# 1AC

### 1AC – Terrorism

#### CONTENTION 1: TERRORISM

**European allies will insist on a policy that limits operations to a law enforcement approach---failure to codify policy risks overreach**

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

The debate has largely devolved into an either-or dichotomy, even while security and practical considerations demand more nuanced practices. Thus, the **U**nited **S**tates, supported by a vocal group of scholars, including Professors Jack Goldsmith, Curtis Bradley, and Robert Chesney, has long asserted that it is at war with al Qaeda and associated groups. Therefore, it can legitimately detain without charge - and kill - al Qaeda members and their associates **wherever they are** found, subject of course to additional law-of-war, constitutional, and sovereignty constraints. n9 Conversely, European [\*1170] allies, supported by an equally vocal group of scholars and human rights advocates, assert that the **U**nited **S**tates is engaged in a conflict with al Qaeda only in specified regions, and that the United States' authority to employ law-of-war detention and lethal force extends only to **those particular zones**. n10 In all other places, al Qaeda and its associates should be subject to [\*1171] law enforcement measures, as governed by international human rights law and the domestic laws of the relevant states. n11 Recent statements by **U**nited **S**tates officials suggest an attempt to mediate between these two extremes, at least for purposes of targeted killing, and **as a matter of policy, not law**. While continuing to assert a global conflict with al Qaeda, official statements have limited the defense of out-of-conflict zone targeting operations to high-level leaders and others who pose a "significant" threat. n12 In the words of President Obama's then-Assistant for Homeland Security and Counterterrorism, John O. Brennan, the United States does not seek to "eliminate every single member of al-Qaida in the world," but instead conducts targeted strikes to mitigate "actual[,] ongoing threats." n13 That said, the **U**nited **S**tates continues to suggest that it can, as a matter of law, "take action" against anyone who is "part of" al Qaeda or associated forces - a very broad category of persons - **without any explicit geographic limits.** n14 The stakes are high. If the United States were permitted to launch a drone strike against an alleged al Qaeda operative in Yemen, why not in London - so long as the United States had the United Kingdom's consent and was confident that collateral damage to nearby civilians would be minimal (thereby addressing sovereignty and proportionality concerns)? There are many reasons why such a scenario is unlikely, but the **U**nited [\*1172] **S**tates has yet to assert **any limiting principle** that would, as a matter of law, prohibit such actions. And in fact, the United States did rely on the laws of war to detain a U.S. citizen picked up in a Chicago airport for almost four years. n15 Even if one accepts the idea that the United States now exercises its asserted authority with appropriate restraint, what is to prevent **Russia**, for example, from asserting that it is engaged in an armed conflict with Chechens and that it can target or detain, without charge, an alleged member of a Chechen rebel group wherever he or she is found, including possibly in the United States? Conversely, it cannot be the case - as the extreme version of the territorially restricted view of the conflict suggests - that an enemy with whom a state is at war can merely cross a territorial boundary in order to plan or plot, free from the threat of being captured or killed. In the London example, law enforcement can and should respond effectively to the threat. n16 But there also will be instances in which the enemy escapes to an effective safe haven because the host state is unable or unwilling to respond to the threat (think Yemen and Somalia in the current conflict), capture operations are infeasible because of conditions on the ground (think parts of Yemen and Somalia again), or criminal prosecution is not possible, at least in the short run. This Article proposes a way forward - offering a new legal framework for thinking about the geography of the conflict in a way that better mediates the multifaceted liberty, security, and foreign policy interests at stake. It argues that the jus ad bellum questions about the geographic borders of the conflict that have dominated much of the literature are the wrong questions to focus on. Rather, it focuses on jus in bello questions about the conduct of hostilities. This Article assumes that the conflict extends to **wherever the enemy threat is found**, but argues for **more stringent rules of conduct outside zones of active hostilities**. Specifically, it proposes a series of substantive and procedural rules designed to limit the use of lethal targeting [\*1173] and detention outside zones of active hostilities - subjecting their use to an **individualized threat finding**, a least-harmful-means test, and **meaningful procedural safeguards**. n17 The Article does not claim that existing law, which is uncertain and contested, dictates this approach. (Nor does it preclude this approach.) Rather, the Article explicitly recognizes that the set of current rules, developed mostly in response to state-on-state conflicts in a world without drones, fails to address adequately the complicated security and liberty issues presented by conflicts between a state and mobile non-state actors in a world where technological advances allow the state to track and attack the enemy wherever he is found. New rules are needed. Drawing on evolving state practice, underlying principles of the law of war, and prudential policy considerations, the Article proposes a set of such rules for conflicts between states and transnational non-state actors - rules designed both to promote the state's security and legitimacy and to protect against the erosion of individual liberty and the rule of law. The Article proceeds in four parts. Part I describes how the legal framework under which the United States is currently operating has generated legitimate concerns about the creep of war. This Part outlines how the U.S. approach over the past several years has led to a polarized debate between opposing visions of a territorially broad and territorially restricted conflict, and how both sides of the debate have failed to [\*1174] acknowledge the legitimate substantive concerns of the other. Part II explains why a territorially broad conflict can and should distinguish between zones of active hostilities and elsewhere, thus laying out the broad framework under which the Article's proposal rests. Part III details the proposed zone approach. It distinguishes zones of active hostilities from both peacetime and lawless zones, and outlines the enhanced substantive and procedural standards that ought to apply in the latter two zones. Specifically, Part III argues that outside zones of active hostilities, law-of-war detention and use of force should be employed **only in exceptional situations,** subject to an individualized threat finding, least-harmful-means test, and meaningful procedural safeguards. n18 This Part also describes how such an approach maps onto the conflict with al Qaeda, and is, at least in several key ways, **consistent with the approach** **already taken** by the **U**nited **S**tates as a matter of policy. Finally, Part IV explains how such an approach ought to apply not just to the current conflict with al Qaeda but to other conflicts with transnational non-state actors in the future, as well as self-defense actions that take place outside the scope of armed conflict. It concludes by making several recommendations as to how this approach should be incorporated into U.S. and, ultimately, international law. The Article is United States-focused, and is so for a reason. To be sure, other states, most notably Israel, have engaged in armed conflicts with non-state actors that are dispersed across several states or territories. n19 But the **U**nited **S**tates is the first state to self-consciously declare itself at war with a non-state terrorist organization that **potentially spans the globe**. Its **actions and asserted authorities** in response to this threat **establish a reference point** for state practice that will **likely be mimicked by others** and inform the development of **c**ustomary **i**nternational **l**aw.

