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# Inherency

CONTENTION ONE: INHERENCY

Status quo administration policy delineates between geographic zones, but our legal justification for war everywhere remains in place

Anthony Dworkin 13, senior policy fellow at the European Council on Foreign Relations, “Drones And Targeted Killing: Defining A European Position”, July, http://ecfr.eu/page/-/ECFR84\_DRONES\_BRIEF.pdf

Two further points are worth noting. First, the administration has acknowledged that in the case of American citizens, even when they are involved in the armed conflict, the US Constitution imposes additional requirements of due process that bring the threshold for targeted killing close to that involved in a self-defence analysis. These requirements were listed in a Department of Justice white paper that became public earlier this year.26 Second, the administration has at times suggested that even in the case of non-Americans its policy is to concentrate its efforts against individuals who pose a significant and imminent threat to the US. For example, John Brennan said in his Harvard speech in September 2011 that the administration’s counterterrorism efforts outside Afghanistan and Iraq were “focused on those individuals who are a threat to the United States, whose removal would cause a significant – even if only temporary – disruption of the plans and capabilities of al-Qaeda and its associated forces”.27

However, the details that have emerged about US targeting practices in the past few years raise questions about how closely this approach has been followed in practice. An analysis published by McClatchy Newspapers in April, based on classified intelligence reports, claimed that 265 out of 482 individuals killed in Pakistan in a 12-month period up to September 2011 were not senior al-Qaeda operatives but instead were assessed as Afghan, Pakistani, and unknown extremists.28 It has been widely reported that in both Pakistan and Yemen the US has at times carried out “signature strikes” or “Terrorist Attack Disruption Strikes” in which groups are targeted based not on knowledge of their identity but on a pattern of behaviour that complies with a set of indicators for militant activity. It is widely thought that these attacks have accounted for many of the civilian casualties caused by drone strikes. In both Pakistan and Yemen, there may have been times when some drone strikes – including signature strikes – could perhaps best be understood as counterinsurgency actions in support of government forces in an internal armed conflict or civil war, and in this way lawful under the laws of armed conflict. Some attacks in Pakistan may also have been directly aimed at preventing attacks across the border on US forces in Afghanistan. However, by presenting its drone programme overall as part of a global armed conflict. the Obama administration continues to set an expansive precedent that is damaging to the international rule of law.

Obama’s new policy on drones

It is against this background that Obama’s recent counterterrorism speech and the policy directive he announced at the same time should be understood. On the subject of remotely piloted aircraft and targeted killing, there were two key aspects to his intervention. First, he suggested that the military element in US counterterrorism may be scaled back further in the coming months, and that he envisages a time in the not-too-distant future when the fight against the al-Qaeda network will no longer qualify as an armed conflict. He said that “the core of al Qaeda in Afghanistan and Pakistan is on the path to defeat” and that while al-Qaeda franchises and other terrorists continued to plot against the US, “the scale of this threat closely resembles the types of attacks we faced before 9/11”.29 Obama promised that he would not sign legislation that expanded the mandate of the AUMF, and proclaimed that the United States’ “systematic effort to dismantle terrorist organizations must continue […] but this war, like all wars, must end”. The tone of Obama’s speech contrasted strongly with that of US military officials who testified before the Senate Committee on Armed Services the week before; Michael Sheehan, the Assistant Secretary of Defence for Special Operations and Low-Intensity Conflict, said then that the end of the armed conflict was “a long way off” and appeared to say that it might continue for 10 to 20 years.30

Second, the day before his speech, Obama set out regulations for drone strikes that appeared to restrict them beyond previous commitments (the guidance remains classified but a summary has been released). The guidance set out standards and procedures for drone strikes “that are either already in place or will be transitioned into place over time”.31 Outside areas of active hostilities, lethal force will only be used “when capture is not feasible and no other reasonable alternatives exist to address the threat effectively”. It will only be used against a target “that poses a continuing, imminent threat to US persons”. And there must be “near certainty that non-combatants will not be injured or killed”.

In some respects, these standards remain unclear: the president did not specify how quickly they would be implemented, or how “areas of active hostilities” should be understood. Nevertheless, taken at face value, they seem to represent a meaningful change, at least on a conceptual level. Effectively, they bring the criteria for all targeted strikes into line with the standards that the administration had previously determined to apply to US citizens. Where the administration had previously said on occasions that it focused in practice on those people who pose the greatest threat, this is now formalised as official policy. In this way, the standards are significantly more restrictive than the limits that the laws of armed conflict set for killing in wartime, and represent a shift towards a threat-based rather than status-based approach. In effect, the new policy endorses a self-defence standard as the de facto basis for US drone strikes, even if the continuing level of attacks would strike most Europeans as far above what a genuine self-defence analysis would permit.32 The new standards would seem to prohibit signature strikes in countries such as Yemen and Somalia and confine them to Pakistan, where militant activity could be seen as posing a cross-border threat to US troops in Afghanistan. According to news reports, signature strikes will continue in the Pakistani tribal areas for the time being.33

However, the impact of the new policy will depend very much on how the concept of a continuing, imminent threat is interpreted. The administration has not given any definition of this phrase, and the leaked Department of Justice white paper contained a strikingly broad interpretation of imminence; among other points, the white paper said that it “does not require the United States to have clear evidence that a specific attack on US persons or interests will take place in the immediate future” and that it “must incorporate considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”.34 The presidential policy guidance captures the apparent concerns behind the administration’s policy more honestly by including the criterion of continuing threat, but this begs the question of how the notions of a “continuing” and “imminent” threat relate to each other. Even since Obama’s speech, the US is reported to have carried out four drone strikes (two in Pakistan and two in Yemen) killing between 18 and 21 people – suggesting that the level of attacks is hardly diminishing under the new guidelines.35

It is also notable that the new standards announced by Obama represent a policy decision by the US rather than a revised interpretation of its legal obligations. In his speech, Obama drew a distinction between legality and morality, pointing out that “to say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance”. The suggestion was that the US was scaling back its use of drones out of practical or normative considerations, not because of any new conviction that the its previous legal claims went too far. The background assertion that the US is engaged in an armed conflict with al-Qaeda and associated forces, and might therefore lawfully kill any member of the opposing forces wherever they were found, remains in place to serve as a precedent for other states that wish to claim it.

# Drone Prolif

CONTENTION TWO: DRONE PROLIFERATION

It’s inevitable – only the plan establishes norms for restrained use that solves global war

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

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

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

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

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

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

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

THE WRONG QUESTION

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

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

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

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

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

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

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

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

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

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

LOWERING THE BAR

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

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

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

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

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

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

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

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

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

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

BEHIND CLOSED DOORS

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

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

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

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

But that’s not who is being targeted.

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

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

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

PEER PRESSURE

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

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

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

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

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

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

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

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

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

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

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

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

Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists.

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

Geographic restrictions are key

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

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

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

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

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

A. The Rule of Law

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

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

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

B. Targeted Killing and the Law of Armed Conflict

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Setting Troubling International Precedents

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

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

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

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

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

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

Turkey follows US precedent to strike the PKK – collapses negotiations and Erdogan’s presidency

Stein 13 (Aaron, Ph.D candidate at King’s College, London and the Nonproliferation Program Director at the Center for Economics and Foreign Policy Studies an independent think tank in Istanbul, “Turkey’s Negotiations with the Kurdistan Workers’ Party and Armed Drones” February 26, 2013, Turkey Wonk Blog)

Prime Minister Recep Tayyip Erdogan has recently re-intiated peace talks with Abdullah Ocalan and the Kurdistan Worker’s Party (PKK). Erdogan’s AKP, like Turgut Ozal’s Motherland Party, has sought to address Turkey’s Kurdish Issue – or the Kurds’ Turkey Problem – by focusing on the two groups’ shared muslim identity, rather than the previous policy of forced ethnic assimilation. Erdogan has previously engaged the PKK in peace talks, however, these efforts were unsuccessful. During the previous round of negotiations, Erdogan opted to hold the talks in secret, rather than subject himself to the inevitable backlash from Turkish nationalists (An important AKP voting bloc by the way).

The talks, despite having made some progress, broke down after President Abdullah Gul went public with the negotiations and the subsequent celebration at the Habur border gate in 2009 when Kurdish fighters returned from the PKK camps in Iraqi Kurdistan to Turkish territory. The AKP appeared to have been caught off guard and ill-prepared to deal with the imagery of thousands of Kurds welcoming home the PKK fighters as national heroes. The Turkish nationalist backlash, combined with the AKP’s political ambitions, led to the end of the talks and the re-militarization of the Kurdish issue.

This time around, Erdogan has opted to publicize the talks, which has, in my opinion, placed the responsibility for success squarely on the shoulders of Abdullah Ocalan. Erdogan’s public statements, as well as the policies that his party is now pursuing are politically dangerous, though the powerful Prime Minister has a number of reasons to solve the Kurdish issue. Most importantly, the AKP has shown an off and on commitment to ending the Turkish – Kurdish conflict, which has claimed an estimated 40,000 lives since the current conflict began in 1984. Moreover, Erdogan, who has made no secret of his desire to move to an executive Presidency, has an incentive to engage and secure the support of the Kurdish BDP for his proposed constitution. In addition, Erdogan’s 2009 – 2012 alliance with Turkey’s ultra-nationalist MHP has alienated Turkish liberals, which, despite being less religious than the AKP, are keen on implementing European Union reforms and deepening the country’s democratic system (Both AKP campaign themes).

Erdogan, I am assuming, is betting that if he solves the PKK problem, the majority of Turks, who continue to be wary of negotiating with what they consider to be a terrorist group akin to Al Qaeda, will eventually support his decision. This of course hinges on his kicking out the fighters from Turkish territory, so as to ensure a drop in violence, which would in turn give him the credibility to go before the wary Turkish electorate and claim that he has brought peace. This political path is fraught with potential pitfalls, as illustrated by the recent attack of BDP MPs in the nationalist strongholds of Sinop and Samsun (For an excellent overview of the recent attack, see this blog post by the excellent Frederike Geerdink).

The AKP, however, receives a tremendous amount of political support from nationalists. The AKP, which faces little resistance from the main opposition Republican People’s Party (CHP), is far more concerned about the potential for its base to splinter, which would in turn lead to it loosing some votes to the MHP, the BDP, and the Islamist Saadet Party. The AKP, therefore, is seeking to balance the current PKK negotiations with its need to continue to engage and appeal to Turkish nationalists. It is an incredibly difficult policy to pursue and is likely the reason why Erdogan’s messaging has vacillated wildly between themes like re-instituting the death penalty and the need to open chapters for Turkey’s stalled European Union bid.

However, because the AKP has shown an incredible ability to set Turkey’s political agenda – using coordinated leaks, trial balloons, and speeches, which are framed by overarching themes like justice and development (The translation of the AKP’s name) – I believe that the AKP is capable of keeping its coalition together and ending the conflict with the PKK. (The PKK also has a lot to with this, but that is the subject for another blog post.)

However, as I explain in my current piece on Foreign Policy, Ankara has opted to follow Washington’s example of using drones for counter-terrorism missions. Turkey, as I explain in the piece, has developed a surveillance drone and is seeking to use the current platform to develop an armed version. While Ankara has been characteristically opaque about the drones’ development, it does not take a genius to figure out that the Turkish military hopes to use armed drones to shorten to “kill-chain” for targeted strikes against PKK operatives. However, Turkey has not publicized who makes the decisions about when to use deadly force, nor has it publicly explained the legal rationale for using armed drones to assassinate Turkish citizens without due process. (As an EU candidate country, one would assume Turkey would try and figure this out).

Moreover, if the drone is used in the southeast to attack PKK militants, it is likely that some of those killed will be Turkish citizens. Given the trajectory of the cease fire talks, I see a disconnect between Erdogan’s intentions, the likely use of armed drones in the future, and the military establishment’s opaque drone policy. To be clear, I am not advocating that Ankara disarm or cease in its efforts to further develop its anti-terror capabilities. However, I do think it would be prudent for the Turkish government to publicize its drone policies, in order to build trust with the Kurdish minority. Moreover, Turkey should also seek to clarify the current legal structure that has been put in place for the killing of Turkish citizens. (If one does not exist, Ankara should start writing.) It would also be prudent for the Turkish government to explain whether or not it conducts signature strikes (I think it does, one need not look any further than the Uludere tragedy for confirmation).

If Ankara presses ahead with its armed drone program (and it will), the government should seek to be more forthcoming with information about the program’s goals and its intended use. Otherwise, it risks undermining trust with the Kurdish minority and, should the two sides agree to a cease fire, could risk re-igniting the conflict. Moreover, the program, which is still in the design phase, provides Ankara with a political opportunity. On the one hand, Erodgan can tout the program as a symbol of Turkey’s strength – which would win him support from the nationalists. However, he could pair the rhetoric with a clear articulation of Turkey’s drone policy, which should include a clear legal framework for the strikes, in order to assuage Turkish liberals and Turkey’s Kurds. This would allow for him to continue to balance the two sides’ political demands and, from the perspective of AKP political operatives, help them grow their voter base.

Key to Turkish model --- solves Middle East instability

Kirişci 8/15/13 (Kemal Kirişci is the TÜSİAD senior fellow and director of the Center on the United States and Europe's Turkey Project at Brookings, with an expertise in Turkish foreign policy and migration studies, “ The Rise and Fall of Turkey as a Model for the Arab World “ August 15, 2013, Brookings Institution)

As the Arab Spring spread from Tunisia to the rest of the Middle East early in 2011, the longtime opposition figure Rashid al-Gannouchi, also the co-founder and leader of Tunisia’s an-Nahda party, was among the many leaders who pointed to Justice and Development Party (AKP)-led Turkey as a model for guiding the transformation of the Middle East. Gannouchi maintained close relations with AKP and its leadership, which later became closely involved in Tunisia’s transformation efforts. Yet, after a May 2013 talk on “Tunisia’s Democratic Future” at The Brookings Institution, Gannouchi’s response to a question asking him which countries he thought constituted a model for Tunisia was striking because he did not mention Turkey. It is probably not a coincidence that he responded the way he did because the news about the harsh police response to the initial stages of the anti-government protests in Turkey was just breaking out. Subsequently, in an interview he gave to Jackson Diehl of The Washington Post early in June, he also took a critical view of both Mohammed Morsi and Recep Tayyip Erdoğan for their majoritarian understanding of democracy, a view that he said an-Nahda renounces. So what happened to Turkey’s model credentials? What might have led Gannouchi to change his views so dramatically? Are there any prospects for Turkey to reclaim these credentials?

For a long time, Turkish schoolchildren were taught how the 1923 establishment of the Turkish Republic on the ashes of the Ottoman Empire and the reforms introduced by the founder of the republic Kemal Atatürk constituted an example for nearly all the national liberation struggles against colonial powers during the first half of the 20th century. As the Soviet Union collapsed and the question of reform and democratization emerged in its former republics, The Economist announced Turkey to be the “Star of Islam” and a model particularly for the newly independent Central Asian republics. Roughly a decade later, the idea of Turkey as a “model” was raised once again, this time by U.S. President George W. Bush, when he launched the Broader Middle East and North Africa Initiative after intervening against Saddam Hussein in Iraq. In both cases, Turkey’s “model” credentials were promoted by the West because Turkey was both a secular Muslim country and a democracy with a liberal market and close ties to the West. But many Turkish leaders were somewhat reluctant to take up the mantle of a role model and some even feared that this could undermine Turkey’s national identity and secularism.

The Arab Spring brought about a different context. This time it seemed that it was the Arab world that was keen to take Turkey as a model. Public opinion surveys run by the Turkish Economic and Social Studies Foundation (TESEV) between 2010 and 2012 repeatedly showed that approximately 60 percent of the Arab public saw Turkey as a model and believed that Turkey could contribute positively to the transformation of the Arab world. A number of factors made Turkey attractive to the post-Spring Arab public. The most visible one was Turkey’s economic performance. The impressive growth rates that the Turkish economy achieved at a time when Western economies were suffering caught attention. This was accompanied by the growing visibility of Turkish manufactured goods and investments in the region. Furthermore, the Turkish government’s efforts to encourage regional economic integration and the signing of free trade agreements with a string of countries including Syria and Lebanon was welcomed as development that would help the region’s economic development. The AKP government’s policy to liberalize visa requirements also made it possible for an ever-growing number of Arab tourists, professionals and students to come and see this economic performance with their own eyes. The fact that a political party with Islamist roots was in power in Turkey since 2002 and that it had introduced a long list of reforms to improve the quality of Turkey’s democracy was another factor that strengthened Turkey’s model credentials. In the early stages of the AKP’s government, Turkey’s close relations with the EU and its prospects of membership also attracted considerable positive attention and appreciation.

Turkey’s popularity was also strengthened by the “zero problems with neighbors” policy of Turkish Minister of Foreign Affairs Ahmet Davutoğlu. In the Middle East, the cornerstone of this policy was Turkey’s ability to improve its relations with neighboring countries and to talk to all parties involved in the region’s disputes. In Lebanon, Turkey was able to engage with Hezbollah as well as with the Christian and Sunni leaderships. The same was true of Iraq, where Turkey maintained close contacts with Sunni, Shi’a, Kurdish and Turkmen parties during much of the 2000s. Longstanding tensions with Syria over territorial disputes, water rights and the Kurdish issue were replaced by much closer and warmer relations. Additionally, Erdoğan’s critical stance toward Israel and his support for the Palestinian cause galvanized the Arab street even if it did raise some eyebrows in diplomatic circles.

However, this positive climate did not last very long and, as a result of at least two important developments, Turkey’s credentials began to weaken. Firstly, as the excitement over the region’s prospects of transformation from authoritarian to more democratic regimes waned and peaceful revolutions were replaced by civil war, sectarian strife and instability, Turkey increasingly became embroiled in the regional conflicts rather than an arbiter of them. The worst of this turnabout occurred in the case of Turkey’s relationship with Syria, once presented as a resounding success of Turkey’s “zero problems” policy at its best, which has deteriorated into virtual undeclared warfare. Practically all the gains achieved with respect to visa liberalization and economic integration has collapsed. The free trade agreement with Syria was suspended in December 2011, the one in Lebanon could not be activated and relations with the Nouri al-Maliki government in Iraq entered an impasse. Most recently the new Egyptian regime appears inclined to reassess Egypt’s relations with Turkey in reaction to Erdoğan’s bitter criticisms of the military intervention and pro-Morsi stand. As a result, many commentators have come to characterize this dramatic transformation in Turkish foreign policy as “zero neighbors without problems.”

