# 1AC – Clay Round 2

### 1AC – Overreach Advantage

#### CONTENTION 1: OVERREACH

#### Congressional inaction has made Executive overreach a defining policy doctrine---expansive executive authority triggers overreach

Maxwell 12 - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

In the wake of the attacks by al Qaeda on September 11, 2001, an analogous phenomenon of feeling safe has occurred in a recent U.S. national security policy: America’s explicit use of targeted killings to eliminate terrorists, under the legal doctrines of self-defense and the law of war. Legal scholars define targeted killing as the use of lethal force by a state4 or its agents with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.5 In layman’s terms, targeted killing is used by the United States to eliminate individuals it views as a threat.6 Targeted killings, for better or for worse, have become “a defining doctrine of American strategic policy.”7 Although many U.S. Presidents have reserved the right to use targeted killings in unique circumstances, making this option a formal part of American foreign policy incurs risks that, unless adroitly controlled and defined in concert with Congress, could drive our practices in the use of force in a direction that is not wise for the long-term health of the rule of law. This article traces the history of targeted killing from a U.S. perspective. It next explains how terrorism has traditionally been handled as a domestic law enforcement action within the United States and why this departure in policy to handle terrorists like al Qaeda under the law of war—that is, declaring war against a terrorist organization—is novel. While this policy is not an ill-conceived course of action given the global nature of al Qaeda, there are practical limitations on how this war against terrorism can be conducted under the orders of the President. Within the authority to target individuals who are terrorists, there are two facets of Presidential power that the United States must grapple with: first, how narrow and tailored the President’s authority should be when ordering a targeted killing under the rubric of self-defense; and second, whether the President must adhere to concepts within the law of war, specifically the targeting of individuals who do not don a uniform. The gatekeeper of these Presidential powers and the prevention of their overreach is Congress. The Constitution demands nothing less, but thus far, Congress’s silence is deafening.

#### That lowers the threshold for use for US policymakers

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

But the advantages of drones are as overstated and misunderstood as the problems they pose — and in some ways, their very perceived advantages cause new problems. Drone technologies temptingly lower or disguise the costs of lethal force, but their availability can blind us to the potentially dangerous longer - term costs and consequences of our strategic choices. Armed drones lower the perceived costs of using lethal force in at least three ways. First, drones reduce the dollar cost of using lethal force inside foreign countries. 13 Most drones are economical compared with the available alternatives. 14 Manned aircraft, for instance, are quite expensive: 15 Lockheed Martin's F - 22 fighter jets cost about $150 million each; F - 35s are $90 million; and F - 16s are $55 million. But the 2011 price of a Reaper drone was approximately $28.4 million, while Predator drones cost only about $5 million to make. 16 As with so many things, putting a dollar figure on drones is difficult; it depends what costs are counted, and what time frame is used. Nevertheless, drones continue to be perceived as cheaper by government decision - makers. Second, relying on drone strikes rather than alternative means reduces the domestic political costs of using lethal force. Sending manned aircraft or special operations forces after a suspected terrorist places the lives of U.S. personnel at risk, and full - scale invasions and occupations endanger even more American lives. In contrast, using armed drones eliminates all short - term risks to the lives of U.S. personnel involved in the operations. Third, by reducing accidental civilian casualties, 17 precision drone technologies reduce the perceived moral and reputational costs of using lethal force. The US government is extraordinarily concerned about avoiding unnecessary civilian casualties, and rightly so. There are moral and legal reasons for this concern, and there are also pragmatic reasons: civilian casualties cause pain and resentment within local populations and host - country governments and alienate the international community It is of course not a bad thing to possess military technologies that are cost little, protect American lives and enable us to minimize civilian casualties. When new technologies appear to reduce the costs of using lethal force, however, the threshold for deciding to use lethal force correspondingly drops, and officials will be tempted to use lethal force with greater frequency and less wisdom.¶ Over the last decade, we have seen US drone strikes evolve from a tool used in extremely limited circumstances to go after specifically identified high - ranking al Qaeda officials to a tool relied on in an increasing number of countries to go after an eternally lengthening list of putative bad actors, with increasingly tenuous links to grave or imminent threats to the United States. Some of these suspected terrorists have been identified by name and specifically targeted, while others are increasingly targeted on the basis of suspicious behavior patterns. Increasingly, drones strikes have targeted militants who are lower and lower down the terrorist food chain, 18 rather than terrorist masterminds. 19 Although drone strikes are believed to have killed more than 3,000 people since 2004, 20 analysis by the New America Foundation and more recently by a the McClatchy newspaper s suggests that only a small fraction of the dead appear to have been so - called "high - value targets." 21 What’s more, drone strikes have spread ever further from "hot" battlefields, migrating from Pakistan to Yemen to Somalia (and perhaps to Mali 22 and the Philippines as well). 23

#### Failure to adopt rules for US drones sets a dangerous international precedent----magnifies every impact by causing global instability

Kristen Roberts 13, news editor for National Journal, master's in security studies from Georgetown University, master's degree in journalism from Columbia University, March 21st, 2013, "When the Whole World Has Drones," National Journal, www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321

To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order.¶ Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan.¶ This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself **that would at minimum** create a globally relevant standard **for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation.**

#### And it makes great power war inevitable by tempting leaders to use drones too often---causes escalation as traditional checks don’t apply

Eric Posner 13, a professor at the University of Chicago Law School, May 15th, 2013, "The Killer Robot War is Coming," Slate, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/drone\_warfare\_and\_spying\_we\_need\_new\_laws.html

Drones have existed for decades, but in recent years they have become ubiquitous. Some people celebrate drones as an effective and humane weapon because they can be used with precision to slay enemies and spare civilians, and argue that they pose no special risks that cannot be handled by existing law. Indeed, drones, far more than any other weapon, enable governments to comply with international humanitarian law by avoiding civilian casualties when attacking enemies. Drone defenders also mocked Rand Paul for demanding that the Obama administration declare whether it believed that it could kill people with drones on American territory. Existing law permits the police to shoot criminals who pose an imminent threat to others; if police can gun down hostage takers and rampaging shooters, why can’t they drone them down too?¶ While there is much to be said in favor of these arguments, drone technology poses a paradox that its defenders have not confronted. Because drones are cheap, effective, riskless for their operators, and adept at minimizing civilian casualties, governments may be tempted to use them too frequently.¶ Indeed, a panic has already arisen that the government will use drones to place the public under surveillance. Many municipalities have passed laws prohibiting such spying even though it has not yet taken place. Why can’t we just assume that existing privacy laws and constitutional rights are sufficient to prevent abuses?¶ To see why, consider U.S. v. Jones, a 2012 case in which the Supreme Court held that the police must get a search warrant before attaching a GPS tracking device to a car, because the physical attachment of the device trespassed on property rights. Justice Samuel Alito argued that this protection was insufficient, because the government could still spy on people from the air. While piloted aircraft are too expensive to use routinely, drones are not, or will not be. One might argue that if the police can observe and follow you in public without obtaining a search warrant, they should be able to do the same thing with drones. But when the cost of surveillance declines, more surveillance takes place. If police face manpower limits, then they will spy only when strong suspicions justify the intrusion on targets’ privacy. If police can launch limitless drones, then we may fear that police will be tempted to shadow ordinary people without good reason.¶ Similarly, we may be comfortable with giving the president authority to use military force on his own when he must put soldiers into harm’s way, knowing that he will not risk lives lightly. Presidents have learned through hard experience that the public will not tolerate even a handful of casualties if it does not believe that the mission is justified. But when drones eliminate the risk of casualties, the president is more likely to launch wars too often.¶ The same problem arises internationally. The international laws that predate drones assume that military intervention across borders risks significant casualties. Since that check normally kept the peace, international law could give a lot of leeway for using military force to chase down terrorists. But if the risk of casualties disappears, then nations might too eagerly attack, resulting in blowback and retaliation. Ironically, the reduced threat to civilians in tactical operations could wind up destabilizing relationships between countries, including even major powers like the United States and China, making the long-term threat to human life much greater.¶ These three scenarios illustrate the same lesson: that law and technology work in tandem. When technological barriers limit the risk of government abuse, legal restrictions on governmental action can be looser. When those technological barriers fall, legal restrictions may need to be tightened.

#### These conflicts escalate --- wrecks global stability

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89\_1/89\_1Boyle.pdf

A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them.

#### Best scholarship supports our theory of drone use---unless norms are established early, they’ll be ineffective

Robert Farley 11, assistant professor at the Patterson School of Diplomacy and International Commerce at the University of Kentucky, Over the Horizon: U.S. Drone Use Sets Global Precedent, October 12, <http://www.worldpoliticsreview.com/articles/10311/over-the-horizon-u-s-drone-use-sets-global-precedent>

Is the world about to see a "drone race" among the United States, China and several other major powers? Writing in the New York Times, Scott Shane argued that just such an arms race is already happening and that it is largely a result of the widespread use of drones in a counterterror role by the United States. Shane suggests that an international norm of drone usage is developing around how the United States has decided to employ drones. In the future, we may expect that China, Russia and India will employ advanced drone technologies against similar enemies, perhaps in Xinjiang or Chechnya. Kenneth Anderson agrees that the drone race is on, but disagrees about its cause, arguing that improvements in the various drone component technologies made such an arms race inevitable. Had the United States not pursued advanced drone technology or launched an aggressive drone campaign, some other country would have taken the lead in drone capabilities. ¶ So which is it? Has the United States sparked a drone race, or was a race with the Chinese and Russians inevitable? While there's truth on both sides, on balance Shane is correct. Arms races don't just "happen" because of outside technological developments. Rather, they are embedded in political dynamics associated with public perception, international prestige and bureaucratic conflict. China and Russia pursued the development of drones before the United States showed the world what the Predator could do, but they are pursuing capabilities more vigorously because of the U.S. example. Understanding this is necessary to developing expectations of what lies ahead as well as a strategy for regulating drone warfare.¶ States run arms races for a variety of reasons. The best-known reason is a sense of fear: The developing capabilities of an opponent leave a state feeling vulnerable. The Germany's build-up of battleships in the years prior to World War I made Britain feel vulnerable, necessitating the expansion of the Royal Navy, and vice versa. Similarly, the threat posed by Soviet missiles during the Cold War required an increase in U.S. nuclear capabilities, and so forth. However, states also "race" in response to public pressure, bureaucratic politics and the desire for prestige. Sometimes, for instance, states feel the need to procure the same type of weapon another state has developed in order to maintain their relative position, even if they do not feel directly threatened by the weapon. Alternatively, bureaucrats and generals might use the existence of foreign weapons to argue for their own pet systems. All of these reasons share common characteristics, however: They are both social and strategic, and they depend on the behavior of other countries. ¶ Improvements in technology do not make the procurement of any given weapon necessary; rather, geostrategic interest creates the need for a system. So while there's a degree of truth to Anderson's argument about the availability of drone technology, he ignores the degree to which dramatic precedent can affect state policy. The technologies that made HMS Dreadnought such a revolutionary warship in 1906 were available before it was built; its dramatic appearance nevertheless transformed the major naval powers' procurement plans. Similarly, the Soviet Union and the United States accelerated nuclear arms procurement following the Cuban Missile Crisis, with the USSR in particular increasing its missile forces by nearly 20 times, partially in response to perceptions of vulnerability. So while a drone "race" may have taken place even without the large-scale Predator and Reaper campaign in Pakistan, Yemen and Somalia, the extent and character of the race now on display has been driven by U.S. behavior. Other states, observing the effectiveness -- or at least the capabilities -- of U.S. drones will work to create their own counterparts with an enthusiasm that they would not have had in absence of the U.S. example.¶ What is undeniable, however, is that we face a drone race, which inevitably evokes the question of arms control. Because they vary widely in technical characteristics, appearance and even definition, drones are poor candidates for "traditional" arms control of the variety that places strict limits on number of vehicles constructed, fielded and so forth. Rather, to the extent that any regulation of drone warfare is likely, it will come through treaties limiting how drones are used. ¶ Such a treaty would require either deep concern on the part of the major powers that advances in drone capabilities threatened their interests and survival, or widespread revulsion among the global public against the practice of drone warfare. The latter is somewhat more likely than the former, as drone construction at this point seems unlikely to dominate state defense budgets to the same degree as battleships in the 1920s or nuclear weapons in the 1970s. However, for now, drones are used mainly to kill unpleasant people in places distant from media attention. So creating the public outrage necessary to force global elites to limit drone usage may also prove difficult, although the specter of "out of control robots" killing humans with impunity might change that. P.W. Singer, author of "Wired for War," argues that new robot technologies will require a new approach to the legal regulation of war. Robots, both in the sky and on the ground, not to mention in the sea, already have killing capabilities that rival those of humans. Any approach to legally managing drone warfare will likely come as part of a more general effort to regulate the operation of robots in war.¶ However, even in the unlikely event of global public outrage, any serious effort at regulating the use of drones will require U.S. acquiescence. Landmines are a remarkably unpopular form of weapon, but the United States continues to resist the Anti-Personnel Mine Ban Convention. If the United States sees unrestricted drone warfare as being to its advantage -- and it is likely to do so even if China, Russia and India develop similar drone capabilities -- then even global outrage may not be sufficient to make the U.S. budge on its position. This simply reaffirms the original point: Arms races don't just "happen," but rather are a direct, if unexpected outcome of state policy. Like it or not, the behavior of the United States right now is structuring how the world will think about, build and use drones for the foreseeable future. Given this, U.S. policymakers should perhaps devote a touch more attention to the precedent they're setting.

#### Norm setting is effective---US can make the difference on drones

Micah Zenko 13, CFR Douglas Dillon Fellow in the Center for Preventive Action, PhD in Political Science from Brandeis University, “Reforming U.S. Drone Strike Policies,” CFR Special Report 65, January 2013

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.¶ In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies.

#### Now is key to shape international norms and only the US can lead---lack of rules undermines all other norms on violence

James Whibley 13, received a M.A. in International Relations from Victoria University of Wellington, New Zealand, February 6th, 2013 "The Proliferation of Drone Warfare: The Weakening of Norms and International Precedent," Georgetown Journal of International Affairs,journal.georgetown.edu/2013/02/06/the-proliferation-of-drone-warfare-the-weakening-of-norms-and-international-precedent-by-james-whibley/

While drone advocates such as Max Boot argue that other countries are unlikely to follow any precedents about drone use established by America, power has an undeniable effect in establishing which norms are respected or enforced. America used its power in the international system after World War 2 to embed norms about human rights and liberal political organization, not only in allies, but in former adversaries and the international system as a whole. Likewise, the literature on rule-oriented constructivism presents a powerful case that norms have set precedents on the appropriate war-fighting and deterrence policies when using weapons of mass destruction and the practices of colonialism and human intervention. Therefore, drones advocates must consider the possible **unintended consequences of lending legitimacy to the** unrestricted use of drones. However, with the Obama administration only now beginning to formulate rules about using drones and seemingly uninterested in restraining its current practices, the US may miss an opportunity to entrench international norms about drone operations.¶ If countries begin to follow the precedent set by the US, there is also the risk of weakening pre-existing international norms about the use of violence. In the summer 2000 issue of International Security, Ward Thomas warned that, while the long-standing norm against assassination has always been less applicable to terrorist groups, the targeting of terrorists is, “likely to undermine the norm as a whole and erode the barriers to the use of assassination in other circumstances.” Such an occurrence would represent a deleterious unintended consequence to an already inhumane international system, justifying greater scrutiny of the drone program.¶ Realism cautions scholars not to expect ethical behaviour in international politics. Yet, the widespread use of drones by recent administrations with little accountability and the lack of any normative framework about their deployment on the battlefield could come to be seen as a serious strategic error and moral failing. If the Obama administration was nervous about leaving an amorphous drone policy to a possible Romney Presidency, then surely China or Russia possessing such a program would be terrifying.

#### Lawful norms on nuclear use necessary to maintain the taboo

Fetter 3, Dean of the School of Public Policy at the University of Maryland and an affiliate of the Project on Managing the Atom at Harvard University's Belfer Center for Science and International Affairs, 2003, U.S. Nuclear Posture: One Step Forward, Two Steps Back, http://www.publicpolicy.umd.edu/Fetter/2003-P&S-NPR.pdf

The most significant security threat to our society and to most of our allies is nuclear weapons. The taboo on the use of nuclear weapons which has held since 1945 benefits the United States as much or more than any other country. Our nuclear posture should be based first and foremost on protecting and enhancing that taboo, and on the spread of nuclear weapons to additional states. Developing new nuclear weapons designed for tactical use moves in the opposite direction. As Pakistan and North Korea demonstrated, nuclear weapons are not that difficult to acquire. Iraq may have been thwarted, but what about Iran? Many countries could build nuclear weapons in a few years or less if they decided to so, despite our best efforts to prevent it. Nonproliferation is largely a voluntary and cooperative game; for most part, we are able to act effectively against proliferators only to the extent that we can marshal widespread international support. We must recognize that nonproliferation regime is a vast web of formal international agreements and informal cooperation. Despite a few notable failures, it has been highly successful and has greatly benefited the security of the United States. Cooperation among states with nuclear capability is vital to control the flow of nuclear materials and combat nuclear terrorism. This web of agreements and this level of cooperation cannot remain intact for long if the United States claims for itself alone the right to use nuclear weapons first, even against nonnuclear weapon states, and to develop and test a new generation of weapons for this purpose. We are the most powerful nation on earth, but we are not invulnerable. Our security relies on assistance of allies and the protection of international restraints. In the long run, our interests are best served by an international system that is as law-like as possible, one in which the use of nuclear weapons by anyone or any country is beyond the pale.

#### Impact is extinction

Philip W. Anderson 6 – Physics Prof @ Princeton, http://physics.ucsd.edu /petition/DCflyer.pdf

Using or even merely threatening to use a nuclear weapon preemptively against a nonnuclear adversary tells the 182 non-nuclear-weapon countries signatories of the Nuclear Non-Proliferation Treaty that their adherence to the treaty offers them no protection against a nuclear attack by a nuclear nation. Many are thus likely to abandon the treaty, and the nuclear non-proliferation framework will be damaged even further than it already has, with disastrous consequences for the security of the United States and the world. There are no sharp lines between small “tactical” nuclear weapons and large ones, nor between nuclear weapons targeting facilities and those targeting armies or cities. Nuclear weapons have not been used for 60 years. Once the US uses a nuclear weapon again, it will heighten the probability that others will too. In a world with many more nuclear nations and no longer a “taboo” against the use of nuclear weapons, there will be a greatly enhanced risk that regional conflicts could expand into global nuclear war, with the potential to destroy our civilization. It is gravely irresponsible for the U.S. as the greatest superpower to consider courses of action that could eventually lead to the widespread destruction of life on the planet. We urge you to announce publicly that the U.S. is taking the nuclear option off the table in the case of all nonnuclear adversaries, present or future, and we urge the American people to make their voices heard on this matter.

### 1AC – Plan

#### The United States Federal Government should restrict presidential war making authority to conduct targeted killings.