**Alignment with allies brings detention policy into compliance with laws--- makes criminal prosecutions effective outside zones of conflict**

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There is clear evidence that other countries **recognize** and respond to **the difference in legitimacy** **between civilian and military courts** and that they are, indeed, more **willing to cooperate with U.S.** **counterterrorism efforts** when terrorism suspects are tried in the **c**riminal **j**ustice **s**ystem. Increased international cooperation is therefore another advantage of criminal prosecution.¶ Many key U.S. allies have been unwilling to cooperate in cases involving **l**aw-**o**f-**w**ar detention or prosecution but have cooperated in criminal [\*166] prosecutions. In fact, many U.S. extradition treaties, including those with allies such as India and Germany, forbid extradition when the defendant will not be tried in a criminal court. n252 This issue has played out in practice several times. An al-Shabaab operative was extradited from the Netherlands only after assurances from the United States that he would be prosecuted in criminal court. n253 Two similar cases arose in 2007. n254 In perhaps the most striking example, five terrorism suspects - including Abu Hamza al-Masr, who is accused of providing material support to al-Qaeda by trying to set up a training camp in Oregon and of organizing support for the Taliban in Afghanistan - were extradited to the United States by the **U**nited **K**ingdom in October 2012. n255 The extradition was made on the express condition that they would be tried in civilian federal criminal courts rather than in the military commissions. n256 And, indeed, both the **E**uropean **C**ourt of **H**uman **R**ights and the British courts allowed the extradition to proceed after assessing the protections offered by the U.S. **federal criminal justice system** and finding they fully met all relevant standards. n257 An insistence on using military commissions may thus **hinder extradition** and other kinds of international prosecutorial cooperation, such as the sharing of testimony and evidence.¶ Finally, the **c**riminal **j**ustice **s**ystem is simply a more agile and versatile prosecution forum. Federal jurisdiction offers an extensive variety of antiterrorism statutes that can be marshaled to prosecute terrorist activity committed outside the United States, and subsequently to detain those who are convicted. n258 This greater variety of offenses - military commissions can only [\*167] punish an increasingly narrow set of traditional offenses against the laws of war n259 - offers prosecutors important flexibility. For instance, it might be very difficult to prove al-Qaeda membership in an MCA prosecution or a law-of-war habeas proceeding; but if the defendant has received training at a terrorist camp or participated in a specific terrorist act, federal prosecutors may convict under various statutes tailored to more specific criminal behavior. n260 In addition, military commissions can no longer hear prosecutions for material support committed before 2006. n261 Due in part to the established track record of the federal courts, the federal criminal justice system also allows for more flexible interactions between prosecutors and defendants. Proffer and plea agreements are **powerful incentives for defendants to cooperate**, and often lead to **valuable intelligence-gathering**, producing more intelligence over the course of prosecution. n262

**That solves safe havens and extradition to the US court system**

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Finally, the **c**riminal **j**ustice **s**ystem may help us **obtain important cooperation from other countries**. That **cooperation may be necessary** if we want to detain suspected terrorists¶ or otherwise accomplish our national¶security objectives. Our federal courts are well-respected internationally.¶ They are well-established, formal legal mechanisms that allow the transfer of terrorism suspects to the United States¶ for trial in federal court, and for¶ the provision of information to assist¶ in law enforcement investigations –¶ i.e., extradition and mutual legal assistance treaties (MLATs). **Our allies around the world are comfortable with these mechanisms**, as well as with more informal procedures that are often used to provide assistance to the United States in law enforcement matters, whether relating to terrorism or¶ other types of cases. Such cooperation can be critical to the success of a prosecution, and in some cases can be **the only way in which we will gain** **custody of a suspected terrorist** who has broken our laws.¶ 184¶ In contrast, many of our **key** **allies around the world** are **not willing to cooperate** with or support our efforts to hold suspected terrorists in **law of war detention** or to **prosecute them in military commissions**. While we hope that over time they will grow more supportive of these legal¶ mechanisms, at present many countries would not extradite individuals to the United States for military commission proceedings or law of war¶ detention. Indeed, some of our extradition treaties explicitly forbid extradition to the United States where the person will be tried in a forum other than a criminal court. For example, our treaties with Germany¶ (Article 13)¶ 185¶ and with Sweden (Article V(3))¶ 186¶ expressly forbid extradition¶ when the defendant will be tried in¶ an “extraordinary” court, and the¶ understanding of the Indian government pursuant to its treaty with the¶ United States is that extradition is available only for proceedings under the¶ ordinary criminal laws of the requesting state.¶ 187¶ More generally, the¶ doctrine of dual criminality – under which extradition is available only for¶ offenses made criminal in both countries – and the relatively common¶ exclusion of extradition for military offenses not also punishable in civilian¶ court may also limit extradition outside the criminal justice system.¶ 188¶ Apart¶ from extradition, even where we already have the terrorist in custody, many countries will not provide testimony, other information, or assistance in support of law of war detention or a military prosecution, either as a matter¶ of national public policy or under other provisions of some of our MLATs.¶ 189¶ These concerns are not hypothetical. During the last Administration,¶ the United States was obliged to give¶ assurances against the use of military¶ commissions in order to obtain extradition of several terrorism suspects to¶ the United States.¶ 190¶ There are a number of terror suspects currently in foreign custody who **likely would not be extradited** to the United States by¶ foreign nations if they faced military tribunals.¶ 191¶ In some of these cases, it might be necessary for the foreign nation **to release these suspects** if they cannot be extradited because they do¶ not face charges pending in the¶ foreign nation.

