** argues the strong anthropocentrist, since preserving resources also falls within the ambit of human interest. Weak anthropocentrism aims to carve a middle routebetween strong anthropocentrism's potential for excess and nonanthropocentrism's conceptual inchoateness insofar as it recognizes (1) that not all felt preferences are necessarily rational or consonant with a rational world view; (2) that considered preferences are not always consistent with felt preferences; and, lastly, (3) that the sense that something has value does not necessarily imply that such value is unassigned. If I, for example, have a felt preference for having nonhuman animals available to my affection that 1 think can only be fulfilled by going to the zoo every day, but also a considered preference that going to the zoo everyday will likely thwart my pursuit of other worthy goals, then I am faced with a conflict between a less than wholly rational felt preference and a rationally considered one. Moreover, although I may believe that my going every day is justified as a response to each animal's intrinsic value, my feeling that the zoo animals have such a value is not evidence that they do. Weak anthropocentrism, argues Norton, offers neither autonomie sanction to the excesses of the strong anthropocentrist nor concession to a notion of value that has no conceptual moorings. By distinguishing between felt and considered preferences, it invites us to reflect case by case upon whether our felt preferences ought always to be satisfied, or at least at the expense of other human and/or nonhuman beings. In classic Deweyan tradition, weak anthropocentrism seeks no ultimate truth about our responsibilities to the environment, but rather "provides a basis for criticism of value systems which are purely exploitative of nature" (Norton 2003, 165). The provision of such a basis, argues Norton, follows from the possibility of articulating a worldview—a coherent set of evolving, contextually sensitive, considered preferences—that recognizes the interdependence of human beings and nature, and thus **provides a foundation for** the **critique** of practices inconsonant with this worldview. The concept "interdependence" does not, however, necessarily imply any additional inferences such as the claim that the Earth itself is an organism that can be harmed. Instead, weak anthropocentrism invites us to consider whether our preferences are something we merely have or something over which we exercise some control. Moreover, it provides a basis, argues Norton, for the review of value formation itself in that, by distinguishing between felt and considered preferences, we can query whether what may appear to be a felt preference is actually a considered one whose duration or tradition makes it seem natural (2003, 165), but whose practice may no longer be justified. Perhaps most importantly, however, for a practicable environmental ethic, is the role played in Norton's argument by the deeply Deweyan concept of experience: Because weak anthropocentrism places value not only on felt preferences, but also on the process of value formation embodied in the criticism and replacement of felt preferences with more rational ones, it makes possible appeals to the value of experience of natural objects and undisturbed places in human value fonnation. To the extent that environmentalists can show that values are formed and infomied by contact with nature, nature takes on value as a teacher of human values. Nature need no longer be seen as a satisfier of fixed and often consumptive values—it also becomes an important source of inspiration in value formation. (2003, 165) The experience of nature can**, on Norton's view,** encourage **deeper** self-reflection about whether the satisfaction of particular felt preferences is rational given a world view composed of felt and considered preferences within which the environment is accorded value.

No link—their authors indict environmental exploitation, not restoration—we’re the latter.

Sandler ’10

(Ronald, Associate Professor of Philosophy @ Northeastern University, “Global Warming and Virtues of Ecological Restoration,” <http://hettingern.people.cofc.edu/Nature_Technology_and_Society_Fall_2010/Sandler_Global_Warming_and_Virtues_of_Ecological_Restoration.pdf>, AM)

In this way, **all** restoration (and all other assisted recovery) has anthropocentric dimensions. It is anthropocentrism in a sense inextricable not just from restoration or assisted recovery, but from environmental ethics and ethics more broadly. We are the ones responsible for making decisions regarding the considerations that we are responsive to and our forms of responsiveness. **There is no other option**. Even if we try to abdicate the choice (the design) to nature (or god), we choose the aspects of nature (or the theology) to which we “defer” (Vogel, 2006). This sort of anthropocentrism is distinct from anthropocentrism that denies the moral considerability or inherent worth of all non-human entities or that denies the intrinsic value of human-independent aspects of nature. After all, even if non-humans (or human-independent parts of nature) do have inherent worth in the strongest possible sense—i.e. independent of their being valued—it is still up to us to recognize that value and respond appropriately to it (i.e. to do what we should). Therefore, that design **is inextricable from ecological restoration**, and that design is inherently anthropocentric (or, perhaps more appropriately, anthropogenic), does not itself imply that restoration is problematic on any theory of environmental values.

Their ethics collapses down to the lowest common denominator – causes genocide

David R. **Schmahmann and** Lori J. **Polacheck**, a partner in the firm of Nutter, McLennan & Fish, Boston College Environmental Affairs Law Review, SPRING, **95**

In the end, however, it is the aggregate of these characteristics that does render humans fundamentally, importantly, and unbridgeably different from animals, even though it is also beyond question that in individual instances -- for example, in the case of vegetative individuals -- some animals may indeed have higher cognitive skills than some humans. To argue on that basis alone, however, that human institutions are morally flawed because they rest on assumptions regarding the aggregate of human abilities, needs, and actions is to deny such institutions the capacity to draw any distinctions at all. Consider the consequences of a theory which does not distinguish between animal life and human life for purposes of identifying and enforcing legal rights. Every individual member of every species would have recognized claims against human beings and the state, and perhaps other animals as well. As the concept of rights expanded to include the "claims" of all living creatures, the concept would lose much of its force, and human rights would suffer as a consequence. Long before Singer wrote Animal Liberation, one philosopher wrote:  If it is once observed that there is no difference in principle between the case of dogs, cats, or horses, or stags, foxes, and hares, and that of tsetse-flies or tapeworms or the bacteria in our own blood-stream, the conclusion likely to be drawn is that there is so much wrong that we cannot help doing to the brute creation that it is best not to trouble ourselves about it any more at all. The ultimate sufferers are likely to be our fellow men [sic], because the final conclusion is likely to be, not that we ought to treat the [\*753] brutes like human beings, but that there is no good reason why we should not treat human beings like brutes. Extension of this principle leads straight to Belsen and Buchenwald, Dachau and Auschwitz, where the German and the Jew or Pole only took the place of the human being and the Colorado beetle. 26

The alt can’t solve the case

**Light 2** associate professor of philosophy and environmental policy, and director of the Center for Global Ethics at George Mason University [Andrew, “Contemporary Environmental Ethics From Metaethics to Public Philosophy,” *Metaphilosophy* 33.4, July]

A second problem with this overall approach is political. As advice to environmentalists, the approach would be **politically suicidal**. To the extent that such considerations as utility benefits for preservation or development are a reasonably persistent part of the discussion over whether to develop the Amazon, adopting an approach that conveniently skirts around such issues ensures that environmentalists will be excluded from such discussions, or at least easy to ignore. To come to the bargaining table armed with a theory “making questions of human benefit and satisfaction irrelevant,” when issues of human benefit and satisfaction are necessarily on the table, and when representatives of those interests are the only ones who are at the table and able to articulate those interests, would **make bargaining irrevocably caustic if not impossible**. To negotiate environmental priorities from the point of view of an irreconcilable and intractable moral view opposing human interests is not to engage in negotiations but simply to make demands from a presumed superior moral position. To the extent that it is difficult for environmentalists even to find themselves with a voice at a forum where such decisions are made, this approach would be, at the very least, naïve and imprudent. It also stands against the substantial amount of research that has been done on negotiations and policy making (for an application to similar cases see de-Shalit 2001).