Secondly, the brutal police repression used against the anti-government protests in Istanbul and across Turkey coupled with Erdoğan’s choice of denigrating language toward the protestors raised doubts about the quality of Turkey’s democracy. Even before the protests broke out, these doubts had already started to be expressed, particularly with respect to press freedoms and the freedom of expression. Turkey had increasingly been cited as a country that had a greater number of journalists in jail than did China, Iran and Russia. Furthermore, Turkey’s inability to resolve its Kurdish problem — ironically at a time when the prime minister was launching an effort to address the problem — began to be seen as yet another weakness that engendered views critical of Turkey’s model credentials. The coup de grace came as Erdoğan in his third term of office, after a resounding electoral victory in 2011, began to adopt an increasingly authoritarian style of leadership in his third term of office, grew unwilling to accept criticisms and displayed a majoritarian understanding of democracy. His discourse and policies became more and more at odds with a country characterized by diversity in all senses of the word: culturally, ethnically, religiously, socially and politically. It is then not surprising that Gannouchi should have reconsidered his views about Turkey’s model credentials for Tunisia’s transformation and taken a critical view of Erdoğan’s own democratic credentials.

Is this then the end of the road for Turkey as a model for the transformation of the Middle East? The answer will clearly depend a lot on the lessons that Erdoğan and his government will draw from the protests in Turkey as well as the loss that Turkey’s role-model status has suffered recently. It is difficult to see how Turkey could revitalize these credentials if Erdoğan maintains his current domestic and regional courses of action. It is also difficult to see how, under these circumstances, Turkey would be able to finally resolve the thorny Kurdish issue, continue to keep the economy growing, maintain Turkey as a major attraction for tourism, raise new generations of youth capable of keeping up with the challenges of globalization and, perhaps most importantly, manage the Syrian crisis in a manner that does not draw Turkey into it. The alternative course of action would revisit the pragmatism and inclusiveness that characterized the first two AKP governments. Such a course of action would revitalize Turkey’s democratic transition and credentials as a model capable of reconciling Western liberal values with a religiously conservative society. Indeed, such a Turkey would regain its constructive role in its neighborhood and also energize its relationship with the EU. Yet, if the current course of action is maintained, it may well drag Turkey into turmoil and the kind of instability and polarization that could cause Turkey to look more like the post-Arab Spring Middle East rather than an inspiration for pluralist democracy, consensus building and tolerance.

And, Turkish intervention goes nuclear

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In recent days, there have been persistent rumors that we could potentially be on the verge of a military conflict between Syria and Turkey. As impossible as such a thing may have seemed just a few months ago, it is now a very real possibility. Over the past several months, we have seen the same kind of "pro-democracy" protests erupt in Syria that we have seen in many of the other countries in the Middle East. The Syrian government has no intention of being toppled by a bunch of protesters and has cracked down on these gatherings harshly. There are reports in the mainstream media that say that over 1,300 people have been killed and more than 10,000 people have been arrested since the protests began. Just like with Libya, the United States and the EU are strongly condemning the actions that the Syrian government has taken to break up these protests. The violence in Syria has been particularly heavy in the northern sections of the country, and thousands upon thousands of refugees have poured across the border into neighboring Turkey. Syria has sent large numbers of troops to the border area to keep more citizens from escaping. Turkey has responded by reinforcing its own troops along the border. Tension between Turkey and Syria is now at an all-time high. So could we actually see a war between Syria and Turkey? A few months ago anyone who would have suggested such a thing would have been considered crazy. But the world is changing and the Middle East is a powder keg that is just waiting to explode. Since the Syrian government began cracking down on the protests, approximately 12,000 Syrians have flooded into Turkey. The Turkish government is deeply concerned that Syria may try to strike these refugees while they are inside Turkish territory. Troop levels are increasing on both sides of the border and tension is rising. One wrong move could set off a firestorm. The government of Turkey is demanding that Syrian military forces retreat from the border area. The government of Syria says that Turkey is just being used to promote the goals of the U.S. and the EU. Syria also seems to be concerned that Turkey may attempt to take control of a bit of territory over the border in order to provide a "buffer zone" for refugees coming from Syria. What makes things even more controversial is that the area where many of the Syrian refugees are encamped actually used to belong to Syria. In fact, many of the maps currently in use inside Syria still show that the area belongs to Syria. War between Syria and Turkey has almost happened before. Back in the 1990s, the fact that the government of Syria was strongly supporting the Kurds pushed the two nations dangerously close to a military conflict. Today, the border between Syria and Turkey is approximately 850 kilometers long. The military forces of both nations are massing along that border. One wrong move could set off a war. Right now, it almost sounds as though the U.S. government is preparing for a war to erupt in the region. U.S. Secretary of State Hillary Clinton recently stated that the situation along the border with Turkey is "very worrisome" and that we could see "an escalation of conflict in the area". Not only that, but when you study what Clinton and Obama have been saying about Syria it sounds very, very similar to what they were saying about Libya before the airstrikes began. In a recent editorial entitled "There Is No Going Back in Syria", Clinton wrote the following.... Finally, the answer to the most important question of all -- what does this mean for Syria's future? -- is increasingly clear: There is no going back. Syrians have recognized the violence as a sign of weakness from a regime that rules by coercion, not consent. They have overcome their fears and have shaken the foundations of this authoritarian system. Syria is headed toward a new political order -- and the Syrian people should be the ones to shape it. They should insist on accountability, but resist any temptation to exact revenge or reprisals that might split the country, and instead join together to build a democratic, peaceful and tolerant Syria. Considering the answers to all these questions, the United States chooses to stand with the Syrian people and their universal rights. We condemn the Assad regime's disregard for the will of its citizens and Iran's insidious interference. "There is no going back"? "Syria is headed toward a new political order"? It almost sounds like they are already planning the transitional government. The EU has been using some tough language as well. A recent EU summit in Brussels issued a statement that declared that the EU "condemns in the strongest possible terms the ongoing repression and unacceptable and shocking violence the Syrian regime continues to apply against its own citizens. By choosing a path of repression instead of fulfilling its own promises on broad reforms, the regime is calling its legitimacy into question. Those responsible for crimes and violence against civilians shall be held accountable." If you take the word "Syrian" out of that statement and replace it with the word "Libyan" it would sound exactly like what they were saying about Gadhafi just a few months ago. The EU has hit Syria with new economic sanctions and it is also calling on the UN Security Council to pass a resolution condemning the crackdown by the Syrian government. It seems clear that the U.S. and the EU want to see "regime change" happen in Syria. The important thing to keep in mind in all of this is that Turkey is a member of NATO. If anyone attacks Turkey, NATO has a duty to protect them. If Syria attacked Turkey or if it was made to appear that Syria had attacked Turkey, then NATO would have the justification it needs to go to war with Syria. If NATO goes to war with Syria, it is very doubtful that Iran would just sit by and watch it happen. Syria is a very close ally to Iran and the Iranian government would likely consider an attack on their neighbor to be a fundamental threat to their nation. In fact, there are already reports in the international media that Iran has warned Turkey that they better not allow NATO to use their airbases to attack Syria. So if it was NATO taking on Syria and Iran, who else in the Middle East would jump in? Would Russia and China sit by and do nothing while all of this was going on? Could a conflict in the Middle East be the thing that sets off World War III? Let's certainly hope not. More war in the Middle East would not be good for anyone. Unfortunately, tensions are rising to frightening levels throughout the region. Even if things between Syria and Turkey cool off, that doesn't mean that war won't break out some place else. Riots and protests continue to sweep across the Middle East and the entire region has been arming for war for decades. Eventually something or someone is going to snap. When it does, let us just hope that World War III does not erupt as a result.

And so does the Middle East

James A. Russell, Senior Lecturer, National Security Affairs, Naval Postgraduate School, ‘9 (Spring) “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” IFRI, Proliferation Papers, #26, http://www.ifri.org/downloads/PP26\_Russell\_2009.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

Drones cause SCS and ECS conflict – US precedent is key

Bodeen 13 (Christopher, Beijing correspondent for The Associated Press, 5/3/2013, "China's Drone Program Appears To Be Moving Into Overdrive", www.huffingtonpost.com/2013/05/03/china-drone-program\_n\_3207392.html)

Chinese aerospace firms have developed dozens of drones, known also as unmanned aerial vehicles, or UAVs. Many have appeared at air shows and military parades, including some that bear an uncanny resemblance to the Predator, Global Hawk and Reaper models used with deadly effect by the U.S. Air Force and CIA. Analysts say that although China still trails the U.S. and Israel, the industry leaders, its technology is maturing rapidly and on the cusp of widespread use for surveillance and combat strikes.

"My sense is that China is moving into large-scale deployments of UAVs," said Ian Easton, co-author of a recent report on Chinese drones for the Project 2049 Institute security think tank.

China's move into large-scale drone deployment displays its military's growing sophistication and could challenge U.S. military dominance in the Asia-Pacific. It also could elevate the threat to neighbors with territorial disputes with Beijing, including Vietnam, Japan, India and the Philippines. China says its drones are capable of carrying bombs and missiles as well as conducting reconnaissance, potentially turning them into offensive weapons in a border conflict.

China's increased use of drones also adds to concerns about the lack of internationally recognized standards for drone attacks. The United States has widely employed drones as a means of eliminating terror suspects in Pakistan and the Arabian Peninsula.

"China is following the precedent set by the U.S. The thinking is that, `If the U.S. can do it, so can we. They're a big country with security interests and so are we'," said Siemon Wezeman, a senior fellow at the arms transfers program at the Stockholm International Peace Research Institute in Sweden, or SIPRI.

"The justification for an attack would be that Beijing too has a responsibility for the safety of its citizens. There needs to be agreement on what the limits are," he said.

Though China claims its military posture is entirely defensive, its navy and civilian maritime services have engaged in repeated standoffs with ships from other nations in the South China and East China seas. India, meanwhile, says Chinese troops have set up camp almost 20 kilometers (12 miles) into Indian-claimed territory.

It isn't yet known exactly what China's latest drones are capable of, because, like most Chinese equipment, they remain untested in battle.

The military and associated aerospace firms have offered little information, although in an interview last month with the official Xinhua News Agency, Yang Baikui, chief designer at plane maker COSIC, said Chinese drones were closing the gap but still needed to progress in half a dozen major areas, from airframe design to digital linkups.

Executives at COSIC and drone makers ASN, Avic, and the 611 Institute declined to be interviewed by The Associated Press, citing their military links. The Defense Ministry's latest report on the status of the military released in mid-April made no mention of drones, and spokesman Yang Yujun made only the barest acknowledgement of their existence in response to a question.

"Drones are a new high-tech form of weaponry employed and used by many militaries around the world," Yang said. "China's armed forces are developing weaponry and equipment for the purpose of upholding territorial integrity, national security and world peace. It will pose no threat to any country."

Drones are already patrolling China's borders, and a navy drone was deployed to the western province of Sichuan to provide aerial surveillance following last month's deadly earthquake there.

They may also soon be appearing over China's maritime claims, including Japanese-controlled East China Sea islands that China considers its own. That could sharpen tensions in an area where Chinese and Japanese patrol boats already confront each other on a regular basis and Japan frequently scrambles fighters to tail Chinese manned aircraft.

SCS conflict causes extinction

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

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.

Senkaku conflict causes extinction

Baker 12 (Kevin R., Member of the Compensation Committee of Calfrac, Chair of the Corporate Governance and Nominating Committee, served as President and Chief Executive Officer of Century Oilfield Services Inc. from August 2005 until November 10, 2009, when it was acquired by the Corporation. He also has served as the President of Baycor Capital Inc., 9/17/2012, “What Would Happen if China and Japan Went to War?”, http://appreviews4u.com/2012/09/17/what-would-happen-if-china-and-japan-went-to-war/)

China is not an isolationist country but it is quite nationalistic. Their allies include, Russia, which is a big super power, Pakistan and Iran as well as North Korea. They have more allies than Japan, although most relations have been built on economic strategies, being a money-centric nation.

Countries potentially hostile toward China in the event of a Japan vs. China war include Germany, Britain, Australia and South Korea. So even though Japan does not outwardly build relationships with allies, Japan would have allies rallying around them if China were to attack Japan.

The island dispute would not play out as it did in the UK vs. Argentina island dispute, as both sides could cause massive damage to each other, whereas the UK was far superior in firepower compared to Argentina.

Conclusion

Even though China outweighs Japan in numbers, the likelihood that a war would develop into a nuclear war means that numbers don’t really mean anything anymore. The nuclear capabilities of Japan and China would mean that each country could destroy each other many times over. The island dispute would then escalate to possible mass extinction for the human race.

The nuclear fall out would affect most of Asia and to a certain extent the West. If the allies were then to turn on each other it would spell the end of the human race. Bear in mind that it will take an estimated 10,000 years for Chernobyl to become safe to walk around and you’ll get an idea of what state land masses will be in after a war of such magnitude. I say ‘land masses’ as countries and nations would cease to exist then and it would be a case of ‘if’ and ‘where’ could human beings, plant life and animals could exist, if at all possible, which is very doubtful. Even with underground bunkers, just how long could people survive down there? With plant and animal life eradicated above? I would say maybe 20 years at best, if there are ample supplies of course.

# Terrorism

CONTENTION THREE: TERRORISM

The plan is key to prevent an escalating public backlash against future drone use

Zenko 13 (Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No. 65, January 2013, “U.S. Drone Strike Policies”, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎)

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial coun- terterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and inter- national humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 per- cent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gun- ships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forc- ing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making signifi- cant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allow- ing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resis- tance—such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attack- ing Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

Public backlash culminates in a legal crackdown that hemorrhages the targeted killing program

Jack Goldsmith, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, P. 199-201

For the GTMO Bar and its cousin NGOs and activists, however, the al-Aulaqi lawsuit, like other lawsuits on different issues, was merely an early battle in a long war over the legitimacy of U.S. targeting practices—a war that will take place not just in the United States, but in other countries as well. When the CCR failed to achieve what it viewed as adequate accountability for Bush administration officials in the United States in connection with interrogation and detention practices, it started pursuing, and continues to pursue, lawsuits and prosecutions against U.S. officials in Spain, Germany, and other European countries. "You look for every niche you can when you can take on the issues that you think are important," said Michael Ratner, explaining the CCR's strategy for pursuing lawsuits in Europe.

Clive Stafford Smith, a former CCR attorney who was instrumental in its early GTMO victories and who now leads the British advocacy organization Reprieve, is using this strategy in the targeted killing context. "There are endless ways in which the courts in Britain, the courts in America, the international Pakistani courts can get involved" in scrutinizing U.S. targeting killing practices, he argues. "It's going to be the next 'Guantanamo Bay' issue."' Working in a global network of NGO activists, Stafford Smith has begun a process in Pakistan to seek the arrest of former CIA lawyer John Rizzo in connection with drone strikes in Pakistan, and he is planning more lawsuits in the United States and elsewhere against drone operators." "The crucial court here is the court of public opinion," he said, explaining why the lawsuits are important even if he loses. His efforts are backed by a growing web of proclamations in the United Nations, foreign capitals, the press, and the academy that U.S. drone practices are unlawful. What American University law professor Ken Anderson has described as the "international legal-media-academic-NGO-international organization-global opinion complex" is hard at work to stigmatize drones and those who support and operate them."

This strategy is having an impact. The slew of lawsuits in the United States and threatened prosecutions in Europe against Bush administration officials imposes reputational, emotional, and financial costs on them that help to promote the human rights groups' ideological goals, even if courts never actually rule against the officials. By design, these suits also give pause to current officials who are considering controversial actions for fear that the same thing might later happen to them. This effect is starting to be felt with drones. Several Obama administration officials have told me that they worry targeted killings will be seen in the future (as Stafford Smith predicts) as their administration's GTMO. The attempted judicial action against Rizzo, the earlier lawsuits against top CIA officials in Pakistan and elsewhere, and the louder and louder proclamations of illegality around the world all of which have gained momentum after al-Aulaqi's killing—are also having an impact. These actions are rallying cries for protest and political pushback in the countries where the drone strikes take place. And they lead CIA operators to worry about legal exposure before becoming involved in the Agency's drone program." We don't know yet whether these forces have affected actual targeting practices and related tactics. But they induce the officials involved to take more caution. And it is only a matter of time, if it has not happened already, before they lead the U.S. government to forgo lawful targeted killing actions otherwise deemed to be in the interest of U.S. national security.

Support for the legality of global war against al-Qaeda is collapsing

Robert Chesney, University of Texas School of Law Professor, 8/29/12, Beyond the Battlefield, Beyond Al Qaeda: The Destabilizing Legal Architecture of Counterterrorism, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2138623

The drawdown in Afghanistan, combined with the expansion of the shadow war model, ensures that the legal architecture of counterterrorism will be far more contested—and hence unstable—going forward than it was during the first post-9/11 decade. When U.S. involvement in overt armed conflict in Afghanistan comes to an end, so too will the other key stabilizing factor identified in Part II: the existence of at least one location as to which LOAC indisputably applies, and as to which many cases could be linked.189 The fact patterns that will matter most in the future—i.e., the instances in which the U.S. government will be most likely to wish to use lethal force or military detention—will instead increasingly be rooted in other locations, such as Yemen and Somalia.

It does not follow that LOAC accordingly will be irrelevant to future instances of detention or lethal force. To the extent that the government continues to invoke LOAC, its arguments will be more or less persuasive from case to case. In some contexts, for example, the government can make relatively-conventional arguments to the effect that the level of violence in a given state has risen to a level constituting a non-international armed conflict, quite apart from whether there also exists a borderless armed conflict with al Qaeda or its successors. Where that is the case, and where the level of U.S. participation in those hostilities warrants the conclusion that it is a party to such a conflict, LOAC arguments may prove persuasive after all. Yemen currently provides a good example of an area ripe for such an analysis.190

But even in those cases, the very nature of the shadow war approach is such that there can be no guarantees that such arguments will be accepted, certainly not as was the case during the first post-9/11 decade vis-à-vis Afghanistan. And since not all shadow war contexts will match Yemen in terms of supporting such a conventional analysis, attempts to invoke LOAC in some cases will have to stand or fall instead on the far-broader argument that the United States is engaged in a borderless armed conflict governed by LOAC wherever the parties may be found.