#### Allied cooperation’s key to effective counter-terrorism

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

CNN should not have been surprised. Neither the Bush nor Obama administrations received blanket permission to transit Algerian airspace with surveillance planes or drones; instead, they received authorization only on a case-by-case basis and with advance notice.¶ According to Washington Post journalist Craig Whitlock, the U.S. military relies on a fleet of civilian-looking unarmed aircraft to spy on suspected Islamist groups in North Africa, because they are less conspicuous - and therefore less politically sensitive for host nations - than drones. Moreover, even if the United States received flyover rights for armed drones, it has been unable to secure a base in southern Europe or northern Africa from which it would be permitted to conduct drone strikes; and presently, U.S. armed drones cannot be launched and recovered from naval platforms.¶ According to Hollywood movies or television dramas, with its immense intelligence collection and military strike capabilities, the United States can locate, track, and kill anyone in the world.¶ This misperception is continually reinvigorated by the White House's, the CIA's, and the Pentagon's close cooperation with movie and television studios. For example, several years before the CIA even started conducting non-battlefield drone strikes, it was recommending the tactic as a plotline in the short-lived (2001-2003) drama "The Agency." As the show's writer and producer later revealed: "The Hellfire missile thing, they suggested that. I didn't come up with this stuff. I think they were doing a public opinion poll by virtue of giving me some good ideas."¶ Similarly, as of November there were at least 10 movies about the Navy SEALs in production or in theaters, which included so much support from the Pentagon that one film even starred active-duty SEALs.¶ The Obama administration's lack of a military response in Algeria reflects how sovereign states routinely constrain U.S. intelligence and military activities. As the U.S. Air Force Judge Advocate General's Air Force Operations and the Law guidebook states: "The unauthorized or improper entry of foreign aircraft into a state's national airspace is a violation of that state's sovereignty. . . . Except for overflight of international straits and archipelagic sea lanes, all nations have complete discretion in regulating or prohibiting flights within their national airspace."¶ Though not sexy and little reported, deploying CIA drones or special operations forces requires constant behind-the-scenes diplomacy: with very rare exceptions - like the Bin Laden raid - the U.S. military follows the rules of the world's other 194 sovereign, independent states.¶ These rules come in many forms. For example, basing rights agreements can limit the number of civilian, military and contractor personnel at an airbase or post; what access they have to the electromagnetic spectrum; what types of aircraft they can fly; how many sorties they can conduct per day; when those sorties can occur and how long they can last; whether the aircraft can drop bombs on another country and what sort of bombs; and whether they can use lethal force in self-defense. When the United States led the enforcement of the northern no-fly zone over Iraq from the Incirlik Air Base in southern Turkey from 1991 to 2003, a Turkish military official at the rank of lieutenant colonel or higher was always on board U.S. Air Force AWACS planes, monitoring the airspace to assure that the United States did not violate its highly restrictive basing agreement.¶ As Algeria is doing presently, the denial or approval of overflight rights is a powerful tool that states can impose on the United States. These include where U.S. air assets can enter and exit another state, what flight path they may take, how high they must fly, what type of planes can be included in the force package, and what sort of missions they can execute. In addition, these constraints include what is called shutter control, or the limits to when and how a transiting aircraft can collect information. For example, U.S. drones that currently fly out of the civilian airfield in Arba Minch, Ethiopia, to Somalia, are restricted in their collection activities over Ethiopia's Ogaden region, where the government has conducted an intermittent counterinsurgency against the Ogaden National Liberation Front.

#### That solves safe-havens and prevents an attack in the US

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Should the U.S. continue to strike at al-Qaida's leadership with drone attacks? A recent poll shows that while most Americans approve of drone strikes, in 17 out of 20 countries, more than half of those surveyed disapprove of them.¶ My study of leadership decapitation in 90 counter-insurgencies since the 1970s shows that when militant leaders are captured or killed militant attacks decrease, terrorist campaigns end sooner, and their outcomes tend to favor the government or third-party country, not the militants.¶ Those opposed to drone strikes often cite the June 2009 one that targeted Pakistani Taliban leader Baitullah Mehsud at a funeral in the Tribal Areas. That strike reportedly killed 60 civilians attending the funeral, but not Mehsud. He was killed later by another drone strike in August 2009. His successor, Hakimullah Mehsud, developed a relationship with the foiled Times Square bomber Faisal Shahzad, who cited drone strikes as a key motivation for his May 2010 attempted attack.¶ Compared to manned aircraft, drones have some advantages as counter-insurgency tools, such as lower costs, longer endurance and the lack of a pilot to place in harm's way and risk of capture. These characteristics can enable a more deliberative targeting process that serves to minimize unintentional casualties. But the weapons employed by drones are usually identical to those used via manned aircraft and can still kill civilians—creating enmity that breeds more terrorists.¶ Yet many insurgents and terrorists have been taken off the battlefield by U.S. drones and special-operations forces. Besides Mehsud, the list includes Anwar al-Awlaki of al-Qaida in the Arabian Peninsula; al-Qaida deputy leader Abu Yahya al-Li-bi; and, of course, al-Qaida leader Osama bin Laden. Given that list, it is possible that the drone program has prevented numerous attacks by their potential followers, like Shazad.¶ What does the removal of al-Qaida leadership mean for U.S. national security? Though many in al-Qaida's senior leadership cadre remain, the historical record suggests that "decapitation" will likely weaken the organization and could cripple its ability to conduct major attacks on the U.S. homeland.¶ Killing terrorist leaders is not necessarily a knockout blow, but can make it harder for terrorists to attack the U.S. Members of al-Qaida's central leadership, once safely amassed in northwestern Pakistan while America shifted its focus to Iraq, have been killed, captured, forced underground or scattered to various locations with little ability to communicate or move securely.¶ Recently declassified correspondence seized in the bin Laden raid shows that the relentless pressure from the drone campaign on al-Qaida in Pakistan led bin Laden to advise al-Qaida operatives to leave Pakistan's Tribal Areas as no longer safe. Bin Laden's letters show that U.S. counterterrorism actions, which had forced him into self-imposed exile, had made running the organization not only more risky, but also more difficult.¶ As al-Qaida members trickle out of Pakistan and seek sanctuary elsewhere, the U.S. military is ramping up its counterterrorism operations in Somalia and Yemen, while continuing its drone campaign in Pakistan. Despite its controversial nature, the U.S. counter-terrorism strategy has demonstrated a degree of effectiveness.¶ The Obama administration is committed to reducing the size of the U.S. military's footprint overseas by relying on drones, special operations forces, and other intelligence capabilities. These methods have made it more difficult for al-Qaida remnants to reconstitute a new safe haven, as Osama bin Laden did in Afghanistan in 1996, after his ouster from Sudan.

#### Risk of nuclear terrorism is real and high now

Bunn et al 10/2/13 Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998.<http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>

I. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in **radical interpretations of Islam;** by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

#### Nuclear terrorism is feasible---high risk of theft and attacks escalate

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. Series of armed clashing terrorist attacks may follow. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

**Terrorism causes extinction---hard-line responses are key**

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Several **powerful trends have aligned to** profoundly **change the way that the world works. Technology** now **allows stateless groups to organize, recruit, and fund themselves in an** unprecedented fashion. **That, coupled with** the extreme **difficulty of** finding and **punishing a stateless group, means that stateless groups are positioned to be lead players on the world stage.** **They may act on their own, or** they may act **as proxies for nation-states that wish to duck responsibility**. Either way, stateless groups are forces to be reckoned with. At the same time, a different set of **technology trends means that small numbers of people can obtain incredibly** lethal power**.** Now, for the first time in human history, **a small group can be as lethal as the largest superpower**. Such a group could execute an attack that could kill millions of people. **It is technically feasible for such a group to kill billions** of people, to end modern civilization—perhaps **even** to drive the human race to extinction. Our defense establishment was shaped over decades to address what was, for a long time, the only strategic threat our nation faced: Soviet or Chinese missiles. More recently, it has started retooling to address tactical terror attacks like those launched on the morning of 9/11, but the reform process is incomplete and inconsistent. **A real defense will require rebuilding our military and intelligence capabilities** from the ground up. Yet, so far, strategic terrorism has received relatively little attention in defense agencies, and the efforts that have been launched to combat this existential threat seem fragmented.**History suggests what will happen. The only thing that shakes America out of complacency is a direct threat from a determined adversary that confronts us with our shortcomings by repeatedly attacking us or hectoring us for decades.**

