# Round 8—Neg vs Kansas KS

## 1NC

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#### The 1AC’s attempt to reign in the executive by placing faith in the law only serves to legalize the violent nature of the law itself

**Krasmann 2012** - professor, Dr, Institute for Criminological Research, University of Hamburg (Susanne Krasmann, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” Leiden Journal of International Law (2012), 25, pg. 67)

The legal debate on targeted killing, particularly that referring to the US practice, has increased immensely during the last decade and even more so very recently, obviously due to a ‘compulsion of legality’.87 Once this state practice of resorting to the use of lethal force has been recognized as systematically taking place, it needs to be dealt with in legal terms. Whether this is done in supportive or critical terms, the assertion of targeted killing as a legal practice commences at this point. This is due to the fact that the law, once invoked, launches its own claims. To insist on disclosing ‘the full legal basis for targeted killings’; on criteria, legal procedures, and ‘access to reliable information’ in order to render governmental action controllable; or on legal principles to be applied in order to estimate the necessity and proportionality of a concrete intervention at stake,88 not only involves **accepting targeted killing as a legitimate subject of debate in the first place**. It requires distinctions to be made between, for example, a legitimate and an illegitimate target. It invokes the production of knowledge and the establishment of pertinent rules. Indeterminate categories are to be determined and thus established as a new reading of positive law. The introduction of international human rights standards into the debate, for example, clearly allows limits to be set in employing the pre-emptive tactic. As Wouter Werner has shown with regard to the Israeli High Court of Justice’s decision on the legality of targeted killing operations,89 this may well lead, for example, to recognizing the enemy as being not ‘outlaws’ but, instead, combatants who are to be granted basic human rights. Subsequently, procedural rules may be established that restrict the practice and provide criteria for assessing the legality of concrete operations.90 At the same time, however, targeted killing is recognized as a legitimate tactic in the fight against terrorism and is being determined and implemented legally.91 When framed within the ‘theatre of war’, targeted killing categorically seems to be justifiable under the legal principles of necessity, proportionality, discrimination, and the avoidance of unnecessary suffering. This is true as long as one presupposes in general terms, as the juridical discourse usually does, both a well-considered proceeding along those principles92 and, accordingly, that targeted killing, by its very nature, is a ‘calculated, precise use of lethal force’.93 Procedural rules, like the ‘proportionality test’, that are essentially concerned with determination, namely with specifying criteria of intervention for the concrete case or constellation, certainly provide reliability by systematically inciting and provoking justifications. Their application therefore, we may say, contributes to clarifying a controversial norm- ative interpretation, but it will **never predict or determine** how deliberation and justification translate into operational action. The application of procedural rules does not only notoriously remain ‘indeterminate’,94 but also produces its own truth effects. The question of proportionality, for example, is intrinsically a relational one. The damage that targeting causes is to be related to the anticipated military advantage and to the expected casualties of non-targeted operations. Even if there are ‘substantial grounds to believe’ that such an operation will ‘encounter significant armed resistance’,95 this is a presumption that, above all, entails a virtual dimension: the alternate option will never be realized. According to a Foucauldian perspective, decisions always articulate within an epistemic regime and thus ‘eventualize’ on the political stage.96 There is, in this sense, no mere decision and no mere meaning; and, conversely, there is no content of a norm, and no norm, independent of its enforcement.97 To relate this observation to our problem at hand means that, rather than the legal principles’ guiding a decision, it is the decision on how to proceed that constitutes the meaning of the legal principle in question. The **legal reasoning, in turn, produces a normative reality of its own**, as we are now able to imagine, comprehend, and assess a procedure and couch it in legal terms. This is also noticeable in the case of the Osama bin Laden killing. As regards the initial strategy of justification, the question of resistance typically is difficult to establish ex post in legal terms. Such situations are fraught with so many possible instances of ambiguous behaviour and risk, and the identification of actual behav- iour as probably dangerous and suspicious may change the whole outcome of the event.98 But, once the public found itself with little alternative but to assume that the prospect of capturing the subject formed part of the initial order, it also had to assume that the intention was to use lethal force as a last resort. And, once the public accepts the general presumption that the United States is at war with the terrorist organization, legal reasoning about the operation itself follows and constitutes a rationale shaping the perception of similar future actions and the exercise of governmental force in general.99 Part of this rationale is the assumption, as the president immediately pointed out in his speech, that the threat of al Qaeda has not been extinguished with bin Laden. The identification of a threat that emanates from a network may give rise to the question of whether the killing of one particular target, forming part of a Hydra, makes any sense at all.100 Yet, it equally nourishes the idea that the fight against terrorism, precisely because of its elusiveness, is an enduring one, which is exactly the position the United States takes while considering itself in an armed conflict with the terrorist organization. Targeting and destroying parts of a network, then, do not destroy the entire network, but rather verify that it exists and is at work. The target, in this sense, is constituted by being targeted.101 Within the rationale of the security dispositif, there continue to be threats and new targets. Hence, at work is a transformation of laws through practice, rather than their amendment. 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.

#### No tag does this card justice—the aff links mega hard

**Pugliese 13**—Research Director, MMCCS @ Macquarie U

(Joseph, *State Violence and the Execution of Law: Biopolitical Caesurae of Torture, Black Sites, Drones* pg 15-20, dml)

The deployment of drones across different nations against which the US is not at war, including Pakistan, Yemen, Somalia and Libya, has been **officially legitimated** by a ‘domestic policy of anticipatory self- defense.’ 48 The policy of ‘anticipatory self- defense’ can be seen as President Obama’s re- codifi cation of the Bush imperial doctrine of ‘preventive war’; both policies evidence the continued re- animation of the notion of US exceptionalism. 49 Anticipatory selfdefence offers the US administration carte blanche to conduct war wherever it ‘anticipates’ its suspect targets might lurk. As I discuss in Chapter 6, under the Obama administration Bush’s ‘war on terror’ has morphed into a ‘war against al-Qaeda.’ 50 This shift in nomenclature is signifi cant as it enables the exercise of war **wherever suspect al-Qaeda targets supposedly lurk, regardless of** geography**,** national boundaries **or** sovereignties. In this unbounded arena of war, drones emerge as the perfect weapons that silently transgress the very things that the US government is so preoccupied in protecting on its own homeland: national sovereignty and security. Drones have been represented by the administration as ideal attack weapons ‘in dealing with terrorist groups in ungoverned places of the world.’ 51 The Orientalist trope of the lawless and ungoverned other **has lost none of its force** or salience in the opening decade of the twenty- fi rst century as **the customary way of legitimizing imperial incursions** in places such as Afghanistan or Pakistan. 52 Indeed, the international law doctrine of territorial sovereignty is conveniently reduced, by the US administration’s apologists, to a mere ‘diplomatic fi ction’ **that** cannot be equally applied **to all nation- states.** Such apologists duly discount the possibility of drone attacks in, for example, ‘London or Paris’ as

what is justifi ed in the ungoverned regions of Somalia or Yemen **is a different matter applied to places under the rule of law** such as our friends and allies. The United States is not going to undertake a targeted killing in London. The diplomatic fi ction of the ‘sovereign equality’ of states makes it diffi cult to say, as a matter of international law that, yes, Yemen is different from France, but of course that is true. 53

Postcolonial legal scholars have drawn attention to the historical foundation of the discipline of international law in the violent moment of the colonial encounter. In his genealogical tracking of the historical emergence of international law in Francisco de Vitoria’s jurisprudential work on the relations between imperial Spain and its Indian colonies, Antony Anghie notes that ‘The vocabulary of international law, far from being neutral, or abstract, **is mired in this history of** subordinating **and** extinguishing **alien cultures**.’ 54 The Orientalist logic that enables the discursive practices of imperial intervention is perhaps **nowhere more graphically evidenced than in the US military’s neologism ‘AfPak’ to describe the ‘**zone of hostilities**’** **in which it is conducting its current war**. 55 AfPak, in keeping with its Orientalist determinations, homogenizes **and** collapses **two different nations**, Afghanistan and Pakistan, into one undifferentiated amalgam. The conceptual flattening and erasing of difference that is operative in this geopolitical neologism **functions to** legitimate the conduct of war **across the terrain of both sovereign nations**, Afghanistan and Pakistan, as though they were one.

The imperial position that argues that target nations **can have their sovereignty violated with impunity** – **because their territory is** undifferentiated, malleable **and always** ‘open’ **to the entitlements of empire** – is clearly evidenced by current US doctrine: ‘Wherever the enemy goes, we are entitled to follow and attack him as a combatant. **Geography and location** – important for diplomatic reasons and raising questions about the territorial integrity of states, true – **are** irrelevant **to the question of whether it is lawful to target under the laws of war;** the war goes where the combatant goes.’ 56 In the words of one US senator, ‘This is a worldwide conflict without borders.’ 57 More accurately, **this is a worldwide conflict in which** **the borders of the target nations of the Global South are** rendered irrelevant **through the US state’s exercise of imperial power**, **even as** its own borders are defended **through processes of militarized securitization**.

Out- law no- bodies

The use of law to justify the torture and killings that the state can perpetrate is predicated on the understanding that the state’s target subjects are, as the embodiment of ungovernable violence, at once **anathema to and beyond law and thus** outside of any ethical consideration. A documentary history of torture in the United States evidences the recursive marking of the state’s black and colored subjects as, in Thomas Jefferson’s words, ‘out of the protection of the laws.’ 58 The torture and killing of such subjects, Denise Ferreira da Silva writes, **does ‘not unleash an ethical crisis** because these persons’ bodies **and** the territories they inhabit **always- already signify violence**.’ 59 In the diffuse and malleable schema of the war on terror, the loaded descriptors ‘terrorist,’ ‘enemy combatant,’ ‘sand nigger,’ ‘Muslim,’ ‘insurgent,’ ‘of Middle Eastern appearance’ and so on – all identify subjects who **always- already signify violence** in advance of the fact of actually having committed any violent acts. As embodiments of violence, they are out- laws situated beyond due processes of law. As, in da Silva’s words, ‘no- bodies’ ‘with/out legality,’ 60 they are mere biological matter **that can be exterminated without compunction.**

As I examined in my discussion of the Torture Memos and drone legal briefs, the liberal democratic state uses law in order to present an offi cial front of due process and ordered governance, thereby legitimating its monopoly on violence. At the same time, this use of law is also inscribed with an aporetic contradiction: the liberal democratic state at once legislates and executes law in order to be seen as just in its violent conduct, even as, in places such as the secret black site prisons, as I discuss in Chapter 5, **it places its target subjects beyond the reach of law**. Giorgio Agamben elaborates on this aporia in his theorization of ‘zones of exception’ that are constituted by the ‘inexecution’ of law. 61 ‘One of the paradoxes of the state of exception,’ writes Agamben, ‘lies in the fact that in the state of exception it is impossible to distinguish transgression of the law from the execution of law.’ 62 It is in **the zones marked as states of exception** that Agamben famously situates the fi gure of ‘bare life’ that can be killed with impunity. Reviewing the contemporary biopolitical state, Agamben decisively concludes that the ‘exception everywhere becomes the rule.’ In other words, the space of the camp and the ‘unpunishability’ of killing bare life have interpenetrated the very fabric of the contemporary state so as to assume normative dimensions. 63 As I discuss below, outside spaces of exception (black site prisons) are already inside the US state (Immigration and Customs Enforcement prisons).

