# Round 2—Aff vs Georgia DG

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#### Welcome to the Predator Empire—executive authority over targeted killing is increasingly constituted by a disposition matrix that relies on an ethos of precision and total knowledge about the targets—this embeds an everywhere war into the fabric of political planning

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(Ian, “Predator Empire: The Geopolitics of US Drone Warfare”, Geopolitics Volume 18, Issue 3, 2013, dml)

Since 2010, Obama administration ofﬁcials have busily **constructed a database for** administering life and death. The “disposition matrix”1 as it’s called, contains a list of suspects targeted for elimination **across the planet**. These spreadsheets are now a **permanent feature** of US national security. Once upon a time, targeted killings were antithetical to the American way of war. During the Clinton cabinet, ofﬁcials debated ﬁercely about the legality of eliminating Osama bin Laden. Even by July 2001, the US ambassador to Israel said, “The United States government is very clearly on record as against targeted assassinations. . . . They are extrajudicial killings and we do not support that”.2 Now, targeted killings have become **so normalised** that the Obama administration is seeking ways to streamline the process. The disposition matrix was developed by Michael Leiter of the National Counterterrorism Center to centralise the kill lists across multiple state agencies, including the CIA and the Pentagon. The result is **a single, evolving database** in which “biographies, locations, known associates, and afﬁliated organizations are all catalogued. So are strategies for taking targets down, including extradition requests, capture operations and drone patrols”.3 This deadly form of bureaucracy4 suggests **the changing method of state violence**: the decentralisation of targeted killings across the globe and the simultaneous **centralisation of state power in the** executive branch of government. From soldier, to special op, to lethal bureaucrat, this complicated and evolving geopolitical picture, one underwritten by lawfare, drones, and Orwellian terminology, is very much **the new face of an old Empire.**

Of course, the post-2001 “Global War on Terror” began its life as a geographically and legally amorphous war, encompassing battleﬁelds and “black sites” that marked a new phase of American exceptionalism. The hunt for Osama bin Laden in Afghanistan and the counterinsurgency in Iraq mobilised billion-dollar budgets and legions of troops. But as the clock ticked, and cracks in the Project for the New American Century emerged, the borders of the “Global War on Terror” did not contract, **they expanded**. In secret and shadow, Pakistan, Yemen, and Somalia became targets in a low-level war that Obama’s White House ofﬁcially brands an ‘Overseas Contingency Operation’.5 Referring to this gradual expansion of state violence in spaces far removed from declared theatres of war, Derek Gregory describes an “everywhere war”6 that is deﬁned by **asymmetrical and paramilitary battles** in the borderlands of the planet. At the start of 2012, amid controversy stirred by hawkish congressmen, President Barack Obama and his former Secretary of Defense, Leon Panetta, unveiled a new national strategy built around the ~~unmanned~~ [unstaffed] aerial vehicle and special operations forces. Troop numbers are to be cut by as much as 100,0007 as part of a restructuring to create a “smaller, leaner” military that will no longer engage in large-scale counterinsurgency. In addition to presenting the kind of technological visions that Rumsfeld touted only a decade earlier, Panetta discussed a “ﬂoating base”8 that would serve special operations forces as well as drone units. Taking stock of these developments, the aim of this paper is to grasp the contours and consequences of this droniﬁcation of US national security under a label I name **the “Predator Empire**”.

The MQ-1 Predator (see Figure 1) is perhaps the most well-known of all military drones used today. It has a wingspan of 55 feet, a length of 27 feet, and can be remotely piloted from thousands of miles away via satellite communications. According to the US Air Force,9 “The Predator system was designed in response to a Department of Defense requirement to **provide persistent** intelligence**,** surveillance **and** reconnaissance **information** combined with a kill capability to the warﬁghter”. Its deathly name conjures images of a science-ﬁction dystopia, a “Terminator Planet”10 where robots hover in the sky and exterminate humans on the ground. Of course, this is **no longer science-ﬁction fantasy**. Drone operators sitting in a Nevada desert now control a ﬂeet of robots that can loiter above the landscape with advanced sensing capabilities and weapon systems – giving rise to the claim that drone warfare resembles a “video game” (see Figure 2). And yet, as Steven Graham reminds us, “The instinct to **technologise and distanciate** their killing power – to deploy their technoscientiﬁc dominance to destroy and kill safely from a distance in a virtualised ‘joystick war’ – **has been the** dominant ethos **of US military culture and politics** for a century or more”.11

The modern Predator drone dates back to the GNAT-750 (and “Amber” before it) ﬂown in Bosnia in 1994 by the CIA under codename “LOFTY VIEW”. Six years later in 2000, the CIA ﬁrst started ﬂying Predators in Eastern and Southern Afghanistan in the hunt for Osama bin Laden. The agency’s ﬁrst targeted killing took place on February 2002; the Counterterrorism Center unleashed a “Hellﬁre” missile at a “tall man” believed to be none other than the al-Qa’ida leader and his lieutenants. But the analysts had wrongly identiﬁed civilians gathering up scrap metal.12 All were killed. And in a mark of irony that often haunts the drone wars – the site of the strike was Zhawar Kili, a mujahideen complex built by Jalaluddin Haqqani in the 1980s with CIA and Saudi support.13 This model of extrajudicial killings, one developed almost exclusively in-house,14 would soon be rolled out across the Durrand Line to become the model of drone strikes in Pakistan. Since 2004, the Federally Administered Tribal Areas (FATA) has been the primary target for the agency’s clandestine attacks. Hundreds of civilians and thousands of militants have died15 in an undeclared war that generates international controversy for its seeming violation of national sovereignty and international law.16 While the number of drones carried by the CIA is classiﬁed, in 2012 the agency’s former director David Petreaus requested that the number of Predators and Reapers increase by 10, from an inventory of “30 to 35”.17

The CIA’s drone programme in Pakistan emerges from a history of targeted killings and counterinsurgencies, especially in Latin America and Vietnam.18 Ever since The National Security Act established the CIA in 1947, clandestine operations have deﬁned a “black world”19 of intelligence, surveillance, and extrajudicial activity that continues to swell and spread, blurring the division between military and civilian violence.20 **Targeted killings are a central US counterterrorism tactic** that came to prominence after Israel used them against suspected Palestinian terrorists in 2000.21 Although there is no agreed deﬁnition under international law, targeted killings are deﬁned by the UN as “the intentional, premeditated and deliberate use of lethal force”.22 The details of the CIA’s drone programme remain shrouded in secrecy, despite Obama’s admission on a “web chat” that he was keeping the strikes on “a tight leash”.23 On September 9, 2011, US District Judge Rosemary Collyer ruled that the CIA is not legally required to inform the public about the use of drones in the killing of suspected terrorists.24 Even if the exact details are classiﬁed, the White House and anonymous “ofﬁcials” implicitly justify the drone campaign with broader legal arguments such as the “inherent right to self defense” under Article 51 of the U.N. Charter.25 But perhaps any appeal to a legal argument is limited: law has never been a guaranteed check on sovereign power, whether declared or not – **often enabling and exacerbating it**.26 And 2011 will be remembered as the year when extrajudicial state violence reached an unprecedented milestone. On the 30th of September, a senior member of al-Qa’ida was killed in Yemen by a covert US drone strike. His name was Anwar al-Awlaki, born inside the US in 1971. As the American Civil Liberties Union (ACLU) responded, “This is a program under which American citizens far from any battleﬁeld **can be executed by their own government without judicial process**, and on the basis of standards and evidence that are kept secret not just from the public but from the courts”.27

As I will soon argue, drones were already cementing their position as a favoured option for US security in 2010. The 2010 National Security Strategy28 and the 2011 National Strategy for Counterterrorism29 state that the American way of life is threatened by geographically and legally amorphous al-Qa’ida ‘afﬁliates’ in regions that stretch from North and East Africa to the Arabian Peninsula, and beyond. These documents are important because they set in motion a set of speciﬁc responses “such that different referents of security give rise to different kinds of governmental technologies and political rationalities”.30 The drone emerges as one governmental technology able to hunt down afﬁliates “everywhere”. The next section of the paper will examine these strategic discourses in more depth, especially in light of the 2012 Defense Strategic Guidance31 that spelled the end of large-scale ground wars. My analysis then extends to a set of delegitimising discourses that challenge the abstract White House security and bureaucratic narratives, by reviewing interview materials from a 2010 report by Civilians in Armed Conﬂict (CIVIC)32 and a 2012 report by Stanford Law School and the New York School of Law.33 From these empirical materials I then make a number of theoretical points concerning the changing face of US national security or the “Washington Rules”.34

I employ the provocative concept “Predator Empire” as a way of bringing together **the** strategies**,** practices **and** technologies **arranged around the deployment of drones for targeted killings**. The Predator Empire is underwritten by a regime of biopolitical power that according to Foucault35 **has “**life**” as its target**. What, or rather who counts as life is understood in two distinct ways. First, there are the various known personalities that **make up the kill lists** on the White House’s disposition matrix. Second, there are the “patterns of life” that are coded and targeted by analysts and operators. Since 2008, the CIA has rolled out “signature strikes” in Pakistan that target individuals or groups that display “dangerous” or “suspicious” patterns of life. What makes these forms of targeted killing so controversial is that the person eliminated is not identiﬁed by staff in the CIA’s headquarters in Langley, Virginia. Instead, they exist asdigital proﬁles **across a network of technologies, algorithmic calculations, and spreadsheets**. The ability to strike distant targets in the far reaches of the planet is enabled by the evolution of a topographic and ground-based spatial power to an aerial and topological spatial power. While by no means denying the vast material infrastructure or ‘Droneworld’36 that houses unmanned aerial vehicles across the globe; the extensive digitising, coding, **and** eliminating **of life in “real time**” is what marks the Predator Empire as distinctive.

#### Wedding information to targeting has enabled a drive for absolute sovereign power that strives to manage life and death based on hypothetical risk scenarios crafted from its accumulated knowledge—this knowledge is always-already incomplete but the Predator Empire blames resultant failures on human error and not the fallibility of its technology—this reduces the bodies of targets to mere information and removes accountability from warfare

**Wilcox 9**—Macalester

(Lauren, “Body Counts: The Politics of Embodiment in Precision Warfare”, International Studies Association Annual Conference "Global Governance: Political Authority in Transition", dml)

Precision bombing, like its less accurate predecessor strategic bombing, is an exercise of sovereign power by deciding who die and who shall be left alone to live. Precision is about **the dream of** perfect vision**,** perfect knowledge**, and** communication of that knowledge. The vision of precision bombing, of **perfect accuracy in targeting** conveys a desire for absolute sovereign power—a desire manifest in the use of PGMs to target specific individuals, thus blurring the line between bombing and execution. **Wars are fought ‘humanely’**: for humanitarian purposes and waged with humane weapons and techniques (Coker 2001). Certainly the shift from the area bombing of World War II and Vietnam to the precision bombing of the Gulf War, Kosovo, Afghanistan and Iraq may parallel the shift from punishment to more ‘humane,’ biopolitical forms of warfare, in which preservation of (certain) lives is necessary for the strategic and political success of the war.

**Precision warfare involves** the management of risk **and** the management of death. Throughout the history of precision bombing, the military has focused on ever more ‘precise’ means of dropping bombs. One of the first tools, the Norden Bombsight, was said to be able drop a “bomb into a pickle barrel,” but its accuracy was measured in percentage of bombs hitting within a 1,000 meter radius of the given target (McFarland 1995). The CEP, or circular error probability, is how ‘precision’ is measured in laser or GPS guided munitions. The CEP measures the average distance from a target that the bomb will hit in terms of fifty percent of hits within a certain radius. The mean CEP in Gulf War was 100 feet, (Easterbrook 1991) while the mean CEP of bombed dropped in Iraq was twenty-five feet, meaning that **even if the bombs hit where they intended to,** massive amounts of damage nearby the target will like ensue. Precision bombing is getting more and more precise, and used as a greater and greater percentage of tonnage dropped. (Rip and Jasik 2002, 214, 224). However, combined with intelligence errors**,** targeting errors**, and** GPS errors, **‘precision’ missiles that can take out targets cleanly with little risk to the surroundings are** largely a myth.

Foucault’s critique of power/knowledge is also particularly relevant in terms of precision bombing. That bodies are made intelligible through knowledgeable discourses focuses our attention on the ways in which **the knowledge that is used in bombing is produced**. The aspiration for total sight, total destructive capability for the entire globe is not limited to the specifics of precision weapons systems, but **is a** defining component to the so-called Revolution in Military Affairs. The RMA is a discourse in which **information is** central **to warfare**, as “the new metaphysic of power” in warfare (Dillon and Reid 2001, 59). The creation, control, **and** transfer **of information are** crucial components **of the liberal war machine.** Proponents of the RMA proclaim knowledge as **the foundation of American military supremacy**. (Nye and Owens 1996). “Total Information Awareness,” is the goal of the Information Awareness Office, a DARPA program formerly symbolized by an all-seeing eye casting its laser-like gaze over the entire planet. The motto is, fittingly, ‘scientia est potentia,’ or ‘knowledge is power’. Ostensibly de-funded in 2003, its key projects have been funded under other programs. This is but one example of **the goal of a global ‘panopticon’** in order to ensure military superiority. This omniscient power is productive of a division of the world between those with the super-human visual capabilities and the objects of that knowledge, **produced as potential terrorists under the disciplining gaze**.