#### Critical terror studies are garbage

Jones and Smith 9 – \* University of Queensland, Queensland, Australia AND \*\* King's College, University of London, London, UK (David and M.L.R.,“We're All Terrorists Now: Critical—or Hypocritical—Studies “on” Terrorism?,” Studies in Conflict & Terrorism, Volume 32, Issue 4 April 2009 , pages 292 **–** 302**,** Taylor and Francis)

The journal, in other words, is not intended, as one might assume, to evaluate critically those state or non-state actors that might have recourse to terrorism as a strategy. Instead, the journal's ambition is to deconstruct what it views as the ambiguity of the word “terror,” its manipulation by ostensibly liberal democratic state actors, and the complicity of “orthodox” terrorism studies in this authoritarian enterprise. Exposing the deficiencies in any field of study is, of course, a legitimate scholarly exercise, but what the symposium introducing the new volume announces questions both the research agenda and academic integrity of journals like *Studies in Conflict and Terrorism* and those who contribute to them. Do these claims, one might wonder, have any substance?¶ Significantly, the original proposal circulated by the publisher Routledge and one of the editors, Richard Jackson, suggested some uncertainty concerning the preferred title of the journal. *Critical Studies on Terrorism* appeared last on a list where the first choice was *Review of Terror Studies*. Evidently, the concision of a review fails to capture the critical perspective the journal promotes. Criticism, then, is central to the new journal's philosophy and the adjective connotes a distinct ideological and, as shall be seen, far from pluralist and inclusive purpose. So, one might ask, what exactly does a critical approach to terrorism involve?¶ What it Means to be Critical¶ The editors and contributors explore what it means to be “critical” in detail, repetition, and opacity, along with an excessive fondness for italics, in the editorial symposium that introduces the first issue, and in a number of subsequent articles. The editors inform us that the study of terrorism is “a growth industry,” observing with a mixture of envy and disapproval that “literally thousands of new books and articles on terrorism are published every year” (pp. l-2). In adding to this literature the editors premise the need for yet another journal on their resistance to what currently constitutes scholarship in the field of terrorism study and its allegedly uncritical acceptance of the Western democratic state's security perspective.¶ Indeed, to be critical requires a radical reversal of what the journal assumes to be the typical perception of terrorism and the methodology of terrorism research. To focus on the strategies practiced by non-state actors that feature under the conventional denotation “terror” is, for the critical theorist, misplaced. As the symposium explains, “acts of clandestine non-state terrorism are committed by a tiny number of individuals and result in between a few hundred and a few thousand casualties *per year over the entire world*” (original italics) (p. 1). The United States's and its allies' preoccupation with terrorism is, therefore, out of proportion to its effects.1 At the same time, the more pervasive and repressive terror practiced by the state has been “silenced from public and … academic discourse” (p. 1).¶ The complicity of terrorism studies with the increasingly authoritarian demands of Western, liberal state and media practice, together with the moral and political blindness of established terrorism analysts to this relationship forms the journal's overriding assumption and one that its core contributors repeat ad nauseam. Thus, Michael Stohl, in his contribution “Old Myths, New Fantasies and the Enduring Realities of Terrorism” (pp. 5-16), not only discovers ten “myths” informing the understanding of terrorism, but also finds that these myths reflect a “state centric security focus,” where analysts rarely consider “the violence perpetrated by the state” (p. 5). He complains that the press have become too close to government over the matter. Somewhat contradictorily Stohl subsequently asserts that media reporting is “central to terrorism and counter-terrorism as political action,” that media reportage provides the oxygen of terrorism, and that politicians consider journalists to be “the terrorist's best friend” (p. 7).¶ Stohl further compounds this incoherence, claiming that “the media are far more likely to focus on the destructive actions, rather than on … grievances or the social conditions that breed [terrorism]—to present episodic rather than thematic stories” (p. 7). He argues that terror attacks between 1968 and 1980 were scarcely reported in the United States, and that reporters do not delve deeply into the sources of conflict (p. 8). All of this is quite contentious, with no direct evidence produced to support such statements. The “media” is after all a very broad term, and to assume that it is monolithic is to replace criticism with conspiracy theory. Moreover, even if it were true that the media always serves as a government propaganda agency, then by Stohl's own logic, terrorism as a method of political communication is clearly futile as no rational actor would engage in a campaign doomed to be endlessly misreported.¶ Nevertheless, the notion that an inherent pro-state bias vitiates terrorism studies pervades the critical position. Anthony Burke, in “The End of Terrorism Studies” (pp. 37-49), asserts that established analysts like Bruce Hoffman “specifically exclude states as possible perpetrators” of terror. Consequently, the emergence of “critical terrorism studies” “may signal the end of a particular kind of traditionally state-focused and directed 'problem-solving' terrorism studies—at least in terms of its ability to assume that its categories and commitments are immune from challenge and correspond to a stable picture of reality” (p. 42).¶ Elsewhere, Adrian Guelke, in “Great Whites, Paedophiles and Terrorists: The Need for Critical Thinking in a New Era of Terror” (pp. 17-25), considers British government-induced media “scare-mongering” to have legitimated an “authoritarian approach” to the purported new era of terror (pp. 22-23). Meanwhile, Joseba Zulaika and William A. Douglass, in “The Terrorist Subject: Terrorist Studies and the Absent Subjectivity” (pp. 27-36), find the War on Terror constitutes “*the* single,” all embracing paradigm of analysis where the critical voice is “not allowed to ask: what is the reality itself?” (original italics) (pp. 28-29). The construction of this condition, they further reveal, if somewhat abstrusely, reflects an abstract “desire” that demands terror as “an ever-present threat” (p. 31). In order to sustain this fabrication: “Terrorism experts and commentators” function as “realist policemen”; and not very smart ones at that, who while “gazing at the evidence” are “unable to read the paradoxical logic of the desire that fuels it, whereby *lack* turns to*excess*” (original italics) (p. 32). Finally, Ken Booth, in “The Human Faces of Terror: Reflections in a Cracked Looking Glass” (pp. 65-79), reiterates Richard Jackson's contention that state terrorism “is a much more serious problem than non-state terrorism” (p. 76).¶ Yet, one searches in vain in these articles for evidence to support the ubiquitous assertion of state bias: assuming this bias in conventional terrorism analysis as a fact seemingly does not require a corresponding concern with evidence of this fact, merely its continual reiteration by conceptual fiat. A critical perspective dispenses not only with terrorism studies but also with the norms of accepted scholarship. Asserting what needs to be demonstrated commits, of course, the elementary logical fallacy *petitio principii*. But critical theory apparently emancipates (to use its favorite verb) its practitioners from the confines of logic, reason, and the usual standards of academic inquiry.¶ Alleging a constitutive weakness in established scholarship without the necessity of providing proof to support it, therefore, appears to define the critical posture. The unproved “state centricity” of terrorism studies serves as a platform for further unsubstantiated accusations about the state of the discipline. Jackson and his fellow editors, along with later claims by Zulaika and Douglass, and Booth, again assert that “orthodox” analysts rarely bother “to interview or engage with those involved in 'terrorist' activity” (p. 2) or spend any time “on the ground in the areas most affected by conflict” (p. 74). Given that Booth and Jackson spend most of their time on the ground in Aberystwyth, Ceredigion, not a notably terror rich environment if we discount the operations of *Meibion Glyndwr* who would as a matter of principle avoid *pob sais* like Jackson and Booth, this seems a bit like the pot calling the kettle black. It also overlooks the fact that *Studies in Conflict and Terrorism* first advertised the problem of “talking to terrorists” in 2001 and has gone to great lengths to rectify this lacuna, if it is one, regularly publishing articles by analysts with first-hand experience of groups like the Taliban, Al Qaeda and *Jemaah Islamiyah*.