### 1AC – Solvency

#### CONTENTION 2: SOLVENCY

#### Plan can limit the scope of targeted killings

**Cole 13** David, The Nation's legal affairs correspondent, is the author of *The Torture Memos: Rationalizing the Unthinkable*, "What's Wrong With Obama's Drone Policy", February 13, www.thenation.com/article/172898/whats-wrong-obamas-drone-policy#

**The power to kill** by remote control anywhere in the world **should not unilaterally reside in the executive branch.** The white paper dismissively claims that courts cannot second-guess the executive’s “predictive” judgments about national security. But courts already do this. The Foreign Intelligence Surveillance Court, composed of federal judges, reviews requests for search and wiretap warrants based on national security concerns. Those warrants by definition rest on predictive judgments about whether evidence relating to national security will be found. If we demand that a court authorize even a temporary wiretap, shouldn’t we also demand that a court review a decision to end a human life? Some have questioned the utility of a necessarily one-sided and secret warrant process, but warrants have served us well for centuries by interposing an independent decision-maker between the executive and the citizenry. Due process may require advance notice to the target in some instances and/or judicial review after the fact, as the Israeli Supreme Court requires. But we can’t leave this awesome power exclusively in executive hands.¶ Some object that since ordinary uses of armed force in wartime do not require this sort of public accountability, judicial review and due process, those requirements ought not to apply to drone strikes. During World War II, FDR did not have to issue criteria for a kill list, involve courts or publish his officers’ specific rules of engagement. **But the technology of drones, coupled with the murky scope of this “war,” make those features essential now**. Because they permit the killing of people without putting boots on the ground or risking American lives, and because they are, at least in theory, surgically precise, drones **reduce** the considerable practical **disincentives to lethal force**.¶ The ambiguous definitions of the **scope of this war** and even of the enemy risk establishing a **precedent that drones can be used against anyone** a government considers even a long-term threat. The administration claims still to be operating under the 2001 Authorization for Use of Military Force (AUMF), but that sanctioned military force only against those who attacked us on 9/11 and those who harbored them. In Yemen and Somalia, we have killed members of Al Qaeda in the Arabian Peninsula and Al Shabaab. Neither organization even existed in 2001, and Al Shabaab seems principally focused on domestic Somali grievances. Does the AUMF authorize the government to kill by remote control any group that says it is inspired by Al Qaeda? If so, has President Obama resurrected the “global war on terror” that he previously rejected?¶ Much like transnational wars against nonstate actors, drones challenge traditional legal and ethical categories. The root of the problem is that they make it too easy to kill**. We need not and cannot forswear their use**. We should not confuse them with assassinations and torture. **But we must insist on clear restrictions, transparent practices, independent oversight and accountability—in short, the rule of law**. In his only major presidential speech on national security, in May 2009, President Obama promised that he would fight terror within the confines of our values and the rule of law. What happened to that promise?

**Failure to codify limits sets precedent for strikes and erodes global norms ---Congress key**

**Maxwell 12** - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

Once a state demonstrates membership in an organized armed group, the members can be presumed to be a continuous danger. **Because this danger is worldwide**, the state can now act in areas **outside** the traditional **zones of conflict**. It is the individual’s conduct over time—**regardless of location**— that gives him the status. Once the status attaches, the member of the organized armed group can be targeted. ¶ Enter Congress ¶ The weakness of this theory is that **it is not codified in U.S. law**; it is merely the extrapolation of international theorists and organizations. The **only entity under the Constitution** that can frame and settle Presidential power regarding the enforcement of international norms is **Congress**. As the check on executive power, Congress must amend the AUMF to **give the executive a statutory roadmap that articulates when force is appropriate** and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, **statutory clarification** will **give other states a roadmap** for the contours of what constitutes anticipatory self-defense and the **proper conduct of the military** under the law of war.¶ Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74¶ The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order **targeted killing without congressional limits** means the President can manipulate force in the name of national security without **tethering it to** the law advanced by international **norms**. The potential consequence of such **unilateral executive action** is that it gives other states, such as North Korea and Iran, the **customary precedent to do the same**. Targeted killing **might be required in certain circumstances**, but if the guidelines are debated and understood, the decision can be executed **with** the full faith of the people’s representative, **Congress**. When the decision is made **without Congress**, the result might make the United States feel safer, but the process **eschews** what gives a state its greatest safety: the **rule of law**.

#### Simulated national security law debates preserve agency and enhance decision-making---avoids cooption

Laura K. Donohue 13, Associate Professor of Law, Georgetown Law, 4/11, “National Security Law Pedagogy and the Role of Simulations”, http://jnslp.com/wp-content/uploads/2013/04/National-Security-Law-Pedagogy-and-the-Role-of-Simulations.pdf

The concept of simulations as an aspect of higher education, or in the law school environment, is not new.164 Moot court, after all, is a form of simulation and one of the oldest teaching devices in the law. What is new, however, is the idea of designing a civilian national security course that takes advantage of the doctrinal and experiential components of law school education and integrates the experience through a multi-day simulation. In 2009, I taught the first module based on this design at Stanford Law, which I developed the following year into a full course at Georgetown Law. It has since gone through multiple iterations. The initial concept followed on the federal full-scale Top Official (“TopOff”) exercises, used to train government officials to respond to domestic crises.165 It adapted a Tabletop Exercise, designed with the help of exercise officials at DHS and FEMA, to the law school environment. The Tabletop used one storyline to push on specific legal questions, as students, assigned roles in the discussion, sat around a table and for six hours engaged with the material. The problem with the Tabletop Exercise was that it was too static, and the rigidity of the format left little room, or time, for student agency. Unlike the government’s TopOff exercises, which gave officials the opportunity to fully engage with the many different concerns that arise in the course of a national security crisis as well as the chance to deal with externalities, the Tabletop focused on specific legal issues, even as it controlled for external chaos. The opportunity to provide a more full experience for the students came with the creation of first a one-day, and then a multi-day simulation. The course design and simulation continues to evolve. It offers a model for achieving the pedagogical goals outlined above, in the process developing a rigorous training ground for the next generation of national security lawyers.166 A. Course Design The central idea in structuring the NSL Sim 2.0 course was to bridge the gap between theory and practice by conveying doctrinal material and creating an alternative reality in which students would be forced to act upon legal concerns.167 The exercise itself is a form of problem-based learning, wherein students are given both agency and responsibility for the results. Towards this end, the structure must be at once bounded (directed and focused on certain areas of the law and legal education) and flexible (responsive to student input and decisionmaking). Perhaps the most significant weakness in the use of any constructed universe is the problem of authenticity. Efforts to replicate reality will inevitably fall short. There is simply too much uncertainty, randomness, and complexity in the real world. One way to address this shortcoming, however, is through design and agency. The scenarios with which students grapple and the structural design of the simulation must reflect the national security realm, even as students themselves must make choices that carry consequences. Indeed, to some extent, student decisions themselves must drive the evolution of events within the simulation.168 Additionally, while authenticity matters, it is worth noting that at some level the fact that the incident does not take place in a real-world setting can be a great advantage. That is, the simulation creates an environment where students can make mistakes and learn from these mistakes – without what might otherwise be devastating consequences. It also allows instructors to develop multiple points of feedback to enrich student learning in a way that would be much more difficult to do in a regular practice setting. NSL Sim 2.0 takes as its starting point the national security pedagogical goals discussed above. It works backwards to then engineer a classroom, cyber, and physical/simulation experience to delve into each of these areas. As a substantive matter, the course focuses on the constitutional, statutory, and regulatory authorities in national security law, placing particular focus on the interstices between black letter law and areas where the field is either unsettled or in flux. A key aspect of the course design is that it retains both the doctrinal and experiential components of legal education. Divorcing simulations from the doctrinal environment risks falling short on the first and third national security pedagogical goals: (1) analytical skills and substantive knowledge, and (3) critical thought. A certain amount of both can be learned in the course of a simulation; however, the national security crisis environment is not well-suited to the more thoughtful and careful analytical discussion. What I am thus proposing is a course design in which doctrine is paired with the type of experiential learning more common in a clinical realm. The former precedes the latter, giving students the opportunity to develop depth and breadth prior to the exercise. In order to capture problems related to adaptation and evolution, addressing goal [1(d)], the simulation itself takes place over a multi-day period. Because of the intensity involved in national security matters (and conflicting demands on student time), the model makes use of a multi-user virtual environment. The use of such technology is critical to creating more powerful, immersive simulations.169 It also allows for continual interaction between the players. Multi-user virtual environments have the further advantage of helping to transform the traditional teaching culture, predominantly concerned with manipulating textual and symbolic knowledge, into a culture where students learn and can then be assessed on the basis of their participation in changing practices.170 I thus worked with the Information Technology group at Georgetown Law to build the cyber portal used for NSL Sim 2.0. The twin goals of adaptation and evolution require that students be given a significant amount of agency and responsibility for decisions taken in the course of the simulation. To further this aim, I constituted a Control Team, with six professors, four attorneys from practice, a media expert, six to eight former simulation students, and a number of technology experts. Four of the professors specialize in different areas of national security law and assume roles in the course of the exercise, with the aim of pushing students towards a deeper doctrinal understanding of shifting national security law authorities. One professor plays the role of President of the United States. The sixth professor focuses on questions of professional responsibility. The attorneys from practice help to build the simulation and then, along with all the professors, assume active roles during the simulation itself. Returning students assist in the execution of the play, further developing their understanding of national security law. Throughout the simulation, the Control Team is constantly reacting to student choices. When unexpected decisions are made, professors may choose to pursue the evolution of the story to accomplish the pedagogical aims, or they may choose to cut off play in that area (there are various devices for doing so, such as denying requests, sending materials to labs to be analyzed, drawing the players back into the main storylines, and leaking information to the media). A total immersion simulation involves a number of scenarios, as well as systemic noise, to give students experience in dealing with the second pedagogical goal: factual chaos and information overload. The driving aim here is to teach students how to manage information more effectively. Five to six storylines are thus developed, each with its own arc and evolution. To this are added multiple alterations of the situation, relating to background noise. Thus, unlike hypotheticals, doctrinal problems, single-experience exercises, or even Tabletop exercises, the goal is not to eliminate external conditions, but to embrace them as part of the challenge facing national security lawyers. The simulation itself is problem-based, giving players agency in driving the evolution of the experience – thus addressing goal [2(c)]. This requires a realtime response from the professor(s) overseeing the simulation, pairing bounded storylines with flexibility to emphasize different areas of the law and the students’ practical skills. Indeed, each storyline is based on a problem facing the government, to which players must then respond, generating in turn a set of new issues that must be addressed. The written and oral components of the simulation conform to the fourth pedagogical goal – the types of situations in which national security lawyers will find themselves. Particular emphasis is placed on nontraditional modes of communication, such as legal documents in advance of the crisis itself, meetings in the midst of breaking national security concerns, multiple informal interactions, media exchanges, telephone calls, Congressional testimony, and formal briefings to senior level officials in the course of the simulation as well as during the last class session. These oral components are paired with the preparation of formal legal instruments, such as applications to the Foreign Intelligence Surveillance Court, legal memos, applications for search warrants under Title III, and administrative subpoenas for NSLs. In addition, students are required to prepare a paper outlining their legal authorities prior to the simulation – and to deliver a 90 second oral briefing after the session. To replicate the high-stakes political environment at issue in goals (1) and (5), students are divided into political and legal roles and assigned to different (and competing) institutions: the White House, DoD, DHS, HHS, DOJ, DOS, Congress, state offices, nongovernmental organizations, and the media. This requires students to acknowledge and work within the broader Washington context, even as they are cognizant of the policy implications of their decisions. They must get used to working with policymakers and to representing one of many different considerations that decisionmakers take into account in the national security domain. Scenarios are selected with high consequence events in mind, to ensure that students recognize both the domestic and international dimensions of national security law. Further alterations to the simulation provide for the broader political context – for instance, whether it is an election year, which parties control different branches, and state and local issues in related but distinct areas. The media is given a particularly prominent role. One member of the Control Team runs an AP wire service, while two student players represent print and broadcast media, respectively. The Virtual News Network (“VNN”), which performs in the second capacity, runs continuously during the exercise, in the course of which players may at times be required to appear before the camera. This media component helps to emphasize the broader political context within which national security law is practiced. Both anticipated and unanticipated decisions give rise to ethical questions and matters related to the fifth goal: professional responsibility. The way in which such issues arise stems from simulation design as well as spontaneous interjections from both the Control Team and the participants in the simulation itself. As aforementioned, professors on the Control Team, and practicing attorneys who have previously gone through a simulation, focus on raising decision points that encourage students to consider ethical and professional considerations. Throughout the simulation good judgment and leadership play a key role, determining the players’ effectiveness, with the exercise itself hitting the aim of the integration of the various pedagogical goals. Finally, there are multiple layers of feedback that players receive prior to, during, and following the simulation to help them to gauge their effectiveness. The Socratic method in the course of doctrinal studies provides immediate assessment of the students’ grasp of the law. Written assignments focused on the contours of individual players’ authorities give professors an opportunity to assess students’ level of understanding prior to the simulation. And the simulation itself provides real-time feedback from both peers and professors. The Control Team provides data points for player reflection – for instance, the Control Team member playing President may make decisions based on player input, giving students an immediate impression of their level of persuasiveness, while another Control Team member may reject a FISC application as insufficient. The simulation goes beyond this, however, focusing on teaching students how to develop (6) opportunities for learning in the future. Student meetings with mentors in the field, which take place before the simulation, allow students to work out the institutional and political relationships and the manner in which law operates in practice, even as they learn how to develop mentoring relationships. (Prior to these meetings we have a class discussion about mentoring, professionalism, and feedback). Students, assigned to simulation teams about one quarter of the way through the course, receive peer feedback in the lead-up to the simulation and during the exercise itself. Following the simulation the Control Team and observers provide comments. Judges, who are senior members of the bar in the field of national security law, observe player interactions and provide additional debriefing. The simulation, moreover, is recorded through both the cyber portal and through VNN, allowing students to go back to assess their performance. Individual meetings with the professors teaching the course similarly follow the event. Finally, students end the course with a paper reflecting on their performance and the issues that arose in the course of the simulation, develop frameworks for analyzing uncertainty, tension with colleagues, mistakes, and successes in the future. B. Substantive Areas: Interstices and Threats As a substantive matter, NSL Sim 2.0 is designed to take account of areas of the law central to national security. It focuses on specific authorities that may be brought to bear in the course of a crisis. The decision of which areas to explore is made well in advance of the course. It is particularly helpful here to think about national security authorities on a continuum, as a way to impress upon students that there are shifting standards depending upon the type of threat faced. One course, for instance, might center on the interstices between crime, drugs, terrorism and war. Another might address the intersection of pandemic disease and biological weapons. A third could examine cybercrime and cyberterrorism. This is the most important determination, because the substance of the doctrinal portion of the course and the simulation follows from this decision. For a course focused on the interstices between pandemic disease and biological weapons, for instance, preliminary inquiry would lay out which authorities apply, where the courts have weighed in on the question, and what matters are unsettled. Relevant areas might include public health law, biological weapons provisions, federal quarantine and isolation authorities, habeas corpus and due process, military enforcement and posse comitatus, eminent domain and appropriation of land/property, takings, contact tracing, thermal imaging and surveillance, electronic tagging, vaccination, and intelligence-gathering. The critical areas can then be divided according to the dominant constitutional authority, statutory authorities, regulations, key cases, general rules, and constitutional questions. This, then, becomes a guide for the doctrinal part of the course, as well as the grounds on which the specific scenarios developed for the simulation are based. The authorities, simultaneously, are included in an electronic resource library and embedded in the cyber portal (the Digital Archives) to act as a closed universe of the legal authorities needed by the students in the course of the simulation. Professional responsibility in the national security realm and the institutional relationships of those tasked with responding to biological weapons and pandemic disease also come within the doctrinal part of the course. The simulation itself is based on five to six storylines reflecting the interstices between different areas of the law. The storylines are used to present a coherent, non-linear scenario that can adapt to student responses. Each scenario is mapped out in a three to seven page document, which is then checked with scientists, government officials, and area experts for consistency with how the scenario would likely unfold in real life. For the biological weapons and pandemic disease emphasis, for example, one narrative might relate to the presentation of a patient suspected of carrying yersinia pestis at a hospital in the United States. The document would map out a daily progression of the disease consistent with epidemiological patterns and the central actors in the story: perhaps a U.S. citizen, potential connections to an international terrorist organization, intelligence on the individual’s actions overseas, etc. The scenario would be designed specifically to stress the intersection of public health and counterterrorism/biological weapons threats, and the associated (shifting) authorities, thus requiring the disease initially to look like an innocent presentation (for example, by someone who has traveled from overseas), but then for the storyline to move into the second realm (awareness that this was in fact a concerted attack). A second storyline might relate to a different disease outbreak in another part of the country, with the aim of introducing the Stafford Act/Insurrection Act line and raising federalism concerns. The role of the military here and Title 10/Title 32 questions would similarly arise – with the storyline designed to raise these questions. A third storyline might simply be well developed noise in the system: reports of suspicious activity potentially linked to radioactive material, with the actors linked to nuclear material. A fourth storyline would focus perhaps on container security concerns overseas, progressing through newspaper reports, about containers showing up in local police precincts. State politics would constitute the fifth storyline, raising question of the political pressures on the state officials in the exercise. Here, ethnic concerns, student issues, economic conditions, and community policing concerns might become the focus. The sixth storyline could be further noise in the system – loosely based on current events at the time. In addition to the storylines, a certain amount of noise is injected into the system through press releases, weather updates, private communications, and the like. The five to six storylines, prepared by the Control Team in consultation with experts, become the basis for the preparation of scenario “injects:” i.e., newspaper articles, VNN broadcasts, reports from NGOs, private communications between officials, classified information, government leaks, etc., which, when put together, constitute a linear progression. These are all written and/or filmed prior to the exercise. The progression is then mapped in an hourly chart for the unfolding events over a multi-day period. All six scenarios are placed on the same chart, in six columns, giving the Control Team a birds-eye view of the progression. C. How It Works As for the nuts and bolts of the simulation itself, it traditionally begins outside of class, in the evening, on the grounds that national security crises often occur at inconvenient times and may well involve limited sleep and competing demands.171 Typically, a phone call from a Control Team member posing in a role integral to one of the main storylines, initiates play. Students at this point have been assigned dedicated simulation email addresses and provided access to the cyber portal. The portal itself gives each team the opportunity to converse in a “classified” domain with other team members, as well as access to a public AP wire and broadcast channel, carrying the latest news and on which press releases or (for the media roles) news stories can be posted. The complete universe of legal authorities required for the simulation is located on the cyber portal in the Digital Archives, as are forms required for some of the legal instruments (saving students the time of developing these from scratch in the course of play). Additional “classified” material – both general and SCI – has been provided to the relevant student teams. The Control Team has access to the complete site. For the next two (or three) days, outside of student initiatives (which, at their prompting, may include face-to-face meetings between the players), the entire simulation takes place through the cyber portal. The Control Team, immediately active, begins responding to player decisions as they become public (and occasionally, through monitoring the “classified” communications, before they are released). This time period provides a ramp-up to the third (or fourth) day of play, allowing for the adjustment of any substantive, student, or technology concerns, while setting the stage for the breaking crisis. The third (or fourth) day of play takes place entirely at Georgetown Law. A special room is constructed for meetings between the President and principals, in the form of either the National Security Council or the Homeland Security Council, with breakout rooms assigned to each of the agencies involved in the NSC process. Congress is provided with its own physical space, in which meetings, committee hearings and legislative drafting can take place. State government officials are allotted their own area, separate from the federal domain, with the Media placed between the three major interests. The Control Team is sequestered in a different area, to which students are not admitted. At each of the major areas, the cyber portal is publicly displayed on large flat panel screens, allowing for the streaming of video updates from the media, AP wire injects, articles from the students assigned to represent leading newspapers, and press releases. Students use their own laptop computers for team decisions and communication. As the storylines unfold, the Control Team takes on a variety of roles, such as that of the President, Vice President, President’s chief of staff, governor of a state, public health officials, and foreign dignitaries. Some of the roles are adopted on the fly, depending upon player responses and queries as the storylines progress. Judges, given full access to each player domain, determine how effectively the students accomplish the national security goals. The judges are themselves well-experienced in the practice of national security law, as well as in legal education. They thus can offer a unique perspective on the scenarios confronted by the students, the manner in which the simulation unfolded, and how the students performed in their various capacities. At the end of the day, the exercise terminates and an immediate hotwash is held, in which players are first debriefed on what occurred during the simulation. Because of the players’ divergent experiences and the different roles assigned to them, the students at this point are often unaware of the complete picture. The judges and formal observers then offer reflections on the simulation and determine which teams performed most effectively. Over the next few classes, more details about the simulation emerge, as students discuss it in more depth and consider limitations created by their knowledge or institutional position, questions that arose in regard to their grasp of the law, the types of decision-making processes that occurred, and the effectiveness of their – and other students’ – performances. Reflection papers, paired with oral briefings, focus on the substantive issues raised by the simulation and introduce the opportunity for students to reflect on how to create opportunities for learning in the future. The course then formally ends.172 Learning, however, continues beyond the temporal confines of the semester. Students who perform well and who would like to continue to participate in the simulations are invited back as members of the control team, giving them a chance to deepen their understanding of national security law. Following graduation, a few students who go in to the field are then invited to continue their affiliation as National Security Law fellows, becoming increasingly involved in the evolution of the exercise itself. This system of vertical integration helps to build a mentoring environment for the students while they are enrolled in law school and to create opportunities for learning and mentorship post-graduation. It helps to keep the exercise current and reflective of emerging national security concerns. And it builds a strong community of individuals with common interests. CONCLUSION The legal academy has, of late, been swept up in concern about the economic conditions that affect the placement of law school graduates. The image being conveyed, however, does not resonate in every legal field. It is particularly inapposite to the burgeoning opportunities presented to students in national security. That the conversation about legal education is taking place now should come as little surprise. Quite apart from economic concern is the traditional introspection that follows American military engagement. It makes sense: law overlaps substantially with political power, being at once both the expression of government authority and the effort to limit the same. The one-size fits all approach currently dominating the conversation in legal education, however, appears ill-suited to address the concerns raised in the current conversation. Instead of looking at law across the board, greater insight can be gleaned by looking at the specific demands of the different fields themselves. This does not mean that the goals identified will be exclusive to, for instance, national security law, but it does suggest there will be greater nuance in the discussion of the adequacy of the current pedagogical approach. With this approach in mind, I have here suggested six pedagogical goals for national security. For following graduation, students must be able to perform in each of the areas identified – (1) understanding the law as applied, (2) dealing with factual chaos and uncertainty, (3) obtaining critical distance, (4) developing nontraditional written and oral communication skills, (5) exhibiting leadership, integrity, and good judgment in a high-stakes, highly-charged environment, and (6) creating continued opportunities for self-learning. They also must learn how to integrate these different skills into one experience, to ensure that they will be most effective when they enter the field. The problem with the current structures in legal education is that they fall short, in important ways, from helping students to meet these goals. Doctrinal courses may incorporate a range of experiential learning components, such as hypotheticals, doctrinal problems, single exercises, extended or continuing exercises, and tabletop exercises. These are important classroom devices. The amount of time required for each varies, as does the object of the exercise itself. But where they fall short is in providing a more holistic approach to national security law which will allow for the maximum conveyance of required skills. Total immersion simulations, which have not yet been addressed in the secondary literature for civilian education in national security law, may provide an important way forward. Such simulations also cure shortcomings in other areas of experiential education, such as clinics and moot court. It is in an effort to address these concerns that I developed the simulation model above. NSL Sim 2.0 certainly is not the only solution, but it does provide a starting point for moving forward. The approach draws on the strengths of doctrinal courses and embeds a total immersion simulation within a course. It makes use of technology and physical space to engage students in a multi-day exercise, in which they are given agency and responsibility for their decision making, resulting in a steep learning curve. While further adaptation of this model is undoubtedly necessary, it suggests one potential direction for the years to come.