Having noted the aporetic relation of the state to law, in the context of the Agambenian state of exception, I want to problematize the manner in which the term has been mobilized in order to declare the various counterterrorism laws enacted in the US post-9/11 as instantiating states of exception within the US polity that are viewed as without precedent. The danger of fetishizing the concept of exceptionalism in the context of law is that it functions **to erase the serial practices of violence actually** constitutive **of the internal operations of the state** **and** their very normalizationprecisely through law: ‘it is important,’ Hunt notes, ‘to recognise the role of coercion and repression **as a** normal condition **of the operation of law**.’ 64 Agamben underscores the normative status of states of exception when he notes that, at the quotidian level of policing, ‘the police are always operating within a similar state of exception.’ 65 The use of police discretionary powers in the context of regimes of racial profi ling, for example, exemplifi es the normative operations of suspending law (for targeted racial others) **even while executing it**. The normative status of coercion and repression, in the everyday operations of US law, has been meticulously documented in Natsu Taylor-Saito’s historico- legal mapping of the violent and explicitly discriminatory exercise of plenary power. Taylor-Saito discloses how a range of **seemingly ‘exceptional’** post-9/11 practices – such as indefinite detention of non- citizens, sequestration into camps along lines of racial profi ling, extraordinary renditions and so on – **emerge as normative once situated in the context of ‘**historical**,** legal**, and** political **precedents.**’ 66

Da Silva problematizes the concept of the state of exception, and its emblematic Agambenian fi gure of ‘bare life,’ by proposing an understanding of racial violence that rejects Agamben’s notion of ‘the ban as an act of dehumanisation, the stripping off of legal and moral protections (the “ban”), as naked (total) violence.’ 67 Rather, da Silva argues, ‘this collapsing is **already inscribed in raciality**, **which** produces humanity, the self- determined political (ethical- juridical) fi gure that thrives in ethical life, only because it institutes it in a relationship . . . with another political fi gure (the affectable I ) **that stands before the horizon of death**.’ 68 In identifying and naming the criticality of this standing before the horizon of death, da Silva brings into acute focus the a priori of raciality precisely as **that which has always- already worked to render the target subject as** disposable **and** killable in the face of the state’s violent acts of self- preservation. Importantly, she spatializes the state’s exercise of violence- as-self- preservation in terms of ‘moments of political/ symbolic “land- reappropriation”. ’ In da Silva’s politico- **theoretical schema, bodies and territory become**, in Fanonian terms, coextensive **with that which must be** invaded**,** controlled **and** occupied **by the colonial state**. If raciality operates as an a priori to these violent operations then, da Silva underscores, the legitimate right to kill is always already given as just **because it is deemed necessary for the reinscription of the state’s authority**. Because it functions, a priori, immediately (always- already) in representation, the deployment of architectures and procedures of security – occupations, military interventions, torture, summary executions, and so on – need no further justifi cation. For raciality assures that, everywhere **and** anywhere**,** across the surface of the planet**, that ever- threatening ‘other’ exists because already named**; as such, **it is an** endless threat **because its necessary difference** consistently **undermines the subject of ethical life’s arrogation of selfdetermination**. 69

As I demonstrate in the chapters that follow, the war on terror **perfectly exemplifies** the imperial operation of an a priori raciality that, ‘everywhere and anywhere, across the surface of the planet,’ **enables the systematic torture and/or execution of those designated by the state as ‘ever- threatening “other**”. ’ 70 In Chapter 1, I qualify and elaborate on da Silva’s conceptualization of race as an a priori by drawing attention to the manner in which the category of race is critically underpinned by speciesism. Speciesism, I contend, establishes, through the operations of the biopolitical caesura, the division between humans and animals; it thereby determines who may be killed with impunity. As I work to visibilize the historical genealogies of raciality and speciesism that inform contemporary practice, my focus will be on the ensemble of architectures and procedures of security – juridical, penal, military, paramilitary, technological and medical – that work to ensure the US state’s biopolitical self- preservation-through- violence, both in domestic and international contexts.

#### Nonviolence is an existential and ethical imperative—militaristic mindsets are the driving force for all forms of conflict and environmental destruction

**Burrowes 13**—Fellowship of Reconciliation

(Robert, “Life on the Line: Can Humanity Survive?”, <http://forusa.org/blogs/robert-j-burrowes/life-line-can-humanity-survive/12483>, dml)

As we approach the International Day of Nonviolence on October 2, which recognizes Mahatma Gandhi’s birthday, one challenge we face is to celebrate his life in a way that Gandhi himself would have found meaningful. Gandhi was not a man of token gestures. His life was dedicated to his search for the Truth and guided by his passionate belief that nonviolence was the means to reach it. He was a visionary who was profoundly aware of **the damage human violence is doing to** ourselves**,** each other **and** the Earth.

Despite his example, most of us are familiar with those horror lists that reveal the extent of our ongoing violence. Here is a sample just to refresh your memory.

Human beings spend $2,000,000,000 [two trillion] each day on military violence, **the sole purpose of which is to terrorize and kill fellow human beings**. And we are poised on the brink of dramatically expanding the war against Syria with unknown (and **possibly nuclear**) consequences for us all. Because we spend so many resources on military violence, one human being in Africa, Asia, or Central/South America **is starved to death every two or three seconds** — **that is** 35,000 people each day — and poverty and homelessness continue their relentless expansion in industrialized countries. In addition to this problem, “**water starvation**” is becoming a frequent reality for many people and **the collapse of hydrological systems is** now expected by 2020. Human activity drives 200 species of life (birds, animals, fish, insects) **to extinction each day** and 80% of the world’s forests and over 90% of the large fish in the ocean **are already gone**.

As polluters, humans are supreme: Eighty-one tons of mercury — the most toxic heavy metal in existence — is emitted into the atmosphere each year **as a result of electric power generation**; there are 46,000 pieces of floating plastic in every square mile of ocean; and each year we dump **billions of kilograms of pesticides** into the environment, which pollutes the groundwater and seriously damages human health. Moreover, as everyone knows, we pump vast quantities of carbon dioxide into the atmosphere and release radioactive contaminants into the environment too.

How serious is this? According to James Hansen and colleagues, ongoing burning of fossil fuels at the current rate will cause **catastrophic levels of global warming** and burning all fossil fuels ‘**would make most of the planet** uninhabitable by humans**’**. (See “Climate sensitivity, sea level and atmospheric carbon dioxide”.) And, according to Layne Hartsell and Emanuel Pastreich, commenting on just one aspect of the radioactive contamination problem, “Radiation continues to leak from the crippled Fukushima Daiichi site into groundwater, threatening to contaminate the entire Pacific Ocean.” (See “Peer-to-Peer Science: The Century-Long Challenge to Respond to Fukushima.”)

Can humanity survive? **The odds are** now stacked heavily against us: despite the persistent warnings of visionaries, such as Gandhi, and scientists since the 1940s, **we have breached** far too many limits **that it would have been wise to respect**. And the forces still arrayed against us, particularly those corporations that profit from this violence as well as their political puppets, **are not going to give way without a struggle**. Moreover, **they can use** education systems and the corporate media to try to manipulate us into believing what they want, whether it is their denials of reality or that our resistance cannot work. In addition, they have the police, legal, and prison systems to inflict more violence upon us when we do find the courage to resist.

But there is good news too. The good news is that there are a lot of great people. And by “great people” I mean ordinary people like you and me **who are willing to** listen to the truth **and then do something tangible** to make a difference, sometimes by taking no risk at all and sometimes by taking a small, shared risk. So what can we do?

#### The alternative is a pedagogical commitment to non-violence—refuse the forced choice of the 1AC, interrogating the discursive frames through which its violence is justified is a prerequisite to any ethically tenable political action

**Evans 13**—Lecturer in the School of Politics and International Studies at the University of Leeds and Programme Director for International Relations [the word “a” has been added for correct sentence structure and is denoted by brackets]

(Brad, “INAUGURAL STATEMENT”, On Violence 1:1, 2-6, dml)

Violence is a complex phenomenon that defies neat description. It cannot be reduced to simple explanations, for as many of its victims tell, **there is no totalizing truth about violence**. Nor can the experience of violence be universalized or merely thought of **in terms of** **some** institutional breakdown **or** failure of State. Not only do the most abhorrent acts of violence seemingly happen **when the state system works all too well**; to speak of violence in such terms denies the personal account or at least renders **insignificant** what we may term **the subjective stakes** to the horrifying encounter. The “subject of violence” is always about violent and violated subjects. Violence then is not some objective condition or natural state of affairs. **It is a process that all too often appears to be reasoned and brutally calculated**. To begin theorizing and critiquing violence as such is to accept that the very form of the enquiry we have chosen to engage enters us **into the most dangerous and politically fraught terrain**. Violence is never is **[a] problem to be studied in some** objective **or** neutral **fashion**. It brings to the fore most clearly the realization that education **and** critical pedagogy **are by definition** forms of political intervention. In light of this, we can argue that any critique of violence is not a challenge that should be avoided; on the contrary, **it is the** ethical problem **that compels us to challenge all its multiple forms.**

The concept of violence is not taken lightly here. Violence **remains** poorly understood if it is accounted for simply in terms of **how and what it violates**, **the scale of its destructiveness**, or **any other element** of its annihilative power. **Intellectual violence is no exception** as its qualities point to a deadly and destructive conceptual terrain. Like all violence there are two sides to this relation. There is the annihilative power of nihilistic thought that seeks, through strategies of domination and practices of terminal exclusion, **to** close down the political **as a site for differences**. Such violence often appeals to the authority of a peaceful settlement, though it does so in a way that imposes a distinct moral image of thought **which already maps out what is reasonable to** think**,** speak**, and** act. Since the means and ends are already set out in advance, **the discursive frame is** never brought into critical question. And there is an affirmative counter that directly challenges authoritarian violence. Such affirmation **refuses to accept the parameters of the rehearsed orthodoxy**. **It** brings into question **that which is** not ordinarily questioned **in any given state of political affairs**. Foregrounding the life of the subject as key to understanding political deliberation, **it eschews intellectual dogmatism with a commitment to the open possibilities in thought.**

Hannah Arendt then was only partly correct when she famously contrasted violence with power. We may quite rightly accept her claim that people often resort to violence when power fails them. This is just as true for leaders of tyrannical States which are frequently shown to be powerless and impotent all the while they violently crush popular protest, as it is for those on the margins of existence who feel that all forms of empowerment have been denied and willfully suppressed. And yet as Michel Foucault would have argued, power without conflict is a misnomer for **without the capacity to resist there is no potential to create the world anew**. Not only are conflict and violence strategically different as it is possible to have the former in a way that challenges the latter. What is violence if it is not the attempt to **destroy something that** refuses to conform **to the oppressive model/standard?**

So rather than countering violence with a “purer violence” (discursive or otherwise) **there is a need, especially in the contemporary moment,** **to maintain** the language of critical pedagogy. That is a language that is necessarily conflictual and yet collaborative by definition. By criticality we may then insist here upon forms of thought **which do not have** war **or** violence **as its object.** If there is destruction, this is only apparent when the affirmative is denied. And by criticality we may also insist here upon forms of thought that **do not offer their intellectual soul to** the seductions of militarized power **and** the poverty of its political visions. Too often we find that while the critical gestures towards profane illumination; it is really the beginning of a violence that **amounts to a** death sentence **for critical thought.**

Perhaps **the most difficult task faced today** **is to avoid the false promises of violence** **and** demand a politics **that is** dignified **and** open **to the possibility of non-violent ways of living.** This demands new ways of thinking about and interrogating violence such that the value of critical thought becomes central to any mediation on global citizenry. As we all increasingly find ourselves in a position where the radical and the fundamental have been merged to denial of anything that may challenge the violent effects of contemporary regimes of control, the inevitable assault upon the university and all intellectual spheres **continues with** unrelenting force. **This is** not incidental **to the violence of our times.** It is one of its more pernicious manifestations. Our response, as the authors in this inaugural edition make clear, must be to counter this violence **with a commitment to the value of** criticality **and** public education. Hopefully “On Violence” will provide a modest counter to those who insist that violence may be reasoned for the greater good. Without this hope that **the world may be** transformed non-violently for the better**, the fight for dignity is** already lost**.**

#### The alternative raises a question that comes prior to aff impacts or solvency—voting negative injects epistemic doubt about militarism into our decision calculus which is the prerequisite to shifting away from violence as the solution

**Neu 13**—University of Brighton [the word “livers” has been replaced with “lives”… how do typos like that get through?]

(Michael, “The tragedy of justified war”, International Relations 27(4) 461–480, dml)

Just war theory is **not concerned with millions of starving people** who could be saved from death and disease **with** a fraction **of the astronomical amount of money** that, every year, goes into the US defence budget alone (a budget that could no longer be justified if the United States ran out of enemies one day). It is not interested in exposing **the operating mechanisms** of a global economic structure that is suppressive and exploitative and may be conducive to outbreaks of precisely the kind of violence that their theory is concerned with. As intellectually impressive as analytical just war accounts are, they do not convey **any critical sense of Western moralism**. It is as though just war theory **were written for** a different world **than the one we occupy**: **a world of** morally responsible**,** structurally unconstrained**,** roughly equal **agents**, who have non-complex and non-exploitative relationships, relationships that lend themselves **to** easy epistemic access **and** binary moral analysis. Theorists write with a degree of confidence **that** fails to appreciate **the** moral **and** epistemic fragility **of justified war, the long-term genesis of violent conflict, structural causes of violence** and the moralistic attitudes that politicians and the media are capable of adopting.

To insist that, in the final analysis, the injustice of wars is completely absorbed by their being justified **reflects a way of doing moral philosophy** **that is** frighteningly mechanical **and** sterile. It does not do justice to individual persons,59 it is nonchalant about suffering of unimaginable proportions and it **suffocates a nuanced moral world in a** rigid binary structure **designed to deliver** unambiguous**,** action-guiding **recommendations**. According to the tragic conception defended here, justified warfare constitutes a moral evil, not just a physical one – whatever Coates’ aforementioned distinction is supposed to amount to. If we do not recognise the moral evil of justified warfare, we run the risk of speaking the following kind of language when talking to a tortured mother, who has witnessed her child being bombed into pieces, justifiably let us assume, in the course of a ‘just war’:

See, we did not bomb your toddler into pieces intentionally. You should also consider that our war was justified and that, in performing this particular act of war, we **pursued a valid moral goal** of destroying the enemy’s ammunition factory. And be aware that killing your toddler was not instrumental to that pursuit. As you can see, there was nothing wrong with what we did. (OR: As you can see, we only infringed the right of your non-liable child not to be targeted, but we did not violate it.) Needless to say, we regret your loss.