¶ A consequence of avoiding primary research, it is further alleged, leads conventional analysts uncritically to apply psychological and problem-solving approaches to their object of study. This propensity, Booth maintains, occasions another unrecognized weakness in traditional terrorism research, namely, an inability to engage with “the particular dynamics of the political world” (p. 70). Analogously, Stohl claims that “the US and English [sic] media” exhibit a tendency to psychologize terrorist acts, which reduces “structural and political problems” into issues of individual pathology (p. 7). Preoccupied with this problem-solving, psychopathologizing methodology, terrorism analysts have lost the capacity to reflect on both their practice and their research ethics.¶ By contrast, the critical approach is not only self-reflective, but also and, for good measure, self-reflexive. In fact, the editors and a number of the journal's contributors use these terms interchangeably, treating a reflection and a reflex as synonyms (p. 2). A cursory encounter with the *Shorter Oxford Dictionary* would reveal that they are not. Despite this linguistically challenged misidentification, “reflexivity” is made to do a lot of work in the critical idiom. Reflexivity, the editors inform us, requires a capacity “to challenge dominant knowledge and understandings, is sensitive to the politics of labelling … is transparent about its own values and political standpoints, adheres to a set of responsible research ethics, and is committed to a broadly defined notion of emancipation” (p. 2). This covers a range of not very obviously related but critically approved virtues. Let us examine what reflexivity involves as Stohl, Guelke, Zulaika and Douglass, Burke, and Booth explore, somewhat repetitively, its implications.¶ Reflexive or Defective? ¶ Firstly, to challenge dominant knowledge and understanding and retain sensitivity to labels leads inevitably to a fixation with language, discourse, the ambiguity of the noun, terror, and its political use and abuse. Terrorism, Booth enlightens the reader unremarkably, is “a politically loaded term” (p. 72). Meanwhile, Zulaika and Douglass consider terror “the dominant tropic [sic] space in contemporary political and journalistic discourse” (p. 30). Faced with the “serious challenge” (Booth p. 72) and pejorative connotation that the noun conveys, critical terrorologists turn to deconstruction and bring the full force of postmodern obscurantism to bear on its use. Thus the editors proclaim that terrorism is “one of the most powerful signifiers in contemporary discourse.” There is, moreover, a “yawning gap between the 'terrorism' signifier and the actual acts signified” (p. 1). “[V]irtually all of this activity,” the editors pronounce *ex cathedra*, “refers to the *response* to acts of political violence not the violence itself” (original italics) (p. 1). Here again they offer no evidence for this curious assertion and assume, it would seem, all conventional terrorism studies address issues of homeland security.¶ In keeping with this critical orthodoxy that he has done much to define, Anthony Burke also asserts the “instability (and thoroughly politicized nature) of the unifying master-terms of our field: 'terror' and 'terrorism'” (p. 38). To address this he contends that a critical stance requires us to “keep this radical instability and inherent politicization of the concept of terrorism at the forefront of its analysis.” Indeed, “without a conscious reflexivity about the most basic definition of the object, our discourse will not be critical at all” (p. 38). More particularly, drawing on a jargon-infused amalgam of Michel Foucault's identification of a relationship between power and knowledge, the neo-Marxist Frankfurt School's critique of democratic false consciousness, mixed with the existentialism of the Third Reich's favorite philosopher, Martin Heidegger, Burke “*questions the question*.” This intellectual *potpourri* apparently enables the critical theorist to “question the ontological status of a 'problem' before any attempt to map out, study or resolve it” (p. 38).¶ Interestingly, Burke, Booth, and the symposistahood deny that there might be objective data about violence or that a properly focused strategic study of terrorism would not include any prescriptive goodness or rightness of action. While a strategic theorist or a skeptical social scientist might claim to consider only the complex relational situation that involves as well as the actions, the attitude of human beings to them, the critical theorist's radical questioning of language denies this possibility.¶ The critical approach to language and its deconstruction of an otherwise useful, if imperfect, political vocabulary has been the source of much confusion and inconsequentiality in the practice of the social sciences. It dates from the relativist pall that French radical post structural philosophers like Gilles Deleuze and Felix Guattari, Foucault, and Jacques Derrida, cast over the social and historical sciences in order to demonstrate that social and political knowledge depended on and underpinned power relations that permeated the landscape of the social and reinforced the liberal democratic state. This radical assault on the possibility of either neutral fact or value ultimately functions unfalsifiably, and as a substitute for philosophy, social science, and a real theory of language.¶ The problem with the critical approach is that, as the Australian philosopher John Anderson demonstrated, to achieve a genuine study one must either investigate the facts that are talked about or the fact that they are talked about in a certain way. More precisely, as J.L. Mackie explains, “if we concentrate on the uses of language we fall between these two stools, and we are in danger of taking our discoveries about manners of speaking as answers to questions about what is there.”2 Indeed, in so far as an account of the use of language spills over into ontology it is liable to be a confused mixture of what should be two distinct investigations: the study of the facts about which the language is used, and the study of the linguistic phenomena themselves.¶ It is precisely, however, this confused mixture of fact and discourse that critical thinking seeks to impose on the study of terrorism and infuses the practice of critical theory more generally. From this confused seed no coherent method grows.¶ What is To Be Done?¶ This ontological confusion notwithstanding, Ken Booth sees critical theory not only exposing the dubious links between power and knowledge in established terrorism studies, but also offering an ideological agenda that transforms the face of global politics. “[*C*]*ritical knowledge*,” Booth declares, “*involves understandings of the social world that attempt to stand outside prevailing structures, processes, ideologies and orthodoxies while recognizing that all conceptualizations within the ambit of sociality derive from particular social/historical conditions*” (original italics) (p. 78). Helpfully, Booth, assuming the manner of an Old Testament prophet, provides his critical disciples with “*big-picture* navigation aids” (original italics) (p. 66) to achieve this higher knowledge. Booth promulgates fifteen commandments (as Clemenceau remarked of Woodrow Wilson's nineteen points, in a somewhat different context, “God Almighty only gave us ten”). When not stating the staggeringly obvious, the Ken Commandments are hopelessly contradictory. Critical theorists thus should “avoid exceptionalizing the study of terrorism,”3 “recognize that states can be agents of terrorism,” and “keep the long term in sight.” Unexceptional advice to be sure and long recognized by more traditional students of terrorism. The critical student, if not fully conversant with critical doublethink, however, might find the fact that she or he lives within “Powerful theories” that are “constitutive of political, social, and economic life” (6th Commandment, p. 71), sits uneasily with Booth's concluding injunction to “stand outside” prevailing ideologies (p. 78).¶ In his preferred imperative idiom, Booth further contends that terrorism is best studied in the context of an “academic international relations” whose role “is not only to interpret the world but to change it” (pp. 67-68). Significantly, academic—or more precisely, critical—international relations, holds no place for a realist appreciation of the status quo but approves instead a Marxist ideology of praxis. It is within this transformative praxis that critical theory situates terrorism and terrorists.