The borderless-conflict position at first blush appears nicely entrenched in the status quo legal architecture. It is supported, after all, by a substantial degree of cross-party consensus (it was endorsed most recently in a series of speeches by Obama administration officials).191 But it has always been fiercely disputed, including by the ICRC and many of America’s allies. That dispute was not so much resolved over the past decade as persistently avoided; the caselaw of that era almost always involved persons who could be linked in some way back to the undisputed combat zone of Afghanistan. Thanks to the U.S. government’s shift toward shadow war, however, this will not be the situation going forward when new cases arise, as they are sure to do.192

Making matters worse, the U.S. government’s position on the relevance of LOAC to its use of detention and lethal force may become harder to maintain going forward even without a drawdown in Afghanistan. The reason why has to do with the decline and fragmentation of al Qaeda. The borderless-conflict position does require, after all, identifiable parties on both sides. Even if one accepts that the United States and al Qaeda are engaged in a borderless armed conflict, in other words, organizational ambiguity of the sort described above will increasingly call into question whether specific cases are sufficiently linked to that conflict (or to any other that might be said to exist with respect to specific al Qaeda-linked groups, such as AQAP). Again Warsame’s situation provides a useful illustration, or perhaps more accurately, a cautionary tale.

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Though widely perceived at the time as a period of great legal controversy and uncertainty, the first post-9/11 decade will in retrospect be perceived as a comparatively simple state of affairs during which it was largely undisputed that LOAC applied somewhere and that the central objects of the U.S. government’s use of detention and lethal force were entities one could coherently describe as al Qaeda and the Afghan Taliban. But that period is ending, and it may be that the second post-9/11 decade will witness far more serious legal disputes as a result.

The plan is key to allied coop on counterterrorism

David Kris, Assistant Attorney General for National Security at the U.S. Department of Justice from March 2009 to March 2011, 6/15/2011, Law Enforcement as a Counterterrorism Tool, http://jnslp.com/wp-content/uploads/2011/06/01\_David-Kris.pdf

On the other side of the balance, certainly most of our friends in Europe, and indeed in many countries around the world (as well as many people in this country), accept only a law enforcement response and reject a military response to terrorism, at least outside of theaters of active armed conflict.76 As a result, some of those countries will restrict their cooperation with us unless we are using law enforcement methods. Gaining cooperation from other countries can help us win the war – these countries can share intelligence, provide witnesses and evidence, and transfer terrorists to us. Where a foreign country will not give us a terrorist (or information needed to neutralize a terrorist) for anything but a criminal prosecution, we obviously should pursue the prosecution rather than letting the terrorist go free. This does not subordinate U.S. national interest to some global test of legitimacy; it simply reflects a pragmatic approach to winning the war. If we want the help of our allies, we need to work with them.77

More generally, we need to recognize the practical impact of our treatment of the enemy and the perception of that treatment. This war is not a classic battle over land or resources, but is fundamentally a conflict of values and ways of life.78 Demonstrating that we live up to our values, thus drawing stark contrasts with the adversary, is essential to ensuring victory. When our enemy is seen in its true colors – lawless, ruthless, merciless – it loses support worldwide. For example, in Iraq, al Qaeda’s random and widespread violence against civilians eventually helped mobilize the population against the insurgents.79 On the other hand, when our actions or policies provoke questions about whether we are committed to the rule of law and our other values, we risk losing some of our moral authority. This makes it harder to gain cooperation from our allies and easier for the terrorists to find new recruits.

This is not simply abstract philosophy. It is an important reality in our military’s effort to defeat the enemy in places like Iraq and Afghanistan. As the U.S. military’s counterinsurgency field manual states, “to establish legitimacy, commanders transition security activities from combat operations to law enforcement as quickly as feasible. When insurgents are seen as criminals, they lose public support.”80 Adherence to the rule of law is central to this approach: “The presence of the rule of law is a major factor in assuring voluntary acceptance of a government’s authority and therefore its legitimacy. A government’s respect for preexisting and impersonal legal rules can provide the key to gaining widespread enduring societal support. Such respect for rules – ideally ones recorded in a constitution and in laws adopted through a credible, democratic process – is the essence of the rule of law. As such, it is a powerful potential tool for counterinsurgents.”81 Indeed, the U.S. military has been implementing such a transition to civilian law enforcement in Iraq, where detentions and prosecutions of insurgents are now principally processed through the domestic criminal justice system,82 and we are moving in that direction in Afghanistan, where transfer of detention and prosecution responsibilities to Afghan civilian authorities is our goal.83 I think these are principles that are well worth keeping in mind as we think about the impact of employing different tools in the context of our conflict with al Qaeda. It would not only be ironic, but also operationally counterproductive, if our partners in Iraq and Afghanistan rely increasingly on law enforcement tools to detain terrorists, even in areas of active hostilities, while we abandon those tools here in the United States.84

And, that’s key to drone effectiveness

Zenko 13 Micah Zenko is the Douglas Dillon fellow with the Center for Preventive Action at the Council on Foreign Relations, Newsday, January 30, 2013, "Zenko: Why we can't just drone Algeria", http://www.newsday.com/opinion/oped/zenko-why-we-can-t-just-drone-algeria-1.4536641

CNN should not have been surprised. Neither the Bush nor Obama administrations received blanket permission to transit Algerian airspace with surveillance planes or drones; instead, they received authorization only on a case-by-case basis and with advance notice.

According to Washington Post journalist Craig Whitlock, the U.S. military relies on a fleet of civilian-looking unarmed aircraft to spy on suspected Islamist groups in North Africa, because they are less conspicuous - and therefore less politically sensitive for host nations - than drones. Moreover, even if the United States received flyover rights for armed drones, it has been unable to secure a base in southern Europe or northern Africa from which it would be permitted to conduct drone strikes; and presently, U.S. armed drones cannot be launched and recovered from naval platforms.

According to Hollywood movies or television dramas, with its immense intelligence collection and military strike capabilities, the United States can locate, track, and kill anyone in the world.

This misperception is continually reinvigorated by the White House's, the CIA's, and the Pentagon's close cooperation with movie and television studios. For example, several years before the CIA even started conducting non-battlefield drone strikes, it was recommending the tactic as a plotline in the short-lived (2001-2003) drama "The Agency." As the show's writer and producer later revealed: "The Hellfire missile thing, they suggested that. I didn't come up with this stuff. I think they were doing a public opinion poll by virtue of giving me some good ideas."

Similarly, as of November there were at least 10 movies about the Navy SEALs in production or in theaters, which included so much support from the Pentagon that one film even starred active-duty SEALs.

The Obama administration's lack of a military response in Algeria reflects how sovereign states routinely constrain U.S. intelligence and military activities. As the U.S. Air Force Judge Advocate General's Air Force Operations and the Law guidebook states: "The unauthorized or improper entry of foreign aircraft into a state's national airspace is a violation of that state's sovereignty. . . . Except for overflight of international straits and archipelagic sea lanes, all nations have complete discretion in regulating or prohibiting flights within their national airspace."

Though not sexy and little reported, deploying CIA drones or special operations forces requires constant behind-the-scenes diplomacy: with very rare exceptions - like the Bin Laden raid - the U.S. military follows the rules of the world's other 194 sovereign, independent states.

These rules come in many forms. For example, basing rights agreements can limit the number of civilian, military and contractor personnel at an airbase or post; what access they have to the electromagnetic spectrum; what types of aircraft they can fly; how many sorties they can conduct per day; when those sorties can occur and how long they can last; whether the aircraft can drop bombs on another country and what sort of bombs; and whether they can use lethal force in self-defense. When the United States led the enforcement of the northern no-fly zone over Iraq from the Incirlik Air Base in southern Turkey from 1991 to 2003, a Turkish military official at the rank of lieutenant colonel or higher was always on board U.S. Air Force AWACS planes, monitoring the airspace to assure that the United States did not violate its highly restrictive basing agreement.

As Algeria is doing presently, the denial or approval of overflight rights is a powerful tool that states can impose on the United States. These include where U.S. air assets can enter and exit another state, what flight path they may take, how high they must fly, what type of planes can be included in the force package, and what sort of missions they can execute. In addition, these constraints include what is called shutter control, or the limits to when and how a transiting aircraft can collect information. For example, U.S. drones that currently fly out of the civilian airfield in Arba Minch, Ethiopia, to Somalia, are restricted in their collection activities over Ethiopia's Ogaden region, where the government has conducted an intermittent counterinsurgency against the Ogaden National Liberation Front.

Drones are effective and alternatives are worse—the plan prevents criticism

Byman 13 (Daniel Byman, Brookings Institute Saban Center for Middle East Policy, Research Director, and Foreign Policy, Senior Fellow, July/Aug 2013, “Why Drones Work: The Case for the Washington's Weapon of Choice”, www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman)

Despite President Barack Obama’s recent call to reduce the United States’ reliance on drones, they will likely remain his administration’s weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused. Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage. So drone warfare is here to stay, and it is likely to expand in the years to come as other countries’ capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid. NOBODY DOES IT BETTER The Obama administration relies on drones for one simple reason: they work. According to data compiled by the New America Foundation, since Obama has been in the White House, U.S. drones have killed an estimated 3,300 al Qaeda, Taliban, and other jihadist operatives in Pakistan and Yemen. That number includes over 50 senior leaders of al Qaeda and the Taliban—top figures who are not easily replaced. In 2010, Osama bin Laden warned his chief aide, Atiyah Abd al-Rahman, who was later killed by a drone strike in the Waziristan region of Pakistan in 2011, that when experienced leaders are eliminated, the result is “the rise of lower leaders who are not as experienced as the former leaders” and who are prone to errors and miscalculations. And drones also hurt terrorist organizations when they eliminate operatives who are lower down on the food chain but who boast special skills: passport forgers, bomb makers, recruiters, and fundraisers. Drones have also undercut terrorists’ ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to “maintain complete silence of all wireless contacts” and “avoid gathering in open areas.” Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda’s command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders. Critics of drone strikes often fail to take into account the fact that the alternatives are either too risky or unrealistic. To be sure, in an ideal world, militants would be captured alive, allowing authorities to question them and search their compounds for useful information. Raids, arrests, and interrogations can produce vital intelligence and can be less controversial than lethal operations. That is why they should be, and indeed already are, used in stable countries where the United States enjoys the support of the host government. But in war zones or unstable countries, such as Pakistan, Yemen, and Somalia, arresting militants is highly dangerous and, even if successful, often inefficient. In those three countries, the government exerts little or no control over remote areas, which means that it is highly dangerous to go after militants hiding out there. Worse yet, in Pakistan and Yemen, the governments have at times cooperated with militants. If the United States regularly sent in special operations forces to hunt down terrorists there, sympathetic officials could easily tip off the jihadists, likely leading to firefights, U.S. casualties, and possibly the deaths of the suspects and innocent civilians. Of course, it was a Navy SEAL team and not a drone strike that finally got bin Laden, but in many cases in which the United States needs to capture or eliminate an enemy, raids are too risky and costly. And even if a raid results in a successful capture, it begets another problem: what to do with the detainee. Prosecuting detainees in a federal or military court is difficult because often the intelligence against terrorists is inadmissible or using it risks jeopardizing sources and methods. And given the fact that the United States is trying to close, rather than expand, the detention facility at Guantánamo Bay, Cuba, it has become much harder to justify holding suspects indefinitely. It has become more politically palatable for the United States to kill rather than detain suspected terrorists. Furthermore, although a drone strike may violate the local state’s sovereignty, it does so to a lesser degree than would putting U.S. boots on the ground or conducting a large-scale air campaign. And compared with a 500-pound bomb dropped from an F-16, the grenade like warheads carried by most drones create smaller, more precise blast zones that decrease the risk of unexpected structural damage and casualties. Even more important, drones, unlike traditional airplanes, can loiter above a target for hours, waiting for the ideal moment to strike and thus reducing the odds that civilians will be caught in the kill zone. Finally, using drones is also far less bloody than asking allies to hunt down terrorists on the United States’ behalf. The Pakistani and Yemeni militaries, for example, are known to regularly torture and execute detainees, and they often indiscriminately bomb civilian areas or use scorched-earth tactics against militant groups.

AQ leadership is down but not out

Simpson 8/17—national affairs columnist with The Globe and Mail, a Canadian newspaper (2013, Jeffrey, “The long war against al-Qaeda isn't over,” lexis)

Just how serious is the al-Qaeda threat? Informed people can disagree, but the Canadian Security Intelligence Service did everyone a favour by convening a workshop on "The Future of al-Qaeda" and then publishing the results, including three possible scenarios. They ranged from al-Qaeda in decline, as the State Department suggested, to al-Qaeda growing incrementally, to al-Qaeda gaining rapidly in strength.

The incremental growth scenario emerged as the most likely. If that is correct, the organization will remain a threat for a very long time. Al-Qaeda has morphed or sprung offshoots to Saharan Africa and parts of Southeast Asia. It remains resilient in Pakistan and some countries in the Middle East.

Its fighters are now very much involved in the Syrian war, hoping to assist in the overthrow of Bashar al-Assad's regime and replace it with a militant Sunni alternative. And, of course, it has followers and sleeper cells in Western countries who remain a threat, witness to which were the recent arrests of men alleged to have been plotting to blow up a train between Toronto and New York.

This very loose network of affiliates persists, despite U.S. drone attacks and other actions that have killed at least 34 key al-Qaeda figures in Pakistan, Yemen and elsewhere. These losses have undoubtedly been disruptive, but the movement grows from the bottom, with new recruits coming from failing states, areas with weak governmental authority, poor economic conditions and, of course, the heavy influence of radical Islam, such as central Yemen, the borderlands of Pakistan, southern Thailand, northern Nigeria or northern Mali.

CSIS published four papers delivered at the conference, but kept the authors' names confidential.

The longest paper, dealing with al-Qaeda Central and al-Qaeda in Iraq, is the most comprehensive and sobering. It concludes that "the long-established nucleus of the al-Qaeda organization has proven itself to be as resilient as it is formidable."

Al-Qaeda's core leadership, the author wrote, "has withstood arguably the greatest international onslaught against a terrorist organization in history." Despite this, the organization has lasted for a quarter of a century. When U.S. troops withdraw from Afghanistan, life will be even easier for al-Qaeda across the border in Pakistan, where its key leaders live and work. The chaos in Syria has presented an opportunity for al-Qaeda to join the fray against an apostate Alawite-controlled regime backed by the Shia forces of Iran and Hezbollah in Lebanon, both enemies of the Sunni jihadis in al-Qaeda.

Drones solve safe havens – prevents an attack in the US

Johnston 12 (Patrick B. Johnston is an associate political scientist at the RAND Corporation, a nonprofit, nonpartisan research institution. He is the author of "Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns," published in International Security (Spring 2012)., 8/22/2012, "Drone Strikes Keep Pressure on al-Qaida", www.rand.org/blog/2012/08/drone-strikes-keep-pressure-on-al-qaida.html)

Should the U.S. continue to strike at al-Qaida's leadership with drone attacks? A recent poll shows that while most Americans approve of drone strikes, in 17 out of 20 countries, more than half of those surveyed disapprove of them.

My study of leadership decapitation in 90 counter-insurgencies since the 1970s shows that when militant leaders are captured or killed militant attacks decrease, terrorist campaigns end sooner, and their outcomes tend to favor the government or third-party country, not the militants.

Those opposed to drone strikes often cite the June 2009 one that targeted Pakistani Taliban leader Baitullah Mehsud at a funeral in the Tribal Areas. That strike reportedly killed 60 civilians attending the funeral, but not Mehsud. He was killed later by another drone strike in August 2009. His successor, Hakimullah Mehsud, developed a relationship with the foiled Times Square bomber Faisal Shahzad, who cited drone strikes as a key motivation for his May 2010 attempted attack.

Compared to manned aircraft, drones have some advantages as counter-insurgency tools, such as lower costs, longer endurance and the lack of a pilot to place in harm's way and risk of capture. These characteristics can enable a more deliberative targeting process that serves to minimize unintentional casualties. But the weapons employed by drones are usually identical to those used via manned aircraft and can still kill civilians—creating enmity that breeds more terrorists.

Yet many insurgents and terrorists have been taken off the battlefield by U.S. drones and special-operations forces. Besides Mehsud, the list includes Anwar al-Awlaki of al-Qaida in the Arabian Peninsula; al-Qaida deputy leader Abu Yahya al-Li-bi; and, of course, al-Qaida leader Osama bin Laden. Given that list, it is possible that the drone program has prevented numerous attacks by their potential followers, like Shazad.

What does the removal of al-Qaida leadership mean for U.S. national security? Though many in al-Qaida's senior leadership cadre remain, the historical record suggests that "decapitation" will likely weaken the organization and could cripple its ability to conduct major attacks on the U.S. homeland.

Killing terrorist leaders is not necessarily a knockout blow, but can make it harder for terrorists to attack the U.S. Members of al-Qaida's central leadership, once safely amassed in northwestern Pakistan while America shifted its focus to Iraq, have been killed, captured, forced underground or scattered to various locations with little ability to communicate or move securely.

Recently declassified correspondence seized in the bin Laden raid shows that the relentless pressure from the drone campaign on al-Qaida in Pakistan led bin Laden to advise al-Qaida operatives to leave Pakistan's Tribal Areas as no longer safe. Bin Laden's letters show that U.S. counterterrorism actions, which had forced him into self-imposed exile, had made running the organization not only more risky, but also more difficult.

As al-Qaida members trickle out of Pakistan and seek sanctuary elsewhere, the U.S. military is ramping up its counterterrorism operations in Somalia and Yemen, while continuing its drone campaign in Pakistan. Despite its controversial nature, the U.S. counter-terrorism strategy has demonstrated a degree of effectiveness.

The Obama administration is committed to reducing the size of the U.S. military's footprint overseas by relying on drones, special operations forces, and other intelligence capabilities. These methods have made it more difficult for al-Qaida remnants to reconstitute a new safe haven, as Osama bin Laden did in Afghanistan in 1996, after his ouster from Sudan.