Human-centered ethics solve their impacts

**Hwang** 200**3** Professor in the Department of Philosophy at Seoul National University [Kyung-sig, “Apology for Environmental Anthropocentrism,” Asian Bioethics in the 21st Century, http://eubios.info/ABC4/abc4304.htm]

The third view, which will be defended here, is that there is no need for a specifically ecological ethic to explain our obligations toward nature, that our moral rights and duties can satisfactorily be explained in terms of traditional, human-centered ethical theory.[4] In terms of this view, ecology bears on ethics and morality in that it brings out the far-reaching, extremely important effects of man's actions, that much that seemed simply to happen-extinction of species, depletion of resources, pollution, over rapid growth of population, undesirable, harmful, dangerous, and damaging uses of technology and science - is due to human actions that are controllable, preventable, by men and hence such that men can be held accountable for what occurs. Ecology brings out that, often acting from the best motives, however, simply from short-sighted self-interest without regard for others living today and for those yet to be born, brings about very damaging and often irreversible changes in the environment, changes such as the extinction of plant and animal species, destruction of wilderness and valuable natural phenomena such as forests, lakes, rivers, seas. Many reproduce at a rate with which their environment cannot cope, so that damage is done, to and at the same time, those who are born are ill-fed, ill-clad, ill-sheltered, ill-educated. Moralists concerned with the environment have pressed the need for a basic rethinking of the nature of our moral obligations in the light of the knowledge provided by ecology on the basis of personal, social, and species prudence, as well as on general moral grounds in terms of hitherto unrecognized and neglected duties in respect of other people, people now living and persons yet to be born, those of the third world, and those of future generation, and also in respect of preservation of natural species, wilderness, and valuable natural phenomena. Hence we find ecological moralists who adopt this third approach, writing to the effect that concern for our duties entail concern for our environment and the ecosystems it contains. Environmental ethics is concerned with the moral relation that holds between humans and the natural world, the ethical principles governing those relations determine our duties, obligations, and responsibilities with regard to the earth's natural environment and all the animals and plants inhabit it. A human-centered theory of environmental ethics holds that our moral duties with respect to the natural world are all ultimately derived from the duties we owe to one another as human beings. It is because we should respect the human rights, or should protect and promote the well being of humans, that we must place certain constraints on our treatment of the earth's environment and its non-human habitants.[5]

Hierarchy is inevitable – the alt is utopian nostalgia

Damian Finbar **White**, **3**. Lecturer at Goldsmith College. “Hierarchy, Domination, Nature,” Organization and Environment, Sage Journals.

One immediate problem that arises is that it is difficult to avoid being struck by the sheer vagueness and imprecision that seem to linger around this whole enterprise. So although “organic society” is not presented as a hypothetical “state of nature” but postulated as a historical actuality, as Mary Mellor (1992, p.124) has noted, it is never made very clear by Bookchin when or where this early form of human association actually existed. At points in The Ecology of Freedom, one can find references to an “early Neolithic” village society and get the impression that organic society consequently can be located at a crossover moment when hunter-gatherers first began to settle down into a horticultural society. Elsewhere, in other writings, one can gain the distinct impression that this society stretched well up to the emergence of the early cities.11 Bookchin’s narrative does seem further problematic by the manner in which his expositions wings rather dramatically between a “reflexive voice,” which appears to accept he is embarking on a highly speculative exercise to a much more confident tone, which at times seems to virtually claim a God’s eye view. Thus, one encounters persistent examples of a carefully qualified and tentative insight being quickly reworked into a substantive proposition a few sentences later, where speculation on “preliterate” practises, values, or institutions is then suddenly transformed into an implausibly detailed account of “how things really were back then.”12 Given the time scales that are being dealt with here, and the manner in which these speculations are often unsupported by evidence or supported by one or two case studies, it is difficult to avoid an immediate sense that a certain creative embellishing is going on. Additional problems emerge when it becomes evident that Bookchin’s own understanding of what he has demonstrated does, at times, seem at odds with the actual narrative he provides. For example, as we have seen, one of the boldest claims that Bookchin makes of his account of historical development is that it “radically reverses” central features of historical materialism. Thus, Marx and Engels, Adorno and Horkheimer, are all chastised for their Victorian image of “stingy nature” and the view that freedom from material want necessitated the “domination of nature.” Indeed, at various points, Bookchin (1990b) has emphatically rejected the view “that forms of domination . . . have their sources in economic conditions and needs” (p. 45). On the contrary, we are told the idea of domination initially arose from within societies as part of the development of social hierarchies, “which are not necessarily economically motivated at all” (p. 46). However, an implicit recognition of the role that material factors played in the development of hierarchy, and even a certain sense that the development of hierarchy is inevitable, can also be unearthed from Bookchin’s work.

