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#### Contention 1 is Due Process

#### Scenario One: Rights Protections

#### Targeted killing policy under executive authority will collapse due process protections

Alford, 11 [Copyright (c) 2011 Utah Law Review Society Utah Law Review 2011 Utah Law Review 2011 Utah L. Rev. 1203 LENGTH: 41771 words ARTICLE: The Rule of Law at the Crossroads: Consequences of Targeted Killing of Citizens NAME: Ryan Patrick Alford\* BIO: \* © 2011 Ryan Patrick Alford, Assistant Professor, Ave Maria School of Law, p. lexis]

From 2001 to 2004, the constitutional order of the United States was severely tested. In Hamdi v. Rumsfeld, n408 the Supreme Court held that the writ of habeas corpus extended to a United States citizen held at Guantanamo Bay. n409 Eight of the nine Justices agreed that the executive branch did not have the power to hold a citizen indefinitely, without access to basic due process protections enforceable in open court. n410 This case was properly seen as a watershed, a rejection of theories of executive detention that were incompatible with the basic tenets of our common law tradition. n411 However, the clear right to habeas corpus is only slightly over three hundred years old - the right not to be killed without due process of law is twice as old and considerably more fundamental. As Blackstone made clear, habeas corpus was originally necessary because it was a prophylactic protection for Magna Carta's right not to be killed. n412 To turn a blind eye to executive death warrants would be to trample upon numerous principles the Framers believed so important as to put into a document that outlines the parameters of the state itself. It would also trample upon principles that predate the Bill of Rights: the balance of powers, the constraints on arbitrary executive action, and the specific requirements of additional due process for those accused of crimes amounting to treason. It would also make a mockery of their [\*1271] comprehensive view of due process, which precluded the use of military justice against civilians. It would allow a return to the very features of royalist justice that they and their forbearers detested, such as allowing the executive the power of judgment and denying the courts the power to intervene - this was the hallmark of the detested Star Chamber, which was abolished on these grounds in 1641. n413 What is perhaps most perplexing about this current crossroads is that there seems to be very little discussion of the importance of this case within the legal profession in general, and in particular among the scholars and lawyers who had opposed the legal framework for the indefinite detention of the detainees at Guantanamo Bay. It is difficult to understand why so much determined opposition should emerge to the withholding of the rights of habeas corpus from American citizens (which led to the decision in Hamdi), n414 while the administration's decision to issue executive death warrants has led to so little. Apart from the decision of the ACLU and the CCR to litigate the case on behalf of Nasser Al-Aulaqi, there has been very little action taken within the legal community to publicize the Obama Administration's decision to use the targeted killing program to assassinate an American citizen. n415 As the discussion of the targeted killing program after Al-Awlaki's extrajudicial execution reveals, American militants like Anwar al-Awlaki are placed on a kill or capture list by a secretive panel of senior government officials, which then informs the president of its decisions ... . There is no public record of the operations or decisions of the panel, which is a subset of the White House's National Security Council ... . Neither is there any law establishing its existence or setting out the rules by which it is supposed to operate. n416 [\*1272] Not only is there no law addressing the due process rights of Americans with respect to targeted killing, but no law on this subject can be made. The executive branch has prevented the judiciary from addressing the killing of citizens by asserting that the courts do not have jurisdiction over these cases because they present political questions. Since the judiciary may not adjudicate the claims of those about to be killed, the prevailing law of the land now comes in the form of secret memoranda created by the executive's Office of Legal Counsel ("OLC"). n417 The executive branch now has the final say on the constitutionality of its decision to kill an American citizen, since it asserts that no court has jurisdiction to review its opinion. This is executive privilege beyond James I's wildest dreams. While the administration insists that the OLC memorandum did not formulate general criteria for deciding whether Americans accused (impliedly, but not formally) of treason may be tortured or killed, n418 its version of events is actually worse than the alternative. The administration advances the position that a citizen suspected of treason may be killed after a singular determination within the executive branch that this would not violate the citizen's due process rights. "If that's true, then the Obama Administration is **playing legal Calvinball**, making decisions based on individual cases, rather than consistent legal criteria." n419 Unfortunately, this has been confirmed to be true: the recommendations for targeted killings are reportedly made on a case-by-case basis by "a grim debating society" of "more than 100 members of the government's sprawling national security apparatus," who provide no indication of using legal principles when determining such issues as which sort of "facilitators" of terrorism should be marked for death. n420 This sort of Star Chamber is precisely what the rule of law was designed to protect us against. After months of silence, Attorney General of the United States Eric Holder traced out the rationale for the targeted killing of an American citizen. n421 Rebutting this article's thesis, he argued: Some have argued that the president is required to get permission from a federal court before taking action against a United States citizen who is a senior operational leader of Al Qaeda or associated forces... . [\*1273] This is simply not accurate. "Due process" and "judicial process" are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process. n422 Given the Obama Administration's decision not to release the OLC memorandum or even acknowledge that they did in fact kill Al-Awlaki, n423 this will likely be the most comprehensive description of the legal case for targeted killings the American people ever receive. Its arrogance is stunning. Attorney General Holder appears to rely implicitly on a Court decision holding that those having their social security benefits terminated are not entitled to a hearing in advance in support of another proposition. Namely, that some unspecified degree of procedural fairness apportioned in secret within the executive branch is all that is required before an American citizen can be killed. The Constitution, and a tradition of resistance to arbitrary executive power that it reaffirmed that extends back to the Magna Carta, is being held for naught - on the basis of a holding from an administrative law case wrenched forcibly out of context. With this flimsy justification, the administration rationalizes the creation of a new Star Chamber, newly empowered to administer capital punishment in secret and unchallengeable proceedings. Should this pass unchallenged, this may herald the end of the rule of law in America.

#### That spills over -- it’s the knockout blow for rights guarantees

Blum and Heymann 10 (Gabriella, Assistant Professor of Law – Harvard Law School, and Philip, Professor of Law – Harvard Law School, “Law and Policy of Targeted Killing,” Harvard National Security Journal, 1 Harv. Nat'l Sec. J. 145, Lexis)

As we have shown, targeted killings may be justified even without declaring an all-out "war" on terrorism. A war paradigm is overbroad in the sense that it allows the targeting of any member of a terrorist organization. For the United States, it has had no geographical limits. When any suspected member of a hostile terrorist organization--regardless of function, role, or degree of contribution to the terrorist effort--might be targeted anywhere around the world without any due process guarantees or monitoring procedures, targeted killings run grave risks of doing both short-term and lasting harm. In contrast, a peacetime paradigm that enumerates specific exceptions for the use of force in self-defense is more legitimate, more narrowly tailored to the situation, offers potentially greater guarantees for the rule of law. It is, however, harder to justify targeted killing operations under a law enforcement paradigm when the tactic is used as a continuous and systematic practice rather than as an exceptional measure. Justifying targeted killings under a law enforcement paradigm also threatens to erode the international rules that govern peacetime international relations as well as the human rights guarantees that governments owe their own citizens.

#### New legal framework key to effective norms – clear standards bridge the gap

Mutua 7 (Makau, SUNY Distinguished Professor, Professor of Law, Floyd H. & Hilda L. Hurst Faculty Scholar, and Director of the Human Rights Center – Buffalo Law School, “Standard Setting in Human Rights: Critique and Prognosis,” Human Rights Quarterly, Vol. 29, http://www.law.buffalo.edu/content/dam/law/restricted-assets/pdf/faculty/mutuaM/journals/hrq2907.pdf)

Even with historic conceptual and institutional breakthroughs, a lot remains to be done to secure human dignity. Although human rights standards have been set in virtually all areas that touch on human dignity, normative gaps and weaknesses still exist in many areas. New normative frameworks are needed in some areas, while in others they must be elaborated and strengthened. Standard setting is a dynamic process that must respond to a rapidly changing globe and challenges that come with the emergence of new problems and conditions. The argument that the era of standard setting is over is not only mistaken, but dangerous.

The setting of human rights standards is not a static process. The conditions of humanity that human rights standards seek to safeguard and promote are evolving concepts. New conditions of oppression and powerlessness are forever being discovered, and new challenges are constantly emerging. For example, the gay rights movement and the campaign for the rights of people with disabilities were unthinkable just a few decades ago. The current US war on terror has similarly thrown up new obstacles to established norms. There is no doubt that these and many other issues require a normative response. The struggle for and definition of human freedom and development is a continuous and evolutionary process. These issues require unceasing vigilance, revision, re-evaluation, deepening, and re-definition. Broad norms and standards must be unpacked, broken down, elucidated, revised, and may even need to be rejected and replaced by new and different standards. The scope, reach, and content of norms must be comprehensible to their beneficiaries, as well as to those who bear the responsibility for their implementation. Vacuous, rhetorical, and vague standards accomplish little.

To be effective, standards must have a clear path for their implementation and enforcement. This is an area of weakness. Institutions that are responsible for the promotion and protection of human rights standards—states and IGOs—are largely perceived by NGOs as reluctant, unwilling, unable, or ineffectual actors. They are seen as interested mostly in blunting the bite of human rights to safeguard state sovereignty. The effect of human rights must be translated at the national level, so municipal institutions that safeguard basic rights are critical to enforcement. Judiciaries, national human rights institutions, bar associations, NGOs, police and security apparatuses, and legislatures must be in the frontline to entrench, deepen, promote, and protect human rights. However, only human rights NGOs among these institutions can usually be relied on to advance the human rights agenda with vigor, honesty, and a healthy disinterest. Human rights norms must be internalized by states in their legal and political orders to be effective.

#### Executive clarity isn't enough – creates a double standard that impacts global perception

Zimmerman, 13 [Evan, Citing Zenko of CFR, Jane Dao of the NYT, Kristin Roberts of the Atlantic, etc. “Secrecy and the Obama Drone Program: a Violation of the Fifth Amendment”, April 22, 2013 http://uculr.com/articles/2013/4/22/secrecy-and-the-obama-drone-program-a-violation-of-the-fifth-amendment]

Notwithstanding the ease with which the Administration authorized the killing of al-Awlaki, the Administration has a clear understanding that the primary impediment to lawfully killing Americans is the due process clause of the Fifth Amendment of the US Constitution, which states that, “no person shall…be deprived of life, liberty, or property, without due process of law.”[19] DOJ “assumes that the rights afforded by the Fifth Amendment’s Due Process Clause…attach to a US citizen even while he is abroad.”[20] However, such a protection does not make a US citizen immune from a lethal operation if he is an enemy combatant.[21] Rather, the Administration believes it must weigh the “private interest that will be affected by the official action” against the government’s asserted interest,[22] including “the burdens the government would face in providing process.”[23] The person in question has, indeed, a very weighty, in fact “uniquely compelling,” private interest: his life.[24] However, the Administration says that its war and accordant duty to defend the lives of innocent US citizens is also compelling, maybe even more so in this context than the accused’s own life.[25] Perhaps to satisfy such Fifth Amendment concerns, the DOJ White Paper states that there are three conditions that a targeted killing of a US citizen must fulfill before death may be considered: (a) an “informed, high-level”[26] US official must believe that there is an “imminent threat of violent attack”[27] against the US; (b) capture, which is a “fact-specific, and potentially time-sensitive, question,”[28] must be infeasible, and (c) the operation to kill must be conducted in “a manner consistent with applicable law of war principles.”[29] To be killed, targets must present an “imminent threat,” the first condition.[30] Traditionally, an “imminent threat” means an attack of some sort is about to happen. However, the Administration maintains that al-Qaida “does not behave like a traditional military,”[31] meaning that this conflict is not a traditional war. Specifically, “the Constitution does not require the President to delay action until some theoretical end-stage of planning—when the precise time, place, and manner of an attack become clear,”[32] according to the Administration. So, in accordance with this unconventional war, there is a similarly unconventional definition of “imminent.” DOJ maintains that an “imminent threat” does not require the US “to have clear evidence that a specific attack on US persons and interests will take place in the immediate future,”[33] leading one to question what standard of evidence is required at all. To justify itself, the Administration agrees with the Supreme Court that there must be “the greatest respect and consideration of judgments of military authorities in matters relating to the actual prosecution of war, and…the scope of that discretion is necessarily wide.”[34] DOJ states that it is not required to refrain from action until “preparations for an attack are concluded” because that would not allow the US “sufficient time to defend itself.”[35] Furthermore, for the US to lawfully defend itself, it must demonstrate that the people it defends against are legitimate targets and that the modes of defense are legitimate, which DOJ attempts to root in the traditional laws of war. The US is in armed conflict with al-Qaida and associated forces,[36] making its members legitimate targets of the US military and conduct with them subject to national self-defense laws.[37] Congress designated as enemy combatants those who aid al-Qaida and its associated forces, prompting the Administration to cite the public authority justification[38] when targeting their members.[39] The Administration believes that, as it has the right to detain US citizens who are enemy combatants,[40] it may similarly use lethal force as an “important incident of war,”[41] against those citizens.[42] Although the Administration believes it may only unilaterally conduct a drone strike in a place where al-Qaida is believed to have a “significant and organized presence,”[43] it also believes that there is little geographical limitation of its scope to target al-Qaida militants.[44] Furthermore, although the DOJ White Paper only addresses US citizens in foreign countries, public statements of DOJ suggest that they believe there would also be lawful circumstances in which US citizens on American soil could be killed.[45] The Administration recognizes that its powers are not unlimited, and that even powers granted to it by Congress may not have unlimited scope.[46] However, it believes that these killings are within the bounds of proper executive authority. Even more, under the Administration’s position, there is no mode for the public to police the propriety and legality of targetedkillings by drones, as DOJ believes there is no proper forum for any case that would be brought against the government for its use of the drone program.[47] In effect, the only form of checks and balances here is to trust the US government not to overstep its authority. IV. Criticism of Official Policy The US has indicated that it believes that it may lawfully take out a citizen with a drone. What might a citizen do to trigger this? It is difficult to say, as the government’s asserted justifications are secret and, it claims, broad. If someone is wrongfully killed by a drone, how can his or her family[48] know that they have standing to sue the US government if the program is mostly secret?[49] There is **great confusion** surrounding the administration of US drone strikes, and the government has provided no adequate guidance. Since the US has kept its policies governing the drone program secret, the policy of targeted killings of US citizens is also secret. Such secrecy makes it so that no one can defend himself against the authorization of a drone strike or sue for restitution if accidentally killed. Secrecy is not the only impediment to the public’s understanding of the drone program; more obfuscation arises from the Administration’s own clear contradictions of its own policies. For example, Eric Holder’s letter to Rand Paul indicates that the Administration believes that it is possible legally to take out a US citizen with a drone on US soil, notwithstanding the DOJ White Paper’s requirement that US citizens only be targeted if they are, (a) on foreign soil, and are (b) senior leaders, (c) of al-Qaida. Why? We do not know, rendering the law impermissibly unclear. Furthermore, the Administration has already broken from its own standards. The only US citizen killed who was a senior leader of al-Qaida is Anwar al-Awlaki. An American subordinate of his—who was, in fact, dismissed as collateral damage, and never considered a senior leader publicly—was killed. A few weeks later, al-Awlaki’s son was also killed despite no indication that he was even involved in any terrorism group. The Administration has clearly conducted drone strikes that violate their own stated legal framework for proper and lawful targeted killings. Compounding the issue, the Administration’s rules are built on shaky ground. Hamdi v. Rumsfeld, a case that is crucial foundation for the legal positions taken within the DOJ White Paper, refers to the capture and detainment of a US citizen in combat, not assassination from a distance at a time potentially far removed from the time of attack. Hamdi admits that “while the full protections…may prove unworkable and inappropriate” in combat, “threats to military operations posed by a basic system of independent review are not so weighty as to trump a citizen’s core right to challenge meaningfully the Government’s case and to be heard by an impartial adjudicator.”[50] The right to an impartial adjudicator implies the right to a place and time to be heard, as well as the right to construct and present a case that has a “meaningful” possibility of success. In sum, Hamdi demands that due process of law be maintained outside of the combat setting, which by definition is where targeted killings occur. These rights have been violated with the way that targeted killings have been carried out so far. The Administration maintains that the killing of al-Awlaki’s son was collateral damage rather than the result of an authorized strike specifically against him. But this still means that, as a result, his family is now eligible to sue for restitution.[51] How would al-Awlaki’s son’s family be granted damages from the impartial adjudicator Hamdi calls for if the program that killed him is secret?[52] How could they prove that he was not a legitimate target if the criteria for targeted killings are unknown, or at least not clearly defined? They may not, perhaps most clearly because of DOJ’s position that there is no proper forum for such a trial.[53] Additionally, the secrecy of the program - and the fact that the government maintains that any decisions regarding targeted killing may only be reached through the its own “internal deliberations”[54] - ensures that, before they are killed, targets are impeded in their efforts to collect facts about their case and therefore wage a “meaningful” defense against the government’s accusations. Both of these situations directly violate the right to a robust defense before an impartial adjudicator called for in Hamdi, presenting serious constitutional issues relating to the Fifth Amendment. It is simply incorrect to compare the power to capture someone from the battlefield[55] with the right to be tried before one is killed, considering the right to an impartial adjudicator in a non- combat situation[56] and the highly compelling—in fact, paramount—interest a person has in saving his own life from imposition by the government.[57] The government may cite its own compelling interests and the power to strike secretly, but that is not mutually exclusive from a system with an acceptable level of disclosure. The exact manner and time at which they strike may remain secret, and may conform with the laws of war, but US citizens are entitled to know what they did to be targeted, to contest their targeting in some way, and for their families to pursue just compensation—and be awarded it—if they are wrongfully killed. This is only possible if the families know how and why their kin was killed, and what laws were broken. V. Conclusion and Summary A person has a clear right to due process. It would go too far to suggest that this implies that a person is absolutely free from being killed by the government. However, it is clear that a person has the right to defend himself in court, which requires that the charges against him be made known and the laws that he has broken publicized. The secrecy of the drone program does not allow Americans these protections that the Fifth Amendment requires. **There are alternatives to a fully public trial**—at the very least, a person is entitled to a military tribunal, if not a grand jury, for a capital offense. Being in a state of war does not allow the government to cease following the rule of law, but merely means some of its conduct becomes governed by the laws of war instead. Wartime perhaps permits targeted persons to be tried in absentia, for which there is some precedent,[58] represented by a public defender or his family and their private attorney.[59] If there truly is no “proper forum” in existence, Congress has the power to establish a court[60] with special jurisdiction over these matters. If the US government is concerned about speed,[61] it may establish special courts with a high, but not absolute, level of secrecy that try these cases with special speed.[62] If the government is worried that a publicized drone program will harm the United States’ image, secrecy is doing so already**,** causing speculation that the U.S. has secret agreements with other governments.[63] This further engenders suspicion of America, particularly in countries where citizens only have state-owned media and assume such information is vetted and condoned by the Administration.[64] If the government is concerned that such actions will slow down the U.S., it already has. Rand Paul recently stopped Senate business with a 13-hour filibuster of the architect of the drone program, John Brennan’s, nomination to Director of the CIA in order to force Eric Holder to say whether the Administration would target U.S. citizens on American soil. Holder was forced to respond, thereby delaying other DOJ business. There may be more such delays in the future as dissent, already present,[65] grows. The secrecy of the drone program is harming US citizens and their right to defend themselves and their families’ rights to just compensation if the accused are unjustly harmed. The issue is not that drones as a new technology are inherently problematic, but that they are used as a proxy targeted killing program, the secrecy of which is leveraged to sidestep the provision of Fifth Amendment rights. Americans do not know whether they are targeted, or what they can be targeted for. Due process of law requires these protections, especially when one’s life is at stake. Secrecy prevents these protections from being provided, a clear violation of the Fifth Amendment. There is a distinction between secrecy provided for the purpose of national security and an unacceptable lack of oversight. And it is clear that, with its drone policy, the Administration has not afforded the public the necessary information, rights, and protections it deserves.

#### Prior, judicial oversight fosters capable, procedural decisions – vital to due process

Adelsberg 12 (Samuel, J.D. – Yale Law School, “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens,” Harvard Law & Policy Review, Summer, 6 Harv. L. & Pol'y Rev. 437, Lexis)

The relevance of these precedents to the targeting of citizens is clear: the constitutional right to due process is alive and well--regardless of geographic location. We now turn to what type of process is due.

III. BRING IN THE COURTS: BRINGING JUDICIAL LEGITIMACY TO TARGETED KILLINGS

The function of this Article is not to argue that targeted killing should be removed from the toolbox of American military options. Targeted killing as a military tactic is here to stay. n34 Targeting strikes have robust bipartisan political support and have become an increasingly relied upon weapon as the United States decreases its presence in Iraq and Afghanistan. n35 The argument being asserted here, therefore, is that in light of the protections the Constitution affords U.S. citizens, there must be a degree of inter-branch process when the government targets such individuals.

The current intra-executive process afforded to U.S. citizens is not only unlawful, but also dangerous. n36 Justice O'Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that an interrogator is not a neutral decision-maker as the "even purportedly fair adjudicators are disqualified by their interest in the controversy." n37 In rejecting the government's argument that a "separation of powers" analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O'Connor contended that, in times of conflict, the Constitution "most assuredly envisions a role for all three branches when individual liberties are at stake." n38 Similarly, Justice Kennedy was unequivocal in Boumediene about the right of courts to enforce the Constitution even in times of war. Quoting Chief Justice Marshall in Marbury v. Madison, n39 Kennedy argued that holding "that the political branches may switch the constitution on or off at will would lead to a regime in which they, not this Court, say 'what the law is.'" n40 This sentiment is very relevant to our targeted killing analysis: in the realm of targeted killing, where the deprivation is of one's life, the absence of any "neutral decision-maker" outside the executive branch is a clear violation of due process guaranteed by the Constitution.

Justices O'Connor and Kennedy are pointing to a dangerous institutional tension inherent in any intra-executive process regime. Targeting decisions are no different; indeed, the goal of those charged with targeting citizens like al-Awlaki is not to strike a delicate balance between security [\*444] and liberty but rather, quite single-mindedly, to prevent attacks on the United States. n41 In describing the precarious nature of covert actions, James Baker, a distinguished military judge, noted, "the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and informed accountable decision-making." n42 While Judge Baker concluded that these risks "magnify the importance of a meaningful process of ongoing executive appraisal," he overlooked the institutional tension, seized upon by Justices O'Connor and Kennedy, which would preclude the type of process that he was advocating. n43

Although there may be a role for Congress in such instances, a legislative warrant for specific cases would likely be cumbersome, carry significant security risks, and may violate the spirit of the Bill of Attainder Clause, which prohibits the legislature from performing judicial or executive functions. The current inter-branch process for covert actions, in which the President must make a finding and notify the leaders of Congress and the intelligence committees, is entirely ex post and also has not been proven to provide a meaningful check on executive power. n44 Moreover, most politicians are unqualified to make the necessary legal judgments that these situations require.

Solutions calling for the expatriation of citizens deemed to be terrorists are fraught with judicial complications and set very dangerous precedents for citizenship revocation. n45 Any post-deprivation process, such as a Bivens-style action, for a targeted attack would also be problematic. n46 Government officials charged with carrying out these attacks might be hesitant to do so if there were a threat of prosecution. Moreover, post-deprivation process for a target would be effectively meaningless in the wake of a successful attack.

 [\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens.

Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on steadier constitutional ground. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

#### That’s key to economic leadership and preventing democratic backsliding

Khodorkovsky, 11 [Mikhail, once Russia’s Richest Man, was arrested in 2003 after speaking out against the growing power of then-president Vladimir Putin. He was tried and sentenced to nine years for alleged tax evasion. A second trial last year on new charges, widely viewed as a sham, brought him an additional 14 years.Stop Coddling My Country’s Rulers, http://mag.newsweek.com/2011/09/25/khodorkovsky-america-is-weakening-on-human-rights.html]

If America can still be said to lead the world today, then its leadership is first and foremost a moral one. Millions of people around the world still look to the United States as a lighthouse of freedom. In large part, America’s economic might follows from that moral leadership. People believe in the dollar because they believe in America’s economic model. But they also believe in the values that the U.S. has created at home and promotes in the international arena: political competition, free elections, an independent media and judiciary. Of course, President Obama has to deal with hard realities—one of the hardest being that global economic growth has increased competition for resources, particularly energy resources. And it’s also clear that in times of economic crisis there is a huge temptation to make friends with countries rich in such resources, however obnoxious their regimes, rather than make war against them or antagonize them. But the moral hazard in this kind of appeasement is far greater than its short-term advantages. By ignoring its basic values to make friends with dictators, America risks losing its moral capital—capital that is by no means limitless. If the U.S. fails to live up to the values of its own democracy, faith in the American Dream—that everyone is entitled to a fair chance, a fair say, and a fair hearing—will crumble. Just as important, faith in the fact that democracy is the world’s most successful and effective system of government will crumble, too. There is another way. Return ideals to their rightful, central place in politics, and deal with economic questions in the way that smart, honorable men and women have decided them in times past—through the power of intellect. To take a simple, concrete example, if the U.S. spent as much on saving energy and developing alternative energies as, say, Israel or Germany do, then its dependence on imported oil would be a thing of the past. Politicians seem to shy away from those kinds of farsighted policies because they might lose elections. But is there any doubt that America would be the long-term winner for achieving energy independence? That wouldn’t be a good thing only for America. Regimes in, say, Russia, would have to actually get down to some serious political and economic modernization rather than just paying lip service to reform in nice-sounding but ultimately empty speeches. The time to make a decision is approaching: will America be moral, or merely pragmatic? It’s a crucial decision. For America to turn its back on defending human rights around the world is not just wrong. It’s dangerous. One might say as dangerous as its continued dependence on imported energy. America’s economic might is dependent on its moral leadership: to lose one is to lose the other. If that happens it will be America, not Russia, that will turn out to have been the real loser of the Cold War. And those of us who continue to believe in and fight for the ideals of freedom will find ourselves fighting an even lonelier battle.

#### Democracy prevents global war

Halperin 11 (Morton H., Senior Advisor – Open Society Institute and Senior Vice President of the Center for American Progress, “Unconventional Wisdom – Democracy is Still Worth Fighting For”, Foreign Policy, January / February, <http://www.foreignpolicy.com/articles/2011/01/02/unconventional_wisdom?page=0,11>)

As the United States struggles to wind down two wars and recover from a humbling financial

crisis, realism is enjoying a renaissance. Afghanistan and Iraq bear scant resemblance to the democracies we were promised. The Treasury is broke. And America has a president, Barack Obama, who once compared his foreign-policy philosophy to the realism of theologian Reinhold Niebuhr: "There's serious evil in the world, and hardship and pain," Obama said during his 2008 campaign. "And we should be humble and modest in our belief we can eliminate those things." But one can take such words of wisdom to the extreme-as realists like former Secretary of State Henry Kissinger and writer Robert Kaplan sometimes do, arguing that the United States can't afford the risks inherent in supporting democracy and human rights around the world. Others, such as cultural historian Jacques Barzun, go even further, saying that America can't export democracy at all, "because it is not an ideology but a wayward historical development." Taken too far, such realist absolutism can be just as dangerous, and wrong, as neoconservative hubris. For there is one thing the neocons get right: As I argue in *The Democracy Advantage*, democratic governments are more likely than autocratic regimes to engage in conduct that advances U.S. interests and avoids situations that pose a threat to peace and security. Democratic states are more likely to develop and to avoid famines and economic collapse. They are also less likely to become failed states or suffer a civil war. Democratic states are also more likely to cooperate in dealing with security issues, such as terrorism and proliferation of weapons of mass destruction. As the bloody aftermath of the Iraq invasion painfully shows, democracy cannot be imposed from the outside by force or coercion. It must come from the people of a nation working to get on the path of democracy and then adopting the policies necessary to remain on that path. But we should be careful about overlearning the lessons of Iraq. In fact, the outside world can make an enormous difference in whether such efforts succeed. There are numerous examples-starting with Spain and Portugal and spreading to Eastern Europe, Latin America, and Asia-in which the struggle to establish democracy and advance human rights received critical support from multilateral bodies, including the United Nations, as well as from regional organizations, democratic governments, and private groups. It is very much in America's interest to provide such assistance now to new democracies, such as Indonesia, Liberia, and Nepal, and to stand with those advocating democracy in countries such as Belarus, Burma, and China. It will still be true that the United States will sometimes need to work with a nondemocratic regime to secure an immediate objective, such as use of a military base to support the U.S. mission in Afghanistan, or in the case of Russia, to sign an arms-control treaty. None of that, however, should come at the expense of speaking out in support of those struggling for their rights. Nor should we doubt that America would be more secure if they succeed.

#### Failure to shore up legal safeguards reverberates globally and causes backlash to rights protections

Ghitis, 12 [“On human rights, U.S. must lead — or no one will”, Frida,a world affairs columnist at the World Politics Review, author and consultant. She started her career at CNN, where she worked initially as a show producer, http://www.miamiherald.com/2012/08/06/2930361/on-human-rights-us-must-lead-or.html]

Now, in an unexpected turn of events, Washington’s harshest critics are asking the United States to take an even greater role in world affairs, but to do it for the sake of protecting human rights across the globe. Whoever wins the presidential elections, President Obama or Mitt Romney, human-rights activists, including Amnesty International and the ACLU, are imploring him to move decisively to the forefront of world affairs and take a firm stand in order to prevent genocide, human rights abuses and terrorism. The goal is morally defensible — what could be more important than preventing genocide — but it is also one with strategic benefits for the United States. It turns out the alternative to American leadership is no leadership at all, or not much of one. Often that means conflicts that spiral out of control with disastrous consequences, as we have seen time and time again. America’s relative power has declined significantly, especially in the last half-decade of economic weakness. The powers whose rise has paralleled the American decline, such as China, have shown no inclination to lift a finger in defense of human rights or for the prevention of conflicts that could devastate civilian populations. As far as China, and still Russia, are concerned, conflicts are a problem only in that they interfere with trade or with strategic alliances. But the greatest threat, in their view, is a world that gives itself the right to tell other countries to respect freedoms, because they might later come calling in places like Tibet. As the United States’ ability to shape events diminished, it sought to rely more on international organizations and multilateral partnerships. But time and time again it has become clear that, as Bill Clinton’s Secretary of State Madeleine Albright put it back in the days of the war in Bosnia, America is “the indispensable nation.” Back then, Albright was arguing that the United States should step in and stop the slaughter in the Balkans. The massacres ended rather quickly after U.S. fighter planes started slicing across the sky. In many quarters, American military power is viewed with suspicion. And that’s understandable. But even on the left, among those who care deeply about the suffering of human beings of all nationalities regardless of who their tormentors are, the view that the United States is indispensable is growing. They don’t want to see American soldiers marching across the globe, but they want to see America prevent and solve conflicts and lead the international community to a consensus that human-rights matter. Amnesty International and the ACLU joined in a group of 22 well-known organizations and individuals who recently released a detailed study of the human-rights challenges facing the world — and the American president. They listed the top 10, along with a plaintive appeal that whoever sits in the Oval Office next year should embrace America’s leadership position. They didn’t call for the United States to act alone and didn’t necessarily call for military intervention of any kind, but they noted that “U.S. leadership is critical to effectively address international human-rights issues.” They recommended 10 policies, beginning with the need to “Prioritize U.S. leadership on international norms and universality of human rights.” Not everyone will agree with their second policy recommendation, that America “Act to prevent genocide and mass atrocities,” or the next one, that Washington “Pursue policies that protect people from the threat of terrorism . . . ” Ideally, American actions to prevent genocide and human-rights abuses would not require military action. Making them a priority would enlist international support and help countries everywhere internalize rules of behavior, and send a message that violating them could have consequences. For that, however, there really must be consequences. That includes international condemnation, economic sanctions and, as a final resort, the use of force. The authors of the human-rights paper correctly argue that a policy with a strong focus on human rights makes sense strategically. It’s an argument others, including Albright, have made many times before. When the United States stands for the dignity of individuals against the worst abuses of tyrants, it strengthens its moral core and it becomes a magnet for international support. Doing this is not always easy. It can create enormous practical dilemmas. Still, both Romney and Obama would do well to listen to this group’s advice.

#### The impact is global war

William W. Burke-White 4, Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University, Spring 2004, Harvard Human Rights Journal, 17 Harv. Hum. Rts. J. 249, p. 279-280

This Article presents a strategic--as opposed to ideological or normative--argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post-Cold War period [\*250] indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and global security.¶ Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression. n2 If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

#### Leadership solves extinction

Zhang and Shi 11 Yuhan Zhang is a researcher at the Carnegie Endowment for International Peace, Washington, D.C.; Lin Shi is from Columbia University. She also serves as an independent consultant for the Eurasia Group and a consultant for the World Bank in Washington, D.C., 1/22, “America’s decline: A harbinger of conflict and rivalry”, http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, many actors have bandwagoned with US hegemony and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, creating a status quo that has tended to mute great power conflicts. However, as the hegemony that drew these powers together withers, so will the pulling power behind the US alliance. The result will be an international order where power is more diffuse, American interests and influence can be more readily challenged, and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation. For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that a post-hegemonic world would return to the problems of the 1930s: regional blocs, trade conflicts and strategic rivalry. Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy. Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). A world without American hegemony is one where great power wars re-emerge, the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

#### Scenario Two: Legal Crises

#### Obama’s white paper defended due process for citizens, but executive implementation creates a legal disaster that wrecks due process – providing notice and opportunity is key

Feldman 13 (Noah, Professor of Constitutional and International Law – Harvard University, “Obama’s Drone Attack on Your Due Process,” Bloomberg, 2-8, <http://www.bloomberg.com/news/2013-02-08/obama-s-drone-attack-on-your-due-process.html>)

\*gender modified

The biggest problem with the recently disclosed Obama administration white paper defending the drone killing of radical clerk Anwar al-Awlaki isn’t its secrecy or its creative redefinition of the words “imminent threat.” It is the revolutionary and shocking transformation of the meaning of due process.

Fortunately, as seen during John Brennan’s confirmation hearing for Central Intelligence Agency director, Congress is starting to notice.

Due process is the oldest and most essential component of the rule of law. It goes back to the Magna Carta, when the barons insisted that King John agree not to kill anyone or take property without following legal procedures.

What they meant -- and what has been considered the essence of due process since -- is that the accused must be notified of the charges against him and have the opportunity to have his[\*/her\*] case heard by an impartial decision maker. If you get due process, you can’t complain about the punishment that follows. If you don’t get that opportunity, you’ve been the victim of arbitrary power.

Are U.S. enemies entitled to due process? Well, no -- not if they are arrayed against the country on the battlefield. In war, you don’t try the enemy. You kill him, preferably before he kills you. And if some of the Japanese troops at Guadalcanal had held U.S. citizenship, it wouldn’t have suddenly given them due process rights. If Awlaki was an enemy fighting on the battlefield, he wouldn’t have deserved due process while the fight was on. Off it, he should legally be like any other U.S. citizen, innocent until proven guilty.

Generous Idea

Yet, despite claiming that the Awlaki killing was justified because he was an operational leader of al-Qaeda, and thus in some sense an enemy on the battlefield, the white paper still assumes that due process applies to U.S. citizens abroad who adhere to the enemy. On the surface, this sounds plausible and even generous: Why not consider the possibility that a U.S. citizen abroad has some rights against being killed out of the blue?

In fact, though, applying due process analysis to Awlaki produces a legal disaster. The problem is, once you consider due process, you have to give it some meaning -- and the meaning you choose will cast a long shadow over what the term means everywhere else.

The white paper uses two Supreme Court cases to assess what process is due to an American about to be killed by a drone. The first, Mathews v. Eldridge, is a 1976 case in which the court held that the elaborate administrative processes necessary after a person lost his Social Security disability benefits were constitutionally acceptable even though there was no evidentiary hearing before the benefits were terminated. In that case, the court said that the process due could be determined by balancing the individual’s interest against the government’s.

The other case was 2004’s Hamdi v. Rumsfeld, where the court held that a detained enemy combatant -- in custody, not on the battlefield -- must receive “notice of the factual basis for his classification, and a fair opportunity to rebut the Government’s factual assertions before a neutral decision- maker.”

Astonishingly, the white paper follows its summary of these decisions with the bald assertion that a citizen outside U.S. territory can be killed if a high-level official determines that he poses an imminent threat, it would be unfeasible to capture him and the laws of war would otherwise permit the killing.

Never Explained

The non sequitur is breathtaking. Awlaki wouldn’t receive notice, the opportunity to be heard or a hearing before a decision maker. In other words, he would receive none of the components of traditional due process -- not even one. How the absence of due process could be magically transformed into its satisfaction is never stated or explained. All we get is the assertion that a target’s interest in life must be “balanced against” the government’s interest in protecting other Americans. On this theory, no due process would be due to those accused of murder, because their lives would have to be balanced against the government’s interest in protecting their potential victims.

#### Obama relies on internal review to legally say targeted killing meets due process – external review prevents manipulation of the law that weakens it in other areas

Powell 13 (Jeff, Professor of Law – Duke University School of Law, Former Member – Justice Department’s Office of Legal Counsel, Former Deputy Assistant Attorney, “Jeff Powell on Targeted Killing and Due Process,” Lawfare Blog, 6-21, <http://www.lawfareblog.com/2013/06/jeff-powell-on-targeted-killing-and-due-process/>)

There is much to admire in the speech President Barack Obama gave on May 23rd in which he gave us his views on “lethal, targeted action” against high ranking members of al-Qaeda and its allies, above all his acknowledgment that the “laws constrain the power of the President, even during wartime.” For all his speech’s virtues, however, Mr. Obama’s comments about one legal issue, due process, should disturb us deeply. In discussing his insistence “on strong oversight of all lethal action,” the President stated, “for the record,” that he “do[es] not believe it would be constitutional for the government to target and kill any U.S. citizen – with a drone, or a shotgun – without due process.” Mr. Obama had just referred to the killing of Anwar Awlaki, whose death was “the one instance when we targeted an American citizen,” and he plainly was not confessing constitutional error. There is no serious doubt, then, that the President thinks that the US government deprived Mr. Awlaki of his life with due process. Unfortunately, Mr. Obama’s discussion of that issue is fundamentally flawed in two ways: first, in his assumption that due process applies at all, and second, in his belief that the administration’s procedures satisfy due process.

The President’s blanket assertion that our government must always provide due process before killing a citizen may seem self-evident – after all, the Fifth Amendment demands that no person (not citizen!) shall be deprived of life, liberty or property without due process of law — but Mr. Obama was wrong nonetheless. Due process requires fairness in government’s dealings with those it governs; it simply does not apply to military decisions, in hostilities that Congress has authorized, about attacking members of enemy forces who are not under American control. Mr. Obama was not justifying the killing of Mr. Awlaki as an extrajudicial execution but as the elimination of a particular enemy officer in the field as an act of war. The Constitution imposes other constraints on presidential action in a time of war, but due process has no role in what the Supreme Court’s 2004 decision in Hamdi v. Rumsfeld termed “the Executive in its exchanges …with enemy organizations in times of conflict.”

If there is no constitutional due process requirement at all, why does it matter that Mr. Obama assumes that there is? Is there any real harm in putting forth a standard for meeting a burden that doesn’t exist? There is, because the President’s reasoning may undercut the meaning of due process in other circumstances where the constitutional requirement does apply.

From comments he and other officials have made, and from the Justice Department “White Paper” that was leaked earlier this year, what he had in mind seems clear: it is the “strong oversight” over targeting decisions that the President himself has mandated that he and his advisors believe satisfies the Constitution. The White Paper lays out the argument: the executive branch itself has provided a targeted US citizen due process because only high-level members of al-Qaeda and its allies are targeted, the decision to use lethal force is made by an “informed, high-level official of the U.S. government,” that official must determine that the potential target poses an “imminent threat of violent attack,” and it must not be feasible to capture the individual without excessive risk to the lives of American personnel or vital American interests. As the President put it, Mr. Awlaki “was continuously trying to kill people” as part of his role in al-Qaeda, and although Mr. Obama “would have detained and prosecuted Awlaki if we captured him before he carried out a plot … we couldn’t.”

I have no objection to the procedures that the White Paper outlines: indeed they are roughly the sort of careful decisionmaking that I would hope my government would employ in such a grave matter. (Whether our current practices of targeted killing are a wise or even moral policy overall is another question.) Nor am I criticizing the determination that Mr. Awlaki met the White Paper’s targeting criteria: I have no reason or inclination to doubt the President’s view of the facts. But the White Paper’s claim that these laudable procedures amount to due process is quite indefensible.

The White Paper (correctly) invoked the Hamdi v. Rumsfeld decision for the due process analysis that applies in the war against al-Qaeda, but its understanding of the Constitution’s requirements could hardly be more at odds with the discussion of “the central meaning of procedural due process” in Justice Sandra Day O’Connor’s lead opinion: “Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner,” and they must be heard by a “neutral and detached judge.” “These essential constitutional promises may not be eroded,” Justice O’Connor concluded, but the White Paper – and I think we can assume the President as well – apparently find these promises inapplicable in the context of targeted killings.

It takes only a moment’s reflection to see that the President’s laudable procedures for imposing “strong oversight” over targeting decisions are worlds apart from Hamdi’s “essential constitutional promises” – indeed, it is hard to imagine how a military decision about attacking an enemy combatant could be otherwise. Of course the White Paper does not propose that potential targets be given notice of the government’s possible interest in killing them. Of course it does not contemplate, much less require, that a targeted individual be heard at any time or in any manner as to why the government is mistaken about his identity or activities. Of course it does not provide for a neutral and detached decisionmaker to resolve any factual uncertainty: the ultimate decisionmaker here is the President in his capacity as commander in chief, who (we should hope) is not in the least neutral or detached in carrying out his responsibility for national security. Calling the executive’s own procedures the due process that is meant to check arbitrary executive decisions isn’t merely an erosion of the “essential constitutional promises” but their wholesale repudiation. If Mr. Awlaki was entitled to due process, then his killing violated the Constitution.

Since due process doesn’t apply to a US military decision, in a situation of actual and authorized hostilities, to attack a member of the enemy’s forces who is a legitimate target under the law of war, the Constitution was not in fact violated. But my concern here is to identify the patent error in the White Paper’s and the President’s thinking about due process, because that error is likely to confuse our thinking about the wisdom and morality of targeted killing. The decision to kill a known, identified human being is a brutal one, the action of doing so is ugly to think about, even apart from the fact that sometimes other people die (as Mr. Obama acknowledged with sorrow). This brutality and ugliness are part of the grim reality of war. When we pretend to ourselves that our procedures for making such decisions satisfies the constitutional requirements of due process, we cast a veil of civility and even humanity over something that is inherently violent and dehumanizing.

I am not a pacifist, and I accept that the brutality of war is sometimes unavoidable. But the law’s antiseptic language about the weighing and balancing of interests according to “the traditional due process analysis” that supplies the legal “framework for assessing the process due a U.S. citizen” (I quote from the White Paper) masks, in a deeply misleading fashion, the brutality, the terror and the violence of war – even if we are right to conclude that we should take lethal action against our enemies. It serves no good purpose for the President and his advisors, or for any of us as citizens, to pretend that targeted killing is or can be anything other than the brutality it is.

The problem with the President’s constitutional error is not limited to its power to confuse our thinking about the reality of targeted killing. Once a legal argument gains legitimacy in the courts, or among executive officials, or in public discussion, it tends to expand beyond its original boundaries – the intellectual habits of lawyers and the traditional legalism of American public debate make this almost inevitable. By dint of repetition if nothing else, the claim that the executive’s own internal cogitations can amount to constitutional due process threatens to acquire the sort of legitimacy that will tempt future lawyers, and future Presidents, to apply it in other contexts. During World War Two, Justice Robert Jackson rejected the government’s argument that it was constitutional to intern US citizens purely on the basis of their Japanese ancestry because the decision rested on the executive’s claim of military necessity. Jackson didn’t propose that the courts interfere with the military’s actions, but he vigorously objected to anyone rationalizing the decision as constitutional. Accept that conclusion, Jackson wrote, and “[t]he principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.” The same worry applies to the President’s rewriting of what due process requires. Neither Mr. Obama nor anyone else can foresee or prevent future claims that we must turn the idea of due process on its head because of some perceived need to do so. The President and his advisors should rethink the White Paper’s faulty reasoning, and we should all keep in view the difference between “the essential constitutional promises” due process embodies, and the modes of military decision that our government employs in waging war.

#### Independently – culminates in misuse of drones in Mexico

Sager and Schneider 13 (Josh and Dan, Writers – The Boston Occupier, “America’s Dangerous Drone Precedent: A Secret and Unaccountable Program of Targeted Killings,” Progressive Cynic, 1-29, <http://theprogressivecynic.com/2013/01/29/americas-dangerous-drone-precedent-a-secret-and-unaccountable-program-of-targeted-killings/>)

In addition to their use as a tool in extrajudicial assassination, drones are quickly becoming a hot-ticket item for government agencies that want to conduct surveillance. U.S. Customs and Border Protection currently operates nine drones, using them for border and drug trafficking surveillance; Homeland Security has used them to support FEMA during disaster relief operations; and the Seattle Police Department recently caused a stir when the Mayor and City Council found out that they were operating a pair of surveillance drones.

Support for laissez-faire regulation of this new industry is likely to find a home in the new Congress. Changes between the 112th and 113th sessions haven’t done much to alter the makeup of the House Unmanned Systems Caucus, a bipartisan group of Representatives that collectively received over $8 million in campaign donations from drone manufacturers during the 2012 elections. In early 2012, the “drone caucus” was instrumental in shaping the Federal Aviation Administration Authorization Act (FAAAA), a law passed annually to approve funding for the FAA. This year’s FAAAA contained a special section addressing unmanned aerial vehicles, and specifically requests that both representatives of the aviation and drone industries have a say in crafting how drones are deployed within the country.

This kind of private-public partnership strengthens as the use of drones for surveillance and war around the world increases, and will surely have a strong influence over which countries will have access to this technology, and will set the terms for how it is used. A September study released by NYU and Stanford pointed out the dangers in allowing drone use to spread without a legal framework for their sale and use.

When it comes to them being as a tool of war, researchers ominously noted that:

“US practices may also facilitate recourse to lethal force around the globe by establishing dangerous precedents for other governments. As drone manufacturers and officials successfully reduce export control barriers, and as more countries develop lethal drone technologies, these risks increase.”

Three months into the Afghanistan War, Ali Qaed Sinan al-Harithi and five others (including a U.S. citizen) became the first six fatalities of the U.S. drone program. Not in Afghanistan, however, but in Yemen. In 2001, the U.S. justified the strikes similarly to how Israel, during the First Intifada, justified its own “targeted killing” program. The U.S. said that because Harithi could not possibly be arrested, and was alleged to be a member of al-Qaeda, it was legal to kill him because the U.S. was “at war” with terrorism and this conflict justified ignoring the sovereignty of another state.

Without the constraint of an enforceable international law, there may be too few barriers in place to stop other nations from exploiting the same loopholes that the U.S. has to kill members of groups they deem ‘terrorists’—say, Mexican drug cartels or the Free Syrian Army—but their own citizens, as well. Seen in this light, the assassinations of Harithi, Awlaki, and thousands of others are not mere casualties of short-term war; they are the first dead in new breed of globalized warfare, bound only by feasibility and the size of one’s defense budget.

#### That will destroy relations

News 7-24 (Mexico’s News Service, “US, Mexico talk bilateral security,” 7-24, <http://www.thenews.com.mx/index.php?option=com_content&view=article&id=12173&Itemid=276>)

Delegates from Mexico and the U.S. met near the countries’ border on Tuesday to discuss security and immigration issues. Mexican Interior Secretary Miguel Ángel Osorio Chong held talks with counterpart Janet Napolitano at the U.S.-Mexico Binational Meeting in Tamaulipas.