Decapitation works---studies

Johnston 12 (Patrick B. Johnston is Associate Political Scientist at the RAND Corporation. He wrote this article while he was a fellow at the Center for International Security and Cooperation and the Empirical Studies of Conflict Project at Stanford University and at the International Security Program at Harvard Kennedy School’s Belfer Center for Science and International Affairs., Spring 2012, International Security, Vol. 36, No. 4 (Spring 2012), pp. 47–79, "Does Decapitation Work?", www.mitpressjournals.org/doi/pdf/10.1162/ISEC\_a\_00076)

Conclusion Targeting militant leaders is now a centerpiece of U.S. strategy in Afghanistan, Pakistan, Somalia, and Yemen, but does capturing or killing militant leaders work? Most extant research eschews the notion that removing enemy leaders can help governments achieve military and political goals. Regardless of whether a government’s adversary is a state, a terrorist organization, or a guerrilla insurgency, the scholarly opinion has been that high-value targeting is ineffective at best and counterproductive at worst. The evidence presented in this article challenges this view. In previous studies, causal inference and generalizability have been difficult given research design and measurement issues. I addressed these issues by employing a data driven approach in which I analyzed variation in the consequences of successful and failed decapitation attempts in campaigns dating from the mid-1970s. After correcting for the endogeneity and measurement issues that have hindered previous studies, I found that neutralizing insurgent leaders has a substantively large and statistically significant effect on numerous metrics of countermilitancy effectiveness. Specifically, the results showed that removing insurgent leaders increases governments’ chances of defeating insurgencies, reduces insurgent attacks, and diminishes overall levels of violence. Because these effects were estimated by comparing the consequences of successful and failed decapitation attempts, I conducted additional analysis to ensure that the observed effects can be attributed to successful operations against insurgent leaders rather than to blowback from botched high-value targeting missions. This was confirmed to be the case. Yet the data also show conclusively that killing or capturing insurgent leaders is usually not a silver bullet. Neutralizing insurgent leaders significantly increases governments’ chances of reducing violence, terminating wars, and defeating insurgencies. A variety of different empirical tests consistently demonstrated that governments were more likely to defeat insurgencies following the successful removal of top insurgent leaders, but this probability was consistently estimated at around 25 to 30 percent—a far cry from the silver bullet many look for when they analyze leadership decapitation. Yet this effect indeed provides a sizable advantage, which can help explain why governments continue to invest in high-value targeting despite its legal ambiguity and normative disrepute. These are not the only findings with policy implications. Importantly, the results do not support the common argument that the costs of failed targeting outweigh the benefits of successful targeting; although there is abundant evidence that capturing or killing insurgent leaders is associated with key metrics of successful counterinsurgency, there is no credible evidence of a martyrdom effect, whereby trying but failing to neutralize militant leaders decreases governments’ chances of defeating insurgencies or increases levels of antigovernment violence. The apparently low costs of failed targeting to operational effectiveness is consistent with choices made by states, such as Israel and the United States, to continue to aggressively target individual members of insurgent and terrorist organizations—including midlevel operatives who can potentially lead them to senior leaders—despite the inherent uncertainty, difficulty, and risks of doing so, and to continue to invest in intelligence capabilities and Special Operations Forces dedicated to kinetic and nonkinetic targeting. The role, responsibilities, and budget of the U.S. Special Operations Command continue to expand even as significant budget cuts become a reality for the Department of Defense. As long as the United States continues to move its fight from the battlefield to the shadows, this trend will likely remain true.

Nuclear terrorism causes extinction

Hellman 8 (Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

Causes US-Russia miscalc – extinction

Barrett et al. 13—PhD in Engineering and Public Policy from Carnegie Mellon University, Fellow in the RAND Stanton Nuclear Security Fellows Program, and Director of Research at Global Catastrophic Risk Institute—AND Seth Baum, PhD in Geography from Pennsylvania State University, Research Scientist at the Blue Marble Space Institute of Science, and Executive Director of Global Catastrophic Risk Institute—AND Kelly Hostetler, BS in Political Science from Columbia and Research Assistant at Global Catastrophic Risk Institute (Anthony, 24 June 2013, “Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia,” Science & Global Security: The Technical Basis for Arms Control, Disarmament, and Nonproliferation Initiatives, Volume 21, Issue 2, Taylor & Francis)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have globally catastrophic effects such as severely reducing food production for years, 1 potentially leading to collapse of modern civilization worldwide, and even the extinction of humanity. 2 Nuclear war between the United States and Russia could occur by various routes, including accidental or unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 3 (Brinkmanship strategies incorporate elements of all of the above, in that they involve intentional manipulation of risks from otherwise accidental or inadvertent launches. 4 ) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, and numerous measures also were taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side's forces and command-and-control capabilities led to both sides’ development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. 5 Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. 6 However, it also has been argued that inadvertent nuclear war between the United States and Russia has continued to present a substantial risk. 7 While the United States and Russia are not actively threatening each other with war, they have remained ready to launch nuclear missiles in response to indications of attack. 8 False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 9 Second, terrorist groups or other actors might cause attacks on either the United States or Russia that resemble some kind of nuclear attack by the other nation by actions such as exploding a stolen or improvised nuclear bomb, 10 especially if such an event occurs during a crisis between the United States and Russia. 11 A variety of nuclear terrorism scenarios are possible. 12 Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 13 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 14 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.–Russian crisis conditions, 15 with the Cuban Missile Crisis being a prime historical example. It is possible that U.S.–Russian relations will significantly deteriorate in the future, increasing nuclear tensions. There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 16

Al-Qaeda is gearing up for ebola bioterror attacks

Obwale 12 [David, Clinical and Experimental Medicine graduate, University College London Clinical and Experimental Medicine graduate, 8/5/12, The Observer, “Ebola a potential bio-terror weapon,” http://www.observer.ug/index.php?option=com\_content&view=article&id=20215:ebola-a-potential-bio-terror-weapon&catid=37:guest-writers&Itemid=66, accessed 9/3/12, JTF]

Ebola has capabilities of biological weaponization with catastrophic consequences, especially due to the fact that it lacks adequate and effective vaccines and therapeutics that would counter any prospective mass attacks. Its zoonotic origin, distribution route and exposure in the tropical climatic conditions conceal its incubation and concurrence in these belligerent conditions.¶ Also, Ebola, being highly contagious, presents an adaptability factor likely to be exploited by biological terrorists willing to be infected by these bio-hazardous agents. The terrorists would then have to deliberately transport themselves into their targeted areas during the incubation period in order to initiate person-to-person transmission, either by secretion contact or airborne dissemination.¶ The relatively low production cost, that only entails human contact and enormous availability of willing volunteers, which already exists amongst Al Qaeda radicals, poses a threat of unprecedented scale. Al Qaeda and its extremist networks have already carried out numerous terrorist attacks around the globe. Needless to say, arming themselves with Ebola, as a highly effective weapon, would lend them the capacity to unleash a high-impact attack causing mass civilian casualties.¶ Proliferation of the Ebola virus for bioterrorism may also arise from the way biological specimens are stored, which is unique to agents of viral hemorrhagic fevers. Most virological laboratories are not specialized and equipped adequately for rapid diagnosis and appropriate examination of the Ebola samples. The storage of Ebola virus samples requires maximum security in the specimen laboratories.¶ This has resulted into the monopoly by some reference laboratories dealing with scientific repositories’ management. This raises the issues of sharing specimens and the illicit use of these infectious agents which can stream into the possible risk of bioterrorism during diagnostic research and procedures.

Bioterror causes extinction

Mhyrvold ‘13 Nathan, Began college at age 14, BS and Masters from UCLA, Masters and PhD, Princeton “Strategic Terrorism: A Call to Action,” Working Draft, The Lawfare Research Paper Series Research paper NO . 2 – 2013

As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 1970s technology because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances, utterly transforming the field in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. Tomorrow’s terrorists will have vastly more deadly bugs to choose from. Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. A team of researchers at Saint Louis University led by Mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too. Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done. This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14 Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included.

Independently causes US retaliation

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The number of American casualties suffered due to a WMD attack may well be the most important variable in determining the nature of the US reprisal. A key question here is how many Americans would have to be killed to prompt a massive response by the United States. The bombing of marines in Lebanon, the Oklahoma City bombing, and the downing of Pan Am Flight 103 each resulted in a casualty count of roughly the same magnitude (150–300 deaths). Although these events caused anger and a desire for retaliation among the American public, they prompted no serious call for massive or nuclear retaliation. The body count from a single biological attack could easily be one or two orders of magnitude higher than the casualties caused by these events. Using the rule of proportionality as a guide, one could justifiably debate whether the United States should use massive force in responding to an event that resulted in only a few thousand deaths. However, what if the casualty count was around 300,000? Such an unthinkable result from a single CBW incident is not beyond the realm of possibility: “According to the U.S. Congress Office of Technology Assessment, 100 kg of anthrax spores delivered by an efficient aerosol generator on a large urban target would be between two and six times as lethal as a one megaton thermo-nuclear bomb.” Would the deaths of 300,000 Americans be enough to trigger a nuclear response**?** In this case, proportionality does not rule out the use of nuclear weapons. Besides simply the total number of casualties, the types of casualties- predominantly military versus civilian- will also affect the nature and scope of the US reprisal action. Military combat entails known risks, and the emotions resulting from a significant number of military casualties are not likely to be as forceful as they would be if the attack were against civilians.World War II provides perhaps the best examples for the kind of event or circumstance that would have to take place to trigger a nuclear response. A CBW event that produced a shock and death toll roughly equivalent to those arising from the attack on Pearl Harbor might be sufficient to prompt a nuclear retaliation. President Harry Truman’s decision to drop atomic bombs on Hiroshima and Nagasaki- based upon a calculation that up to one million casualties might be incurred in an invasion of the Japanese homeland47- is an example of the kind of thought process that would have to occur prior to a nuclear response to a CBW event. Victor Utgoff suggests that **“**if nuclear retaliation is seen at the time to offer the best prospects for suppressing further CB attacks and speeding the defeat of the aggressor, and if the original attacks had caused severe damage that had outraged American or allied publics, nuclear retaliation would be more than just a possibility, whatever promises had been made**.”**

# Plan

Plan: The United States Federal Government should restrict executive authority for targeted killing as a first resort outside zones of active hostilities.

# Solvency

CONTENTION FOUR: SOLVENCY

Congressional action sends a clear signal the US abides by laws of armed conflict

Kenneth Anderson, Professor of Law, Washington College of Law, American University, and Research Fellow, The Hoover Institution, Stanford University and Member of its Task Force on National Security and the Law, 3/18/10, Rise of the Drones: Unmanned Systems and the Future of War, digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=pub\_disc\_cong

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

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

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

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

The Multiple Strategic Uses of Drones and Their Legal Rationales

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plan’s mechanism is key to consensus-building on targeted killing norms

Jennifer Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165

Legal scholars, policymakers, and state actors are embroiled in a heated debate about whether the conflict with al Qaeda is concentrated within specific geographic boundaries or extends to wherever al Qaeda members and associated forces may go. The United States' expansive view of the conflict, coupled with its broad definition of the enemy, has led to a legitimate concern about the creep of war. Conversely, the European and human rights view, which confines the conflict to a limited geographic region, ignores the potentially global nature of the threat and unduly constrains the state's ability to respond. Neither the law of international armed conflict (governing conflicts between states) nor the law of noninternational armed conflict (traditionally understood to govern intrastate conflicts) provides the answers that are so desperately needed.

The zone approach proposed by this Article fills the international law gap, effectively mediating the multifaceted liberty and security interests at stake. It recognizes the broad sweep of the conflict, but distinguishes between zones of active hostilities and other areas in determining which rules apply. Specifically, it offers a set of standards that would both limit and legitimize the use of out-of-battlefield targeted killings and law of war-based detentions, subjecting their use to an individualized threat assessment, a least-harmful-means test, and significant procedural safeguards. This approach confines the use of out-of-battlefield targeted killings and detention without charge to extraordinary situations in which the security of the state so demands. It thus limits the use of force as a first resort, protects against the unnecessary erosion of peacetime norms and institutions, and safeguards individual liberty. At the same time, the zone approach ensures that the state can effectively respond to grave threats to its security, wherever those threats are based.

The United States has already adopted a number of policies that distinguish between zones of active hostilities and elsewhere, implicitly recognizing the importance of this distinction. By adopting the proposed framework as a matter of law, the United States can begin to set the standards and build an international consensus as to the rules that ought to apply, not only to this conflict, but to future conflicts. The likely reputational, security, and foreign policy gains make acceptance of this framework a worthy endeavor.

The plan is administration policy but just needs to be formalized---triggers your DAs

Jennifer Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165

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

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

Second, while the proposed substantive and procedural safeguards are more stringent than those that are currently being employed, their implementation will lead to increased restraint and enhanced legitimacy, which in turn inure to the state. As the U.S. Counterinsurgency Manual explains, it is impossible and self-defeating to attempt to capture or kill every potential insurgent: "Dynamic insurgencies can replace losses quickly. Skillful counterinsurgents must thus cut off the sources of that recuperative power" by increasing their own legitimacy at the expense of the insurgent's legitimacy. n215 The Counterinsurgency Manual further notes, "Excessive use of force, unlawful detention ... and punishment without trial" comprise "illegitimate actions" that are ultimately "self-defeating." n216 In this vein, the Manual advocates moving "from combat operations to law enforcement as [\*1232] quickly as feasible." n217 In other words, the high profile and controversial nature of killings outside conflict zones and detention without charge can work to the advantage of terrorist groups and to the detriment of the state. Self-imposed limits on the use of detention without charge and targeted killing can yield legitimacy and security benefits. n218

Third, limiting the exercise of these authorities outside zones of active hostilities better accommodates the demands of European allies, upon whose support the United States relies. As Brennan has emphasized: "The convergence of our legal views with those of our international partners matters. The effectiveness of our counterterrorism activities depends on the assistance and cooperation of our allies who, in ways public and private, take great risks to aid us in this fight." n219 By placing self-imposed limits on its actions outside the "hot" battlefield, the United States will be in a better position to participate in the development of an international consensus as to the rules that ought to apply.

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

Fifth, and critically, while the United States might be confident that it will exercise its authorities responsibly, it cannot assure that other states will follow suit. What is to prevent Russia, for example, from asserting that [\*1233] it is engaged in an armed conflict with Chechen rebels, and can, consistent with the law of war, kill or detain any person anywhere in the world which it deems to be a "functional member" of that rebel group? Or Turkey from doing so with respect to alleged "functional members" of Kurdish rebel groups? If such a theory ultimately resulted in the targeted killing or detaining without charge of an American citizen, the United States would have few principled grounds for objecting.

Congressional restriction key to credibility and signal

Kenneth Anderson, Professor of Law, Washington College of Law, American University, and Research Fellow, The Hoover Institution, Stanford University and Member of its Task Force on National Security and the Law, 5/11/2009, Targeted Killing in U.S. Counterterrorism Strategy and Law, http://www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\_counterterrorism\_anderson.pdf

What Should Congress Do?

Does this analysis offer any practical policy prescriptions for Congress and the administration? The problem is not so much a need for new legislation to create new structures or new policies. The legislative category in which many instances of targeted killing might take place in the future already exists. The task for Congress and the administration, rather, is instead to preserve a category that is likely to be put under pressure in the future and, indeed, is already seen by many as a legal non-starter under international law.

Before addressing what Congress should do in this regard, we might ask from a strictly strategic political standpoint whether, given that the Obama Administration is committed to this policy anyway, whether it is politically prudent to draw public attention to the issue at all. Israeli officials might be threatened with legal action in Spain; but so far no important actor has shown an appetite for taking on the Obama Administration. Perhaps it is better to let sleeping political dogs lie.

These questions require difficult political calculations. However, the sources cited above suggest that even if no one is quite prepared at this moment to take on the Obama Administration on targeted killing, the intellectual and legal pieces of the challenge are already set up and on the table. Having asserted certain positions concerning human rights law and its application and the United States having unthinkingly abandoned its self-defense rationale for its policy, the play can be made at any time—at some later time in the Obama Administration or in the next Republican administration, prying apart the “American” position to create a de facto alliance among Democrats and Europeans and thereby undermining the ability of the United States to craft a unified American security strategy.101 The United States would be best served if the Obama Administration did that exceedingly rare thing in international law and diplomacy: Getting the United States out in front of the issue by making plain the American position, rather than merely reacting in surprise when its sovereign prerogatives are challenged by the international soft-law community.

The deeper issue here is not merely a strategic and political one about targeted killing and drones but goes to the very grave policy question of whether it is time to move beyond the careful ambiguity of the CIA’s authorizing statute in referring to covert uses of force under the doctrines of vital national interest and self-defense. Is it time to abandon strategic ambiguity with regards to the Fifth Function and assert the right to use force in self-defense and yet in “peacetime”—that is, outside of the specific context of an armed conflict within the meaning of international humanitarian law? Quite possibly, the strategic ambiguity, in a world in which secrecy is more and more difficult, and in the general fragmentation of voice and ownership of international law, has lost its raison d’etre. This is a larger question than the one undertaken here, but on a range of issues including covert action, interrogation techniques, detention policy, and others, a general approach of overt legislation that removes ambiguity is to be preferred.

The single most important role for Congress to play in addressing targeted killings, therefore, is the open, unapologetic, plain insistence that the American understanding of international law on this issue of self-defense is legitimate. The assertion, that is, that the United States sees its conduct as permissible for itself and for others. And it is the putting of congressional strength

 behind the official statements of the executive branch as the opinio juris of the United States, its authoritative view of what international law is on this subject. If this statement seems peculiar, that is because the task—as fundamental as it is—remains unfortunately poorly understood.

Yet if it is really a matter of political consensus between Left and Right that targeted killing is a tool of choice for the United States in confronting its non-state enemies, then this is an essential task for Congress to play in support of the Obama Administration as it seeks to speak with a single voice for the United States to the rest of the world. The Congress needs to backstop the administration in asserting to the rest of the world— including to its own judiciary—how the United States understands international law regarding targeted killing. And it needs to make an unapologetic assertion that its views, while not dispositive or binding on others, carry international authority to an extent that relatively few others do—even in our emerging multi-polar world. International law traditionally, after all, accepts that states with particular interests, power, and impact in the world, carry more weight in particular matters than other states. The American view of maritime law matters more than does landlocked Bolivia’s. American views on international security law, as the core global provider of security, matter more than do those of Argentina, Germany or, for that matter, NGOs or academic commentators. But it has to speak—and speak loudly—if it wishes to be heard. It is an enormously important instance of the need for the United States to re-take “ownership” of international law— not as its arbiter, nor as the superpower alone, but as a very powerful, very important, and very legitimate sovereign state.