¶ The political goals of those non-state entities that choose to practice the tactics of terrorism invariably seek a similar transformative praxis and this leads “critical global theorizing” into a curiously confused empathy with the motives of those engaged in such acts, as well as a disturbing relativism. Thus, Booth again decrees that the gap between “those who hate terrorism and those who carry it out, those who seek to delegitimize the acts of terrorists and those who incite them, and those who abjure terror and those who glorify it—is not as great as is implied or asserted by orthodox terrorism experts, the discourse of governments, or the popular press” (p. 66). The gap “between us/them is a slippery slope, not an unbridgeable political and ethical chasm” (p. 66). So, while “terrorist actions are always—without exception—wrong, they nevertheless might be contingently excusable” (p. 66). From this ultimately relativist perspective gang raping a defenseless woman, an act of terror on any critical or uncritical scale of evaluation, is, it would seem, wrong but potentially excusable.¶ On the basis of this worrying relativism a further Ken Commandment requires the abolition of the discourse of evil on the somewhat questionable grounds that evil releases agents from responsibility (pp. 74-75). This not only reveals a profound ignorance of theology, it also underestimates what Eric Voeglin identified as a central feature of the appeal of modern political religions from the Third Reich to Al Qaeda. As Voeglin observed in 1938, the Nazis represented an “attractive force.” To understand that force requires not the abolition of evil [so necessary to the relativist] but comprehending its attractiveness. Significantly, as Barry Cooper argues, “its attractiveness, [like that of al Qaeda] cannot fully be understood apart from its evilness.”4¶ The line of relativist inquiry that critical theorists like Booth evince toward terrorism leads in fact not to moral clarity but an inspissated moral confusion. This is paradoxical given that the editors make much in the journal's introductory symposium of their “responsible research ethics.” The paradox is resolved when one realizes that critical moralizing demands the “ethics of responsibility to the terrorist other.” For Ken Booth it involves, it appears, empathizing “with the ethic of responsibility” faced by those who, “in extremis” “have some explosives” (p. 76). Anthony Burke contends that a critically self-conscious normativism requires the analyst, not only to “critique” the “strategic languages” of the West, but also to “take in” the “side of the Other” or more particularly “engage” “with the highly developed forms of thinking” that provides groups like Al Qaeda “with legitimizing foundations and a world view of some profundity” (p. 44). This additionally demands a capacity not only to empathize with the “other,” but also to recognize that both Osama bin Laden in his *Messages to the West* and Sayyid Qutb in his Muslim Brotherhood manifesto *Milestones* not only offer “well observed” criticisms of Western decadence, but also “converges with elements of critical theory” (p. 45). This is not surprising given that both Islamist and critical theorists share an analogous contempt for Western democracy, the market, and the international order these structures inhabit and have done much to shape.¶ Histrionically Speaking¶ Critical theory, then, embraces relativism not only toward language but also toward social action. Relativism and the bizarre ethicism it engenders in its attempt to empathize with the terrorist other are, moreover, histrionic. As Leo Strauss classically inquired of this relativist tendency in the social sciences, “is such an understanding dependent upon our own commitment or independent of it?” Strauss explains, if it is independent, I am committed as an actor and I am uncommitted in another compartment of myself in my capacity as a social scientist. “In that latter capacity I am completely empty and therefore completely open to the perception and appreciation of all commitments or value systems.” I go through the process of empathetic understanding in order to reach clarity about my commitment for only a part of me is engaged in my empathetic understanding. This means, however, that “such understanding is not serious or genuine but histrionic.”5 It is also profoundly dependent on Western liberalism. For it is only in an open society that questions the values it promotes that the issue of empathy with the non-Western other could arise. The critical theorist's explicit loathing of the openness that affords her histrionic posturing obscures this constituting fact.¶ On the basis of this histrionic empathy with the “other,” critical theory concludes that democratic states “do not always abjure acts of terror whether to advance their foreign policy objectives … or to buttress order at home” (p. 73). Consequently, Ken Booth asserts: “If terror can be part of the menu of choice for the relatively strong, it is hardly surprising it becomes a weapon of the relatively weak” (p. 73). Zulaika and Douglass similarly assert that terrorism is “always” a weapon of the weak (p. 33).¶ At the core of this critical, ethicist, relativism therefore lies a syllogism that holds all violence is terror: Western states use violence, therefore, Western states are terrorist. Further, the greater terrorist uses the greater violence: Western governments exercise the greater violence. Therefore, it is the liberal democracies rather than Al Qaeda that are the greater terrorists.¶ In its desire to empathize with the transformative ends, if not the means of terrorism generally and Islamist terror in particular, critical theory reveals itself as a form of Marxist unmasking. Thus, for Booth “*terror has multiple forms*” (original italics) and the real terror is economic, the product it would seem of “global capitalism” (p. 75). Only the *engagee* intellectual academic finding in deconstructive criticism the philosophical weapons that reveal the illiberal neo-conservative purpose informing the conventional study of terrorism and the democratic state's prosecution of counterterrorism can identify the real terror lurking behind the “manipulation of the politics of fear” (p. 75).¶ Moreover, the resolution of this condition of escalating violence requires not any strategic solution that creates security as the basis for development whether in London or Kabul. Instead, Booth, Burke, and the editors contend that the only solution to “the world-historical crisis that is facing human society globally” (p. 76) is universal human “emancipation.” This, according to Burke, is “the normative end” that critical theory pursues. Following Jurgen Habermas, the godfather of critical theory, terrorism is really a form of distorted communication. The solution to this problem of failed communication resides not only in the improvement of living conditions, and “the political taming of unbounded capitalism,” but also in “the telos of mutual understanding.” Only through this telos with its “strong normative bias towards non violence” (p. 43) can a universal condition of peace and justice transform the globe. In other words, the only ethical solution to terrorism is conversation: sitting around an un-coerced table presided over by Kofi Annan, along with Ken Booth, Osama bin Laden, President Obama, and some European Union pacifist sandalista, a transcendental communicative reason will emerge to promulgate norms of transformative justice. As Burke enunciates, the panacea of un-coerced communication would establish “a secularism that might create an enduring architecture of basic shared values” (p. 46).¶ In the end, un-coerced norm projection is not concerned with the world as it is, but how it ought to be. This not only compounds the logical errors that permeate critical theory, it advances an ultimately utopian agenda under the guise of *soi-disant* cosmopolitanism where one somewhat vaguely recognizes the “human interconnection and mutual vulnerability to nature, the cosmos and each other” (p. 47) and no doubt bursts into spontaneous chanting of Kumbaya.¶ In analogous visionary terms, Booth defines real security as emancipation in a way that denies any definitional rigor to either term. The struggle against terrorism is, then, a struggle for emancipation from the oppression of political violence everywhere. Consequently, in this Manichean struggle for global emancipation against the real terror of Western democracy, Booth further maintains that universities have a crucial role to play. This also is something of a concern for those who do not share the critical vision, as university international relations departments are not now, it would seem, in business to pursue dispassionate analysis but instead are to serve as cheerleaders for this critically inspired vision.