And the permutation’s pragmatic struggle for animal rights is the only feasible option – the alt devolves into paradigm wars

David **Favre,** Professor of Law at MSU, **4** 10 Animal L. 87

This division stems from divergent visions and methodologies, as well as an unwillingness to compromise

in the political arena or to join with others who do not hold the same purity of view. Human pride seems to be a major issue, hindering non-human animals from receiving the help that they need. Progressing toward a goal is not an immoral compromise simply because the advancement does not represent a full realization of a personal philosophy. It is the height of human arrogance to sacrifice the welfare of existing animals because the political system will not give complete and immediate satisfaction. In 2000, Congress passed the Chimpanzee Health Improvement, Maintenance, and Protection Act.1 The issue before Congress was what should be done for or with the more than 1,000 chimpanzees who were part of the federal research system for many years, but are no longer needed. Congress opted to create retirement sanctuaries that are operated and supported partially by Congress and partially by non-profit organizations. ~ Though this provided positive alternatives for many chimpanzees, there was a significant split in the animal rights movement, with a number of groups opposing the legislation because it did not go far enough in that the requirement that chimpanzees be permanently retired was removed. 2 Do we have to reach 100% agreement within the movement about the ultimate end point of legal change in order to take the next step? I hope not, because otherwise next steps will not happen. Animal rights activists lack a plan for advancing toward a better future in a systemic way. There must be focus on what should and can be accomplished in the next five years, as well as who can best accomplish it. Many in the animal rights movement possess an incorrect understanding of property law. Progress will not be made if one's threshold engagement with the legal system is to demand that the property status of animals be eliminated. lQ It is highly unlikely that the elimination of property status will occur in the foreseeable future. To seek such abolition is unwise and unnecessary. It is unwise because the [\*91] only outcome from the adoption of this view may be the elimination of domesticated animals altogether, which the author believes is a wrong in and of itself. It is unnecessary because property law can be transformed such that ownership is redefined as guardianship, allowing animals to receive the legal respect that they deserve. II It is an incorrect legal analysis that the interests of animals cannot be accommodated within the legal system if they remain legal property. 12

## k1

Life has intrinsic and objective value achieved through subjective pleasures---its preservation should be an a priori goal

Kacou 8

(Amien WHY EVEN MIND? On The A Priori Value Of “Life”, Cosmos and History: The Journal of Natural and Social Philosophy, Vol 4, No 1-2 (2008) [cosmosandhistory.org/index.php/journal/article/view/92/184](http://cosmosandhistory.org/index.php/journal/article/view/92/184" \t "_blank))

Furthermore, that manner of finding things good that is in pleasure can certainly not exist in any world without consciousness (i.e., without “life,” as we now understand the word)—slight analogies put aside. In fact, we can begin to develop a more sophisticated definition of the concept of “pleasure,” in the broadest possible sense of the word, as follows: it is the common psychological element in all psychological experience of goodness (be it in joy, admiration, or whatever else). In this sense, pleasure can always be pictured to “mediate” all awareness or perception or judgment of goodness: there is pleasure in all consciousness of things good; pleasure is the common element of all conscious satisfaction. In short, it is simply the very experience of liking things, or the liking of experience, in general. In this sense, pleasure is, not only uniquely characteristic of life but also, the core expression of goodness in life—the most general sign or phenomenon for favorable conscious valuation, in other words. This does not mean that “good” is absolutely synonymous with “pleasant”—what we value may well go beyond pleasure. (The fact that we value things needs not be reduced to the experience of liking things.) However, what we value beyond pleasure remains a matter of speculation or theory. Moreover, we note that a variety of things that may seem otherwise unrelated are correlated with pleasure—some more strongly than others. In other words, there are many things the experience of which we like. For example: the admiration of others; sex; or rock-paper-scissors. But, again, what they are is irrelevant in an inquiry on a priori value—what gives us pleasure is a matter for empirical investigation. Thus, we can see now that, in general, something primitively valuable is attainable in living—that is, pleasure itself. And it seems equally clear that we have a priori logical reason to pay attention to the world in any world where pleasure exists. Moreover, we can now also articulate a foundation for a security interest in our life: since the good of pleasure can be found in living (to the extent pleasure remains attainable),[17] and only in living, therefore, a priori, life ought to be continuously (and indefinitely) pursued at least for the sake of preserving the possibility of finding that good. However, this platitude about the value that can be found in life turns out to be, at this point, insufficient for our purposes. It seems to amount to very little more than recognizing that our subjective desire for life in and of itself shows that life has some objective value. For what difference is there between saying, “living is unique in benefiting something I value (namely, my pleasure); therefore, I should desire to go on living,” and saying, “I have a unique desire to go on living; therefore I should have a desire to go on living,” whereas the latter proposition immediately seems senseless? In other words, “life gives me pleasure,” says little more than, “I like life.” Thus, we seem to have arrived at the conclusion that the fact that we already have some (subjective) desire for life shows life to have some (objective) value. But, if that is the most we can say, then it seems our enterprise of justification was quite superficial, and the subjective/objective distinction was useless—for all we have really done is highlight the correspondence between value and desire. Perhaps, our inquiry should be a bit more complex.

Humanity is valuable

**Bookchin**, philosophy – Institute for Social Ecology, **‘95**

(Murray, http://lamiae.meccahosting.com/~a0004f7f/StudiesInAnti-Capitalism/Documents\_TWO\_files/SocialAnarchismOrLifestyleAnarchism.pdf)

What is of crucial importance is that the regression to primitivism among lifestyle anarchists denies the most salient attributes of humanity as a species and the potentially emancipatory aspects of Euro-American civilization. Humans are vastly different from other animals in that they do more than merely adapt to the world around them; they innovate and create a new world, not only to discover their own powers as human beings but to make the world around them more suitable for their own development, both as individuals and as a species. Warped as this capacity is by the present irrational society, the ability to change the world is a natural endowment, the product of human biological evolution -- not simply a product of technology, rationality, and civilization. That people who call themselves anarchists should advance a primitivism that verges on the animalistic, with its barely concealed message of adaptiveness and passivity, sullies centuries of revolutionary thought, ideals, and practice, indeed defames the memorable efforts of humanity to free itself from parochialism, mysticism, and superstition and change the world.

Life outweighs value

Jonathan **Schell**, Writer-New Yorker, **’82** (The Fate of the Earth)

But the mere risk of extinction has a significance that is categorically different from, and **immeasurably greater** than, that of any other risk, and as we make our decisions we have to take that significance into account. Up to now, every risk has been contained within the frame of life; **extinction will shatter the frame**. It represents not the defeat of some purpose but an abyss in which all human purposes would be drowned for all time. We have no right to place the possibility of limitless, eternal defeat on the same footing as risks that we run in the ordinary conduct of our affairs in our particular transient moment of human history. To employ a mathematical analogy, we can say that although the risk of extinction may be fractional, the stake is, humanly speaking, infinite, and a fraction of infinity is still infinity. In other words, once we learn that a holocaust might lead to extinction, we have no right to gamble, because if we lose, the game will be over, and neither we nor anyone else will ever get another chance. Therefore, although, scientifically speaking, there is all the difference in the world between the mere possibility that a holocaust will bring about extinction and the certainty of it, morally they are the same, and we have no choice but to address the issue of nuclear weapons as though we knew for a certainty that their use would put an end to our species.