This would be a deeply pathological thing to say, but it is precisely what at least some contemporary just war theorists would seem to advise. The monstrosity of some accounts of contemporary just war theory seems to derive from a combination of the degree of certainty with which moral judgements are offered and the ability to regard the moral case as closed once the judgements have been made.

One implication of my argument for **just theorists** is clear enough: they **should** critically reflect **on the one-dimensionality of their dominant agenda of making binary moral judgements about war**. If they did, **they would become** more sympathetic to the pacifist argument, not to the conclusion drawn by pacifists who are also caught in a binary mode of thinking (i.e. never wage war, regardless of the circumstances!) **but to the** timeless wisdom **that forms the essence of the pacifist argument.** It is wrong to knowingly kill and maim people, and it does not matter, at least not as much as the adherents of double effect claim, whether the killing is done intentionally or ‘merely’ with foresight. The difference would be psychological, too. Moral philosophers of war would no longer be forced to concede this moral truth; rather, they would be free to embrace it. There is no reason for them to disrespect the essence of pacifism. The just war theorist Larry May implicitly offers precisely such a tragic vision in his sympathetic discussion of ‘Grotius and Contingent Pacifism’. According to May, ‘war can sometimes be justified on the same grounds on which certain forms of pacifism are themselves grounded’.60

If this is correct, **just war theorists have good reason to stop calling themselves by their name**. **They would no longer be just war theorists, but** unjust war theorists, confronting politicians with ajus contra bellum**,** rather than offering them a jus ad bellum. Beyond being that, they would be much ‘humbler in [their] approach to considering the justness of war’ (or, rather, the justifiability), acknowledging that:

notions of legitimate violence **which appear so vivid and complete** to the thinking individual **are only** moments **and** snapshots **of a wider history** concerning the different ways in which humans have **ordered their arguments and practices of legitimate violence**. Humility in this context does not mean weakness. It involves a concern with the implicit danger of adopting an arrogant approach to the problem of war.61

Binary thinking in just war theory **is indeed arrogant**, as is the failure to acknowledge the legitimacy of – **and need for** – ambiguity**,** agony **and** doubt **in moral thinking about war**. Humble philosophers of war, on the contrary, would acknowledge that any talk of justice is highly misleading in the context of war.62 It does not suffice here, in my view, to point out that ‘we’ have always understood what ‘they’ meant (assuming they meant what we think they meant). Fiction aside, there is no such thing as a just war. There is also no such thing as a morally justified war **that comes** without ambiguity **and moral remainders**.

Any language of justified warfare **must therefore be** carefully drafted **and** constantly questioned. It should demonstrate **an** inherent**,** acute **awareness of the fragility of moral thinking about war**, rather than an eagerness to construct unbreakable chains of reasoning. Being uncertain about, and agonised by, the justifiability of waging war does not put a moral philosopher to shame. **The uncertainty is not only moral,** it is also epistemic. Contemporary just war theorists proceed **as if certainty were the rule**, and uncertainty the exception. The world to which just war theory applies is **one of** radical **and** unavoidable **uncertainty though**, where politicians, voters and combatants do not always know who their enemies are; whether or not they really exist (and if so, why they exist and how they have come into existence); what weapons the enemies have (if any); whether or not, when, and how they are willing to employ them; why exactly the enemies are fought and what the consequences of fighting or not fighting them will be.

Philosophers of war should also become more sensitive to the problem of political moralism. The **just war language is dangerous**, particularly when spoken by eager, selfrighteous, over-confident moralists trying to make a case. It would be a pity if philosophers of war, despite having the smartest of brains and the best of intentions, effectively ended up delivering rhetorical ammunition to political moralists. To avoid being inadvertently complicit in that sense, they could give public lectures on the dangers of political moralism, that is, on thinking about war in terms of black and white, good and evil and them and us. They could warn us against Euro-centrism, missionary zeal and the emperors’ moralistic clothes. They **could also** investigate the historical genesis **and** structural conditionality **of large-scale aggressive behaviour in the global arena**, deconstructing how warriors who claim to be justified are potentially tied into histories and structures, asking them: Who are you to make that claim?

A philosopher determined to go beyond the narrow discursive parameters provided by the contemporary just war paradigm would surely embrace something like Marcus’ ‘second-order regulative principle’, which could indeed lead to ‘“better” policy’.63 If justified wars are unjust and if it is true that not all tragedies of war are authentic, then political agents **ought to prevent such tragedies from occurring**. This demanding principle, however, **may require a** more fundamental reflection **on how we ‘conduct our lives and arrange our institutions’** (Marcus) in this world. **It is not enough to** adopt a ‘wait and see’ policy, simply **waiting for potential aggressions to occur and making sure that we do not go to war** unless doing so is a ‘last resort’. Large-scale violence between human beings has causes that go beyond the individual moral failure of those who are potentially aggressing, and if it turns out that some of these causes can be removed ‘**through more careful decision-making’** (Lebow), then **this is what ought to be done** by those who otherwise deprive themselves, today, of the possibility of not wronging tomorrow.

#### It’s try or die—the aff is a perfection of the military cooption of academic spaces—the role of the judge should be to dismantle the militarization of knowledge production—individual action is critical and the impact is extinction

**BondGraham and Hell 3**—PhD Sociology UC Santa Barbara AND UC Fiat Pax Research Project Group

(Darwin and Emily, “THE MILITARIZATION OF AMERICA’S UNIVERSITIES”, <http://santacruz.indymedia.org/usermedia/application/5/ucsc_demil.pdf>, dml)

The militarization of knowledge is found **in its pure form in the university**. Militarized knowledge is a way of knowing the world and relationships between humans, characterized by an acceptance and promotion of violence and war. In militarized society we come to know the world and our fellow humans in terms of the hostile other. Other nations become enemies. Other peoples become dehumanized. The world becomes possess-able if we are strong enough, disposable if we so choose. **Militarized knowledge adopts a worldview of force** not understanding**, violence** not peace. Militarized society relies on knowledge to create technological solutions to our problems and conflicts. **This is** always **at the expense of humanistic knowledge** – the ways of knowing and relating to the world which find solutions in peace and organization, not violence and quantity.

Because **universities are** at the center **of knowledge creation** in our society, we find our institutions of higher learning **imbued with violence**. The militarization of universities leads to **a spiraling effect** further strengthening the forces of war.

Militarized universities produce: military technologies including – new weapons, warfare systems, ways of thought and organization distinct to the goals of coercion and force, and the permanent technological revolution of warfare itself. Universities in service of the warfare state also produce the human resources demanded by the militarized society. **Universities churn out the** politicians**,** technocrats**,** bureaucrats**, and** skilled workers demanded by the society which so **diligently** produces **and** executes **the means of destruction**. These graduates, having learned about the world, its society, and applied sciences **through the lens of warfare** go forth and recreate this calamity. The future politicians will lead the nation into future wars, and the future engineers will construct future combat systems, **while we all obey and simply "**do our jobs**." The system** further entrenches itself, war begets war, the institutions of knowledge produce destruction **at the expense of creation**.

The technologies meant to banish war as unimaginabley destructive, and obsolete **have only accomplished the former**. New technologies meant to make war more humane, and conductable have only accomplished the latter.

TechnoWar & How the University Makes War Possible

The greatest effect the militarization of universities has had is by **making war more conductable**. Modern America, being the “civilized” and “peaceful” society it is, will not conduct a war that extols to large a cost in innocent civilian lives, and the lives of US soldiers. The technological revolution in aerial bombardment, missile capabilities, and weapon accuracy since the Vietnam war was intended to address this very issue. By making weapons more accurate and deployable from a distance, the military and its partners in science hoped to remove the US soldier from combat equation, while making state violence humane and survivable. This **supposed injection of ethics into the arsenal of the United States was** lauded in the Gulf War, Afghan War, and now with unprecedented emphasis in the second war against Iraq. War becomes more automated, increasingly technology withdraws the soldier from the battlefield. The arsenal becomes deployable through computer interfaces, warfighters sit behind computer screens hundreds, even thousands of miles from where they wreak havoc. Soldiers who must still encounter the enemy face to face are made into superhumans with high tech body armor, night vision, network communications, advanced sensors, all intended to make the US soldier invulnerable.

Science in the service of warfare reinforces a political establishment more willing to use violence than diplomacy. US politicians become sure of their military’s capabilities to defeat the enemy, and to do so **in a manner that the American public can accept**. The population falls into a similar mindstate. The technological revolution to make war more effectively against the enemy leads us only to more war.

Does science, technology, and knowledge emanating from our universities produce an ethical and just form of warfare? **Can war be made humane through technological solutions?** Absolutely not – Historically we know this. New technology leveraged in war has had the **net effect of** more war **and** more killing. Most prominent are the examples of past weapons whose inventors claimed would make war impossible. The machine gun being the most famous case was said to have made warfare so destructive and technologically advanced that nations would no longer fight. World War I immediately ensued, and millions died. The technologies meant to banish war as unimaginabley destructive, and obsolete have only accomplished the former. New technologies meant to make war more humane, and conductable have only accomplished the latter.

**What is at Stake?**

The future, and everything. The university takes its namesake from this fact. In Latin, universum - "The whole of created or existing things regarded collectively." **The university is** the whole of human knowledge; the knowledge we have about our existence, past present and future. The university is the attempt of the scientific system of knowledge to understand the human condition, our place in the world, and the realm of possibility. The university is more: In its most worthy incarnation, the university makes room for, even thrives from nonscientific, non-rational forms of knowledge including the arts and humanities. It is inarguably the most powerful attempt humanity has made to understand and re-make the world.

With this fact in mind there are two conclusions to be drawn from the militarization of the university. First, it can be described as simply a matter of fact that knowledge creation and the university serve the military. Humans make war with one another, and that universities are involved in this effort is a truism. Humans will continue to make war, and so the inclusion of the university should be expected. **This answer is of no value**. It assumes **a set of universal permanent truths** (a nature) about the human condition with no possibility of disproving. Furthermore it offers no future for humanity other than annihilation, and it completely betrays the fundamental idealogical basis of the university which is progress through enlightenment.

In contrast, it can be said that **the militarization of universities is a problem** directly related **to the condition of a society**. How much and in what ways a society’s institutions of knowledge creation serve the forces of war is a measure of that society’s worth. A nation that demands the enlistment of its knowledge base in the production of war and the perpetuation of violence is a nation not worthy of life. The only alternatives left would be the dismantling of that nation, or **a** radical reform **of its institutions and a fight against the forces of war**. This publication is dedicated to nothing less than **the** complete **and** radical **reform of our society’s** institutions of knowledge creation, from universities in service of the warfare state, to universities in resistance, in peace, and **toward the creation of a meaningful future**.

### 1NC K

#### The 1AC’s quick-fix solution to the coming apocalypse glosses over the ontological questioning of the human subject. The drive to prevent our inevitable extinction is an example of the same human hubris which has caused these problems.

**Scranton 13**—department of English at Princeton (Roy, November 10th, “Learning How to Die in the Anthropocene”, <http://opinionator.blogs.nytimes.com/2013/11/10/learning-how-to-die-in-the-anthropocene/?_r=1&>,)

The challenge the Anthropocene poses is a challenge not just to national security, to food and energy markets, or to our “way of life” — though these challenges are all real, profound, and inescapable. The greatest challenge the Anthropocene poses may be to our sense of what it means to be human. Within 100 years — within three to five generations — we will face average temperatures 7 degrees Fahrenheit higher than today, rising seas at least three to 10 feet higher, and worldwide shifts in crop belts, growing seasons and population centers. Within a thousand years, unless we stop emitting greenhouse gases wholesale right now, humans will be living in a climate the Earth hasn’t seen since the Pliocene, three million years ago, when oceans were 75 feet higher than they are today. We face the imminent collapse of the agricultural, shipping and energy networks upon which the global economy depends, a large-scale die-off in the biosphere that’s already well on its way, and our own possible extinction. If homo sapiens (or some genetically modified variant) survives the next millenniums, it will be survival in a world unrecognizably different from the one we have inhabited.

Geological time scales, civilizational collapse and species extinction give rise to profound problems that humanities scholars and academic philosophers, with their taste for fine-grained analysis, esoteric debates and archival marginalia, might seem remarkably ill suited to address. After all, how will thinking about Kant help us trap carbon dioxide? Can arguments between object-oriented ontology and historical materialism protect honeybees from colony collapse disorder? Are ancient Greek philosophers, medieval theologians, and contemporary metaphysicians going to keep Bangladesh from being inundated by rising oceans?