Precision warfare is also characterized by risk-aversion in both the means of fighting and reasons for war. While precision warfare involves constant calculation of risks to both soldiers and civilians, it should be noted that ‘risk’ as prevalent concern is not a concept that is essential and unavoidable. Kessler and Werner note, “risk is not a ‘thing’ **independent of human practices or social relations**. It is not a property of an objectively given reality, nor is it a psychological law. Rather, risk names the boundary of both what is known and unknown and the particular war in which the ‘unknown’ is made known,” (Kessler and Werner 2008). Risks are a product of **specific discourses of threat and danger** on one hand, and **technologies of control** on the other.

Cyborg/Prosthetic bodies

Feminist and other critical scholars have argued that discourses of dehumanization have **enabled killings to take place from a distance that** would not be tolerated **at close range**. Critical scholarship addressing contemporary warfare has often critiqued the use of precision guided munitions along with the portrayal of these weapons as a technological solution to the ‘fog of war’. ‘Precision bombing’ is seen as a myth, **as such weapons often** do not live up **to alleged ability to strike their targets precisely**, resulting in numerous deaths of civilians. **Precision warfare is a** technical fantasy, and serves as technology of **validating a type of warfare that is only available to a few.** Critical studies of precision bombing in contemporary warfare have argued that the legal and moral tenets of the just war doctrine and the laws of war have served to legitimize the high tech warfare associated with the use of PGMs (Smith 2002) (ah Jochnick and Normand 1994). The legitimacy accrued to the use of such technology is challenged by critics who see the benefits of the development and use of PGMs resulting less from a desire to spare civilians than to reduce the risks to servicemen and women and to garner and maintain support for overseas operations (Beier 2003) (Ignatieff 2001). Dubbed ‘risk-transfer warfare’ by Martin Shaw, risks that were once shouldered by combatants **are now borne by local allies and civilians**, who are at risk of being victims of small ‘accidental’ massacres, as well as indirect victims of infrastructural damage (Shaw 2002).

By privileging the question of just how ‘precise’ precision weapons are, both proponent and critics of precision warfare operate in the discourse of risk in which death and destruction are probabilistic rather than absolute. The deaths of civilians and ‘our’ soldiers are carefully managed. Patricia Owens argues that the ‘accidents’ in precision bombing that kill scores of civilians **are** not really ‘accidents’ per se, but are rather part of a discourse associated with technological progress **legitimizes such civilian deaths** under the guise of ‘accidents’ (Owens 2003). ‘Accidents’ furthermore **help sustain the hegemonic status quo** in which US and NATO campaigns are framed as ‘humanitarian’. The portrayal of civilian casualties as ‘accidents’ by officials and in the popular press along with constant claims of military planners of the precautions taken to avoid civilian casualties **serve to** shield **politicians and the military from responsibility for these civilian deaths**. ‘Accidental’ deaths are seen as inevitable even with the most precise weapons are used. The word ‘even’ here is instructive. **Accidental massacres are attributed to human,** not technological **error**. For example, the attack on Al-Firdos bunker in which three hundred civilians were killed is described as **one of the most precise of the war**: an intelligence failure as to the facility’s use was the only thing preventing this mission from being a complete success (Rip and Jasik 2002, 321). The bombing of the Chinese embassy in Sarajevo has been attributed to the use of outdated maps or to improper targeting information. The infamous bombing of a wedding party in Afghanistan has been attributed to errors made by the ground spotters. Thus, **even when technology enables the accidental massacre**, it is ultimately not to blame, it is human error that causes the technology to fail. Humans are fallible, but machines are not. **The machine represents the highest ideas of** rationality **and** perfectibility. To replace the human with the machine is **ideologically to remove risk, contingency from the battle space and** to have total control.

#### This method of management marks certain lives as killable based on their potential acts in imagined scenarios—this securitization of the future is theoretically incoherent and can only result in endless violence

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(Liam, “Securitizing the Future? A Critical Interrogation of the Pre-emptive Turn in the Theory and Practice of Contemporary Security”, Presented at the Canadian Political Science Association Annual Conference Concordia University, Montréal, QC 1-3 June 2010, dml)

The preceding discussion has shown how the problem of uncertainty dictates that the logic of pre-emption and the securitization of the future that it embodies necessitate a wide and diverse deployment of sovereign power in the present. Moreover, the logic of pre-emption is premised upon the extension of sovereign control to the temporal realm, as the chief concern of security policy shifts from questions of deterrence, reactivity, and punishment toward the securing of one particular imagined iteration of the future in lieu of multiple potential others. The crucial role of imagination that results from the inherent unknowability of the future is important to consider in this respect, as the future that is being securitized— and thus in whose name exceptional interventions in the present are carried out—is always imaginary. This point has been taken up by critical security scholars, with Mark Salter (2008: 243) asserting that “[t]he logic of pre-emption prioritizes the power of imagination over the power of fact,” while Aradau et al. (2008: 152) contend that “the sovereign order is no longer simply that of decision, but also that of imagination.” What these observations imply is that, under the logic of pre-emptive security, exceptional practices can be (and are) enacted against an individual (or group) not on the basis of what s/he has done, or even on the basis of what s/he has indicated through actions or declarations that s/he might do, but rather on the basis of what it is imagined that s/he might one day think about doing—what Cynthia Weber (2007: 115), invoking Philip K. Dick, terms one’s “pre-thoughts.” Indeed, this very line of reasoning provided the impetus for the development of the category of “unlawful enemy combatant”, which was employed by the US to enable the indefinite detention of prisoners at Guantánamo Bay and other exceptional spaces in archetypal acts of pre-emptive security. These individuals were condemned by sovereign power solely on the basis of “imagined future harm they might cause, rather than past crime” (Ericson 2008: 63,my emphasis). 3

With the sovereign decision thus contingent upon imagined scenarios rather than explicit knowledge, a condition emerges in which no future is considered impossible and thus, by default, every individual—regardless of their particular characteristics—is a potential suspect and is placed upon a “continuum of risk” within the unlimited realm of the imaginary (Ibid.: 66; see also Ewald 2002). As Ericson contends, a security environment where imagination is the primary means of determining threat generates a regime of “universal suspicion that spells the end of innocence” (2008: 66.). The necessarily imaginary element inhering in the logic of pre-emption thus severs the link between factual knowledge and sovereign security practice, in that, once the accusatory imagination has been enacted, there is no way to explicitly prove a subject’s innocence since the accusation relates to an act or thought which has, by definition, not yet occurred (Aradau & Van Munster 2007). A crucial corollary of this condition is that the very basis of the juridical system of the liberal polity is fundamentally undermined, as the collection of evidence and its evaluation via the appropriate judicial procedures is rendered impossible when dealing with an imagined future offence, since the offence in question has not yet been conceived by the accused, let alone committed (Ibid.: 106). Thus, the pre-emptive security logics and their attendant practices operate under a condition where the established juridical order of a liberal state cannot apply, as the latter is simply incapable of accommodating the temporal problems that are inevitably raised. The extension of sovereign power to the temporal realm—which is the central function of the logic of pre-emption—thus serves to suspend the juridical order by default, as decisions regarding innocence and guilt relating to questions of security now become solely the purview of sovereign power. As the suspension of the juridical order is the central characteristic of the state of exception (Agamben 2005), it is thus clear that a security regime premised upon a logic of pre-emption enacts such a state, as the reach of sovereign power becomes immense and the potential for each individual to be subject to its violences is always present.

The implications of this determination for everyday life in ostensibly liberal polities are significant. Within such a security climate—where the juridical order is no longer applicable to questions of security—it is only sovereign power itself that is immune from potential pro/persecution (Ericson 2008: 67). Accordingly, the potential necessarily exists for what Agamben (2000) terms the “logic of the camp” to be enacted at any location—be it the detention centre, the airport, the border, or a London Tube station.4 What this signifies is that, even within “liberal” states ostensibly committed to the rule of law and the upholding of human rights norms, a security logic of pre-emption premised upon the primacy of imagination always already embodies the potential that anyone at any time may be inscribed as “bare life” by sovereign power (Agamben 1998). 5 Yet, returning to the question of temporality, the arbitrary violences inherent in these practices are not viewed as problematic under the logic of pre-emption precisely because they are enacted in the present—an ostensibly exceptional temporal space that requires sovereign intervention—in the name of that which is to be secured: the future. Moreover, as discussed above, the precautionary ethos based on the unknowability of the future that underwrites this logic necessarily favours action over inaction, thus ensuring both a high level of sovereign activity, and a concomitantly increased likelihood that mistakes will be made and violence will be done to innocent life. Indeed, as David Runciman (2004) asserts, the precautionary logic of pre-emption “does not take seriously enough the downside of getting things wrong.”

Thus, to summarize, under the logic of pre-emption, securing the future through the violent deployment of sovereign power in the present against individuals deemed guilty in a contingently imagined future is paramount, and the present consequences thereof cannot be deemed problematic if this logic’s prioritization of the future over the present is to be upheld. The potential for sovereign power to inscribe any individual as bare life in the present is thus an ineluctable feature of a pre-emptive security logic premised upon a securitized future. The present is thus constructed as an exceptional temporal space necessitating violent interventions and the suspension of the juridical order if this latter goal is to be pursued. Under the pre-emptive logic of contemporary security practices, then, the present is laid siege by sovereign power for the ostensible purposes of ensuring that a certain order subsequently emerges in lieu of all(risky) others at some indefinite future point.

A Logic of Absurdity

While a vast catalogue of literature has problematized states of exception akin to that which I have argued arises from pre-emptive security strategies on ethico-political terms, this is not the route the remainder of the paper will take. Rather, I intend to focus instead upon how the seemingly inevitable emergence of a temporalized exception as a consequence of preemptive security practices illustrates that the broader logic upon which the latter are premised is fundamentally absurd and theoretically incoherent. As a departure point for this discussion, it is important to consider that for all the insidious violences it enables and the cynical ways in which it has been implemented practically, the logic of the exception is nevertheless just that: a logical theoretical premise imbued with a degree of intuitive normative coherence—namely, the idea that exceptional measures are temporarily required for the restoration of a particular desirable condition of existence in the present (see Agamben 2005). 6 Yet, when the political condition in which the present is taken hostage in the name of the future that I have detailed heretofore is considered in relation to this logic, the fundamental absurdity of the idea of preemptive security begins to reveal itself. Indeed, the specific introduction of temporality into the concept of the exception—as is entailed by the notion of pre-emptive security—renders the underlying logic of the exception elementally incoherent, as the very nature of preemption ensures that the aims of its security project that are pursued through exceptional practices can never in fact be realized, thus permanently instantiating a state of exception in the present.

To elaborate upon this point—albeit at the risk of descending into obscure hypotheticals akin to the worst excesses of analytical philosophy—consider the claim that the pre-emptive security project is inherently unrealizable, and thus logically absurd, in terms of a metaphorical illustration consisting of a rider atop a horse. To induce the horse to run forward, the rider hangs a carrot on a string in front of the horse. Imagining the reward of eating the carrot in the future, the horse makes an intervention in the present—moving its feet—that it believes will allow it to secure possession of the carrot in accordance with the ideally imagined future scenario. However, the rider’s dangling the carrot at a specified distance from the horse ensures that there is always a separation between horse and carrot. Thus, regardless of the intensity (or violence) of the interventions that the horse undertakes in the present, it and the carrot will always remain separated and its ingestion of the latter will always exist only in the imagined future that is perpetually out of reach. Accordingly, no matter what the horse does in the present, its inexorable separation from the carrot ensures that this future will never be realized in the present. Yet the logic of its thinking continues to necessitate unending interventions in pursuit of that future, to the point where it will have done immense damage to itself (in the form of fatigue, for instance) in pursuit of a future that is by definition never achievable due to the perpetual separation between itself and the carrot. To return from this obscure digression to the specifics of this paper, then, the spatial separation between horse and carrot is analogous to the temporal separation between present and future within the context of pre-emptive security. Much like the thinking of the hypothetical horse, the logic of pre-emption is premised upon the notion that exceptional interventions are required at present to secure a particular imagined future. However, just as the perpetual spatial separation of horse and carrot ensures that the horse continues, ad infinitum, to vainly pursue a snack that will never be eaten, the necessary temporal separation of present and future ensures that, in a climate of pre-emptive security, the sovereign gaze will be perpetually fixed upon a future that will never actually arrive, since what was the future inevitably becomes the present, whereby it too becomes exceptionalized as a site of violent intervention in pursuit of securing what is the new future, and so on.