#### Prefer specificity—simulation about war powers is uniquely empowering

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2. Factual Chaos and Uncertainty¶ One of the most important skills for students going into national security law is the ability to deal with factual chaos. The presentation of factual chaos significantly differs from the traditional model of legal education, in which students are provided a set of facts which they must analyze. Lawyers working in national security law must figure out what information they need, integrate enormous amounts of data from numerous sources, determine which information is reliable and relevant, and proceed with analysis and recommendations. Their recommendations, moreover, must be based on contingent conditions: facts may be classified and unavailable to the legal analyst, or facts may change as new information emerges. This is as true for government lawyers as it is for those outside of governmental structures. They must be aware of what is known, what is unsure, what is unknown, and the possibility of changing circumstances, and they must advise their clients, from the beginning, how the legal analysis might shift if the factual basis alters. a. Chaos. Concern about information overload in the national security environment is not new: in the 1970s scholars discussed and debated how to handle the sequential phases of intelligence gathering and analysis in a manner that yielded an optimal result.132 But the digital revolution has exponentially transformed the quantitative terms of reference, the technical means of collection and analysis, and the volume of information available. The number of sources of information – not least in the online world – is staggering. Added to this is the rapid expansion in national security law itself: myriad new Executive Orders, Presidential Directives, institutions, programs, statutes, regulations, lawsuits, and judicial decisions mean that national security law itself is rapidly changing. Lawyers inside and outside of government must keep abreast of constantly evolving authorities. The international arena too is in flux, as global entities, such as the United Nations, the European Court of Human Rights, the G-7/G-8, and other countries, introduce new instruments whose reach includes U.S. interests. Rapid geopolitical changes relating to critical national security concerns, such as worldwide financial flows, the Middle East, the Arab Spring, South American drug cartels, North Korea, the former Soviet Union, China, and other issues require lawyers to keep up on what is happening globally as a way of understanding domestic concerns. Further expanding the information overload is the changing nature of what constitutes national security itself.133 In sum, the sheer amount of information the national security lawyer needs to assimilate is significant. The basic skills required in the 1970s thus may be similar – such as the ability (a) to know where to look for relevant and reliable information; (b) to obtain the necessary information in the most efficient manner possible; (c) to quickly discern reliable from unreliable information; (d) to know what data is critical; and (e) to ascertain what is as yet unknown or contingent on other conditions. But the volume of information, the diversity of information sources, and the heavy reliance on technology requires lawyers to develop new skills. They must be able to obtain the right information and to ignore chaos to focus on the critical issues. These features point in opposite directions – i.e., a broadening of knowledge and a narrowing of focus. A law school system built on the gradual and incremental advance of law, bolstered or defeated by judicial decisions and solidified through the adhesive nature of stare decisis appears particularly inapposite for this rapidly-changing environment. An important question that will thus confront students upon leaving the legal academy is how to keep abreast of rapidly changing national security and geopolitical concerns in an information-rich world in a manner that allows for capture of relevant information, while retaining the ability to focus on the immediate task at hand. Staying ahead of the curve requires developing a sense of timing – when to respond to important legal and factual shifts – and identifying the best means of doing so. Again, this applies to government and non-government employees. How should students prioritize certain information and then act upon it? This, too, is an aspect of information overload. b. Uncertainty. National security law proves an information-rich, factuallydriven environment. The ability to deal with such chaos may be hampered by gaps in the information available and the difficulty of engaging in complex fact-finding – a skill often **under-taught** in law school. Investigation of relevant information may need to reach far afield in order to generate careful legal analysis. Uncertainty here plays a key role. In determining, for instance, the contours of quarantine authority, lawyers may need to understand how the pandemic in question works, where there have been outbreaks, how it will spread, what treatments are available, which social distancing measures may prove most effective, what steps are being taken locally, at a state-level, and internationally, and the like. Lawyers in non-profit organizations, legal academics, in-house attorneys, and others, in turn, working in the field, must learn how to find out the relevant information before commenting on new programs and initiatives, agreeing to contractual terms, or advising clients on the best course of action. For both government and non-government lawyers, the secrecy inherent in the field is of great consequence. The key here is learning to ask intelligent questions to generate the best legal analysis possible. It may be the case that national security lawyers are not aware of the facts they are missing – facts that would be central to legal analysis. This phenomenon front-loads the type of advice and discussions in which national security lawyers must engage. It means that analysis must be given in a transparent manner, contingent on a set of facts currently known, with indication given up front as to how that analysis might change, should the factual basis shift. This is particularly true of government attorneys, who may be advising policymakers who may or may not have a background in the law and who may have access to more information than the attorney. Signaling the key facts on which the legal decision rests with the caveat that the legal analysis of the situation might change if the facts change, provides for more robust consideration of critically important issues. c. Creative Problem Solving. Part of dealing with factual uncertainty in a rapidly changing environment is learning how to construct new ways to address emerging issues. Admittedly, much has been made in the academy about the importance of problem-based learning as a method in developing students’ critical thinking skills.134 Problem-solving, however, is not merely a method of teaching. It is itself a goal for the type of activities in which lawyers will be engaged. The means-ends distinction is an important one to make here. Problemsolving in a classroom environment may be merely a conduit for learning a specific area of the law or a limited set of skills. But problem-solving as an end suggests the accumulation of a **broader set of tools,** such as familiarity with multidisciplinary approaches, creativity and originality, sequencing, collaboration, identification of contributors’ expertise, and how to leverage each skill set. This goal presents itself in the context of fact-finding, but it draws equally on strong understanding of legal authorities and practices, the Washington context, and policy considerations. Similarly, like the factors highlighted in the first pedagogical goal, adding to the tensions inherent in factual analysis is the abbreviated timeline in which national security attorneys must operate. Time may not be a commodity in surplus. This means that national security legal education must not only develop students’ complex fact-finding skills and their ability to provide contingent analysis, but it must teach them how to **swiftly and efficiently engage** in these activities. 3. Critical Distance As was recognized more than a century ago, analytical skills by themselves are insufficient training for individuals moving into the legal profession.135 Critical thinking provides the necessary distance from the law that is required in order to move the legal system forward. Critical thought, influenced by the Ancient Greek tradition, finds itself bound up in the Socratic method of dialogue that continues to define the legal academy. But it goes beyond such constructs as well. Scholars and educators disagree, of course, on what exactly critical thinking entails.136 For purposes of our present discussion, I understand it as the metaconversation in the law. Whereas legal analysis and substantive knowledge focus on the law as it is and how to work within the existing structures, critical thought provides distance and allows students to engage in purposeful discussion of theoretical constructs that deepen our understanding of both the actual and potential constructs of law. It is inherently reflective. For the purpose of practicing national security law, critical thought is paramount. This is true partly because of the unique conditions that tend to accompany the introduction of national security provisions: these are often introduced in the midst of an emergency. Their creation of new powers frequently has significant implications for distribution of authority at a federal level, a diminished role for state and local government in the federalism realm, and a direct impact on individual rights.137 Constitutional implications demand careful scrutiny. Yet at the time of an attack, enormous pressure is on officials and legislators to act and to be seen to act to respond.138 With the impact on rights, in particular, foremost in legislators’ minds, the first recourse often is to make any new powers temporary. However, they rarely turn out to be so, instead becoming embedded in the legislative framework and providing a baseline on which further measures are built.139 In order to withdraw them, legislators must demonstrate either that the provisions are not effective or that no violence will ensue upon their withdrawal (either way, a demanding proof). Alternatively, legislators would have to acknowledge that some level of violence may be tolerated – a step no politician is willing to take. Any new powers, introduced in the heat of the moment, may become a permanent part of the statutory and regulatory regime. They may not operate the way in which they were intended. They may impact certain groups in a disparate manner. They may have unintended and detrimental consequences. Therefore, it is necessary for national security lawyers to be able to view such provisions, and related policy decisions, from a distance and to be able to think through them outside of the contemporary context. There are many other reasons such critical analysis matters that reflect in other areas of the law. The ability to recognize problems, articulate underlying assumptions and values, understand how language is being used, assess whether argument is logical, test conclusions, and determine and analyze pertinent information depends on critical thinking skills. Indeed, one could draw argue that it is the goal of higher education to build the capacity to engage in critical thought. **Deeply humanistic theories underlie this approach**. The ability to develop discerning judgment – the very meaning of the Greek term, 􏰀􏰁􏰂􏰃􏰄􏰅􏰆 – provides the basis for advancing the human condition through reason and intellectual engagement. Critical thought as used in practicing national security law may seem somewhat antithetical to the general legal enterprise in certain particulars. For government lawyers and consultants, there may be times in which not providing legal advice, when asked for it, may be as important as providing it. That is, it may be important not to put certain options on the table, with legal justifications behind them. Questions whether to advise or not to advise are bound up in considerations of policy, professional responsibility, and ethics. They may also relate to questions as to who one’s client is in the world of national security law.140 It may be unclear whether and at what point one’s client is a supervisor, the legal (or political) head of an agency, a cross-agency organization, the White House, the Constitution, or the American public. Depending upon this determination, the national security lawyer may or may not want to provide legal advice to one of the potential clients. Alternatively, such a lawyer may want to call attention to certain analyses to other clients. Determining when and how to act in these circumstances requires critical distance. 4. Nontraditional Written and Oral Communication Skills Law schools have long focused on written and oral communication skills that are central to the practice of law. Brief writing, scholarly analysis, criminal complaints, contractual agreements, trial advocacy, and appellate arguments constitute standard fare. What is perhaps unique about the way communication skills are used in the national security world is the importance of non-traditional modes of legal communication such as concise (and precise) oral briefings, email exchanges, private and passing conversations, agenda setting, meeting changed circumstances, and communications built on swiftly evolving and uncertain information. For many of these types of communications speed may be of the essence – and unlike the significant amounts of time that accompany preparation of lengthy legal documents (and the painstaking preparation for oral argument that marks moot court preparations.) Much of the activity that goes on within the Executive Branch occurs within a hierarchical system, wherein those closest to the issues have exceedingly short amounts of time to deliver the key points to those with the authority to exercise government power. Unexpected events, shifting conditions on the ground, and deadlines require immediate input, without the opportunity for lengthy consideration of the different facets of the issue presented. This is a different type of activity from the preparation of an appellate brief, for instance, involving a fuller exposition of the issues involved. It is closer to a blend of Supreme Court oral argument and witness crossexamination – although national security lawyers often may not have the luxury of the months, indeed, years, that cases take to evolve to address the myriad legal questions involved. Facts on which the legal analysis rests, moreover, as discussed above, may not be known. This has substantive implications for written and oral communications. Tension between the level of legal analysis possible and the national security process itself may lead to a different norm than in other areas of the law. Chief Judge Baker explains, If lawyers insist on knowing all the facts all the time, before they are willing to render advice, or, if they insist on preparing a written legal opinion in response to every question, then national security process would become dysfunctional. The delay alone would cause the policymaker to avoid, and perhaps evade, legal review.141 Simultaneously, lawyers cannot function without some opportunity to look carefully at the questions presented and to consult authoritative sources. “The art of lawyering in such context,” Baker explains, “lies in spotting the issue, accurately identifying the timeline for decision, and applying a meaningful degree of formal or informal review in response.”142 The lawyer providing advice must resist the pressure of the moment and yet still be responsive to the demand for swift action. The resulting written and oral communications thus may be shaped in different ways. Unwilling to bind clients’ hands, particularly in light of rapidly-changing facts and conditions, the potential for nuance to be lost is considerable. The political and historical overlay of national security law here matters. In some circumstances, even where written advice is not formally required, it may be in the national security lawyer’s best interests to commit informal advice to paper in the form of an email, notation, or short memo. The process may serve to provide an external check on the pressures that have been internalized, by allowing the lawyer to separate from the material and read it. It may give the lawyer the opportunity to have someone subject it to scrutiny. Baker suggests that “on issues of importance, even where the law is clear, as well as situations where novel positions are taken, lawyers should record their informal advice in a formal manner so that they may be held accountable for what they say, and what they don’t say.”143 Written and oral communication may occur at highly irregular moments – yet it is at these moments (in the elevator, during an email exchange, at a meeting, in the course of a telephone call), that critical legal and constitutional decisions are made. This model departs from the formalized nature of legal writing and research. Yet it is important that students are prepared for these types of written and oral communication as an ends in and of themselves. 5. Leadership, Integrity and Good Judgment National security law often takes place in a high stakes environment. There is tremendous pressure on attorneys operating in the field – not least because of the coercive nature of the authorities in question. The classified environment also plays a key role: many of the decisions made will never be known publicly, nor will they be examined outside of a small group of individuals – much less in a court of law. In this context, leadership, integrity, and good judgment stand paramount. The types of powers at issue in national security law are among the most coercive authorities available to the government. Decisions may result in the death of one or many human beings, the abridgment of rights, and the bypassing of protections otherwise incorporated into the law. The amount of pressure under which this situation places attorneys is of a higher magnitude than many other areas of the law. Added to this pressure is the highly political nature of national security law and the necessity of understanding the broader Washington context, within which individual decision-making, power relations, and institutional authorities compete. Policy concerns similarly dominate the landscape. It is not enough for national security attorneys to claim that they simply deal in legal advice. Their analyses carry consequences for those exercising power, for those who are the targets of such power, and for the public at large. The function of leadership in this context may be more about process than substantive authority. It may be a willingness to act on critical thought and to accept the impact of legal analysis. It is closely bound to integrity and professional responsibility and the ability to retain good judgment in extraordinary circumstances. Equally critical in the national security realm is the classified nature of so much of what is done in national security law. All data, for instance, relating to the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of nuclear material in the production of energy is classified from birth.144 NSI, the bread and butter of the practice of national security law, is similarly classified. U.S. law defines NSI as “information which pertains to the national defense and foreign relations (National Security) of the United States and is classified in accordance with an Executive Order.” Nine primary Executive Orders and two subsidiary orders have been issued in this realm.145 The sheer amount of information incorporated within the classification scheme is here relevant. While original classification authorities have steadily decreased since 1980, and the number of original classification decisions is beginning to fall, the numbers are still high: in fiscal year 2010, for instance, there were nearly 2,300 original classification authorities and almost 225,000 original classification decisions.146 The classification realm, moreover, in which national security lawyers are most active, is expanding. Derivative classification decisions – classification resulting from the incorporation, paraphrasing, restating, or generation of classified information in some new form – is increasing. In FY 2010, there were more than seventy-six million such decisions made.147 This number is triple what it was in FY 2008. Legal decisions and advice tend to be based on information already classified relating to programs, initiatives, facts, intelligence, and previously classified legal opinions. The key issue here is that with so much of the essential information, decisionmaking, and executive branch jurisprudence necessarily secret, lawyers are limited in their opportunity for outside appraisal and review. Even within the executive branch, stove-piping occurs. The use of secure compartmentalized information (SCI) further compounds this problem as only a limited number of individuals – much less lawyers – may be read into a program. This diminishes the opportunity to identify and correct errors or to engage in debate and discussion over the law. Once a legal opinion is drafted, the opportunity to expose it to other lawyers may be restricted. The effect may be felt for decades, as successive Administrations reference prior legal decisions within certain agencies. The Office of Legal Counsel, for instance, has an entire body of jurisprudence that has never been made public, which continues to inform the legal analysis provided to the President. Only a handful of people at OLC may be aware of the previous decisions. They are prevented by classification authorities from revealing these decisions. This results in a sort of generational secret jurisprudence. Questions related to professional responsibility thus place the national security lawyer in a difficult position: not only may opportunities to check factual data or to consult with other attorneys be limited, but the impact of legal advice rendered may be felt for years to come. The problem extends beyond the executive branch. There are limited opportunities, for instance, for external judicial review. Two elements are at work here: first, very few cases involving national security concerns make it into court. Much of what is happening is simply not known. Even when it is known, it may be impossible to demonstrate standing – a persistent problem with regard to challenging, for instance, surveillance programs. Second, courts have historically proved particularly reluctant to intervene in national security matters. Judicially-created devices such as political question doctrine and state secrets underscore the reluctance of the judiciary to second-guess the executive in this realm. The exercise of these doctrines is increasing in the post-9/11 environment. Consider state secrets. While much was made of some five to seven state secrets cases that came to court during the Bush administration, in more than 100 cases the executive branch formally invoked state secrets, which the courts accepted.148 Many times judges did not even bother to look at the evidence in question before blocking it and/or dismissing the suit. In numerous additional cases, the courts treated the claims as though state secrets had been asserted – even where the doctrine had not been formally invoked.149 In light of these pressures – the profound consequences of many national security decisions, the existence of stovepiping even within the executive branch, and limited opportunity for external review – the practice of national security law requires a particularly rigorous and committed adherence to ethical standards and professional responsibility. This is a unique world in which there are enormous pressures, with potentially few external consequences for not acting in accordance with high standards. **It thus becomes particularly important, from a pedagogical perspective, to think through the types of situations that national security attorneys may face, and to address the types of questions** related to professional responsibility **that will confront them** in the course of their careers. Good judgment and leadership similarly stand paramount. These skills, like many of those discussed, may also be relevant to other areas of the law; however, the way in which they become manifest in national security law may be different in important ways. Good judgment, for instance, may mean any number of things, depending upon the attorney’s position within the political hierarchy. Policymaking positions will be considerably different from the provision of legal advice to policymakers. Leadership, too, may mean something different in this field intimately tied to political circumstance. It may mean breaking ranks with the political hierarchy, visibly adopting unpopular public or private positions, or resigning when faced by unethical situations. It may mean creating new bureaucratic structures to more effectively respond to threats. It may mean holding off clients until the attorneys within one’s group have the opportunity to look at issues while still being sensitive to the political needs of the institution. Recourse in such situations may be political, either through public statements and use of the media, or by going to different branches of government for a solution. 6. Creating Opportunities for Learning In addition to the above skills, national security lawyers must be able to engage in continuous self-learning in order to improve their performance. They must be able to identify new and emerging legal and political authorities and processes, systems for handling factual chaos and uncertainty, mechanisms to ensure critical distance, evaluating written and oral performance, and analyzing leadership skills. Law schools do not traditionally focus on how to teach students to continue their learning beyond the walls of academia. Yet **it is vital for their future success to give students the ability to** create conditions of learning.