Of course not. But the biggest problems the Anthropocene poses are precisely those that have always been at the root of humanistic and philosophical questioning: “What does it mean to be human?” and “What does it mean to live?” In the epoch of the Anthropocene, the question of individual mortality — “What does my life mean in the face of death?” — is universalized and framed in scales that boggle the imagination. What does human existence mean against 100,000 years of climate change? What does one life mean in the face of species death or the collapse of global civilization? How do we make meaningful choices in the shadow of our inevitable end?

These questions have no logical or empirical answers. They are philosophical problems par excellence. Many thinkers, including Cicero, Montaigne, Karl Jaspers, and The Stone’s own Simon Critchley, have argued that studying philosophy is learning how to die. If that’s true, then we have entered humanity’s most philosophical age — for this is precisely the problem of the Anthropocene. The rub is that now we have to learn how to die not as individuals, but as a civilization.

III.

Learning how to die isn’t easy. In Iraq, at the beginning, I was terrified by the idea. Baghdad seemed incredibly dangerous, even though statistically I was pretty safe. We got shot at and mortared, and I.E.D.’s laced every highway, but I had good armor, we had a great medic, and we were part of the most powerful military the world had ever seen. The odds were good I would come home. Maybe wounded, but probably alive. Every day I went out on mission, though, I looked down the barrel of the future and saw a dark, empty hole.

“For the soldier death is the future, the future his profession assigns him,” wrote Simone Weil in her remarkable meditation on war, “The Iliad or the Poem of Force.” “Yet the idea of man’s having death for a future is abhorrent to nature. Once the experience of war makes visible the possibility of death that lies locked up in each moment, our thoughts cannot travel from one day to the next without meeting death’s face.” That was the face I saw in the mirror, and its gaze nearly paralyzed me.

I found my way forward through an 18th-century Samurai manual, Yamamoto Tsunetomo’s “Hagakure,” which commanded: “Meditation on inevitable death should be performed daily.” Instead of fearing my end, I owned it. Every morning, after doing maintenance on my Humvee, I’d imagine getting blown up by an I.E.D., shot by a sniper, burned to death, run over by a tank, torn apart by dogs, captured and beheaded, and succumbing to dysentery. Then, before we rolled out through the gate, I’d tell myself that I didn’t need to worry, because I was already dead. The only thing that mattered was that I did my best to make sure everyone else came back alive. “If by setting one’s heart right every morning and evening, one is able to live as though his body were already dead,” wrote Tsunetomo, “he gains freedom in the Way.”

I got through my tour in Iraq one day at a time, meditating each morning on my inevitable end. When I left Iraq and came back stateside, I thought I’d left that future behind. Then I saw it come home in the chaos that was unleashed after Katrina hit New Orleans. And then I saw it again when Sandy battered New York and New Jersey: Government agencies failed to move quickly enough, and volunteer groups like Team Rubicon had to step in to manage disaster relief.

Now, when I look into our future — into the Anthropocene — I see water rising up to wash out lower Manhattan. I see food riots, hurricanes, and climate refugees. I see 82nd Airborne soldiers shooting looters. I see grid failure, wrecked harbors, Fukushima waste, and plagues. I see Baghdad. I see the Rockaways. I see a strange, precarious world.

Our new home.

The human psyche naturally rebels against the idea of its end. Likewise, civilizations have throughout history marched blindly toward disaster, because humans are wired to believe that tomorrow will be much like today — it is unnatural for us to think that this way of life, this present moment, this order of things is not stable and permanent. Across the world today, our actions testify to our belief that we can go on like this forever, burning oil, poisoning the seas, killing off other species, pumping carbon into the air, ignoring the ominous silence of our coal mine canaries in favor of the unending robotic tweets of our new digital imaginarium. Yet the reality of global climate change is going to keep intruding on our fantasies of perpetual growth, permanent innovation and endless energy, just as the reality of mortality shocks our casual faith in permanence.

The biggest problem climate change poses isn’t how the Department of Defense should plan for resource wars, or how we should put up sea walls to protect Alphabet City, or when we should evacuate Hoboken. It won’t be addressed by buying a Prius, signing a treaty, or turning off the air-conditioning. The biggest problem we face is a philosophical one: understanding that this civilization is already dead. The sooner we confront this problem, and the sooner we realize there’s nothing we can do to save ourselves, the sooner we can get down to the hard work of adapting, with mortal humility, to our new reality.

The choice is a clear one. We can continue acting as if tomorrow will be just like yesterday, growing less and less prepared for each new disaster as it comes, and more and more desperately invested in a life we can’t sustain. Or we can learn to see each day as the death of what came before, freeing ourselves to deal with whatever problems the present offers without attachment or fear.

#### The alternative is an imagining of the global suicide of humanity – we must abandon our stranglehold over the domination of life in order to envision a more ethical future

Kochi and Ordan 8 – Lecturer in Law and International Security at the U of Sussex, and \*Research in Translation Studies at Bar Ilan U, (Tarik and Noam, “An argument for the global suicide of humanity” borderlands”, http://findarticles.com/p/articles/mi\_6981/is\_3\_7/ai\_n31524968/

How might such a standpoint of dialectical, utopian anti-humanism reconfigure a notion of action which does not simply repeat in another way the modern humanist infliction of violence, as exemplified by the plan of Hawking, or fall prey to institutional and systemic complicity in speciesist violence? While this question goes beyond what it is possible to outline in this paper, **we contend that** **the thought experiment of global suicide helps to locate this question--the question of modern action itself--as residing at the heart of the** modern environmental **problem**. In a sense perhaps the only way to understand what is at stake in ethical action which responds to the natural environment is to come to terms with the logical consequences of ethical action itself. **The point operates then not as the end, but as the starting point of a standpoint which attempts to reconfigure our notions of action, life-value, and harm**.

For some, guided by the pressure of moral conscience or by a practice of harm minimisation, the appropriate response to historical and contemporary environmental destruction is that of action guided by abstention. For example, one way of reacting to mundane, everyday complicity is the attempt to abstain or opt-out of certain aspects of modern, industrial society: to not eat non-human animals, to invest ethically, to buy organic produce, to not use cars and buses, to live in an environmentally conscious commune. Ranging from small personal decisions to the establishment of parallel economies (think of organic and fair trade products as an attempt to set up a quasi-parallel economy), a typical modern form of action is that of a refusal to be complicit in human practices that are violent and destructive. Again, however, at a practical level, to what extent are such acts of nonparticipation rendered banal by their complicity in other actions? In a grand register of violence and harm the individual who abstains from eating non-human animals but still uses the bus or an airplane or electricity has only opted out of some harm causing practices and remains fully complicit with others. **One response, however, which bypasses** the problem of **complicity** and the banality **of action is to take the non-participation solution to its** most **extreme** level. In this instance, the only way to truly be non-complicit in the violence of the human heritage would be to opt-out altogether. Here, then, the modern discourse of reflection, responsibility and action runs to its logical conclusion--the **global suicide of humanity**--as a free-willed and 'final solution'.

While we are not interested in the discussion of the 'method' of the global suicide of humanity per se, one method that would be the least violent is that of humans choosing to no longer reproduce. [10] The case at point here is that the global suicide of humanity would be a moral act; it would take humanity out of the equation of life on this earth and remake the calculation for the benefit of everything nonhuman. While suicide in certain forms of religious thinking is normally condemned as something which is selfish and inflicts harm upon loved ones, the global suicide of humanity would be the highest act of altruism. That is, global suicide would involve the taking of responsibility for the destructive actions of the human species. By eradicating ourselves we end the long process of inflicting harm upon other species and offer a human-free world. If there is a form of divine intelligence then surely the human act of global suicide will be seen for what it is: a profound moral gesture aimed at redeeming humanity. Such an act is an offer of sacrifice to pay for past wrongs that would usher in a new future. Through the death of our species we will give the gift of life to others.

It should be noted nonetheless that our proposal for the global suicide of humanity is based upon the notion that such a radical action needs to be voluntary and not forced. In this sense, and given the likelihood of such an action not being agreed upon, it operates as a thought experiment which may help humans to radically rethink what it means to participate in modern, moral life within the natural world. In other words, whether or not the act of global suicide takes place might well be irrelevant. What is more important is the form of critical reflection that an individual needs to go through before coming to the conclusion that the global suicide of humanity is an action that would be worthwhile. The point then of a thought experiment that considers the argument for the global suicide of humanity is the attempt to outline an anti-humanist, or non-human-centric ethics. Such an ethics attempts to take into account both sides of the human heritage: the capacity to carry out violence and inflict harm and the capacity to use moral reflection and creative social organisation to minimise violence and harm. Through the idea of global suicide such an ethics reintroduces a central question to the heart of moral reflection: To what extent is the value of the continuation of human life worth the total harm inflicted upon the life of all others? Regardless of whether an individual finds the idea of global suicide abhorrent or ridiculous, this question remains valid and relevant and will not go away, no matter how hard we try to forget, suppress or repress it.

### 1NC Solvency

#### No enforcement mechanism

**Blank, 12 -** Director, International Humanitarian Law Clinic, Emory Law School (Laurie, “TARGETED STRIKES: THE CONSEQUENCES OF BLURRING THE ARMED CONFLICT AND SELF-DEFENSE JUSTIFICATIONS,” 1656 WILLIAM MITCHELL LAW REVIEW [Vol.38:5, <http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf>)

Finally, effective implementation of and compliance with the law, whether the LOAC, the law of self-defense, or human rights law, depends on regular and respected mechanisms for enforcement. In the arena of international law, both formal (courts and tribunals) and informal (public opinion, response from other states) enforcement have value and effect. Any judicial body determining the lawfulness of state action or the criminal responsibility of individuals must first determine the applicable law in order to reach an appropriate result. n141 When the legal regimes become blurred through repeated conflation, application of the law and thus enforcement will be hampered. The resulting consequence, of course, is that a lack of effective enforcement then undermines effective implementation of the law and protection of persons in the future. These problems often are highlighted in the more informal enforcement arena of media reporting, public opinion, advocacy reports, and other responses, where disputes over applicable law and appropriate analyses abound. When international or nongovernmental organization reports produce primarily disputes over which law is applied - rather than how the law is applied to the facts on the ground - the debate becomes centered on the law and legal disputes rather than on the victims, the perpetrators, and how to prevent legal violations in the future. The blurring of lines between armed conflict and self-defense takes these challenges to another level as well, however, creating a situation in which independent analysts may have difficulty identifying the key pieces of information necessary to an effective examination of the legality of the state's policies and actions.

#### Plan does nothing – it ends the use of self-defense justifications in armed conflict. The greatest risk is the opposite – the use of jus in bello justifications in self-defense targeting.

**Blank, 12 -** Director, International Humanitarian Law Clinic, Emory Law School (Laurie, “TARGETED STRIKES: THE CONSEQUENCES OF BLURRING THE ARMED CONFLICT AND SELF-DEFENSE JUSTIFICATIONS,” 1656 WILLIAM MITCHELL LAW REVIEW [Vol.38:5, <http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf>)

When no differentiation is made between the armed conflict and self-defense justifications and the two paradigms are potentially conflated, serious concerns regarding the legal parameters for targeting may arise. The greatest risk is that the status-based targeting regime relevant to armed conflict could bleed over into self-defense targeting. Suddenly, imminence and individualized [\*1695] threat determinations begin to give way to more amorphous and seemingly simplistic designations of membership and affiliation or association. In fact, even beyond that danger, one might argue that it is easier to group more groups or individuals within the category of "enemy" because of the greater ease in reaching them with the superior capability and decreased riskiness of drones. n129 The use of so-called "signature strikes" n130 outside of Afghanistan and Pakistan - the "hot battlefields" - surely raises the prospect of status-based targeting in areas where the existence of an armed conflict is uncertain. The category of persons who can be targeted outside of armed conflict thus becomes significantly broader than that contemplated by international law and that normally demonstrated through state practice in situations in which self-defense is not conflated with armed conflict.

#### There’s no such thing as ‘self-defense targeted killings’ – jus ad bellum only allows the use of self-defense against states that facilitate non-state actors’ attacks. The plan codifies an expansive notion of jus ad bellum that increases the risk of armed conflict

**Martin, 11 -** Associate Professor of Law at Washburn University School of Law (Craig, “GOING MEDIEVAL: TARGETED KILLING, SELFDEFENSE AND THE JUS AD BELLUM REGIME” SSRN) **NSA = Non State Actors**

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

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

### 1NC Case

#### Conflation is a norm and is inevitable – multiple alt causes disprove the impact

Benvenisti 9 (Eyal, Professor of Law, Tel Aviv University, “Rethinking the Divide Between Jus ad Bellum and Jus in Bello in Warfare Against Nonstate Actors,” Yale Journal of International Law, Vol. 34, <http://law.bepress.com/cgi/viewcontent.cgi?article=1114&context=taulwps>)

A. Observing State Practice

The reasons for maintaining the “total separation” between jus ad bellum and jus in bello, which are generally valid, are both moral and pragmatic. Yet they become strained in the context of warfare against nonstate actors. As a result, it is possible to observe a shift in the attitude of different actors, who inject ad bellum considerations into their assessment of the legality of certain military measures. In this Part, I first articulate the observation concerning the changing practice and then discuss its normative basis.