Intellectually, continuing to squeeze all forms and instances of targeted killing by standoff platform under the law of IHL armed conflict is probably not the most analytically compelling way to proceed. It is certainly not a practical long-term approach. Not everyone who is an intuitively legitimate target from the standpoint of self-defense or vital national security, after all, will be already part of an armed conflict or combatant in the strict IHL sense. Requiring that we use such IHL concepts for a quite different category is likely to have the deleterious effect of deforming the laws of war, over the long term—starting, for example, with the idea of a “global war,” which is itself a certain deformation of the IHL concept of hostilities and armed conflict.

# \*\*\*2AC\*\*\*

## A2: Backlash Inevitable – Public

 **Anderson 13** (Kenneth Anderson is a professor of international law at American University and a member of the Task Force on National Security and Law at the Hoover Institution, June 2013, "The Case for Drones", https://www.commentarymagazine.com/articles/the-case-for-drones/)

**Without a hardheaded effort on the part of Congress** and the executive branch to make drone policy, **the efforts to discredit drones will continue**. The current wide public support in the United States today should not mask the ways in which **public perception and sentiment can be shifted,** here and abroad. The campaign of delegitimation is modeled on the one against Guantanamo Bay during the George W. Bush administration; the British campaigning organization Reprieve tweets that it will make drones the Obama administration’s Guantanamo. **Then as now, administration officials did not, or were unforgivably slow to, believe that a mere civil-society campaign could** force a reset of their policies. They miscalculated then and, as former Bush administration officials John Bellinger and Jack Goldsmith have repeatedly warned, **they might well be miscalculating now**.

## A2: DoD Shift Solves

 DoD Shift doesn’t solve either advantage

Zakaria 13 (Rafia, Aljazeera, “President Obama: The drones don't work, they just make it worse,” March 26, 2013, http://www.aljazeera.com/indepth/opinion/2013/03/201332685936147309.html)

Moving the drone program from the CIA to the Department of Defense is thus being painted as a victory, even a capitulation, to those critics who have criticised the lack of transparency, accountability, and legal basis of the drone program. However, the details of the move do not suggest a reversal or even a rethinking of the strategic imperatives that the Obama Administration and the CIA have used to justify the drone program. First, the gradual process of the transition without any publicly disclosed details of how and when it will be completed are likely to create a situation in which, at least for a time, it would be difficult if not impossible to tell which agency, the Department of Defense or the CIA, would actually be responsible for a strike. Second, according to a government official who spoke to the Washington Post, the CIA program in Pakistan would be phased out even later “because of the complexities there” and because the program, unlike the ones in Yemen and Somalia, was actually begun by the CIA. Finally, even if the drone program is actually moved to the Department of Defense, it will be incorporated into its most secret portion, the Joint Special Operations Command, whose top-secret operations are also covert and never released to the public. When these factors are considered, the effort to provide more transparency and an institutional framework for the drone program seem chimerical at best and deceptive at worst. All of them point to a continuation of a national security mindset, within the Obama Administration and the State Department, both believing that drones, cheaply bought and unmanned, are a perfect way to bombard other countries with minimal cost the United States. With the risk of dead American soldiers reduced to nothing, military officials are also gobbling up the idea of waging remote-control wars all over the world, wherever a possible or even supposed threat can be identified.

## 2AC EU Relations

 Anthony Dworkin 13, senior policy fellow at the European Council on Foreign Relations, “Drones And Targeted Killing: Defining A European Position”, July, <http://ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf>

There are several ways in which **the EU has an interest in** the elaboration of **a clearer position on drone strikes and targeted killing**, and in a broader effort to promulgate more restrictive international standards **in this area**. The EU is committed to put human rights and the rule of law at the centre of its foreign policy, and **many Europeans are likely to consider the widespread use of drones outside battlefield conditions incompatible** with these principles. The EU has in the past condemned Israeli targeted killing of Palestinians. For instance, in March 2004, the European Council issued a statement describing the recent Israeli strike against Hamas leader Sheikh Ahmed Yassin as an “extra-judicial killing”. It added: “Not only are extra-judicial killings contrary to international law, they undermine the concept of the rule of law which is a key element in the fight against terrorism.”4 Although there are, of course, differences in the contexts of US and Israeli actions, the EU should continue to use its influence to work against the spread of a practice that it has previously opposed.

 3) Make them find plan-specific links – the 1AC is the one standard that will appease the EU

Anthony Dworkin 13, senior policy fellow at the European Council on Foreign Relations, “Drones And Targeted Killing: Defining A European Position”, July, <http://ecfr.eu/page/-/ECFR84_DRONES_BRIEF.pdf>

Meanwhile, **European governments are** increasingly **acquiring armed drones** for their own military forces **and**, in some cases, **encountering** strong **public or political** opposition. German Defence Minister Thomas de Maizière’s announcement of his wish to purchase armed UAVs for the Bundeswehr prompted campaigning groups to launch an appeal entitled “No Combat Drones” and provoked criticism from opposition parties. In the UK, the shift of control of British drones from Nevada to a Royal Air Force base in Lincolnshire led to a demonstration of several hundred people. Italy, the Netherlands, and Poland are among other EU member states that are seeking or considering the purchase of armed drones, and European defence consortia are exploring the possibility of manufacturing both surveillance and armed UAVs in Europe. To defuse public suspicion **of drones in Europe,** EU governments have an interest in **reducing the controversy provoked by US actions and developing** a clearer European line **about when lethal strikes against individuals are permissible**.

**Armed drones are proliferating** (and developing in sophistication) **rapidly beyond Europe**. Perhaps **the strongest reason** for the EU **to define a clearer position on drones and targeted killing is to prevent the expansive and opaque policies followed by the US until now from setting an** unchallenged global precedent. Already Chinese state media have reported that the country’s Public Security Ministry developed a plan to carry out a drone strike against a Burmese drug trafficker implicated in the killing of several Chinese sailors, though the suggestion was apparently overruled.12 As well as China, which has an active drone programme, Russia, Saudi Arabia, and Turkey are either developing or have announced an intention to purchase armed UAVs. **The US assertion that it can lawfully target** members of a group with whom it declares itself to be at war, even outside battlefield conditions**, could become a** reference point for these and other countries. It will be difficult for the EU to condemn such use of drones if it fails to define its own position more clearly at this point.

4) No impact to EU relations

**Helgesen ‘11** Vidar Helgesen, Secretary-General of International IDEA. “Reinvigorating the Infrastructure for Democracy Support: Strengthening multilateral mechanisms for coordinating and implementing democracy policy – what role for the EU and US”. March 3, 2011. <http://www.idea.int/resources/analysis/upload/2011-03-03-International-IDEA-NDI-paper-final.pdf>

Reviewing the transatlantic relationship and the potential to develop it in the area of democracy policy, it seems that political momentum may be lacking at two levels. Firstly, EU and US leaders may not be convinced themselves of the importance of the transatlantic relationship as central in addressing global challenges. As leaders strive to keep pace with shifts in global power and build new networks, old alliances will be neglected unless they show themselves relevant and up to the challenges presented. Each side must have something to offer the other in terms of relevance and being a credible partner. On the EU side, the lack of institutional coordination and lack of clarity about changes in the foreign policy area resulting from the Lisbon Treaty compound this problem. The EU has faced challenges in showing itself to be a relevant partner for the US in areas of critical American foreign policy interest, such as Afghanistan7. In the democracy field, as the focus has shifted from the support of emerging democracy in Central and Eastern Europe, it is also not clear from the state of the transatlantic relationship that the US views the EU as the most relevant of partners. This may again be up for re-assessment, though, given the wave of democratic uprisings in the Arab World and in the event that the EU will be able to shape an effective and unified response to the developments. A key test in this regard is whether the EU will be seen as being driven mainly by concerns about immigration control and whether EU and US policies will be seen as dominated by the spectre of violent Islamism. If, on the contrary, the EU and the US could share a comprehensive and long-term approach respectful of home-grown political dynamics, there could be potential for renewed energy in transatlantic support to democracy.

No impact

**Leonard 12** (Mark Leonard is co-founder and director of the European Council on Foreign Relations, the first pan-European think tank., 7/24/2012, "The End of the Affair", www.foreignpolicy.com/articles/2012/07/24/the\_end\_of\_the\_affair)

But Obama's stellar personal ratings in Europe hide the fact that the Western alliance has never loomed smaller in the imagination of policymakers on either side of the Atlantic. Seen from Washington, there is not a single problem in the world to be looked at primarily through a transatlantic prism. Although the administration looks first to Europeans as partners in any of its global endeavors -- from dealing with Iran's nuclear program to stopping genocide in Syria -- it no longer sees the European theater as its core problem or seeks a partnership of equals with Europeans. It was not until the eurozone looked like it might collapse -- threatening to bring down the global economy and with it Obama's chances of reelection -- that the president became truly interested in Europe. Conversely, Europeans have never cared less about what the United States thinks. Germany, traditionally among the most Atlanticist of European countries, has led the pack. Many German foreign-policy makers think it was simply a tactical error for Berlin to line up with Moscow and Beijing against Washington on Libya. But there is nothing accidental about the way Berlin has systematically refused even to engage with American concerns over German policy on the euro. During the Bush years, Europeans who were unable to influence the strategy of the White House would give a running commentary on American actions in lieu of a substantive policy. They had no influence in Washington, so they complained. But now, the tables are turned, with Obama passing continual judgment on German policy while Chancellor Angela Merkel stoically refuses to heed his advice. Europeans who for many years were infantilized by the transatlantic alliance, either using sycophancy and self-delusion about a "special relationship" to advance their goals or, in the case of Jacques Chirac's France, pursuing the even more futile goal of balancing American power, have finally come to realize that they can no longer outsource their security or their prosperity to Uncle Sam. On both sides of the Atlantic, the ties that held the alliance together are weakening. On the American side, Obama's biography links him to the Pacific and Africa but not to the old continent. His personal story echoes the demographic changes in the United States that have reduced the influence of Americans of European origin. Meanwhile, on the European side, the depth of the euro crisis has crowded out almost all foreign policy from the agenda of Europe's top decision-makers. The end of the Cold War means that Europeans no longer need American protection, and the U.S. financial crisis has led to a fall in American demand for European products (although U.S. exports to Europe are at an all-time high). What's more, Obama's lack of warmth has precluded him from establishing the sorts of human relationships with European leaders that animate alliances. When asked to name his closest allies, Obama mentions non-European leaders such as Recep Tayyip Erdogan of Turkey and Lee Myung-bak of South Korea. And his transactional nature has led to a neglect of countries that he feels will not contribute more to the relationship -- within a year of being elected, Obama had managed to alienate the leaders of most of Europe's big states, from Gordon Brown to Nicolas Sarkozy to Jose Luis Rodriguez Zapatero. Americans hardly remember, but Europe's collective nose was put out of joint by Obama's refusal to make the trip to Europe for the 2010 EU-U.S. summit. More recently, Obama has reached out to allies to counteract the impression that the only way to get a friendly reception in Washington is to be a problem nation -- but far too late to erase the sense that Europe matters little to this American president. Underlying these superficial issues is a more fundamental divergence in the way Europe and the United States are coping with their respective declines. As the EU's role shrinks in the world, Europeans have sought to help build a multilateral, rule-based world. That is why it is they, rather than the Chinese or the Americans, that have pushed for the creation of institutionalized global responses to climate change, genocide, or various trade disputes. To the extent that today's world has not collapsed into the deadlocked chaos of a "G-zero," it is often due to European efforts to create a functioning institutional order. To Washington's eternal frustration, however, Europeans have not put their energies into becoming a full partner on global issues. For all the existential angst of the euro crisis, Europe is not as weak as people think it is. It still has the world's largest market and represents 17 percent of world trade, compared with 12 percent for the United States. Even in military terms, the EU is the world's No. 2 military power, with 21 percent of the world's military spending, versus 5 percent for China, 3 percent for Russia, 2 percent for India, and 1.5 percent for Brazil, according to Harvard scholar Joseph Nye. But, ironically for a people who have embraced multilateralism more than any other on Earth, Europeans have not pooled their impressive economic, political, and military resources. And with the eurozone's need to resolve the euro crisis, the EU may split into two or more tiers -- making concerted action even more difficult. As a result, European power is too diffuse to be much of a help or a hindrance on many issues. On the other hand, Obama's United States -- although equally committed to liberal values -- thinks that the best way to safeguard American interests and values is to craft a multipartner world. On the one hand, Obama continues to believe that he can transform rising powers by integrating them into existing institutions (despite much evidence to the contrary). On the other, he thinks that Europe's overrepresentation in existing institutions like the World Bank and the International Monetary Fund is a threat to the consolidation of that order. This is leading a declining America to increasingly turn against Europe on issues ranging from climate change to currencies. The most striking example came at the 2009 G-20 in Pittsburgh, when Obama worked together with the emerging powers to pressure Europeans to give up their voting power at the IMF. As Walter Russell Mead, the U.S. international relations scholar, has written, "[I]ncreasingly it will be in the American interest to help Asian powers rebalance the world power structure in ways that redistribute power from the former great powers of Europe to the rising great powers of Asia today." But the long-term consequence of the cooling of this unique alliance could be the hollowing out of the world order that the Atlantic powers have made. The big unwritten story of the last few decades is the way that a European-inspired liberal economic and political order has been crafted in the shell of the American security order. It is an order that limits the powers of states and markets and puts the protection of individuals at its core. If the United States was the sheriff of this order, the EU was its constitutional court. And now it is being challenged by the emerging powers. Countries like Brazil, China, and India are all relatively new states forged by movements of national liberation whose experience of globalization has been bound up with their new sense of nationhood. While globalization is destroying sovereignty for the West, these former colonies are enjoying it on a scale never experienced before. As a result, they are not about to invite their former colonial masters to interfere in their internal affairs. Just look at the dynamics of the United Nations Security Council on issues from Sudan to Syria. Even in the General Assembly, the balance of power is shifting: 10 years ago, China won 43 percent of the votes on human rights in the United Nations, far behind Europe's 78 percent. But in 2010-11, the EU won less than 50 percent to China's nearly 60 percent, according to research by the European Council on Foreign Relations. Rather than being transformed by global institutions, China's sophisticated multilateral diplomacy is changing the global order itself. As relative power flows Eastward, it is perhaps inevitable that the Western alliance that kept liberty's flame alight during the Cold War and then sought to construct a liberal order in its aftermath is fading fast. It was perhaps inevitable that both Europeans and Americans should fail to live up to each other's expectations of their respective roles in a post-Cold War world. After all, America is still too powerful to happily commit to a multilateral world order (as evidenced by Congress's reluctance to ratify treaties). And Europe is too physically safe to be willing to match U.S. defense spending or pool its resources. What is surprising is that the passing of this alliance has not been mourned by many on either side. The legacy of Barack Obama is that the transatlantic relationship is at its most harmonious and yet least relevant in 50 years. Ironically, it may take the election of someone who is less naturally popular on the European stage for both sides to wake up and realize just what is at stake.

NATO resilient

Brunnstrom 10 (David, Reuters, 11/15/2010, “NATO to stress global role despite Afghan bruising”, http://news.yahoo.com/s/nm/20101115/wl\_nm/us\_nato\_summit\_future)

Analysts say the Afghan war has been a blow to NATO's psyche, with countries keen to wind down their commitment as rapidly as possible. The widely expected messy conclusion to the conflict could be further damaging to its prestige. But they see little threat to the future of NATO itself. "I think that Afghanistan has really raised questions about the future of NATO -- but that's not to say that NATO is going away," said Rand Corporation analyst Brian Jenkins. NATO was created during the Cold War to defend against invasion by conventional forces from the former Soviet bloc. As a result it has relied mostly on weaponry such as tanks and aircraft largely unsuited to counter-insurgency operations. Critics argue the alliance has been more effective as a means of intimidation or deterrent than a fighting force, having fought only one other campaign in its history -- the successful air war against Serbia over Kosovo in 1999. "NATO now finds itself in a situation for which the allies were politically and militarily unprepared," Jenkins said, noting that the vast majority of conflicts around the world involved irregular forces.

## 2AC Legal Liberalism

 2) The ballot should simulate the effects of the 1AC - they should only defend the squo

**Donohue 13** 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.

5) Debating the law teaches us how to make it better – rejection is worse

Todd Hedrick, Assistant Professor of Philosophy at Michigan State University, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

Habermas’ alleged abandonment of immanent critique, however, is belied by the role that the democratic legal system comes to play in his theory. While in some sense just one system among others, it has a special capacity to shape the environments of other systems by regulating their interaction. Of course, the legal system is not the only one capable of affecting the environments of other systems, but law is uniquely open to inputs from ordinary language and thus potentially more pliant and responsive to democratic will formation: “Normatively substantive messages can circulate throughout society only in the language of law … . Law thus functions as the ‘transformer’ that guarantees that the socially integrating network of communication stretched across society as a whole holds together.”55 This allows for the possibility of consensual social regulation of domains ranging from the economy to the family, where actors are presumed to be motivated by their private interests instead of respect for the law, while allowing persons directed toward such interests to be cognizant that their privately oriented behavior is compatible with respect for generally valid laws. While we should be cautious about automatically viewing the constitution as the fulcrum of the legal order, its status as basic law is significant in this respect. For, recalling Hegel's broader conception of constitutionalism, political constitutions not only define the structure of government and “the relationship between citizens and the state” (as in Hegel's narrower “political” constitution); they also “implicitly prefigure a comprehensive legal order,” that is, “the totality comprised of an administrative state, capitalist economy, and civil society.”56 So, while these social spheres can be conceived of as autonomous functional subsystems, their boundaries are legally defined in a way that affects the manner and degree of their interaction: “The political constitution is geared to shaping each of these systems by means of the medium of law and to harmonizing them so that they can fulfill their functions as measured by a presumed ‘common good’.”57 Thus, constitutional discourses should be seen less as interpretations of a positive legal text, and more as attempts to articulate legal norms that could shift the balance between these spheres in a manner more reflective of generalizable interests, occurring amidst class stratification and cultural pluralism.