¶ Overall, the journal's fallacious commitment to emancipation undermines any ostensible claim to pluralism and diversity. Over determined by this transformative approach to world politics, it necessarily denies the possibility of a realist or prudential appreciation of politics and the promotion not of universal solutions but pragmatic ones that accept the best that may be achieved in the circumstances. Ultimately, to present the world how it ought to be rather than as it is conceals a deep intolerance notable in the contempt with which many of the contributors to the journal appear to hold Western politicians and the Western media.6¶ It is the exploitation of this oughtistic style of thinking that leads the critic into a Humpty Dumpty world where words mean exactly what the critical theorist “chooses them to mean—neither more nor less.” However, in order to justify their disciplinary niche they have to insist on the failure of established modes of terrorism study. Having identified a source of government grants and academic perquisites, critical studies in fact does not deal with the notion of terrorism as such, but instead the manner in which the Western liberal democratic state has supposedly manipulated the use of violence by non-state actors in order to “other” minority communities and create a politics of fear.¶ Critical Studies and Strategic Theory—A Missed Opportunity¶ Of course, the doubtful contribution of critical theory by no means implies that all is well with what one might call conventional terrorism studies. The subject area has in the past produced superficial assessments that have done little to contribute to an informed understanding of conflict. This is a point readily conceded by John Horgan and Michael Boyle who put “A Case Against 'Critical Terrorism Studies'” (pp. 51-74). Although they do not seek to challenge the agenda, assumptions, and contradictions inherent in the critical approach, their contribution to the new journal distinguishes itself by actually having a well-organized and well-supported argument. The authors' willingness to acknowledge deficiencies in some terrorism research shows that critical self-reflection is already present in existing terrorism studies. It is ironic, in fact, that the most clearly reflective, original, and *critical* contribution in the first edition should come from established terrorism researchers who critique the critical position.¶ Interestingly, the specter haunting both conventional and critical terrorism studies is that both assume that terrorism is an existential phenomenon, and thus has causes and solutions. Burke makes this explicit: “The inauguration of this journal,” he declares, “indeed suggests broad agreement that there is a phenomenon called terrorism” (p. 39). Yet this is not the only way of looking at terrorism. For a strategic theorist the notion of terrorism does not exist as an independent phenomenon. It is an abstract noun. More precisely, it is merely a tactic—the creation of fear for political ends—that can be employed by any social actor, be it state or non-state, in any context, without any necessary moral value being involved.¶ Ironically, then, strategic theory offers a far more “critical perspective on terrorism” than do the perspectives advanced in this journal. Guelke, for example, propounds a curiously orthodox standpoint when he asserts: “to describe an act as one of terrorism, without the qualification of quotation marks to indicate the author's distance from such a judgement, is to condemn it as absolutely illegitimate” (p. 19). If you are a strategic theorist this is an invalid claim. Terrorism is simply a method to achieve an end. Any moral judgment on the act is entirely separate. To fuse the two is a category mistake. In strategic theory, which Guelke ignores, terrorism does not, ipso facto, denote “absolutely illegitimate violence.”¶ Intriguingly, Stohl, Booth, and Burke also imply that a strategic understanding forms part of their critical viewpoint. Booth, for instance, argues in one of his commandments that terrorism should be seen as a conscious human choice. Few strategic theorists would disagree. Similarly, Burke feels that there does “appear to be a consensus” that terrorism is a “form of instrumental political violence” (p. 38). The problem for the contributors to this volume is that they cannot emancipate themselves from the very orthodox assumption that the word terrorism is pejorative. That may be the popular understanding of the term, but inherently terrorism conveys no necessary connotation of moral condemnation. “Is terrorism a form of warfare, insurgency, struggle, resistance, coercion, atrocity, or great political crime,” Burke asks rhetorically. But once more he misses the point. All violence is instrumental. Grading it according to whether it is insurgency, resistance, or atrocity is irrelevant. Any strategic actor may practice forms of warfare. For this reason Burke's further claim that existing definitions of terrorism have “specifically excluded states as possible perpetrators and privilege them as targets,” is wholly inaccurate (p. 38). Strategic theory has never excluded state-directed terrorism as an object of study, and neither for that matter, as Horgan and Boyle point out, have more conventional studies of terrorism.¶ Yet, Burke offers—as a critical revelation—that “the strategic intent behind the US bombing of North Vietnam and Cambodia, Israel's bombing of Lebanon, or the sanctions against Iraq is also terrorist.” He continues: “My point is not to remind us that states practise terror, but to show how mainstream *strategic doctrines* are terrorist in these terms and undermine any prospect of achieving the normative consensus if such terrorism is to be reduced and eventually eliminated” (original italics) (p. 41). This is not merely confused, it displays remarkable nescience on the part of one engaged in teaching the next generation of graduates from the Australian Defence Force Academy. Strategic theory conventionally recognizes that actions on the part of state or non-state actors that aim to create fear (such as the allied aerial bombing of Germany in World War II or the nuclear deterrent posture of Mutually Assured Destruction) can be terroristic in nature.7 The problem for critical analysts like Burke is that they impute their own moral valuations to the term terror. Strategic theorists do not. Moreover, the statement that this undermines any prospect that terrorism can be eliminated is illogical: you can never eliminate an abstract noun.¶ Consequently, those interested in a truly “critical” approach to the subject should perhaps turn to strategic theory for some relief from the strictures that have traditionally governed the study of terrorism, not to self-proclaimed critical theorists who only replicate the flawed understandings of those whom they criticize. Horgan and Boyle conclude their thoughtful article by claiming that critical terrorism studies has more in common with traditional terrorism research than critical theorists would possibly like to admit. These reviewers agree: they are two sides of the same coin.¶ Conclusion¶ In the looking glass world of critical terror studies the conventional analysis of terrorism is ontologically challenged, lacks self-reflexivity, and is policy oriented. By contrast, critical theory's ethicist, yet relativist, and deconstructive gaze reveals that we are all terrorists now and must empathize with those sub-state actors who have recourse to violence for whatever motive. Despite their intolerable othering by media and governments, terrorists are really no different from us. In fact, there is terror as the weapon of the weak and the far worse economic and coercive terror of the liberal state. Terrorists therefore deserve empathy and they must be discursively engaged.¶ At the core of this understanding sits a radical pacifism and an idealism that requires not the status quo but communication and “human emancipation.” Until this radical post-national utopia arrives both force and the discourse of evil must be abandoned and instead therapy and un-coerced conversation must be practiced. In the popular ABC drama *Boston Legal* Judge Brown perennially referred to the vague, irrelevant, jargon-ridden statements of lawyers as “jibber jabber.” The Aberystwyth-based school of critical internationalist utopianism that increasingly dominates the study of international relations in Britain and Australia has refined a higher order incoherence that may be termed Aber jabber. The pages of the journal of *Critical Studies on Terrorism* are its natural home.