**Even the adherents** of the separation between ad bellum and in bello admit that “conflicts continue to be viewed in terms of ‘good’ and ‘evil’ . . . [and that] the reality is that such differences, real or perceived, matter.”15 For example, during the Gulf War of 1991 both the coalition forces and the international community took into consideration the illegality of the Iraqi invasion of Kuwait when assessing the proportionality of the military tactics adopted by the coalition forces. As Gardam noted, “[i]n the assessment of proportionality, civilians, and to a lesser extent combatants, of the aggressor state were accorded less weight in the balancing process than combatants of the ‘just side.’”16 Reactions during the military conflict in Lebanon in the summer of 2006 conflated ad bellum with in bello obligations.17 Similarly, in reaction to the Israeli attack in the Gaza Strip in December 2008 and January 2009, key observers linked ad bellum and in bello considerations. When asked whether Israel’s attacks were disproportionate, the U.S. ambassador to the United Nations responded: “Israel has the right to defend itself against these rocket attacks and we understand also that Israel needs to do all that it can to make sure that the impact of its exercise of right of self defense against rockets is as minimal and no affect [sic] on the civilian population.”18

#### No extinction from bioweapons

**O’Neill 04 –** (Brendan, 8-19 “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm)

David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.

#### Strikes won’t escalate

**Shanker et al 2-29** – Thom Shanker, a correspondent covering the Pentagon, the military and national security for The New York Times. Mr. Shanker spent two years in the master's degree program at The Fletcher School of Law and Diplomacy at Tufts University, specializing in strategic nuclear policy and international law, passing his master’s orals with Highest Honors. He graduated Cum Laude with a bachelor’s degree in political science from Colorado College, and was awarded an Honorary Doctor of Laws by the college in 2004. Helene Cooper, journalism at UNC, a [White House correspondent](http://en.wikipedia.org/wiki/White_House_correspondent) for the [New York Times](http://en.wikipedia.org/wiki/New_York_Times). Ethan Bronner, a legal affairs reporter for the national desk of the [NYT,](http://en.wikipedia.org/wiki/New_York_Times) a graduate of [Wesleyan University](http://en.wikipedia.org/wiki/Wesleyan_University)'s College of Letters and the [Columbia University](http://en.wikipedia.org/wiki/Columbia_University) Graduate School of Journalism, began his journalistic career at [Reuters](http://en.wikipedia.org/wiki/Reuters) in 1980, reporting from London, Madrid, Brussels and Jerusalem. (2012, “U.S. Sees Iran Attacks as Likely if Israel Strikes” <http://www.nytimes.com/2012/02/29/world/middleeast/us-sees-iran-attacks-as-likely-if-israel-strikes.html?_r=2>) Jacome

While a missile retaliation against Israel would be virtually certain, according to these assessments, Iran would also be likely to try to calibrate its response against American targets so as not to give the United States a rationale for taking military action that could permanently cripple Tehran’s nuclear program. “The **Iranians have been pretty good masters of escalation control**,” said Gen. James E. Cartwright, now retired, who as the top officer at Strategic Command and as vice chairman of the Joint Chiefs of Staff participated in war games involving both deterrence and retaliation on potential adversaries like Iran.

The Iranian targets, General Cartwright and other American analysts believe, would include petroleum infrastructure in the Persian Gulf, and American troops in Afghanistan, where Iran has been accused of shipping explosives to local insurgent forces.

#### No one would intervene

**Poor 2-16 –** (Jeff, 2/16/12, <http://dailycaller.com/2012/02/16/krauthammer-israeli-strike-on-iran-will-not-cause-a-world-war-video/>,)

On Wednesday’s “Special Report Online” segment on FoxNews.com, syndicated columnist Charles Krauthammer said that if Israel decides to attack Iran in order to thwart its development of nuclear weapons, the collateral damage wouldn’t start a third world war.

Krauthammer based that hypothesis on Iran not having allies that would be willing to intervene significantly on a military level. (RELATED: More analysis from Charles Krauthammer)

“It could cause a regional war,” Krauthammer said. “It will not cause a world war by any means. It’s not August 1914, because Iran has no great power allies who will intervene militarily. Iran is going to be alone with its clients, Syria, Hezbollah and Hamas — all of whom are on their heels right now.”

He said it would require Iran acting out in an irrational way and luring the United States into engagement for any conflict to become more widespread.

“If Iran is smart, it will not attack the United States in retaliation because that would involve us,” he said. “It would retaliate against Israel and it could remain a limited engagement. Now of course, irrationality is possible and you cannot predict. If the Iranians either close the Strait of Hormuz or attack Americans at the naval facility in Bahrain, that would be suicide because that would occasion American intervention, almost like Wilson in the First World War in the sinking of the Lusitania. You don’t do that if you’re rational, but who knows. The Iranians haven’t always been rational.”

#### No SCS war

**Fravel 13** – 3-22 Associate Professor of Political Science and member of the Security Studies Program at MIT. Taylor is a graduate of Middlebury College and Stanford University, where he received his PhD. He has been a Postdoctoral Fellow at the Olin Institute for Strategic Studies at Harvard University, a Predoctoral Fellow at the Center for International Security and Cooperation at Stanford University, a Fellow with the Princeton-Harvard China and the World Program and a Visiting Scholar at the American Academy of Arts and Sciences. He also has graduate degrees from the London School of Economics and Oxford University, where he was a Rhodes Scholar. In March 2010, he was named Research Associate with the National Asia Research Program launched by the National Bureau of Asian Research and the Woodrow Wilson International Center. (M. Taylor, 2012, “All Quiet in the South China Sea” <http://www.foreignaffairs.com/articles/137346/m-taylor-fravel/all-quiet-in-the-south-china-sea?page=show>) Jacome

In recent years, China became increasingly ready to assert and defend its territorial and maritime claims in the South China Sea, where six other nations have competing claims. Beijing publicly challenged the legality of foreign oil companies' investments in Vietnam's offshore energy industry, emphasized its own rights over islands and waters far from the Chinese mainland, detained hundreds of Vietnamese fishermen near the Chinese-held Paracel Islands, and harassed Vietnamese and Philippine vessels conducting seismic surveys in waters that Beijing claims. Many East Asian countries saw China's behavior as a sign of the country's new willingness to adopt a more unilateral and confrontational posture in the region.

Little noticed, however, has been **China's recent adoption of a new** -- and much more moderate -- approach. The primary goals of the friendlier policy are to restore China's tarnished image in East Asia and to reduce the rationale for a more active U.S. role there.

Beijing is also unlikely to be more assertive if that sustains Southeast Asian countries' desires to further deepen ties with the United States.

The first sign of China's new approach came last June, when Hanoi dispatched a special envoy to Beijing for talks about the countries' various maritime disputes. The visit paved the way for an agreement in July 2011 between China and the ten members of the Association of Southeast Asian Nations (ASEAN) to finally implement a declaration of a code of conduct they had originally drafted in 2002 after a series of incidents in the South China Sea. In that declaration, they agreed to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes."

Since the summer, senior Chinese officials, especially top political leaders such as President Hu Jintao and Premier Wen Jiabao, have repeatedly reaffirmed the late Deng Xiaoping's guidelines for dealing with China's maritime conflicts to focus on economic cooperation while delaying the final resolution of the underlying claims. In August 2011, for example, Hu echoed Deng's approach by stating that "the countries concerned may put aside the disputes and actively explore forms of common development in the relevant sea areas."

Authoritative Chinese-language media, too, has begun to underscore the importance of cooperation. Since August, the international department of *People's Daily* (under the pen name Zhong Sheng) has published several columns stressing the need to be less confrontational in the South China Sea. In January 2012, for example, Zhong Sheng discussed the importance of "pragmatic cooperation" to achieve "concrete results." Since the *People's Daily* is the official paper of the Central Committee of the Chinese Communist Party, such articles should be interpreted as the party's attempts to explain its new policy to domestic readers, especially those working lower down in party and state bureaucracies.

In terms of actually setting aside disputes, China has made progress. In addition to the July consensus with ASEAN, in October China reached an agreement with Vietnam on "basic principles guiding the settlement of maritime issues." The accord stressed following international law, especially the UN Convention on the Law of the Sea. Since then, China and Vietnam have begun to implement the agreement by establishing a working group to demarcate and develop the southern portion of the Gulf of Tonkin near the disputed Paracel Islands.

China has also initiated or participated in several working-level meetings to address regional concerns about Beijing's assertiveness. Just before the East Asian Summit last November, China announced that it would establish a three billion yuan ($476 million) fund for China-ASEAN maritime cooperation on scientific research, environmental protection, freedom of navigation, search and rescue, and combating transnational crimes at sea. The following month, China convened several workshops on oceanography and freedom of navigation in the South China Sea, and in January it hosted a meeting with senior ASEAN officials to discuss implementing the 2002 code of conduct declaration. The breadth of proposed cooperative activities indicates that China's new approach is probably more than just a mere stalling tactic.

Beyond China's new efforts to demonstrate that it is ready to pursue a more cooperative approach, the country has also halted many of the more assertive behaviors that had attracted attention between 2009 and 2011. For example, patrol ships from the Bureau of Fisheries Administration have rarely detained and held any Vietnamese fishermen since 2010. (Between 2005 and 2010, China detained 63 fishing boats and their crews, many of which were not released until a hefty fine was paid.) And Vietnamese and Philippine vessels have been able to conduct hydrocarbon exploration without interference from China. (Just last May, Chinese patrol ships cut the towed sonar cable of a Vietnamese ship to prevent it from completing a seismic survey.) More generally, China has not obstructed any recent exploration-related activities, such as Exxon's drilling in October of an exploratory well in waters claimed by both Vietnam and China. Given that China retains the capability to interfere with such activities, its failure to do so suggests a conscious choice to be a friendlier neighbor.

The question, of course, is why did the Chinese shift to a more moderate approach? More than anything, Beijing has come to realize that its assertiveness was harming its broader foreign policy interests. One principle of China's current grand strategy is to maintain good ties with great powers, its immediate neighbors, and the developing world. Through its actions in the South China Sea, China had undermined this principle and tarnished the cordial image in Southeast Asia that it had worked to cultivate in the preceding decade. It had created a shared interest among countries there in countering China -- and an incentive for them to seek support from Washington. In so doing, China's actions provided a strong rationale for greater U.S. involvement in the region and inserted the South China Sea disputes into the U.S.-Chinese relationship.

By last summer, China had simply recognized that it had overreached. Now, Beijing wants to project a more benign image in the region to prevent the formation of a group of Asian states allied against China, reduce Southeast Asian states' desire to further improve ties with the United States, and weaken the rationale for a greater U.S. role in these disputes and in the region.

So far, Beijing's new approach seems to be working, especially with Vietnam. China and Vietnam have deepened their political relationship through frequent high-level exchanges. Visits by the Vietnamese Communist Party general secretary, Nguyen Phu Trong, to Beijing in October 2011 and by the Chinese heir apparent, Xi Jinping, to Hanoi in December 2011 were designed to soothe spirits and protect the broader bilateral relationship from the unresolved disputes over territory in the South China Sea. In October, the two also agreed to a five-year plan to increase their bilateral trade to $60 billion by 2015. And just last month, foreign ministers from both countries agreed to set up working groups on functional issues such as maritime search and rescue and establish a hotline between the two foreign ministries, in addition to starting talks over the demarcation of the Gulf of Tonkin.

Even if it is smooth sailing now, there could be choppy waters ahead. Months of poor weather have held back fishermen and oil companies throughout the South China Sea. But when fishing and hydrocarbon exploration activities resume in the spring, incidents could increase. In addition, China's new approach has raised expectations that it must now meet -- for example, by negotiating a binding code of conduct to replace the 2002 declaration and continuing to refrain from unilateral actions.

Nevertheless, because the new approach reflects a strategic logic, it might endure, signaling a more significant Chinese foreign policy shift. As the 18th Party Congress draws near, Chinese leaders want a stable external environment, lest an international crisis upset the arrangements for this year's leadership turnover. And even after new party heads are selected, they will likely try to avoid international crises while consolidating their power and focusing on China's domestic challenges.

China's more moderate approach in the South China Sea provides further evidence that China will seek to avoid the type of confrontational policies that it had adopted toward the United States in 2010. When coupled with Xi's visit to Washington last month, it also suggests that the United States need not fear Beijing's reaction to its strategic pivot to Asia, which entails enhancing U.S. security relationships throughout the region. Instead, China is more likely to rely on conventional diplomatic and economic tools of statecraft than attempt a direct military response. Beijing is also unlikely to be more assertive if that sustains Southeast Asian countries' desires to further deepen ties with the United States. Whether the new approach sticks in the long run, it at least demonstrates that China, when it wants to, can recalibrate its foreign policy. That is good news for stability in the region.