The logical absurdities underwriting the idea of pre-emptive security thus become clearer, as what results from the introduction of pre-emption into security logic is the necessary permanence of the state of exception in the present. To reiterate, under the logic of pre-emption, the passage of time ensures that the future will become the present, whence it too will be “taken hostage” by sovereign power in an effort to secure what is now the future, which by definition can never be arrived at due to the exigencies of time. The problem is thus that, while we may seek to secure the future, we nevertheless always exist and act in what might be termed the perpetual present, since the present is the only temporal space in which interventions can be practically undertaken and experiences of security can occur. The corollary is that, if the logic of pre-emption holds, the imagined future that these interventions are ostensibly enacted to secure is necessarily never realizable, since any evaluation of whether it has been securely realized can only occur in the present, which is always already constructed as a state of exception under the logic of pre-emption. Indeed, the present can never be(come) the ideally imagined future that is ostensibly being secured, since pre-emptive security’s focus upon the future-as-referent necessitates that the present can only ever be conceived as the exceptional temporal space in which interventions to secure that future are to be undertaken. The experienced present thus cannot ever be seen as a manifestation of the risk-free “future prefect”, since the inherent unknowability of the future is a constant threatening spectre in the present. This ensures that, under the logic of pre-emption, the present is inevitably and perpetually subject to arbitrary and potentially violent sovereign interventions.

#### Prefer our framing of violence—problematizing the normative structures that shape how bodies are targeted is critical to understanding how and why violence occurs in concretized scenarios

**Lloyd 6**—Loughborough University

(Moya, “Who counts? Understanding the relation between normative violence and the production of political bodies”, paper presented to the panel: ‘Power, Violence and the Body’ Annual Meeting of the American Political Science Association Philadelphia, 31 August – 3 rd September 2006, dml)

It might be objected, of course, that extending the idea of violence any further in order to incorporate normative violence within it results in a proliferation of meaning that merely hampers the usefulness of ‘violence’ as a descriptive and evaluative political concept. 27 And, this is not just because the very idea of a normative violence may itself appear paradoxical, if not downright contradictory given that normative is conventionally used to designate something that ought to happen. It is also because it is not perhaps transparently obvious that some of the actions Butler identifies as sustaining normative gender (in the examples given) qualify as recognizable acts of violence in the first place (e.g. losing lovers and jobs). Moreover, given that **so many die in wars**, as a consequence of acts of internecine conflict, terrorism, random killings, and so many are brutalized in civil wars, in racially-motivated or homophobic assaults, through rape or acts of domestic violence, as a result of torture, not to mention the violence of child abuse, some critics will no doubt claim that **time is better spent** finding solutions **to deal with these instances of actual violence** rather than speculating about forms of figurative or categorical violence and how they do or do not relate to **what happens in the ‘real world’**. But what if what we recognize as physical violence depends on certain categorizations **that are**, in themselves, **normatively violent**, that operate, in other words, to exclude certain subjects and/or acts of violence? **What if physical violence occurs** precisely because **some people are apprehended as less valuable than others?** And, here we have only to think of homophobic or racist violence. **What if we** cannot see **the violence that certain peoples suffer as violence at all because those people are invisible** (‘unreal’, in Butler’s lexicon) to us; that is, fail to figure within our consciousness as human and are thus denied the rights, privileges, protections and help that accrue to the human? **Should we still argue** **for an** exclusive focus **on** actual**,** empirical **violence?** Or would we be better **evaluating** how **and** why **certain persons are construed as somehow deserving of**, or soliciting, **violence** **in the first place?** It is my contention in this section that an analysis of normative violence is, in fact, something we cannot do without **since it not only sheds** valuable light **on the kinds of political violence that characterize the contemporary world** (including war, ethnic conflict, terrorism, racist violence to mention only some of the most obvious) but also because it forces us to consider how our ability to recognize certain actions as violent **might itself depend on the effacement of other (violent) actions**. To illustrate how this argument works, I now want to turn to Precarious Life.

#### We’re not superhuman—this politics of controllability culminates in extinction—the aff is a paradigm shift that forces us to recognize the futility of our efforts to rationally manage the world—this is the prerequisite to a politics that better addresses global problems

**Peat 8 –** theoretical physicist, Ph.D., founder of the Pari Centre for New Learning

(F. David, “Gentle Action: Surviving Chaos and Change”, <http://www.gentleaction.org/library/paper2.php>, dml)

Many rapid changes that are taking place around us. These include globalization, developments in technology; fears of terrorism, the instability of the Third World; the rise of the Pacific Rim and a United Europe; the breakdown of inner cities; economics that appear to be out of control with the consequent challenges of inflation, recession and unemployment; spiraling health costs; revolutions in communication technology and information processing; the demands of consumers and special interest groups; threatened species and ecologies; the dangers of global warming and ozone depletion; increasing rates of teenage suicide and drugs use; the transformation of management and the breakdown of conventional institutions. Governments, institutions, organizations and individuals experience considerable anxiety in the face of such rapid change and **feel powerless to ameliorate the problems** that surround them. Indeed, it sometimes appears as if their plans and policies, as well as the traditional structures of their institutions, **are themselves part of the problem**. In so many cases policies, plans, interventions and other actions, all taken in good faith, have not only failed to resolve an existing situation but in many cases **have acted to magnify and render the problem even more intractable**. In other cases, the attempt to impose a solution in one location or context **has had the effect of creating an even larger problem elsewhere**. Organizations and individuals feel control slipping from their grasp and their natural reaction is to become even more intransigent in their attempt to clamp down on events and exert ever more control. **The result is a spiral of control that has literally gone out of control!** The realization that plans and policies are ineffective leads to a sense of depression and hopelessness. Faced with the insecurities and flux of the modern world many institutions fall into a state that, where it to be detected in an individual, would be diagnosed as manic-depression! How did this cycle of anxiety, hopelessness, panic and the desire for ever more control arise? I would argue that it is a paradigm of thought and behavior that originates in our particular view of reality, a view, moreover, that modern science had now demonstrated to be fundamentally erroneous. Thus, when our perception of the world around us is astigmatic, the actions we take become increasingly inappropriate and incongruous. It is only by entering into new modes of perception and acknowledging a new paradigm of reality that more appropriate forms of action can be taken. The Myth of Control One of the great themes of Western civilization, a theme of virtually mythic proportions, involves the way in which nature has been tamed and controlled over the course of the last few thousand years. Other cultures and civilizations have, for example, developed the techniques of farming but it appears that only the civilizations that expanded from their Neolithic birthplace in Northern Europe and the Fertile Crescent of the near East possessed the hubris necessary to impose themselves to such a marked extent upon the landscape. Thus, even in prehistoric times, European forests were cleared, marshes drained, vast tracts of land converted to farming, and tracks and walkways established as human beings sought to recreate the landscape according to their own needs. And, as ever more powerful technologies and social control became available, this path of domination continued. Within our own time, social critics have pointed out that this desire to exert control has led to our distancing ourselves from the natural world. The effect has been for us to place an **increasing faith in human reason, science, technology and the effectiveness of plans**, directives **and policies** while, at the same time, to decrease our sensitivity for the complex and subtle nature of the world around us. In short, **we tend to stand outside the world**, like observers, **indulging in constant analysis,** **making predictions and exerting corrective control** when situations do not move in the direction we desire. When human society and its associated technology were relatively simple and localized, and the resources that it called upon were unlimited, then this pattern of control was relatively successful. But as societies attempt to deal with ever more complicated issues, their boundaries became more open, their resources are found to be finite, the environment fragile, and technologies and world economics become increasingly complex then these conventional approaches simply fail. Ultimately, by virtue of its early success, the desire to dominate grew to the point where **it began to subvert itself and**, in the process, **endangered the whole planet**. And increasingly actions taken in one sphere **have unintended consequences in another**. Engaging complexity Over the last decades, however, there have been indications of a remarkable transformation within this traditional vision; a revolution in the perception of ourselves, our culture and the nature of reality that is truly Copernican in its implications. Just as in the 16th century astronomical observations were to dethrone the human race from a central place in the universe, so too in our own century relativity, quantum theory, chaos theory and systems theory, along with new insights in psychology, ecology and economics, have demonstrated the fundamental fallacy of our belief in definitive control. At the same time they are affirming our basic connectedness to the whole of creation. These scientific insights happen to have come at a time when the world has been experiencing rapid revolutionary change. States have risen and fallen. The notion of government is being transformed. Institutions are questioning their effectiveness. Businesses are desperately searching for new ways of operating. Technologies have developed so rapidly that people are unable to keep up with their implications. The overall effect has been to create **a profound sense of anxiety**, a fear that things are out of control, that the future is increasingly uncertain and that we have been left with nothing to hang on to. Yet what if this anxiety actually **points to an essential truth about the world**, that ultimately control and definitive prediction are strictly limited and that we must discover new ways of being and acting? Our current economic, social, ecological, environmental and institutional systems are now enormously complex to the extent that **we may never have complete knowledge** **about the inner dynamics of** such **systems**, nor the ability to predict exactly or exert total control. In this we can draw on metaphors from the new sciences of quantum theory, chaos theory, systems theory, and so on which also indicate essential limits to prediction, description and control. It is for such reason that so many of our plans and policies have been unable to meet the complexities of the modern world and why some supposed "solutions" have created even deeper problems and more intractable situations. The myth of eternal progress and control that has lain behind Western civilization can no longer sustain itself. The island of order and certainty on which we have been living has turned out to be not solid land but a rapidly melting iceberg, and we have no alternative but to **plunge into the boiling sea of flux, uncertainty and change that surrounds us**. The Dilemma of Action These are the dilemmas that many organizations find themselves in today, dilemmas that translate into the anxieties and uncertainties faced by many individuals. Programmed by their goals and mission statements, as well as by their very structures, many organizations inevitably seek ways of exerting control and believe that they must always take positive action in the face of uncertainty. Yet increasingly they discover that these actions are inappropriate. And so organizations, institutions, governments, groups and individuals retrench, break apart or in some other way get trapped into a spiral of ineffective decision making, paralysis and anxiety. These organizations, governments and institutions have been created according to our traditional image of reality; that is, of **a world that is external to us, predictable, relatively mechanical, and whose dynamics can be controlled** by the application of directed force. As a result, organizations are themselves relatively rigid in their nature, operating from fixed plans, policies and mission statements. Their internal structures are often hierarchical in nature, their lines of communication are limited rather than being flexible and dynamic, and their response to challenge and change is often predictable. In other words, most organizations are far less subtle and complex than the very systems they are attempting to address. **The basic problem** facing our modern world **is:** **How can society respond to the flux and challenge of the modern world** when all its institutions are inflexible and over-simplistic? When situations move more rapidly than an organization is capable of responding, policies and programs are outdated even before they are put into operation. Rather than acting to render organizations and policies more flexible, the apparatus of modern technology tends to **rigidify and entrench the problems** and rigidities that already exist within an organization. Organizations are composed of individuals and here too the conditioning of our society tends to inhibit natural creativity and abilities. Just as organizations have areas of rigidity, limitations also apply to the psychology of the individual. The issue becomes, therefore, one of freeing and fostering the natural intelligence and creativity of individuals and allowing them to operate fully within society, governments and institutions. In other words, how can organizations and individuals transform themselves so that they can become as subtle, sensitive, intelligent and fast-responding as the world around them? How can institutions heal their separation from society; society from the individual; and the individual from the natural world? Creative Suspension Paradoxically it is the very effort to change that establishes an internal resistance and rigidity that sustains the blocks that are to be removed. The first step towards transformation lies in an act of "**creative suspension**" and "alert watchfulness". This is an action that has the effect of relevating and making manifest the internal dynamics, rigidities, **fixed positions**, **unexamined paradigms**, **interconnections** and **lines and levels of communication** within the organization and the individual. A form of "creative suspension" is taught to paramedics and rescue workers who have to deal with serious accidents. While a layperson may wish to rush in an "help", a professional will suspend immediate response in order to make a careful assessment of the whole situation and determine how to use resources most effectively. Likewise doctors and paramedics made a visual examination of the wounded before carefully touching and then determining what medical action should be taken. The nature of this creative suspension is related to other approaches and techniques whereby unexamined assumptions and rigidities are brought into conscious awareness. For example, Sigmund Freud's notion of "non-judgmental listening" as well as various meditative practices. Artists, composers, scientists and other creative people often describe how their work unfolds from a form of creative "listening". These acts of listening and watchfulness have the effect of dissolving rigidities and **rendering a system more flexible**. Of course the lights will begin to flash and the alarm bells ring. Like Pavlov's dog an organization is conditioned to react and respond. But what if it does nothing--but it a very watchful way, and this applies not only to organizations but to individuals as well? **The first stage will be one of panic and chaos**, a flow of commands and information. All of this is not **being generated by** any external threat but through **the** internal **structure of the organization** itself. By remaining sensitive to what it going on it may be possible to become aware of the whole nature of the organization, of its values, the way its information flows, its internal relationships, dynamics and, in particular, its fixed and inflexible responses-- the organizational neuroses and psychoses if you like. Arthur Koestler suggested that a scientific revolution is born out of the chaos as a paradigm breaks down. It is possible that **something** **new and more flexible could be born out of the** break-down of fixed patterns in an organization, policy group or individual. Through a very active watchfulness it may be possible to detect its unexamined presuppositions, fixed values and conditioned responses and in this way allow them to dissolve by no longer giving energy to support them. The idea would be to permit the full human potential for creativity within each individual to flower, it would enable people to relate together in a more harmonious way and human needs and values to be acknowledged. In this fashion the organization or group dies and is reborn. In its new form it becomes at least as flexible and sensitive as the situation it faces. Now, using science, human creativity and the art of working with complex systems it may be possible to perceive a complex system correctly and model it within the organization. This new understanding would be the basis for a novel sort of action, **one that** **harmonizes with nature and society**, that does not desire to dominate and control and but **seeks balance and good order** and is based on respect for nature and society. Gentle Action explores images of new organizations and institutions that would be able to sustain this watchfulness. In place of relatively mechanical, hierarchical and rule-bound organizations there would exist something more organic in nature. In place of relatively mechanical, hierarchical and rule-bound organizations there would exist something more organic in nature. By way of illustrate one could draw upon ideas and concepts in systems theory, Prigogine's dissipative structures, cooperative and coherent structures in biology, neural networks, quantum interconnectedness and non-locality. In such a way organizations will be able to reach a condition in which they are as sensitive, subtle and as intelligent as the systems and situations that surround them. New Organizations, New Dynamics With this increased flexibility, organizations will now be able to internalize and model the complex dynamics of the systems that surround them. Rather than seeking to predict and control, they will now be able to enter the flux of change and engage in those actions that are appropriate to each new situation.