Util’s the only moral framework

**Murray 97** (Alastair, Professor of Politics at U. Of Wales-Swansea, *Reconstructing Realism*, p. 110)

Weber emphasised that, while the 'absolute ethic of the gospel' must be taken seriously, it is inadequate to the tasks of evaluation presented by politics. Against this 'ethic of ultimate ends' — Gesinnung — he therefore proposed the 'ethic of responsibility' — Verantwortung. First, whilst the former dictates only the purity of intentions and pays no attention to consequences, the ethic of responsibility commands acknowledgement of the divergence between intention and result. Its adherent 'does not feel in a position to burden others with the results of his [OR HER] own actions so far as he was able to foresee them; he [OR SHE] will say: these results are ascribed to my action'. Second, the 'ethic of ultimate ends' is incapable of dealing adequately with the moral dilemma presented by the necessity of using evil means to achieve moral ends: Everything that is striven for through political action operating with violent means and following an ethic of responsibility endangers the 'salvation of the soul.' If, however, one chases after the ultimate good in a war of beliefs, following a pure ethic of absolute ends, then the goals may be changed and discredited for generations, because responsibility for consequences is lacking. The 'ethic of responsibility', on the other hand, can accommodate this paradox and limit the employment of such means, because it accepts responsibility for the consequences which they imply. Thus, Weber maintains that only the ethic of responsibility can cope with the 'inner tension' between the 'demon of politics' and 'the god of love'. 9 The realists followed this conception closely in their formulation of a political ethic.10 This influence is particularly clear in Morgenthau.11 In terms of the first element of this conception, the rejection of a purely deontological ethic, Morgenthau echoed Weber's formulation, arguing tha/t:the political actor has, beyond the general moral duties, a special moral responsibility to act wisely ... The individual, acting on his own behalf, may act unwisely without moral reproach as long as the consequences of his inexpedient action concern only [HER OR] himself. What is done in the political sphere by its very nature concerns others who must suffer from unwise action. What is here done with good intentions but unwisely and hence with disastrous results is morally defective; for it violates the ethics of responsibility to which all action affecting others, and hence political action par excellence, is subject.12 This led Morgenthau to argue, in terms of the concern to reject doctrines which advocate that the end justifies the means, that the impossibility of the logic underlying this doctrine 'leads to the negation of absolute ethical judgements altogether'.13

Global extinction risks require a revision of the politics of compassion – survival is still paramount. New risks dictate embracing our ethic DEPSITE their impacts

Winchester 94

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Nietzsche's Aesthetic Turn

As uninformed as it is to assume that there is an easy connec- tion between his thought and National Socialism, it is neither diffi- cult nor misguided to consider his lack of social concern. Nietzsche saw one danger in our century, but failed to see a second. His critique of herd mentality reads like a prophetic warning against the dictatorships that have plagued and continue to haunt the twentieth cen- tury. But the context of our world has changed in ways that Nietzsche never imagined. We now have, as never before, the ability to destroy-the planet. The threat of the destruction of a society is not new. From the beginnings of Western literature in the Iliad and the Odyssey, the Western mind has contemplated the destruction that, for example, warfare has wrought. Although the Trojan war destroyed almost everyone involved, both the victors and the van- quished, it did not destroy the entire world. In the twentieth century, what has changed is the scale of destruction. If a few countries destroy the ozone layer, the whole world perishes, or if two countries fight a nuclear or biological war, the whole planet is threatened. This is something new in the history of the world/ The intercon- nectedness of the entire world has grown dramatically. We live, as never before, in a global community where our actions effect ever- larger numbers of the world's population. The earth's limits have become more apparent. Our survival depends on working together to solve problems like global pollution. Granted mass movements have instituted reigns of terror, but our survival as a planet is becoming ever-more predicated on community efforts of the sort that Nietzsche's thought seems to denigrate if not preclude. I do not criticize Nietzsche for failing to predict the rise of problems requiring communal efforts such as the disintegration of the ozone layer, acid rain, and the destruction of South American rain forests. Noting his lack of foresight and his occasional extrem- ism, I propose, in a Nietzschean spirit, to reconsider his particular tastes, without abandoning his aesthetic turn. Statements like "com- mon good is a self-contradiction" are extreme, even for Nietzsche. He was not always so radical. Yet there is little room in Nietzsche's egoism for the kind of cooperation and sense of community that is today so important for our survival. I am suggesting that the time for Nietzsche's radical individualism is past. There are compelling prag- matic and aesthetic reasons why we should now be more open to the positive possibilities of living in a community. There is nothing new about society's need to work together. What has changed is the level of interconnectedness that the technological age has pressed upon us.

Embrace compassion because it’s difficult and fraught with risk

Frazer 6

The Review of Politics (2006), 68: 49-78 Cambridge University Press

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There is a second way in which the painful experience of compassion can threaten human excellence. Not only do we risk developing contempt for all but the suffering masses, but we also risk developing contempt for the compassion that forces us to suffer with them. The terrible experience of shared suffering might lead some of the would-be great on a futile quest to abolish human misery. Others, however, are likely to conclude that their sympathetic pain could be most efficiently relieved by extirpating the faculties responsible for it. When we do not hate the suffering of others, but only our own sharing of this suffering, we seek only to banish compassion from our own breasts. Doing so, however, requires us to shield ourselves from the troubling awareness of our fellows' plight, to sever the imaginative and emotional bonds which connect us to others. It requires that we turn against our own strength of intelligence and imagination, that we sacrifice knowledge for ignorance by denying our insights into the human condition. Some of us might succeed in turning ourselves into such isolated, unthinking beings, but such individuals are not destined for creative achievement.

By contrast, the natural philosopher, poet, or psychologist—the born and inevitable unriddler of human souls—could no more destroy his own sense of compassion than he could abolish the human suffering which compassion compels him to share. A futile quest to extirpate his sympathetic sentiments would only turn such an individual against the world, against life, and against himself; in the end, it might even destroy him. Zarathustra does not pass the greatest test of his strength by purging compassion from his psyche. To the contrary, he affirms his painful experience of the emotion as creativity-enhancing and life-promoting. In doing so, Nietzsche's protagonist warns against those who unduly oppose compassion as well as those who unduly celebrate it. Both sides treat pain as something to be soothed away rather than harnessed for creative purposes; they differ only in whether the pain to be alleviated is our own or that of others. From the ethically authoritative perspective of life, both can be seen as opponents of human flourishing.