#### No senkaku war

Trefor Moss, The Diplomat, 2/10/13, 7 Reasons China and Japan Won’t Go To War, thediplomat.com/2013/02/10/7-reasons-china-and-japan-wont-go-to-war/?all=true

But if Shinzo Abe is gambling with the region’s security, he is at least playing the odds. He is calculating that Japan can pursue a more muscular foreign policy without triggering a catastrophic backlash from China, based on the **numerous constraints that shape Chinese actions**, as well as the interlocking structure of the globalized environment which the two countries co-inhabit. Specifically, there are seven reasons to think that war is a very unlikely prospect, even with a more hawkish prime minister running Japan: 1. Beijing’s nightmare scenario. China might well win a war against Japan, but defeat would also be a very real possibility. As China closes the book on its “century of humiliation” and looks ahead to prouder times, the prospect of a new, avoidable humiliation at the hands of its most bitter enemy is enough to persuade Beijing to do everything it can to prevent that outcome (the surest way being not to have a war at all). Certainly, China’s new leader, Xi Jinping, does not want to go down in history as the man who led China into a disastrous conflict with the Japanese. In that scenario, Xi would be doomed politically, and, as China’s angry nationalism turned inward, the Communist Party probably wouldn’t survive either. 2. Economic interdependence. Win or lose, a Sino-Japanese war woud be disastrous for both participants. The flagging economy that Abe is trying to breathe life into with a $117 billion stimulus package would take a battering as the lucrative China market was closed off to Japanese business. China would suffer, too, as Japanese companies pulled out of a now-hostile market, depriving up to 5 million Chinese workers of their jobs, even as Xi Jinping looks to double per capita income by 2020. Panic in the globalized economy would further depress both economies, and potentially destroy the programs of both countries’ new leaders. 3. Question marks over the PLA’s operational effectiveness.The People’s Liberation Army is rapidly modernizing, but there are concerns about how effective it would prove if pressed into combat today – not least within China’s own military hierarchy. New Central Military Commission Vice-Chairman Xu Qiliang recently told the PLA Daily that too many PLA exercises are merely for show, and that new elite units had to be formed if China wanted to protect its interests. CMC Chairman Xi Jinping has also called on the PLA to improve its readiness for “real combat.” Other weaknesses within the PLA, such as endemic corruption, would similarly undermine the leadership’s confidence in committing it to a risky war with a peer adversary. 4. Unsettled politics. China’s civil and military leaderships remain in a state of flux, with the handover initiated in November not yet complete. **As the new leaders find their feet** and jockey for position amongst themselves, **they will want to avoid big foreign-policy distractions** – **war with** Japan and possibly **the U.S. being the biggest of them all**. 5. The unknown quantity of U.S. intervention. China has its hawks, such as Dai Xu, who think that the U.S. would never intervene in an Asian conflict on behalf of Japan or any other regional ally. But this view is far too casual. U.S. involvement is a real enough possibility to give China pause, should the chances of conflict increase. 6. China’s policy of avoiding military confrontation. China has always said that it favors peaceful solutions to disputes, and its actions have tended to bear this out. In particular, it continues to usually dispatch unarmed or only lightly armed law enforcement ships to maritime flashpoints, rather than naval ships.There have been calls for a more aggressive policy in the nationalist media, and from some military figures; but Beijing has not shown much sign of heeding them. The PLA Navy made a more active intervention in the dispute this week when one of its frigates trained its radar on a Japanese naval vessel. This was a dangerous and provocative act of escalation, but once again the Chinese action was kept within bounds that made violence unlikely (albeit, needlessly, more likely than before). 7. China’s socialization. China has spent too long telling the world that it poses no threat to peace to turn around and fulfill all the China-bashers’ prophecies. Already, China’s reputation in Southeast Asia has taken a hit over its handling of territorial disputes there. If it were cast as the guilty party in a conflict with Japan –which already has the sympathy of many East Asian countries where tensions China are concerned – China would see regional opinion harden against it further still. This is not what Beijing wants: It seeks to influence regional affairs diplomatically from within, and to realize “win-win” opportunities with its international partners. In light of these constraints, Abe should be able to push back against China – so long as he doesn’t go too far. He was of course dealt a rotten hand by his predecessor, Yoshihiko Noda, whose bungled nationalization of the Senkaku/Diaoyu islands triggered last year’s plunge in relations. Noda’s misjudgments raised the political temperature to the point where neither side feels able to make concessions, at least for now, in an attempt to repair relations. However, Abe can make the toxic Noda legacy work in his favor. Domestically, he can play the role of the man elected to untangle the wreckage, empowered by his democratic mandate to seek a new normal in Sino-Japanese relations. Chinese assertiveness would be met with a newfound Japanese assertiveness, restoring balance to the relationship. It is also timely for Japan to push back now, while its military is still a match for China’s. Five or ten years down the line this may no longer be the case, even if Abe finally grows the stagnant defense budget. Meanwhile, Abe is also pursuing diplomatic avenues. It was Abe who mended Japan’s ties with China after the Koizumi years, and he is now trying to reprise his role as peacemaker, having dispatched his coalition partner, Natsuo Yamaguchi, to Beijing reportedly to convey his desire for a new dialogue. It is hardly surprising, given his daunting domestic laundry list, that Xi Jinping should have responded encouragingly to the Japanese olive branch. In the end, Abe and Xi are balancing the same equation: They will not give ground on sovereignty issues, but they have no interest in a war – in fact, they must dread it. **Even if a small skirmish** between Chinese and Japanese ships or aircraft **occurs, the leaders will not order additional forces to join the battle** unless they are boxed in by a very specific set of circumstances that makes escalation the only face-saving option. The escalatory spiral into all-out war that some envisage once the first shot is fired is certainly not the likeliest outcome, as recurrent skirmishes elsewhere – such as in Kashmir, or along the Thai-Cambodian border – have demonstrated.

## 2NC

### nonviolence

#### This comes first—problematizing the normative structures that shape how bodies are targeted by war 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.

#### You should refuse their intellectual blackmail—roleplaying is a trap—your role as an intellectual is to speak truth to power

**Foucault 88**—DHeidt’s crime-fighting alter-ego

(Michel, interview with Alessandro Fontana, *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984* pg 51-52, dml)

FOUCAULT I believe too much in truth **not to suppose that there are different truths and different ways of speaking the truth**. Of course, **one** can't expect **the government to tell the truth**, the whole truth, and nothing but the truth. On the other hand, **we can demand of those who govern us** a certain truth **as to** their ultimate aims**,** the general choices of their tactics**, and** a number of particular points in their programs: this is the parrhesia (free speech) of the governed, **who** can **and** must **question those who govern them**, in the name of the knowledge, the experience they have, **by virtue of being citizens**, of what those who govern do, of the meaning of their action, of the decisions they have taken.

However, **one must** avoid a trap in which **those who govern try to catch intellectuals** and into which they often fall: "Put yourselves in our place and tell us what you would do." **It is** not **a question one has to answer**. To make a decision on some question **implies a knowledge of evidence that is refused us**, an analysis of the situation that we have not been able to make. This is a trap. Nevertheless, as governed, **we have a** perfect right **to ask questions about the truth**: "What are you doing, for example, when you are hostile to Euromissiles, or when, on the contrary, you support them, when you restructure the Lorraine steel industry, when you open up the question of private education."

#### LOAC is a neoliberal security governance strategy that necessitates un-ending violence against innocents and normalizes atrocities.

Dowdeswell ‘13

Tracey, PhD candidate at Osgoode Hall Law School at York University. Her research focuses on the impact of globalisation on the customary laws of war, “How Atrocity Becomes Law: The Neoliberalisation of Security Governance and the Customary Laws of Armed Conflict,” Journal of Critical Globalisation Studies , Issue 6 (2013)

Certain practices of contemporary warfare, such as pre-emptive attacks on civilians, house clearings, air strikes in residential neighbourhoods, **targeted killings,** and attacks on medical personnel and providers of humanitarian assistance, have become increasingly common in the War on Terror, in protest policing, and in counter-insurgent and **urban warfare.** This article will discuss the ways in which the ideologies and practices of neoliberal governance in the security sector are not only facilitating such practices, but are in fact facilitating their justification as lawful within the customary laws of armed conflict. Moreover, these are practices that until recently were **denounced as atrocities** and even prosecuted as war crimes. To a certain extent, it would seem reasonable to assume that modern States have ordinarily **sought to normalise** the atrocities that their security forces commit against civilians, preferring to use the language and logic **of the law** whenever possible to justify such actions. However, there is a distinct pattern to the tactics that are being normalised today, and this is due in part to the widespread adoption of neoliberal ideologies of governance and administration within the security sector. This is enabling the U.S. and its allies to institute what Agamben (2005) has discussed **as a permanent state of exception within the ordinary law,** and **the normalisation of atrocity is a key component of this.** The post-war period has seen an increase in attention to war crimes and the codification of the laws of war, and this has given us such instruments as the Rome Statute of the International Criminal Court, and the United Nations Responsibility to Protect Protocol (UN Res., 2009), as well as the International Committee of the Red Cross which continues to address pressing issues in humanitarian law (Melzer, 2008). At the same time, though, the neoliberalisation of security governance is significantly weakening protections for civilians by permitting and justifying attacks against them as being customary under the laws of armed conflict. There is very little that international law would have to offer such civilians if the harms they suffer are rendered lawful as customary practices of war. Yet, this is indeed what is happening, and one can canvass the above strategies and perceive that their impact on their target populations consists not only of intentional deaths, but also injuries, mayhem, and **widespread social dislocations** that serve to further fracture and marginalise such populations. Whether they are used to justify counter-insurgent strikes in Iraq or Afghanistan, military intervention in Libya, or protest policing in regimes experiencing the Arab Spring, the strategies of what Abrahamsen and Williams (2011) have termed “globalised security governance” are designed to be waged not against states and lawful combatants, but against **'failed States' and 'non-State actors'** – categories that are essentially euphemisms for civilians. The present article focuses on the neoliberal ideologies embedded within globalised governance, arguing that these are having **serious negative impacts** on the development of civil institutions and political mobilisation within a societies already fractured by conflict. Moreover, this development further reinforces the political power of the military hegemons that wield these strategies – whether these are the U.S. in Afghanistan and Iraq, NATO in Libya, or United Nations peacekeepers on the borders of Kosovo and Serbia. The article will first review the orthodox thinking concerning the customary laws of armed conflict, particularly the traditional 'two element' theory that posits that customary norms can be determined by examining the elements of actual state practice and the state's opinio juris that the norm is a legally binding one. It will then present critical alternatives to this view, which posit that customary law is a kind of discursive practice, where customary laws emerge from the overarching normative and ideological framework within which customary norms are articulated and by reference to which they are justified. The second section then describes how neoliberal ideologies of governance have shifted the normative framework within which we understand and justify the customary laws of war, and focuses in particular on how neoliberal ideologies of management have **radically decentralised and disaggregated** the traditional military chain-of-command. It is argued that neoliberal ideologies of individualisation, privatisation, and strategies of risk management are used to promote **the use of force against civilians** as seemingly legitimate acts of 'self-defence' against unknown and unknowable risks – risks that emerge from a conflict zone which the actions of the security forces themselves have **rendered endemically dangerous**. The third section will then illustrate this logic at work through reference to a specific case of atrocities committed against civilians, using the example of Collateral Murder, which is a piece video footage that was recorded by the U.S. First Air Cavalry Brigade in Iraq on 12 July 2007. This footage, which was released in April 2010 by WikiLeaks, depicts the killing of civilians, including civilians who were collecting bodies and aiding the wounded. This case study will then be supplemented by a range other examples which illustrate how justifications for civilian atrocities are **becoming increasingly widespread** throughout the security sector. The argument that I wish to make is not that such acts are illegal under the normative framework of the customary laws of war, but instead that this normative framework **itself is being shifted by neoliberal strategies of security governance** in such a way as **to normalise atrocities** within the customary laws of armed conflict. In order to make this argument, I will pull together diverse strands of thinking in the nature of customary law, the organising principles of the laws of war, and the history of the doctrine of the chain-of-command, and discuss how these **have all been disaggregated and reconfigured by the neoliberalisation of governance** in the security sector. The argument that is developed through the grasping together of these strands will then be illustrated through reference to the events depicted in Collateral Murder, and linked to broader set of examples from elsewhere in the security sector, so as to demonstrate the increasing extent to which these norms are shared. In so doing, I will be examining the problem of intentional – and seemingly justifiable – civilian atrocities from a number of different points of view. More specifically, though, the starting point will be a focus on the customary law principle of distinction, which requires that security forces distinguish between civilian and military targets. Civilians are liable to attack only for such time as they have taken up arms and are actively posing a threat, or if they are part of an organized armed group such that they perform a “continuous combat function” (Melzer, 2008). This article argues that the neoliberalisation of the security sector has shifted the criteria for attack from one based upon an individual's status as a combatant to one of defining and containing risk. Security forces in global war zones are thus shifting the criteria for attack to one in which they use armed force to **define** and then manage 'risky populations' in a way that **subverts** the ability of the **humanitarian law to regulate attacks** against civilians. Typically, violations of the principle of distinction and the killing of civilians have been all-to-commonplace, calling into question the ability of the humanitarian law to play such a regulatory role. However, with the transformations in the customary laws of war called into being by the neoliberalisation of security governance, what is at stake is **not merely the failure of** humanitarian **law** to protect civilians in conflict zones, **but its increasing use as an instrument of their violent repression**.