#### Student debate about war powers policy is critical to overall American Political Development---influences the durable shifts in checks and balances

Dominguez and Thoren 10 Casey BK, Department of Political Science and IR at the University of San Diego and Kim, University of San Diego, Paper prepared for the Annual Meeting of the Western Political Science Association, San Francisco, California, April 1-3, 2010, “The Evolution of Presidential Authority in War Powers”, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1580395

Students of American institutions should naturally be interested in the relationships between the president and Congress. However, the evolution of war powers falls into a category of inquiry that is important not just to studies of the presidency or to students of history, but also to the field of American Political Development. Among Orren and Skowronek’s recommendations for future work in American Political Development, they argue that “shifts in governing authority,” including and especially shifts in the system of checks and balances, “are important in historical inquiry, because they are a constant object of political conflict and they set the conditions for subsequent politics, especially when shifts are durable” (Orren and Skowronek 2004, 139). How an essential constitutional power, that of deploying military force, changed hands from one institution to another over time, would certainly seem to qualify as a durable shift in governing authority. Cooper and Brady (1981) also recommend that researchers study change over time in Congress’ relations to the other branches of government.

#### Politics should start with pragmatic inquiry aimed at problem-solving---metaphysical abstractions inevitably fail

Majid Yar 2k, Department of Sociology @ Lancaster University, ARENDT'S HEIDEGGERIANISM: CONTOURS OF A `POSTMETAPHYSICAL' POLITICAL THEORY?, Cultural Values Vol 1 Issue 1, Jstor

The first and perhaps most readily apparent difficulty of this 'postmetaphysical' discourse on the political is its reliance on an overly synoptic **and** undifferentiated philosophical history **as the basis of its 'diagnosis of the present'.** It depends above all else, wholeheartedly and unequivocally, upon the corpus of philosophical discourse for a characterisation of political, social and cultural experiences and practices. Following Heidegger's cue, there takes place a **questionable transposition of the history of philosophy onto the history of society**; the widest field of socio-cultural understandings, those implicated in the practices of politics, the living of socio-technological relations, etc., are 'read-off from what philosophy has had to say about those practices and relations. Granted, what is at stake for Heidegger and those who follow him is a specific (metaphysical, technological) understanding or revealing of Being, and such revealing takes place in/as language, and philosophy is one such language in which Being is revealed. Therefore, philosophical understanding is part and parcel of the way in which Being is disclosed. However, the problem here is that it [i.e. philosophy] is taken as the language, a privileged locus whose understandings are encapsulatory or exhaustive of a society's modes of comportment as such. To put this another way, the 'postmetaphysical' position takes modern philosophers at their word, **deferring to what philosophers have written** about the experience of modernity, believing that philosophers have captured the actuality of the many and diverse modes of being characteristic of a society.

This **affirmation of the philosophical reading of politics**, culture and society is **self-sustaining** in that any 'empirical' inquiry is a priori rendered illegitimate by its **'merely ontic' status** and the association of the 'sciences' with the very metaphysical contamination that the postmetaphysical position seeks to set aside. Nancy and Lacoue- Labarthe presciently acknowledge that 'To submit ... [a] phenomena to this sort of generalisation is clearly to tear it from every empirical hold and from all empirical treatment. We will be reproached for this' (Lacoue-Labarthe and Nancy, 1997, p. 126). But they justify their submission of the political to a generalised philosophical treatment by asserting that 'The project of a theory or science of the political, with all its socio-anthropological baggage (and consequently, its philosophical presuppositions), now more than ever necessitates its own critique and the critique of its political function' (Lacoue-Labarthe and Nancy, 1997, p. 109). This is a statement with which I would wholeheartedly agree. However, this does not entail that we abstain from all such inquiry, for to so suppose is to suppose that such inquiry takes no other form than by the ostensible and canonical precepts of 'science'. In other words, the cursory dismissal of the human and social sciences because their concepts and modus operandii 'necessarily derive from the philosophical field ... a field itself determined, that is to say, ancient, past, closed' (Lacoue-Labarthe and Nancy, 1997, p. 109) - this gives one the impression of an insensitivity to the transformation of such inquiries in their relation to the 'philosophical field', the very field of 20th century 'continental philosophy' out of which the deconstructions and decentrings of the 'postmetaphysical turn' itself emerge. To think of the contemporary social and human sciences as merely recapitulating or repeating the suspect philosophical gestures of modern metaphysical thinking (rigidified subject-object distinctions, truth as subjective representationalism, a belief in a transparent and final vocabulary, a priori assumption of a self-identical Cartesian cogito, etc.) is to fail to apprehend the ways in which such sciences have learnt from the continental philosophical tradition, engendering interpretive, phenomenological, hermeneutic, critical and reflexive modes of investigation (McCarthy, 1991, pp. 114-15). Nevertheless, we see that on the basis of this obdurate **refusal of substantive socio-historical study of the political**, what remains is a pseudo-politological and -sociological analysis, insofar as the postmetaphysical discourse proffers a narrative about the emergence and configuration of the experience of modernity, yet this narrative remains resolutely (one might even say solipsistically) within the realm of a specifically philosophical ( inter)textuality. If by 'metaphysics' we mean a particular economy of presencing, one prevalent in or characteristic of a period or epoch as a whole, then we can't simply confine ourselves to reading it off from philosophical discourse - we must engage in a substantive and differentiated historical-hermeneutic investigation of the modes of comportment which take place in the lived relations and practices of a society; macro or meta level claims require commensurately exhaustive investigations to support them. We might note here that the promise of an experientially and 'factically' grounded investigation of human being in- the-world (i.e. the existential analytic of Being and Time) isn't sustained and developed, but rather (regrettably in my view) gives way in Heidegger's writings to a 'history of Being' as the consolidation of the metaphysico-technological, an account which relies either upon commentary on philosophical texts (e.g. the Nietzsche lectures) or upon modern philosophical interpretations as the basis for determining the 'essence of the modern age' (e.g. the Cartesian stipulation of man as 'the relational centre of that which is as such' is conflated into the claim that modern human beings experience and live in the world in such a way as to constitute themselves as the relational centre of that which is as such; these are clearly not the same; the slippage here is that a philosophical discourse is taken to be an adequate expression of what Being is at a particular time, in a society and culture as a whole), (Villa, 1996, p.178; Heidegger, 1977, p. 128; Rorty, 1992, p. 219).15

We might note here that this **failure to deliver on the initial promise of a substantive analysis of human experience and practice** was instrumental in Marcuse's parting of ways with Heidegger. Marcuse studied with Heidegger from 1928-1932, published a number of essays in a strongly Heideggerian register, as well as his Habilitationschrift dealing with the ontological groundings of Hegel's theory of historicity. He felt that Being and Time offered the way into a philosophically informed social analysis of 'actual human existence, of human beings and their world', and thus could be fruitfully connected with the Marxist materialist project (Marcuse, 1988, p. 96). It is Marcuse's dissatisfaction with

Heidegger's 'false concreteness', his phenomenology's **non-engagement with the specificity of contemporary socio-historical situations and the philosophical** 'fencing off from the social and historical sciences (a tendency which aggregates after Being and Time), which draws Marcuse away from Heidegger and toward the Marx of the 1844 Manuscripts (not published until 1932) (McCarthy, 1991, pp. 83-96). These difficulties in the Heideggerian standpoint, highlighted by the Frankfurt School theorists, retain their salience. To the extent to which 'postmetaphysical' accounts **of the political follow this Heideggerian narrative and strategy, they can be said to** reproduce its flaws**.**

A corrective for this abstraction from the 'factual' grounds of political life might be discerned from within Arendt's own oeuvre. We can see that while there is a tendency in some of Arendt's writings to reproduce the abstract and schematic Kulturkritik of modernity typified by Heidegger's history of metaphysics, there is a counter-tendency in works such as On Revolution and Origins of Totalitarianism which seeks to offer distinctions and judgements by starting from the historical specificity of particular events. Yet closer examination reveals that the treatment of such events tends to proceed by way of an 'idealising abstraction' commensurate with a pre-established definition of the 'authentic' political in its 'pure' or 'essential' form. Thus, for example, the founding of the American republic is 'elevated to the status of myth', rendered as the archetype of the act of instauration which for Arendt is the definition of authentic politics. Historians have rightly pointed out the discrepancies between Arendt's idealisation and the realities presented by historical research (Kielmansegg, 1995, pp. 2-3). It would appear that Arendt's attentiveness to the 'facts' and specificities of political events is undermined or overwhelmed by a prefiguration of 'the political' which provides the criteriological basis in terms of which all 'historical events' are re-narrated. Indeed, the very insistence upon proceeding from a conception of what constitutes the authentically political, prior to the specific historical and social configurations and articulations of political practices, sits uncomfortably with a commitment to eschewing philosophical-metaphysical 'essentialisms'.

A second, and not unrelated difficulty, is a causal attribution to philosophy in relation to politics, culture and society. That is, the tendency is not simply to attribute philosophical figurations of the political to the political experiences of actual social beings, but also to **depict those philosophical interpretations as standing in a** determining relation to the culture and society as a whole. As Heidegger declaims at the beginning of 'The Age of the World Picture', 'Metaphysics grounds an age, in that through a specific interpretation of what is and through a specific comprehension of truth it gives to that age the basis upon which it is essentially formed [emphasis added]' (Heidegger, 1977, p. 115). 'Metaphysics', as an 'interpretation', is the basis upon which an age is formed. The 'interpretation' adduced here, let us be clear, is that of philosophy. Hence, for Arendt, the emergence of philosophy's metaphysical discourse on the political, its figuration of the political in terms of a dualistic metaphysical ontology, in terms of theoretical models of truth, and so on, rather than in terms of doxical opinion, agonism and performativity etc., - this philosophical figuration is taken as a disaster for political life. Yet this disastrous consequence only follows from the philosophical refiguration if we **accord philosophical understanding a determinative or prescriptive role**, in that it has the power to efface and override the existing understandings that political actors might have. The 'onto-theological' or 'onto-typological' tradition is taken to permeate Western science, culture, and politics as a whole; the language of metaphysics is held to be central to constituting the entire range of human possibilities (McCarthy, 1991, p. 102; Rorty, 1984, p. 3, pp. 15-6; Rorty, 1998, p. 45; also, Rorty, 1991). As Richard Rorty puts it: 'there is something called 'philosophy' or 'metaphysics' which is central to our culture and has been radiating evil influences outward' (Rorty, 1984, pp. 18-9). In short, the 'postmetaphysical' discourse on the political 'presupposes a prior determination of the political as the practical effectuation of the philosophical' (Fraser, 1984, p. 136). This casts philosophy in a relation to the political as both villain and hero.

First **philosophy qua metaphysics is the** party responsible for the parlous state of the modern political**, the** cause of its pathological degradation into a totalitarian form **of relation toward Being and beings**. Then philosophy **charges itself with the responsibility of redeeming the political**, by way of philosophy's self-transformation into a postphilosophical, literary-poetic 'thinking'. What is missed here is the possibility that **the political never did mirror or actualise the metaphysicians' understanding of Being**; that for political life, it might well have been 'business as usual', largely indifferent to philosophy's discourse. From the standpoint of political beings it might be claimed that they **never have lived their relations in the way in which philosophers' discourses figured them.** Consequently, there is **no need to 'breach a wholly other politics' to lead them back from an oblivion** which **only ever existed as part of philosophical manifestos**. Hence there is no necessity to lead political beings back to something primordial or essential from which they have supposedly departed - this departure, or 'forgetting', is characteristic only of philosophy's turn to metaphysics**, not of the field of** political practice. I'm not necessarily claiming that this is the case, that there is a profound disjunction between the comportment toward humans and other entities envisioned by modern philosophy on the one hand, and that to be found in the understandings of our political culture and the practices of political life on the other. The point is, that this a question for substantive inquiry; if we want to say something about the way in which the modern political reveals the Being of beings (technologically, coercively, forgettingly, etc.) this is something which has to be investigated. The 'postmetaphysical' critique of political modernity assumes convergence or identity by mapping philosophical renditions onto the culture as a whole, and what is more, makes philosophy responsible for that convergence via its determining influence. If we insist on proceeding in this way, **we might get our** 'diagnosis of the present'**, and any attendant** 'prescription' for our ailing political life**, rather** alarmingly wrong.

Now these aforementioned objections are significant not only with respect to the analytical adequation or otherwise of the account offered, but also in terms of practical consequences: that is, the **possibility of politics implied by this critical rendition of the political**. The totalising and undifferentiated character of the critique of political modernity implies an equally generalised nugatory stance toward the sum of existing political institutions and practices (as 'grounded' in the 'metaphysical essence' of the age, a technological reduction of beings to 'standing reserve', and so on). **Commitment to this generalised schema results in difficulty in making nuanced and differentiated judgements about current political formations**. To cite just one example: Claude Lefort, in his paper "The Question of Democracy', offers an analysis of the political present in terms of the difference between the closed character of totalitarianism and the 'open space' of democracy (Lefort, 1988). Nancy and Lacoue-Labarthe have responded to this by questioning the opposition between 'totalitarianism' and 'democracy', introducing a concept of 'soft totalitarianism' to characterise Western liberal democracies, and thereby to establish an underlying continuum between these political forms which are ostensibly taken to be antithetical. This continuity or contiguity called 'totalitarianism' is, of course, the closure of the political under the aegis of the metaphysical technological, which 'grounds' all political forms in modernity at the completion of metaphysics. 'Totalitarianism' is the totalitarianism of metaphysical violence and closure (Lacoue-Labarthe and Nancy, 1997, pp. 126-8; Critchley, 1993, pp. 78-82). This is clearly redolent of Heidegger's assertions to the effect that Americanism, Bolshevism and National Socialism are in essence not very different, that is they are all dominated by Gestell as the actualisation of Western metaphysics, now extended to global reach (Heidegger, 1993, p. 244; Heidegger, 1981, pp. 55-6). The point here is not that the concept of 'soft totalitarianism' is in itself uninteresting; similar accounts of the underlying logics of domination in modernity have been a mainstay of socio-political and cultural critiques from the Frankfurt School to Foucault, and before and beyond. The issue here is that, on the subsumption of political modernity to an overarching history of Being qua metaphysics, **very real and critically important moral and political distinctions between political forms and practices are levelled-out**, as these distinctions are recuperated back into a general and global account (parenthetically, an anachronism - in the age beyond grand narratives, the grandest of narratives ...); 'all political acts and all political systems are conceptually levelled into so many moments of the intensification of our technological existence' (White, 1991, p. 39; Wolin, 1990, pp. 160-9; Beistegui, 1998, p. 86). This difficulty in terms of differentiation holds out problems for such an account as a **facilitator in the formulation of political judgements and strategies**; one need not be a mere apologist for 'actually existing Western liberal democracies' to insist upon the value of a more refined and discriminating set of distinctions between political formations.