Inevitability doesn’t justify extinction in the short term – future generations are intrinsically valuable and might solve the impacts anyway

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An extinction event today could cause the loss of thousands of generations. This matters to the extent we value future lives. Society places some value on future lives when it accepts the costs of long-term environmental policies or hazardous waste storage. Individuals place some value on future lives when they adopt measures, such as screening for genetic diseases, to ensure the health of children who do not yet exist. Disagreement, then, does not center on whether future lives matter, but on how much they matter.6 Valuing future lives less than current ones (“intergenerational discounting”) has been justified by arguments about time preference, growth in consumption, uncertainty about future existence, and opportunity costs. I will argue that none of these justifications applies to the benefits of delaying human extinction. Under time preference, a good enjoyed in the future is worth less, intrinsically, than a good enjoyed now. The typical justification for time preference is descriptive—most people make decisions that suggest that they value current goods more than future ones. However, it may be that people’s time preference applies only to instrumental goods, like money, whose value predictably decreases in time. In fact, it would be difficult to design an experiment in which time preference for an intrinsic good (like happiness), rather than an instrumental good (like money), is separated from the other forms of discounting discussed below. But even supposing individuals exhibit time preference within their own lives, it is not clear how this would ethically justify discounting across different lives and generations (Frederick, 2006; Schelling, 2000). In practice, discounting the value of future lives would lead to results few of us would accept as being ethical. For instance, if we discounted lives at a 5% annual rate, a life today would have greater intrinsic value than a billion lives 400 years hence (Cowen & Parfit, 1992). Broome (1994) suggests most economists and philosophers recognize that this preference for ourselves over our descendents is unjustifiable and agree that ethical impartiality requires setting the intergenerational discount rate to zero. After all, if we reject spatial discounting and assign equal value to contemporary human lives, whatever their physical distance from us, we have similar reasons to reject temporal discounting, and assign equal value to human lives, whatever their temporal distance from us. I Parfit (1984), Cowen (1992), and Blackorby et al. (1995) have similarly argued that time preference across generations is not ethically defensible.7 There could still be other reasons to discount future generations. A common justification for discounting economic goods is that their abundance generally increases with time. Because there is diminishing marginal utility from consumption, future generations may gain less satisfaction from a dollar than we will (Schelling, 2000). This principle makes sense for intergenerational transfers of most economic goods but not for intergenerational transfers of existence. There is no diminishing marginal utility from having ever existed. There is no reason to believe existence matters less to a person 1,000 years hence than it does to a person 10 years hence. Discounting could be justified by our uncertainty about future generations’ existence. If we knew for certain that we would all die in 10 years, it would not make sense for us to spend money on asteroid defense. It would make more sense to live it up, until we become extinct. A discount scheme would be justified that devalued (to zero) anything beyond 10 years. Dasgupta and Heal (1979, pp. 261–262) defend discounting on these grounds—we are uncertain about humanity’s long-term survival, so planning too far ahead is imprudent.8 Discounting is an approximate way to account for our uncertainty about survival (Ponthiere, 2003). But it is unnecessary—an analysis of extinction risk should equate the value of averting extinction at any given time with the expected value of humanity’s future from that moment forward, which includes the probabilities of extinction in all subsequent periods (Ng, 2005). If we discounted the expected value of humanity’s future, we would count future extinction risks twice—once in the discount rate and once in the undiscounted expected value—and underestimate the value of reducing current risks. In any case, Dasgupta and Heal’s argument does not justify traditional discounting at a constant rate, as the probability of human extinction is unlikely to be uniform in time.9 Because of nuclear and biological weapons, the probability of human extinction could be higher today than it was a century ago; and if humanity colonizes other planets, the probability of human extinction could be lower then than it is today. Even Rees’s (2003) pessimistic 50-50 odds on human extinction by 2100 would be equivalent to an annual discount rate under 1% for this century. (If we are 100% certain of a good’s existence in 2007 but only 50% certain of a good’s existence in 2100, then the expected value of the good decreases by 50% over 94 years, which corresponds to an annual discount rate of 0.75%.) As Ng (1989) has pointed out, a constant annual discount rate of 1% implies that we are more than 99.99% certain of not surviving the next 1,000 years. Such pessimism seems unwarranted. A last argument for intergenerational discounting is from opportunity costs: without discounting, we would always invest our money rather than spend it now on important projects (Broome, 1994). For instance, if we invest our money now in a stock market with an average5%real annual return, in a century we will have 130 times more money to spend on extinction countermeasures (assuming we survive the century). This reasoning could be extended indefinitely (as long as we survive). This could be an argument for investing in stocks rather than extinction countermeasures if: the rate of return on capital is exogenous to the rate of social savings, the average rate of return on capital is higher than the rate of technological change in extinction countermeasures, and the marginal cost effectiveness of extinction countermeasures does not decrease at a rate equal to or greater than the return on capital. First, the assumption of exogeneity can be rejected. Funding extinction countermeasures would require spending large sums; if, instead, we invested those sums in the stock market, they would affect the average market rate of return (Cowen & Parfit, 1992). Second, some spending on countermeasures, such as research on biodefense, has its own rate of return, since learning tends to accelerate as a knowledge base expands. This rate could be higher than the average rate of return on capital. Third, if the probability of human extinction significantly decreases after space colonization, there may be a small window of reducible risk: the period of maximum marginal cost effectiveness may be limited to the next few centuries. Discounting would be a crude way of accounting for opportunity costs, as cost effectiveness is probably not constant. A more precise approach would identify the optimal invest-and-spend path based on estimates of current and future extinction risks, the cost effectiveness of countermeasures, and market returns. In summary, there are good reasons not to discount the benefits of extinction countermeasures. Time preference is not justifiable in intergenerational problems, there is no diminishing marginal utility from having ever existed, and uncertainties about human existence should be represented by expected values. I thus assume that the value of future lives cannot be discounted. Since this position is controversial, I later show how acceptance of discounting would affect our conclusions.

The 1ac is an exercise in scenario planning, the decision-making benefits of considering multiple alternative futures is a good process, regardless of the voracity of the content

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Institute, and an Associate Professor at the National School of Political Science and Public Administration in Bucharest, Uncertainty, Human Action, and Scenarios; An Austrian Theory Based Decision Support Tool for Business Strategy and Public Policy, <http://mercatus.org/sites/default/files/publication/Uncertainty.pdf>

Scenarios are both a matter of cognition and imagination. "Scenarios attempt to describe in more or less detail with more or less explanatory acumen some hypothetical sequence of events" (Kahn 1973: 119). The scenario builder is dealing with the unknown (and to some degree unknowable) future full of surprises. Analytical reason has serious limits in dealing with such circumstances and other intellectual faculties come to fore. Imagination has always been "one of the principal means for dealing in various ways with the future", and the scenario could be seen as "simply one of many devices useful in stimulating and disciplining the imagination". The "scenario" as a methodological device is nothing more than a systematic effort to generate by analysis and imagination, relatively plausible contexts in which the possible developments may be tested or at least discussed or evaluated (Kahn 1967: 262).