#### Their techno-strategic rhetoric serves to sanitize the costs of drone warfare—they directly enable endless bureaucratic warfare

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(Richard and Chris, “The bureaucratization of war: moral challenges exemplified by the covert lethal drone”, Critical Debate Article (it’s actually called that), Ethics & Global Politics Vol. 6, No. 4, 2013, pp. 245-260, dml)

The dissimulation of bureaucratic language **is** aided **and** abetted **by drone technology**. Pioneering technology informs the rhetorical devices which **aim to reduce political and societal inhibitions to conflict**. Drones are described as ‘~~unmanned~~ [unstaffed]’, ‘robotic’, and ‘remote’. **Technological ideas are applied with practiced artifice to** amplify the psychological distance, which separates advanced democratic society from the distant impact of Hellfire missiles. Technological language dissolves the human empathy, **which should inform the moral calculus of war**.

The misappropriation of technical language may bring about more than concern about deceit. Technology, which enables the political bureaucracy **to depict drone strikes as** clinical**,** routine**,** regulated **and** efficient**, may contribute to a public callousness**, to a public susceptible to the idea of costless war, and to a public **predisposed to** tolerate wars waged by the bureaucratic class. In his book, Wired for War, political scientist P. W. Singer writes, ‘~~unmanned~~ [unstaffed] systems represent the ultimate break between the public and its military’.45 Singer recognizes that a weapons system can shape the viability of military action. But more importantly, he illuminates the way that technology can erode our controlling humanity and moral insight. From this perspective, he informs the debate about **the dehumanizing bureaucratization of war**, which may make war more likely.

#### The laws of war are not neutral---they’re tools to sanitize violence---restrictions enable warfare because of law’s political nature

Francisco Contreras 8, professor of philosophy of the law at Seville U – AND - Ignacio de la RASILLA, Ph.D. candidate in international law, Graduate Institute of International Studies, Geneva, On War as Law and Law as War, Leiden Journal of International Law 21; 3 [Gender paraphrased]

If the aim of this introduction was to serve as an instrumental background against which to place the book under review, the question that ensues is that of knowing how does David Kennedy approach in his book the doctrinal polemic involving the “law of force” as the provider “of the best-known legal tools for defending and denouncing military action”?. Kennedy begins by coldly contradicting those opponents of the Bush administration “that have routinely claimed that the United States has disregarded these rules” by pointing out that both opponents and supporters of Iraq war as well as both opponents and supporters of the great panoply of US’ legal measures related to the war on terror “were playing with the same deck” in presenting “professional arguments about how recognised rules and standards, as well as recognised exceptions and jurisdictional limitations, should be interpreted”. Kennedy’s only concession in reference to the Bush administration’s legal advisers is to point out that “As professionals, these lawyers failed to advise their client adequately about the consequences of the interpretations they proposed, and about the way others would read the same texts – and their memoranda.”. Kennedy does not, thus, adopt any legal position in the detriment of other as his assessment does not pretend to persuade at the level of the world of legal validity staged in the vocabulary of the UN Charter. The extent to which that excludes Kennedy from the category of being a “true jusinternationalist” in Cançado Trindade’s previous understanding of those who actually “comply with the ineluctable duty to stand against the apology of the use of force which is manifested in our days through distinct “doctrinal” elaborations” is not for us to judge. Suffice it to note that the starting point of Kennedy’s connoted perspective on the matter is that “the law of force” is a form of “vocabulary for assessing the legitimacy” of a conduct (e.g. a military campaign) or “for defending as well as attacking the “legality” of an act (e.g. distinguishing legitimate from illegitimate targets) in which the very same law of force becomes a double-edge sword, everybody’s strategic partner and none’s in a contemporary world where “legitimacy has become the currency of power”. Thus, for Kennedy, in today’s age of “lawfare”, “to resist war in the name of law (…) is to misunderstand the delicate partnership of war and law“ because “there is little comfort in knowing that law has become the vernacular for evaluating the legitimacy of war and politics where it has done so by itself becoming a strategic instrument of war and the continuation of politics by similar means.”

3. LAW AS A MODERN LEGAL INSTITUTION

Of War and Law seems animated by a certain philosophical perplexity regarding the ambiguous relation between the apparently antithetical nature of the terms appearing in its title. Since antiquity, both jurists and philosophers have taught that the law’s raison d’être is that of making social peace possible, of overcoming what would, later on, be commonly known as the Hobbesian state of nature of bellum omnium contra omnes. Kant noted that law should be perceived, first and foremost, as a pacifying tool (“the establishment of peace constitutes, not a part of, but the whole purpose of the doctrine of law”) and Lauterpacht projected that same principle to the international sphere (“the primordial duty” of international law is to ensure that “there shall be no violence among states”) . The paradox lies, of course, in that law performs its pacifying function, not by means of edifying advices, but by the threat of the use of force. In this sense, as Kennedy points out, “to use law is also to invoke violence, at least the violence that stands behind legal authority”. Hobbes himself never concealed that the State (“that mortal god, to which we owe under the immortal God our peace and defence”) would succeed in eradicating inter-individual violence precisely due to its ability to “inspire terror ; but Weber (“the State is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory”), Godwin or Kelsen have also provided support for the same proposition. This ambivalent and paradoxical relationship between law and violence (obvious in the domestic or intrastate realm) becomes even more so in the interstate domain with its classical twin antinomy of ubi ius, ibi pax and silent leges inter arma until the “law in war” emerges as a bold normative sector which dares to defy this conceptual incompatibility: even war can be regulated, be submitted to conditions and limitations. The hesitations of Kant in addressing the ius in bello or the very fact that the Latin terms ius ad bellum and ius in bello were coined, as Kolb has pointed out, in relatively recent dates seems to confirm that this has never been per se an evident aspiration.

Kennedy explains his own calling as international lawyer as partly inspired by his will to participate in the law’s civilising mission as something utterly distinct from war: “We think of these rules [law in war] as coming from “outside” war, limiting and restricting the military. We think of international law as a broadly humanist and civilizing force, standing back from war, judging it as just or unjust, while offering itself as a code of conduct to limit violence on the battlefield” . In his book, he notes how this virginal confidence in the pacifying efficiency of international law (its presumed ability to forbid, limit, humanize war “from outside”) becomes progressively nuanced, eroded, almost discredited by a series of considerations. As a result, the disquieting image of the “delicate partnership of war and law” evidences progressively itself. The lawyer who attempts to regulate warfare inevitably becomes also an accomplice of it. As Kennedy put its: “The laws of force provide the vocabulary not only for restraining the violence and incidence of war –but also for waging war and deciding to go to war. […] [L]aw no longer stands outside violence, silent or prohibitive. Law also permits injury, as it privileges, channels, structures, legitimates, and facilitates acts of war” . Unable to suppress all violence, law typifies certain forms of violence as legally admissible thus “privileging” them with regard to others and investing some agents with a “privilege to kill” . Law becomes, thereby, in Kennedy’s view, not so much a tool for the restriction of war as for the legal construction of war.

Elsewhere we have labelled Kennedy “a relative outsider” who, peering from the edge of the vocabulary of international law, tries to “highlight its inherent structural limits, gaps, dogmas, blind spots and biases”, as someone “specialised in speaking the unspeakable, disclosing ambivalences and asking awkward questions” . The “unspeakable”, in the case of the “law of force”, is precisely, in Kennedy’s view, this process of involuntary complicity with the very phenomenon one supposedly wants to prohibit. Prepared to “stain his hands” à la Sartre, in his attempt to humanise the military machine from within, to walk one step behind the soldier reminding him constantly, as an imaginary CNN camera, of the legal limits of the legitimate use of force, the lawyer starts to realise, in the author’s view, that he is becoming but an accessory piece of the war machine. Kennedy maintains that law, in its attempt to subject war to its rule, has been absorbed by it, and it has now become but another war instrument; law has been weaponized . Contemporary war is by definition a legally organized war: “no ship moves, no weapon is fired, no target selected without some review for compliance with regulation –not because the military has gone soft, but because there is simply no other way to make modern warfare work. Warfare has become rule and regulation” . War “has become a modern legal institution” with the result that the international lawyer finds himself before an evident instance of Marxian alienation, otherwise “the consolidation of our own products as a material power erected above us beyond our control that raises a wall in front of our expectations and destroys our calculations” . Ideas and institutions develop “a life of their own”, an autonomous, perverted dynamism.

4. AMBIGUITIES AND CONTIGENCIES OF THE CONTEMPORARY LAW OF WAR

The institutional scheme and the rules about the use of force set up by the UN Charter were initially conceived as a sincere attempt to definitively overcome interstate war. The UN purpose “to save succeeding generations from the scourge of war” promised that the age of war was to be superseded by the age of collective security. The system was, as noted by Franck, a two-tiered one. The upper tier contained “a normative structure for an ideal world”. It included the absolute banning “of the use of force against the territorial integrity or political independence of any state” (art. 2.4) and a mechanism of collective (diplomatic and/or military) action against states having violated such prohibition (Articles 39 to 43). The lower tier, by contrast, represented the interim preservation of an older international legal concept (dating from the “age of war”): the individual or collective right to self-defence (Art. 51). We are, therefore, confronted to a hybrid system (“a bifurcated regime”) , halfway between the “age of war” and the “age of collective security”. A system which has supposedly failed, partly due to causes not foreseeable in 1945: the outbreak of the Cold War made the agreed action of the permanent members of the Security Council almost unthinkable; frontal interstate aggressions were replaced by more subtle techniques of indirect fight (export of insurgency, covert meddling in civil wars, etc.); the development of nuclear and chemical weapons convinced some of the necessity of defending a broader interpretation of the right to self-defence in the light of art. 51, including a “right to anticipatory self-defence”. Thus, Kennedy, can argue that “what began as an effort to monopolize force has become a constitutional regime of legitimate justifications for warfare. . For the author, the Charter, far from ensuring the dawning of an “age of collective security”, has rather become the contemporary legal language for the justification and organization of war: “it is hard to think of a use of force that could not be legitimated in the Charter’s terms”. So as to corroborate his point, Kennedy signals how “the Bush and Blair administrations argued for the [Iraq] war in terms drawn straight from the UN Charter, and they issued elaborate legal opinions legitimating the invasion in precisely those terms” .

Once Kennedy has stressed, what we could term, the teleological ambiguity of the law of war, he proceeds on with his deconstructive analysis by noting a second type of ambivalence or relativity in the ius belli: the historical and political contingency of all its categories . These categories have been rightfully reconducted by N. Berman to two major questions: “What is a war? Who is a warrior?”. A shift from an initial formalist-statalist framework to, what we could label, a “factualist-pluralist” approach is observable in the treatment of these questions along the 20th century. Thus, prior to the Second World War, the ius belli granted states with the monopoly of the combatants’ privilege: states themselves determined what was a war, officially declared whether they were at war and only their regular armies were recognised the quality of combatant answering, thereby, the question of “who is a warrior?”. This standpoint was “formalist” insofar as the legal existence or inexistence of a war depended on the formal declaration of war by the states involved in the conflict according to the traditional “state of war doctrine”. But, as the 20th century advanced, states failed increasingly to issue formal declarations of war (e.g. the Japanese attack to Pearl Harbor) . Accordingly, the ius in bello had to find new empirical criteria enabling jurists to ascertain objectively the existence of a conflict (and, consequently, the applicability of its rules) irrespective of the formal recognition of a “state of war” by governments. Consequently, common Article 2 of the Geneva Conventions (1949) establishes that the Conventions are applicable to “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”. While this formulation was still characterized by a state bias (as it presupposed the subjects of the conflict would at any rate be states), since then, various non-governmental players have been pressing for an extension of the legal categories of “war” and “combatant” . Thus, the 1977 Protocol I to the Geneva Conventions added the “armed conflicts which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination”. This criterion seemed, however, to render the applicability of the Convention dependent on the motivations that allegedly inspire the fighters of a non-governmental guerrilla: that is, aspects that were traditionally dealt with by the ius ad bellum (the problem of the “just entitlements” in Francisco de Vitoria’s terminology) as Abraham Sofaer has noted. As a consequence, no significant progress towards the “objectivity” promised by the new “factualist-pluralist” approach seems to have been made. If the anti-colonial or anti-racist fighters are “combatants” as far as the ius in bello is concerned, should fighters struggling for other causes not be now counted as “combatants” too? Are there any limits whatsoever to those claimed causes?. This relativity applies, of course, not just to the subjects of ius in bello, but does also affect the contents of ius in bello. In view of this, Kennedy stresses that both the actual and potential subjects of the law in war will now be entitled to uphold different viewpoints as to the limits of tolerable military conduct. If, from a Western perspective, the tactics of the Afghan or Iraqi insurgences appear intrinsically perfidious (terrorists disguise themselves as civilians or use civilians as human shields, immolate in suicide attacks, shoot from mosques, etc), the insurgents would argumentatively retort that only the use of those tactics can allow them to offset the huge technological asymmetry of the opposing forces . They would also claim that, from their perspective, perfidy rather lies in bombing from an altitude of 5.000 metres (which trades the security of the pilot for the increased likelihood of “collateral damage”), checking civilians systematically in search of weapons, etc. Contemporary law in war turns out to be, in Kennedy’s formally egalitarian perspective, the legal language in which a global “conversation” about the moral limits of military conduct unfolds; a conversation in which, moreover, an increasing variety of actors, with a growing number of heterogeneous outlooks, are taking part.