Similarly, we must consider the **consequences that this 'ontological substitution' for the essence of the political has for politics**, in terms of what is practically excluded by this rethinking. If the presently available menu of political engagements and projects (be they market or social liberalism, social democracy, communitarianism, Marxism, etc.) are only so many moments of the techno-social completion of an underlying metaphysics, then the **fear of 'metaphysical contamination'** inhibits any return to recognisable political practices **and sincere** engagement with the political exigencies of the day. This is what Nancy Fraser has called the problem of 'dirty hands', the suspension of engagement with the existing content of political agendas **because of their identification as being in thrall to the violence of metaphysics**. Unable to engage in politics as it is, one either [a] sublimates the desire for politics by retreating to an interrogation of the political with respect to its essence (Fraser, 1984, p. 144), or [b] on this basis, seeks 'to breach the inscription of a wholly other polities'. The former suspends politics indefinitely, while the latter implies a new politics, which, on the basis of its reconceived understanding of the political, apparently excludes much of what recognizably belongs to politics today. This latter difficulty is well known from Arendt's case, whose barring of issues of social and economic justice and welfare from the political domain are well known. To offer two examples: [1] in her commentary on the U.S. civil rights movement in the 1950s, she argued that the politically salient factor which needed challenging was only racial legislation and the formal exclusion of African-Americans from the political sphere, not discrimination, social deprivation and disadvantage, etc.(Arendt, 1959, pp. 45-56); [2] Arendt's pronouncement at a conference in 1972 (put under question by Albrecht Wellmer regarding her distinction of the 'political' and the 'social'), that housing and homelessness were not political issues, that they were external to the political as the sphere of the actualisation of freedom as disclosure; the political is about human self-disclosure in speech and deed, not about the distribution of goods, which belongs to the social realm as an extension of the oikos. The point here is not that Arendt and others are in any sense unconcerned or indifferent about such sufferings, deprivations and inequalities. Rather, it is that such disputes and agendas are identified as belonging to the socio-technical sphere of administration, calculation, instrumentality, the logic of means and ends, subject-object manipulation by a will which turns the world to its purposes, the conceptual rendering of beings in terms of abstract and levelling categories and classes, and so on; they are thereby **part and parcel of the metaphysical-technological understanding of Being**, which effaces the unique and singular appearance and disclosure of beings, and thereby illegitimate candidates for consideration under the renewed, ontological-existential formulation of the political. To reconceive the political in terms of a departure from its former incarnation as metaphysical politics, means that **the revised terms of a properly political discourse cannot accommodate the prosaic yet urgent questions we might typically identify under the rubric of 'policy'**. Questions of social and economic justice are made homeless, exiled from the political sphere of disputation and demand in which they were formerly voiced. Indeed, it might be observed that the postmetaphysical formulation of the political is devoid of any content other than the freedom which defines it; it is freedom to appear, to disclose, but not the freedom to do something in particular, in that utilising freedom for achieving some end or other implies a collapse back into will, instrumentality, teleocracy, poeisis, etc. By defining freedom qua disclosedness as the essence of freedom and the sole end of the political, **this position skirts dangerously close to advocating politique pour la politique, divesting politics of any other practical and normative ends in the process**.

#### A pragmatic approach to politics is optimal---argumentation should start from empirical method using a reasoned process to avoid nihilism

Robert Rowland 95, Professor of Communication at the University of Kansas, “In Defense of Rational Argument: A Pragmatic Justification of Argumentation Theory and Response to the Postmodern Critique” Philosophy & Rhetoric Vol. 28, No. 4Oct 1, 1995, EBSCO

A pragmatic theory of argument¶ The first step in developing a justifiable theory of rational argument that can account for the epistemological and axiological attacks is to recognize the performative contradiction at the heart of the postmodern critique. Postmodernists rely on rational argument in order to attack rational argument and they consistently claim that their positions are in some way superior to those of their modernist opponents. Writing of post-structuralism, Amanda Anderson notes "the incommensurability between its epistemological stance and its political aims, between its descriptions and its prescriptions, between the pessimism of its intellect and, if not the optimism, at least the intrusiveness of its moral and political will" (1992, 64).¶ The performative contradiction at the heart of postmodernism is nowhere more evident than in the epistemological critique of modernism. The two most important points made by postmodernists in relation to epistemology are that humans can understand the world only through their symbols and that there is no means of using "reality" to test a symbolic description. Advocates of traditional approaches to rationality have not been able to satisfactorily answer these positions, precisely because they seem to be "true" in some sense. This "truth," however, suggests that a theory of rational argument may be salvageable. If postmodernists can defend their views as in some sense "truer" than those of their modernist opponents, then there must be some standard for judging "truth" that can withstand the postmodern indictment. That standard is pragmatic efficacy in fulfilling a purpose in relation to a given problem.¶ Both modernists and postmodernists generally assume that truth and fact are equivalent terms. Thus, a "true" statement is one that is factually correct in all circumstances. By this standard, of course, there are no totally "true" statements. However, if no statement can be proved factually true, then a focus on facts is an inappropriate standard for judging truth.¶ I suggest that knowledge and truth should be understood not as factual statements that are certain, but as symbolic statements that function as useful problem-solving tools. When we say that a view is true, we really mean that a given symbolic description consistently solves a particular problem. Thus, the statement "the sun will come up tomorrow" can be considered "true," despite ambiguities that a postmodernist might point to in regard to the meaning of sun or tomorrow, because it usefully and consistently solves a particular epistemic problem.¶ The standard for "truth" is pragmatic utility in fulfilling a purpose in relation to a particular problem. A true statement is one that "works" to solve the problem. Both the nature of the problem and the arguer's purpose in relation to that problem infiuence whether a given statement is viewed as true knowledge. This explains why biological researchers and physicians often seem to have different definitions of truth in regard to medical practice. The researcher is concerned with fully understanding the way that the body works. His or her purpose dictates application of rigorous standards for evaluating evidence and causation. By contrast, the physician is concerned with treating patients and therefore may apply a much lower standard for evaluating new treatments. The pragmatic theory of argument I am defending draws heavily on the work of William James, who believed that "the only test of probable truth is what works" (1982, 225). Alan Brinton explains that for jEunes "the ultimate question of truth is a question about the concepts and their fruitfulness in serving the purposes for which they were created and imposed. Ideas are true insofar as they serve these purposes, and false insofar as they fail to do so" (1982, 163). Some contemporary pragmatists take a similar view. For example, Nicholas Rescher writes in relation to methodology that "the proper test for the correctness or appropriateness of anything methodological in nature is plainly and obviously posed by the paradigmatically pragmatic questions: Does it work? Does it attain its intended purposes?" (1977, 3). Similarly, Celeste Condit Railsback argues that "truth is . . . relative to the language and purposes of the persons who are using it" (1983, 358-59). At this point, someone like Derrida might argue that while the pragmatic approach accounts for the symbolic nature of truth, it does not deal with the inability of humans to get at reality directly. Although the postmodern critique denies that humans can directly experience "the facts," it does not deny that a real-world exists.¶ Thus, a pragmatist endorses a given scientific theory because the symbolic description present in that theory does a better job than its competitors of fulfilling a set of purposes in a given context. Because it fulfills those purposes, we call the theory "true." We cannot attain knowledge about "the facts," but we can test the relative adequacy of competing problem-solving statements against those facts. Michael Redhead, a professor of history and philosophy of science at Cambridge University, notes that "we can always conjecture, but there is some control. The world kicks back" (in Peterson 1992,175; emphasis added). Knowledge is not about "facts." It is about finding symbolic descriptions of the world that work, that is, avoiding nature's kicks in fulfilling a given purpose.¶ The foregoing suggests that a principled pragmatic theory of argument sidesteps the postmodern critique. Argumentation theory ¶ should be understood as a set of pragmatic rules of thumb about the kinds of symbolic statements that effectively solve ¶ problems. These statements exist at varying levels of generality. A consistency principle , for example, is really a rule of thumb stating something like "All other things being equal, consistent symbolic descriptions are more likely to prove useful for solving a particular problem in relation to a given purpose than are inconsistent descriptions." Other principles are linked to narrower purposes in more specific contexts. Thus, the standards for evaluating arguments in a subfield of physics will be tied to the particular purposes and problems found in that subfield. The key point is that all aspects of a theory of argument can be justified pragmatically, based on their value for producing useful solutions to problems.¶ A pragmatic theory of argument can be understood as operating at three levels, all of which are tied to functionality. At the first or definitional level, argument is best understood as a kind of discourse or interaction in which reasons and evidence are presented in support of a claim. Argument as a symbolic form is valued based on its ability to deal with problems; the business of argument is problem solving. At a second or theoretical level, what Toulmin would call fieldinvariant, general principles of rational argument are justified pragmatically based on their capacity to solve problems. Thus, tests of evidence, general rules for describing argument, standards relating to burden of proof or presumption, and fallacies, all can be justified pragmatically based on the general problem-solving purpose served by all argument. For example, the requirement that claims must be supported with evidence can be justified as a general rule of thumb for distinguishing between strong and weak (that is, useful and useless) arguments. Certainly, there are cases in which unsupported assertions are "true" in some sense. However, the principle that any claim on belief should be supported with evidence of some type is a functional one for distinguishing between claims that are likely to be useful and those that are less likely to be useful.¶ At a third level, that of specific fields or subfields, principles of argumentation are linked to pragmatic success in solving problems in the particular area (see Rowland 1982). Thus, for instance, the rules of evidence found in the law are linked directly to the purposes served by legal argument. This explains why the burden of proof in a criminal trial is very different from that found in the civil law. The purpose of protecting the innocent from potential conviction requires that a higher standard of proof be applied in this area than elsewhere.¶ The pragmatic perspective I have described is quite different from that of interpretive pragmatists such as Richard Rorty (1979, 1982, 1985, 1987) and Stanley Fish (1980, 1989a, 1989b). Rorty, while denying the existence of legitimate formal or content-based standards for "proof" (1982,277), endorses a processual epistemology based on "the idea of [substituting] 'unforced agreement' for that of 'objectivity' " (41-42). Janet Home summarizes Rorty's views, noting that "the difference between 'certified knowledge' and 'mere belief is based upon intersubjective agreement rather than correspondence" (1989, 249). By contrast. Fish grounds reason in the practices of particular "interpretive communities" (1989b, 98). In this view, "Particular facts are firm or in question insofar as the perspective . . . within which they emerge is firmly in place, settled" (Fish 1989a, 308).¶ Unfortunately, a theory of argumentation cannot be salvaged merely by grounding reason in conversational practice or community assent. If there are no agreed upon standards, then how does one "rationally" test a claim intersubjectively or in process? Fish and Rorty beg the question when they ground reason in community and conversational process. Unlike Rorty and Fish, who reject the ideas of "truth" and "knowledge," I argue that those concepts must be redefined in relation to problem solving.¶ The pragmatic theory of argument that I have advanced provides a principled means of choosing among competing alternatives, regardless of the context. One always should ask whether or not a particular symbolic description of the world fulfills its purposes. In so doing, methodological principles for testing knowledge claims, such as tests of evidence, fallacies, and more precise field standards, can be justified, and then they can be applied within the conversation or by the community. The approach, therefore, provides standards to be applied in Rorty's process or by Fish's community and avoids the tautology that otherwise confronts those approaches. The perspective neatly avoids the problems associated with modernism, but also provides a principled approach to argument that does not lead to relativism.¶ In defense of rational argument¶ When argument is viewed as a pragmatic problem-solving tool, the power of the postmodern critique largely dissipates. At the most basic level, a pragmatic theory of argument is based on premises such as the following:¶ 'Statements supported by evidence and reasoning are more likely to be useful for satisfactorily solving a problem than ones that lack that support.¶ 'Consistent arguments are more likely to be generalizable than inconsistent ones.¶ 'Experts are more likely to have useful viewpoints about technical questions tied to a particular field than nonexperts. These statements are not "true" in the factual sense, but they are universally recognized as useful, a point that is emphasized in the work of even the most committed postmodernist. Even someone like Derrida demands that his opponents support their claims with evidence and consistent reasoning. In so doing, Derrida clearly recognizes the functional utility of general standards for testing argument form and process.¶ Arguing should be understood as a pragmatic process for locating solutions to problems. The ultimate justification of argument as a discipline is that it produces useful solutions. Of course, not all arguments lead to successful solutions because the world is a complex place and the people who utilize the form/process are flawed. However, the general functional utility of argument as a method of ¶ invention or discovery and the method of justification is undisputed. The pragmatic approach to argument also provides a means of answering the axiological objections to traditional reason. Initially, the view that argument is often a means of enslaving or disempowering people is based on a misunderstanding of how argument as a form of discourse functions. In fact, the danger of symbolic oppression is less applicable to argument as a type of symbol use than to other forms. Argument tells us how to solve problems. It can be a force for enslavement only to the degree that a successful problem-solution is enslaving. This is a rare event in any society grounded in democratic ethics.¶ Additionally, argument as a form and process is inherently person-respecting because in argument it is not status or force that matters, but only the reasoning (see Brockriede 1972). In a pure argumentative encounter, it does not matter whether you are President of the United States or a college junior; all that is relevant is what you have to say. Of course, this ideal is rarely realized, but the principle that humans should test their claims against standards of argumentation theory that are tied to pragmatic problem solving (and not base conclusions on power) is one that recognizes the fundamental humanity in all people.¶ Furthermore, argument is one of the most important means of protecting society from symbolic oppression. Argument as an internal process within an individual and external process within society provides a method of testing the claims of potential oppressors. Therefore, training in argument should be understood as a means of providing pragmatic tools for breaking out of terministic or disciplinary prisons.¶ Against this view, it could be argued that pragmatism, because of its "practical" bent, inevitably degenerates into "hegemonic instrumental reason" in which technocratic experts control society. In Eclipse of Reason, Max Horkheimer takes the position that "in its instrumental aspect, stressed by pragmatism," reason "has become completely harnessed to the social process. Its operational value, its role in the domination of men and nations has been made the sole criterion" (1947, 21). Later, he notes that "pragmatism is the counterpart of modern industrialism for which the factory is the prototype of human existence" (50).¶ The claims that pragmatism reduces reason to a mere instrument of production or leads to undemocratic technocratic control of society are, however, misguided. Initially, it is worth noting that Horkeimer's aim is not to indict rationality per se, but to focus on the inadequacy of a purely instrumental form of rationality, which he labels "subjective reason." Near the conclusion of Eclipse of Reason, Horkheimer defends "objective reason": "This concept of truth—the adequation of name and thing—inherent in every genuine philosophy, enables thought to withstand if not to overcome the demoralizing and mutilating effects of formalized reason" (1947, 180). The goal of this essay, to develop a theory of rational argument that can withstand the postmodern indictment, is quite consistent with Horkheimer's view that humans need "objective reason" in order to "unshackle . . . independent thought" and oppose "cynical nihilism" (127, 174). While there can be no purely "objective reason," field-invariant and field-dependent principles of argumentation can be justified pragmatically to serve the aims that Horkheimer assigns to that form.¶ Moreover, a pragmatic theory of argument should not be confused with a decision-making approach based on mere practicality or self-interest. Principles of argument are justified pragmatically, that is, because they work consistently to solve problems. But after justification, the invariant and relevant field-dependent principles may be used to test the worth of any argument and are not tied to a simple utilitarian benefit/loss calculus. The misconception that a pragmatic theory of truth is tied to a simplistic instrumentalism is a common one. John Dewey notes, for instance, that William James's reference to the "cash value" of reasoning was misinterpreted by some "to mean that the consequences themselves of our rational conceptions must be narrowly limited by their pecuniary value" (1982, 33). In fact, pragmatism "concerns not the nature of consequences but the nature of knowing" (Dewey 1960,331). Or as James himself put it, "The possession of true thoughts means everywhere the possession of invaluable instruments of action" (1948, 161). Pragmatism "is a method only," which "does not stand for any special result" (James 1982, 213), but that method can be used to justify principles of argument that in turn can be used to check the excesses of instrumental reason. Moreover, a pragmatic approach to argument is self-correcting. According to James, pragmatism "means the open air and possibilities of nature, as against dogma, artificiality and the pretense of finality in truth" (213). Dewey makes the same point when he claims that pragmatic theory involves "the use of intelligence to liberate and liberalize action" (1917,63). Nor does pragmatism necessarily lead to expert domination. A pragmatic argumentation theory endorses deference to the opinion of experts only on questions for which the expert possesses special knowledge relevant to a particular problem. And even on such issues, the views of the expert would be subject to rigorous testing. It would be quite unpragmatic to defer to expert opinion, absent good reasons and strong evidence.¶ The previous analysis in no way denies the risks associated with technical reason. It is, however precisely because of such risks that a principled pragmatic theory of argument is needed. Given that we live in an advanced technological society, it is inevitable that technical reason will play a role. Postmodernism points to the dangers of technical reason, but provides no means of avoiding those risks. A pragmatic theory of argument, by contrast, justifies principles of rationality that can be used to protect society from the nihilistic excesses of a purely instrumental reason.

#### This approach to politics is necessary for effective progress in situations of uncertainty---avoids instrumentalism through inter-subjective understanding

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First, a pragmatic approach does not begin with objects or ‘things’ (ontology), or with reason and method (epistemology), but with ‘acting’ (prattein), thereby preventing some false starts. Since, as historical beings placed in a specific situations, we do not have the luxury of deferring decisions until we have found the ‘truth’ we have to act and must do so always under time pressures and in the face of incomplete information. Precisely because the social world is characterized by strategic interactions, what a situation ‘is’, is hardly ever clear ex ante, since it is being ‘produced’ by the actors and their interactions, and the multiple possibilities are rife with incentives for (dis)information. This puts a premium on quick diagnostic and cognitive shortcuts informing actors about the relevant features of the situation, and on leaving an alternative open (‘plan B’) in case of unexpected difficulties. Instead of relying on certainty and universal validity gained through abstraction and controlled experiments, we know that completeness and attentiveness to detail, rather than to generality, matter. To that extent, likening practical choices to simple ‘discoveries’ of an already independently existing ‘reality’ disclosing itself to an ‘observer’–or relying on optimal strategies – is somewhat heroic. These points have been made vividly by ‘realists’ such as Clausewitz in his controversy with von Buelow, in which he criticized the latter’s obsession with a strategic ‘science’ (Paret et al. 1986). While Clausewitz has become anicon for realists, a few of them (usually dubbed ‘old’ realists) have taken seriously his warnings against the misplaced belief in the reliability and usefulness of a ‘scientific’ study of strategy. Instead, most of them, especially ‘neorealists’ of various stripes, have embraced the ‘theory’-building based on the epistemological project as the via regia to the creation of knowledge. A pragmatist orientation would most certainly not endorse such a position. Second, since acting in the social world often involves acting ‘for’ someone, special responsibilities arise that aggravate both the incompleteness of knowledge as well as its generality problem. Since we owe special care to those entrusted to us, for example, as teachers, doctors or lawyers, we cannot just rely on what is generally true, but have to pay special attention to the particular case. Aside from avoiding the foreclosure of options, we cannot refuse to act on the basis of incomplete information or insufficient knowledge