Scenarios emphasize different aspects of "future history" and may do that in many forms. Some scenarios may explore and emphasize one particular development or a particular element of a larger problem or trend. These are attempts to describe in some detail "a specific hypothetical sequence of events that could lead plausibly to various situations or a specific situation envisaged" (Kahn 1967: 262). Scenarios may also be used to produce, "perhaps in impression tones", the future development of a culture, a nation, of some group or class or of the world as a whole. Such scenarios are dealing with events taken together—integrating several aspects of a situation more or less simultaneously. Finally there are scenarios "used just as a context for discussing or as a 'named' possibility that can be referred to for various purposes". But irrespective of the type of scenario employed, Kahn considered that there are several general functions of the scenario as an aid to thinking, common to all: (i) They are calling attention, to the larger range of possibilities that must be considered. They encourage plunging into the unfamiliar and rapidly changing world of the present and the future by dramatizing and illustrating the possibilities they focus on. (2) They force the analyst to deal with details and dynamics which he might easily avoid treating if he restricted himself to abstract considerations. (3) They help to illuminate the interaction of psychological, social, political, and economic factors, including the influence of individual political personalities upon what otherwise might be an abstract analysis, and they do so in a form which permits the comprehension of many interacting elements at once. (4) They can illustrate forcefully, certain principles or questions that would be ignored or lost if one insisted on taking examples only from the complex and controversial real world. (5) They may also be used to consider alternative possible outcomes of certain real past and present crises. (6) They can be used as artificial "case histories" and "historical anecdotes" either to make up to some degree for the paucity of actual examples, or as "existence theorems" or examples to test or demonstrate the technical feasibility or plausibility of some possible sequence of events (Kahn 1973: 120; 1967: 264-65).

However, precisely because their unique usefulness, Kahn and his followers have been very keen to remind again and again that scenarios are not predictions about the future. Rather, scenarios are "tools for ordering one's perceptions about alternative future environments, in which **one's decisions might be played out**" (Schwartz, 1996) and an effective "device for organizing a variety of much seemingly unrelated information, economic, technological, competitive, political, societal—some quantitative, some qualitative, and translating it into a framework for judgment" (Wack 1985).

At Hudson, Kahn transformed scenarios into a tool for business strategy and introduced them to the corporate world. Shell Oil was one of the first corporations employing scenarios. At the beginning of the seventies Pierre Wack and others at Shell built on the Hudson method and used scenarios to warn Shell's executives of a possible dramatic rise in oil-prices. They realized scenarios should not aim only at just presenting systematic narratives about possible futures but also should be designed in such a way as to change the executives' view of reality or "unlock their mindsets". By using scenarios as a cognitive device to challenge their imagination and perceptions, they led Shell's executives out of their complacent world-view. When the oil-crisis occurred in 1973, Shell was ready. Shell's success drew attention to the scenario method and from there scenarios took off and become accepted as one of the most effective and robust decision support methods in business strategy and public policy.

The success was even more dramatic when the limits and failures of the "unified planning machinery" prediction-based approach came to disappoint the high expectations built into its models and methods in the '60 and 70 (Kleiner 1996: 139-80). If accurate prediction was impossible even when supported by sophisticated mathematical models and powerful computing technologies, what was then left was the awareness of the need to be always mentally prepared, conceptually equipped and alert for uncertain multiple alternative futures, i.e. precisely the scenario method's message and substance.

However despite its success in the practical world of business, the scenario method felt short of a similar victory in the academic world. It is at least intriguing that given their crucial role in decision making, administration and institutional order in general, and the fact that they are in fact a unique procedure that is practiced on such a large scale as a necessary condition for social action, scenarios have been so marginal to academic interest in social sciences, even after their triumph over the "unified planning machinery" prediction based approach.

Extinction actually is the end of all human consciousness---no transcendence or life after death---this arg could not be dumber

Stenger 92 – Victor J. Stenger, Adjunct Professor of Philosophy, University of Colorado, 1992, “The Myth of Quantum Consciousness,” online: <http://www.colorado.edu/philosophy/vstenger/Quantum/QuantumConsciousness.pdf>

Quantum mechanics is called on further to argue that the cosmic field, like Newton’s aether, couples to the human mind itself. In Robert Lanza’s view, that field is the universal mind of all humanity - living, dead, and unborn. Ironically, this seemingly profound association between quantum and mind is an artifact, the consequence of unfortunate language used by Bohr, Heisenberg and the others who originally formulated quantum mechanics. In describing the necessary interaction between the observer and what is being observed, and how the state of a system is determined by the act of its measurement, they inadvertently left the impression that human consciousness enters the picture to cause that state come into being. This led many who did not understand the physics, but liked the sound of the words used to describe it, to infer a fundamental human role in what was previously a universe that seemed to have need for neither gods nor humanity. If Bohr and Heisenberg had spoken of measurements made by inanimate instruments rather than “observers,” perhaps this strained relationship between quantum and mind would not have been drawn. For, nothing in quantum mechanics requires human involvement. Quantum mechanics does not violate the Copernican principle that the universe cares not a whit about the human race. Long after humanity has disappeared from the scene, matter will still undergo the transitions that we call quantum events. The atoms in stars will radiate photons, and these photons will be absorbed by materials that react to them. Perhaps, after we are gone, some of our machines will remain to analyze these photons. If so, they will do so under the same rules of quantum mechanics that operate today.