A constitution's status as positive law is also of importance for fundamentally Hegelian reasons relating to his narrower sense of political constitutionalism: its norms must be public and concrete, such that differently positioned citizens have at least an initial sense of what the shared hermeneutic starting points for constitutional discourse might be. But these concrete formulations must also be understood to embody principles in the interest of all citizens, so that constitutional discourse can be the site of effective democratic will formation concerning the basic norms that mediate between particular individuals and the general interests of free and equal citizens. This recalls Hegel's point that constitutions fulfill their mediational function by being sufficiently positive so as to be publicly recognizable, yet are not exhausted by this positivity – the content of the constitution is instead filled in over time through ongoing legislation. In order to avoid Hegel's foreshortened conception of public participation in this process and his consequent authoritarian tendencies, Habermas and, later, Benhabib highlight the importance of being able to conceive of basic constitutional norms as themselves being the products of public contestation and discourse. In order to articulate this idea, they draw on legal theorists like Robert Cover and Frank Michelman who characterize this process of legal rearticulation as “jurisgenesis”58: a community's production of legal meaning by way of continuous rearticulation, through reflection and contestation, of its constitutional project.

Habermas explicitly conceives of the democratic legal order in this way when, in the context of considering the question of how a constitution that confers legitimacy on ordinary legislation could itself be thought to be democratically legitimate, he writes:

I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic – not just in its content but also according to its source of legitimation – is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights.59

A constitutional order and its interpretive history represent a community's attempt to render the terms under which they can give themselves the law that shapes their society's basic structure and secure the law's integrity through assigning basic liberties. Although philosophical reflection can give us some grasp of the presuppositions of a practice of legitimate lawmaking, this framework of presuppositions (“the system of rights”) is “unsaturated.”60 In Hegelian fashion, it must, to be meaningful, be concretized through discourse, and not in an one-off way during a founding moment that fixes the terms of political association once and for all, but continuously, as new persons enter the community and as new circumstances, problems, and perspectives emerge.

The stakes involved in sustaining a broad and inclusive constitutional discourse turn out to be significant. Habermas has recently invoked the concept of dignity in this regard, linking it to the process through which society politically constitutes itself as a reciprocal order of free and equal citizens. As a status rather than an inherent property, “dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition.”61 Rather than being understood as a quality possessed by some persons by virtue of their proximity to something like the divine, the modern universalistic conception of dignity is a social status dependent upon ongoing practices of mutual recognition. Such practices, Habermas posits, are most fully instantiated in the role of citizens as legislators of the order to which they are subject.

[Dignity] can be established only within the framework of a constitutional state, something that never emerges of its own accord. Rather, this framework must be created by the citizens themselves using the means of positive law and must be protected and developed under historically changing conditions. As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order.62

Although the implications of invoking dignity (as opposed to, say, autonomy) as the normative core of democratic constitutionalism are unclear,63 plainly Habermas remains committed to strongly intersubjective conceptions of democratic constitutionalism, to an intersubjectivity that continues to be legally and politically mediated (a dimension largely absent from Honneth's successor theory of intersubectivity).

What all of this suggests is a constitutional politics in which citizens are empowered to take part and meaningfully impact the terms of their cultural, economic, and political relations to each other. Such politics would need to be considerably less legalistic and precedent bound, less focused on the democracy-constraining aspects of constitutionalism emphasized in most liberal rule of law models. The sense of incompleteness and revisability that marks this critical theory approach to constitutionalism represents a point where critical theories of democracy may claim to be more radical and revisionary than most liberal and deliberative counterparts. It implies a sharp critique of more familiar models of bourgeois constitutionalism: whether they conceive of constitutional order as having a foundation in moral rights or natural law, or in an originary founding moment, such models a) tend to be backward-looking in their justifications, seeing the legal order as founded on some exogenously determined vision of moral order; b) tend to represent the law as an already-determined container within which legitimate ordinary politics takes place; and c) find the content of law to be ascertainable through the specialized reasoning of legal professionals. On the critical theory conception of constitutionalism, this presumption of completeness and technicity amounts to the reification of a constitutional project, where a dynamic social relation is misperceived as something fixed and objective.64 We can see why this would be immensely problematic for someone like Habermas, for whom constitutional norms are supposed to concern the generalizable interests of free and equal citizens. If it is overall the case for him that generalizable interests are at least partially constituted through discourse and are therefore not given in any pre-political, pre-discursive sense,65 this is especially so in a society like ours with an unreconciled class structure sustained by pseudo-compromises. Therefore, discursive rearticulation of basic norms is necessary for the very emergence of generalizable interests.

Despite offering an admirably systematic synthesis of radical democracy and the constitutional rule of law, Habermas’ theory is hobbled by the hesitant way he embraces these ideas. Given his strong commitment to proceduralism, the view that actual discourses among those affected must take place during the production of legitimate law if constitutionalism is to perform its mediational function, as well as his opposition to foundational or backward-looking models of political justification, we might expect Habermas to advocate the continuous circulation in civil society of constitutional discourses that consistently have appreciable impact on the way constitutional projects develop through ongoing legislation such that citizens can see the links between their political constitution (narrowly construed), the effects that democratic discourse has on the shape that it takes, and the role of the political constitution in regulating and transforming the broader institutional backbone of society in accordance with the common good. And indeed, at least in the abstract, this is what the “two track” conception of democracy in Between Facts and Norms, with its model of discourses circulating between the informal public sphere and more formal legislative institutions, seeks to capture.66 As such, Habermas’ version of constitutionalism seems a natural ally of theories of “popular constitutionalism”67 emerging from the American legal academy or of those who, like Jeremy Waldron,68 are skeptical of the merits of legalistic constitutionalism and press for democratic participation in the ongoing rearticulation of constitutional norms. Indeed, I would submit that the preceding pages demonstrate that the Left Hegelian social theoretic backdrop of Habermas’ theory supplies a deeper normative justification for more democratic conceptions of constitutionalism than have heretofore been supplied by their proponents (who are, to be fair, primarily legal theorists seeking to uncover the basic commitments of American constitutionalism, a project more interpretive than normative.69) Given that such theories have very revisionary views on the appropriate method and scope of judicial review and the role of the constitution in public life, it is surprising that Habermas evinces at most a mild critique of the constitutional practices and institutions of actually existing democracies, never really confronting the possibility that institutions of constitutional review administered by legal elites could be paternalistic or extinguish the public impetus for discourse he so prizes.70 In fact, institutional questions concerning where constitutional discourse ought to take place and how the power to make authoritative determinations of constitutional meaning should be shared among civil society, legislative, and judiciary are mostly abstracted away in Habermas’ post-Between Facts and Norms writings, while that work is mostly content with the professional of administration of constitutional issues as it exists in the United States and Germany.

This is evident in Habermas’ embrace of figures from liberal constitutional theory. He does not present an independent theory of judicial decision-making, but warmly receives Dworkin's well-known model of “law as integrity.” To a certain extent, this allegiance makes sense, given Dworkin's sensitivity to the hermeneutic dimension of interpretation and the fact that his concept of integrity mirrors discourse theory in holding that legal decisions must be justifiable to those affected in terms of publicly recognizable principles. Habermas does, however, follow Michelman in criticizing the “monological” form of reasoning that Dworkin's exemplary Judge Hercules employs,71 replacing it with the interpretive activities of a specialized legal public sphere, presumably more responsive to the public than Hercules. But this substitution does nothing to alleviate other aspects of Dworkin's theory that make a match between him and Habermas quite awkward: Dworkin's standard of integrity compels judges to regard the law as a complete, coherent whole that rests on a foundation of moral rights.72 Because Dworkin regards deontic rights in a strongly realistic manner and as an unwritten part of the law, there is a finished, retrospective, “already there” quality to his picture of it. Thinking of moral rights as existing independently of their social articulation is what moves Dworkin to conceive of them as, at least in principle, accessible to the right reason of individual moral subjects.73 Legal correctness can be achieved when lawyers and judges combine their specialized knowledge of precedent with their potentially objective insights into deontic rights. Fashioning the law in accordance with the demands of integrity thereby becomes the province of legal elites, rendering public discourse and the construction of generalizable interests in principle unnecessary. This helps explain Dworkin's highly un-participatory conception of democracy and his comfort with placing vast decision-making powers in the hands of the judiciary.7

There is more than a little here that should make Habermas uncomfortable. Firstly, on his account, legitimate law is the product of actual discourses, which include the full spate of discourse types (pragmatic, ethical-political, and moral). If the task of judicial decision-making is to reconstruct the types of discourse that went into the production of law, Dworkin's vision of filling in the gaps between legal rules exclusively with considerations of individual moral rights (other considerations are collected under the heading of “policy”75) makes little sense.76 While Habermas distances himself from Dworkin's moral realism, calling it “hard to defend,”77 he appears not to appreciate the extent to which Dworkin links his account of legal correctness to this very possibility of individual insight into the objective moral order. If Habermas wishes to maintain his long held position that constitutional projects involve the ongoing construction of generalizable interests through the democratic process – which in my view is really the heart of his program – he needs an account of legal correctness that puts some distance between this vision and Dworkin's picture of legal elites discovering the content of law through technical interpretation and rational intuition into a fixed moral order.

Also puzzling is the degree of influence exercised by civil society in the development of constitutional projects that Habermas appears willing to countenance. While we might expect professional adjudicative institutions to play a sort of yeoman's role vis-à-vis the public, Habermas actually puts forth something akin to Bruce Ackerman's picture of infrequent constitutional revolutions, where the basic meaning of a constitutional project is transformed during swelling periods of national ferment, only to resettle for decades at a time, during which it is administered by legal professionals.78 According to this position, American civil society has not generated new understandings of constitutional order that overcome group divisions since the New Deal, or possibly the Civil Rights era. Now, this may actually be the case, and perhaps Habermas’ apparent acquiescence to this view of once-every-few-generations national conversations is a nod to realism, i.e., a realistic conception of how much broad based, ongoing constitutional discourse it is reasonable to expect the public to conduct. But while a theory with a Left Hegelian pedigree should avoid “the impotence of the ought” and utopian speculation, and therefore ought not develop critical conceptions of legal practice utterly divorced from present ones, such concessions to realism are unnecessary. After all, critical theory conceptions of constitutionalism will aim to be appreciably different from the more authoritarian ones currently in circulation, which more often than not fail to stimulate and sustain public discourse on the basic constitution of society. Instead, their point would be to suggest how a more dynamic, expansive, and mediational conception of constitutionalism could unlock greater democratic freedom and rationally integrated social identities.

Given these problems in Habermas’ theory, the innovations that Benhabib makes to his conception of constitutionalism are most welcome. While operating within a discourse theoretic framework, her recent work more unabashedly recalls Hegel's broader conception of the constitution as the basic norms through which a community understands and relates to itself (of which a founding legal document is but a part): a constitution is a way of life through which individuals seek to connect themselves to each other, and in which the very identity and membership of a community is constantly at stake.79 Benhabib's concept of “democratic iterations,” which draws on meaning-as-use theories, emphasizes how meaning is inevitably transformed through repetition:

 In the process of repeating a term or a concept, we never simply produce a replica of the original usage and its intended meaning: rather, very repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there is really no ‘originary’ source of meaning, or an ‘original’ to which all subsequent forms must conform … . Every iteration involves making sense of an authoritative original in a new and different context … . Iteration is the reappropriation of the ‘origin’; it is at the same time its dissolution as the original and its preservation through its continuous deployment.80

Recalling the reciprocal relationship that Hegel hints at between the narrow “political” constitution and the broader constitution of society's backbone of interrelated institutions, Benhabib here seems to envision a circular process whereby groups take up the conceptions of social relations instantiated in the legal order and transform them in their more everyday attempts to live with others in accordance with these norms. Like Cover and Michelman, she stresses that the transformation of legal meaning takes place primarily in informal settings, where different groups try (and sometimes fail) to live together and to understand themselves in their relation to others according to the terms they inherit from the constitutional tradition they find themselves subject to.81 Her main example of such democratic iteration is the challenge Muslim girls in France raised against the head scarf prohibition in public schools (“L’Affaire du Foulard”), which, while undoubtedly antagonistic, she contends has the potential to felicitously transform the meaning of secularity and inclusion in the French state and to create new forms of togetherness and understanding. But although Benhabib illustrates the concept of democratic iterations through an exemplary episode, this iterative process is a constant and pervasive one, which is punctuated by events and has the tendency to have a destabilizing effect on authority.82

It is telling, however, that Benhabib's examples of democratic iterations are exclusively centered on what Habermas would call ethical-political discourses.83 While otherwise not guilty of the charge,84 Benhabib, in her constitutional theory, runs afoul of Nancy Fraser's critical diagnosis of the trend in current political philosophy to subordinate class and distributional conflicts to struggles for cultural inclusion and recognition.85 Perhaps this is due to the fact that “hot” constitutional issues are so often ones with cultural dimensions in the foreground, rarely touching visibly on distributional conflicts between groups. This nonetheless is problematic since much court business clearly affects – often subtly and invisibly – the outcomes of these conflicts, frequently with bad results.86 For another reason why centering constitutional discourse on inclusion and cultural issues is problematic, it is useful to remind ourselves of Habermas’ critique of civic republicanism, according to which the main deficit in republican models of democracy is its “ethical overburdening” of the political process.87 To some extent, republicanism's emphasis on ethical discourse is understandable: given the level of cooperativeness and public spirit that republicans view as the font of legitimate law, political discourses need to engage the motivations and identities of citizens. Arguably, issues of ethical self-understanding do this better than more abstract or arid forms of politics. But it is not clear that this is intrinsically so, and it can have distorting effects on politics. In the American media, for example, this amplification of the cultural facets of issues is very common; conflicts over everything from guns to taxes are often reduced to conflicts over who is a good, real American and who is not. It is hard to say that this proves edifying; substantive issues of rights and social justice are elided, politics becomes more fraudulent and conflictual. None of this is to deny a legitimate place for ethical-political discourse. However, we do see something of a two-steps-forward-one-step-back movement in Benhabib's advancement of Habermas’ discourse theory of law: although her concept of democratic iterations takes center stage, she develops the notion solely along an ethical-political track. Going forward, critical theorists developing conceptions of constitutional discourse should work to see it as a way of integrating questions of distributional justice with questions of moral rights and collective identities without subordinating or conflating them.

4. Conclusion

Some readers may find the general notion of reinvigorating a politics of constitutionalism quixotic. Certainly, it has not been not my intention to overstate the importance or positive contributions of constitutions in actually existing democracies, where they can serve to entrench political systems experiencing paralysis in the face of long term fiscal and environmental problems, and where public appeals to them more often than not invoke visions of society that are more nostalgic, ethno-nationalistic, authoritarian, and reactionary than what Habermas and Benhabib presumably have in mind. Instead, I take the basic Hegelian point I started this paper with to be this: modern persons ought to be able to comprehend their social order as the work of reason; the spine of institutions through which their relations to differently abled and positioned others are mediated ought to be responsive to their interests as fully-rounded persons; and comprehending this system of mediation ought to be able to reconcile them to the partiality of their roles within the universal state. Though modern life is differentiated, it can be understood, when seen through the lens of the constitutional order, as a result of citizens’ jointly exercised rationality as long as certain conditions are met. These conditions are, however, more stringent than Hegel realized. In light of this point, that so many issues deeply impacting citizens’ social and economic relations to one another are rendered marginal – and even invisible – in terms of the airing they receive in the public sphere, that they are treated as mostly settled or non-questions in the legal system consitutues a strikingly deficient aspect of modern politics. Examples include the intrusion of market logic and technology into everyday life, the commodification of public goods, the legal standing of consumers and residents, the role of shareholders and public interests in corporate governance, and the status of collective bargaining arrangements. Surely a contributing factor here is the absence of a shared sense of possibility that the basic terms of our social union could be responsive to the force that discursive reason can exert. Such a sense is what I am contending jurisgenerative theories ought to aim at recapturing while critiquing more legalistic and authoritarian models of law.

This is not to deny the possibility that democratic iterations themselves may be regressive or authoritarian, populist in the pejorative sense. **But the denial of their** legitimacy or **possibility moves us in the direction of authoritarian** conceptions of **law and political power and the isolation of individuals and social groups wrought by a political order of machine-like administration** that Horkheimer and Adorno describe as a main feature of modern political domination. Recapturing some sense of how human activity makes reason actual in the ongoing organization of society need not amount to the claim that reason culminates in some centralized form, as in the Hegelian state, or in some end state, as in Marx. It can, however, move us to envision the possibility of an ongoing practice of communication, lawmaking, and revision that seeks to reconcile and overcome positivity and division, without the triumphalist pretension of ever being able to fully do so.

6) Legal interventions work and the alt is worse

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From the vantage of 2010, it appears the interventionist position—our position—has failed. As we see it, it failed because it was premised upon a legalistic view of rights that simply cannot be squared with the reality of the American political experience. Yet the interventionist stance holds an undeniable attraction. Of all the positions advanced since 9/11, it holds out the best promise of preserving the pluralist ideals of a liberal democracy. The challenge going forward, therefore, is to re-imagine the interventionist intellectual endeavor. To retain relevance, we must translate the lessons of the social sciences into the language of the law, which likely requires that we knock law from its lofty perch. As a beginning, scholarship should be more attuned to the limitations of the judiciary, and mindful of the complicated tendency of narratives to generate backlash and counter-narratives.

But there is another tendency we must resist, and that is the impulse to nihilism—to throw up our hands in despair, with the lament that nothing works and repression is inevitable. Just how to integrate the political and the ideal is, of course, a problem that is at least as old as legal realism itself and one we do not purport to solve in this essay.154 Still, we are heartened by the creative work undertaken in other arenas, ranging from poverty law to gay rights, that explores how, done properly, lawyering (and even litigation) can make real differences in the lives of marginalized people.155 We hope that the next decade of reflections on the policies undertaken in the name of national security will follow their lead in probing not just what the law should be, but how it functions and whom it serves.

7) The alt doesn’t influence legal decisionmaking and results in tyranny

Paul Passavant, Ph.D., Hobart and William Smith College Associate Professor of Political Science, December 2010, Yoo's Law, Sovereignty, and Whatever, Constellations Volume 17, Issue 4, pages 549–571

For some on the left, it has become conventional to celebrate, if not cultivate, pluralism, whether this means multiple forms of being or multiple interpretive possibilities with regard to texts. It has also become conventional to be critical of “sovereignty” and of “law.” Multiplicity is thought to be a threat to sovereignty, and this threat is thought to be democratizing or a force that resists oppression. The Italian philosopher Giorgio Agamben exemplifies these tendencies within contemporary political and legal theory. In some of his earlier and less well-known work, he aspires toward a “coming community” that he calls “whatever being.” Whatever being embraces the infinite communicative possibilities of language as pure means beyond a preoccupation with true or false propositions.