Kennedy’s appears as an attempt to show how the shift from formalism to realism (and from statism to pluralism) in the response to the questions “what is a war?” and “who is a warrior?” entails a blurring of the edges (once seemingly distinct) of both categories. In this sense, Of War and Law present itself as a story of the “rise and fall of a traditional legal world that sharply distinguished war from peace and in which law was itself cleanly distinguished from both morality and politics” . For the author, it is not just that formal “declarations of war” and “states of war” (which used to provide a sharp and intellectually reassuring separation line between war and “non-war”) have fallen into oblivion, but that we are witnessing what might be called “a revenge of Clausewitz” and his conspicuous formulation of war as “the continuation of politics by other means.” The use of force appears as just another area within a range of foreign policy measures at the disposal of governments. That range is a continuum, within which it is very hard to ascertain where diplomacy and politics end, and where war begins. As Kennedy notes “the point about war today […] is that these distinctions have become unglued. War and peace are far more continuous with one another than our rhetorical habits of distinction and our wish that war be truly something different would suggest” . This blurring of the war/politics boundary was already a feature of the long Cold War period: was the tug-of-war between the superpowers genuine war, or was it peace? The contraditio in terminis of the very concept “Cold War” was precisely meant to express the ambiguous nature of that situation, which went beyond the patterns of the formalist-statist ius belli. Following the termination of the Cold War, this continuity has only increased and the use of “a bit of” military force (in a new age of “distotalized” or “virtualized” war) has become another tool within the political foreign toolkit (diplomatic pressures, economic sanctions) of the great powers. Thus, the “opponents of the Iraq wars faced the immediate question –is the UN sanctions regime more or less humanitarian? More or less effective?”. In the author’s view, the final image is one where no categorial gap between the use of force and other means of state pressure exists. Today’s scenario would, therefore, be one where the referred qualitative boundary, that was before taken for granted, has simply disappeared and where considerations of efficiency, opportunity or humanity are bound to determine the state’s final choice.

#### The Trumanites disad—the plan replicates a Trumanite bureaucracy by placing its faith in illusionary legal restrictions—only the micropolitical action of the alt solves

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 (Michael, “National Security and Double Government”, Harvard National Security Journal / Vol. 5, pg 1-114, dml)

The first set of potential remedies aspires to tone up Madisonian muscles one by one **with ad hoc** legislative **and** judicial **reforms**, by, say, narrowing the scope of the state secrets privilege; permitting the recipients of national security letters at least to make their receipt public; broadening standing requirements; improving **congressional oversight of** covert operations, including drone killings **and** cyber operations; **or strengthening** statutory constraints **like** FISA545 and **the War Powers Resolution**.546 Law reviews brim with such proposals. But **their stopgap approach has been tried repeatedly** since the Trumanite network’s emergence. Its futility is now glaring. Why such efforts would be any more fruitful in the future **is hard to understand**. The Trumanites **are committed to the rule of** **law** and their sincerity is not in doubt, but the rule of law to which they are committed **is** largely devoid **of meaningful constraints**.547 Continued focus on legalist band-aids merely buttresses the illusion that the Madisonian **institutions are alive and well**—and with that illusion, **an entire narrative** **premised on the assumption that it is merely a matter of** identifying a solution **and** looking to the Madisonian institutions to effect it. That frame deflects attention from the underlying malady. What is needed, if Bagehot’s theory is correct, is **a fundamental change in** the very discourse **within which U.S. national security policy is made**. For **the question is no longer**: What should the government do? The questions now are: What should be done about the government? What can be done about the government? **What are the responsibilities** not of the government **but** of the people?

## 1NR

### solvency

#### Emergencies prove circumvention

**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**.**

#### Martin is negative evidence – he’s writing about the expanded use of self-defense justifications outside of zones of armed conflict – this destroys their entire legal regimes advantage

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In this chapter I analyze the U.S. claims that the targeted killing policy is justified under the jus ad bellum doctrine of self-defense, and argue that this very broad and general claim, as a basis for strikes against targets in countries that are not sufficiently responsible for the actions of the terrorists, and in which the United States is not clearly a belligerent in an armed conflict, is not consistent with current international law principles. Arguments that the targeted killing policy is unlawful are not of course new or novel—others have already made this point quite persuasively. 5 But the jus ad bellum issues raised by the policy have not received as much attention in the literature as the IHL and IHRL aspects.6 Moreover, in addition to assessing the policy from a jus ad bellum perspective, this chapter considers the impact that the policy may have on the legal regime itself. The manner in which the targeted killing program is being prosecuted, together with its justifications and rationales, may lead to changes to the jus ad bellum regime, and to the nature of the relationship between it and the IHL regime, and my analysis here explores how such changes could have harmful unintended consequences for the entire system of constraints on the use of force and armed conflict. The implications and rationales of the U.S. policy tend to resurrect old principles, some dating back to the medieval period, which are not consistent with the theoretical premises underlying the modern U.N. system. In its efforts to address an admittedly real and present danger of transnational terrorism, the United States may undermine the system that was developed to prevent war among states and thereby increase the risk of international armed conflict, which in the long run is a far graver danger to international society than the threat posed by terrorists.

I. The policy and its justifications

The targeted killing policy is said to be aimed at members of Al Qaeda, the Taliban, and associated forces.7 While primarily explained as being responsive to the planning and perpetration of terrorist attacks, it also clearly includes the targeting of those thought to be involved in the insurgency in Afghanistan, and may include persons involved in the “material support” of terrorism.8 There are features of the policy that are significant for the purposes of the jus ad bellum analysis. The use of methods that would constitute a use of force against the state in which the targets are attacked is important—the use of drone-mounted missile strikes in particular, though the military strike into Pakistan to kill bin Laden raised similar issues. As well, there is the fact that strikes are being made in countries such as Yemen, Somalia, and Pakistan, which were not sufficiently responsible for the operations of the targeted terrorists, and in which the United States is not clearly a belligerent in an armed conflict. These features of the policy trigger the application of the jus ad bellum regime, but in addition the targeted killing strikes have been justified by the United States on the basis of the jus ad bellum doctrine of self-defense.

While the government policy of targeted killing remains technically a covert operation, Harold Koh, then the legal counsel to the Department of State, provided two justifications for the government’s policy of targeted killing in a short official statement in 2010.9 The first was that the United States is engaged in an international armed conflict with Al Qaeda and other forces associated with it, and thus the members of such groups are combatants and legitimate targets under IHL. The second justification offered was that the United States is entitled to use lethal force against such groups as an exercise of the right of self-defense. While Koh did not say so explicitly, this is interpreted to mean that the targeting of members of these groups constitutes a use of force justified by the jus ad bellum right of self-defense provided for in Article 51 of the U.N. Charter. Such targeting is a use of force against the states in which the members of these groups are being targeted, and Koh indicated that among the considerations for each such use of force, were the sovereignty of the state involved, and “the willingness and ability of those states to suppress the threat the target poses.” This was an echo of President George W. Bush’s assertion that “we will make no distinction between the terrorists who committed these acts and those who harbor them.”10

#### Also, Jus ad bellum doesn’t apply to non-state actors outside of armed conflict – means they cant solve

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Accepting that attacks by terrorists can constitute an “armed attack” in jus ad bellum terms, however, does not mean that states may use force in self-defense against the terrorist organization as such, in whatever state to which it may have re-located following the attacks, and quite separate and apart from considerations of whether the “host” states bear legal responsibility for the attacks.50 At the outset, it should be recalled that the right to use armed force in self-defense is an exception to a general prohibition on states against the threat or use of force against the territorial integrity or political independence of other states, or in any other manner inconsistent with the purposes of the U.N. Charter.51 The very purpose of the U.N. system is to narrow the legitimate grounds for the use of force and reduce the incidence of armed conflict among states. The jus ad bellum system simply does not contemplate the use of force against NSAs as such. On the other hand, military operations against transnational terrorist groups is necessarily going to occur within the territory of another sovereign state, unless they happen to be on the high seas. Thus, absent the consent of that state, the use of force against the NSA could never actually be just against the NSA in the abstract, but will also constitute a use of force against another state. As we will review, the jus ad bellum system requires a signifi cant degree of involvement by a state in the operations of the NSAs within its territory before the use of force against that state can be justified. That is of course consistent with the purpose of reducing the incidence of war among states.

#### Adapting jus ad bellum to include self-defense against non-state actors outside of armed conflict wrecks the entire regime for regulating war – it makes it impossible to establish clear limits for what constitute armed conflict

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

### advantage

#### Empirics go neg – every attempt to reverse conflation is muddle by emerging circumstances

Benvenisti 9 (Eyal, Professor of Law, Tel Aviv University, “Rethinking the Divide Between Jus ad Bellum and Jus in Bello in Warfare Against Nonstate Actors,” Yale Journal of International Law, Vol. 34, <http://law.bepress.com/cgi/viewcontent.cgi?article=1114&context=taulwps>)

Not very long ago the regulation of warfare by international law was conveniently organized according to several sets of dichotomies: the right to use force was determined by the presence or absence of an actual armed attack; the type of the military conflict was either international or internal, each with its unique set of norms; the regulation of the hostilities was founded on the dichotomy between combatants (and military targets) and noncombatants (and nonmilitary targets); and the obligations of parties to the conflict and those of neutral third parties were strictly distinguished. But, perhaps due to its counterintuitiveness, the most prominent of all dichotomies has been the sharp distinction between the jus ad bellum, the law governing resort to force, and the jus in bello, the law governing the conduct of hostilities.

Over time most of these binary choices have evolved into continua, and the sharp distinctions have softened into overlapping sets of norms. Exceptions to the prohibition on the use of force have been recognized in response to new types of challenges ranging from imminent attacks,1 protracted and low-level attacks by nonstate actors,2 and humanitarian catastrophes. Some would say, in addition, that the development of weapons of mass destruction capability could also at times legitimate a preemptive strike. 4 The significance of the distinction between international and noninternational armed conflicts has also been muted by the recognition that both humanitarian and human rights obligations are relevant to both types of conflicts. Guerrilla tactics that exploited the law’s distinctions between combatants and noncombatants, and between military and nonmilitary targets, required the transformation of these sharp distinctions into a set of points along elaborate continua. Both pragmatic and normative reasons have led to the recognition of erga omnes applicability of the obligation to ensure compliance with the laws of war and have therefore obliged neutral states to be vigilant and even to take action.5

#### Deployment of bioweapons dramatically reduces their death toll.

**Mueller ‘10** (John, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies and a Professor of Political Science at The Ohio State University, A.B. from the University of Chicago, M.A. and Ph.D. @ UCLA, Atomic Obsession – Nuclear Alarmism from Hiroshima to Al-Qaeda, Oxford University Press, Accessed @ Emory)

Properly developed and deployed, biological weapons could potentially, if thus far only in theory, kill hundreds of thousands, perhaps even millions, of people. The discussion remains **theoretical** because biological weapons have scarcely ever been used. For the most destructive results, they need to be **dispersed** in very **low-altitude** aerosol clouds. Since aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed **near nose level**. Moreover, **90 percent** of the microorganisms are likely to **die** during the process of aerosolization, while their effectiveness could be reduced still further by **sunlight**, **smog**, **humidity**, and **temperature changes**. Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term **storage** of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organisms have a **limited lifetime**. Such weapons can take days or **weeks** to have **full effect**, during which time they can be **countered** with medical and civil defense measures. In the summary judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties-as an aerosol that could be inhaled-requires a delivery system of **enormous sophistication**, and **even then** effective dispersal could **easily be disrupted** by unfavorable environmental and meteorological conditions