The alt fails and destroys minority rights – sectarian violence causes re-securitization

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(Paul, “Securitization and Minority Rights: Conditions of Desecuritization,” *Security Dialogue*, Vol. 35, No. 3, September)

Aradau’s (valuable) contentions aside, what I want to emphasize here is the particular understanding of securitization in terms of deconstructing identities – where the label ‘migrant’ is subordinated to other, individual identity markers. In this next section, however, what I want to show is how the deconstructivist strategy might be considered a ‘logical impossibility’ when set against the different context of protecting minority rights – that is, where, as an identity marker, the collective (the ethnic and/or the national) is necessarily considered primary. Minority Rights, Societal Security and (the Impossibility of) Desecuritization Taking a lead from Wæver, Kymlicka has also expressed a preference for desecuritization. Speaking of **minority rights**, Kymlicka notes that while in the West the claims of minorities are assessed in terms of justice, in much of Central and Eastern Europe (CEE) they **are assessed in terms of security.** Moreover, the discourses of justice and security ‘pull in different directions’: security discourse effectively closes the space for minority rights to be framed in terms of justice (Kymlicka, 2001a: 1–2). Kymlicka’s claim with regard to the distinction between justice (in Western Europe) and security (in Eastern Europe) may, in itself, be contentious,4 but this is not necessarily my concern. Rather, what I would like to concentrate on is more the point that minority rights are often subject to the language of security and – this being the case – Kymlicka’s argument that the most effective strategy for enhancing minority rights in this situation is ‘to desecuritize the discourse . . . to get people to think of minority claims in terms of justice/fairness rather than loyalty/security’ (2001a: 2). I will come back to Kymlicka’s own suggested strategy for descuritization at the end of this section. But, first of all, I want to set a Huysmans-like deconstructivist approach in this very context. My starting point in thinking about this lies in Gaetano Pentassuglia’s (2003: 29) assertion that although the notion of minority rights has often been less than clearly defined, ‘the “right to identity”, going beyond the “minimalist”, physical discrimination and antidiscrimination entitlements, stands out as the overarching guarantee informing the whole notion of minority rights’. In other words, over and above all other principles, it is **the maintenance of group identity** that **underpins the provision of minority rights.** The same is also made clear in the interpretation of minority rights promoted by the OSCE’s High Commissioner for National Minorities: ‘First of all, a minority is a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority. Secondly, a minority is a group which usually not only seeks to maintain its identity but also tries to give a stronger expression to that identity’ (Kemp, 2001: 30). Or, in the language of the Copenhagen School, being a minority, and thus pursuing minority rights, is a matter of ‘societal security’. In the 1993 book Identity, Migration and the New Security Agenda in Europe (Wæver et al., 1993), Barry Buzan’s (1991) previous five-dimensional approach to international security is reconceptualized. In addition to the five sectors of state security (military, political, economic, societal and environmental), a duality of state and societal security is also conceived: societal security is retained as a sector of state security, but it is also a referent object of security in its own right (Wæver, 1993: 25). In this new formulation, whereas, according to Wæver, state security is concerned with threats to the state’s sovereignty – if a state loses its sovereignty it will not survive as a state – societal security is all about threats to collective identity – if a society loses its identity it will not survive as a society (Wæver, 1993: 25–26). In simple terms, the Copenhagen School defines societies as politically significant ethnic, national or religious groups – collectivities that can act alongside, indeed even challenge, states in the international system. Thus, societal security concerns whatever threats bring the identity of such units into question. For Buzan, threats to societal identity can occur through the ‘sustained application of repressive measures against the expression of identity’, which can include ‘forbidding the use of language, names and dress, through closure of places of worship, to the deportation or killing of members of the community’ (Buzan, 1993: 43). In terms of defending societal identity, the Copenhagen School recognizes that ‘for threatened societies, one obvious response is to strengthen societal identity. This can be done by using cultural means to reinforce social cohesion and distinctiveness and to ensure that society reproduces itself effectively’ (Wæver et al., 1993: 191). Wæver captures the dynamic neatly, commenting that culture can be defended ‘with culture’, adding that ‘if one’s identity seems threatened . . . the answer is a strengthening of existing identities. In this sense, consequently, culture becomes security policy’ (Wæver, 1995: 68; my emphasis). Therefore, the likely response to such threats is either to safeguard the maintenance of, or to seek the restoration of, the means and practices that ensure the expression and continuity of group identity. When societal security concerns are considered within the subsequent securitization concept, the defence (maintenance/restoration) of societal identity is conceived as a discourse that is potentially available to a securitizing actor. Societal security speech acts will thus display the language of **existential threat** presented in identity terms on behalf of a collectivity (society). Securitizing actors may speak of ‘security’ itself, or instead describe threats to the identity of the group through synonyms – for example, ‘die’, ‘perish’, ‘wither’, ‘weaken’, ‘waste’, ‘decline’, and so forth. Williams notes how ‘within the specific terms of security as a speech act . . . it is precisely under the condition of attempted securitizations that a reified, monolithic form of identity is declared’ and, if this is successful, ‘[the identity’s] negotiability and flexibility are challenged, denied, or suppressed’ (Williams, 2003: 519). He continues: ‘A successful securitization of identity involves precisely the capacity to decide on the limits of a given identity, to oppose it to what it is not, to cast this as a relationship of threat or even enmity, and to have this decision or declaration accepted by the relevant group’ (Williams, 2003: 520). Securitizing within the societal sector is therefore concerned with the defining of us and them, maintaining our identity as opposed to theirs. Thus, **the language of societal security is the language of minority rights.** As such, to desecuritize in the societal sector entails that the language of maintaining collective identity be effectively **taken out of the discourse.** In Huysmans’s deconstructivist strategy, the language of the collectivity, ‘migrants’, is replaced with the language of the individual, ‘migrant’. Thus, the potential fluidity of the individual migrant’s identity provides a possible escape route from the constraints of the us–them dichotomy. In the context of minority rights, however, the necessity on the part of the minority (and indeed also the majority) for group distinctiveness necessarily **blocks this** same **way out:** the language of the individual is subordinated to the language of the collective. In other words, how is it possible to desecuritize through identity deconstruction when both minorities and majorities often strive for the reification of distinct collectivities? **To remove the language of security from the issue of minority rights**, to shift from a position of societal security to one of societal asecurity, is in essence to stop talking about group distinctiveness. In this way, it **signals the death of the** collectivity, of the **distinct minority.