 The meeting took place behind closed doors, and delegates did not share details on any outcomes. Osorio Chong said in his twitter account prior to the meeting that the Mexico and the U.S. “share a vision of a dynamic and secure border, implicating a shared responsibility.” Border security has been hotly discussed in both countries since the U.S. Senate passed an immigration reform bill that would see border security tightened and the estimated 11 million undocumented immigrants living in the U.S. given a path to citizenship.

 Mexico’s relationship with the U.S. has been under the spotlight after former President Felipe Calderón was accused of allowing U.S. agencies conduct surveillance operations in Mexico, causing uproar among the Mexican public. President Enrique Peña Nieto said that if found to be true, the operations would have been “totally unacceptable.” The U.S. is also known to have flown surveillance drones over Mexico in the fight against organized crime.

#### The impact is extinction

Selee and Wilson, 12- Andrew Selee is Vice President for Programs and Senior Advisor to the Mexico Institute and Christopher Wilson is an associate with the Mexico Institute, (Andrew and Christopher, Wilson Center, November 2012, [http://www.wilsoncenter.org/sites/default/files/a\_new\_agenda\_with\_mexico.pdf)](http://www.wilsoncenter.org/sites/default/files/a_new_agenda_with_mexico.pdf%29//sawyer)

The depth of economic ties with Mexico, together with declines in illegal immigration and organized crime violence in Mexico, Open up an opportunity for U.S. policymakers to deepen the economic relationship with Mexico and to engage Mexico more on major global issues. Security cooperation, especially strengthening institutions for rule of law and disrupting money laundering, will remain important to the relationship, and there are clear opportunities to reform the U.S. legal immigration system over the next few years, which would have important implications for the relationship with Mexico. The strongest engagement, going forward, is likely to be on the economic issues that can help create jobs for people on both sides of the border, and on the shared global challenges that both countries face. Few countries will shape America’s future as much as Mexico. The two countries share a 2,000 mile border, and Mexico is the second largest destination for U.S. exports and third source of oil for the U.S. market. A quarter of all U.S. immigrants are from Mexico, and one in ten Americans are of Mexican descent. Joint security challenges, including both terrorist threats and the violent operations of drug cartels, have forced the two governments to work more closely than ever. What’s more, cooperation has now extended to a range of other global issues, from climate change to economic stability. Nonetheless, the landscape of U.S.-Mexico relations is changing. and organized crime violence, which has driven much of the recent cooperation, is finally declining. Violence will remain a critical issue, but economic issues—bilateral and global—have risen to the fore as both countries struggle to emerge from the global slowdown. Trade has increased dramatically, connecting the manufacturing base of the two countries as never before, so that gains in one country benefit the other. To keep pace with these changes, U.S. policymakers will need to deepen the agenda with Mexico to give greater emphasis to economic issues, including ways to spur job creation, and they will have opportunities to strengthen cooperation on global issues. Security cooperation will remain critical, and determined but nuanced followthrough to dismantle the operations of criminal groups on both sides of the border will be needed to continue the drop in violence. With less illegal immigration, it will be easier to address legal migration in new ways. However, economic issues are likely to dominate the bilateral agenda for the first time in over a decade. Strengthening economic ties and creating Jobs In most trading relationships, the U.S. simply buys or sells finished goods to another country. However, with its neighbors, Mexico and Canada, the U.S. actually co-manufactures products. Indeed, roughly 40 percent of all content in Mexican exports to the United States originates in the United States. The comparable figures with China, Brazil, and India are four, three, and two percent respectively. Only Canada, at 25 percent, is similar. With the economies of North America deeply linked, growth in one country benefits the others, and lowering the transaction costs of goods crossing the common borders among these three countries helps put money in the pockets of both workers and consumers. Improving border ports of entry is critical to achieving this and will require moderate investments in infrastructure and staffing, as well as the use of new risk management techniques and the expansion of pre-inspection and trusted shipper programs to speed up border crossing times. Transportation costs could be further lowered — and competitiveness further strengthened — by pursuing an Open Skies agreement and making permanent the cross-border trucking pilot program. While these are generally seen as border issues, the benefits accrue to all U.S. states that depend on exports and joint manufacturing with Mexico, including Michigan, Ohio, Nebraska, Iowa, South Dakota, New Hampshire, and Georgia, to name just a few. Mexico also has both abundant oil reserves and one of the largest stocks of shale gas in the world. The country will probably pursue a major energy reform over the next couple years that could spur oil and gas production, which has been declining over the past decade. If that happens, it is certain to detonate a cycle of investment in the Mexican economy, could significantly contribute to North American energy security, and may open a space for North American discussions about deepened energy cooperation Reinforcing Security cooperation Organized crime groups based in Mexico supply most of the cocaine, heroin, and methamphetamines, and some of the marijuana, to U.S. consumers, who, in return, send six to nine billion dollars to Mexico each year that fuels the violence associated with this trade. The U.S. and Mexican governments have significantly improved intelligence sharing, which has helped weaken many of these criminal networks and disrupt some of their financial flows. At the same time, the congressionally funded Merida Initiative, which has provided $1.6 billion to Mexico for national and public security since 2008, has been successfully strengthening the Mexican government’s capacity and rule of law institutions. These efforts appear to be yielding some success as violence has dropped noticeably since mid-2011. Going forward, the two countries will need to do more to disrupt the southbound flows of illegal money and weapons that supply the criminal groups, strengthen communities under the stress of violence, and improve the performance of police, prosecutors, and courts in Mexico. In many ways, Mexico has been successful at turning a national security threat into a public security threat, but the country now requires significant investment to create an effective and accountable criminal justice system and to slow the flow of illegal funds from the U.S. that undermine these efforts. As Mexico’s security crisis begins to recede, the two countries will also have to do far more to strengthen the governments of Central America, which now face a rising tide of violence as organized crime groups move southward. Mexico is also a U.S. ally in deterring terrorist threats and promoting robust democracy in the Western Hemisphere, and there will be numerous opportunities to strengthen the already active collaboration as growing economic opportunities reshape the region’s political and social landscape managing Legal migration flows Since 2007, the number of Mexican migrants illegally entering the United States has dropped to historically low levels, with a net outflow of unauthorized immigrants from the U.S. over the past three years. The drop is partially because of the weak U.S. economy, but it also has to do with more effective U.S. border enforcement and better economic opportunities in Mexico. This shift offers the potential for both countries to explore new approaches to migration for the first time in a decade In the United States, policymakers have an opportunity to look specifically at how to reform the legal immigration system. Almost all sides agree that the current immigration system, originally developed in the 1960s, fails to address the realities of a twenty-first century economy. A renewed discussion on this issue could focus on how to restructure the U.S. visa system to bring in the kinds of workers and entrepreneurs the United States needs to compete globally in the future. This includes both high-skilled and lowerskilled workers, who fill important gaps in the U.S. economy. Policymakers should consider whether those already in the United States, who have set down roots and are contributing effectively to the economy and their communities, might also be able to apply through a restructured visa system. Mexican policymakers, on the other hand, have huge opportunities to consolidate Mexico’s burgeoning middle class in those communities where out-migration has been a feature of life so as to make sure that people no longer need to leave the country to get ahead. There are a number of ambitious efforts, including some led by Mexican migrants that can serve as models for this. Mexican policymakers could also facilitate U.S. reform efforts by indicating how they could help cooperate with a new U.S. visa system if the U.S. Congress moves forward on a legal immigration reform. Addressing Major Global Issues With Mexico Over the past few years, the U.S. and Mexican governments have expanded beyond the bilateral agenda to work closely together on global issues, from climate change to international trade and the economic crisis. The U.S. government should continue to take advantage of the opportunities this creates for joint problem-solving. Mexico’s active participation in the G-20, which it hosted in 2012, and in the U.N. Framework on Climate Change, which it hosted in 2010, have helped spur this collaboration, and the recent accession of Mexico into the Trans-Pacific Partnership negotiations provides one obvious avenue to continue it. The two countries also coordinate more extensively than ever before on diplomatic issues, ranging from the breakdown of democratic order in Honduras to Iran’s nuclear ambitions. Mexico is likely to play an increasingly active role on global economic and environmental issues, areas where the country has significant experience, and through cooperative efforts the U.S. can take advantage of Mexico’s role as a bridge between the developed and developing worlds, and between North America and Latin America. The bilateral agenda will remain critically important —and the increasingly deep integration of the two economies and societies means that efforts on trade, security, and migration will remain vital for the future of both countries. In addition, the maturation of the bilateral relationship means that it may one day resemble that between the United States and Canada, in which global issues can be as important as the strictly bilateral issues. A balanced and wide-ranging U.S.-Mexico agenda—one that seeks creative and collaborative approaches on topics ranging from local gangs to global terrorist networks and from regional supply chains to international finance—promises significant mutually beneficial results in the coming years. Key Recommendations Work together with Mexico and Canada to strengthen regional competitiveness and to grow North American exports to the world. Economic issues can drive the next phase in deepening U.S.-Mexico cooperation. Investments in trusted shipper programs, pre-inspection programs, and enhanced border infrastructure will be crucial. Deepen support for Mexico’s criminal justice institutions, and strengthen U.S. antimoney laundering efforts in order to combat organized crime and violence. Reform the legal immigration system to ensure U.S. labor needs are met for both high-skilled and low-skilled workers, and incorporate those who are already contributing to the U.S. economy and their communities. Engage Mexico more actively on hemispheric and extra-hemispheric foreign policy issues, ranging from terrorism to international trade and finance, as Mexico’s role as a global power grows.

#### India models US due process reforms

Mate, ‘10

[Manoj, “The Origins of Due Process in India: The Role of

Borrowing in Personal Liberty and Preventive

Detention Cases,” Berkeley Journal of International Law, v. 28, no. 1, <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1381&context=bjil>]

How did the Indian Supreme Court overcome the lack of a due process clause, a prolix Constitution designed to limit the power of the Court and a legacy of positivism and parliamentary sovereignty inherited from British rule to develop a doctrine of due process? As previous scholars have noted, the Constituent Assembly designed the Indian Court to be a relatively weak institution in a system in which the parliament and the executive were supreme,3 and most justices of the Court in its early years operated in the British traditions of legal positivism and deference to Parliament.4 Leading scholarship on Indian law highlights the significant shift from a more formal, positivist interpretive approach to the Indian Constitution, exemplified by the Court's decision in Gopalan v. State of Madras (1950), to the more expansive approach adopted by the Indian Court in Maneka Gandhi v. Union of India (1978) in which the court adopted an activist approach to interpreting the fundamental rights and effectively created new doctrines of due process and nonarbitrariness. 5 What the literature highlighted as groundbreaking in Maneka Gandhi was the court's recognition of "an implied substantive component to the term "liberty" in Article 21 that provides broad protection of individual freedom against unreasonable or arbitrary curtailment."6 However, this Article analyzes how the Court's use of foreign precedent underwent a fundamental transformation in a line of cases preceding Maneka, which helps to account for the development of substantive due process in the specific area of preventive detention and personal liberty. Thus, the Maneka Gandhi decision cannot be understood as a sudden, synoptic change. Rather, I contend that the move toward substantive due process was a gradual one, in which universalist approaches gradually overcame particularist ones, through close analysis of a series of key decisions involving personal liberty: Gopalan v. State of Madras (1950), Kharak Singh v. State of Punjab (1964), Govind v. State of Madhya Pradesh (1975), and Maneka Gandhi v. Union of India (1978). This Article specifically examines how the Indian Supreme Court used U.S. and foreign precedent in its interpretation of the right to life and liberty contained in Article 21 of the Indian Constitution, examining the role of judicial borrowing in the Court's move toward more expansive, substantive interpretive approaches. 7 It then considers several explanatory factors that help shed light on this shift in the Court, including: an emphasis on "borrowing" of American and other foreign legal precedents and norms, institutional changes in the Court, and direct American influence in the development of Indian law, changes in the education, training and background of judges, and finally the changed political environment and context of the post-Emergency period (1977-1979) in India.

#### That's key to their Constitutional model—they have a strong judiciary, but this determines their democratic credentials

Mehta, 7

[Pratap Bhanu, president -- the Centre for Policy Research, New Delhi, “India’s Unlikely Democracy: The Rise of Judicial Sovereignty,” Journal of Democracy, v. 18, no. 2, http://www.journalofdemocracy.org/articles/gratis/Mehta-18-2.pdf]

The Indian Supreme Court’s chief duty is to interpret and enforce the Constitution of 1950. Running to more than a hundred-thousand words in its English-language version, this document is the longest basic law of any of the world’s independent countries. It contains, at latest count, 444 articles and a dozen schedules. Since its original adoption, it has been amended more than a hundred times, and now fills about 250 printed pages. It is fair to say that the Supreme Court, operating under the aegis of this book-sized liberal constitution, has by and large played a significant and even pivotal role in sustaining India’s liberal-democratic institutions and upholding the rule of law.1 The Court’s justices, who by law now number twenty-six, have over the years carved out an independent role for the Court in the matter of judicial appointments and transfers, upheld extensive judicial review of executive action, and even declared several constitutional amendments unconstitutional. The Court upon which they sit is one of the world’s most powerful judicial bodies, and yet precisely because of this its career has been and remains shadowed by irony and controversy, with implications for democracy that are both positive and problematic. A simple issue-wise scorecard of the Court’s contribution to maintaining liberty and the rule of law might begin by noting that the Court has generally upheld basic freedoms associated with liberal democracy, albeit with some glaring exceptions. The Court has a relatively weak record when it comes to questioning executive action in cases of preventive detention. While the Court has generally upheld the right to free expression, it has given the state more leeway in banning books—particularly those held to offend religious sensibilties—that officials fear may threaten public order. During the period of emergency rule declared at the instigation of Prime Minister Indira Gandhi from June 1975 to March 1977, the Supreme Court shrank from its duty and—in a now universally condemned decision— chose supinely to concur with the executive’s suspension of the writ of habeas corpus. Besides protecting the basic liberties that put the “liberal” in India’s liberal democracy, the Court has helped to ensure the polity’s democratic character by safeguarding the integrity of the electoral process. The Court has acted to curb the central government’s tendency to misuse Article 356 as a pretext to sack elected state governments and install “president’s rule” instead. Supreme Court interventions have also promoted democratic transparency by making political candidates meet fuller norms of disclosure. The Supreme Court’s record in promoting decentralized governance is mixed. On the one hand, the Court has ensured the integrity of Indian federalism by pronouncing that the central government cannot dismiss a state government without a high threshold of public justification. On the other hand, courts across the country have been less receptive to the claims of lower tiers of government against state governments. The Supreme Court has so far proven unable to clarify the law in this area. While the social and economic rights that the Constitution lists were not at first deemed justiciable, the Supreme Court has managed over the years to apply a more substantive conception of equality that justices have used to uphold rights to health, education, and shelter, among others. To one degree or another, the executive branch has responded by at least trying to make provisions for the guarantee of these rights. The Court’s greatest judicial innovation—and the most important vehicle for the expansion of its powers—has been its institution of Public-Interest Litigation (PIL). In PIL cases, the Court relaxes the normal legal requirements of “standing” and “pleading,” which require that litigation be pressed by a directly affected party or parties, and instead allows anyone to approach it seeking correction of an alleged evil or injustice. Such cases also typically involve the abandonment of adversarial fact-finding in favor of Court-appointed investigative and monitoring commissions. Finally, in PIL matters the Court has expanded its own powers to the point that it sometimes takes control over the operations of executive agencies. The PIL movement has allowed all kinds of public-interest matters to be heard, and given hundreds of poor people a route by which to approach the Court. While PIL cases to date have had mixed success at shrinking poverty or correcting injustices, the provision of a forum to which citizens marginalized by the corruptions of routine politics can turn has arguably given serious moral and psychological reinforcement to the legitimacy of the democratic system. In the Shadow of Irony The Indian Supreme Court’s undeniable contributions to democracy and the rule of law, to say nothing of its reachings for power in service of these aims, are shadowed by three profound ironies. First, even as the nation’s most senior judicial panel engages in high-profile PIL interventions, routine access to justice remains extremely difficult. India’s federal judicial system has a backlog of almost twenty million cases, thousands of prisoners are awaiting trial, and the average time it takes to get a judgment has been steadily increasing. There is a saying in India that you do not get punishment after due process—due process is the punishment.

#### Key to Asian political and economic stability

Chadda, ‘8

[Maya, professor of political science -- William Patterson University, research fellow, Southern Asia Institute -- Columbia University, Winter, “Human Rights and Democracy in India's Emerging Role in Asia,” <http://csis.org/files/media/csis/pubs/090201_bsa_chadda.pdf>]

The “Look East” policy suggests that New Delhi is actively globalizing its diplomatic leverage and deploying military power to buttress diplomacy. India is Asia’s third largest economy after Japan and China and has entered into numerous free trade agreements with East Asian economies, including a comprehensive economic cooperation agreement with Singapore and an early harvest scheme with Thailand. It is also negotiating similar agreements with Japan, South Korea, and ASEAN. In turn, Japan, South Korea, and Singapore have invested large amounts of funds into India's infrastructure development.28 **What role can India’s democratic credentials play in Asia’s emerging security environment?** While India is reluctant to promote democratic forces in Myanmar (for fear of losing advantage to China), it is willing to participate in constructing a grand narrative that will secure its forward thrust in Southeast Asia. In his speech before a joint session of India's parliament in August 2007,Japanese Prime Minister Shinzo Abe talked about common interests among of democratic states such as India, Japan and the United States. He included India in a "broader Asia" that would span "the entirety of the Pacific Ocean, incorporating the United States and Australia." This was undoubtedly an invitation to India to participate in building a normative and security architecture for Asia but in its subtext it is also a subtle warning to Beijing that a China-centered Asia would not be countenanced by the “democratic” states in Asia. Abe noted that these states comprise as "Arc of Freedom and Prosperity" of "like-minded countries" that "share fundamental values such as freedom, democracy and respect for basic human rights as well as strategic interests." Shinzo Abe is the third successive Japanese prime minister to visit India after Yoshiro Mori in 2000 and Koizumi in 2005. Manmohan Singh's 2006 visit culminated in signing of the "joint statement Towards Japan-India strategic and Global Partnership."29 India can make significant security contributions to the alliance of “democratic” states envisaged in Premier Abe’s speech. This has been steadily demonstrated in the joint naval exercises with Singapore since 1993, with Vietnam in 2000, and with Indonesia in the Andaman Sea. The Malabar CY 07-2 naval exercises in the Bay of Bengal held in September 2007 brought the navies of Japan, United States, Australia, and India together in a well advertised, large-scale exercise. The joint statement by the Japan, United States, and Australian governments spoke of "a partnership with India to advance areas of common interests and increase cooperation, recognizing that India's continued growth is inextricably tied to the prosperity, freedom and security of the region." Not coincidentally the first four power talks occurred at the same time that the ASEAN Regional Forum (ARF) meeting was held in Manila. Similar discussions about promoting India in regional forums were conducted when President Bush, Japanese Prime Minister Abe, and Australian Prime Minster Howard met at the 2007APEC meeting in Sydney. Conclusion Asia’s political alignments are in flux, but at least three broad security futures can be envisaged. Democratic India can play an important part in each future although each will engage India differently and to a different degree. The first is a region divided along an opposite axis, a kind of Asian bipolar order in which the United States and China constitute the opposing poles. This future assumes hardened Westphalian inter-state relations and a more blatant game of “real politick” in forging alignments. The second hypothetical future revolves around an entente of great powers, a group of leading states that strive to keep order and preserve peace by rewarding those who toe the line and punish those who deviate from it. Although the Concert of Europe (following the Congress in Vienna) comes to mind as a historic analogy, its applicability to contemporary Asia remains limited. The concert of Europe presumed an external state – England – could throw in its weight to restore balance and deter potential aggressors. No such power is on the horizon in Asia at least in the foreseeable future. Only the United States can balance a powerful China; and only China can challenge the United States in Asia. But both these states would also be the leaders of their respective clusters in the second scenario. The third future is akin to the order founded on the38 1975 Helsinki agreement in Europe that established a normative consensus(claimed by 35 States in Europe as a universal guide to international relations). The Helsinki consensus does not legitimize an uneven distribution of power or at least it is not meant to do so. Nor is it a front to secure hegemony of any single state. It is meant to be an open-ended order admitting revisions, inclusion, amendment, and extension based on democratic consensus. The steady incorporation of Eastern European states to the European Union underscores the flexibility of the otherwise “value-based” Helsinki consensus. India benefits least from the first scenario of a bipolar, divided Asia although it will be regarded an attractive prize by those competing for influence and markets in Asia. The objective of “strategic autonomy” will by definition confine India to the margins of a bipolar Asia. India’s current dilemma in dealing with China can only worsen in a divided Asia. Joining an anti-China alliance is sure to provoke Beijing; not joining an alliance will mean isolation. As in the days of Cold War, India’s democratic credentials will have a limited role to play in the first future. But the first future does not seem likely because neither Japan nor the United States wish to push China into a corner. In the second future, democracy and human rights do not become a means to exclude and punish recalcitrant regimes. Rather, it instead becomes instead an invitation to peacefully integrate into the new normative order and its rules of conduct. The Japanese proposal to build an “arc of freedom” or a “value based alliance” is an attempt to construct a grand narrative for such a collective order. It has39 the immediate purpose of preempting the moral high ground and inviting China to join in the common platform, which automatically rules out expansionist or destabilizing policies. Supported by a strategic alliance, the “arc of freedom” would enable powerful democratic states – the United States, Japan, India, Australia – to define a common set of interests such as freedom of international seas, protection of the environment, the war against terrorism, and open access to Asian markets, but it would also seek to prevent domination of Asia by China. The fact that no country has yet acted on it forcefully is testimony to the power of China and the uncertainty it has sown about the goals it is meant to serve. But a multi-polar Asia best serves India’s interests as long as it does not become blatantly anti-Chinese or a front for promoting exclusive U.S. interests. The possibility of creating an Asian Helsinki is remote given the force of nationalism and spread of ethnic conflicts across Asia’s borders. There is no regional consensus on how to deal with separatist nationalities nor is there a possibility of arriving at one in the near future. India would find it extremely difficult to accept external guidelines while it deals with its own ethnic separatism in its Northwest and Northeast. Should such an order ever become a reality, **India’s democratic voice would assume immense importance**. Among the three futures outlined above, the second future best fits India’s current and midterm security concerns. During his recent visit to Japan, Prime Minister Manmohan Singh suggested that the time has come for Japan and India, "our two ancient civilizations to build a40 strong contemporary relationship involving strategic and global partnership" and the "most important area in which we can build this partnership isin the field of knowledge economy." He was less reticent in stressing India’s exceptional achievement as a developing democracy. "If there is an “idea of India” by which India should be defined,” he said, "it is the idea of an inclusive, open, multi-cultural, multi-ethnic, multi-lingual society...(we) have an obligation to history and mankind to show that pluralism worked. Liberal democracy is the natural order of political organization in today's world. All alternate systems, authoritarian and majoritarian in varying degree, are an aberration."30 Prime Minister Singh explicitly linked for the first time the Indian model of democracy to an alliance of democratic states in Asia; he saw it as India’s obligation to reject authoritarian alternatives to prosperity. In diplomatic parlance, this was a pointed reference to India as the alternative to China. As an authoritarian state, China could not become a core country in the proposed order For Asia. India’s preferred grand narrative is then distinctly different from the one China might construct. Indian leaders remain anxious not to get ahead of the current developments in this regard; they are keenly aware nevertheless of the advantages in establishing a loose alliance of democracies. What is more, their ability to back it up has expanded substantially with the rapid growth in India’s economic and military power.