, and the necessary diagnostic will involve typification and comparison, reasoning by analogy rather than generalization or deduction. Leaving out the particularities of a case, be it a legal or medical one, in a mistaken effort to become ‘scientific’ would be a fatal flaw. Moreover, there still remains the crucial element of ‘timing’ – of knowing when to act. Students of crises have always pointed out the importance of this factor but, in attempts at building a general ‘theory’ of international politics analogously to the natural sciences, such elements are neglected on the basis of the ‘continuity of nature’ and the ‘large number’ assumptions. Besides, ‘timing’ seems to be quite recalcitrant to analytical treatment. Third, the cure for anxiety induced by Cartesian radical doubt does not consist in the discovery of a ‘foundation’ guaranteeing absolute certainty. This is a phantasmagorical undertaking engendered by a fantastic starting point, since nobody begins with universal doubt! (Peirce 1868). Rather, the remedy for this anxiety consists in the recognition of the unproductive nature of universal doubt on the one hand, and of the fetishization of ‘rigour’ on the other. Letting go of unrealizable plans and notions that lead us to delusional projects, and acquiring instead the ability to ‘go on’ despite uncertainties and the unknown, is probably the most valuable lesson to learn. Beginning somewhere, and reflecting critically on the limitations of the starting point and the perspective it opened, is likely to lead to a more fruitful research agenda than starting with some preconceived notions of the nature of things, or of ‘science’, and then testing the presumably different (but usually quite similar) theories (such as liberalism and realism). After all, ‘progress’ in the sciences occurred only after practitioners had finally given up on the idea that in order to say something about the phenomena of the world (ta onta), one had to grasp first ‘being’ itself (to ontos on). Fourth, by giving up on the idea that warranted knowledge is generated either through logical demonstration or through the representation of the world ‘out there’, a pragmatic starting point not only takes seriously the always preliminary character of knowledge, it also promises that we will learn to follow a course of action that represents a good bet.7 Thus, it accounts for changes in knowledge in a more coherent fashion. If the world were ‘out there’, ready-made, only to be discovered, scientific knowledge would have to be a simple accumulation of more and more true facts, leading us virtually automatically closer and closer to ‘the TRUTH’. Yet, if we have learned anything from the studies of various disciplines, it is the fact that progress consists in being able to formulate new questions that could not even be asked previously. Hence, whatever we think of Kuhn’s argument about ‘paradigms’, we have to recognize that in times of revolutionary change the bounds of sense are being redrawn, and thus the newly generated knowledge is not simply a larger sector of the encircled area (Kratochwil 2000). Fifth, pragmatism recognizes that science is social practice, which is determined by rules and in which scientists not only are constitutive for the definitions of problems (rather than simply lifting the veil from nature), but they also debate seemingly ‘undecidable’ questions and weigh the evidence, instead of relying on the bivalence principle of logic as an automatic truth-finder (Ziman 1991; Kratochwil 2007a). To that extent, the critical element of the epistemological project is retained, but the ‘court’, which Kant believed to be reason itself, now consists of the practitioners themselves. Instead of applying free-standing epistemological standards, each science provides its own court, judging the appropriateness of its methods and practices. Staying with the metaphor of a court, we also have to correct an implausible Kantian interpretation of law – that it has to yield determinate and unique decisions. We know from jurisprudence and case law that cases can be decided quite differently without justifying the inference that this proves the arbitrariness of law. Determinacy need not coincide with uniqueness, either in logic (multiple equilibria), science (equifinality) or law – Ronald Dworkin (1978) notwithstanding! Sixth, despite the fact that it is no longer a function of bivalent truth conditions, or anchored neither in the things themselves (as in classical ontology) nor in reason itself, ‘truth’ has not been abolished or supplanted by an ‘anything goes’ attitude. Rather, it has become a procedural notion of rule-following according to community practices, since nobody can simply make the rules as she or he goes along. These rules do not ‘determine’ outcomes, as the classical logic of deductions or truth conditions suggest, but they do constrain and enable us in our activities. Furthermore, since rule-following does not simply result in producing multiple copies of a fixed template, rules provide orientation in new situations, allowing us to ‘go on’, making for both consistency and change. Validity no longer assumes historical universality, and change is no more conceived of as temporal reversibility, as in differential equations, where time can be added and multiplied, compared with infinity, and run towards the past or the future. Thus ‘History’ is able to enter the picture, and it matters because, differently from the old ontology, change can now be conceived of as a ‘path-dependent’ development, as a (cognitive) evolution or even as radical historicity, instead of contingency or decay impairing true knowledge. Consequently, time-bound rather than universal generalizations figure prominently in social analysis, and as Diesing, a philosopher of science, reminds us, this is no embarrassment. Being critical of the logical positivists’ search for ‘laws’ does not mean that only single cases exist and that no general statements are possible. It does mean, however, that in research: there are other goals as well and that generality is a matter of degree. Generalizations about US voting behaviour can be valid though they apply only between 1948–72 and only to Americans. Truth does not have to be timeless. Logical empiricists have a derogatory name for such changing truths (relativism); but such truths are real, while the absolute, fully axiomatized truth is imaginary. (Diesing 1991:91) Seventh, the above points show their importance when applied not only to the practices of knowledge generation but also to the larger problem of the reproduction of the social world. Luhmann (1983) suggested how rule-following solves the problem of the ‘double contingency’ of choices that allows interacting parties to relate their actions meaningfully to each other. ‘Learning’ from past experience on the basis of a ‘tit for tat’ strategy represents one possibility for solving what, since Parsons, has been called the ‘Hobbesian problem of order’. This solution, however, is highly unstable, and thus it cannot account for institutionalized behaviour. The alternative to learning is to forgo ‘learning’. Actors must abstract from their own experiences by trusting in a ‘system of expectations’ which is held to be counterfactually valid. ‘Institutionalization’ occurs in this way, especially when dispute-settling instances emerge that are based on shared expectations about the system of expectations. Thus, people must form expectations about what types of arguments and reasons are upheld by ‘courts’ in case of a conflict (Luhmann 1983). Eighth, a pragmatic approach, although sensitive to the social conditions of cognition, is not simply another version of the old ‘sociology of knowledge’, let alone of utilitarianism by accepting ‘what works’ or what seems reasonable to most people. It differs from the old sociology of knowledge that hinged on the cui bono question of knowledge (Mannheim 1936), since no argument about a link between social stratification and knowledge is implied, not to mention the further-reaching Marxist claims of false consciousness. A pragmatist approach, however, is compatible with such approaches as Bourdieu’s (1977) or more constructivist accounts of knowledge production, such as Fuller’s (1991) social epistemology, because it highlights the interdependence of semantics and social structures. Ninth, as the brief discussion of ‘science studies’ above has shown, it is problematic to limit the problem of knowledge production to ‘demonstrations’ (even if loosely understood in terms of the arguments within the scientific community), thus neglecting the factors that are conducive to (or inhibitive of) innovation in the definition of problems. To start with, antecedent to any demonstration, there has to be the step of ‘invention’, as the classical tradition already suggested. In addition, although it might well be true that ‘invention’ does not follow the same ‘logic’ as ‘testing’ or demonstrating, this does not mean that these considerations are irrelevant or can be left outside the reflection on how knowledge is generated. To attribute originality solely to a residual category of a rather naively conceived individual ‘psychology of discovery’, as logical positivism does, will simply not do. After all, ‘ideas’ are not representations and properties of the individual mind, but do their work because they are shared; innovation is crucially influenced by the formal and informal channels of communication within a (scientific) community. While the logical form of refutability in principle is, for logical positivists, a necessary element of their ‘theoretical’ enterprise, it does not address issues of creativity and innovation, which are a crucial part of the search for knowledge. Corroborating what we already suspected is interesting only if such inquiries also lead to novel discoveries, since nobody is served by ‘true’ but trivial results. Quite clearly, the traditional epistemological focus is much too narrow to account for and direct innovative research, while pragmatic approaches have notoriously emphasized the creativity of action (Rochberg-Halton 1986). Tenth, the above discussion should have demonstrated that a pragmatic approach to knowledge generation is not some form of ‘instrumentalism’ á la Friedman (1968), perhaps at basement prices, or that it endorses old wives’ tales if they generated ‘useful predictions’, even though for rather unexplainable reasons. Thus, buying several lottery tickets on the advice of an acquaintance to rid oneself of debts and subsequently hitting the jackpot neither qualifies as a pragmatically generated solution to a problem nor does it make the acquaintance a financial advisor. Although ‘usefulness’ is a pragmatic standard, not every employment of it satisfies the exacting criteria of knowledge production. As suggested throughout this chapter, a coherent pragmatic approach emphasizes the intersubjective and critical nature of knowledge generation based on rules, and it cannot be reduced to the de facto existing (or fabricated) consensus of a concrete group of scientists or to the utility of results, the presuppositions of which are obscure because they remained unexamined. Conclusions No long summary of argument is necessary here. Simply, a pragmatic turn shows itself to be consistent with the trajectory of a number of debates in the epistemology of social sciences; it also ties in with and feeds into the linguistic, constructivist and ‘historical’ turns that preceded it; and finally, it is promising for the ten reasons listed above. While these insights might be useful correctives, they do not by themselves generate viable research projects. This gain might have been the false promise of the epistemological project and its claim that simply following the path of a ‘method’ will inevitably lead to secure knowledge. Disabusing us of this idea might be useful in itself because it would redirect our efforts at formulating and conceptualizing problems that are antecedent to any ‘operationalization’ of our crucial terms (Sartori 1970), or of any ‘tests’ concerning which ‘theory’ allegedly explains best a phenomenon under investigation.

# 2AC

### AT Prison Abolition

#### Abolition’s an unrealistic and ineffective strategy---see serial rapists cross-x

Nick Herbert 8, The Guardian, The abolitionists' criminal conspiracy, www.theguardian.com/commentisfree/2008/jul/27/prisonsandprobation.youthjustice

Last week saw an International Conference on Penal Abolition. With such a heady ambition, what can be next? A global conference to abolish crime? The ambition of an eccentric minority to abolish prison isn't just dotty. It's a distraction from a real and pressing agenda, which is to reform prisons which simply aren't working.

A century ago, prisons had hard labour and treadmills. Today, they have colour TVs in cells. Jails may have changed, but the enduring truth that they are necessary has not. We will always have a small minority of offenders who, by their behaviour, pose so great a threat to the lives and property of the law-abiding majority that they must be kept apart from us. Ignoring this reality and arguing for the total abolition of prison is a hopelessly utopian goal that does the credibility of penal reformers no service.

The case for penal abolition rests on a series of tenuous assertions. Let's set aside the obvious, if uncomfortable, fact that part of the purpose of prison is to punish. It's said that short-term prison sentences don't work, because recidivism rates are shockingly high and there is little time for any restorative programmes to work. But since the evidence is that longer sentences have lower recidivism rates, and provide the opportunity to rehabilitate offenders, this might be an argument to lengthen sentences, not abolish them altogether. After all, another purpose of prison is to incapacitate offenders.

Of course, overcrowded prisons that are awash with drugs, and a system which gives short-term prisoners no supervision or support on release, is almost calculated to fail. But this could equally be an argument – the one which the modern Conservative party is making – for a complete transformation of prison regimes and a system of support for offenders when they are released from jail. It's a logical non sequitur on a grand scale to argue that because short-term prison sentences currently aren't working, we should therefore stop using them at all.

Abolitionists say that short-term prison sentences have a poorer recidivism rate than community sentences. In fact, both have a lamentable record – and one that has deteriorated in the last ten years. But the difference is hardly surprising, since the worst recidivists are bound to end up in jail. According to Home Office figures (pdf), only 12% of those sentenced to prison have no previous convictions. Over half have five or more previous convictions, and over a third have ten or more. Those who say that prison should be reserved for serious or serial offenders tend to ignore the fact that it already is.

Serial offenders who end up with custodial sentences have usually run through the gamut of weak community sentences already. If we want to avoid magistrates having little choice but to send them down, the logical thing to do is to make community sentences far more effective. Yet the perverse reaction of the abolitionists is to recommend that the very community disposals that have, by definition, already failed are used again.

Over a third of unpaid work requirements are not completed. Drug rehabilitation requirements have an even worse record – fewer than half are completed. If a fraction of the energy and resources that are being devoted to the cause of penal abolition were directed to thinking seriously about how better to design non-custodial punishments, short-term prison sentences would be less necessary.

What do the abolitionists really want? If it's the end of all custody, including for the most serious and dangerous offenders, then we can dismiss their demands as truly silly. If it's the abolition of short-term custodial sentences, then the effect on the overall prison population will be minimal. Justice ministry tables show (pdf) that over 87% of the current prison population are serving sentences of over 12 months. Abolishing prison for those serving, say, six months or less would mean watering down 60,000 sentences – but it would reduce the prison population by less than 7,000. The more effective and sustainable way to reduce the prison population in the long term is to reduce re-offending, as the Conservative party's radical "rehabilitation revolution" proposes.

It would be nice to live in a society where there were no prisons, just as it would be nice if there were no hospitals because there was no illness. But until someone steps forward with a ten-year plan to Make Crime History, jails are here to stay. The challenge is to create prisons with a purpose – not to hold lazy conferences making futile calls for their abolition.

### AT: Chow

#### Zero risk of their Chow impact---instrumental knowledge production doesn’t cause violence and discursive criticism could never solve it anyway

Ken Hirschkop 7, Professor of English and Rhetoric at the University of Waterloo, July 25, 2007, “On Being Difficult,” Electronic Book Review, online: http://www.electronicbookreview.com/thread/criticalecologies/transitive

This defect - not being art - is one that theory should prolong and celebrate, not remedy. For the most egregious error Chow makes is to imagine that obstructing instrumentalism is somehow a desirable and effective route for left-wing politics. The case against instrumentalism is made in depth in the opening chapter, which argues with reference to Hiroshima and Nagasaki that "[t]he dropping of the atomic bombs effected what Michel Foucault would call a major shift in epistemes, a fundamental change in the organization, production and circulation of knowledge" (33). It initiates the "age of the world target" in which war becomes virtualized and knowledge militarized, particularly under the aegis of so-called "area studies".

It's hard not to see this as a Pacific version of the notorious argument that the Gulag and/or the Holocaust reveal the exhaustion of modernity. And the first thing one has to say is that this interpretation of war as no longer "the physical, mechanical struggles between combative oppositional groups" (33), as now transformed into a matter technology and vision, puts Chow in some uncomfortable intellectual company: like that of Donald Rumsfeld, whose recent humiliation is a timely reminder that wars continue to depend on the deployment of young men and women in fairly traditional forms of battle. Pace Chow, war can indeed be fought, and fought successfully, "without the skills of playing video games" (35) and this is proved, with grim results, every day.

But it's the title of this new epoch - the title of the book as well - that truly gives the game away. Heidegger's "Age of the World Picture" claimed that the distinguishing phenomena of what we like to call modernity - science, machine technology, secularization, the autonomy of art and culture - depended, in the last instance, on a particular metaphysics, that of the "world conceived of and grasped as a picture", as something prepared, if you like, for the manipulations of the subject. Against this vision of "sweeping global instrumentalism" Heidegger set not Mallarmé, but Hölderlin, and not just Hölderlin, but also "reflection", i.e., Heidegger's own philosophy.

It's a philosophical reprise of what Francis Mulhern has dubbed "metaculture", the discourse in which culture is invoked as a principle of social organization superior to the degraded machinations of "politics", degraded machinations which, at the time he was composing this essay, had led Heidegger to lower his expectations of what National Socialism might achieve. In the fog of metaphysics, every actually existing nation - America, the Soviet Union, Germany - looks just as grey, as does every conceivable form of politics. For the antithesis of the "world picture" is not a more just democratic politics, but no politics at all, and it is hard to see how this stance can serve as the starting point for a political critique.

If Chow decides to pursue this unpromising path anyhow, it is probably because turning exploitation, military conquest and prejudice into so many epiphenomena of a metaphysical "instrumentalism" grants philosophy and poetry a force and a role in revolutionising the world that would otherwise seem extravagant. Or it would do, if "instrumentalism" was, as Chow claims a "demotion of language", if language was somehow more at home exulting in its own plenitude than merely referring to things.

Poor old language. Apparently ignored for centuries, it only receives its due when poststructuralists force us to acknowledge it. In their hands, "language flexes its muscles and breaks the chains of its hitherto subordination to thought" and, as a consequence, "those who pursue poststructuralist theory in the critical writings find themselves permanently at war with those who expect, and insist on, the transparency - that is, the invisibility - of language as a tool of communication" (48).

We have been down this road before and will no doubt go down it again. In fact, it's fair to say this particular journey has become more or less the daily commute of critical theory, though few have thought it ought to be described in such openly military terms. There is good reason, however, to think Chow's chosen route will lead not to the promised land of resistance and emancipation, but to more Sisyphean frustration. In fact, there are several good reasons.

### T – WPA/Prohibitions

#### We meet--A restriction on war powers authority limits Presidential discretion---we meet

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### Authority is what the president may do not what the president can do – comes from AUMF, don’t specify in plan because we’d lose to PICs

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

## K

### AT: Prior Questions – Cochrane

#### Prior questions will never be fully settled---must take action even under conditions of uncertainty

Molly Cochran 99, Assistant Professor of International Affairs at Georgia Institute for Technology, “Normative Theory in International Relations”, 1999, pg. 272

To conclude this chapter, while modernist and postmodernist debates continue, while we are still unsure as to what we can legitimately identify as a feminist ethical/political concern, while we still are unclear about the relationship between discourse and experience, it is particularly important for feminists that we proceed with analysis of both the material (institutional and structural) as well as the discursive. This holds not only for feminists, but for all theorists oriented towards the goal of extending further moral inclusion in the present social sciences climate of epistemological uncertainty. Important ethical/political concerns hang in the balance. We cannot afford to wait for the meta-theoretical questions to be conclusively answered. Those answers may be unavailable. Nor can we wait for a credible vision of an alternative institutional order to appear before an emancipatory agenda can be kicked into gear. Nor do we have before us a chicken and egg question of which comes first: sorting out the metatheoretical issues or working out which practices contribute to a credible institutional vision. The two questions can and should be pursued together, and can be via moral imagination. Imagination can help us think beyond discursive and material conditions which limit us, by pushing the boundaries of those limitations in thought and examining what yields. In this respect, I believe international ethics as pragmatic critique can be a useful ally to feminist and normative theorists generally.

### AT: Ontology First – Owen

#### Prior questions fail and stymie politics

David Owen 2, Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

### No Link

#### States choose to follow LOAC based on a system of incentives – studies prove that solves violence

Prorock and Appel 13 (Alyssa, and Benjamin, Department of Political Science, Michigan State University, “Compliance with International Humanitarian Law: Democratic Third Parties and Civilian Targeting in Interstate War,” Journal of Conflict Resolution 00(0) 1-28)

Coercion is a strategy of statecraft involving the threat or use of positive inducements and negative sanctions to alter a target state’s behavior. It influences the decision making of governments by altering the payoffs of pursuing various policies. Recent studies demonstrate, for example, that third-party states have used the carrot of preferential trade agreements (PTAs) to induce better human rights outcomes in target states (Hafner-Burton 2005, 2009), while the World Bank has withheld aid to states with poor human rights records as a form of coercive punishment (Lebovic and Voeten 2009).

We focus theoretically and empirically on the **expectation of coercion**. As Thompson (2009) argues, coercion has already failed once an actor has to carry through on its coercive threat. Thus, an accurate understanding of coercion’s impact must account for the expectation rather than the implementation **of overt penalties** or benefits. It follows that leaders likely incorporate the expected reactions of third parties into their decision making when they weigh the costs/benefits of complying with international law (Goodliffe and Hawkins 2009; Goodliffe et al. 2012). Because governments care about the ‘‘economic, security, and political goods their network partners provide, they anticipate likely reactions of their partners and behave in ways they expect their partners will approve’’ (Goodliffe et al. 2012, 132).8 Anticipated positive third-party reactions for compliance increase the expected payoffs for adhering to legal obligations, while anticipated negative responses to violation decrease the expected payoffs for that course of action. Coercion succeeds, therefore, when states comply with the law because the expected reactions of third parties alter payoffs such that compliance has a higher utility than violating the law. Based on this logic, we focus on the conditions under which states expect third parties to engage in coercive statecraft. We identify when combatant states will anticipate coercion and when that expectation will alter payoffs sufficiently to induce compliance with the law.