#### Our advocacy is to say no to the executive’s authority to engage in targeted killing.

**Rowan 5**—University of London Department of Geography, the best article titler in the world

(Rory, “Imagine a Boot Stamping on Your Face Indeﬁnitely: The ‘War On Terror’ and Executive Hegemony”, Anamesa vol 3 issue 1, spring 2005, dml)

The French legal theorist Julien Freund warned, in his analysis of Carl Schmitt’s work, that “once power has been acquired legally, nothing guarantees it will be exercised legally and the legality in force will not be transgressed.”26 For this very reason a healthy democracy cannot be reduced to the vote alone. Those who are elected democratically (although even this is open to question in the United States) may have no interest in the continuation of democracy and indeed may seek its destruction. The ability to publicly criticize and demand accountability from the government is also essential to the functioning of a healthy democracy. The balance of powers in the United States government was designed to guarantee the accountability of those in power to the public. The current executive, however, has sought to undermine this balance and thus the public’s ability to hold the executive accountable for its actions is diminished. Democracy must be reconceived as being inseparable from accountability and the public’s ability to freely criticize the government where they see ﬁ t. For democracy to be worthy of that name, we must once again take control of language, and, once again, we must say “no.”

#### Legalism cannot be neutral—how we produce knowledge about the law shapes how it is both interpreted and enforced—the aff is necessary to understand how executive authority over targeted killing exists in the first place—this is the prerequisite to crafting meaningful legal restrictions

**Krasmann 12**—prof. Dr, Institute for Criminological Research, University of Hamburg [added the word “the” for correct sentence structure—denoted by brackets]

(Susanne, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship”, Leiden Journal of International Law (2012), 25, pp. 665–682, dml)

It was only with President Barack Obama’s ‘drone program’30 that targeted killing operations were systematically and more openly employed in the fight against terrorism. Since Obama entered office, there has reportedly been a conspicuous increase of aerial strikes, mainly in Pakistan. Targeted killing became a subject of public knowledge and thus publicly visible.31 As a security technology assigned to the context of military operations, the term itself then came to represent a rather new phenomenon of (mainly drone-launched) air strikes on a foreign territory – which, of course, **does not preclude** intelligence **continuing to play a crucial role in the fight against terrorism** and accomplishing respective missions.32 Yet, within the ‘theatre of war’, as this telling phrase indicates, the practice of killing political opponents takes an entirely different shape. The exercise of sovereign power sees itself authorized to **address corresponding bodies of law**, notably around ‘self-defence’ and ‘armed conflict’. It is with these legal references that **a justification of targeted killing operations apparently** ceases to be required, according to US State Department Legal Advisor Harald S. Koh:

Some have argued that the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing. But a state that is engaged in an armed conflict or in legitimate self-defense is not required to provide targets with legal process before the state may use lethal force.33

At the very same moment as targeted killing entered the public stage, **it became legalizable**. It did so as a security dispositif by locating itself within the legal discourse and at the same time relocating elementary conceptions of existing international law.

It was the identification of a new dimension of threats that, in the first instance, paved the way **for targeted killing’s surfacing on the political and legal stage**. With the ability to utilize weapons of mass destruction or to display the capacity to invent such weapons, contemporary terrorism has been perceived as competing with the destructive power of states and, at the same time,34 being organized in transnationally operating networks, as an unforeseeable threat. The rationale of facing this threat no longer consists of deterring the attack by a known enemy state, but of **pre-empting ‘the danger before it is known’ and** before it has a chance to even emerge.35 If international law was prepared to accommodate targeted killing in legal terms, this was also the case because radical uncertainty, in the sense of the unforeseeable and possible, **had already been introduced into legal reasoning**.36 The precautionary logic **constitutes a** crucial feature **of the new security dispositif – and a** condition of possibility **for targeted killing to be embraced by international law.** As a dispositif, targeted killing entails the claim of its being an appropriate response to the new dimension of threats. Its promise is that a limited, or ‘surgical’, intervention brings about the greatest effects. The rationale is to intercept, or preempt, any preparatory terrorist action and thereby figure out the source of the problem – in the present context, leaders and core figures of a terrorist organization – in order to disrupt the whole matter. Terror networks, through this lens, then, appear to be the mirror image of this dispositif. Rather than merely being a response to the presumed problem, targeted killing asserts that this kind of organization would in fact be its very structure. It thus **relocates the legal notions of war and self defence**, once clearly attributable to ‘the political space of sovereignty’,37 within an entirely new constellation. What is at stake is no longer the idea of a confrontation between states, but rather the concerted acts of individuals.

If targeted killing could re-emerge as a new phenomenon and **legitimate subject of legal debate**, gradually losing resemblance to the classical forms of political assassination, this induced a distinctive kind of politico-legal question. The fight against terrorism, namely, is to be assigned to the legal sphere of either warfare or crime control. This decision makes a considerable difference as regards both the rights of state authorities to exercise lethal force and the due-process guarantees of the impacted individuals.38 It is, however, only the traditional notion of sovereign states that suggests a clear distinction be made between foreign and internal affairs, military and criminal cases, war- and peacetime, in accordance with bodies of law. Reluctance to accept targeted killing as a legitimate measure, even when basically assenting to ‘the morality of killing in the context of war’,39 within this framework seems quite rational – that is to say, once targeted killing is regarded as being an instrument of ordinary law enforcement.40 Those clear distinctions, however, have always been an idealization. Wartime, which is thought of as an exception to the norm, intrudes into everyday life through both memories and anticipation.41 The presence of past wars in public debates is as much a testimony to this phenomenon as current political invocations to prepare for the next attack. There is also continuity between war- and peacetime that is reinforced by technologies and institutions.42 **The convertibility of military into civilian techniques**, and vice versa, is to mention just one facet: **the possible** double use **of drones in war- and in peace times another**. It is only the awareness of boundaries being blurred that is a rather recent phenomenon.43 And, in fact, to the extent that targeted killing replaces the notion of assassination, the targets themselves are no longer civilian political leaders, but terrorists44 – a term that comes to be located within the juridical debate beyond the distinction of soldier or civilian. If targeted killing today in the fight against terrorism appears to be an appropriate security technology, embedded within international law, this acceptance in turn is evidence of a new security dispositif’s becoming the norm.

Within a Foucauldian perspective, talk about a new security dispositif does not imply that one dispositif would replace the other altogether, but rather that established notions and practices become relocated and linked to new ones. Sovereign power thus in no way loses its significance, but sees itself **confronted with new challenges and obligations, and endowed with** new momentums **of authorization**. Targeted killing, in this sense, itself shapes state formation,45 namely **our understanding of** sovereignty, of **the** rule of law**, and** of **what is** a legal **and** an illegal practice. Rather than asking whether international law competes with the sovereignty of states, focus, within this perspective, is on how sovereignty transforms and constitutes itself anew by enforcing international law; how distinctions are being made, for example, between national and international legal matters or between laws of war and ordinary law enforcement; and what kinds of concept underlie legal norms and are being inscribed into the law.

3. A FOUCAULDIAN PERSPECTIVE ON LAW

Foucault did not elaborate on a comprehensive theory of law – a fact that critics have attributed to his allegedly underestimating law’s political and social relevance. Some statements by Foucault may have provoked this interpretation, among them his assertion that law historically ‘recedes’with,46 or is **being ‘colonized’** by,47 forms of knowledge that are addressed at **governing people and populations**. It is, though, precisely this analytical perspective that allows us to capture **the** mutually productive **relationship between targeted killing and the law**. In contrast to a widely shared critique, then, Foucault did not read law merely as a negative instrument of constraint. He referred, instead, to a particular mode of juridical power that operates in terms of repressive effects.48Moreover, rather than losing significance coextensively with the ancient sovereign power, law enters new alliances, particularly with certain knowledge practices and attendant expertise.49 This linkage proves to be relevant in the present context, considering not only **the interchange between the legal and political discourse on targeted killing**, but notably **the relationship between law and security**.

According to Foucault, **social phenomena** cannot be isolated fromand are only decipherable **within the** practices**,** procedures**, and** forms **of knowledge that allow them to surface as such**.50 In this sense, ‘all phenomena are singular, every historical or social fact is a singularity’.51Hence, they need to be studied within their historically and locally specific contexts, so as to account for both the subject’s singularity and the conditions of its emergence. It is against this background that a crucial question to be posed is **how targeted killing could emerge on the political stage as a subject of legal debate**. Furthermore, this analytical perspective on power and knowledge intrinsically being interlinked highlights that **our access to reality** always entails a productive moment. Modes of thinking, or what Foucault calls rationalities, **render reality conceivable and thus manageable**.52 They implicate certain ways of seeing things, **and they** induce truth effects whilst translating into practices and technologies of government. These do not merely address and describe their subject; they constitute or produce it.53

Law is to be approached accordingly.54 It cannot be extracted **from the forms of knowledge that enact it**, and it is in this sense that law is only conceivable as practice. Even if we only think of the law in ideal terms, as being designated to contain governmental interference, for example, or to provide citizens’ rights, **it is already a practice and** a form of enacting the law. To enforce the law is always a form of enactment, since it involves a productive moment of **bringing certain forms of knowledge into play and of** rendering legal norms meaningful **in the first place**. Law is susceptible to certain forms of knowledge and rationalities in a way that **these constitute it and shape legal claims**. Rather than on the application of norms, legal reasoning is on the production of norms.

Legality, within this account of law, then, is not only due to a normative authority that, based in our political culture, is external to law, nor is it something that is just inherent in law, epitomized by the principles that constitute law’s ‘innermorality’.55 Rather, **the enforcement of law and its attendant reasoning produce their own –** legal **– truth effects**. Independently of the purported intentions of the interlocutors, **the juridical discourse on targeted killing leads to**, in the first instance, conceiving of and receiving the subject in legal terms.

When targeted killing surfaced on the political stage, **appropriate laws** appeared to be already at hand. ‘There are more than enough rules for governing drone warfare’, reads the conclusion of a legal reasoning on targeted killing.56 Yet, accommodating the practice in legal terms means that international law itself is undergoing a transformation. The notion of dispositifs is useful in analysing such processes of transformation. It **enables us to grasp the** minute displacements **of established legal concepts** that,57 while undergoing a transformation, at the same time **prove to be** faithful to their previous readings. The displacement of some core features of the traditional conception of the modern state reframes the reading of existing law. Hence, to give just one example for such a rereading of international law: legal scholars raised the argument that neither the characterization of an international armed conflict holds – ‘since al Qaeda is not a state and has no government and is therefore incapable of fighting as a party to an inter-state conflict’58 – nor that of an internal conflict. Instead, the notion of dealing with a non-international conflict,59 which, in view of its global nature, purportedly ‘closely resembles’ an international armed conflict, serves to provide ‘a fuller and more comprehensive set of rules’.60 Established norms and rules of international law are preserved formally, but **filled with a** radically different meaningso as to eventually integrate the figure of a terrorist network **into its conventional understanding**. Legal requirements are thus meant to hold for a drone programme that is accomplished both by military agencies in war zones and by military and intelligence agencies targeting terror suspects beyond these zones,61 since the addressed is no longer a state, but a terrorist network.