#### Nuclear war

Christopher P. **Twomey**, January 20**11**; Assistant Professor of National Security Affairs at the Naval Postgraduate School in Monterey, California, and a Research Fellow of the National Asia Research Program; Asia's Complex Strategic Environment: Nuclear Multipolarity and Other Dangers, Asia Policy Number 11, January 2011, Mirlyn

Ongoing changes in traditional state-to-state nuclear dynamics are reshaping international security in Asia. Today, Asia is a multipolar nuclear environment in which long-range nuclear weapons are joined by other systems with strategic effect, and in which countries hold different views about the role and utility of nuclear weapons. This article discusses the implications of these shifts from the Cold War to the present for several guises of stability, on the one hand, and for competition and conflict, on the other. Though each of these considerations leads to dangerous outcomes in isolation, their combined effect is even more deleterious. The implications of this analysis are deeply pessimistic, both for peace in general and for U.S. national security interests in particular. Policy Implications • Asia is likely to see vigorous competition in the strategic arena, ranging from increased offensive nuclear weapons to the development of advanced conventional offensive munitions and missile defenses. These technologies will likely continue to spread. • Competition between Asian states is likely to lead to increased reliance on nuclear threats, bluster, and statecraft. **This will erode any "nuclear taboo" and will increase the chance of nuclear weapons detonation**. • Arms control is unlikely to substantially mitigate any of these concerns in the current environment. • Given the pessimistic factors outlined above, **increased understanding across states** of how each sees the utility of nuclear weapons **will be extremely beneficial**. • Missile defenses systems make, on balance, a positive contribution to regional security; nevertheless, their negative implications should be addressed through judicious use of transparency about nontechnical aspects of the systems. • Expansive national security goals such as regime change should be abandoned, given the potential for catastrophic nuclear escalation. [End Page 52] The Cold War continues to constrain thinking about nuclear issues. In the first 20 years of the Cold War, a dynamic nuclear environment posed great risks of truly catastrophic war. Yet by the end of the 50 years of bipolar rivalry, many argued that nuclear weapons had stabilized Soviet-U.S. relations. Traditional deterrence theory, with its emphasis on calculating rationality, seemed to contribute to Americans' understanding of world events. Certainly the latter years of the rivalry saw the rise of arms control efforts within and beyond the nuclear arena that facilitated the end of the Cold War. Throughout that period, the two primary nuclear powers developed sophisticated national security apparatuses with an increasingly deep understanding of the efficacies and dangers of nuclear weapons. Few of these factors speak to the nuclear environment in Asia today. It is increasingly clear that the second nuclear age is upon us.1 Much work on this epochal shift focuses both on the role of asymmetry in nuclear balances and on the role of nonstate actors.2 Indeed, some analysts characterize this situation in pejorative terms: an advanced set of nuclear "haves" declaring less developed latecomers to be the primary source of danger in the nuclear order smacks of hypocrisy and Orientalism.3

### Plan

#### The United States Federal Government should grant limited jurisdiction to a federal court that prohibits targeted killings of individual United States citizens when, after being afforded notice and opportunity as well as defense from an independent public advocate, it is determined that the target is not a senior member of Al Qaeda or associated force.

### Solvency

#### SOLVENCY!

#### Unchecked targeted killing is the largest violation of due process --- external review key

McKelvey, 11 (Benjamin, JD Candidate, Senior Editorial Board – Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>)

IV. CHALLENGING THE CONSTITUTIONALITY OF TARGETED KILLING: A CLEAR VIOLATION OF DUE PROCESS The President’s supposed authority to conduct targeted killings of Americans is highly questionable.119 Moreover, the DOJ’s argument that targeted killing is a political question within executive discretion inaccurately portrays the judiciary’s power to review broader questions of law.120 Yet in addition to these compelling objections to the legal underpinnings of targeted killing authority, targeted killing likely violates existing law as well.121 Targeted killing is a unilateral government execution that completely circumvents traditional notions of law enforcement and violates even minimum notions of established due process.122 A. How Due Process Rights Are Determined Despite the fact that Aulaqi was hiding in Yemen, the Fifth Amendment still protected him. The Supreme Court has held that Americans enjoy the same constitutional protections abroad as in American territory, unless the application of the Bill of Rights would prove “impracticable and anomalous.”123 The rationale for this principle is that although Americans are not completely without constitutional protections abroad, it may not always be feasible to ensure all of these protections.124 The application of the Bill of Rights abroad must take into account “the particular circumstances, the practical necessities, and the possible alternatives” of the situation at hand.125 Analyzing Aulaqi’s Fifth Amendment rights is especially complex given the many political, economic, and security problems in Yemen at the time of his killing.126 The Fifth Amendment provides, in part, that no American may be “deprived of life, liberty, or property, without due process of law.”127 The case of Anwar al-Aulaqi implicates procedural due process because the plaintiff’s complaint alleges that the government is attempting to deprive Aulaqi of life without any formal presentation of the charges against him or an opportunity to protest these charges at a hearing before an impartial judge.128 The Supreme Court uses a balancing test for determining the level of due process in different contexts.129 This balancing test has three factors: the private interest that will be affected by a deprivation, the risk of an erroneous deprivation by the procedural method in question, and the government interests involved.130 Aulaqi’s case represents a collision of the first and third factors.131 The deprivation in question was Aulaqi’s life, the most serious deprivation in law.132 In the case of judicial error or procedural shortfall, property can be returned and liberty can be restored, but the deprivation of life is permanent. However, the government’s interest in protecting American citizens from the unrelenting threat of terrorism is also compelling.133 The exigencies involved in combating terrorism require decisive action and safeguards for intelligence sources that help identify threats.134 Under such extraordinary circumstances, the time and resources involved in satisfying procedural due process rights might also serve to inadvertently amplify specific threats of terrorism.135 The purpose of the Fifth Amendment, however, is to provide protections for citizens, not to increase the power of government or to ease the burden of government agencies under exigent circumstances.136 Given this constitutional purpose and the unique importance of life as a civil liberty, it is clear that Aulaqi is owed at least the minimum form of due process protection. B. A Comparative Perspective: The Due Process Rights of Detainees The position that minimum due process protections are required in Aulaqi is a natural extension of the holding in Hamdi v. Rumsfeld. In Hamdi, the Supreme Court held that the government may not indefinitely detain a citizen without providing some form of procedural due process.137 Yaser Hamdi was an American captured in Afghanistan in 2001 and turned over to U.S. authorities during the invasion of Afghanistan.138 He was initially held at the detention facility in Guantanamo Bay, but was transferred to military holding brigs in Virginia and South Carolina after the military learned that he was an American.139 Originally, President George W. Bush claimed the authority to hold Hamdi as an enemy combatant caught within a theatre of war.140 As an enemy combatant, Hamdi was not entitled to any procedural rights such as the right to an attorney or access to a federal court.141 However, the Eastern District of Virginia granted next-friend standing to his father, and that court subsequently found the evidence against Hamdi insufficient to support his detention.142 The Fourth Circuit reversed, citing the broad wartime powers designated to the president under Article II of the Constitution and the infringement on executive power that would occur if judicial review proceeded in this case.143 Hamdi’s father appealed the reversal of the Fourth Circuit and the Supreme Court granted certiori.144 Although the Court did not reach a majority opinion in its decision, a plurality of Justices agreed that the Executive Branch does not have the power to detain an American citizen indefinitely without providing some basic due process protections.145 A majority of Justices agreed that Hamdi had the right to challenge his detention.146 Because it is a plurality opinion, the extent of the due process protections required in a federal detention scenario is unclear.147 But the basic principle of Hamdi is that the Executive does not have the authority to detain an American citizen without some form of due process.148 If elements of due process are required when the government deprives an American of liberty, is it not logical to conclude that the government must also satisfy due process when depriving an American of life? This is a natural extension of the Hamdi holding, especially because a deprivation of life must be treated more seriously and carefully than a deprivation of liberty.149 Not only is the Hamdi holding a natural theoretical cousin of Aulaqi, but the legal analysis is also similar. In its brief in response to the Aulaqi complaint, the DOJ made several arguments that echo the overturned Fourth Circuit’s arguments in Hamdi: judicial review represents an infringement on textually committed executive authority and litigating this issue would involve the disclosure of sensitive intelligence that would threaten national security.150 Hamdi was an American citizen, and the government detained him due to allegations that he was fighting for the Taliban in Afghanistan.151 Similarly, Aulaqi was an American citizen accused of providing leadership and spiritual counsel to al-Qaeda terrorists.152 He was therefore considered a high-risk threat to national security, and the DOJ claims that the authority to kill Aulaqi is a nonjusticiable political question protected by the state secrets privilege.153 Because the Supreme Court held that Hamdi’s deprivation of liberty merited due process, it is a natural extension of this holding to find that the government also owes Aulaqi basic due process.However, there are important factual distinctions between Hamdi and Aulaqi to balance against the similarities. Although both cases fit the general category of due process rights in the context of national security concerns, the circumstances of the Hamdi holding limit its application to Aulaqi.154 Hamdi was captured in a theatre of war and originally accused of aiding the Taliban in hostilities against the United States.155 But once he was moved to holding brigs within the United States, Hamdi was fully secured under government control.156 Therefore, at the time of the Supreme Court’s decision, Hamdi was not an imminent threat to national security and was completely subject to government authority.157 The same cannot be said of Aulaqi. As an alleged high-value terrorist target hiding in Yemen, a known staging ground for al-Qaeda operations, Aulaqi was not under government control.158 Assuming that the government’s allegations against him were true, Aulaqi posed an imminent threat to national security.159 These are important factual distinctions that may render the Hamdi opinion inapplicable to the Aulaqi case. The lack of government control over Aulaqi and the potential for an imminent threat to national security may serve as government interests that trump Aulaqi’s due process rights. The exigencies of the Aulaqi situation are important distinctions that may render the Hamdi analysis inapplicable. However, even if the Hamdi holding is not directly controlling in the Aulaqi context, it is still highly relevant to the analysis. After Hamdi, it is clear that very serious constitutional rights are implicated, and perhaps violated, when the president authorizes the targeted killing of an American without any independent judicial review of that decision or of the criteria involved.160 As demonstrated in Aulaqi, it is equally clear that litigating this issue in federal court is an ineffective ex post mechanism for ensuring basic due process protections.161 Yet the result in Aulaqi is unsatisfactory and potentially very dangerous. Given the constitutional protections guaranteed by the Supreme Court in Hamdi, it is important to clarify the law of targeted killing and ensure basic safeguards against the abuse of this power.

#### Clarifications don’t ensure guaranteed protections --- executive error rate collapses due process

McKelvey, 11 (Benjamin, JD Candidate, Senior Editorial Board – Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>)

V. CHALLENGING THE EXECUTIVE BRANCH DEFENSE OF TARGETED KILLING A. The Obama Administration’s Reassurances Are Circular and Unsatisfactory The Obama Administration has addressed the controversy over targeted killing in an effort to assuage concerns over the program’s constitutionality, including concerns over due process protections.162 However, the Administration’s explanations do little but reiterate the gaping hole in guaranteed due process protections if Americans are justify the current response emphasize the desperate need for a clear articulation of the law and a mechanism for constitutional safeguards.164 Harold Koh, the Legal Adviser to the Department of State, addressed the criticisms of targeted killing in a speech at the Annual Meeting of the American Society of International Law in March 2010.165 Koh addressed the concern that “the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing.”166 First, he asserted that a state engaged in armed conflict is not required to provide legal process to military targets.167 Koh then attempted to reassure the critics of targeted killing that the program was conducted responsibly and with precision.168 He said that the procedures for identifying targets for the use of lethal force are “extremely robust,” without providing any explanation or details to substantiate this claim.169 He then argued that “[i]n my experience, the principles of proportionality and distinction . . . are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with international law.”170 Koh dismissed constitutional claims over targeted killing by simply suggesting that the program is legal and responsible.171 But this response only begs the question over targeted killing: what mechanisms are in place to prevent the unsafe and irresponsible use of this extraordinary power? Asserting that theprogram is legal and responsible without substantiating this assertion rests on notions of blind faith in executive prudence and responsibility, and provides no grounds for reassurance.172 The Obama Administration’s assurances regarding the targeted killing program are unsatisfactory because they fail to address the primary concern at issue: the possibility that an unchecked targeted killing power within the Executive Branch is an invitation for abuse.173 Without some form of independent oversight, there is no mechanism for ensuring the accurate and legitimate use of targeted killings in narrowly tailored circumstances.174 B. A Record of Error and Abuse of Authority Currently, there is no specific evidence that the targeted killing program has been used for illegitimate purposes other than national defense and security. However, the Executive’s exercise of authority in identifying and pursuing threats of terror has produced a worrisome error rate.175 According to an analysis of Predator drone strikes in Pakistan conducted by the New America Foundation, since 2004, the non-militant fatality rate has been roughly 20 percent.176 In other words, about one-fifth of those killed by Predator drone strikes have been non-military targets, including innocent civilians.177 In June of 2010, it was reported that the government lost nearly 75 percent of the cases involving habeas petitions filed by detainees at Guantanamo Bay.178 This suggests that for the majority of detained enemy combatants, the government has had insufficient evidence for the assertion that the detained individuals were involved in hostilities against the United States.179 The rate of error in these instances only adds to the concern over the procedural guarantees of the targeted killing process and the need for a more standardized process with a robust system of screening and oversight. There is also historical precedent for cautiously evaluating the legitimacy and constitutionality of unreviewable executive authority in matters of espionage and national security. In 1976, President Ford issued an executive order outlawing political assassination.180 The order was a response to revelations after the Watergate scandal that the CIA had attempted to assassinate Cuban President Fidel Castro multiple times.181 Every U.S. president since Ford has upheld the ban on political assassinations in subsequent executive orders.182 This is an example of classified CIA activity that, once publicly known, was deemed unacceptable as a matter of law and policy.183 The current targeted killing program conducted in executive secrecy raises concerns similar to those of political assassination.

#### The plans model is empirically proven to create an effective balance

McKelvey, 11 (Benjamin, JD Candidate, Senior Editorial Board – Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>)

C. The Need for a Resolution Concerns over targeted killing error rates and historical abuses of executive power cast extraordinary doubt over the adequacy of the Obama Administration’s legal justification of targeted killing, as articulated by the Department of State.194 The government’s argument is that it should be taken at its word when it assures the public that the process for identifying and targeting suspected terrorists with lethal force is careful, rigorous, and legal.195 This is not an adequate explanation of targeted killing law for two reasons. First, this explanation leaves unanswered the question of how the targeted killing program is careful, rigorous, and legal.196 Second, there is **ample historical evidence** that suggests that executive guarantees of authority and privilege ought to be met with skepticism.197 Without some form of independent oversight or review, taking the Executive Branch at its word is not an adequate form of due process and provides no minimum constitutional guarantee.198 VI. THE RESPONSIBLE WAY FORWARD: CONGRESS SHOULD EITHER PROHIBIT THE TARGETED KILLING OF AMERICANS OR ESTABLISH OVERSIGHT The targeted killing of Americans, as demonstrated by the Aulaqi case, presents complex questions of constitutional law that are not easily answered or resolved.199 This is more than an academic debate; the stakes are high, as targeted killing in its current form provides the Executive Branch with a power over American lives that is chillingly broad in scope.200 It is concerning that the President’s grounds for claiming this extraordinary authority are tenuous and subject to compelling challenges.201 Furthermore, the absence of basic due process protection in Aulaqi appears unconstitutional after Hamdi.202 But the Aulaqi case shows that the constitutional objections to targeted killing cannot be resolved in federal court.203 For these reasons, Congress should intervene by passing legislation with the goal of establishing clear principles that safeguard fundamental due process liberties from potential executive overreach. A. Option One: Congress Could Pass Legislation to Establish Screening and Oversight of Targeted Killing As the Aulaqi case demonstrates, any resolution to the problem of targeted killing would require a delicate balance between due process protections and executive power.204 In order to accomplish this delicate balance, Congress can pass legislation modeled on the Foreign Intelligence Surveillance Act (FISA) that establishes a federal court with jurisdiction over targeted killing orders, similar to the wiretapping court established by FISA.205 There are several advantages to a legislative solution. First, FISA provides a working model for the judicial oversight of real-time intelligence and national security decisions that have the potential to violate civil liberties.206 FISA also effectively balances the legitimate but competing claims at issue in Aulaqi: the sensitive nature of classified intelligence and national security decisions versus the civil liberties protections of the Constitution.207 A legislative solution can provide judicial enforcement of due process while also respecting the seriousness and sensitivity of executive counterterrorism duties.208 In this way, congress can alleviate fears over the abuse of targeted killing without interfering with executive duties and authority. Perhaps most importantly, a legislative solution would provide the branches of government and the American public with a clear articulation of the law of targeted killing.209 The court in Aulaqi began its opinion by explaining that the existence of a targeted killing program is no more than media speculation, as the government has neither confirmed nor denied the existence of the program.210 Congress can acknowledge targeted killing in the light of day while ensuring that it is only used against Americans out of absolute necessity.211 Independent oversight would promote the use of all peaceful measures before lethal force is pursued.212 i. FISA as an Applicable Model FISA is an existing legislative model that is applicable both in substance and structure.213 FISA was passed to resolve concerns over civil liberties in the context of executive counterintelligence.214 It is therefore a legislative response to a set of issues analogous to the constitutional problems of targeted killing.215 FISA also provides a structural model that could help solve the targeted killing dilemma.216 The FISA court is an example of a congressionally created federal court with special jurisdiction over a sensitive national security issue.217 Most importantly, FISA works. Over the years, the FISA court has proven itself capable of handling a large volume of warrant requests in a way that provides judicial screening without diminishing executive authority.218 Contrary to the DOJ’s claims in Aulaqi, the FISA court proves that independent judicial oversight is institutionally capable of managing real-time executive decisions that affect national security.219 The motivation for passing FISA makes this an obvious choice for a legislative model to address targeted killing. With FISA, Congress established independent safeguards and a form of oversight in response to President Nixon’s abusive wiretapping practices.220 The constitutional concern in FISA involved the violation of Fourth Amendment privacy protections by excessive, unregulated executive power.221 Similarly, the current state of targeted killing law allows for executive infringement on Fifth Amendment due process rights. Although there is no evidence of abusive or negligent practices of targeted killing, the main purpose of congressional intervention is to ensure that targeted killing is conducted only in lawful circumstances after a demonstration of sufficient evidence.

#### Special court for targeting eligibility is key to check executive backsliding—due process will collapse without it

Weinberger 13 (Dr. Seth, Associate Professor in the Department of Politics & Government – University of Puget Sound, “Enemies Among Us: The Targeted Killing of American Members of al Qaeda and the Need for Congressional Leadership,” Global Security Studies Review, 5-7, <https://blogs.commons.georgetown.edu/globalsecuritystudiesreview/2013/05/07/enemies-among-us-the-targeted-killing-of-american-members-of-al-qaeda-and-the-need-for-congressional-leadership/>)

On September 30, 2011, an American drone fired on and destroyed a convoy of members of al Qaeda in the Arabian Peninsula (AQAP). The target of the strike was Anwar al-Awlaki, a U.S. citizen born in New Mexico in 1971, accused of being a propagandist and operational leader for AQAP. The targeted killing of an American citizen raises a simple yet extremely discomfiting problem: Should the President of the United States be able to order an American citizen to be killed without trial, without any external review process, and without appeal?

In June 2010, John Brennan, then Deputy National Security Adviser for Homeland Security and Counterterrorism and current CIA director, stated that “there are dozens of U.S. persons [who have joined international terrorist organizations] who are in different parts of the world and they are very concerning to us.”[1] The issue was made even more salient on February 4, 2013, when an unclassified U.S. Justice Department (DOJ) white paper was released which laid out the legal justification for the targeted killing of “a U.S. citizen who is a senior operational leader of al Qaeda or an associated force.”[2]

The release of the targeted killing white paper unleashed a barrage of criticism of the policy. One author called the brief “a disaster” and asserted that “the Obama administration…wants to justify…assassinating citizens without specific and credible evidence of imminent violence.”[3] Another warned that “what’s so terrifying about this white paper is that it’s unconstitutional, not in the sense that it violates any particular tenet of the American Constitution, but in that it doesn’t respect the premise of there being a Constitution in the first place.”[4] Yet another claims that “[the white paper] is every bit as chilling as the Bush Office of Legal Counsel (OLC) torture memos in how its clinical, legalistic tone completely sanitizes the radical and dangerous power it purports to authorize.”[5] A few voices defended the policy, arguing, for example, that “once you take up arms against the United States, you become an enemy combatant, thereby forfeiting the privileges of citizens and the protections of the Constitution,”[6] and that “American presidents…have lawfully deployed military force against citizens in insurrection, rebellion, or war against the United States from the beginning of the nation.”[7]

However, focusing on the question of whether and when the president can order the targeted killing of an American citizen who has joined al Qaeda – as did almost all of the analyses of the DOJ white paper – not only misses the more important question involved but also obscures the best avenue to a potential solution. Instead of asking whether the president ought to be able to order the killing of American members of al Qaeda, we should instead be asking whether the president should be allowed to determine when an American citizen can be considered to be a senior operational member of al Qaeda, and if so, by what process?

Why is the question of determining who is a member of al Qaeda more important than the question of whether the president can kill American senior operational members of al Qaeda? As made clear by the World War II-era case Ex Parte Quirin, American citizens who join the armed forces of an enemy of the United States during wartime forfeit many of their basic constitutional protections and can be, as was the American citizen involved in the case, tried by military tribunal and executed under the laws of war.[8] The 2004 case of Hamdi v. Rumsfeld built on the Quirin case, finding that not only were at least some of the president’s war powers activated by congressional passage of the Authorization for the Use of Military Force (AUMF) in 2001, but that, as is normal under the laws of war, American citizens seized on the battlefield can be detained until the end of the conflict.[9]

However, the Hamdi decision also illustrates why the question of who is and is not a member of al Qaeda is the more critical question. The U.S. Supreme Court’s decision in Hamdi contained language vital for understanding the issue. The Court acknowledged that while enemy soldiers seized on the battlefield during a “normal” war do not receive an opportunity to challenge their detention, the exigencies of the war in Afghanistan against the Taliban dictate that “the circumstances surrounding Hamdi’s seizure cannot in any way be characterized as ‘undisputed’.”[10] Furthermore, because “‘the risk of erroneous deprivation’ of [Hamdi’s] liberty is unacceptably high” and as the case dealt with “the most elemental of liberty interests – the interest in being free from physical detention by one’s own government,” the Court decided that the traditional rules of war needed adjusting for the armed conflict against the Taliban.[11] Thus, the Court ruled that “a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification and a fair opportunity to rebut the Government’s factual assertions before a neutral decision maker.”[12] In essence, the Court ruled that the armed conflict with the Taliban sufficiently resembled traditional conflict as to allow for the indefinite military detention of enemy combatants, but that the difficulties involved in determining who is and is not an enemy combatant (for example, fighters in the Taliban neither wore uniforms nor carried identification) warranted an alteration in the normal application of the president’s war powers where American citizens are concerned.

The laws of war were designed to govern ‘traditional’ wars, in which the armies of states met on the battlefield and in which soldiers wore uniforms clearly identifying themselves as combatants. The lack of clarity that prompted the ruling in Hamdi comes from the inherent ambiguities in a low-intensity war against a non-state actor that is not limited to a specific battlefield. These ambiguities are magnified in the conflict against al Qaeda. Not only do al Qaeda’s members not wear uniforms or carry identification cards, but, given the decentralized nature of the organization, it is not even clear what exactly constitutes membership. It might be possible that one can become a “member” of al Qaeda simply by declaring or even believing oneself to be a member. In short, we should be much less confident in our judgments about who is and who is not a member of al Qaeda.