While a **growing body of literature** recognizes that international coercion can **induce compliance and contribute to international cooperation** more generally (Goldsmith and Posner 2005; Hafner-Burton 2005; Thompson 2009; Von Stein 2010), many scholars remain skeptical about coercion’s effectiveness as an enforcement mechanism. Skeptics argue that coercion is costly to implement; third parties value the economic, political, and military ties they share with target states and may suffer along with the target from cutting those ties. This may undermine the credibility of coercive threats and a third party’s ability to induce compliance through this enforcement mechanism.

While acknowledging this critique of coercion, we argue that it can act as an **effective enforcement mechanism** under certain conditions. Specifically, successful coercion requires that third parties have (1) the incentive to commit to and implement their coercive threats and (2) sufficient leverage over target states in order to meaningfully alter payoffs for compliance. This suggests that only some third parties can engage in successful coercion and that it is necessary to identify the specific conditions under which third parties can generate credible coercive threats to enforce compliance with international humanitarian law. In the following sections, we argue that third-party states are most likely to effectively use coercion to alter the behavior of combatants when they have both the willingness and opportunity to coerce (e.g., Most and Starr 1989; Siverson and Starr 1990; Starr 1978).

Willingness: Clarity, Democracy, and the Salience of International Humanitarian Law

Enforcement through the coercion mechanism is only likely when at least one third-party state has a substantial enough interest in another party’s compliance that it is willing to act (Von Stein 2010). Third-party willingness, in turn, depends upon two conditions: (1) legal principles must be clearly defined, making violations easily identifiable and (2) third parties must regard the legal obligation as highly salient.

First, scholars have long recognized that there is significant variation in the precision and clarity of legal rules, and that clarity contributes to compliance with the law (e.g., Abbott et al. 2000; Huth, Croco, and Appel 2011; Morrow 2007; Wallace 2013**).** Precise rules **increase the effectiveness of the law** by **narrowing the range of possible interpretations** and allowing all states to clearly identify acceptable versus unacceptable conduct. By clearly proscribing unacceptable behavior, clear legal obligations allow states to more precisely respond to compliant versus noncompliant behavior. In contrast, **ambiguous legal principle**s often lead to **multiple interpretations** among relevant actors, **impeding a convergence of expectations** and increasing uncertainty about the payoffs for violating (complying with) the law. Thus, the clarity of the law shapes states’ expectations by allowing them to predict the reactions of other states with greater confidence. In particular, they can expect **greater cooperation and rewards following compliance** and more punishment and sanctions for violating the law when legal obligations are clearly defined.

While some bodies of law are imprecise, i**nternational humanitarian law establishes a comprehensive code of conduct** regarding the intentional targeting of noncombatants during war (e.g., Murphy 2006; Shaw 2003). Starting with the 1899 and 1907 Hague Conventions and continuing through the 1949 Geneva Convention (Protocol IV), the law clearly prohibits the intentional targeting of noncombatants in war.

This clarity **allows international humanitarian law to** serve as a “bright line” **that coordinates the expectations of both war combatants and third parties** (Morrow 2007). By creating a **common set of standards,** it reduces uncertainty, narrowing the range of interpretations of the law and allowing both combatants and third parties to readily recognize violations of these standards. Third parties are, as a result, more likely to expend resources to punish conduct that transgresses legal standards or to support behavior in accordance with them. This, in turn, alters the expectations of war combatants who can expect greater support for abiding by the law and greater punishment for violating it when the clarity condition is met.

### AT: Legal Norms = War

#### Legal norms don’t cause wars and the alt can’t effect liberalism

David Luban **10**, law prof at Georgetown, Beyond Traditional Concepts of Lawfare: Carl Schmitt and the Critique of Lawfare, 43 Case W. Res. J. Int'l L. 457

Among these associations is the positive, constructive side of politics, the very foundation of Aristotle's conception of politics, which Schmitt completely ignores. Politics, we often say, is the art of the possible. It is the medium for organizing all human cooperation. Peaceable civilization, civil institutions, and elemental tasks such as collecting the garbage and delivering food to hungry mouths all depend on politics. Of course, peering into the sausage factory of even such mundane municipal institutions as the town mayor's office will reveal plenty of nasty politicking, jockeying for position and patronage, and downright corruption. Schmitt sneers at these as "banal forms of politics, . . . all sorts of tactics and practices, competitions and intrigues" and dismisses them contemptuously as "parasite- and caricature-like formations." n55 The fact is that Schmitt has nothing whatever to say about the constructive side of politics, and his entire theory focuses on enemies, not friends. In my small community, political meetings debate issues as trivial as whether to close a street and divert the traffic to another street. It is hard to see mortal combat as even a remote possibility in such disputes, and so, in Schmitt's view, they would not count as politics, but merely administration. Yet issues like these are the stuff of peaceable human politics.

Schmitt, I have said, uses the word "political" polemically--in his sense, politically. I have suggested that his very choice of the word "political" to describe mortal enmity is tendentious, attaching to mortal enmity Aristotelian and republican associations quite foreign to it. But the more basic point is that Schmitt's critique of humanitarianism as political and polemical is itself political and polemical. In a word, the critique of lawfare is itself lawfare. It is self-undermining because to the extent that it succeeds in showing that lawfare is illegitimate, it de-legitimizes itself.

What about the merits of Schmitt's critique of humanitarianism? His argument is straightforward: either humanitarianism is toothless and [\*471] apolitical, in which case ruthless political actors will destroy the humanitarians; or else humanitarianism is a fighting faith, in which case it has succumbed to the political but made matters worse, because wars on behalf of humanity are the most inhuman wars of all. Liberal humanitarianism is either too weak or too savage.

The argument has obvious merit. When Schmitt wrote in 1932 that wars against "outlaws of humanity" would be the most horrible of all, it is hard not to salute him as a prophet of Hiroshima. The same is true when Schmitt writes about the League of Nations' resolution to use "economic sanctions and severance of the food supply," n56 which he calls "imperialism based on pure economic power." n57 Schmitt is no warmonger--he calls the killing of human beings for any reason other than warding off an existential threat "sinister and crazy" n58 --nor is he indifferent to human suffering.

But international humanitarian law and criminal law are not the same thing as wars to end all war or humanitarian military interventions, so Schmitt's important moral warning against ultimate military self-righteousness does not really apply. n59 Nor does "bracketing" war by humanitarian constraints on war-fighting presuppose a vanished order of European public law. The fact is that in nine years of conventional war, the United States has significantly bracketed war-fighting, even against enemies who do not recognize duties of reciprocity. n60 This may frustrate current lawfare critics who complain that American soldiers in Afghanistan are being forced to put down their guns. Bracketing warfare is a decision--Schmitt might call it an existential decision--that rests in part on values that transcend the friend-enemy distinction. Liberal values are not alien extrusions into politics or evasions of politics; they are part of politics, and, as Stephen Holmes argued against Schmitt, liberalism has proven remarkably strong, not weak. n61 We could choose to abandon liberal humanitarianism, and that would be a political decision. It would simply be a bad one.

### AT: Wars for Humanity

#### ‘Wars for humanity’ are an ahistorical myth

Benno Gerhard Teschke 11, IR prof at the University of Sussex, “Fatal attraction: a critique of Carl Schmitt's international political and legal theory”, International Theory (2011), 3 : pp 179-227

For at the centre of the heterodox – partly post-structuralist, partly realist – neo-Schmittian analysis stands the conclusion of The Nomos: the thesis of a structural and continuous relation between liberalism and violence (Mouffe 2005, 2007; Odysseos 2007). It suggests that, in sharp contrast to the liberal-cosmopolitan programme of ‘perpetual peace’, the geographical expansion of liberal modernity was accompanied by the intensification and de-formalization of war in the international construction of liberal-constitutional states of law and the production of liberal subjectivities as rights-bearing individuals. Liberal world-ordering proceeds via the conduit of wars for humanity, leading to Schmitt's ‘spaceless universalism’. In this perspective, a straight line is drawn from WWI to the War on Terror to verify Schmitt's long-term prognostic of the 20th century as the age of ‘neutralizations and de-politicizations’ (Schmitt 1993). But this **attempt to** read **the history of 20th century international relations in terms of a succession of confrontations between the carrier-nations of liberal modernity and the criminalized foes at its outer margins** seems unable to comprehend the complexities and specificities of ‘liberal’ world-ordering, then and now. For in the cases of Wilhelmine, Weimar and fascist Germany, the assumption that their conflicts with the Anglo-American liberal-capitalist heartland were grounded in an antagonism between liberal modernity and a recalcitrant Germany outside its geographical and conceptual lines runs counter to the historical evidence. For this reading presupposes that late-Wilhelmine Germany was not already substantially penetrated by capitalism and fully incorporated into the capitalist world economy, posing the question of whether the causes of WWI lay in the capitalist dynamics of inter-imperial rivalry (Blackbourn and Eley 1984), or in processes of belated and incomplete liberal-capitalist development, due to the survival of ‘re-feudalized’ elites in the German state classes and the marriage between ‘rye and iron’ (Wehler 1997). It also assumes that the late-Weimar and early Nazi turn towards the construction of an autarchic German regionalism – Mitteleuropa or Großraum – was not deeply influenced by the international ramifications of the 1929 Great Depression, but premised on a purely political–existentialist assertion of German national identity. Against a reading of the early 20th century conflicts between ‘the liberal West’ and Germany as ‘wars for humanity’ between an expanding liberal modernity and its political exterior, there is more evidence to suggest that these confrontations were interstate conflicts within the crisis-ridden and nationally uneven capitalist project of modernity. Similar objections and caveats to the binary opposition between the Western discourse of liberal humanity against non-liberal foes apply to the more recent period. For how can this optic explain that the ‘liberal West’ coexisted (and keeps coexisting) with a large number of pliant authoritarian client-regimes (Mubarak's Egypt, Suharto's Indonesia, Pahlavi's Iran, Fahd's Saudi-Arabia, even Gaddafi's pre-intervention Libya, to name but a few), which were and are actively managed and supported by the West as anti-liberal Schmittian states of emergency, with concerns for liberal subjectivities and Human Rights secondary to the strategic interests of political and geopolitical stability and economic access? Even in the more obvious cases of Afghanistan, Iraq, and, now, Libya, the idea that Western intervention has to be conceived as an encounter between the liberal project and a series of foes outside its sphere seems to rely on a denial of their antecedent histories as geopolitically and socially contested state-building projects in pro-Western fashion, deeply co-determined by long histories of Western anti-liberal colonial and post-colonial legacies. If these states (or social forces within them) turn against their imperial masters, the conventional policy expression is ‘blowback’. And as the Schmittian analytical vocabulary does not include a conception of human agency and social forces – only friend/enemy groupings and collective political entities governed by executive decision – **it** also lacks the categories of analysis to comprehend the social dynamics that drive the struggles around sovereign power and the eventual overcoming, for example, of Tunisian and Egyptian states of emergency without US-led wars for humanity. Similarly, it seems unlikely that the generic idea of liberal world-ordering and the production of liberal subjectivities can actually explain why Western intervention seems improbable in some cases (e.g. Bahrain, Qatar, Yemen or Syria) and more likely in others (e.g. Serbia, Afghanistan, Iraq, and Libya). Liberal world-ordering consists of differential strategies of building, coordinating, and drawing liberal and anti-liberal states into the Western orbit, and overtly or covertly intervening and refashioning them once they step out of line. These are conflicts within a world, which seem to push the term liberalism beyond its original meaning. The generic Schmittian idea of a liberal ‘spaceless universalism’ sits uncomfortably with the realities of maintaining an America-supervised ‘informal empire’, **which has to manage a persisting interstate system in diverse and case-specific ways**. But it is this persistence of a worldwide system of states, which encase national particularities, which renders challenges to American supremacy possible in the first place.

## Impact D

### AT: 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.

### AT: Endless War

#### No risk of genocidal wars

Gray 7—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

### AT: Environment

#### No impact to the environment and no solvency

Holly Doremus 2k Professor of Law at UC Davis, "The Rhetoric and Reality of Nature Protection: Toward a New Discourse," Winter 2000 Washington & Lee Law Review 57 Wash & Lee L. Rev. 11, lexis

Reluctant to concede such losses, tellers of the ecological horror story highlight how close a catastrophe might be, and how little we know about what actions might trigger one. But the apocalyptic vision is **less credible today than it seemed in the 1970s.** Although it is clear that the earth is experiencing a mass wave of extinctions, n213 the **complete elimination of life on earth seems unlikely.** n214 **Life is remarkably robust**. **Nor is human extinction probable** any time soon. Homo sapiens is **adaptable to nearly any environment**. Even if the world of the future includes far fewer species, it likely will hold people. n215 One response to this credibility problem tones the story down a bit, arguing not that humans will go extinct but that ecological disruption will bring economies, and consequently civilizations, to their knees. n216 But this too may be **overstating the case**. Most ecosystem functions are **performed by multiple species**. This **functional redundancy** means that **a high proportion of species can be lost without precipitating a collapse**. n217 Another response drops the horrific ending and returns to a more measured discourse of the many material benefits nature provides humanity. Even these more plausible tales, though, suffer from an important limitation. They call for nature protection only at a high level of generality. For example, human-induced increases in atmospheric carbon dioxide levels may cause rapid changes in global temperatures in the near future, with drastic consequences for sea levels, weather patterns, and ecosystem services. n218 Similarly, the loss of large numbers of species undoubtedly reduces the genetic library from which we might in the future draw useful resources. n219 But it is difficult to translate these insights into convincing arguments against any one of the small local decisions that contribute to the problems of global warming or biodiversity loss. n220 It is easy to argue that **the** material **impact of any individual decision to increase** carbon **emissions slightly or to destroy a small amount of habitat will be small.** It is difficult to identify the specific straw that will break the camel's back. Furthermore, **no unilateral action at the local or even national level can solve these global problems**. Local decisionmakers may feel paralyzed by the scope of the problems, or may conclude that any sacrifices they might make will go unrewarded if others do not restrain their actions. In sum, at the local level at which most decisions affecting nature are made, the material discourse provides little reason to save nature. Short of the ultimate catastrophe, the material benefits of destructive decisions frequently will exceed their identifiable material costs. n221

## Alt (General)

### Perm

#### Non-reformist reforms work

Angela Davis 4, Interview with Dylan Rodriguez, Davis: The Challenges of Prison Abolition, illinoisprisonwatch.blogspot.com/2010/03/davis-challenges-of-prison-abolition.html

Angela: The seemingly unbreakable link between prison reform and prison development -- referred to by Foucault in his analysis of prison history -- has created a situation in which progress in prison reform has tended to render the prison more impermeable to change and has resulted in bigger, and what are considered "better," prisons.

The most difficult question for advocates of prison abolition is how to establish a balance between reforms that are clearly necessary to safeguard the lives of prisoners and those strategies designed to promote the eventual abolition of prisons as the dominant mode of punishment. In other words, I do not think that there is a strict dividing line between reform and abolition.

For example, it would be utterly absurd for a radical prison activist to refuse to support the demand for better health care inside Valley State, California's largest women's prison, under the pretext that such reforms would make the prison a more viable institution. Demands for improved health care, including protection from sexual abuse and challenges to the myriad ways in which prisons violate prisoners' human rights, can be integrated into an abolitionist context that elaborates specific decarceration strategies and helps to develop a popular discourse on the need to shift resources from punishment to education, housing, health care, and other public resources and services.

### Moore

#### Their alternative locks in the war system--- infinite number of non-falsifiable ‘root causes’

John Norton Moore 4, Dir. Center for Security Law @ University of Virginia, 7-time Presidential appointee, & Honorary Editor of the American Journal of International Law, Solving the War Puzzle: Beyond the Democratic Peace, pages 41-2.

If major interstate war is predominantly a product of a synergy between a potential nondemocratic aggressor and an absence of effective deterrence, what is the role of the many traditional "causes" of war? Past, and many contemporary, theories of war have focused on the role of specific disputes between nations, ethnic and religious differences, arms races, poverty or social injustice, competition for resources, incidents and accidents, greed, fear, and perceptions of "honor," or many other such factors. Such factors may well **play a role** in **motivating** aggression or in serving **as a means for generating fear** and manipulating public opinion. The reality, however, is that while some of these may have more potential to contribute to war than others, there may well be **an infinite set of motivating factors**, or human wants, **motivating aggression**. It is not the **independent existence of such motivating factors** for war but rather t**he circumstances permitting or encouraging high risk decisions** leading to war that is **the key to more effectively controlling war**. And the same may also be true of democide. The early focus in the Rwanda slaughter on "ethnic conflict," as though Hutus and Tutsis had begun to slaughter each other through spontaneous combustion, distracted our attention from the reality that a nondemocratic Hutu regime had carefully planned and orchestrated a genocide against Rwandan Tutsis as well as its Hutu opponents.I1 Certainly **if we were able to press a button** and **end** poverty, racism, religious intolerance, injustice, and endless disputes, we would want to do so. Indeed, democratic governments must remain committed to policies that will produce a better world by all measures of human progress. The broader achievement of democracy and the rule of law will itself assist in this progress. No one, however, has yet been able to demonstrate the kind of **robust correlation with any of these "traditional" causes of war** as is reflected in the "democratic peace." Further, given the **difficulties in overcoming many of these social problems**, an approach to war **exclusively dependent on their solution** may be to **doom us to war for generations to come**.¶ A useful framework in thinking about the war puzzle is provided in the Kenneth Waltz classic Man, the State, and War,12 first published in 1954 for the Institute of War and Peace Studies, in which he notes that previous thinkers about the causes of war have tended to assign responsibility at one of the three levels of individual psychology, the nature of the state, or the nature of the international system. This tripartite level of analysis has subsequently been widely copied in the study of international relations. We might summarize my analysis in this classical construct by suggesting that the most critical variables are the second and third levels, or "images," of analysis. Government structures, at the second level, seem to play a central role in levels of aggressiveness in high risk behavior leading to major war. In this, the "democratic peace" is an essential insight. The third level of analysis, the international system, or totality of external incentives influencing the decision for war, is also critical when government structures do not restrain such high risk behavior ¶ on their own. Indeed, nondemocratic systems may not only fail to constrain inappropriate aggressive behavior, they may even massively enable it by placing the resources of the state at the disposal of a ruthless regime elite. It is not that the first level of analysis, the individual, is unimportant. I have already argued that it is important in elite perceptions about the permissibility and feasibility of force and resultant necessary levels of deterrence. It is, instead, that the second level of analysis, government structures, may be a powerful proxy for settings bringing to power those who may be disposed to aggressive military adventures and in creating incentive structures predisposing to high risk behavior. We should keep before us, however, the possibility, indeed probability, that a war/peace model focused on democracy and deterrence might be further usefully refined by adding psychological profiles of particular leaders, and systematically applying other findings of cognitive psychology, as we assess the likelihood of aggression and levels of necessary deterrence in context. ¶ A post-Gulf War edition of Gordon Craig and Alexander George's classic, Force and Statecraft,13 presents an important discussion of the inability of the pre-war coercive diplomacy effort to get Saddam Hussein to withdraw from Kuwait without war.14 This discussion, by two of the recognized masters of deterrence theory, reminds us of the many important psychological and other factors operating at the individual level of analysis that may well have been crucial in that failure to get Hussein to withdraw without war. We should also remember that nondemocracies can have differences between leaders as to the necessity or usefulness of force and, as Marcus Aurelius should remind us, not all absolute leaders are Caligulas or Neros. Further, the history of ancient Egypt reminds us that not all Pharaohs were disposed to make war on their neighbors. Despite the importance of individual leaders, however, we should also keep before us that major international war is predominantly and critically an interaction, or synergy, of certain characteristics at levels two and three, specifically an absence of democracy and an absence of¶ effective deterrence.¶ Yet another way to conceptualize the importance of democracy and deterrence in war avoidance is to note that each in its own way internalizes the costs to decision elites of engaging in high risk aggressive behavior. Democracy internalizes these costs in a variety of ways including displeasure of the electorate at having war imposed upon it by its own government. And deterrence either prevents achievement of the objective altogether or imposes punishing costs making the gamble not worth the risk.I5¶ VI¶ Testing the Hypothesis¶ Theory without truth is but costly entertainment.¶ HYPOTHESES, OR PARADIGMS, are useful **if they reflect the real world better than previously held paradigms**. In the complex world of foreign affairs and the war puzzle, perfection is unlikely. **No general construct will fit all cases** even in the restricted category of "major interstate war"; **there are simply too many variables**. We should insist, however, on testing **against the real world** and on **results that suggest enhanced usefulness** over other constructs. In testing the hypothesis, we can test it for consistency with major wars; that is, in looking, for example, at the principal interstate wars in the twentieth century, did they present both a nondemocratic aggressor and an absence of effective deterrence?' And although it is by itself not going to prove causation, we might also want to test the hypothesis against settings of potential wars that did not occur. That is, in nonwar settings, was there an absence of at least one element of the synergy? We might also ask questions about the effect of changes on the international system in either element of the synergy; that is, what, in general, happens when a totalitarian state makes a transition to stable democracy or vice versa? And what, in general, happens when levels of deterrence are dramatically increased or decreased?