In his best-known work, Agamben links sovereignty to the production of rightless subjects and the Nazi death camps. He urges us to rethink the very ontological basis of politics in the West, creating a human being beyond sovereignty or law, in order to avoid perilous outcomes. One key to surpassing the logic of sovereignty, according to Agamben, is whatever being's positive relation to the singularities of life and the multiplicities of communication.

Whatever being is also being outside of law. If “law” persists in this “coming community,” it would be a “law” that has become deactivated and deposed from its prior purposes. “Law” will have become an object for play – something to be toyed with the way that children might come upon a disused object and play with it by putting it to uses disconnected from whatever purpose this object might once have had.

Why does the fact of playful communicative possibilities lead to either more democracy or a less brutal world? **The most conservative** United States Supreme Court **justices have recently embraced the fact that texts are open to multiple interpretations**. For example, Samuel Alito has suggested that the meaning of public monuments is open to multiple interpretations that may shift over time to avoid a potential First Amendment establishment clause problem over a monument of the Ten Commandments in a public park.1 Yet, as the late Justice Blackmun has written regarding state endorsement of religion, “government cannot be premised on the belief that all persons are created equal when it asserts that God prefers some.”2 **Recognizing the possibility of multiple interpretations,** as this instance shows, **does not lead** necessarily **to outcomes friendly to democracy**.

In this essay, I investigate how playing with the multiplicity of communicative possibilities can, contrary to Agamben's expectations, **actually** facilitate aspirations for unitary sovereign power. My argument unfolds in the context of the legal arguments put forward by Bush administration lawyer John Yoo, particularly those enabling torturous interrogations.

Those, like Agamben, who favor interpretive pluralism in itself rarely, if ever, have right-wing supporters of unchecked presidentialism in mind. Reading the scholarship and legal memoranda of John Yoo, formerly in the Bush administration's Office of Legal Counsel (OLC) and presently a University of California, Berkeley law professor, however, approaches an experience of pure mediality or of law that has become deposed or disconnected from its purposes. Yoo is well known as the author of the key legal memoranda asserting the president's discretionary power to make war, to engage in warrantless surveillance, and, most infamously, justifying torturous methods of interrogation. Some scholars refer to Lewis Carroll's Alice in Wonderland to describe the experience of reading Yoo's legal memos.3 Is John Yoo an exemplar of the whatever being and pure mediality that Agamben describes and to which he contends politics should aspire?

In this paper, I describe how Yoo gestures toward pure mediality, as he indicates the experience of language itself as pure communicability or as pure means in his legal work when he emphasizes the openness of law to being exposed to new, different, flexible, or plural interpretive possibilities. I argue, however, that Yoo is not well described as whatever being. His work repeats too consistently in the direction of absolute presidential decisionism to be open to whatever.

Instead, Yoo's work may capture a broader development within our society that Agamben describes as the emergence of whatever being. Without saying that there has been no resistance to the Bush administration's warrantless wiretapping and policies of torturous interrogations, the contrast between the response to the Nixon administration and the Bush administration is striking. Richard Nixon resigned one step ahead of impeachment in the midst of mass protests against his presidency. The articles of impeachment, for instance, addressed how Nixon engaged in warrantless wiretapping, and refused to execute laws passed by Congress faithfully while repeatedly engaging in conduct that violated the constitutional rights of citizens. Congress also passed major acts of legislation to prevent a president such as Nixon from ever again abusing power the way he had. These laws include the War Powers Act of 1973, the Budget Impoundment and Control Act of 1974, and the Foreign Intelligence Surveillance Act (FISA) of 1978.

In contrast, almost no one seems to have noticed that the Bush administration claimed power to make war at the president's sole discretion. Additionally, upon learning that the Bush administration engaged in criminal acts of surveillance, Congress amended FISA in the summer of 2008 to expand the government's power to spy on Americans, while immunizing from legal accountability non-state actors who collaborated with the then-criminal acts of government officials who followed Bush's illegal orders. Congress tried to make it impossible for those detained to question, legally, their detention or to bring the torturous treatment they endured to a court's attention, while allowing the intelligence agencies to continue to engage in torturous acts by passing the Military Commissions Act of 2006 (MCA). This complicity on the part of Congress cannot be explained on partisan grounds as many Democrats voted in favor of the MCA, and upon becoming the majority party in Congress, they have not rescinded it. Indeed, it was a Democratic-controlled Congress that brushed the Bush administration's illegal surveillance under the rug in 2008.4 Moreover, upon taking power in 2006, the Democratic leadership immediately stated that they would not pursue impeachment. Former Reagan administration **Department of Justice lawyer** Bruce **Fein** has **decried the lack of outrage at the Bush administration's illegalities by suggesting that the nation has become a collection of constitutional “illiterates**.”5 Perhaps law is being deposed as Agamben suggests.

Both Agamben's and Fein's observations may also indicate a failure of what Michel Foucault would call disciplinary power – the power to constitute subjects capable of exercising power, here the powers of liberal democracy – a failure that Gilles Deleuze has identified with the emergence of societies of control, and a subjective and ontological diversity that Michael Hardt and Antonio Negri call the “multitude.”6 They also indicate practices of textual “interpretation” where interpretative acts extricate legal texts from the narratives that once oriented their purposes and animated these texts for a republican and anti-monarchical polity. Robert Cover argues, however, that law is part of a narrative practice constitutive of subjects and a way of life.7 Insofar as interpretive practices become extricated from the possibility of narrative, then, we may indeed doubt the continuing existence of “law,” as Agamben posits. Psychoanalytic theory also identifies a loss of a structuring meaning in contemporary society and describes this as the decline of symbolic efficiency.8

In sum, there appears to be a phenomenon emerging in contemporary society that a variety of different theoretical and political perspectives are struggling to grasp and evaluate. While Agamben welcomes the failures of disciplinary powers as enabling the emergence of whatever being and the “coming community,” it is a cause for concern among those seeking to keep the faith with republicanism, with liberal democracy, or with a Constitution representing these aspirations. In this light, we can be more specific than Agamben about the kind of threat that whatever being poses to the state or to sovereignty.

**Contrary to Agamben's contentions**, **I find** that **whatever being is no threat at all to** the kind of **unitary sovereignty** that Agamben uses to theorize the state in his book Homo Sacer. **Why would it be? Whatever being would be equally at ease with the legal justifications on behalf of a “unitary” sovereignty as it would anything else**. If we, however, give the achievements of the people their due and consider the question of sovereignty from the perspective of popular sovereignty, of the assemblies and assemblages of power through which liberal democratic states seek to extend themselves and to govern at a distance, then whatever being is very much a danger to this type of power. Whatever being can be understood as facilitating a process of deposing this law and this state. **A relation of whatever to the installation of a state of unchecked presidential powers and torture can be the** death knell of popular sovereignty **dedicated to the purpose of opposing tyranny**. Whatever being is not the enemy of any state or form of “sovereignty.” It is the enemy of popular sovereignty. Whatever ruins democracy. If we want more than unchecked presidential power and torture, then we will have to dedicate ourselves to certain purposes, like resisting tyranny and recalling that this was the purpose of the U.S. Constitution.

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

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

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

## 2AC Ban Drones

4) Can’t solve prolif – it’s like a non-nuclear state trying to convince Russia to sign an arms reduction treaty

**Anderson 13** Kenneth Anderson, professor of international law at Washington College of Law, American University, and visiting fellow at the Hoover Institution, and Matthew Waxman, a professor of law at Columbia Law School and an adjunct senior fellow at the Council on Foreign Relations, 4/9/13, Law and Ethics for Autonomous weapon Systems: Why a Ban Won’t Work and How the Laws of War Can, http://www.hoover.org/publications/monographs/144241

Conclusion

The incremental development and deployment of autonomous weapon systems is inevitable, and any attempt at a global ban will be ineffective in stopping their use by the states whose acquisition of such weaponry would be **most dangerous**. Autonomous weapon systems are not inherently unlawful or unethical. Existing legal norms are sufficiently robust to enable us to address the new challenges raised by robotic systems. The best way to adapt existing norms to deal with these new technologies is a combined and international-national dialogue designed to foster common standards and spread best practices.

Taken as a whole, these policy proposals reflect a rather traditional approach— relying on the gradual evolution and adaptation of long-standing law of armed conflict principles—to regulate what seems to many like a revolutionary technological and ethical predicament. That is in part because the challenge of regulating apparently radical innovations in weaponry within a long-standing legal and ethical framework is hardly novel.

Some view the emergence of automated and autonomous weapon systems as a crisis for the law and ethics of war. To the contrary, provided we start now to incorporate legal and ethical norms adapted to weapons that incorporate emerging technologies of automation, the incremental movement from automation to machine autonomy can be both regulated and made to serve the ends of law on the battlefield.

5) Empirics – norms have to come first

Josh Calder 13, partner at the futures consulting firm Foresight Alliance, Why Armed Drones Won't Be Banned, February 5, http://www.wfs.org/blogs/josh-calder/why-armed-drones-wont-be-banned

But that won't be enough to get them banned. Chemical weapons and mines are banned in part because they are indiscriminate, but also because they are not very useful. Drones, on the other hand, will become steadily more capable.

Accelerating computing power will drive this process, and remotely controlled and robotic systems will become better than humans at ever more tasks. A researcher on NOVA's "Rise of the Drones" pointed out that a human takes 80 milliseconds to react, while a drone can respond to a situation in one millisecond. In many combat situations, that will decide who gets destroyed.

Going forward

As a result, there is almost no chance that the world's militaries will not adopt them wholeheartedly. This need not result in a deterioration of human rights, however. These factors might help:

Governments using drones and combat robots need to be told by other states and by their citizens that it matters how they are used.

The international community should continue to strengthen norms about civilian casualties, for instance supporting prosecutions in the International Criminal Court; norm changes have been significant over the last 50 years.

Leaders and military officers who deploy robotic systems should be held responsible for both the deployment decision and its outcomes, so that that they have concrete incentives to act responsibly.

4) Links to politics- causes massive controversy

Goldsmith 13 (Jack, Lawfare, “More on Drone Shift from CIA to DOD,” March 21, 2013, http://www.lawfareblog.com/2013/03/more-on-drone-shift-from-dod-to-cia/)

Following up on Wells’ post, I increasingly think that the shift in drone authorities from CIA to DOD first reported by Dan Klaidman might not amount to much in substance, and that any proposed changes face many hurdles in any event. In addition to the suggestions to this effect in the NYT story that Wells discusses, the WSJ reports that any CIA wind down in Yemen and especially Pakistan will be slow at best. It also notes that the possible shift from CIA to DOD “remains controversial on Capitol Hill, within the CIA and in some military circles among people who think the program is more effective under the agency’s control.” And it describes disagreements about the shift between Senator McCain, who is on the Arms Services Committee and who (unsurprisingly) favors the shift, and Senator Feinstein, who is on the Intelligence Committee and who (unsurprisingly) opposes it. This congressional jurisdictional battle (more details here) could have large consequences for the success of any shift.

DoD Shift doesn’t solve either advantage

Zakaria 13 (Rafia, Aljazeera, “President Obama: The drones don't work, they just make it worse,” March 26, 2013, http://www.aljazeera.com/indepth/opinion/2013/03/201332685936147309.html)

Moving the drone program from the CIA to the Department of Defense is thus being painted as a victory, even a capitulation, to those critics who have criticised the lack of transparency, accountability, and legal basis of the drone program. However, the details of the move do not suggest a reversal or even a rethinking of the strategic imperatives that the Obama Administration and the CIA have used to justify the drone program. First, the gradual process of the transition without any publicly disclosed details of how and when it will be completed are likely to create a situation in which, at least for a time, it would be difficult if not impossible to tell which agency, the Department of Defense or the CIA, would actually be responsible for a strike. Second, according to a government official who spoke to the Washington Post, the CIA program in Pakistan would be phased out even later “because of the complexities there” and because the program, unlike the ones in Yemen and Somalia, was actually begun by the CIA. Finally, even if the drone program is actually moved to the Department of Defense, it will be incorporated into its most secret portion, the Joint Special Operations Command, whose top-secret operations are also covert and never released to the public. When these factors are considered, the effort to provide more transparency and an institutional framework for the drone program seem chimerical at best and deceptive at worst. All of them point to a continuation of a national security mindset, within the Obama Administration and the State Department, both believing that drones, cheaply bought and unmanned, are a perfect way to bombard other countries with minimal cost the United States. With the risk of dead American soldiers reduced to nothing, military officials are also gobbling up the idea of waging remote-control wars all over the world, wherever a possible or even supposed threat can be identified.

## 2ac Security

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

**Ghughunishvili 10**

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

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

It’s inevitable

**Mearsheimer 1**, Poli. Sci. Prof. @ U. Chicago, (John J., *The Tragedy of Great Power Politics*)

Great powers cannot commit themselves to the pursuit of a peaceful world order for two reasons. First, states are unlikely to agree on a general formula for bolstering peace. Certainly, international relations scholars have never reached a consensus on what the blueprint should look like. In fact, it seems there are about as many theories on the causes of war and peace as there are scholars studying the subject. But more important, poli­cymakers are unable to agree on how to create a stable world. For exam­ple, at the Paris Peace Conference after World War I, important differences over how to create stability in Europe divided Georges Clemenceau, David Lloyd George, and Woodrow Wilson.49 In particular, Clemenceau was determined to impose harsher terms on Germany over the Rhineland than was either Lloyd George or Wilson, while Lloyd George stood out as the hard-liner on German reparations. The Treaty of Versailles, not sur­prisingly, did little to promote European stability.

Furthermore, consider American thinking on how to achieve stability in Europe in the early days of the Cold War.50 The key elements for a sta­ble and durable system were in place by the early 1950s. They included the division of Germany, the positioning of American ground forces in Western Europe to deter a Soviet attack, and ensuring that West Germany would not seek to develop nuclear weapons. Officials in the Truman administration, however, disagreed about whether a divided Germany would be a source of peace or war. For example, George Kennan and Paul Nitze, who held important positions in the State Department, believed that a divided Germany would be a source of instability, whereas Secretary of State Dean Acheson disagreed with them. In the 1950s, President Eisenhower sought to end the American commitment to defend Western Europe and to provide West Germany with its own nuclear deterrent. This policy, which was never fully adopted, nevertheless caused significant instability in Europe, as it led directly to the Berlin crises of 1958-59 and 1961."

Second, great powers cannot put aside power considerations and work to promote international peace because they cannot be sure that their efforts will succeed. If their attempt fails, they are likely to pay a steep price for having neglected the balance of power, because if an aggressor appears at the door there will be no answer when they dial 911. That is a risk few states are willing to run. Therefore, prudence dictates that they behave according to realist logic. This line of reasoning accounts for why collective security schemes, which call for states to put aside narrow con­cerns about the balance of power and instead act in accordance with the broader interests of the international community, invariably die at birth.

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

**Roe**, Assistant Professor, International Relations and European Studies – Central European University, **‘4**

(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.**

Solves best – management of threat construction moderates the security dilemma – maintains minority rights

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(Paul, “Reconstructing Identities or Managing Minorities? Desecuritizing Minority Rights: A Response to Jutila,” *Security Dialogue*, Vol. 37, No. 3)