Several examples illustrate the problems caused by this ambiguity over membership in al Qaeda. First, consider Major Nidal Hassan, who stands accused of 13 counts of murder and 32 counts of attempted murder in the shootings at Ft. Hood, Texas. While Hasan had been in communication with Anwar al-Awlaki, he was ultimately court martialed rather than tried as a terrorist. This decision troubled terrorism scholar Bruce Hoffman, who argued that while he “used to argue it was only terrorism if it were part of some identifiable, organized conspiracy… this new strategy of al-Qaeda is to empower and motivate individuals to commit acts of violence completely outside any terrorist chain of command.”[13]

Next is the case of al Shabaab, an Islamist insurgent movement dedicated to bringing Sharia to Somalia. In February 2012, leaders of al Shabaab officially pledged allegiance to al Qaeda, a pledge that was enthusiastically accepted by Ayman al-Zawahiri, who succeeded Osama bin Laden as the formal head of al Qaeda.[14] Since the 2012 National Defense Authorization Act (NDAA) expanded the scope of the 2001 AUMF to include “associated groups,” al Shabaab is now a legitimate target for American forces. This poses several problems. First, a number of Somali-American citizens have joined al Shabaab, mostly for religious and nationalistic reasons related to the domestic political situation in Somalia.[15] Second, al Shabaab has largely confined its activities to inside Somalia, with the exceptions of a bombing in Uganda and a grenade attack in Kenya, attacks almost certainly intended to convince Uganda and Kenya to withdraw their respective troops from Somalia.[16] Third, many members have splintered-off from the main body of al Shabaab in the wake of the union with al Qaeda, apparently to keep their struggle focused on Somalia rather than the global jihad.[17] There seems to be little evidence, other than the formal affiliation, that al Shabaab has taken any actions against American citizens or interests or that al Shabaab is in any way other than name a part of the global terrorist movement.

And yet, under the 2012 NDAA, a Somali-American who becomes a senior operational leader of al Shabaab in order to liberate and Islamize Somalia is the legal equivalent of Anwar al-Awlaki and is therefore eligible for being targeted for death. Is this the enemy as envisioned by Congress and defined in the 2001 AUMF?

These examples call attention to several vital questions surrounding the Obama Administration’s use of targeted killing against American citizens. Is every group that is somehow connected to al Qaeda the “enemy” in this conflict, regardless of the threat it poses to American national interests or its involvement in global jihad? What kind of connection – formal, operational, or ideological – is sufficient justification for including an affiliated group under the scope of the 2001 AUMF and 2012 NDAA? Exactly what actions make an individual a member of al Qaeda? Given these serious questions about what constitutes involvement with al Qaeda, it is dangerous for decisions about the eligibility of American citizens for targeted killing to be made without legislative definition or judicial process or review.

The Obama Administration would likely claim that such decisions are a fundamental incident of war and therefore part of the president’s war powers that were activated by the 2001 AUMF. And under the current legal regime, the President’s use of drones to eliminate American senior operational members of al Qaeda is indeed legal.

But legal is not the same thing as prudent. Simply because a course of action is permitted does not mean it should be taken. For a number of reasons, perhaps most importantly because it is increasingly unclear what constitutes being a senior operational member of al Qaeda, we should be skeptical of allowing the Executive Branch to judge these decisions on its own. Without effective checks or definition, there can be little doubt that the bar for defining membership in al Qaeda and eligibility for targeting will move downwards, allowing more Americans to be targeted without due process. And in the absence of additional congressional actions to limit the president’s ability to make such determinations, that is exactly the situation that exists.

But how could such checks or definitions be imposed? The President’s likely defense – that under the 2001 AUMF, only the Executive Branch can determine questions of al Qaeda membership – is a strong one. Here we must return to the Hamdi decision. By focusing attention and criticism on the power to target American members of al Qaeda rather than on the power to determine eligibility for being targeted, most analysts and pundits have missed the importance of the Hamdi decision for suggesting a solution to the problem of targeted killings.

By giving Yasir Hamdi a status hearing to determine his eligibility for indefinite military detention without trial, the Supreme Court interfered with the traditional war powers of the president and altered the standard applications of the rules of war. The Court argued, as mentioned earlier, that as the prospect of indefinite detention involves the “most elemental of liberty interests,” “striking the proper constitutional balance…is of great importance to the Nation during this period of ongoing combat.”[18] What is true for an American citizen detained on the battlefield and assigned for indefinite detention is undoubtedly true for an American citizen who has been targeted for death by a U.S. drone strike. Surely, the right not to be killed by a Hellfire missile ordered by one’s own government without due process must be as elemental of a liberty interest, if not more so, as “the interest in being free from physical detention.”[19]

Furthermore, while the Court did add a hearing into the process for military detention, it still permitted the U.S. government to assign an American citizen to indefinite detention. It did so even while acknowledging that, given the undefined nature of the conflict against the Taliban, which the U.S. government might not consider won for two generations or more, “Hamdi’s detention could last for the rest of his life.”[20] The justification given for leaving the basic structure of military detention in place was the determination that conflict between the U.S. and the Taliban resembles the traditional conflicts for which the laws of war were created. However, the Court warned that “if the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, [the long-standing law of war principles] unravel.”[21] It seems reasonable that a conflict like the one with al Qaeda –in which drones are used to target American citizens who have been identified as senior operational leaders of decentralized affiliates of an already decentralized non-state terrorist organization – presents circumstances unlike traditional wars in which enemies were readily identifiable by their uniforms, identification cards, and adherence to a clearly visible military and political chain of command.

From the logic of the Hamdi decision, it follows that adjustments or adaptations to the traditional war powers of the president to target American citizens believed to be members of the armed forces of the enemy might be both justifiable and allowable. What options or procedures could be put into place? Two options stand out. First, Congress could attempt to identify the positive criteria for membership in al Qaeda, the nature of the relationships between al Qaeda and its various affiliates, and, more specifically, the definition of a senior operational leader. While this would undoubtedly be a difficult task, there is precedent for such efforts by the Legislative Branch. The laws surrounding conspiracy must define at what point constitutionally-protected free speech switches to the illegal preparation for criminal activity.

But once again, what is possible is not always the best course of action. Given the diffuse nature of global terrorist networks and the flexible nature of the battlefield, trusting an a priori assessment to accurately account for all possibilities and to do so in a timely manner is likely a bad idea. A better option would be the creation of a special national security court, along the lines of the courts that hear federal requests for warrantless wiretapping in accordance with the Foreign Intelligence Surveillance Act (FISA). Such a court could be created and empowered by Congress to hear presidential requests to designate an American citizen as a senior operational leader of either al Qaeda or of an affiliated group as defined under the 2001 AUMF and the 2012 NDAA.

#### None of their drone court answers apply – the aff is a uniquely limited court

Weinberger 13 (Dr. Seth, Associate Professor in the Department of Politics & Government – University of Puget Sound, “Enemies Among Us: The Targeted Killing of American Members of al Qaeda and the Need for Congressional Leadership,” Global Security Studies Review, 5-7, <https://blogs.commons.georgetown.edu/globalsecuritystudiesreview/2013/05/07/enemies-among-us-the-targeted-killing-of-american-members-of-al-qaeda-and-the-need-for-congressional-leadership/>)

Several people have voiced objections to the creation of a FISA-style “drone court.” One worries that a court of “generalist federal judges” will lack “national security expertise,” “are not accustomed to ruling on lightning-fast timetables,” and should not be able to involve themselves in “questions about whether to target an individual for assassination by a drone strike.” [22] Another writes that, “the determination of whether a person is a combatant to judicial review would seem to rather clearly violate the separation of powers requirements in the Constitution,” as in Ex Parte Milligan, the Supreme Court ruled that the congressional war power “extends to all legislation essential to the prosecution of the war…except such as interferes with the command of the forces and the conduct of campaigns,” which includes, the author argues, the “sole authority to determine who the specific combatants are when conducting a campaign.”[23] While in a traditional war such objections are almost certainly correct, in the context of the Hamdi decision and with the unconventional nature of the armed conflict against al Qaeda, they become less compelling.

First, if properly defined, the new court could be limited solely to questions of eligibility, not the decision of whether and when to conduct a drone strike. The court would carry out a function quite similar to the FISA courts, judging whether the Executive Branch has sufficient evidence to support its claim that a citizen has become a senior operational member

of a group covered under the AUMF and 2012 NDAA. This would differ little from the FISA courts’ assessments of Executive Branch requests to wiretap individuals believed to be agents of a foreign power without a warrant.

Second, given the definition of imminent threat in the Department of Justice’s white paper – a definition that incorporates “considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”[24] – such eligibility decisions are not likely to be made in the moments immediately prior to a drone strike. Rather, eligibility decisions are likely made in the process of long investigations and in light of much intelligence.

Finally, while Anthony Arend is almost certainly correct that in nearly every other incidence of armed conflict, Congress would not be permitted to involve itself in determinations of who is and who is not an eligible target for the American military, as Hamdi makes clear, the armed conflict against al Qaeda is not like every other armed conflict. The Supreme Court has already inserted a judicial proceeding into the determination of whether an American citizen seized on the battlefield is actually an enemy combatant and therefore eligible for indefinite detention, a determination that traditionally has been solely within the purview of executive power. It would be counterintuitive – to say the least – if an American citizen could be killed, but not detained, without judicial involvement.

#### Limited and external review is key – allows for processes that can’t be circumvented

Somin 13 (Ilya, Professor of Law – George Mason University School of Law, Hearing on “Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing,” United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, 4-23, <http://www.judiciary.senate.gov/pdf/04-23-13SominTestimony.pdf>)

One partial solution to the problem of target selection would be to require officials to get advance authorization for targeting a United States citizen from a specialized court, similar to the FISA Court, which authorizes intelligence surveillance warrants for spying on suspected foreign agents in the United States. The specialized court could act faster than ordinary courts do and without warning the potential target, yet still serve as a check on unilateral executive power. In the present conflict, there are relatively few terrorist leaders who are American citizens. Given that reality, we might even be able to have more extensive judicial process than exists under FISA.

Professor Amos Guiora of the University of Utah, a leading expert on legal regulation of counterterrorism operations with extensive experience in the Israeli military, has developed a proposal for a FISA-like oversight court that deserves serious consideration by this subcommittee, and Congress more generally.22 The idea of a drone strike oversight court has also been endorsed by former Secretary of Defense Robert Gates, who served in that position in both the Obama and George W. Bush administrations. Gates emphasizes that “some check on the president’s ability to do this has merit as we look to the long-term future,” so that the president would not have the unilateral power of “being able to execute” an American citizen.23

We might even consider developing a system of judicial approval for targeted strikes aimed at non-citizens. The latter process might have to be more streamlined than that for citizens, given the larger number of targets it would have to consider. But it is possible that it could act quickly enough to avoid compromising operations, while simultaneously acting as a check on abusive or reckless targeting. However, the issue of judicial review for strikes against non-citizens is necessarily more difficult than a court that only covers relatively rare cases directed at Americans.

Alternatively, one can envision some kind of more extensive due process within the executive branch itself, as advocated by Neal Katyal of the Georgetown University Law Center.24 But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lower level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad.

#### Back to India—democratic model key to resolve every global threat

**Chandra 11** (Naresh, Chair – India's National Security Advisory Board and Former Indian Ambassador to the United States, et al., “The United States and India: A Shared Strategic Future”, September, p. 3-6)

India is an indispensable partner for the United States. Geographically, it sits between the two most immediate problematic regions for U.S. national interests. The arc of instability that begins in North Africa, goes through the Middle East, and proceeds to Pakistan and Afghanistan ends at India’s western border. To its east, India shares a contested land border with the other rising Asian power of the twenty-first century, China. India—despite continuing challenges with internal violence— is a force for stability, prosperity, **democracy, and the rule of law** in a very dangerous neighborhood.

The Indian landmass juts into the ocean that bears its name. With the rise of Asian economies, the Indian Ocean is home to critical global lines of communication, with perhaps 50 percent of world container products and up to 70 percent of ship-borne oil and petroleum traffic transiting through its waters. For the United States, India’s location alone makes it a more consequential partner than other nations more distant from these U.S. zones of concern. Unlike many U.S. treaty allies, India does not need to be convinced that a distant problem requires the projection of U.S. power to be successfully managed. Many of America’s global challenges are India’s regional challenges, and therefore India is uniquely positioned to exert influence and offer resources to help deal with them.

India’s growing national capabilities give it ever greater tools to pursue its national interests to the benefit of the United States. India has the world’s third-largest army, fourth-largest air force, and fifth-largest navy. All three of these services are modernizing, and the Indian air force and Indian navy have world-class technical resources, and its army is seeking more of them. Moreover, unlike some longtime U.S. partners, India has demonstrated that it possesses not only a professional military force, but also a willingness to suffer substantial military hardship and loss in order to defend Indian national interests.

India is an important U.S. partner in international efforts to prevent the further spread of weapons of mass destruction. Despite India’s principled refusal to sign the Nuclear Nonproliferation Treaty (NPT), India has shown itself to be a responsible steward of nuclear technology. Similarly, despite decades of work on missile and space launch vehicle technology, India has not been a proliferator of these technologies. India’s assistance on nonproliferation will also be critical regarding chemical and biological weapons, given its substantial chemical and biotechnology industries, which could unwittingly be the source of precursor materials to dangerous actors. In all of these areas where India has considerable technological expertise, India has exhibited restraint and responsibility in its international behavior.

During President Barack Obama’s visit to India in 2010, the United States announced its intent to support India’s phased induction into the four multilateral export control regimes (the Nuclear Suppliers Group, Missile Technology Control Regime, Australia Group, and Wassenaar Arrangement), continuing efforts begun in the Bush administration to bring India fully into the nonproliferation mainstream. In addition to its role as a potential technology provider, India will play an important and growing political role on international nonproliferation issues. India’s **broad diplomatic ties** globally (most importantly in the Middle East), its aspirations for United Nations (UN) Security Council permanent membership, and its role in international organizations such as the International Atomic Energy Agency make New Delhi an especially effective voice in calls to halt proliferation.

India’s **position against radicalism and terrorism corresponds** with that of the United States. India has suffered terribly from terrorism over the last three decades and like the United States is determined to prevent, deter, and disrupt the terrorist groups that most threaten it. There was no hesitation to India’s offer of assistance to the United States following the attacks of September 11, 2001, because India viewed its national interests as congruent with those of the United States’ in uprooting transnational terrorist groups. Similarly, the United States quickly offered law enforcement and intelligence cooperation after the terrorist attacks on Mumbai that began on November 26, 2008.

Economically, India has grown at an average of 7.6 percent in real terms over the last decade, according to International Monetary Fund statistics, with only a modest decline due to the global economic crisis in 2008 and 2009. After charting 10.4 percent growth in 2010, the government of India believes that it can sustain rates of 8 to 9 percent economic expansion for the foreseeable future. Goldman Sachs agrees, estimating that the Indian economy will expand at an average rate of 8.4 percent through 2020. In short, over the next two decades India is on a path to become a global economic powerhouse, with all that implies for the U.S. and world economies.

With respect to economic enterprise and science and technology cooperation, the United States is India’s collaborator of choice. India’s English-speaking and Western-oriented elite and middle classes comfortably partner with their counterparts in U.S. firms and institutions, including more than 2.8 million Indian Americans. The U.S. higher educational system is an incubator of future collaboration, with more than 100,000 Indian students in American universities, more than from any other country except China. Trade between the United States and India has doubled twice in the last ten years. Bilateral trade has been balanced in terms of its content and is beneficial to both countries. In many sectors, the role of governments is simply to encourage what the private sector already desires by removing remaining barriers that prevent cooperative outcomes. As India modernizes and grows it will spend trillions of dollars on infrastructure, transportation, energy production and distribution, and defense hardware. U.S. firms can benefit immensely by providing expertise and technology that India will need to carry out this sweeping transformation.

India-U.S. cooperation is critical to global action against climate change. According to the International Energy Agency, India is already the fourth-largest aggregate producer of carbon dioxide from energy use, behind China, the United States, and Russia. India’s high ranking as a greenhouse gas producer has mostly to do with its sheer size; India produces dramatically fewer greenhouse gases than industrialized or other developing nations on a per capita basis and is below the global average in terms of greenhouse gas emissions per unit of gross domestic product. Even so, because of India’s aggressive economic growth profile combined with higher than average population growth, its share of global greenhouse gas production will rise substantially between now and 2050. India has shown itself to be keenly interested in cooperation on renewable energy technology and efficiency standards that would allow it to retain its growth and still reduce its emissions intensity over time. India’s role, both as a fast-growing large economy and as a leader of the developing world, makes Indian agreement a necessary condition for the success of any prospective international climate change accord.

On issues of global governance, India will remain the most important swing state in the international system. Importantly, India is genuinely committed to a world order based on multilateral institutions and cooperation and the evolution of accepted international norms leading to accepted international law. Despite being a rising power with some complaints regarding the existing global governance structure, India seeks to reform the present system and not to overturn it. U.S. and Indian national interests naturally overlap on many of these issues, given India’s commitment to a stable Asia, democracy, market-driven growth, the rule of law, and opposition to violent extremism.

India’s capability extends well beyond the realm of military, economic, and global diplomatic power. Indian culture and diplomacy has generated goodwill in its extended neighborhood. New Delhi has positive relations with critical states in the Middle East, in Central Asia, in Southeast Asia, and with important middle powers such as Brazil, South Africa, and Japan—all of strategic value to the United States. India’s soft power is manifest in wide swaths of the world where its civil society has made a growing and positive impression. This includes the global spread of its private corporate sector, the market for its popular culture, its historical religious footprint, and the example of its democracy and nongovernmental institutions.

In addition, India has demonstrated an enduring **commitment to democratic values**. Indian democracy has prospered despite endemic poverty; extraordinary ethnic, religious, and linguistic diversity; and foreign and internal conflicts. It **has provided** Indian society **the resilience and adaptability necessary to overcome and respond to the myriad challenges** the nation has faced since independence. India and the United States share the objective to strengthen pluralist and secular democracies worldwide, and India’s rise as a democratic great power promotes that profound global objective.

For many of the reasons indicated, a stronger India inevitably makes managing a stable balance of power in Asia significantly easier for the United States. Although other friendly countries in the region writ large will also play a critical role, over the next two decades India may well become the most important Asian partner for the United States in ensuring that the broad balance of power that serves Asia so well is preserved.

# 2ac

## Case

#### President believes he is constrained by statute

Saikrishna Prakash 12**,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

## K 1

### Ellis

#### The AFF’s approach to the topic is a method for dispute resolution – normative policy prescriptions are educationally valuable and don’t deny agency

Ellis, et al, 09 [Richard, LOL that’s my Debate partner, but actually…. Ph.D. University of California, Berkeley, degree completed December 1989, M.A. University of California, Berkeley, Political Science, 1984, B.A. University of California, Santa Cruz, Politics, 1982, Debating the Presidency: Conflicting Perspectives on the American Executive, p. google book]

In 1969 the political scientist Aaron Wildavsky published a hefty reader on the American presidency. He prefaced it with the observation that “the presidency is the most important political institution in American life” and then noted the paradox that an institution of such overwhelming importance had been studied so little. “The eminence of the institution,” Wildavsky wrote, “is matched only by the extraordinary neglect shown to it by political scientists. Compared to the hordes of researchers who regularly descend on Congress, local communities, and the most remote foreign principalities, there is an extraordinary dearth of students of the presidency, although scholars ritually swear that the presidency is where the action is before they go somewhere else to do their research.”1 Political scientists have come a long way since 1969. The presidency remains as central to national life as it was then, and perhaps even more so. The state of scholarly research on the presidency today is unrecognizable compared with what it was forty years ago. A rich array of new studies has reshaped our understanding of presidential history, presidential character, the executive office, and the presidency’s relationship with the public, interest groups, parties, Congress, and the executive branch. Neglect is no longer a problem in the study of the presidency. In addition, those who teach about the presidency no longer lack for good textbooks on the subject. A number of terrific books explain how the office has developed and how it works. Although students gain a great deal from reading these texts, even the best of them can inadvertently **promote a passive learning experience.** Textbooks convey what political scientists know, but the balance and impartiality that mark a good text can **obscure the contentious nature** of the scholarly enterprise. Sharp disagreements **are often smoothed over** in the writing. The primary purpose of Debating the Presidency **is to allow students to** participate **directly in the ongoing real-world controversies swirling around the presidency and to judge for themselves which side is right.** It is premised philosophically on our view of students as active learners to be engaged rather than as passive receptacles to be filled. The book is designed to promote a classroom experience in which students debate and discuss issues rather than simply listen to lectures. Some issues, of course, lend themselves more readily to this kind of classroom debate. In our judgment, questions of a normative nature —**asking** not just what is, **but what ought to be**—are likely to foster the most interesting and engaging classroom discussions. So in selecting topics for debate, we generally eschewed narrow but important empirical questions of political science—such as whether the president receives greater support from Congress on foreign policy than on domestic issues—for broader questions that include empirical as well as normative components—such as **whether the president has usurped the war power** that rightfully belongs to Congress. We aim not only to teach students to think like political scientists, **but also to encourage them to think like democratic citizens**. Each of the thirteen issues selected for debate in this book’s second edition poses questions on which thoughtful people differ. These include whether the president should be elected directly by the people, whether the media are too hard on presidents, and whether the president has too much power in the selection of judges. Scholars are trained to see both sides of an argument, but we invited our contributors to choose one side and defend it vigorously. Rather than provide balanced scholarly essays impartially presenting the strengths and weaknesses of each position, Debating the Presidency leaves the balancing and weighing of arguments and evidence to the reader. The essays contained in the first edition of this book were written near the end of President George W. Bush’s fifth year in office; this second edition was assembled during and after Barack Obama’s first loo days as president. The new edition includes four new debate resolutions that should spark spirited classroom discussion about the legitimacy of signing statements, the war on terror, the role of the vice presidency, and the Twenty-second Amendment. Nine debate resolutions have been retained from the first edition and, wherever appropriate, the essays have been revised to reflect recent scholarship or events. For this edition we welcome David Karol, Tom Cronin, John Yoo, Lou Fisher, Peter Shane, Nelson Lund, Doug Kriner, and Joel Goldstein, as well as Fred Greenstein, who joins the debate with Stephen Skowronek over the importance of individual attributes in accounting for presidential success. In deciding which debate resolutions to retain from the first edition and which ones to add, we were greatly assisted by advice we received from many professors who adopted the first edition of this book. Particularly helpful were the reviewers commissioned by CQ Press: Craig Goodman of Texas Tech University, Delbert J. Ringquist of Central Michigan University, Brooks D. Simpson of Arizona State University, and Ronald W. Vardy of the University of Houston. We are also deeply grateful to chief acquisitions editor Charisse Kiino for her continuing encouragement and guidance in developing this volume. Among the others who helped make the project a success were editorial assistants Jason McMann and Christina Mueller, copy editor Mary Marik, and the book’s production editor, Gwenda Larsen. Our deepest thanks go to the contributors, not just for their essays, but also for their excellent scholarship on the presidency.