** This point is similar to that made by so-called post-structural security studies (e.g., Campbell, 1992; Klein, 1994; Shapiro, 1997), where, in terms of the state, security is not so much a function of the unit as an assertion of itself: it is ‘discourses of danger’ (Campbell, 1992) on the part of the state that are constitutive of the latter’s own identity. Commenting on David Campbell’s work, Steve Smith notes how, in this way, this identity is never fixed, and never final; it is always in the process of becoming and ‘should the state project of security be successful in terms in which it is articulated, the state would cease to exist.. . . Ironically, then, the inability of the state project of security to succeed is the guarantor of the state’s continued success’ (Smith, 2000: 95). Equally, minority rights is ‘the process of becoming’; it is an ongoing project that enables the minority to reproduce its group distinctiveness. Should its project of societal security be successful, in the sense that collective identity is no longer something that needs to be maintained, then, again, the minority will cease to exist. To restate: the **desecuritization of minority rights may** thus **be logically impossible.** This, I acknowledge, is a very strong claim to make. And although it is a claim that I wish to stick to, I do so in the knowledge of a number of important contentions. A first is that I have chosen a particular understanding of minority rights, one that ignores a more complex rendering of the situation in which political and economic insecurities are also of importance. This I accept, together with its corollary that there may be no logical impossibility at all of desecuritizing in other such situations. My approach is clearly very much contextual, and although thus relatively limited in empirical terms (to Central and Eastern Europe perhaps?), it nonetheless serves a more than useful purpose in terms of thinking conceptually about the desecuritization process. A second is that I have utilized a particular understanding of desecuritization – a Huysmans-type strategy predicated on the deconstruction of identity. Again, this is true, which is why I now want to return to Kymlicka and to what may be described as a more objectivist desecuritizing approach. Although Kymlicka is relatively unsure as to how to proceed in terms of desecuritization, he does suggest that a first step must be to grapple with the issue of territorial (political) autonomy and (possible) secession. He notes how political autonomy for minority groups might be decoupled from secession: ‘to persuade [CEE] states to put [political autonomy] on the agenda, while agreeing . . . that secession cannot be a legitimate topic of public debate or political mobilization’ (Kymlicka, 2001b: 46). But, as Kymlicka also points out, even with certain guarantees in place, CEE states have nonetheless been more than reluctant to consider claims for political autonomy, this stemming from the fear that political autonomy will naturally lead to stronger calls for secession. Kymlicka’s suggestion, though, is ‘just the opposite. I believe that democratic federalism reduces the likelihood of secession’ (Kymlicka, 2001b: 49). And here it is worthwhile quoting Kymlicka at length: We need to challenge the assumption that eliminating secession from the political agenda should be the first goal of the state. We should try to show that secession is not necessarily a crime against humanity, and that the goal of the democratic political system shouldn’t be to make it unthinkable. States and state borders are not sacred. The first goal of a state should be to promote democracy, human rights, justice and the wellbeing of citizens, not to somehow insist that every citizen views herself as bound to the existing state in ‘perpetuity’ – a goal that can only be achieved through undemocratic and unjust means in a multinational state. A state can only enjoy the benefits of democracy and federalism if it is willing to live with the risks of secession (Kymlicka, 2001b: 50). To desecuritize minority rights, then, is to accept the previously unacceptable: to open up, through democratic federalism, the **possibility of** political autonomy and **secession**; to make minority rights part of normal politics. Kymlicka’s approach here in some way seems to resemble an objectivist strategy of desecuritization. In the West, the acceptance of secession, he notes, is ‘tied to the fact that secession would not threaten the survival of the minority nation. Secession may involve the painful loss of territory, but it is not seen as a threat to the very survival of the majority nation or state’ (Kymlicka, 2001b: 50). In the East (or Central and Eastern Europe), however, the tendency is to believe that secession ‘forebodes national death’ (Bibo, in Kymlicka, 2001b: 50). The question, therefore, is how to make the case that the minority does not really represent a threat. From a Huysmans-type point of view, **this** kind of **strategy** clearly **reproduces the us–them dichotomy**: ‘we’ should accept, as part of being normal, that ‘they’ might not want to live with ‘us’ anymore! And this runs the risk that the minority, as with the migrant, will remain as the ‘unified cultural alien’ (Huysmans, 1995: 66). However, in order for group distinctiveness to be successfully reproduced, such a dichotomy must arguably be maintained. But, this being the case, the further risk perhaps is that the very possibility of political autonomy and secession will not only serve to reproduce the dichotomy between us and them, but will also potentially **transform this dichotomy into** one of **friend–enemy**. In other words, **it threatens to (re)securitize the situation**, not ‘normalize’ it. Conclusion: Towards the ‘Managing’ of Minority Rights? The assumption that more security is not always better has found a great deal of its expression in the context of migration. To frame the issue of migration in security terms is, as Huysmans describes, to see it as a ‘drama’, one ‘in which selves and others are constituted in a dialectic of inclusion and exclusion and in which this dialectic appears as a struggle for survival’ (Huysmans, 1995: 63). As a security drama, there is always the risk of violence between the natives and the aliens, and ‘there are good arguments for saying that in the present western European context that risk is relatively high’ (Huysmans, 1995: 63). The concept of desecuritization, where migration is moved from emergency politics to normal politics, where the migrant is taken out of the security drama, has thus far centred very much on the deconstruction of collective identities, where the label ‘migrant’ is subordinated to a plurality of other, more ‘everyday’ identity markers. In Central and Eastern Europe, the security drama has often been played out more in terms of minorities than in terms of migrants. But taking the minority out of the drama cannot always follow the same escape route as the migrant. Where minority rights are predicated on the maintenance of a distinct collectivity, other, everyday identity markers will remain subordinate to the ethnic/national. In these cases, therefore, a Huysmans-type deconstructivist strategy may well, as I have argued, be a logical impossibility. My conclusion in this respect thus points to the consideration of alternative ways of dealing with securitized issues: if minority rights cannot always be ‘transformed’, then perhaps they can be sometimes ‘managed’ instead. Thinking in these terms certainly reflects Wæver’s concerns with the strong self-reinforcing character of securitization in the societal sector, but does not necessarily lead to a Wæver-type conclusion that strategies should thereby be designed to ‘forestall’ emergency politics. **Management** in this sense **is about ‘moderate’** (**not excessive**) **securitization**, about ‘sensible’ (not irrational) securitization. Where societal security dilemmas occur, management is about ‘mitigating’ or ‘ameliorating’ them, not transcending them. As I alluded earlier in the article, managing the securitization of minority rights will not return the issue to normal politics in the Copenhagen School sense of it – that is to say, the situation will still be marked by the language of (societal) security. What **management can** do, however, is to ‘**normalize’ minority rights** in terms of seeking to regulate minority–majority relations **through** more **liberal democratic forms.** For such a strategy, there is the clear acceptance that both sides have genuine security concerns. As such, the strategy is to move the situation from a condition of insecurity (insufficient defence) to one of security (sufficient defence), and not from a condition of security to asecurity. The minority can feel secure when certain provisions/ legislations/mechanisms are put in place that will guarantee its existence (in identity terms), while similarly the majority can also feel secure in the knowledge that the minority will thus work (politically, economically and also societally) within the existing framework of the state. Thus, and returning to Kymlicka, the institutionalizing of a federal state structure is desirable not because it makes the possibility of political autonomy and secession something normal, but because it provides the mechanisms through which **the justification for emergency politics on both sides is reduced.**