As Kymlicka (2002: 3–4) points out, although, as in Central and Eastern Europe, Western democracies have tried in the past to suppress substate nationalisms, since the 1970s in particular ‘there has been a dramatic reversal in the way Western countries deal with substate nationalisms’. The principle that national identities must be accommodated has been fully accepted, and this ‘accommodation has typically taken the form of . . . “multination federalism”; that is, creating a federal or quasi-federal subunit in which the minority group forms a local majority, and so can exercise meaningful forms of self-government’. Indeed, Kymlicka (2002: 10–11) goes on to list five ways in which multination federalism has been successful: One, issues concerning competing national identities are handled with an ‘almost **complete absence of violence** . . . by either the state or the minority’. Two, ethnic politics operates under **normal democratic procedures**; in other words, a matter of ‘ballots not bullets’. Three, there has developed a firm respect for ‘individual civil and political rights’. Four, the adoption of multination federalism has in many cases also brought with it economic prosperity. And, five, multination federalism has ‘promoted equality between majority and minority groups’. What is important here, however, is how exactly this was done. Was it through a reconstructive desecuritizing strategy? Or was it through the normalization of minority rights according to management strategies? My argument here is that **management is the necessary precursor to any reconstruction of identities** and must therefore be considered the **primary desecuritizing strategy.** Manage First, Reconstruct Later! The desecuritization of minority rights is not logically impossible. But desecuritization depends on a strategy whereby the group nonetheless survives as a distinct entity. Thus, on the one hand, the deconstructivist strategy is inapplicable. On the other hand, though, the reconstructivist strategy is indeed potentially applicable. Still, set against this, what Jutila leaves unexplored are the conditions under which a reconstructivist strategy can be applied: ‘To change the story and obtain support for that new narrative can be hard – even practically impossible in the foreseeable future’ (Jutila, 2006: 181). Hard, yes, particularly in the context of Central and Eastern Europe, where the provision of minority rights is often framed as a matter of security. Practically impossible, in some cases perhaps, especially where there is a strong homogenizing project on the part of the state (majority group). But only even thinkable after the managing of minority rights. In my 2004 piece, I describe management as being about the ‘**moderate’** and ‘sensible’ **securitization** of minority rights; that is to say, minority rights is still seen by both parties, majority and minority, as a question of (societal) security, but measures are put in place that reduce, or even effectively **rule out, the recourse to emergency politics.** When the majority feels secure that the minority will work within the existing state framework, and when the existence of the minority is thereby also guaranteed, then ‘normal’ – or, as I alluded to earlier, ‘special’ (management) – politics will be the modus operandi. Thus, what I mean by the management of minority rights is, in effect, the application of multination federalism. The accommodation of minority identities has been accepted, and provisions/legislations/mechanisms have been put in place to **institutionalize** this **accommodation.** In part, then, Jutila and I are advocating the self-same thing: cultural and/or political autonomy as part of a federal structure. But, while Jutila is more concerned about the concomitant reconstruction of identities, my argument is rather that the reconstruction of group identities **can only take place** **after** a period within which such special politics have operated successfully. While it is not impossible that, in a situation of securitized minority rights (a condition of insecurity), majority and minority alike may choose to respond by reconstructing their identities in a mutually non-threatening way (asecurity), it is, however, improbable. What is possible, even probable, however, is a response according to which a condition of ‘security’ is manifest instead – in other words, majority and minority identities continue to constitute an ‘us’/‘them’ dichotomy, but relations are managed in such a way that an **escalation to ‘friend’/‘enemy’ is made unlikely.** As such, it is not difficult to imagine that over time such a condition of security can create the **necessary political space** within which group identities are able to transform in the way that Jutila envisages. So, management first, reconstruction later. Even so, while not so difficult to imagine, practice has shown that reconstructing identities has been difficult to realize: multination federalism has its own problems. Again, Kymlicka (2002: 11) notes how, in most multinational federations, relations between majority and minority are ‘hardly a model of robust or constructive intercultural exchange’, as many members of the majority group are at best ‘ignorant of, and indifferent to, the internal life of the minority groups, and vice versa’. Indeed, Steven Vertovec & Susanna Wessendorf (2005: 10–11) pointedly remark as to how ‘almost all discourses of multiculturalism entail a kind of “ethnisation”’, inasmuch as ‘multicultural policies may have the effect of putting ethnic minority populations into . . . cultural conservation areas’. In the end, therefore, multinational (multicultural) societies tend to reflect a ‘pool of bounded uni-cultures, forever divided into we’s and they’s’; they are ‘parallel societies’, or ‘two solitudes’ (Kymlicka, 2002: 13). And this brings me back to the very dangers I mentioned in my 2004 piece: that, in keeping with Huysmans’s warnings, any desecuritizing strategy that maintains the ‘us’/‘them’ dichotomy, although institutionalizing moderate and sensible securitization, still runs the risk of leading to a possible excessive and irrational resecuritization of the situation. As Kymlicka (2002: 11) notes, relations between majority and minority groups can often be characterized by ‘feelings of resentment and annoyance’. In Belgium, for example, although tensions between the Flemish and the Walloon communities have, up until now, gone no further than various forms of civil disobedience,6 the danger of escalation nonetheless remains. These are not propitious conditions for the reconstruction of group identities, despite multination federalism and despite the (successful) managing of minority rights. The successes and failures of multination federalism do not make the securitization of minority rights impossible according to a Jutila-type reconstructivist strategy. What they do show, however, is: first, that **successful management** of the situation **is crucial** in terms of creating those very conditions within which group identities may, after some time, be subject to the process of transformation – or, put slightly differently, handle a problem well enough for long enough and it may cease to be a problem at all; and, second, that desecuritizing strategies that necessarily leave in place the distinction between ‘us’ and ‘them’ may well prove to be all too ineffective an approach. Jutila’s reconstructivist strategy certainly invites further thinking about the desecuritization of minority rights. But Jutila himself does not take this far enough. He, like me, brings with him a conception of group identity based predominantly on a distinct culture. And culture, in the minds of Vertovec & Wessendorf (2005: 11), is itself a problematic basis for the constitution of majority–minority relations: the understanding of ‘culture’ assumed and prescribed by many multicultural . . . policies and discourses is one that may distance . . . minorities as much or more than it actually seems to include them. ‘Culture’, in the sense entailed in many such measures, is presumed to be something forever distinguishing and separating . . . ethnic minorities from the rest of the society. So, what of the way forward? To dispense with a culture-based approach, but in doing so to also dispense with the fundamental premise of minority rights? Or, to maintain a concentration on ethnic and national identity, but to thereby also maintain a concentration on an alienating and potentially dangerous notion of ‘us’ and ‘them’? In the words of Vertovec & Wessendorf (2005: 11), it is indeed a ‘conundrum: basing participation [and] representation . . . on “culture” can stigmatise people, thereby maintaining or exacerbating conditions of exclusion; yet, ignoring “culture” . . . can (a) neglect legitimate special needs (based on particular values and practices), and (b) perpetuate patterns of discrimination and equality’. In the next section, I turn my attention briefly to those reactions to multiculturalism in a bid to find a route to a further, possible desecuritizing strategy. Against Diversity? Those opposed to multination federalism see the promotion of group identities based on the maintenance of distinct culture and identity as contra to the notion of political community. For these ‘communitarians’,7 community entails unity via a common identity. And because multination federalism institutionalizes the very divisions that communitarians seek to do away with, naturally they are very much opposed to it. Its proponents argue that cultural division ‘disrupts national identity, breaks down a society’s sense of cohesion, [and] dissipates common values’. As such, communitarians talk about the need for **integration** ‘by way of emphasizing a core set of national values over recognizing minority specificities (Vertovec & Wessendorf, 2005: 13). In essence, **such a strategy is one of assimilation.** And besides the fact that many may reject such a project on ethical grounds, the more specific point here, as with a Huysmans-type deconstructivist strategy, is that group identity is fragmented, if not **shattered**, thus **removing any cause for** the provision of **minority rights**. So, whether Jutila’s reconstructivist strategy or my own management approach is adopted, the problem still remains. Our commitment to the preservation of a distinct identity on the part of the minority gives rise to cultural- autonomy/political-autonomy projects that solidify identity divisions. But, communitarians promote cultural unity in such a way that identity divisions are eradicated,

 thus **necessarily leading to the death of the minority.** Quite a problem indeed, although an answer may be found in the work of writers such as Bhikhu Parekh. In putting forward what he describes as ‘intercultural dialogue’, Parekh (2000) seeks to avoid the failures of existing multicultural approaches. Parekh proceeds on the basis that the celebration of diversity may encourage difference, and with it **segregation** and possibly **conflict.** Thus, what he advocates is a type of multiculturalism in which everyone adheres to the laws and values of the nation-state, but where distinct forms of culture are nonetheless maintained. Such ‘interculturalism’ seems to manifest itself as a kind of mutual borrowing between culturally defined groups: I take something of yours, you take something of mine. In the end, we create something new for both us, but we both still retain enough of what makes us distinct. Such a process might also be referred to as ‘acculturation’ – a more benign form of assimilation, where members of one community adapt to (and are not forced to adopt) the culture of another. Parekh’s notion of interculturalism is also not without its problems. For example, as Dilek Cinar (2001) points out, within such an intercultural dialogue ‘all parties have to recognize each other as equal participants, while a successful outcome is also **dependent** on them having similar amounts of . . . economic and political power’. This is rarely the case: invariably, the weaker, minority group will find itself having to borrow heavily from the stronger, majority group. And, all said and done, how far different to assimilation is this? Nevertheless, what of its potential for an alternative desecuritizing strategy? That the different parties agree to a common set of values points towards the dissipation of those divisions that concern opponents of multiculturalism, while a mutual exchange of culture seems to indicate that important self-defining values nonetheless remain in place. Thus, and to echo Jutila at this point, the logical impossibility of desecuritization? No. The practical impossibility of it? Maybe. **Management first, intercultural dialogue later!** Concluding Thoughts Am I ‘“writing security” into minority rights’, as Jutila (2006: 183) seems to think? I do argue, and will continue to argue, despite Jutila’s contentions, that a conception of minority rights predicated on the maintenance of a distinct culture and identity is necessarily a matter of societal security. But, I do not argue that all matters of societal security are, or will be, inevitably securitized. As I mentioned earlier, my approach in this respect lies in some as yet |seemingly unexplored space between the Copenhagen School’s objectivist and constructivist formulations of societal security. Within this space, to desecuritize is not to return to normal politics but simply to undo the emergency politics of (societal) insecurity. Here, securitization is a special type of politics: a ‘managing securitization’, not a ‘panicking securitization’ – theoretically a strange place to be, but one, nevertheless, **that is supported empirically.** Politicians, leaders, representatives of majorities and minorities alike, frequently approach minority rights as a societal security issue. However, they also frequently **fall short** of advocating emergency politics – ‘silence’, ‘secrecy’ and ‘suppression’ – as a way of dealing with the situation. **Instead**, as reflected in multination federalism, minority rights are framed as a politics that is ‘discussion’, ‘debate’ and ‘deliberation’, **while at the same time also marked by notions of threat** and defence. Although, yes, minority rights creates propitious conditions for (panicking, not managing) securitization, no, it does not determine it.

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## at: vagueness

**The best academic studies validate the effective of norms – the US is key**

**Whibley 13** (James Whibley received a M.A. in International Relations from Victoria University of Wellington, New Zealand in 2012. His research is soon to be published in Intelligence and National Security., 2/6/2013, "The Proliferation of Drone Warfare: The Weakening of Norms and International Precedent", journal.georgetown.edu/2013/02/06/the-proliferation-of-drone-warfare-the-weakening-of-norms-and-international-precedent-by-james-whibley/)

In a recent article, David Wood expresses concern over the start of a drone arms race, with China’s People’s Liberation Army beginning to adopt drone technology and Iran possibly supplying drones to Hezbollah in Lebanon. Other reports show that Pakistan has also developed its own set of drones, with offers of assistance from China to help improve their technological sophistication. The proliferation of drone technology is in many ways unsurprising, as technology always spreads across the globe. Yet, the economic and organizational peculiarities of drones may mean their adoption is more likely than other high-tech weapons.

Michael C. Horowitz, in his widely praised book The Diffusion of Military Power, notes that states and non-state actors face a number of possible strategic choices when considering military innovations, with the adoption of innovative technology not a foregone conclusion. States will consider both the financial cost of adopting new technology and the organizational capacity required to adopt new technologies — that is, the need to make large-scale changes to recruitment, training, or strategic doctrine. From a financial perspective, drones are an attractive option for state and non-state actors alike, as they are vastly cheaper to build and operate than other forms of aerial technology, with the high level of commercial applications for drone technology helping drive down their cost. Organizationally, drones still require a significant level of training to operate in a combat setting, inhibiting their immediate adoption. Yet, as strategic doctrine in nearly every state prioritizes combating terrorism, drone programs will be easier to integrate into military structures as Horowitz notes that how a military organization defines its critical tasks determines the ease of adopting innovations. Even if the level of organizational capacity needed to operate drones eludes most terrorist organizations, the apparent willingness of states such as Iran to supply militant groups with drones raises the possibility of terrorist groups acquiring tacit knowledge about operating them by networking with sympathising states.

If drones are destined to proliferate, the more important issue may become whether American drone doctrine is setting a precedent for other states over how drones are used, and if so, is American drone use weakening the long-standing international norm against assassination? Current US practices include the use of drones in countries without a declaration of war, the routine targeting of rescuers at the scene of drone attacks and the funerals of victims, and the killing of US citizens. **The existence of such practices lends legitimacy to illiberal actions and significantly diminishes the moral authority of the US to condemn similar tactics used by other states, whether against rebellious populations in their own territory or enemies abroad**.

While drone advocates such as Max Boot argue that other countries are unlikely to follow any precedents about drone use established by America, **power has an undeniable effect in establishing which norms are respected or enforced**. America used its power in the international system after World War 2 to embed **norms about human rights and liberal political organization**, not only in allies, but in former adversaries and the international system as a whole. Likewise, **the literature on rule-oriented constructivism presents a powerful case that norms have set precedents on the appropriate war-fighting and deterrence policies when using weapons of mass destruction and the practices of colonialism and human intervention**. Therefore, **drones advocates must consider the possible unintended consequences of lending legitimacy to the unrestricted use of drones**. However, with the Obama administration only now beginning to formulate rules about using drones and seemingly uninterested in restraining its current practices, **the US may miss an opportunity to entrench international norms about drone operations**.

If countries begin to follow the precedent set by the US, there is also the risk of **weakening pre-existing international norms about the use of violence**. In the summer 2000 issue of International Security, Ward Thomas warned that, while the long-standing norm against assassination has always been less applicable to terrorist groups, the targeting of terrorists is, “likely to undermine the norm as a whole and erode the barriers to the use of assassination in other circumstances.” Such an occurrence would represent a deleterious unintended consequence to an already inhumane international system, justifying greater scrutiny of the drone program.

Realism cautions scholars not to expect ethical behaviour in international politics. Yet, the widespread use of drones by recent administrations with little accountability and the lack of any normative framework about their deployment on the battlefield could come to be seen as a serious strategic error and moral failing. If the Obama administration was nervous about leaving an amorphous drone policy to a possible Romney Presidency, then surely China or Russia possessing such a program would be terrifying.

## no root cause

Their author’s analysis is shoddy

**Martin**, professor of science, technology, and society – University of Wollongong, **‘90**

(Brian, <http://www.uow.edu.au/arts/sts/bmartin/pubs/90uw/uw13.html>)

In this chapter and in the six preceding chapters I have examined a number of structures and factors which have some connection with the war system. There is much more that could be said about any one of these structures, and other factors which could be examined. Here I wish to note one important point: **attention should not be focussed on one single factor** to the exclusion of others. This is often done for example by some Marxists who look only at capitalism as a root of war and other social problems, and by some feminists who attribute most problems to patriarchy. The danger of **monocausal explanations** is that they may **lead to an inadequate political practice.** **The 'revolution' may be followed by the** persistence or even **expansion of many problems which were not addressed by the single-factor perspective**. The one connecting feature which I perceive in the structures underlying war is an unequal distribution of power. This unequal distribution is socially organised in many different ways, such as in the large-scale structures for state administration, in capitalist ownership, in male domination within families and elsewhere, in control over knowledge by experts, and in the use of force by the military. Furthermore, these different systems of power are interconnected. They often support each other, and sometimes conflict. This means that the struggle against war can and must be undertaken at many different levels. It ranges from struggles to undermine state power to struggles to undermine racism, sexism and other forms of domination at the level of the individual and the local community. Furthermore, the different struggles need to be linked together. That is the motivation for analysing the roots of war and developing strategies for grassroots movements to uproot them.

## 1ar terror talk

Believing that a nuclear WMD terrorist attack is possible is necessary to prevent it from happening

**Allison, 10**– professor of government and director of the Belfer Center for Science and International Affairs at Harvard (1/25/10, Graham, “A Failure to Imagine the Worst: The first step toward preventing a nuclear 9/11 is believing it could happen,”

<http://www.foreignpolicy.com/articles/2010/01/25/a_failure_to_imagine_the_worst?print=yes&hidecomments=yes&page=full>, JMP)

In his first speech to the U.N. Security Council, U.S. President Barack Obama challenged members to think about the impact of a single nuclear bomb.He said: "Just one nuclear weapon exploded in a city -- be it New York or Moscow, Tokyo or Beijing, London or Paris -- could kill hundreds of thousands of people." The consequences, he noted, would "destabilize our security, our economies, and our very way of life." Before the Sept. 11, 2001, assault on the World Trade Center and Pentagon, who could have imagined that terrorists would mount an attack on the American homeland that would kill more citizens than Japan did at Pearl Harbor? As then-Secretary of State Condoleezza Rice testified to the 9/11 Commission: "No one could have imagined them taking a plane, slamming it into the Pentagon ... into the World Trade Center, using planes as missiles." For most Americans, the idea of international terrorists conducting a successful attack on their homeland, killing thousands of citizens, was not just unlikely. It was inconceivable. As is now evident, assertions about what is "imaginable" or "conceivable," however, are propositions about our minds, not about what is objectively possible. Prior to 9/11, how unlikely was a megaterrorist attack on the American homeland? In the previous decade, al Qaeda attacks on the World Trade Center in 1993, U.S. embassies in Kenya and Tanzania in 1998, and the USS Cole in 2000 had together killed almost 250 and injured nearly 6,000. Moreover, the organization was actively training thousands of recruits in camps in Afghanistan for future terrorist operations. Thinking about risks we face today, we should reflect on the major conclusion of the bipartisan 9/11 Commission established to investigate that catastrophe. The U.S. national security establishment's principal failure prior to Sept. 11, 2001, was, the commission found, a "failure of imagination." Summarized in a single sentence, the question now is: Are we at risk of an equivalent failure to imagine a nuclear 9/11? After the recent attempted terrorist attack on Northwest Airlines Flight 253, this question is more urgent than ever. The thought that terrorists could successfully explode a nuclear bomb in an American city killing hundreds of thousands of people seems incomprehensible. This essential incredulity is rooted in three deeply ingrained presumptions. First, no one could seriously intend to kill hundreds of thousands of people in a single attack. Second, only states are capable of mass destruction; nonstate actors would be unable to build or use nuclear weapons. Third, terrorists would not be able to deliver a nuclear bomb to an American city. In a nutshell, these presumptions lead to the conclusion: inconceivable. Why then does Obama call nuclear terrorism "the single most important national security threat that we face" and "a threat that rises above all others in urgency?" Why the unanimity among those who have shouldered responsibility for U.S. national security in recent years that this is a grave and present danger? In former CIA Director George Tenet's assessment, "the main threat is the nuclear one. I am convinced that this is where [Osama bin Laden] and his operatives desperately want to go." When asked recently what keeps him awake at night, Secretary of Defense Robert Gates answered: "It's the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear." Leaders who have reached this conclusion about the genuine urgency of the nuclear terrorist threat are not unaware of their skeptics' presumptions. Rather, they have examined the evidence, much of which has been painstakingly compiled here by Rolf Mowatt-Larssen, former head of the CIA's terrorism and weapons-of-mass-destruction efforts, and **much of which remains classified.** Specifically, who is seriously motivated to kill hundreds of thousands of Americans? Osama bin Laden, who has declared his intention to kill "4 million Americans -- including 2 million children." The deeply held belief that even if they wanted to, "men in caves can't do this" was then Pakistani President Pervez Musharraf's view when Tenet flew to Islamabad to see him after 9/11. As Tenet (assisted by Mowatt-Larssen) took him step by step through the evidence, he discovered that indeed they could. Terrorists' opportunities to bring a bomb into the United States follow the same trails along which 275 tons of drugs and 3 million people crossed U.S. borders illegally last year. In 2007, Congress established a successor to the 9/11 Commission to focus on terrorism using weapons of mass destruction. This bipartisan Commission on the Prevention of WMD Proliferation and Terrorism issued its report to Congress and the Obama administration in December 2008. In the **commission's unanimous judgment:** "it is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013." Faced with the possibility of an American Hiroshima, many Americans are paralyzed by a combination of denial and fatalism. Either it hasn't happened, so it's not going to happen; or, if it is going to happen, there's nothing we can do to stop it. Both propositions are wrong. **The countdown to a nuclear 9/11 can be stopped, but only by realistic recognition of the threat, a clear agenda for action, and relentless determination to pursue it.**