### Ontology

#### Extinction outweighs ontology

**Jonas 96** [Hans, Former Alvin Johnson Prof. Phil. At the New School for Social Research & Former Eric Voegelin Visiting Prof. at U. Munich, \*do not agree with gendered language, Mortality and Morality: A Search for the Good after Auschwitz, pg 111-2

With this look ahead at an ethics for the future, we are touching at the same time upon the question of the future of freedom. The unavoidable discussion of this question seems to give rise to misunderstandings. My dire prognosis that not only our material standard of living but also our democratic freedoms would fall victim to the growing pressure of a worldwide ecological crisis, until finally there would remain only some form of tyranny that would try to save the situation, has led to the accusation that I am defending dictatorship as a solution to our problems. I shall ignore here what is a confusion between warning and recommendation. But I have indeed said that such a tyranny would still be better than total ruin; thus, I have ethically accepted it as an alternative. I must now defend this standpoint, which I continue to support, before the court that I myself have created with the main argument of this essay. For are we not contradicting ourselves in prizing physical survival at the price of freedom? Did we not say that freedom was the condition of our capacity for responsibility—and that this capacity was a reason for the survival of humankind? By tolerating tyranny as an alternative to physical annihilation are we not violating the principle we established: that the How of existence must not take precedence over its Why? Yet we can make a terrible concession to the primacy of physical survival in the conviction that the ontological capacity for freedom, inseparable as it is from man’s being, cannot really be extinguished, only temporarily banished from the public realm. This conviction can be supported by experience we are all familiar with. We have seen that even in the most totalitarian societies the urge for freedom on the part of some individuals cannot be extinguished, and this renews our faith in human beings. Given this faith, we have reason to hope that, as long as there are human beings who survive, the image of God will continue to exist along with them and will wait in concealment for its new hour. With that hope—which in this particular case takes precedence over fear—it is permissible, for the sake of physical survival, to accept if need be a temporary absence of freedom in the external affairs of humanity. This is, I want to emphasize, a worst-case scenario, and it is the foremost task of responsibility at this particular moment in world history to prevent it from happening. This is in fact one of the noblest of duties (and at the same time one concerning self-preservation), on the part of the imperative of responsibility to avert future coercion that would lead to lack of freedom by acting freely in the present, thus preserving as much as possible the ability of future generations to assume responsibility. But more than that is involved. At stake is the preservation of the Earth’s entire miracle of creation, of which our human existence is a part and before which man reverently bows, even without philosophical “grounding.” Here too faith may precede and reason follow; it is faith that longs for this preservation of the Earth (fides quaerens intellectum), and reason comes as best it can to faith’s aid with arguments, not knowing or even asking how much depends on its success or failure in determining what action to take. With this confession of faith we come to the end of our essay ontology.

#### Ontology is silly and irrelevant to resolution of the political

Gathman 9 [Professional editor, translator, publishes pieces in salon.com and Austin Chronicle, <http://limitedinc.blogspot.com/2009/10/dialectics-of-diddling.html>]

IT – and I will interrupt the continuity of this post in the very first sentence to say that I, at least, refuse to identify the semi-autonomous heteronym, Infinite Thought, with the semi-autonomous philosopher, Nina, so this is about IT – recently wrote a post that makes an oblique but telling point against the current fashion for returning to things as they are via some kind of speculative realist ontology. As she notes, this gesture seems to go along with a taste for a politics that is so catastrophic as to be an excuse for no politics. “proliferating ontologies is simply not the point - further, what use is it if it simply becomes a race to the bottom to prove that every entity is as meaningless as every other (besides, the Atomists did it better). Confronting 'what is' has to mean accepting a certain break between the natural and the artificial, even if this break is itself artificial. Ontology is play-science for philosophers; I'm pretty much convinced when Badiou argues that mathematics has better ways of conceiving it than philosophy does and that, besides, ontology is not the point. What happens, or what does not happen, should be what concerns us: philosophers sometimes pride themselves on their ignorance of world affairs, again like watered-down Heideggarians, no matter how hostile they think they are to him, pretending that all that history and politics stuff is so, like, ontic, we're working on something much more important here.” Being the Derridean type, I expect that any attempt to create another, better ontology will produce the kinds of double binds that Derrida so expertly fished out of phenomenology. There have been a lot of replies to I.T.'s post. I thought the most interesting one was by Speculative Heresy, because he makes it clear that Speculative Realism is a return to a distinction that was popular among the analytic philosophers in the 50s, where a value neutral view of philosophy as a technique supposedly precluded the relevance of any political conclusions from conceptual analysis, and at worst blocked the advance of philosophy as a science. Here, the part of the natural is played by the question, which apparently asks itself in the void: “Which is to say that philosophy and politics are born of two different questions: ‘what is it?’ and ‘what to do?’ The latter, political, question need never concern itself with the former question.” IT rightly sees this reverence for the question in itself, and its supposedly fortunate alignment with the disciplines we all know and love, with their different mailboxes in the university, as a very Heideggerian gesture. And, as an empirical fact of intellectual history, it is very curious to think that a discipline is “born” from a syntactical unit peculiar to certain languages. Again, we run into a very old thematic, in which the question giving "birth" is entangled in the parallel series of logos and the body, in which each becomes a privileged metaphor for the other. There's nothing more political than this.

### Latour

#### Prefer the aff – it talks about how institutional structures shape war powers – Latour ignores this and argues for the inclusion of meaningless networks

McLean and Hassard 4 (Chris, and John, “Symmetrical Absence/Symmetrical Absurdity: Critical Notes on the Production of Actor-Network Accounts,” Journal of Management Studies, 41(3), May, Wiley Online)

Our next issue relates to the claim that while ANT addresses the local, contingent and processual, it fails to attend to broader social structures that influence the local. While Latour, Callon and Law (see chapters in Law and Hassard, 1999) have generally argued that the inclusion of an agency/structure dichotomy contradicts their work (and indeed reference to this form of dualism is antithetical generally for those adopting an ANT position, for arguably to talk of structure in the same breath as ANT is to confound the approach) it remains an issue for writers who are critical of the method of general symmetry.

Habers and Koenis (1996) for example suggest that Latour concentrates too heavily on the contribution of ‘things’ to the production of social order. By failing to address the sociality of the stability of things, this leads to an asymmetrical reading of the mediation process. Reed (1995) also appears dissatisfied with a lack of appreciation of the impact of social structures on micro events and processes. He argues that ANT tends to:

concentrate on how things get done, to the virtual exclusion of the various ways in which **institutionalized structures shape and modify the process of social interaction and the socio-material practices** through which it is accomplished. (1995, p. 332)

Walsham (1997) wishes to suggest however that the failure of ANT to account fully for the impact of broader social structures could potentially be resolved by synthesizing the approach with the work of Giddens (1990, 1991). However, for reasons outlined above, it is highly unlikely that such a position would ever be feasible, let alone beneficial or desirable, for structuration and ANT are largely antithetical. In short, being drawn constantly into a debate over structure/agency is one which Latour, Callon, and Law would certainly view as unproductive (see Law (1999) for a discussion of centred actor and decentred network in relation to agency/structure).

### Global war

#### Global war does not result from a Western desire for control---it results from lack of clearly defined strategic imperatives---the aff is necessary to reclaim the political

David Chandler **9**, Professor of International Relations at the Department of Politics and International Relations, University of Westminster, War Without End(s): Grounding the Discourse of `Global War', Security Dialogue 2009; 40; 243

Western governments appear to portray some of the distinctive characteristics that Schmitt attributed to ‘motorized partisans’, in that the shift from narrowly strategic concepts of security to more abstract concerns reflects the fact that Western states have tended to fight free-floating and non-strategic wars of aggression without real enemies at the same time as professing to have the highest values and the absolute enmity that accompanies these. The government policy documents and critical frameworks of ‘global war’ have been so accepted that it is assumed that it is the strategic interests of Western actors that lie behind the often irrational policy responses, with ‘global war’ thereby being understood as merely the extension of instrumental struggles for control. This perspective seems unable to contemplate the possibility that it is the lack of a strategic desire for control that drives and defines ‘global’ war today. ¶ Very few studies of the ‘war on terror’ start from a study of the Western actors themselves rather than from their declarations of intent with regard to the international sphere itself. This methodological framing inevitably makes assumptions about strategic interactions and grounded interests of domestic or international regulation and control, which are then revealed to explain the proliferation of enemies and the abstract and metaphysical discourse of the ‘war on terror’ (Chandler, 2009a). For its radical critics, the abstract, global discourse merely reveals the global intent of the hegemonizing designs of biopower or neoliberal empire, as critiques of liberal projections of power are ‘scaled up’ from the international to the global.¶ Radical critics working within a broadly Foucauldian problematic have no problem grounding global war in the needs of neoliberal or biopolitical governance or US hegemonic designs. These critics have produced numerous frameworks, which seek to assert that global war is somehow inevitable, based on their view of the needs of late capitalism, late modernity, neoliberalism or biopolitical frameworks of rule or domination. From the declarations of global war and practices of military intervention, rationality, instrumentality and strategic interests are read in a variety of ways (Chandler, 2007). Global war is taken very much on its own terms, with the declarations of Western governments explaining and giving power to radical abstract theories of the global power and regulatory might of the new global order of domination, hegemony or empire¶ The alternative reading of ‘global war’ rendered here seeks to clarify that the declarations of global war are a sign of the lack of political stakes and strategic structuring of the international sphere rather than frameworks for asserting global domination. We increasingly see Western diplomatic and military interventions presented as justified on the basis of value-based declarations, rather than in traditional terms of interest-based outcomes. This was as apparent in the wars of humanitarian intervention in Bosnia, Somalia and Kosovo – where there was no clarity of objectives and therefore little possibility of strategic planning in terms of the military intervention or the post-conflict political outcomes – as it is in the ‘war on terror’ campaigns, still ongoing, in Afghanistan and Iraq. ¶ There would appear to be a direct relationship between the lack of strategic clarity shaping and structuring interventions and the lack of political stakes involved in their outcome. In fact, the globalization of security discourses seems to reflect the lack of political stakes rather than the urgency of the security threat or of the intervention. Since the end of the Cold War, the central problematic could well be grasped as one of withdrawal and the emptying of contestation from the international sphere rather than as intervention and the contestation for control. The disengagement of the USA and Russia from sub-Saharan Africa and the Balkans forms the backdrop to the policy debates about sharing responsibility for stability and the management of failed or failing states (see, for example, Deng et al., 1996). It is the lack of political stakes in the international sphere that has meant that the latter has become more open to ad hoc and arbitrary interventions as states and international institutions use the lack of strategic imperatives to construct their own meaning through intervention. As Zaki Laïdi (1998: 95) explains:¶ war is not waged necessarily to achieve predefined objectives, and it is in waging war that the motivation needed to continue it is found. In these cases – of which there are very many – war is no longer a continuation of politics by other means, as in Clausewitz’s classic model – but sometimes the initial expression of forms of activity or organization in search of meaning. . . . War becomes not the ultimate means to achieve an objective, but the most ‘efficient’ way of finding one. ¶ The lack of political stakes in the international sphere would appear to be the precondition for the globalization of security discourses and the ad hoc and often arbitrary decisions to go to ‘war’. In this sense, global wars reflect the fact that the international sphere has been reduced to little more than a vanity mirror for globalized actors who are freed from strategic necessities and whose concerns are no longer structured in the form of political struggles against ‘real enemies’. The mainstream critical approaches to global wars, with their heavy reliance on recycling the work of Foucault, Schmitt and Agamben, appear to invert this reality, portraying the use of military firepower and the implosion of international law as a product of the high stakes involved in global struggle, rather than the lack of clear contestation involving the strategic accommodation of diverse powers and interests.

### perm

### AT; Alt

#### The neg attempt to create a cyborg culture devolves into nihilism and masks the technological gaze

Smith-Windsor, political science at University of Victoria, 2004 [Jaimie, “The Cyborg Mother: A Breached Boundary,” CTHEORY, internationally peer-reviewed journal of theory, technology, and culture, 2/4, <http://www.ctheory.net/articles.aspx?id=409>]

The relationship between machine and body cannot sustain life endlessly. **One must eventually overtake the other in order for life to continue**. Through the body, the machine performs the dichotomy of living and killing, life and death. It gives life only to overtake it. The technology that sustains life is ultimately **nihilistic**. What happens faster is vital -- the ability to outgrow the machine, or the damage inflicted by the machine itself. This is a profound statement about the morphology of humans and machines. **To become cyborg is to commit a slow-suicide**. Ultimately, it is the nihilation of the human body, of **autonomous human consciousness**. This is the paradox of modernity, manifest in rituals of living. Just as technology is capable of simulating rituals of living, becoming cyborg affects the rituals of dying. Technology has intervened and institutionalized the right/rite of death. Even after the body expires, the machines keep going. It is not until they are turned off that the body is pronounced "dead." Being cyborg means that death is experienced in a new way. Is it possible to be absent in death ? a redundant body in the machinic performance of consciousness? February 14 -- I hold my child for the first time. She is naked, against my chest. Her ventilator curls around my neck, taped to my shoulder, disappears inside her. There are other tubes, too, taped to my other limbs by peach colored surgical tape. Beside me, another mother's baby dies. Another baby dies. The respiratory technician yells : "NO CPR" from across the nursery. He crosses the room, switches off the machines ? ventilator, incubator, monitor, eight intravenous pumps of miscellaneous medical poisons. The life inside the machine, refuses to go on without them. And I am taped to a rubberized rocking chair, taped to my baby, taped to the machine. I cannot leave when another baby's mother comes in. The nihilism of becoming cyborg is inescapable. We are taped down to our own inherent nihilism. In cyborg culture, nihilism becomes synonymous with death. When a cyborg dies, the announcement of death waits for the machine to be switched off. The simulation of life continues even in the absence of physical being. When a cyborg dies, it is only because the human body has failed the perfect simulation of life by the machine. Death is ambivalent to physical being, the body becomes almost irrelevant. The machinic simulation of "being human" can continue to exist in the absence of a body, but the body cannot continue in the absence of the machine. In death, the human body seemingly fails the machine. This is what Jacques Derrida calls, the logocentric moment where one technology of knowing is privileged over the other and infinite other historicities of being are forgotten. What happens if someone fails to turn off the machine? Is it possible that the cyborg can forget to die? Can machinic consciousness simply be switched off? It is the moment where we forget to be merely human, that the machine takes over the mother, the technology takes over the consciousness. Thus, becoming cyborg becomes a meta-narrative, totalizing and privileging only one point of view -- the technological gaze. The internalization of the technological gaze it the most important political moment in becoming cyborg. The internalization of the machine is the moment when the human condition becomes invisibly mediated by technology. It is the moment where technology and knowing become bound within perception. Thus, becoming cyborg is not merely a physical condition. It is a condition of being mediated by technology.

## K 2

### AT: Affect

#### Affect is about consequences, not process or performance

**Woodward** assoc prof geography @ U Wisc Madison **and Lea** prof geography @ U lancaster **2010**(Keith, Jennifer, “Geographies of Affect” In The Sage Handbook of Social Geographies, pp. 157)

Affect has epistemological and ontological consequences, orienting thought and practice towards dynamic processes often passed over in structuralist and categorical accounts of the social. Contemporary epistemology asserts that we can neither engage in research under the assumption that there is a world ‘out there’ to explain, nor presume that there is a social composed of pre-formed, cataloguable individuals or entities.5 By highlighting the continuous formation of the world as an infinite series of bodily enactments, affect ontologically and materially recontextualizes relations by hoisting them out of knowledge regimes and resituating them within the contexts of being and becoming. This joins a body of approaches antithetical to the ‘Euro-American method’ in which the ‘**bias is against process and in favour of product’** (Law, 2004: 152).

### Greene

#### Ethical obligations are tautological—the only coherent rubric is to maximize number of lives saved

**Greene 2010** – Associate Professor of the Social Sciences Department of Psychology Harvard University (Joshua, Moral Psychology: Historical and Contemporary Readings, “The Secret Joke of Kant’s Soul”, [www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf](http://www.fed.cuhk.edu.hk/~lchang/material/Evolutionary/Developmental/Greene-KantSoul.pdf), WEA)

What turn-of-the-millennium science is telling us is that human moral judgment is not a pristine rational enterprise, that our moral judgments are driven by a hodgepodge of emotional dispositions, which themselves were shaped by a hodgepodge of evolutionary forces, both biological and cultural. Because of this, it is exceedingly unlikely that there is anyrationallycoherentnormativemoral theory that can accommodateourmoral intuitions. Moreover, anyone who claims to have such a theory, or even part of one, almost certainly doesn't. Instead, what that person probably has is a moral rationalization.

It seems then, that we have somehow crossed the infamous "is"-"ought" divide.  How did this happen? Didn't Hume (Hume, 1978) and Moore (Moore, 1966) warn us against trying to derive an "ought" from and "is?" How did we go from descriptive scientific theories concerning moral psychology to skepticism about a whole class of normative moral theories? The answer is that we did not, as Hume and Moore anticipated, attempt to derive an "ought" from and "is." That is, our method has been inductive rather than deductive. We have inferred on the basis of the available evidence that the phenomenon of rationalist deontological philosophy is best explained as a rationalization of evolved emotional intuition (Harman, 1977).

Missing the Deontological Point
I suspect that rationalist deontologists will remain unmoved by the arguments presented here. Instead, I suspect, they will insist that I have simply misunderstoodwhatKant and like-minded deontologistsare all about. Deontology, they will say, isn't about this intuition or that intuition. It's not defined by its normative differences with consequentialism. Rather, deontology is about taking humanity seriously. Above all else, it's about respect for persons. It's about treating others as fellow rational creatures rather than as mere objects, about acting for reasons rational beings can share. And so on (Korsgaard, 1996a; Korsgaard, 1996b).This is, no doubt, how many deontologists see deontology. But this insider's view, as I've suggested, may be misleading. The problem, more specifically, is that it defines deontology in terms of values that are notdistinctivelydeontological, though they may appear to be from the inside. Consider the following analogy with religion. When one asks a religious person to explain the essence of his religion, one often gets an answer like this: "It's about love, really. It's about looking out for other people, looking beyond oneself. It's about community, being part of something larger than oneself." This sort of answer accurately captures the phenomenology of many people's religion, but it's nevertheless inadequate for distinguishing religion from other things. This is because many, if not most, non-religious people aspire to love deeply, look out for other people, avoid self-absorption, have a sense of a community, and be connected to things larger than themselves. In other words, secular humanists and atheists can assent to most of what many religious people think religion is all about. From a secular humanist's point of view, in contrast, what's distinctive about religion is its commitment to the existence of supernatural entities as well as formal religious institutions and doctrines. And they're right. These things really do distinguish religious from non-religious practices, though they may appear to be secondary to many people operating from within a religious point of view.
In the same way, I believe that most of the standard deontological/Kantian self-characterizatons fail to distinguish deontology from other approaches to ethics. (See also Kagan (Kagan, 1997, pp. 70-78.) on the difficulty of defining deontology.) It seems to me that consequentialists, as much as anyone else, have respect for persons, are against treating people asmereobjects, wish to act for reasons that rational creatures can share, etc. A consequentialist respects other persons, and refrains from treating them as mere objects, by counting every person's well-beingin the decision-making process. Likewise, a consequentialist attempts to act according to reasons that rational creatures can share by acting according to principles that give equal weight to everyone's interests, i.e. that are impartial. This is not to say that consequentialists and deontologists don't differ. They do. It's just that the real differences may not be what deontologists often take them to be.
What, then, distinguishes deontology from other kinds of moral thought? A good strategy for answering this question is to start with concrete disagreements between deontologists and others (such as consequentialists) and then work backward in search of deeper principles. This is what I've attempted to do with the trolley and footbridge cases, and other instances in which deontologists and consequentialists disagree. If you ask a deontologically-minded person why it's wrong to push someone in front of speeding trolley in order to save five others, you will getcharacteristically deontological answers. Some will betautological: "Because it's murder!"Others will be more sophisticated: "The ends don't justify the means." "You have to respect people's rights." But, as we know, these answers don't really explain anything, because if you give the same people (on different occasions) the trolley case or the loop case (See above), they'll make the opposite judgment, even though their initial explanation concerning the footbridge case applies equally well to one or both of these cases. Talk about rights, respect for persons, and reasons we can share are natural attempts to explain, in "cognitive" terms, what we feel when we find ourselves having emotionally driven intuitions that are odds with the cold calculus of consequentialism. Although these explanations are inevitably incomplete, there seems to be "something deeply right" about thembecause they give voice to powerful moral emotions. But, as with many religious people's accounts of what's essential to religion, they don't really explain what's distinctive about the philosophy in question.

### AT: Futurity

#### Edelman’s thesis is wrong – politics is a site of reform – that’s why people vote, care about the environment and live in communities – death is inevitable, but there is value in tangible improvements in the human condition

Brenkman ‘2 (John, Distinguished Professor of English and Comprative Literature at CUNY Graduate Center, Narrative, “Queer Post-Politics”, Volume 10, Issue 2, p. 174-180, Project Muse)

But Edelman interprets this nonrecognition in very different terms from those I have just used. When he asserts that "there are no queers in that future as there can be no future for queers," he is not making a mere statement of protest; rather, he is announcing the theoretical position that is the explicit stake of his entire argument. I [End Page 175] now want to turn to his theoretical project, which involves an argument in political theory and an argument from psychoanalysis and a link between the two. The Political Theory Argument For Edelman the image of the child-as-future is more than a powerful trope in the political discourse of the moment. It in effect defines the political realm: "For politics, however radical the means by which some of its practitioners seek to effect a more desirable social order, is conservative insofar as it necessarily works to affirm a social order, defining various strategies aimed at actualizing social reality and transmitting it into the future it aims to bequeath to its inner child" (19). The burden of this argument is that a genuinely critical discourse cannot arise via the marking or symbolizing of the gap between the present and the future. Such symbolizing has indeed been the defining feature of modern critical social discourse, whether among the Enlightenment's philosophes, French revolutionaries, Marxists, social democrats, or contemporary socialists and democrats. Jürgen Habermas, in The Philosophical Discourse of Modernity, defines modern time-consciousness itself as a taking of responsibility for the future. Edelman sees in such a time-consciousness an inescapable trap. For him any such political discourse or activity steps into "the logic by which political engagement serves always as **the medium for reproducing our** social **reality**" (26). Certainly the political realm—whether viewed from the perspective of the state, the political community and citizenship, or political movements—is a medium of social reproduction, in the sense that it serves the relative continuity of innumerable economic and non-economic institutions. But it is not simply a mechanism of social reproduction; it is also the site and instrument of social change. Nor is it simply the field of existing power relations; it is also the terrain of contestation and compromise. Edelman compounds his reductive concept of the political realm by in turn postulating an ironclad intermeshing of social reproduction and sexual reproduction. Here too he takes a **fundamental feature** of modern society, or any society, and absolutizes it. Sexual reproduction is a necessary dimension of social reproduction, almost by definition, in the sense that a society's survival depends upon, among many other things, the fact that its members reproduce. Kinship practices, customs, religious authorities, and civil and criminal law variously regulate sexual reproduction. However, that is not to say that the imperatives of social reproduction dictate or determine or fully functionalize the institutions and practices of sexual reproduction. The failure to recognize the relative autonomy of those institutions and practices underestimates how seriously feminism and the gay and lesbian movement have already challenged the norms and institutions of compulsory heterosexuality in our society. They have done so through creative transformations in civil society and everyday life and through cultural initiatives and political and legal reforms. The anti-abortion and anti-gay activism of the Christian Right arose, in response, to alter and reverse the fundamental achievements of these movements. How then to analyze or theorize this struggle? A motif in Edelman's analysis [End Page 176] takes the rhetoric and imagery of the Christian Right and traditional Catholicism to be a more insightful discourse than liberalism when it comes to understanding the underlying politics of sexuality today. I think this is extremely misguided. The Right does not have a truer sense of the social-symbolic order than liberals and radicals; it simply has more reactionary aims and has mobilized with significant effect to impose its phobic and repressive values on civil society and through the state. The Christian Right is itself a "new social movement" that contests the feminist and gay and lesbian social movements. To grant the Right the status of exemplary articulators of "the" social order strikes me as politically self-destructive and theoretically just plain wrong.