However, to conceive of law as a practice does not imply that law would be susceptible to any form of knowledge. Not only is its reading itself based on a genealogy of practices established over a longer period.62 Most notably, the respective forms of knowledge are also embedded in varying procedures and strategic configurations. If law is subject to an endless deference of meaning,63 this is not the case in the sense of arbitrary but historically contingent practices, but in the sense of historically contingent practices. Knowledge, then, is not merely an interpretive scheme of law. Rather than merely on meaning, [the] focus is on practices that, **while materializing and producing attendant truth effects,** shape the distinctions we make **between legal and illegal measures**. What is more, as regards anticipatory techniques to prevent future harm, this perspective allows for our scrutinizing the division made between what is presumably known and what is yet to be known, and between what is presumably unknown and has yet to be rendered intelligible. This prospect, as will be seen in the following, is crucial for a rereading of existing law. It was the identification of a new order of threat since the terror attacks of 9/11 that brought about a turning point in the reading of international law. The identification of threats in general provides a space for transforming the unknowable into new forms of knowledge. **The indeterminateness itself of legal norms proves to be a tool** for introducing a new reading of law**.**

## 2AC

### case/war on terror good

#### Terrorists aren’t a threat until we construct them as such – causes genocide

**Jackson 5** (Richard, Lecturer in International Politics at the University of Manchester, “Language Power and Politics: Critical Discourse Analysis and the War on Terrorism,” 49th Parallel, <http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm>, dml)

Another ubiquitous feature of the discourse of the ‘war on terrorism’ is the scripting of a perpetual state of threat and danger. As David Campbell has eloquently shown, discourses of danger and foreign threat have been integral in constituting and disciplining American identity as practiced through its foreign policy.[[37]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn37) Collectivities, especially those as disparate and diverse as America, are often only unified by an external threat or danger; in this sense, threat creation can be functional to political life. Historically, the American government has relied on the discourse of threat and danger on numerous occasions: the ‘red scares’ of the native Americans who threatened the spread of peaceful civilization along the Western frontier, the workers’ unrest at the time of the Bolshevik Revolution, and the threat to the American way of life during the cold war; the threat of ‘rogue states’ like Libya, Panama, Iran, North Korea, and Iraq; and the threats posed by the drug trade, the proliferation of weapons of mass destruction, and now of course, terrorism. These discourses of danger are scripted for the purposes of maintaining inside/outside, self/other boundaries—they write American identity—and for enforcing unity on an unruly and (dis)United States.

Of course, there are other more mundane political functions for constructing fear and moral panic: provoking and allaying anxiety to maintain quiescence, de-legitimizing dissent, elevating the status of security actors, diverting scarce resources into ideologically driven political projects, and distracting the public from more complex and pressing social ills.[[38]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn38) This is not to say that terrorism poses no real threat; the dangers can plainly be seen in the images of falling bodies and the piles of rubble at ‘Ground Zero’. Rather, it is to point out that dangers are those facets of social life interpreted as threats (in one sense, dangers do not exist objectively, independent of perception), and what is interpreted as posing a threat may not always correspond to the realities of the actual risk of harm. Illegal narcotics, for example, pose less of a risk than the abuse of legal drugs, but a ‘war on drugs’ makes it otherwise. Similarly, the ‘war on terrorism’ is a multi-billion dollar exercise to protect Americans from a danger that, excluding the September 11, 2001 attacks, killed less people per year over several decades than bee stings and lightening strikes. Even in 2001, America ’s worst year of terrorist deaths, the casualties from terrorism were still vastly outnumbered by deaths from auto-related accidents, gun crimes, alcohol and tobacco-related illnesses, suicides, and a large number of diseases like influenza, cancer, and heart disease. Globally, terrorism, which kills a few thousand per year, pales into insignificance next to the 40,000 people who die every day from hunger, the half a million people who die every year from small wars, the 150,000 annual deaths from increased diseases caused by global warming,[[39]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn39) and the millions who die from AIDS. And yet, the whole world is caught up in the global ‘war on terrorism’ whose costs so far run into the hundreds of billions of dollars. In other words, in a world of multiple threats, many of which pose a far greater risk to individual safety (according to Dr David King, Britain’s chief scientist, global warming is a greater threat to humanity than terrorism), the fact that terrorism is widely seen as posing the greatest and most immediate threat is due to the deliberate construction of a discourse of danger.

The initial construction of the threat of terrorism involved fixing the attacks of 9/11 as the start of a whole new ‘age of terror’, rather than as an extraordinary event, or an aberration (out of 18,000 terrorist attacks since 1968 only a dozen or so have caused more than 100 deaths; high-casualty terrorist attacks are extremely rare and 9/11 was the rarest of the rare). Instead, the attacks were interpreted as the dawning of a new era of terrorist violence that knew no bounds. As Bush stated, ‘All of this was brought upon us in a single day—and night fell on a different world’.[[40]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn40) Vice-President Dick Cheney made it even clearer:

Today, we are not just looking at a *new era in national security policy*, we are actually living through it. The exact nature of *the new dangers* revealed themselves on September 11, 2001 , with the murder of 3,000 innocent, unsuspecting men, women and children right here at home.[[41]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn41)

This construct was only possible by severing all links between this act of terrorism and countless others that had preceded it, and by de-contextualizing it from the history of al Qaeda’s previous attacks. In effect, the events of ‘9/11’ were constructed without a pre-history; they stand alone as a defining day of cruelty and evil (‘infamy’). This break with the past makes it possible to assign it future significance as the start of ‘super-terrorism’, ‘catastrophic terrorism’, or simply ‘the new terrorism’. Logically, if there’s a new super-terrorism, then a new super-war-on-terrorism seems reasonable.

A second feature of this discourse of danger is the hyperbolic language of threat. It is not just a threat of sudden violent death, it is actually a ‘threat to civilization’, a ‘threat to the very essence of what you do’,[[42]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm%22%20%5Cl%20%22_edn42) a ‘threat to our way of life’,[[43]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn43) and a threat to ‘the peace of the world’.[[44]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn44) The notion of a ‘threat to our way of life’ is a Cold War expression that vastly inflates the danger: instead of a tiny group of dissidents with resources that do not even begin to rival that of the smallest states, it implies that they are as powerful as the Soviet empire was once thought to be with its tens of thousands of missiles and its massive conventional army. Moreover, as Cheney reminds us, the threat of terrorism, like the threat of Soviet nuclear weapons, is supremely catastrophic:

The attack on our country forced us to come to grips with the possibility that the next time terrorists strike, they may well be armed with more than just plane tickets and box cutters. The next time they might direct chemical agents or diseases at our population, or attempt to detonate a nuclear weapon in one of our cities. […] *no rational person can doubt* that terrorists would use such weapons of mass murder the moment they are able to do so. […] we are dealing with terrorists […] who are willing to sacrifice their own lives in order to *kill millions* of others.[[45]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn45)

In other words, not only are we threatened by evil terrorists eager to kill millions (not to mention civilization itself, the peace of the world, and the American way of life), but this is a rational and reasonable fear to have. We should be afraid, very afraid: ‘If they had the capability to *kill millions* ofinnocent civilians, do any of us believe they would hesitate to do so?’.[[46]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm%22%20%5Cl%20%22_edn46)

As if this was not enough to spread panic throughout the community, officials then go to great lengths to explain how these same terrorists (who are eager to kill millions of us) are actually highly sophisticated, cunning, and extremely dangerous. As John Ashcroft put it: ‘The highly coordinated attacks of September 11 make it clear that terrorism is the activity of *expertly organized*, *highly* *coordinated* and *wellfinanced* organizations and networks’.[[47]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm%22%20%5Cl%20%22_edn47) Moreover, this is not a tiny and isolated group of dissidents, but ‘there are *thousands of these terrorists* in more than 60 countries’ and they ‘hide in countries around the world to plot evil and destruction’;[[48]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn48) or, like the plot of a popular novel: ‘Thousands of dangerous killers, schooled in the methods of murder, often supported by outlaw regimes, are now spread throughout the world *like ticking time bombs*, set to go off without warning’.[[49]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn49) In other speeches, officials inflate the numbers of the terrorists to ‘*tens* of thousands’ of killers spread throughout the world.

The next layer of fear is the notion that the threat resides within; that it is no longer confined outside the borders of the community, but that it is inside of us and all around us. As Ashcroft constructs it:

The attacks of September 11 were acts of terrorism against America orchestrated and carried out by individuals *living within our borders*. Today's terrorists enjoy the benefits of our free society even as they commit themselves to our destruction. *They live in our communities*—plotting, planning and waiting to kill Americans again […] a conspiracy of evil.[[50]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn50)

Like the ‘red scares’ of the past, the discourse of danger is deployed in this mode to enforce social discipline, mute dissent, and increase the powers of the national security state. It is designed to bring the war home, or, as Bush puts it: ‘And make no mistake about it, we’ve got a war *here* just like we’ve got a war abroad’.[[51]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn51)

In another genealogical link to previous American foreign policy, the threat of terrorism is from a very early stage reflexively conflated with the threat of ‘weapons of mass destruction’ and the ‘rogue states’ who might hand them on to terrorists. According to the discourse, rogue states are apparently eager to assist terrorists in killing millions of Americans. As Bush stated in his now infamous ‘axis of evil’ speech,

States like these, and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world. By seeking *weapons of mass destruction*, these regimes pose a grave and growing danger. *They could provide these arms to terrorists*, giving them the means to match their hatred.[[52]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn52)

This is actually an ingenious discursive sleight of hand which allows America to re-target its military from a war against a tiny group of individual dissidents scattered across the globe (surely an unwinnable war), to territorially defined states who also happen to be the target of American foreign policy. It transforms the ‘war against terrorism’ from a largely hidden and unspectacular intelligence gathering and criminal apprehension program, to a flag-waving public display of awesome military firepower that re-builds a rather dented American self-confidence. Dick Cheney explained it to his colleagues thus: ‘To the extent we define our task broadly, including those who support terrorism, then we get at states. And *it’s easier*to find themthat it is to find bin Laden.’[[53]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn53) Perhaps more importantly, it also allows for the simultaneous pursuit of geo-strategic objectives in crucial regions such as the Middle East under the banner of the ‘war on terrorism’.[[54]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn54)

Instead of reassuring the nation that the attacks were an exceptional and a unique event in a long line of terrorist attacks against America (that have thus far failed to overthrow freedom), the Bush administration chose instead to construct them as the start of a whole new age of terror—the start of a deadly new form of violence directed at Americans, civilized people all over the world, freedom and democracy. The Bush administration could have chosen to publicize the conclusions of the Gilmore Commission in 1999, a Clinton-appointed advisory panel on the threat of WMD falling into the hands of terrorists. Its final report concluded that ‘rogue states would hesitate to entrust such weapons to terrorists because of the likelihood that such a group’s actions might be unpredictable even to the point of using the weapon against its sponsor’, and they would be reluctant to use such weapons themselves due to ‘the prospect of significant reprisals’.[[55]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn55) Condoleeza Rice herself wrote in 2000 that there was no need to panic about rogue states, because ‘if they do acquire WMD—their weapons will be unusable because any attempt to use them will bring national obliteration’.[[56]](http://www.49thparallel.bham.ac.uk/back/issue15/jackson1.htm#_edn56) Instead, officials engaged in the deliberate construction of a world of unimaginable dangers and unspeakable threats; they encouraged social fear and moral panic. Within the suffocating confines of such an emergency, where Americans measure their daily safety by the color of a national terrorist alert scale (reflected in the glow of every traffic light), it seems perfectly reasonable that the entire resources of the state be mobilized in defense of the homeland, and that pre-emptive war should be pursued. It also seems reasonable that national unity be maintained and expressions of dissent curtailed.

The reality effect of scripting such a powerful danger moreover, can be seen in the two major wars fought in two years (followed by costly ongoing ‘security operations’ in each of those states to root out the terrorists), the arrest of thousands of suspects in America and around the world, and the vast sums spent unquestioningly (even by the Democrats) on domestic security, border control and the expansion of the military. Only the ‘reality’ of the threat of terrorism allows such extravagance; in fact, the manner in which the threat has been constructed -catastrophic, ubiquitous and ongoing- normalizes the entire effort. If an alternative interpretation of the threat emerged to challenge the dominant orthodoxy (that it was vastly over-blown, or misdirected, for example), support for the consumption of such massive amounts of resources might be questioned and the political order destabilized. A massive threat of terrorism then, is necessary for the continued viability of the ‘war on terrorism’; writing the threat of terrorism is co-constitutive of the practice of counter-terrorism.