### AT: Western Metaphysics

#### The alternative fails and their sweeping critique recreates the totalizing nature of Western metaphysics

**Perkin 93** – English Prof, Saint Mary's (Russell, Theorizing the Culture Wars, Postmodern Culture 3.3, pmuse)

Another problem is that the book makes huge historical assertions that have the effect of lessening difference, even while it attacks the metaphysical principle "that identity is the condition for the possibility of difference and not the other way around" (4; emphasis in original). This is something Spanos has in common with some followers of Derrida who turn deconstruction into a dogma, rather than realizing that it is a strategy of reading that must take account of the particular logic of the texts being read. Spanos asserts that the classical Greeks were characterized by "originative, differential, and errant thinking" (105), which every subsequent age, beginning with the Alexandrian Greek, through the Romans, the Renaissance, the Enlightenment, and the Victorians, and right up to the present, misunderstood in a reifying and imperialistic appropriation. This not only implies a somewhat simplistic reception-history of ancient Greek culture; it also, significantly, perpetuates a myth--the favourite American myth that Spanos in other contexts attacks in the book--of an original period of innocence, a fall, and the possibility of redemption. There are further problems with the narrative built into \_The End of Education\_. Humanism is always and everywhere, for Spanos, panoptic, repressive, characterized by "the metaphysics of the centered circle," which is repeatedly attacked by reference to the same overcited passage from Derrida's "Structure, Sign, and Play in the Discourse of the Human Sciences"--not coincidentally one of the places where Derrida allows himself to make large claims unqualified by their derivation from reading a particular text. In order to make this assertion, Spanos must show that all apparent difference is in fact contained by the same old metaphysical discourse. Thus, within the space of four pages, in the context of making absolute claims about Western education (or thought, or theory), Spanos uses the following constructions: 1. "whatever its historically specific permutations," 2. "despite the historically specific permutations," 3. "Apparent historical dissimilarities," 4. "Despite the historically specific ruptures." (12-15) Western thought, he repeats, has "always reaffirmed a nostalgic and recuperative circuitous educational journey back to the origin" (15). This over-insistence suggests to me that Spanos is a poor reader of Derrida, for he is not attentive to difference at particular moments or within particular texts. He seems to believe that one can leap bodily out of the metaphysical tradition simply by compiling enough citations from Heidegger, whereas his rather anticlimactic final chapter shows, as Derrida recognizes more explicitly, that one cannot escape logocentrism simply by wishing to.

# 1AR

### AT: Roleplaying

#### We don’t call for role-playing, only policy-analysis---that’s effective and productive

Shulock 99 Nancy, PROFESSOR OF PUBLIC POLICY --- professor of Public Policy and Administration and director of the Institute for Higher Education Leadership & Policy (IHELP) at Sacramento State University, The Paradox of Policy Analysis: If It Is Not Used, Why Do We Produce So Much of It?, Journal of Policy Analysis and Management, Vol. 18, No. 2, 226–244 (1999)

In my view, none of these radical changes is necessary. As interesting as our politics might be with the kinds of changes outlined by proponents of participatory and critical policy analysis, we do not need these changes to justify our investment in policy analysis. Policy analysis already involves discourse, introduces ideas into politics, and affects policy outcomes. The problem is not that policymakers refuse to understand the value of traditional policy analysis or that policy analysts have not learned to be properly interactive with stakeholders and reflective of multiple and nontechnocratic perspectives. The problem, in my view, is only that policy analysts, policymakers, and observers alike do not recognize policy analysis for what it is. Policy analysis has changed, right along with the policy process, to become the provider of ideas and frames, to help sustain the discourse that shapes citizen preferences, and to provide the appearance of rationality in an increasingly complex political environment. Regardless of what the textbooks say, there does not need to be a client in order for ideas from policy analysis to resonate through the policy environment.10¶ Certainly there is room to make our politics more inclusive. But those critics who see policy analysis as a tool of the power elite might be less concerned if they understood that analysts are only adding to the debate—they are unlikely to be handing ready-made policy solutions to elite decisionmakers for implementation. Analysts themselves might be more contented if they started appreciating the appropriation of their ideas by the whole gamut of policy participants and stopped counting the number of times their clients acted upon their proposed solutions. And the cynics disdainful of the purported objectivism of analysis might relax if analysts themselves would acknowledge that they are seeking not truth, but to elevate the level of debate with a compelling, evidence-based presentation of their perspectives. Whereas critics call, unrealistically in my view, for analysts to present competing perspectives on an issue or to “design a discourse among multiple perspectives,” I see no reason why an individual analyst must do this when multiple perspectives are already in abundance, brought by multiple analysts. If we would acknowledge that policy analysis does not occur under a private, contractual process whereby hired hands advise only their clients, we would not worry that clients get only one perspective.¶ Policy analysis is used, far more extensively than is commonly believed. Its use could be appreciated and expanded if policymakers, citizens, and analysts themselves began to present it more accurately, not as a comprehensive, problem-solving, scientific enterprise, but as a contributor to informed discourse. For years Lindblom [1965, 1968, 1979, 1986, 1990] has argued that we should understand policy analysis for the limited tool that it is—just one of several routes to social problem solving, and an inferior route at that. Although I have learned much from Lindblom on this odyssey from traditional to interpretive policy analysis, my point is different. Lindblom sees analysis as having a very limited impact on policy change due to its ill-conceived reliance on science and its deluded attempts to impose comprehensive rationality on an incremental policy process. I, with the benefit of recent insights of Baumgartner, Jones, and others into the dynamics of policy change, see that even with these limitations, policy analysis can have a major impact on policy. Ideas, aided by institutions and embraced by citizens, can reshape the policy landscape. Policy analysis can supply the ideas.

### AT: Duffield

#### Duffield’s wrong and no alt

Kaldor 9 Mary, Professor and Director of the Centre for the Study of Global Governance, London School of Economics and Political Science, "Mary Kaldor on Framing War, the Military-Industrial Complex, and Human Security", May 16, www.theory-talks.org/2009/05/theory-talk-30.html

But then one could argue that ‘human security’ linked to intervention is a new way of playing the governance game, in which the world is to confirm to our conception European of security, as for instance Mark Duffield (Theory Talk #41) does.¶ While I really enjoyed Mark Duffield’s book Security, Development and Unending War, I think it is too negative. There is something very seductive about his argument that we have human rights at home and human (in)security abroad, in which human security approaches are viewed as a way of mitigating the terrible consequences of our exclusive consumerism and social insurance policies. But then you ask: what is the alternative, and I think the real problem is that for him there’s no middle position between imperial intervention and global revolution. When you look at his alternative, he talks vaguely about solidarity and I think there just has to be a middle position, or at least we have to believe in the existence of a middle position, which for me is reflected in a human security agenda, which I would argue is not imperialist because it has to be executed within a multilateralist framework based on the equality of human beings. And we simply can’t use conventional warfare, our actions have to be different, and that’s how I understand the middle position.¶ But then there’s the incapacity of the ‘international community’ to intervene when it’s necessary, or, as you call it in your book Reflections on globalization and human security, the ‘security gap’ flowing from our conception of human security and the daily fear of violence of millions worldwide. And one way to close this gap is the way Mark Duffield criticizes, namely, by letting the invisible hand of the aid ‘market’ tackle the gap. How do you see role of the increasing non-state aid, development and security ‘industry’?¶ I think it is quite worrying, actually. Perhaps I’m simply somewhat old-fashioned, but I think there are certain things you just can’t leave to be governed by the market, and especially security is one of them. I think there are huge problems with private security companies and with NGOs: there is this terrible contracting culture that is built around international missions, which wastes enormous amounts of money through layer upon layer upon layer of contracts. If somebody is contracted to build a school, and they subcontract it, and each subcontractor takes their part, and by the time we get to the school, there’s no money left. The NGOs, furthermore, are often more worried about their donors than about the ones they’re building the school for. So there are all kinds of problems that are related to the privatization culture. On the other hand, I don’t think that at this point you can do without these entities, because there simply isn’t the capacity on a national or global scale to engage in those projects, as you point out. I mean, even parts of the UN, such as UNDP, are forced to get their money not from states but from foundations and other donors, which makes them just as worried as NGOs about their donors, and inhibits effective problem-solving. But I think hard security issues, anything to do with war fighting, anything related to using guns, should be kept out of the private sphere, which the Americans didn’t do in Iraq and Afghanistan, as Peter Singer shows in Theory Talk # 29.

### Alt Fails (AT Burke) – Sorenson

#### The alt fails---the system’s too sticky to simply wish away

Sorensen 98 – British International Studies Association (Georg, IR Theory after the cold war, 87-88)

What, then, are the more general problems with the extreme versions of the postpositivist position? The first problem is that they tend to overlook, or downplay, the actual insights produced by non-post-positivists, such as, for example, neorealism. It is entirely true that anarchy is no given, ahistorical, natural condition to which the only possible reaction is adaptation. But the fact that anarchy is a historically specific, socially constructed product of human practice **does not make it less real**. In a world of sovereign states, anarchy is in fact **out there in the real world in some form**. In other words, it is not the acceptance of the real existence of social phenomena which produces objectivist reification. Reification is produced by the transformation of historically specific social phenomena into given, ahistorical, natural conditions.21 Despite their shortcomings, neorealism and other positivist theories have produced valuable insights about anarchy, including the factors in play in balance-of-power dynamics and in patterns of cooperation and conflict. Such insights are downplayed and even sometimes dismissed in adopting the notion of 'regimes of truth'. It is, of course, possible to appreciate the shortcomings of neorealism while also recognizing that it has merits. One way of doing so is set forth by Robert Cox. He considers neorealism to be a 'problem-solving theory' which 'takes the world as it finds it, with the prevailing social and power relationships . . . as the given framework for action . . . The strength of the problem-solving approach lies in its ability to fix limits or parameters to a problem area and to reduce the statement of a particular problem to a limited number of variables which are amenable to relatively close and precise examination'.22 At the same time, this 'assumption of fixity' is 'also an ideological bias . . . Problem-solving theories (serve) . . . particular national, sectional or class interests, which are comfortable within the given order'.23 In sum, objectivist theory such as neorealism contains a bias, **but that does not mean that it is without merit** in analysing particular aspects of international relations from a particular point of view. The second problem with post-positivism is the danger of extreme relativism which it contains. If there are no neutral grounds for deciding about truth claims so that each theory will define what counts as the facts, then the door is, at least in principle, **open to anything goes.** Steve Smith has confronted this problem in an exchange with Øyvind Østerud. Smith notes that he has never 'met a postmodernist who would accept that "the earth is flat if you say so". Nor has any postmodernist I have read argued or implied that "any narrative is as good as any other"'.24 But the problem remains that if we cannot find a minimum of common standards for deciding about truth claims a post-modernist position appears unable to come up with a metatheoretically substantiated critique of the claim that the earth is flat. In the absence of at least some common standards it appears difficult to reject that any narrative is as good as any other.25 The final problem with extreme post-positivism I wish to address here concerns change. We noted the post-modern critique of neorealism's difficulties with embracing change; their emphasis is on 'continuity and repetition'. But extreme post-positivists have their own problem with change, which follows from their metatheoretical position. In short, how can post-positivist ideas and projects of change be distinguished from pure utopianism and wishful thinking? Post-positivist radical subjectivism leaves no common ground for choosing between different change projects. A brief comparison with a classical Marxist idea of change will demonstrate the point I am trying to make. In Marxism, social change ( e.g. revolution) is, of course, possible. But that possibility is tied in with the historically specific social structures (material and non-material) of the world. Revolution is possible under certain social conditions but not under any conditions. Humans can change the world, but they are **enabled and constrained** by the social structures in which they live. There is a dialectic between social structure and human behaviour.26 The understanding of 'change' in the Marxist tradition is thus closely related to an appreciation of the historically specific social conditions under which people live; any change project is not possible at any time. Robert Cox makes a similar point in writing about critical theory: 'Critical theory allows for a normative choice in favor of a social and political order different from the prevailing order, but it limits the range of choice to alternative orders which are feasible transformations of the existing world . . . Critical theory thus contains an element of utopianism in the sense that it can represent a coherent picture of an alternative order, but its utopianism is constrained by its comprehension of historical processes. It must reject improbable alternatives just as it rejects the permanency of the existing order'.27 That constraint appears to be absent in post-positivist thinking about change, because radical post-positivism is **epistemologically and ontologically cut off from evaluating the relative merit** of different change projects. Anything goes, or so it seems. That view is hard to distinguish from utopianism and wishful thinking. If neorealism denies change in its overemphasis on continuity and repetition, then radical post-positivism is metatheoretically compelled to embrace any conceivable change project.28

### NW Causes Extinction

#### Nuclear war causes extinction

Starr 9 (Catastrophic Climatic Consequences of Nuclear Conflict, October 2009, by Steven Starr Steven Starr is a Senior Scientist with Physicians for Social Responsibility, and the Director of the Clinical Laboratory Science Program at the University of Missouri. He has been published in the Bulletin of the Atomic Scientists and the STAR (Strategic Arms Reduction) website of the Moscow Institute of Physics and Technology.

Despite a two-thirds reduction in global nuclear arsenals since 1986, new scientific research makes it clear that the environmental consequences of nuclear war can still end human history. A series of peer-reviewed studies, performed at several U.S. universities, predict the detonation of even a tiny fraction of the global nuclear arsenal within large urban centers will cause catastrophic disruptions of the global climate and massive destruction of the protective stratospheric ozone layer.

### KATO

**All nuclear violence is bad—representing indigenous people as distinctly important reverses marginalization—this fractures movements and makes nuclear testing and escalation inevitable**

**Truman 98** – founder of Downwinders, a leading activist organization for nuclear disarmament (J, 5/30, Thinking about the Unthinkable, http://www.ratical.org/ratville/nukes/JTruman/053098\_1.html, AG)

Here in this country, the "Environmentalists" insist on playing the same "indigenous peoples card", instead of dealing with the awful reality that fallout from nuclear testing is color and ethnic -blind -- it is an equal opportunity victimizer and kills whoever and wherever it goes! Why is this the real problem? Simply because fallout worldwide from testing killed likely on the order of tens of millions to date, and millions more injured who are not yet dead from it. Wholesale mass murder is what it is, and the public "needs" to know that right now! Especially when they "ALL" no matter who they are, where they live, how they live, or what color they are, Are already its victims. Only by realizing that and all that goes with it, is there "any" hope the public here, or worldwide will stand up to their governments and say no before those governments blow them up at the worst, or use this as a "wonderful" excuse to get back to nuclear weapons development business as usual! Likewise the activist community has got to stop playing organizational politics, and stop playing the race card. The movement can no longer play the indigenous peoples game simply because it is more "PC" and most specifically because it is "more fundable". To say nuclear testing's victims have always been indigenous peoples is not only incorrect, but is a sign of total stupidity on the issue, as the only indigenous people victimized by the testing was -- and are -- the human race! And the human race better get that point real soon and come to terms with the fact that on that one level at least we all share one thing in common on this planet. We all carry a little bit of the Nevada Test Site, the Semipalatinsk Test Site, The Lop Nor Test Site, the British and French Test Sites and soon perhaps the Indian and Pakistan Test Sites inside all our bodies. This does not mean that what happened to people forced from their homes -- first for the factories, then for the testing sites, or the reasons why testing sites were put where they were -- are not important, or are insignificant, or to excuse examples of environmental and atomic racism. They are all too clear examples of the utter sickness present in the minds of those responsible. Pick on those least able to defend themselves first and then slowly and steadily expand the circle to those you don't really give a damn about! Just like Joe Stalin, Adolf Hitler, Jim Crow, or George Armstrong Custer! Those stories and those histories and those facts must be exposed and justice demanded right along with ALL the rest of the terrible legacy of nuclear testing. All it means is that to stop the nuclear arms race the truth has to come out, the full truth, the complete truth, and not a truth focused to look better organizationally or politically. Because if it is, it only plays into the hands of those responsible for the testing in the first place, and is a "god-send" to them in helping to minimize the open public exposure of the full extent of the horrors they unleased. No group of victims is better, more worthy, less worthy, or better to focus and raise funds on. We are all one race -- the human race -- and we are all testing's victims.

### AT: Abolition

#### The state must be engaged---action can be reoriented away from past abuses, the alt goes too far

Williams and Krause 97 Michael, assistant professor of political science at the University of Southern Maine and Keith, professor of political science at the Graduate Institute of International Studies, associate professor of political science at York University, Critical Security Studies: Concepts and Cases, edited by Krause and Williams, p. xvi

Many of the chapters in this volume thus retain a concern with the centrality of the state as a locus not only of obligation but of effective political action. In the realm of organized violence, states also remain the preeminent actors. The task of a critical approach is not to deny the centrality of the state in this realm but, rather, to understand more fully its structures, dynamics, and possibilities for reorientation. From a critical perspective, state action is flexible and capable of reorientation, and analyzing state policy need not therefore be tantamount to embracing the statist assumptions of orthodox conceptions. To exclude a focus on state action from a critical perspective on the grounds that it plays inevitably within the rules of existing conceptions simply reverses the error of essentializing the state. Moreover, it loses the possibility of influencing what remains the most structurally capable actor in contemporary world politics.