#### Embracing political change is important for altering the future and for queer scholarship -- Even if there's no future, the aff is key to make the present better

Duggan 94 – Lisa, Queering the State, Social Text, No. 39 (summer, 1994), pp. 1-14

The problem for those of us engaged in queer scholarship and teaching, who have a stake in queer politics, is how to respond to these attacks at a moment when we have unprecedented opportunities (we are present in university curriculums and national politics as never before), yet confront perilous and paralyzing assaults. It is imperative that we respond to these attacks in the public arena from which they are launched. We cannot defend our teaching and scholarship without engaging in public debate **and addressing the** nature and operations of the **state upon which** our jobs and futures depend. In other words, the need to turn our attention to state politics is not only theoretical (though it is also that). It is time for queer intellectuals to concentrate on the creative production of strategies at the boundary of queer and nation-strategies specifically for queering the state.5

#### Reducing the future to reproduction is reductionist – fantasies of immortality are inevitable – the case is a da to the alt

**Feit 2005** (Mario, “Extinction anxieties: same-sex marriage and modes of citizenship” theory and event, 8:3, projectmuse)

Warner is thus concerned with the purity of the queer alternative, which he sees under attack by virtue of the persistence of the reproductive narrative's extension to non-biological reproduction.101 Those "extrafamilial intimate cultures" should not be understood in the terms of that which they replace, namely biological reproduction. Those alternative spaces are to be pried loose from biological reproduction; their representations should also be freed from the metaphors of reproduction. Warner's demand for purity goes further  --  he hopes for a culture cleansed from the reproductive imaginary altogether. The reproductive narrative would become archaic. It would no longer be used to conceive of relations to mortality, cultural production and the building of a future. In other words, lesbians and gay men must not appropriate reproductive metaphors for their own relation to mortality, sexuality and world-making. Same-sex marriage must be avoided.102 It would link queer life to the kinship system's relation to mortality and immortality. It turns out to be, at least for Warner, a misguided response to mortality. Warner takes the heteronormative promise of immortality via reproduction too seriously  --  too seriously in the sense that he thinks that by resisting reproductive imaginations one resists fantasies of immortality. However, Bauman's point about strategies of immortality is precisely that **all aspects** of human culture are concerned with immortality. Indeed, Bauman's argument focuses on cultural production in the widest sense, whereas he considers sexual reproduction "unfit for the role of the vehicle of individual transcendence of death" because procreation secures species "immortality at the expense of the mortality of its individual members."103 In other words, fantasies of immortality may exist outside the reproductive paradigm  --  and Irving's attempt to find vicarious immortality may not be reducible to a heteronormative strategy of consolation. These juxtapositions of Bauman and Warner complicate the latter's sense that any attempt to imagine a future by definition implicates one in heteronormativity. Put more succinctly, giving up on reproductive relations to the future does not constitute the break with fantasies of immortality Warner makes it out to be. Indeed, there are other ways  --  nonheteronormative ways  --  in which we equate world-making, i.e. citizenship, with vicarious immortality. The queer dream of immortality may not rely on reproduction. But it, too, is a way of coping with mortality by leaving a mark on the world, by leaving something behind that transcends generations. In Warner's and Butler's critiques of marriage it is quite clear that a culture that they are invested in, that they helped to build, is one that they want to see continue. They take same-sex marriage so personally, because queer culture is so personally meaningful. If my argument is correct, this personal meaningfulness exceeds the meaning that Butler and Warner consciously attribute to it. That neither of them argues that the preservation of queer culture is about vicarious immortality is beside the point. As Zygmunt Bauman emphasizes, the immortalizing function of culture is highly successful insofar it remains opaque to those participating in the making of this culture.104 In raising the question of how much queer critics of marriage are themselves invested in strategies of immortality, of a nonheteronormative kind, I thus hope to contribute to a reflection on the anxieties driving the queer critique of marriage. Attending to anxieties about mortality, I believe, will help move the same-sex marriage debate among queer theorists away from concerns with transcending death and towards a more complex awareness of the challenges of political strategies for plural queer communities.

### AT: Death Drive

#### Accepting the death drives obliterates ethics and agency

Lear 2000Jonathan Lear, Philosophy Professor at the University of Chicago, 2000

Happiness, Death, and the Remainder of Life, Page 131-132

By 1920 Freud is ready to break up what he has come to see as a fantasized unity of mental functioning. The mind can no longer be understood in terms of the pleasure principle, but instead of living with the gap, he posits a “beyond.” It is in this way that Freud takes himself to be explaining aggression. Aggression is now interpreted as the death drive diverted outward. It is precisely this move which locks us into an inescapably negative teleogy. Let us just assume (for the sake of argument, though I think it true) that humans are aggressive animals, and that dealing with human aggression is a serious psychological and social problem. The question remains: how might one deal with it? But if, as Freud does, one interprets aggression as the most obvious manifestation of one of the two primordial forces in the universe, the answer would seem to be: there is no successful way. My first inclination is to say that this leads to a pessimistic view of the human condition; but this isn’t really the issue. My second inclination is to say it leads to a limited view of the human condition; but even this doesn’t get to the heart of the problem. The point here is not to endorse an ontic optimism – that if we didn’t adopt this view, we could shape life in nonaggressive ways – but to confront an ontological insight: that Freud’s interpretation is an instance of bad faith. The metaphysical basicness of the death drive implies a kind of metaphysical intractability to the phenomenon of human aggression. As a matter of empirical fact, humans may be aggressive animals – and the fact of human aggression may be difficult to deal with. It may be experienced as intractable. But to raise this purported intractability to a metaphysical principle is to obliterate the question of responsibility. And it is to cover over – by precluding – what might turn out to be a significant empirical possibilities.

#### Zero empirical or logical basis for the psychoanalytic critique

Mootz, 2k [Francis J, Visiting Professor of Law, Pennsylvania State University, Dickinson School of Law; Professor of Law, Western New England College School of Law, Yale Journal of the Law & Humanities, 12 Yale J.L. & Human. 299, p. 319-320]

Freudian psychoanalysis increasingly is the target of blistering criticism from a wide variety of commentators. 54 In a recent review, Frederick Crews reports that   independent studies have begun to converge toward a verdict... that there is literally nothing to be said, scientifically or therapeutically, to the advantage of the entire Freudian system or any of its component dogmas Analysis as a whole remains powerless... and understandably so, because a thoroughgoing epistemological critique, based on commonly acknowledged standards of evidence and logic decertifies every distinctively psychoanalytic proposition. 55   The most telling criticism of Freud's psychoanalytic theory is that it has proven no more effective in producing therapeutic benefits than have other forms of psychotherapy. 56 Critics draw the obvious conclusion that the benefits (if any) of psychotherapy are neither explained nor facilitated by psychoanalytic theories. Although Freudian psychoanalytic theory purports to provide a truthful account of the operations of the psyche and the causes for mental disturbances, critics argue that psychoanalytic theory may prove in the end to be nothing more than fancy verbiage that tends to obscure whatever healing effects psychotherapeutic dialogue may have. 57

Freudian psychoanalysis failed because it could not make good on its claim to be a rigorous and empirical science. Although Freud's mystique is premised on a widespread belief that psychoanalysis was a profound innovation made possible by his genius, Freud claimed only that he was extending the scientific research of his day within the organizing context of a biological model of the human mind. 58  [\*320]  Freud's adherents created the embarrassing cult of personality and the myth of a self-validating psychoanalytic method only after Freud's empirical claims could not withstand critical scrutiny in accordance with the scientific methodology demanded by his metapsychology. 59 The record is clear that Freud believed that psychoanalysis would take its place among the sciences and that his clinical work provided empirical confirmation of his theories. This belief now appears to be completely **unfounded** and indefensible.

Freud's quest for a scientifically grounded psychotherapy was not amateurish or naive. Although Freud viewed his "metapsychology as a set of directives for constructing a scientific psychology," n60 Patricia Kitcher makes a persuasive case that he was not a blind dogmatist who refused to adjust his metapsychology in the face of contradictory evidence. n61 Freud's commitment to the scientific method, coupled with his creative vision, led him to construct a comprehensive and integrative metapsychology that drew from a number of scientific disciplines in an impressive and persuasive manner. n62 However, the natural and social sciences upon which he built his derivative and interdisciplinary approach developed too rapidly and unpredictably for him to respond. n63 As developments in biology quickly undermined Freud's theory, he "began to look to linguistics and especially to anthropology as more hopeful sources of support," n64 but this strategy later in his career proved equally [\*321] unsuccessful. n65 The scientific justification claimed by Freud literally eroded when the knowledge base underlying his theory collapsed, leaving his disciples with the impossible task of defending a theory whose presuppositions no longer were plausible according to their own criteria of validation. n66

### AT: Whiteness Root cause

#### **White supremacy isn’t a monolithic root cause---proximate causes determined through empirics are more likely---and their arg shuts off productive debate over solutions**

Shelby 7 – Tommie Shelby, Professor of African and African American Studies and of Philosophy at Harvard, 2007, We Who Are Dark: The Philosophical Foundations of Black Solidarity

Others might challenge the distinction between ideological and structural causes of black disadvantage, on the grounds that we are rarely, if ever, able to so neatly separate these factors, an epistemic situation that is only made worse by the fact that these causes interact in complex ways with behavioral factors. These distinctions, while perhaps straightforward in the abstract, are difficult to employ in practice. For example, it would be difficult, if not impossible, for the members of a poor black community to determine with any accuracy whether their impoverished condition is due primarily to institutional racism, the impact of past racial injustice, the increasing technological basis of the economy, shrinking state budgets, the vicissitudes of world trade, the ascendancy of conservative ideology, poorly funded schools, lack of personal initiative, a violent drug trade that deters business investment, some combination of these factors, or some other explanation altogether. Moreover, it is notoriously difficult to determine when the formulation of putatively race-neutral policies has been motivated by racism or when such policies are unfairly applied by racially biased public officials.

There are very real empirical difficulties in determining the specific causal significance of the factors that create and perpetuate black disadvantage; nonetheless, it is clear that these factors exist and that justice will demand different practical remedies according to each factor's relative impact on blacks' life chances. We must acknowledge that our social world is complicated and not immediately transparent to common sense, and thus that systematic empirical inquiry, historical studies, and rigorous social analysis are required to reveal its systemic structure and sociocultural dynamics. There is, moreover, no mechanical or infallible procedure for determining which analyses are the soundest ones. In addition, given the inevitable bias that attends social inquiry, legislators and those they represent cannot simply defer to social-scientific experts. We must instead rely on open public debate—among politicians, scholars, policy makers, intellectuals, and ordinary citizens—with the aim of garnering rationally motivated and informed consensus. And even if our practical decision procedures rest on critical deliberative discourse and thus live up to our highest democratic ideals, some trial and error through actual practice is unavoidable.

These difficulties and complications notwithstanding, a general recognition of the distinctions among the ideological and structural causes of black disadvantage could help blacks refocus their political energies and self-help strategies. Attention to these distinctions might help expose the superficiality of theories that seek to reduce all the social obstacles that blacks face to contemporary forms of racism or white supremacy. A more penetrating, subtle, and empirically grounded analysis is needed to comprehend the causes of racial inequality and black disadvantage. Indeed, these distinctions highlight the necessity to probe deeper to find the causes of contemporary forms of racism, as some racial conflict may be a symptom of broader problems or recent social developments (such as immigration policy or reduced federal funding for higher education).

### AT: Discourse

#### Discourse doesn’t shape reality for gender

Christina **Sommers**, Prof. Philosophy @ Clark, **’94** (<http://www.friesian.com/language.htm>)

But all this as a theory can actually be tested: We would expect that if linguistic gender were a correlate of social form, an engine for the enforcement of patriarchy or a reflection of the existence of patriarchy, then we would find it present in sexist or patriarchal societies and absent in non-sexist or non-patriarchal societies. In fact, the presence of gender in language bears no relation whatsoever to the nature of the corresponding societies**.** The best historically conspicuous example is Persian**.** Old Persian, like Greek, Latin, and Sanskrit, had the original Indo-European genders of masculine, feminine, and neuter. By Middle Persian all gender had disappeared. This was not the result of Persian feminist criticism, nor was it the result of the evolution of an equal opportunity society for women. It just happened-- as most kinds of linguistic change do. Modern Persian is a language completely without gender**.** There are not even different words for "he" and "she," just the unisex un. (There are not even different titles for married and unmarried women: Persian khânum can be translated as "Ms.") Nevertheless**,** after some progress under Western influence, the Revolutionary Iranof the Ayatollah Khomeini retreated from the modern world into a vigorous reëstablishment of mediaevalism, putting everyone, especially women**,** back into their traditional places. So the advice could be: If someone wants "non-sexist language," move to Iran. But that probably would not be quite what they have in mind. Why didn't the "gender free" Persian language create a feminist utopia? This goes to show us that gender in language is completely irrelevant to the sexual openness of society. And one of the greatest ironies for us is that a feminist attempt to produce a gender free "non-sexist language" in English could only be contemplated in the first place because grammatical gender has already all but disappeared from English. Feminist complaints must focus on the meaning of words like "man," even though words can mean anything by convention, because the pronouns "he," "she", and "it" are all that remain grammatically of the three Indo-European genders. Getting gender to disappear in German or French or Spanish (etc.), on the other hand, would be a hopeless project without completely altering the structure of the languages [note]. Occasionally feminists say that they are personally offended by people referring to ships or aircraft as "she"; and manuals of "non-sexist" language usually require that inanimate objects be "it" without exception. Good luck in French. Since every noun is either masculine or feminine, not only would this feature have to be abolished, but an entirely new gender, the neuter, presumably with new pronouns, would have to be created. Then there would have to be decisions about words like livre, which is differentiated into two words by gender alone: le livre is "book," from Latin liber, while la livre is "pound," from Latin libra. French doesn't even have English's happy refuge from inclusive "he" in "they," since you still have to decide in the third person plural between ils and elles. Only on ("one") allows for a gender free (or common gender) pronoun, just as "one" does in English. But the conceptual error underlying this kind of thing didn't originate with feminism; it is the heritage of once popular but now discreditable theories about the nature of language -- that how we talk determines how we think (to paraphrase something the semanticist S.I. Hayakawa actually said -- a kind of linguistic behaviorism) and that the structure of language creates the structure of the world (promoted by the philosopher Wittgenstein and his recent followers). If we talk with grammatical gender, so this goes, then this determines not only that we think in exactly the same way but that the grammatical structure is projected into the world. In fact, as the counterexamples indicate, such linguistic structures as gender determine little about thought and nothing about the world. Grammar is usually just grammar, nothing else. It is used to express meaning -- it does not determine meaning. But the most significant assumption and the greatest hybris in the theory of "sexist language" is just that language and linguistic change are controllable, and so can be controlled by us, if we wish to. But language is not anything that can be planned or controlled. Languages grow and change spontaneously. The kind of theory that properly can describe the development of language is one that credits events with the capacity for developing spontaneous natural order. Theorists of such order range from the great naturalist Charles Darwin, to the great economist F.A. Hayek, and to the great philosopher Karl Popper. Thosewho traditionally have wanted to control linguistic usagefor one reason or another, and who believe that it can be controlled, are always ultimately frustrated. Literary or sacred languages can preserve ancient or elevated usages -- as with ancient Hebrew, Greek, Latin, Arabic, Sanskrit, Chinese, etc. -- but real spoken language goes off on its own merry way, exuberantly evolving new meanings, words, usages, and even new languages, always to the chagrin of the priests, scholars, and traditionalists. Nobody ever plans that. As feminism has wanted to control, mainly to abolish, the use of gender, it thus puts itself into the pinched shoes of the traditional grammatical martinet -- leaving us with the image of a fussy schoolmarm swatting knuckles with a ruler rather than of the heroic revolutionary woman leading the way to a better future. In the end, gender, in any language, is just an expression of the affinity of our understanding for logical divisons and hierarchies; and since logical divisions and hierarchies are essential to thought, the principle of eradicating gender (or "hierarchy") is absurd. Even if the feminine gender is usually more "marked" than the masculine, this can really mean anything, depending, indeed, on what we intend to mean. Instead of gender systems compelling.

### Alt

#### Turn – radical individualism cedes the political and fractures movements

Edwards 98 (Tim, Senior Lecturer in Sociology at the University of Leicester, Sexualities, “Queer Fears: Against the Cultural Turn”, Vol 1, p471-484, November, <http://sex.sagepub.com.proxy.lib.umich.edu/cgi/reprint/1/4/471.pdf>)

A second factor in queer politics is the assertion of *diversity* in itself as a radical undercutting of the so-called new moral conservatism. There are several important points to make here. Firstly, on one level diversity is not a political strategy in itself, if it is anything at all politically it’s a recipe for radical individualism at the most and, more likely, fragmentation at the least. Secondly, diversity is an empirical reality and while societies are increasing in their complexity it is not as new as it seems. For example, single parenthood is not simply a phenomenon of the 1990s and most individuals still spend vast chunks of their lives in fairly traditional family networks if not entirely under the same roof (Weeks, 1996). Part of the difficulty here is the sense in which diversity is inherently contradictory as a weapon against the assumed normality of the majority and at the same time as a source of potential political collapse into individualism. If the lesson of diversity constitutes anything, then, it is the undermining of any form of communitarian politics.

### More

#### Edelman’s overidentification with the culture of death cedes the political to elites

Balasopoulos, 2006 [Antonis, Journal of American Studies, v. 40, projectmuse]

No Future is a work whose argument cannot be divorced from the experience of disillusionment with the failure of liberal sexual politics to prevail in a political struggle that the author suspects to have been doomed from the start. For political discourse is inconceivable, Edelman argues, without prior agreement to invest in the fantasy of the symbolic intelligibility of the social tissue. Such agreement, however, always turns out to involve a pledge of allegiance to the figure that embodies the promise of a meaning-fulfilling future at the same time that it affirms the transcendental meaningfulness of heterosexual union–the child. What is therefore exacted as entrance fee to the political is the perennial othering and exclusion of those who embody all that is queerly meaning-negating and thereby child-threatening as well: those whose forms of pleasure register as narcissistically antisocial, those whose sexuality refuses to be etherealized into an anodyne expression of subjectivity, those whose very existence appears as a threat to the innocence of the child and to the future-serving ethics of its self-declared protectors. Edelman’s defiant response to this ideological circuit (one made unmistakably visible in the resounding tactical success of the anti-gay marriage ballot in last November’s US presidential elections) is to affirm precisely what liberal defenses of queerness must necessarily seek to deny: an uncompromising “embrace of queer negativity,” whose ethical value would reside in its “radical challenge to the value of the social itself.” The bulk of what follows Edelman’s main thesis consists of three chapters, each of which psychoanalytically examines the vexed relation between the narrative exigencies of “reproductive futurism” and the figure of a subject whose queerness registers as an antisocial pursuit of jouissance and an enthrallment in the meaningless compulsions of the death drive–a subject Edelman, evoking Lacan, dubs the “sinthomosexual.” The first chapter anatomizes this relation through a reading of Victorian prose fiction (focusing on the misanthropic bachelor misers of Charles Dickens’s A Christmas Carol and George Eliot’s Silas Marner and the children who providentially straighten them out), while the remaining two focus on twentieth-century narrative cinema and on the future-negating figures inhabiting Hitchcock’s North by Northwest and The Birds. Edelman’s book takes obvious pleasure in provocation, stylistically indulging in the ironic hermeneutics it methodologically advocates with at times infelicitous results (an excess of largely gratuitous verbal punning and a partiality for highly convoluted syntax are cases in point). More disconcertingly, No Future involves a vision of queer subjectivity that is so strongly invested in transvaluating the homophobic linkage of homosexuality with a “culture of death” that it ends up **ignoring** the complexity and diversity of what has historically constituted queer (lesbian and transgender as well as gay) politics. Missing, for instance, is a serious and sustained attempt to engage with the multiple transformations the concepts of reproduction and parenthood have undergone in the last two decades, partly as a result of the interventions of queer theory itself. Equally absent is any analytical concern with the cultural and representational resonances of the queer child–a figure that certainly complicates the book’s one-dimensional treatment of the image of besieged childhood, while making apparent the unreflectively eclectic and historically untheorized nature of Edelman’s choice of primary texts. The effect of such exclusions–a highly repetitive account of texts that are treated as virtually interchangeable–is particularly troubling from a theoretical standpoint. For though Edelman’s argument largely rests on a theoretical distinction between an ideologically normative and a radically destabilizing kind of repetition compulsion, his analytical practice makes the difference between them less than obvious. Paying the reader diminishing dividends with each page, No Future bulldozes its way from Plato to the Victorians and from Hitchcock to Judith Butler by unwaveringly locating the same Manichean conflict between reproductive ideology and its queer negation, a struggle to the death between monolithic and unchanging absolutes. To declare No Future a timely work is hence not an unambiguous compliment; for its timeliness comes at the cost of intellectual surrender to the increasingly polarized and disconcertingly fundamentalist climate of American politics in the present.

#### The case is a DA -- Futurism key to action

Kurasawa 04 - Fuyuka Kurasawa, prof of sociology at York U, 2004 (Constellations, p. 455-456)

In the twenty-first century, the lines of political cleavage are being drawn along those of competing dystopian visions. Indeed, one of the notable features of recent public discourse and socio-political struggle is their negationist hue, for they are devoted as much to the prevention of disaster as to the realization of the good, less to what ought to be than what could but must not be. The debates that preceded the war in Iraq provide a vivid illustration of this tendency, as both camps rhetorically invoked incommensurable catastrophic scenarios to make their respective cases. And as many analysts have noted, the multinational antiwar protests culminating on February 15, 2003 marked the first time that a mass movement was able to mobilize substantial numbers of people dedicated to averting war before it had actually broken out. More generally, given past experiences and awareness of what might occur in the future, given the cries of ‘never again’ (the Second World War, the Holocaust, Bhopal, Rwanda, etc.) and ‘not ever’ (e.g., nuclear or ecological apocalypse, human cloning) that are emanating from different parts of the world, the avoidance of crises is seemingly on everyone’s lips – and everyone’s conscience. From the United Nations and regional multilateral organizations to states, from non-governmental organizations to transnational social movements, the determination to prevent the actualization of potential cataclysms has become a new imperative in world affairs. Allowing past disasters to reoccur and unprecedented calamities to unfold is now widely seen as unbearable when, in the process, the suffering of future generations is callously tolerated and our survival is being irresponsibly jeopardized. Hence, we need to pay attention to what a widely circulated report by the International Commission on Intervention and State Sovereignty identifies as a burgeoning “culture of prevention,”3 a dynamic that carries major, albeit still poorly understood, normative and political implications. Rather than bemoaning the contemporary preeminence of a dystopian imaginary, I am claiming that it can enable a novel form of transnational socio-political action, a manifestation of globalization from below that can be termed preventive foresight. We should not reduce the latter to a formal principle regulating international relations or an ensemble of policy prescriptions for official players on the world stage, since it is, just as significantly, a mode of ethico-political practice enacted by participants in the emerging realm of global civil society. In other words, what I want to underscore is the work of farsightedness, the social processes through which civic associations are simultaneously constituting and putting into practice a sense of responsibility for the future by attempting to prevent global catastrophes. Although the labor of preventive foresight takes place in varying political and socio-cultural settings – and with different degrees of institutional support and access to symbolic and material resources – it is underpinned by three distinctive features: dialogism, publicity, and transnationalism. In the first instance, preventive foresight is an intersubjective or dialogical process of address, recognition, and response between two parties in global civil society: the ‘warners,’ who anticipate and send out word of possible perils, and the audiences being warned, those who heed their interlocutors’ messages by demanding that governments and/or international organizations take measures to steer away from disaster. Secondly, the work of farsightedness derives its effectiveness and legitimacy from public debate and deliberation. This is not to say that a fully fledged global public sphere is already in existence, since transnational “strong publics” with decisional power in the formal-institutional realm are currently embryonic at best. Rather, in this context, publicity signifies that “weak publics” with distinct yet occasionally overlapping constituencies are coalescing around struggles to avoid specific global catastrophes.4 Hence, despite having little direct decision-making capacity, the environmental and peace movements, humanitarian NGOs, and other similar globally-oriented civic associations are becoming significant actors involved in public opinion formation. Groups like these are active in disseminating information and alerting citizens about looming catastrophes, lobbying states and multilateral organizations from the ‘inside’ and pressuring them from the ‘outside,’ as well as fostering public participation in debates about the future. This brings us to the transnational character of preventive foresight, which is most explicit in the now commonplace observation that we live in an interdependent world because of the globalization of the perils that humankind faces (nuclear annihilation, global warming, terrorism, genocide, AIDS and SARS epidemics, and so on); individuals and groups from far-flung parts of the planet are being brought together into “risk communities” that transcend geographical borders.5 Moreover, due to dense media and information flows, knowledge of impeding catastrophes can instantaneously reach the four corners of the earth – sometimes well before individuals in one place experience the actual consequences of a crisis originating in another. My contention is that civic associations are engaging in dialogical, public, and transnational forms of ethico-political action that contribute to the creation of a fledgling global civil society existing ‘below’ the official and institutionalized architecture of international relations.6 The work of preventive foresight consists of forging ties between citizens; participating in the circulation of flows of claims, images, and information across borders; promoting an ethos of farsighted cosmopolitanism; and forming and mobilizing weak publics that debate and struggle against possible catastrophes. Over the past few decades, states and international organizations have frequently been content to follow the lead of globally-minded civil society actors, who have been instrumental in placing on the public agenda a host of pivotal issues (such as nuclear war, ecological pollution, species extinction, genetic engineering, and mass human rights violations). To my mind, this strongly indicates that if prevention of global crises is to eventually rival the assertion of short-term and narrowly defined rationales (national interest, profit, bureaucratic self-preservation, etc.), weak publics must begin by convincing or compelling official representatives and multilateral organizations to act differently; only then will farsightedness be in a position to ‘move up’ and become institutionalized via strong publics.7 Since the global culture of prevention remains a work in progress, the argument presented in this paper is poised between empirical and normative dimensions of analysis. It proposes a theory of the practice of preventive foresight based upon already existing struggles and discourses, at the same time as it advocates the adoption of certain principles that would substantively thicken and assist in the realization of a sense of responsibility for the future of humankind. I will thereby proceed in four steps, beginning with a consideration of the shifting socio-political and cultural climate that is giving rise to farsightedness today (I). I will then contend that the development of a public aptitude for early warning about global cataclysms can overcome flawed conceptions of the future’s essential inscrutability (II). From this will follow the claim that an ethos of farsighted cosmopolitanism – of solidarity that extends to future generations – can supplant the preeminence of ‘short-termism’ with the help of appeals to the public’s moral imagination and use of reason (III). In the final section of the paper, I will argue that the commitment of global civil society actors to norms of precaution and transnational justice can hone citizens’ faculty of critical judgment against abuses of the dystopian imaginary, thereby opening the way to public deliberation about the construction of an alternative world order (IV).