#### The war on terror marks a new mode of ecological destruction—its weaponization of entomology precedes a spread of empire devastating to both human and apiary ecologies

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(Jake, “ECOLOGIES OF EMPIRE: On the New Uses of the Honeybee”, Cultural Anthropology Volume 25, Issue 4, pages 650–678, November 2010, dml)

Insights gleaned from watching honeybee interactions have helped me map the changing contours of apiary ecology under U.S. empire. Most U.S. politicians, of course, avoid the language of imperialism. Even so, under the George W. Bush administration, some officials began to slip: “**We’re an Empire now**,” said one senior Bush administration official, “and when we act, we create our own reality. And while you’re studying that reality—judiciously as you do—we will act again, creating other new realities, which you can study too. That is how things will sort out. We are history's actors … and you, all of you, will be left to study what we do.”4 Efforts of empire building, although often hidden, **have clearly been consequential to different ecologies and species**; some are transformed while others are destroyed—through bombings, depleted uranium, landmines, or massive infrastructure development. But more than simply being influenced by these political transformations, species and ecologies are integrated into empire building itself. Material ecologies take the form of political aspirations and **serve imperial efforts in ways that transform ecologies and species**. It is this integration of ecology into new forms of empire building that I am interested in here. **The honeybee dwells in a** shifting biopolitical terrain, where nature and culture are being refigured, where humans and nonhumans are being remade by discourses and material practices in the war on terror.3 Many scholars have maintained that **the politics of nature and the human–nonhuman divide are** central **to the war on terror** (see Asad 2007; Butler 2006, 2009; Devji 2009; Gregory 2004). This essay draws from literature on the cultural politics of nature, as well as from science and technology studies, to understand emerging **insectoid forms of warfare** under the Bush and Barack H. Obama administrations. BEES IN WAR, FROM ANTIQUITY TO THE WAR ON TERROR There is a long history of writing on insects, both as models and as metaphors for human sociality, morality, and politics. From fighting ants to racialized lice to industrious bees, the size, sociality, and ubiquitous presence of insects has made them a source and site for creative and scholarly writing. There is renewed interest among anthropologists and scholars in kindred disciplines about the role insects play in human sociality (i.e., Raffles 2010; Sleigh 2006). And insects are more than metaphors. Timothy Mitchell's (2002)“Can the Mosquito Speak?” explores the consequential materiality of the mosquito in social and landscape transformation in Egypt. Joseph Masco (2004) analyzes how the monstrous radioactively mutated ants of the cold war movie Them! bespeak anxieties about the fate of humanity in the nuclear age. And Hugh Raffles 's Insectopedia (2010) offers a range of explorations of the complex and intimate relationships between humans and insects. If animals are human Others, insects are the Others of animals, intimately involved in our lives but much maligned. **Insects are** powerful sites and sources **for the production of human nature**. The environs of insects are also **an intimate part** of changing ecologies of empire. Much has been written about green imperialism (Crosby 1986; Grove 1995). Scholars have traced how colonial endeavors have transformed landscapes, how gardens serve as spatial and taxonomic representations of race, hierarchy, and territorial ambitions (Mukerji 1997) and form the basis of nature governance (Drayton 2000; Matless 1998) through imperial practices of the science of “improving” the world. Schiebinger (1993, 2004) explores these histories and rhetorics of gender, race, and empire through the science of botany, while McClintock (1995) and Stoler (2001, 2008; Cooper and Stoler 1997) demonstrate that **nature is central to the** violence **and** geography **of imperial projects**. **The honeybee has** served as an archetype **for understanding human collective society**, the subject of treatises by apiarists and scientists as well as by philosophers, kings, sociologists, criminologists, physicists, and poets (Crane 1999; Preston 2006). These cultural texts of bees are often marshaled to aid in making claims about human collective behavior. These understandings in turn **influence our relationship with the honeybee**, **whether we understand the bee as a bucolic part of nature or as a** domesticated workhorse. The political, economic, and cultural histories through which bees are made intelligible are entangled with how humans breed, select, and relate to them. The frameworks humans have mobilized to understand the “races” of bees, the organization of bee labor, “gender” in bee society, or the character of hierarchy in bee worlds have been inscribed—sometimes quite materially—into bees’ biology.5 To treat the bee as a wild and instinct-driven object of a nature apart **is to erase the political and military history of honeybees’ biology**. Bees have been used in warfare since antiquity, when hives were dropped on invading armies or launched into fortified tunnels, caves, forts, and bases. The well-documented decline in the honeybee population during the late Roman Empire is now believed to be because of their extensive use in warfare. In the 16th century, a multiarmed catapult launched hives at enemy fortresses like a windmill. **The entomology and etymology of the bee are** intertwined in war. The word bombard comes from bombos, which in Greek means bee, making an association between the threatening hum of an angry swarm and incoming projectiles (Lockwood 2008). In World War I, the bee became central to the war machine not as a projectile but as a source of beeswax that was used to coat almost all ammunition. As explained in a 1944 article in Popular Science,“How Science Made a Better Bee,”“Amazing new discoveries [new breeding technologies] bring improvement to nature's masterpiece, enabling the busy little insect to do a better job for war” (Sinks 1944:8). The bee is not alone among insects in serving militarized campaigns and torture. The Emir of Bukhara used beetles to eat the flesh of his prisoners (Lockwood 2008). Massive research projects took place during World War II in Germany, Japan, Russia, and the United States, when hundreds of millions of insects were cultivated and tens of millions of beetles and mosquitoes were deployed to infest crops, soldiers, and civilians (Lockwood 2008). General Ishii Shiro released hundreds of millions of infected insects across China during World War II, causing the deaths of tens of thousands of people (Lockwood 2008). In the Korean War, U.S. airplanes dropped plague-infested fleas on North Korea and later used mosquitoes, wasps, and bees as part of torture techniques against the Vietcong in Vietnam. The Cold War also saw crop-eating beetles dropped on Vietnam, North Korea, and Cuba, along the way fostering research that transformed modern entomology (Lockwood 2008; Tucker and Edmund 2004). In the war on terror, the Bush administration approved the practice of placing bees and spiders in confinement boxes as part of the torture of U.S. detainee Abu Zubaydah (Scherer 2009).6 Anthropologists have long investigated how the science and practice of ecology became **intertwined in broader questions of cultural politics** of nature and difference (Moore et al. 2003; Comaroff and Comaroff 2001). These works call attention to the connection between ecologies and empire primarily in the 18th and 19th centuries. In this essay, I place such works in dialogue with other studies that have attended to the political economy behind the production of living organisms (Franklin 2007; Haraway 1989, 1991; Schrepfer and Scranton 2004; Vivanco 2001; Zylinska 2009). If insects have long been recruited and bred for military purposes, **the honeybee has now been enlisted in novel modes of material production in war**. The amorphous character of the war on terror requires its own way of seeing and producing knowledge about an enemy that is difficult to identify (Rumsfeld 2001a). The enemy's lack of coherence—institutionally, ideologically, and territorially—**makes the search for the enemy central to the politics of the war on terror**, both in maintaining that there is an enemy and in demonstrating the connections, coherence, and intention of the terrorists. This has produced the possibility that terrorists are anywhere, making anyone a potential target or suspect. Objects themselves take on the possibility of being implicated in terrorism: a lost piece of luggage; an 0oddly parked van; a suspicious looking individual.7 How then to discern the intent of individuals, animals, and objects? We must know them, see beyond them, look inside them, and listen past what they claim for something inside, something more deeply hidden. As U.S. Secretary of Defense Donald Rumsfeld stated, “The war on terror requires new technologies of warfare but even more importantly new technologies of surveillance” (2001a). U.S. intelligence agencies made humans and nonhumans speak (cf. Latour 2004). Intelligence gathering was not just limited to psychologists, sociologists, lawyers, and military planners, but came to include biologists, anthropologists, epidemiologists, and even entomologists.8 Rather than being used simply as weapons of war, **bees have become involved in the search for what is beyond the reach of human senses**. The behavior and physiology of bees **have become** instrumental **in extending the capacity of the human senses**. Bees have become zoosensors (cf. Connor 2005). The deployment of bees, or what military scientists call “six-legged soldiers” (Lockwood 2008), has resulted in new and intimate relationships. Experts have inscribed economic and military designs into the honeybee's nervous system, migration patterns, and community relations. There is a new bee managerialism. The capacities of bees for detection and intelligence gathering have been harnessed. As Homeland Security states, they are “deploying bees as efficient and effective homeland security detective devices.”9

#### Analyzing the apiary aspect of the war on terror is critical to rupturing the social and military management of both the human and the non-human—our questioning of the human breaks away from the entomological dynamics of the status quo that posits certain bodies as vulnerable

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(Jake, “ECOLOGIES OF EMPIRE: On the New Uses of the Honeybee”, Cultural Anthropology Volume 25, Issue 4, pages 650–678, November 2010, dml)

Geography and technology separate individual action from technologies, enabling the U.S. military and the CIA to compromise the sovereignty of other nations in new ways. The bee helps make unmanned air vehicles more beelike, becoming more effective semiautonomous actors, distancing themselves from the human in such a way that legal and moral codes are skirted and attacks are more lethal. Mimetic relationships are not simply about imitation or representations of the real, but simultaneously a means for the production of alterity (Taussig 1993) and distinction (Caillois 1984; and see Butler 2006). Algorithms that purport to copy the animal (the bee) are being used as the strategic answer to barbaric aggression. **The bee has also become a model for understanding the behavior of human soldiers**. Techniques of communication and decentered coordination offer advantages in fighting an enemy. This pattern of collective behavior has become embedded within new “autonomous” technology that itself mimics other species. Civilization's relationship to the nature of the bee and the swarm **is one of imitation** and, as one military strategist put it, “of deep respect for a complex system” (Edwards 2000). **These are the new zoological consequences of the war on terror's** remaking of animal–human natures and apiary ecologies. TOWARD A POLITICAL ENTOMOLOGY Karl Marx famously drew the line between the human and the nonhuman on the back of the bee. He wrote that “what distinguishes the worst architect from the best of bees is this, that the architect raises his structure in imagination before he erects it in reality” (Marx 1990:284). For Marx the nonhuman does not engage in planning. Ironically, in war it is this exact attribute of the bee—**the absence of planning, even intentionality**—**that is** at the heartof its usefulness in modern warfare **as a flexible, decentralized, adaptive form**. Here, the shifting limits of animal and human are again remade, and we reach the limits of historical materialism, where political agency is reduced to the agency of human actors. If these nonhuman bodies matter, they matter not as agents with Marx's intentionality or through “agency” as commonly conceived. Rather, they matter as what Jane Bennett (2010) refers to **as “vibrant matter,” possessing a vitality intrinsic to materiality**, which is always a human-nonhuman working assemblage. Objects and animals are not just passive stuff, or machines, or divinely infused matter, or independent actors. The concept of “vibrant matter” allows us to **avoid treating objects and animals as if they are animated largely** (solely) **through human production** (by being mixed with labor). Rather, the materiality of objects and animals can be apprehended as part of politics without being attributed an “agency” that has to do with nonhuman intentionality or a politics simply animated by human practice. The bee is being remade**, both materially and symbolically, creating a crisis in a relationship thousands of years old that has lead to a dramatic drop in the populations of bees**. Understanding apiary politics requires a critical natural history of the honeybee, one attentive to the political economy of industrial agriculture, to the chemistry and molecular biology of international chemical corporations, as well as to genetic laboratories searching for the bee's “social gene” (Robinson and Ben-Shahar 2002). A critical natural history of the bee also requires attention to the instrumentation of the bee as a means of tracking and tracing the boundaries of dangerous subjects and suspect objects. **These new uses of the honeybee are part of a remaking of its material body, as well as the new ecological contours of empire**. These ecologies of empire matter**, for they constitute the materials from which future** bodies**,** technologies**, and** relationships **will be forged**. What is the legacy for bees and humans in their work as technological instruments of espionage and architects of the military strategies of the United States? How might we better understand these militarized ecologies? These questions emerge as part of **a larger natural history of modern warfare**, a part that is woefully absent from much of the scholarly work on the cultural politics of nature and the animal. At the same time that Homeland Security officials fret about the implications of honeybee colony collapse disorder with regard to national food security, **the sociality of bees has become a model for both** human strategic military behavior **and algorithms for technologies** that make enemy human bodiesmore vulnerable. This vulnerability and these remakings are part of the seemingly disparate modern lives of the honeybee, even as these remakings are also the product of earlier political formations and biological materialities. **Even as bees are mutilated in the name of the war on terror, they are also enlisted** to make humans killable. There is a long history of people being imagined as unloved animals in times of war: from the “lice” of Nazi Germany (Raffles 2010) to the Hutu “cockroaches” of Rwanda (Copeland 2004) to the creatures that live in the swamp of today's war on terror (Rumsfeld 2001a, 2001b; see also Rhem 2001). There is also the history of soldiers becoming animals that are seen as super human (Deleuze and Guattari 1980). In either case, these human transgressions matter (Agamben 2004; Deleuze and Guattari 1980; Weizman 2007). **The nature and boundaries of the human have become** a central part of the war on terror**: the animal is part of the discursive terrain on which** certain bodies are made killable **and** others are celebrated as super human. **What it means to be human is a product of the shifting cartography of what it is to be animal**. Looking at the relationship between bees and humans thus reveals **the far-reaching “**zoological consequences**” of war**. Metaphors of the swarm clearly matter, but they matter most as they are materialized in the software of unmanned aerial vehicles and in breeding programs that remake modern bee exoskeletons and digestive tracts. They also come to matter **in the new practices of warfare and its consequences** living beings, human and animal. **A** new political entomology, or more broadly, a critical natural history, **might start exploring the material consequences of insectoid becomings** that are often left out of political and social theory that reckons with animal becomings.