#### Futurism is key to human survival – internal link turns their impacts

Kurasawa 4(Professor of Sociology, York University of Toronto, Fuyuki, Constellations Volume 11, No 4, 2004).

In recent years, the rise of a dystopian imaginary has accompanied damning assessments and widespread recognition of the international community’s repeated failures to adequately intervene in a number of largely preventable disasters (from the genocides in the ex-Yugoslavia, Rwanda, and East Timor to climate change and the spiraling AIDS pandemics in parts of sub-Saharan Africa and Asia). Social movements, NGOs, diasporic groups, and concerned citizens are not mincing words in their criticisms of the United Nations system and its member-states, and thus beginning to shift the discursive and moral terrain in world affairs. As a result, the callousness implicit in **disregarding the future has been exposed as a threat to the survival of humanity** and its natural surroundings. The Realpolitik of national self-interest and the neoliberal logic of the market will undoubtedly continue to assert themselves, yet demands for farsightedness are increasingly reining them in. Though governments, multilateral institutions, and transnational corporations will probably never completely modify the presentist assumptions underlying their modes of operation, they are, at the very least, finding themselves compelled to account for egregious instances of short-sightedness and rhetorically commit themselves to taking corrective steps. What may seem like a modest development at first glance would have been unimaginable even a few decades ago, indicating the extent to which we have moved toward a culture of prevention. A new imperative has come into being, that of preventive foresight.

# 1ar

### solvency

#### Err aff—our authors have dedicated careers to studying drone legality—it’s way too easy to assert vague loopholes—proves concrete reforms come first

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

To date scholars have lacked a thorough understanding of the U.S. government’s targeted killing practices. As such, their commentary is oftentimes premised on easily describable issues, and fails to grapple with the multiple levels of intergovernmental accountability present in current practice. When dealing with the theoretical and normative issues associated with targeted killings, scholars have failed to specify what they mean when they aver that targeted killings are unaccountable. Both trends have impeded legal theory, and constrained scholarly discourse on a matter of public import.

This article is a necessary corrective to the public and scholarly debate. It has presented the complex web of bureaucratic, legal, professional, and political accountability mechanisms that exert influence over the targeted killing process. It has demonstrated that many of the critiques of targeted killings rest upon poorly conceived understandings of the process, unclear definitions, and unsubstantiated speculation. The article’s reform recommendations, grounded in a deep understanding of the actual process, reflect an assumption that transparency, performance criteria, and politically grounded independent review can enhance the already robust accountability mechanisms embedded in current practice.

### citizenship

#### Opposing citizenship without offering a plausible political alternative speaks to their position as armchair philosophers that allows them to take citizenship for granted while ignoring its history of moving away from ethnic chauvinism

Butts ’88 R. Freeman, Center for Civic Education, “The Morality of Democratic Citizenship: Goals for Civic Education in the Republic's Third Century” http://www.civiced.org/papers/morality/morality\_ch3a.html

**Those of us born and brought up in modern nation-states are likely to think that citizenship is** "natural" and something **to be taken for granted. But those who have been born in one country and have immigrated to another to become "naturalized" citizens** and especially those who are prevented from emigrating **are not nearly so likely to take citizenship for granted. And those who are "stateless" or who are denied full citizenship in the countries of their birth know only too well the (problems)** handicaps**, if not the terrors, of having little or no citizenship at all in a world made up of nation-states.** I begin, then, with a reminder about **the origin of the idea of citizenship in a republic, which** long antedated the **modern** nation-state but which is now tightly bound up with it. The idea of republican citizenship was forged in two major formative periods. The first formulation occurred during the rise and fall of the Greek city-states from roughly the seventh to the fourth centuries B.C. and was developed further in the Roman Republic from the fifth to first centuries B.C. The second took place in connection with the growth of the modern nation-states in the revolutionary era of Western Europe and America from the seventeenth to the nineteenth centuries. We in the United States are inheritors of both periods. The founders of the American Republic not only drew heavily upon both the Graeco-Roman tradition of citizenship and the Western European, but made significant contributions of their own to the idea of democratic citizenship. As the twentieth century draws to a close, it is clear that we are in a third formative period when the idea of citizenship will again need to be reformulated to take account of the dramatically changed world situation, which the men of the eighteenth century could not foresee. Two main points about the origin of the idea of citizenship are: (1) citizenship came to be based on membership in a political community regulated by man-made laws rather than on membership in a family, clan, or tribe arising from kinship, religion, ethnic background, or inherited status; and (2) the predominant view of citizenship in fifth century Athens was that citizenship meant that the laws were made, administered, and judged by free citizens who were both rulers and ruled, not merely "subjects" of a king or priest who made or revealed the laws. In the first case, citizenship entailed rights and responsibilities conferred by law (achieved status) in contrast to roles and obligations conferred by inherited class, kinship, or sex (ascribed status). In the second case the free citizens became members of a democratic or republican political community in which the citizen class participated actively in the affairs of the state. The significant fact about the rise of the Greek city­states from the seventh to the fifth century B.C. was that authority for governing, for maintaining social order, and for administering justice was transferred from household patriarchs, tribal chiefs, military nobles, literate priesthoods, or hereditary kings to the political community centering in the city­state (polis or polity). **While some of the outward forms and terminology of tribe and clan were often kept for the sake of ethnic pride, the Greek polls dropped the essentially ascriptive characteristics of kinship ties typical of traditional folk societies and established citizenship in the polity as the overarching tie of unity that bound the community together. The bonds of sentiment and loyalty to the territorial state became the primary forms of social cohesion, superior to family or kin, class or caste, or any kind of voluntary association**. The key personality in this fundamental change was the powerful Athenian statesman, Cleisthenes, whose political reforms apparently were affected in the last decade of the sixth century B.C. This transfer of legitimate authority from kinship lineage to polity is nicely described by Robert Nisbet, Schweitzer Professor Emeritus of the Humanities at Columbia: What we see, therefore, taking place with revolutionary suddenness and sweep is a total transformation of a social system. Instead of the traditional, kinship­based pluralism of Athenian authority, there is now a monolithic unit that arises from a governmental system reaching directly down to the individual citizen. Instead of a system of law based upon immemorial tradition, its interpretation subject to the elders of kinship society and always slow and uncertain, we have now a system of Athenian law that is prescriptive, that is made, rather than merely interpreted out of tradition, and that is deemed binding upon all Athenians irrespective of kinship lineage. We see, too, a growing commonality of all Athenians, one that did not and could not exist so long as the sense of community rose primarily from the fact of generation, through tribe or clan. And finally, there is in the new Athens a manifest individualism, sprung from the fact that henceforth the individual, not the kinship group, was the irreducible and unalterable unit of the Athenian military-political system. 10 While Nisbet is pleased to refer to the new polity as a "monolithic unity," the rise and decline of the Greek polis from 800 to 300 B.C. would scarcely justify universal application of such a description, especially for Athens. In the seventh century, independent farmers were drawn into the rolls of citizens to fill the ranks of infantrymen alongside the mounted cavalrymen of nobles. And under Cleisthenes propertyless artisans and sailors in the mercantile and military navy also gained citizenship. These trends provided a broader base of citizenship in Athens than in many other Greek polities, leading to its boast of becoming a democracy. And the florescence of drama, art, architecture, literature, and philosophy that was the glory of fifth century Athens both sprang from and centered upon the polls as the symbol and culmination of a citizen's fulfillment. A classic statement of the high ideal of citizenship was expressed by Pericles in his funeral oration in the first year of the Peloponnesian War in 431 B.C. While it was indeed an idealized version, nevertheless it laid claims upon the loyalties and commitments of Athenians similar to those that Lincoln's address on the battlefield of Gettysburg came to have for Americans: Our constitution... favors the many instead of the few; this is why it is called a democracy. **If we look** to the laws, they afford equal justice to all in their private differences; **if to social standing, advancement in public life falls to reputation for capacity, class considerations not being allowed to interfere with merit; nor again does poverty bar the way, if a man is able to serve the state, he is not hindered by the obscurity of his condition. The freedom which we enjoy in our government extends also to our ordinary life. There, far from exercising a jealous surveillance over each other, we do not feel called upon to be angry with our neighbor for doing what he likes**.... But all this ease in our private relations does not make us lawless as citizens... We throw open our city to the world, and never by alien acts exclude foreigners from any opportunity of learning or observing, although the eyes of an enemy may occasionally profit by our liberality.... Our public men have, besides politics, their private affairs to attend to, and our ordinary citizens, though occupied with the pursuits of industry, are still fair judges of public matters; for, unlike any other nation, regarding him who takes no part in these duties not as unambitious but as useless, we Athenians are able to judge at all events if we cannot originate, and instead of looking on discussion as a stumbling block in the way of action, we think it an indispensable preliminary to any action at all. 11

#### Also takes out the alt—us-them dichotomies are an inevitable part of organization—only we mitigate the IMPACT to that

**Wilkinson 5** (Will Wilkingson, policy analyst for the Cato Institute, “Capitalism and Human Nature” http://www.cato.org/research/articles/wilkinson-050201.html

The dynamics of dominance hierarchies in the EEA was complex. Hierarchies play an important role in guiding collective efforts and distributing scarce resources without having to resort to violence. Daily affairs run more smoothly if everyone knows what is expected of him. However, space at the top of the hierarchy is scarce and a source of conflict and competition. Those who command higher status in social hierarchies have better access to material resources and mating opportunities. Thus, evolution favors the psychology of males and females who are able successfully to compete for positions of dominance.

Living at the bottom of the dominance heap is a raw deal, and we are not built to take it lying down. There is evidence that lower status males naturally form coalitions to check the power of more dominant males and to achieve relatively egalitarian distribution of resources. In his book Hierarchy in the Forest, anthropologist Christopher Boehm calls these coalitions against the powerful "reverse dominance hierarchies."

Emory professor of economics and law Paul Rubin usefully distinguishes between "productive" and "allocative" hierarchies. Productive hierarchies are those that organize cooperative efforts to achieve otherwise unattainable mutually advantageous gains. Business organizations are a prime example. Allocative hierarchies, on the other hand, exist mainly to transfer resources to the top. Aristocracies and dictatorships are extreme examples. Although the nation-state can perform productive functions, there is the constant risk that it becomes dominated by allocative hierarchies. Rubin warns that our natural wariness of zero-sum allocative hierarchies, which helps us to guard against the concentration of power in too few hands, is often directed at modern positive-sum productive hierarchies, like corporations, thereby threatening the viability of enterprises that tend to make everyone better off.

There is no way to stop dominance-seeking behavior. We may hope only to channel it to non-harmful uses. A free society therefore requires that positions of dominance and status be widely available in a multitude of productive hierarchies, and that opportunities for greater status and dominance through predation are limited by the constant vigilance of "the people"—the ultimate reverse dominance hierarchy. A flourishing civil society permits almost everyone to be the leader of something, whether the local Star Trek fan club or the city council, thereby somewhat satisfying the human taste for hierarchical status, but to no one's serious detriment.

#### The assumption that citizenship directly plasticizes individuals within national identity is belied by the rise of globally mediated civil society—their link is about a decade obsolete

Urry ’10 John, Department of Sociology University of Lancaster, “Mobile sociology” British Journal of Sociology

http://onlinelibrary.wiley.com/doi/10.1111/j.1468-4446.2009.01249.x/pdf

Further, **most important developments in sociology have at least indirectly stemmed from social movements with ‘emancipatory interests’ fuelling a new or reconfigured social analysis**. Examples of such mobilized groupings which at different historical moments have included the working class, farmers, the professions, urban protest movements, student’s movement, women’s movement, immigrant groups, environmental NGOs, gay and lesbian movement, ‘disabled’ groups and so on. **The emancipatory interests of these groupings are not always directly reflected within sociology; more they have had a complex and refracted impact. But in that sense, sociology has been ‘parasitic’ upon these movements, thus demonstrating how the ‘cognitive practices’ of such movements have helped to constitute ‘public spaces for thinking new thoughts, activating new actors, generating new ideas’ within societies** (Eyerman and Jamison 1991: 161; Urry 1995: ch. 2). **Societies were organized through debate occurring within a** relatively delimited **national,** public sphere**. The** information **and** knowledge produced **by its universities centrally formed those debates and delimited possible outcomes. Disciplines were particularly implicated in contributing knowledge to such a public sphere, and indeed in constituting that sphere as part of a national civil society** (Cohen and Arato 1992; Emirbayer and Sheller 1999). **However, the increasingly mediatized nature of contemporary civil societies transforms all of this. It is not so much that the mass media reflects what goes on elsewhere, so much as what happens in and through the media is what happens elsewhere. The sphere of public life that provided the context for knowledge produced within the academy is now increasingly** mediatized (see Dahlgren 1995).Thrift describes the cosmopolitan mediatization of complexity science, especially as organized in and through the Sante Fe Institute (Thrift 1999). **Debate is concerned as much with image, meaning, and emotion, as it is with written texts, cognition and science. The global economy of signs, of globally circulating information and images, is transforming the public sphere into an increasingly denationalized, visual and emotional public stage** (Urry 2000: ch. 7; Knorr Cetina 1997).

### impact

#### No impact

Dean 4 – Prof Sociology, Macquarie U (Mitchell, Four Theses on the Powers of Life and Death, http://www.usyd.edu.au/contretemps/5december2004/dean.pdf, AG)

In a passage from the latter, Foucault shows that the genocidal character of National Socialism did not simply arise from its extension of bio-power (1979, 149-50). Nazism was concerned with the total administration of the life, of the family, of marriage, procreation, education and with the intensification of disciplinary micro-powers. But it articulated this with another set of features concerned with ‘the oneiric exaltation of a superior blood’, of fatherland, and of the triumph of the race. In other words, if we are to understand how the most dramatic forces of life and death were unleashed in the twentieth century, we have to understand how bio-power was articulated with elements of sovereignty and its symbolics. Pace Bauman, it is not simply the development of instrumental rationality in the form of modern bio-power, or a bureaucratic power applied to life that makes the Holocaust possible. It is the system of linkages, re-codings and re-inscriptions of sovereign notions of fatherland, territory, and blood within the new bio-political discourses of eugenics and racial hygiene that makes the unthinkable thinkable. The fact that all modern states must articulate elements of sovereignty with bio-politics also allows for a virtuous combination. The virtue of liberal and democratic forms of government is that they deploy two instruments to check the unfettered imperatives of bio-power, one drawn from political economy and the other from sovereignty itself (cf. Foucault, 1997a, 73-9). Liberalism seeks to review the imperative to govern too much by pointing to the quasi-natural processes of the market or of the exchanges of commercial society that are external to government. To govern economically means to govern through economic and other social processes external to government and also to govern in an efficient, cost-effective way. Liberalism also invokes the freedom and rights of a new subject - the sovereign individual. By 'governing through freedom' and in relation to freedom, advanced liberal democracies are able to differentiate their bio-politics from that of modern totalitarian states and older police states.

#### The causality of their impact is backwards

Ridley 10 – professor at Cold Spring Harbor Laboratory

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

If my fictional family is not to your taste, perhaps you prefer statistics. Since 1800, the population of the world has multiplied six times, yet average life expectancy has more than doubled and real income has risen more than nine times. Taking a shorter perspective, in 2005, compared with 1955, the average human being on Planet Earth earned nearly three times as much money (corrected for inflation), ate one-third more calories of food, buried one-third as many of her children and could expect to live one-third longer. She was less likely to die as a result of war, murder, childbirth, accidents, tornadoes, flooding, famine, whooping cough, tuberculosis, malaria, diphtheria, typhus, typhoid, measles, smallpox, scurvy or polio. She was less likely, at any given age, to get cancer, heart disease or stroke. She was more likely to be literate and to have finished school. She was more likely to own a telephone, a flush toilet, a refrigerator and a bicycle. All this during a half-century when the world population has more than doubled, so that far from being rationed by population pressure, the goods and services available to the people of the world have expanded. It is, by any standard, an astonishing human achievement. Averages conceal a lot. But even if you break down the world into bits, it is hard to find any region that was worse off in 2005 than it was in 1955. Over that half-century, real income per head ended a little lower in only six countries (Afghanistan, Haiti, Congo, Liberia, Sierra Leone and Somalia), life expectancy in three (Russia, Swaziland and Zimbabwe), and infant survival in none. In the rest they have rocketed upward. Africa’s rate of improvement has been distressingly slow and patchy compared with the rest of the world, and many southern African countries saw life expectancy plunge in the 1990s as the AIDS epidemic took hold (before recovering in recent years). There were also moments in the half-century when you could have caught countries in episodes of dreadful deterioration of living standards or life chances – China in the 1960s, Cambodia in the 1970s, Ethiopia in the 1980s, Rwanda in the 1990s, Congo in the 2000s, North Korea throughout. Argentina had a disappointingly stagnant twentieth century. But overall, after fifty years, the outcome for the world is remarkably, astonishingly, dramatically positive. The average South Korean lives twenty-six more years and earns fifteen times as much income each year as he did in 1955 (and earns fifteen times as much as his North Korean counter part). The average Mexican lives longer now than the average Briton did in 1955. The average Botswanan earns more than the average Finn did in 1955. Infant mortality is lower today in Nepal than it was in Italy in 1951. The proportion of Vietnamese living on less than $2 a day has dropped from 90 per cent to 30 per cent in twenty years. The rich have got richer, but the poor have done even better. The poor in the developing world grew their consumption twice as fast as the world as a whole between 1980 and 2000. The Chinese are ten times as rich, one-third as fecund and twenty-eight years longer-lived than they were fifty years ago. Even Nigerians are twice as rich, 25 per cent less fecund and nine years longer-lived than they were in 1955. Despite a doubling of the world population, even the raw number of people living in absolute poverty (defined as less than a 1985 dollar a day) has fallen since the 1950s. The percentage living in such absolute poverty has dropped by more than half – to less than 18 per cent. That number is, of course, still all too horribly high, but the trend is hardly a cause for despair: at the current rate of decline, it would hit zero around 2035 – though it probably won’t. The United Nations estimates that poverty was reduced more in the last fifty years than in the previous 500.

### perm

#### Last line of HArrwaya

Haraway 1991 (Donna Jeanne, Simians, Cyborgs, and Women. “I would rather be a cyborg than a goddess” p. 159-161) [Nagel]

Beyond either the difficulties or the contributions in the argument of any one author, neither Marxist nor radical feminist points of view have tended to embrace the status of a partial explanation; both were regularly constituted as totalities. Western explanation has demanded as much; how else could the ‘Western’ author incorporate its others? Each tried to annex other forms of domination by expanding its basic categories through analogy, simple listing, or addition. Embarrassed silence about race among white radical and socialist feminists was one major, devastating political consequence. History and polyvocality disappear into political taxonomies that try to establish genealogies. There was no structural room for race (or for much else) in theory claiming to reveal the construction of the category woman an social group women as a unified or totalizable whole. The structure of my caricature looks like this: Socialist feminism – structure of class // wage labor // alienation Labor, by analogy reproduction, by extension sex, by addition race Radical feminism – structure of gender // sexual appropriation // objectification Sex, by analogy labor, by extension reproduction, by addition race In another context, the French theorist, Julia Kristeva, claimed women appeared as a historical group after the Second World War, along with groups like youth. Her dates are doubtful; but we are now accustomed to remembering that as objects of knowledge and as historical actors, ‘race’ did not always exist, ‘class’ has a historical genesis, and ‘homosexuals’ are quite junior. It is no accident that the symbolic system of the family of man – and so the essence of woman – breaks up at the same moment that networks of connection among people on the planet are unprecedentedly multiple, pregnant, and complex. ‘Advanced capitalism’ is inadequate to convey the structure of this historical moment. In the ‘Western’ sense, the end of man is at stake. It is no accident that woman disintegrates into women in our time. Perhaps socialist feminists were not substantially guilty of producing essentialist theory that suppressed women’s particularity and contradictory interests. I think we have been, at least through unreflective participation in the logics, languages, and practices of white humanism and through searching for a single ground of domination to secure our revolutionary voice. Now we have less excuse. But in the consciousness of our failures, we risk lapsing into boundless difference and giving up on the confusing task of making partial, real connection. Some differences are playful; some are poles of world historical systems of domination. ‘Epistemology’ is about knowing the difference.

#### The cyborg gets coopted and commodified – the counterplan solves better

**Cohen-Shabot 6 –** Ph.D. in Philosophy from the University of Haifa, Israel

(Sara, “Grotesque Bodies: A Response to Disembodied Cyborgs”, Journal of Gender Studies, Vol. 15, No. 3 November 2006, pp. 223–235, dml)

In this paper, my aim is to show some of the problems that the figure of the cyborg may raise, in order to show how in many cases the cyborg has been used, even if in a dissimulated way, to reinstate the natural, normal, traditional order with its known distinct and very well defined categories and divisions. But, more importantly, I propose here an alternative to the figure of the cyborg which, I believe, has more possibilities for keeping the promises of subverting the natural order of Western thought. This alternative is the one presented by the figure of the grotesque body. The grotesque body, I will argue, contains in itself the seeds of a real hybrid, fragmented, ambiguous thought. The relevance of my proposal is that, in opposition to the cyborg, the grotesque body does not present the dangers of a reinforcement of the old categories which support the powers-that-be in maintaining oppression and domination. Unlike the cyborg, the grotesque body does not make possible a return to the Cartesian frame, with its clear danger of losing one more time the embodied subject (and losing with it the concrete, non-neutral subject), which postmodern and feminist thought strived so hard to bring to the philosophical and political scene.