### framework

#### the targeted killing debate needs to be situated outside of the juridical matrix to make this space politically productive

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(Susanne, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship”, Leiden Journal of International Law (2012), 25, pp. 665–682, dml)

Giorgio Agamben maintains that a legal norm, because abstract, does not stipulate its application.102 ‘Just as between language and world . . . there is no internal nexus’ between them. The norm, in this sense, exists independent of ‘reality’. This, according to Agamben, allows for the norm in the ‘state of exception’ both to be applied with the effect of ‘ceasing to apply’103 – ‘the rule, suspending itself, gives rise to the exception’104 – and to be suspended without being abolished. Although forming part of and, in fact, being the effect of applying the law, the state of exception, in Agamben’s view, disconnects from the norm. Within a perspective on law as practice, by contrast, **there is no such difference between norm and reality**. Even to ignore a pertinent norm constitutes an act that has a meaning, namely that the norm is not being enforced. It affects the norm. **Targeted killing operations**, in this sense, can never be extra-legal.105 On the contrary, provided that illegal practices come up systematically, they eventually will effectuate the transformation of the law. Equally, the exception from the norm not only suspends the norm, transforming it, momentarily or permanently, into a mere symbol without meaning and force, but at the same time also **impinges upon the validity of that norm**. Moreover, focus on the exception within the present context falls short of capturing a rather gradual transitional process that both **resists a binary deciphering of either legal or illegal and is not a matter of suspending a norm**. As practices deploying particular forms of knowledge, **targeted killing and its law** mutually constitute each other, **thus re-enforcing a new security dispositif**. **The** appropriate research question **therefore is** how positive law changes its framework of reference. Targeted killing, once perceived as illegal, **now appears to be a legal practice** on the grounds of a new understanding of international law’s own elementary concepts. The crux of the ‘compulsion of legality’ is that **legality itself is a shifting reference**.

Seen this way, the United States does not establish targeted killing as a legal practice on the grounds of its internationally ‘possessing’ exceptional power. Rather the reverse; it is able to employ targeted killing as a military tactic, **precisely because this is** accepted by the legal discourse. As a practice, targeted killing, in turn, reshapes our understanding of basic concepts of international law. **Any dissenting voice** will now be heard with more difficulty, since targeted killing is a no longer an isolated practice but, **within the now establishing security dispositif, appears to be** appropriate **and** rational. **To counter the legal discourse**, then, **would require** to interrupt it**,** rather than to respond to it, and to move on to its political implications that are rather tacitly involved in the talk about threats and security, and in the dispute about targeted killing operations’ legality.

6. CONCLUSION

Analysing targeted killing that has asserted itself as a tactic in the US fight against terrorism within a Foucauldian perspective challenges common normative approaches in legal theory towards this phenomenon. Identifying the tactic as residing between the alternatives of either being accomplished illegally or being legal **misses** some important points – first of all, **that** there is a process at work. While presenting itself as a military tactic employed in the name of defending a threatened population, targeted killing today appears to be a new phenomenon that discarded its historical association with political assassination. As a security dispositif, second, it displaces some of the established co-ordinates of international law that are able to formally stick to established legal principles. The identification of a new dimension of threats thereby marked the turning point for a new reading of international law, as it provided a space for transforming the unknowable threat into new forms of knowledge. Third, legal reasoning **that tries,** whether in supportive or critical terms**, to make sense of the current incoherence in international law** contributes to the legal acceptance of targeted killing. This is because legal reasoning, couching the issue in legal terms, **constitutes a normative reality of its own**. There is, then, finally, no superior normativity the law could be measured against and therefore **nothing principally unlegalizable**. Instead, the normative authority resides in the law itself. It is, though, neither a quality of law as such nor merely something society attributes to the law. It lies in the very moment of law’s enactment, whereas its significance depends upon the knowledge and claims thus brought into play.

#### education about the process of the law is detrimental to topic education and displaces our ethical agency—big nozo

Rozo 4

(MA in philosophy and Cultural Analysis, 2004 Diego, Forgiving the Unforgivable: On Violence, Power, and the Possibility of Justice p 19-21)

Within the legal order the relations between individuals will resemble this logic where suffering is exchanged for more, but ‘legal’ suffering, because these relations are no longer regulated by the “culture of the heart” [*Kultur des Herzens*]. (CV 245) As Benjamin describes it, the “legal system tries to erect, in all areas where individual ends could be usefully pursued by violence, legal ends that can be realized only by legal power.” (CV 238) The individual is not to take law in his own hands; no conflict should be susceptible of being solved without the direct intervention of law, lest its authority will be undermined. Law has to present itself as *indispensable* for any kind of conflict to be solved. The consequence of this infiltration of law throughout the whole of human life is paradoxical: the more inescapable the rule of law is, the less responsible the individual becomes**.** Legal and judicial institutions act as avengers in the name of the individual. Even the possibility of forgiveness is monopolized by the state under the ‘right of mercy’. Hence the responsibility of the person toward the others is now delegated on the authority and justness of the law. The legal institutions, the very agents of (legal) vengeance exonerate mefrom my essential responsibility towards the others, breaking the moral proximity that makes every ethics possible.20 Thus I am no longer obliged to an other that by his/her very presence would demand me to be worthy of the occasion (of every occasion), because law, by seeking to regulate affairs between individuals, makes this other anonymous, *virtual:* his otherness is equaled to that of every possible other. The Other becomes faceless, making it all too easy for me to ignore his demands of justice, and even to exert on him violence just for the sake of legality. The logic of evil, then, becomes not a means but an end in itself**:**21 state violence for the sake of the state’s survival. Hence, the ever-present possibility of the worst takes the form of my unconditional responsibility towards the other being delegated on the ideological and totalitarian institutions of a law gone astray in the (its) logic of self- preserving vengeance. The undecidability of the origin of law, and its consequent meddling all across human affairs makes it possible that the worst could be exerted in the name of law. Even the very notion of crimes against humanity, which seeks to protect the life of the population, can be overlooked by the state if it feels threatened by other states or by its own population.22 From now on, my responsibility towards the Other is taken from me, at the price of my own existence being constantly threatened by the imminent and fatal possibility of being signaled as guilty of an (for me) indeterminate offence. In this picture, the modern state protects my existence while bringing on the terror of state violence – the law infiltrates into and seeks to rule our most private conflicts.

#### Dialogue tho

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(Alexander, “Avoiding Deliberative Democracy? Micropolitics, Manipulation, and the Public Sphere”, Philosophy & Rhetoric, Vol. 45, No. 3 (2012), pp. 269-294, dml)

It is important here to stress what a critical theory of deliberative democracy is not.16 It is not the gentlemanly sport of cool, calm, and dispassionate exchange of impartial reasons. It does not depend on the knockdown force of the better argument in a single-round, one-on-one, face-to-face bout of verbal jousting. It is not the reduction of political debate to a matter of logical demonstration. And it is not a clinical exer- cise wherein citizens are extracted from their concrete political world and placed in an artificially domination-free space of the ideal speech situa- tion or deliberative focus group**.** All of these proposals, not to mention others, have been put forward in one form or another under the banner of deliberative democracy.17 If theories of deliberative democracy were limited to these options, Connolly would be right to charge them with an intel- lectualism that ignores the vagaries of lived political praxis. However, a critical theory of deliberative democracy provides both an alternative to this deliberative intellectualism as well as to Connolly’s democratic deficit. The key to this alternative approach to democracy overlooked by both Connolly and these intellectualist theories of deliberation is the complex institution of the public sphere. The public sphere is the decentered network of voluntary associations and media channels that crisscross civil society. It has no center or hub it radiates out of. Rather it is a rhizome in Deleuze and Guattari’s sense of the term: a multiplicity of lively points and intersections that hang together that lacks organization and is not subject to central control. Philippe Mengue makes just this point about the nature of the public sphere when he criticizes Deleuze and Guattari’s antipathy toward the idea of politics as the expression and contestation of public reasons. The public sphere, as he rightly notes, is precisely the kind of deterritorialized plane where movement and becoming can occur.18 Deliberative democracy is a model of democracy that explains how ideas circulate in such a public sphere; that is, how they bump into other ideas, transform them, and become transformed themselves in turn. Key to a critical theory of deliberative democracy is the claim that the exchange of reasons within this rhizomatic public sphere is what Jürgen Habermas calls “subjectless” (1996, 299). A public sphere is always more than the prudential exchange of reasons between two parties, but it is also always less than a self-reflection of a macrosubject capable of action. Rather, it is a complex mediating institution that allows ideas and reasons to become public—that is, it circulates and distributes reasons and ideas beyond the bounds of local conversations, turning them into resources to be drawn on, tested, and sometimes rejected in more local exercises of reason giving. Crucially, the reasons that do all this circulating in the public sphere must be understood in an expansive sense. At the level of democratic the- ory, no one form of discourse has a monopoly on what counts as a reason. Deliberative democracy recognizes diverse forms of communication as reason giving, including storytelling, rhetoric, and greeting. Each has a place in a deliberative politics insofar as it is capable of drawing a connec- tion between a particular claim or experience and a more general and acces- sible norm (Young 2000, 52–80; Dryzek 2000, 57–80). A public reason is always a reason for doing or avoiding doing something. First-person stories like those W. E. B. Du Bois tells in The Souls of Black Folk are vivid depic- tions of the experience of racial oppression, but they function as reasons to a nonblack audience insofar as they aim to open the eyes of white America to the complacency of its commitments to liberty and equality. A public sphere is a site where these sorts of reasons are articulated and take on broader and richer meanings, as they are received by an indefinite audience of strangers.19 The informal and diffuse network of information that spans from labor meetings to church groups to book clubs to blogs to newspapers to PTA meetings and to dissident groups carries our reasons across multiple testing sites where they are subject to uptake, rejection, or transformation, only to be recirculated again. This public exchange of reasons has the important epistemic function of improving the quality of the reasons we use to justify our interests and decisions, but the more crucial function is its critical one. The articulation and contestation of reasons in the public sphere is a motor for self-reflection. It is this function, the self-critical and self-reflection function of exposure to diverse and impersonal reasons in a public sphere, that deliberative democracy values. While the media-saturated public sphere trades in low-involvement advertising and affective manipulation, it also and more importantly can be a means of provoking us to reflect on our received identities and interests.20 These epistemic and critical functions of the public sphere come together to provide a democratic resource for inciting self- and collective transformation in novel and potentially eman- cipatory ways. Seen as a molecular interplay of constantly flowing, shifting, and transforming reasons and self-understandings that provokes new and creative (but reflective) becomings that help us cope with the challenges of political community, the circulation of ordinary talk in the public sphere is Deleuzian. The public sphere is an example of micropolitics par excellence. Once we introduce this institution of the public sphere into the discus- sion, we avail ourselves of a democratic alternative to Connolly’s politics of “cultural-corporeal infusion.” The task of generating resonance for a leftist politics can be divorced from the idea of manipulating visceral responses in favor of a politics that experiments with how reasons resonate in the public sphere, that is, with how they might function to provoke self-reflection. Reasons resonate when they make some claim on the moral and concep- tual imaginary of their audience. That is to say, their resonance is not a feature of their logical structure but rather of the receptivity of the audience to them. A reason resonates when its audience considers it what William James called a “live” hypothesis, “one which appeals as a real possibility to him to whom it is proposed” (1967, 717). Making reasons resonate, however, is the task of activists and social movements who introduce new concerns to the public sphere and rede- scribe acceptable existing practices as oppressive and harmful. To this end, an egalitarian and inclusive public sphere requires the insurgent work of its voluntary associations in the form of “deliberative enclaves” (Mansbridge 1999) or “counterpublics” (Fraser 1992) where dissidents, interests groups, social movements, and the oppressed experiment with novel discourses and redescriptions of the status quo to introduce into the public sphere’s circu- lation. When these experiments in consciousness-raising are successful, as with the feminist movement’s introduction of “date rape,” the queer move- ment’s turn away from civil unions in favor or “gay marriage” and Stephen Colbert’s introduction of “truthiness” into the American political lexicon, the terms of resonance in the public sphere change. Coining terms like “gay marriage” is not the same thing as institutionalizing it, but it does have the effect of redefining the terms of public debate around a now resonant expe- rience of exclusion that had hitherto been simply invisible or erroneously seen as harmless. To put this in the language of Deleuze, deliberative redescription can function as a war machine. The experimenting with resonating reasons in a public on the part of activists is an exercise in “plugging in” a resonance machine into the public sphere. The transformative power of the resonance machine, understood as an inventive redescription of our received practices, has the power to transform the way citizens see their shared world, their own interests, and the suffering of others. The work of counterpublics is to “smooth” the striated space of public political culture so as to displace old prejudices and allow new identities and claims to flourish.

### k

#### Bush doctrine is their k

**Rowan 5**—University of London Department of Geography, look at the title of this article

(Rory, “Imagine a Boot Stamping on Your Face Indeﬁnitely: The ‘War On Terror’ and Executive Hegemony”, Anamesa vol 3 issue 1, spring 2005, dml)

“Terror” is chosen as an enemy because it signiﬁes a potentially limitless threat that ﬁ rst necessitates an increased centralization of state power in the hands of the executive, and then guarantees not only the potentially limitless continuation, but also the extension of these executive powers, in order to respond to the threat. The lack of clear signiﬁ cation inherent in “terror” leaves the enemy/ object of war potentially limitless in number and character. An enemy that is of uncertain nature and not identiﬁ able by state borders means that any war waged against it will be of uncertain duration. The lack of a precise object of war leaves the war without clear objectives. It cannot be known how or when “terror” is defeated. Just as “terror” is of an uncertain nature, so the war waged against it will be of uncertain duration. Judith Butler argues that during the “war on terror” “state power restructures temporality itself,” as “terror” is not a historically limited problem over which a decisive victory can be scored.17 If the “war on terror” is a mechanism to guarantee an executive hegemony, then this hegemony remains of an uncertain nature and duration. It may be foolish to think it has already been fully realized. The undeﬁ ned duration of the “war on terror” gives a crucial insight into its nature, and its relation to the executive hegemony it justiﬁ es. In its lack of clear objectives, the “war on terror” threatens to continue without end. This makes permanent the executive hegemony it supposedly calls for. It could be seen as an attempt to effect some sort of historical closure, as if the “war on terror” were itself the future.18 The “war on terror” becomes an age. In the initial months after the attacks on the World Trade Center and the Pentagon on September 11, 2001, the phrase “war on terror” appeared alongside “age of terror” in ofﬁ cial discourse. Perhaps “age of terror” would have been a more ﬁ tting way to describe current events. The discourse of a “war on terror” acts as pre-emptive historiography, which according to Zizek ensures that “the loop between present and future is closed.”19 The logic of the Bush Doctrine, the logic of pre-emptive strikes, presupposes “that we can treat the future as something that in a way, has already taken place.”20 The “war on terror” thus displays a logic that uses the threat of future terrorist attacks to justify the extension of the current hegemonic order. This logic presupposes that any measures taken by the executive are always already justiﬁ ed by threats that may be possible in the future. 21 The “war on terror” thus serves to ensure the extension of an executive hegemony for an uncertain duration. This reveals the true nature of the “war” itself. It produces a new era only to regulate it. Through the “war on terror,” the executive positions itself as the regulating body of a new order deﬁ ned by the executive’s hegemony. The “war on terror” is used ﬁ rst to justify, and then to regulate, the executive hegemony. As Michael Hardt and Antonio Negri argue, in a situation in which a war with no foreseeable end is initiated, war is not a “threat to the existing structure of power, not a destabilizing force, but rather, on the contrary, an active mechanism that constantly creates and reinforces the present global order.”22 War is established not as an exception but as the normalizing force of the new era. The choice of “terror” as the enemy is crucial to establishing war’s regulative role. The “war on terror” allows the “metaphoric universalization of the signiﬁ er ‘terror,’” writes Zizek; “it is elevated to become the hidden point of equivalence between all social ills.”23 It is this logic of equivalence that gives the “war on terror” a hegemonic function. The extension of the name “terror” guarantees the continuation of this new order, producing ever more objects in need of regulation, thus guaranteeing the new executive hegemony. Any opposition to the hegemony of the executive can be equated with terror either directly or through metonymic suggestion. The aim of this process is to dampen any opposition, so that the executive’s hegemony can be maintained and further extended. The executive gives itself the power to accuse any number of suspects of being involved in “terrorist” activities. Any form of opposition movement with an alternative vision of state order can be outlawed by the decision of the executive itself. The opposition movements that are criminalized in this way ﬁ nd themselves delegitimized and ultimately depoliticized. The executive has the power to decide who or what can legitimately enter the ﬁ eld of the political, thus completely encompassing the political in its hegemony. The new judicial powers of the executive with regard to suspected “terrorists” become a political tool for excluding opposition from legitimacy on the basis that they are political enemies of the state and pose a “concrete” threat to security. Opposition can therefore be criminalized on the grounds of being political, but paradoxically be de-politicized in the same gesture. The “war on terror” is so bound up with the regulation of the executive hegemony it initiated that the distinction between war and policing is blurred. The criminalizing of political opposition allows it to become the depoliticized object of regulation. Political opposition is reduced to the status of a “social ill” that is in need of state regulation/ordering through police operations. The exercise of legitimate opposition is rhetorically elevated to the level of a threat to public security. This is true not only of domestic affairs but also on a global level where nation-states such as Afghanistan and Iraq become the objects of a regulative policing/war.24 Here the phrases “rogue state” or “failed state” de-legitimize states that will soon be the objects of war, reducing them to global “ills.” Indeed the “war on terror” is ﬁ rmly rooted in a U.S. tradition of government rhetorically invoking war in programs tackling social problems such as “war on poverty,” “war on crime,” “war on drugs,” and so on. “War” in this case is rhetorically used to justify changes made in the allocation of state powers, to the executive from other branches. This is portrayed as an urgent security requirement, yet is also meant to evoke a sense of underlying security typical of peacetime “wars” on social ills. As Hardt and Negri argue, “the metaphorical discourse of war is invoked as a strategic political maneuver in order to achieve the total mobilization of social forces for a united purpose typical of a war effort.”25 This is a well-worn formula: producing an external enemy to bring internal unity, or to justify measures enforcing it. What is novel about the “war on terror” is that the enemy is so abstract that making any distinction between internal and external becomes difﬁ cult, due to the ambiguity of the signiﬁ er terror. This ambiguity makes it ever harder to locate the limits of the new hegemony. Those obstacles painted both as threats to security that require war as a response, and as “social ills” in need of state regulation are no longer conﬁ ned merely to the domestic arena. The real aim of the “war on terror,” the extension of the executive hegemony at both domestic and global levels, may have yet to reach its fullest extent. This makes the public critique of the “war on terror” and the demand for the accountability of the executive urgent priorities for democracy both within and outside the United States.

### cp

#### Law no worko

**Fatovic 9**—Director of Graduate Studies for Political Science at Florida International University [added the word “is” for correct sentence structure—denoted by brackets]

(Clement, *Outside the Law: Emergency and Executive Power* pg 1-5, dml)

But the problem for any legal order is that law aims at fixity in a world beset by flux. The greatest challenge to legally established order comes not from the resistance of particular groups or individuals who object to any of its substantive aims but from the unruliness of the world itself. The stability, predictability, and regularity sought by law eventually runs up against **the unavoidable instability, unpredictability, and irregularity of the world**. Events constantly threaten to disrupt and destabilize the artificial order established by law. Emergencies-sudden and extreme occurrences such as the devastating terrorist attacks of September 11, an overwhelming natural disaster like Hurricane Katrina, a pandemic outbreak of avian flu, a catastrophic economic collapse, or a severe food shortage, to name just a few-dramatize **the limitations of the law** in dealing with unexpected and incalculable contingencies. Designed for the ordinary and the normal, law cannot always provide for such extraordinary occurrences in spite of its aspiration to comprehensiveness. When such events arise, the responsibility for formulating a response usually falls to the executive.

The executive has a unique relationship to the law and the order that it seeks, especially in a liberal constitutional system committed to the rule of law. Not only is the executive the authority most directly responsible for enforcing the law and maintaining order in ordinary circumstances, it is also the authority most immediately responsible for restoring order in extraordinary circumstances. But while the executive is expected to uphold and follow the law in normal times, **emergencies** sometimes **compel the executive to** exceed the strict letter of the law. Given the unique and irrepressible nature of emergencies, the law often provides **little effective guidance**, leaving executives to their own devices. Executives possess special resources and characteristics that enable them to **formulate responses more** rapidly**,** flexibly**, and** decisively **than can legislatures, courts, and bureaucracies**. Even where the law seeks to anticipate **and** provide **for emergencies by** specifying the kinds of actions **that** public **officials are permitted or required to take**, **emergencies create** unique opportunities **for the executive to** exercise an extraordinary degree of discretion. And when the law seems to be inadequate to the situation at hand, executives often claim that it [is] necessary to **go beyond its dictates** by consolidating those powers ordinarily exercised by other branches of government or **even by expanding the range of powers ordinarily permitted**. But in seeking to bring order to the chaos that emergencies instigate, executives who take such action also **bring attention to** the deficiencies of the law **in maintaining order**, often with serious consequences for the rule of law.

The kind of extralegal action that executives are frequently called upon to take in response to emergencies **is** deeply problematic **for liberal constitutionalism**, which gives pride of place to the rule of law, both in its self-definition and in its standard mode of operation. If emergencies test the limits of those general and prospective rules that are designed to make governmental action limited and predictable, that is because **emergencies are** largely unpredictable **and** potentially limitless.1 Yet the rule of law, which has enjoyed a distinguished position in constitutional thought going back to Aristotle, has always sought to place limits on what government may do by substituting the arbitrariness and unpredictability of extemporary decrees with the impartiality and regularity of impersonal rules promulgated in advance. The protection of individual freedom within liberal constitutionalism has come to be unimaginable where government does not operate according to general and determinate rules.2 The rule of law has achieved primacy within liberal constitutionalism because it is considered vital to the protection of individual freedom. As Max Weber famously explained of the modern bureaucratic state, legitimacy in the liberal state is not based on habitual obedience to traditions or customs sanctified by time or on personal devotion to a charismatic individual endowed with superhuman gifts but on belief in the legality of a state that is functionally competent in administering highly impersonal but "rational rules." 3 In fact, its entire history and aim can be summed up as an attempt to curtail the kind of discretionary action associated with the arbitrary "rule of men"-by making government itself subject to the law.

The apparent primacy of law in liberal constitutionalism has led some critics to **question its capacity to deal with emergencies**. Foremost among these critics is German political and constitutional theorist Carl Schmitt, who concluded that liberalism is incapable of dealing with the "exception" or "a case of extreme peril" that poses "a danger to the existence of the state" without resorting to measures that contradict and undermine its commitments to the rule of law, the separation of powers, the preservation of civil liberties, and other core values.4 In Schmitt's view, liberalism is wedded to a "normativistic" approach that seeks to regulate life according to strictly codified legal and moral rules that not only **obscure the "decisionistic" basis of all law** but also **deny the role of** personal decision-making **in the** interpretation**,** enforcement**, and** application **of law**. 5 Because legitimacy in a liberal constitutional order is based largely on adherence to formal legal procedures that restrict the kinds of actions governments are permitted to take, actions that have not been specified or authorized in advance **are simply ruled out**. According to Schmitt, the liberal demand that governmental action always be controllable **is** **based on the naive belief that the world is thoroughly calculable**. 6 If it expects regularity and predictability in government, it is because it understands the world in those terms, **making it** oblivious **to the problems of contingency**. Not only does this belief that the world is subject to a rational and predictable order make it difficult for liberalism to justify actions that stand outside that order, it also **makes it difficult for liberalism** even to acknowledge emergencies when they do arise. But Schmitt's critique goes even further than this. When liberal constitutionalism does acknowledge the exception, its commitment to the rule of law forces it to choose between potential suicide if it adheres strictly to its legalistic ideals and undeniable hypocrisy if ignores those ideals? Either way, the argument goes, **emergencies expose the inherent shortcomings and weaknesses of liberalism**.

It is undeniable that the rule of law occupies a privileged position within liberal constitutionalism, but it is a mistake to identify liberal constitutionalism with an excessively legalistic orientation that renders it incapable of dealing effectively with emergencies. Schmitt is correct in pointing out that liberal normativism seeks to render government action as impersonal and predictable as possible in normal circumstances, but the history of liberal 'I· constitutional thought leading up to the American Founding reveals that its main proponents recognized the need to supplement the rule of law with a personal element in cases of emergency. The political writings of John Locke, David Hume, William Blackstone, and those Founders who advocated a strong presidency indicate that many early liberal constitutionalists were **highly attuned** to the limitations of law in dealing with events that disrupt the regular order. They were well aware that rigid adherence to the formalities of law, both in responding to emergencies and in constraining the official who formulates the response, **could undermine important substantive aims and values**, thereby sacrificing the ends for the means.

Their reflections on the chronic instability and irregularity of politics reveal an appreciation for the **inescapable**-albeit temporary-**need** for the sort of discretionary action that the law ordinarily seeks to circumscribe. As Locke explained in his classic formulation, that "it is impossible to foresee, and so by laws to provide for, all Accidents and Necessities, that may concern the publick means that the formal powers of the executive specified in law must be supplemented with "prerogative," the "Power to act according to discretion, for the publick good, without the prescription of the Law, and sometimes even against it." 8 Unlike the powers of the Hobbesian sovereign, which are effectively absolute and unlimited, the exercise of prerogative is, in principle, limited in scope and duration to cases of emergency. The power to act outside and even against the law **does not mean that the executive is "above the law”**—morally or politically unaccountable—**but it does mean that** executive power isultimately irreducible to law**.**