### 1AC – Plan

#### The United States Federal Government should restrict the President's war powers authority by statutorily limiting targeted killing and detention without charge to a counterterrorism policy guided by an individualized threat requirement and procedural safeguards, and by codification of executive branch review policy for those practices.

### 1AC – Solvency

#### The aff shifts the war-on-terror to a law-enforcement approach---this is the perfect middle-ground

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The United States cannot conduct an effective counterterrorism campaign against al Qa'ida or other terrorist groups without understanding how such groups end. While **it is clear that U.S. policymakers will need** to turn to **a range of policy instruments to conduct such campaigns — including careful police and intelligence work, military force**, political negotiations, and economic sanctions — what is less clear is how they should prioritize U.S. efforts.¶ A recent RAND research effort sheds light on this issue by investigating how terrorist groups have ended in the past. By analyzing a comprehensive roster of terrorist groups that existed worldwide between 1968 and 2006, the authors found that most groups ended because of operations carried out by local police or intelligence agencies or because they negotiated a settlement with their governments. Military force was rarely the primary reason a terrorist group ended, and few groups within this time frame achieved victory.¶ These findings suggest that the U.S. approach to countering al Qa'ida has focused far too much on the use of military force. Instead, policing and **intelligence should be the backbone of U.S. efforts.**¶ First Systematic Examination of the End of Terrorist Groups¶ This was the first systematic look at how terrorist groups end. The authors compiled and analyzed a data set of all terrorist groups between 1968 and 2006, drawn from a terrorism-incident database that RAND and the Memorial Institute for the Prevention of Terrorism jointly oversee. The authors used that data to identify the primary reason for the end of groups and to statistically analyze how economic conditions, regime type, size, ideology, and group goals affected their survival. They then conducted comparative case studies of specific terrorist groups to understand how they ended.¶ Of the 648 groups that were active at some point between 1968 and 2006, a total of 268 ended during that period. Another 136 groups splintered, and 244 remained active. As depicted in the figure, the authors found that most ended for one of two reasons: They were penetrated and eliminated by local police and intelligence agencies (40 percent), or they reached a peaceful political accommodation with their government (43 percent). Most terrorist groups that ended because of politics sought narrow policy goals. The narrower the goals, the more likely the group was to achieve them through political accommodation — and thus the more likely the government and terrorists were to reach a negotiated settlement.¶ How 268 Terrorist Groups Worldwide Ended, 1968–2006¶ How 268 Terrorist Groups Worldwide Ended, 1968-2006¶ In 10 percent of cases, terrorist groups ended because they achieved victory. Military force led to the end of terrorist groups in 7 percent of cases. The authors found that militaries tended to be most effective when used against terrorist groups engaged in insurgencies in which the groups were large, well armed, and well organized. But against most terrorist groups, military force was usually too blunt an instrument.¶ The analysis also found that¶ religiously motivated terrorist groups took longer to eliminate than other groups but rarely achieved their objectives; no religiously motivated group achieved victory during the period studied.¶ size significantly determined a group's fate. Groups exceeding 10,000 members were victorious more than 25 percent of the time, while victory was rare for groups below 1,000 members.¶ terrorist groups from upper-income countries are much more likely to be left-wing or nationalist and much less likely to be motivated by religion.¶ Police-Oriented Counterterrorism Rather Than a “War on Terrorism”¶ What does this mean for counterterrorism efforts against al Qa'ida? After September 11, 2001, U.S. strategy against al Qa'ida concentrated on the use of military force. Although the United States has employed nonmilitary instruments — cutting off terrorist financing or providing foreign assistance, for example — U.S. policymakers continue to refer to the strategy as a “war on terrorism.”¶ But military force has not undermined al Qa'ida. As of 2008, al Qa'ida has remained a strong and competent organization. **Its goal is** intact: to establish a pan-Islamic caliphate in the Middle East by uniting Muslims to fight infidels and overthrow West-friendly regimes. It continues to employ terrorism and has been **involved in more terrorist attacks** around the world in the years since September 11, 2001, than in prior years, though engaging in no successful attacks of a comparable magnitude to the attacks on New York and Washington.¶ Al Qa'ida's resilience should trigger a fundamental rethinking of U.S. strategy. Its goal of a pan-Islamic caliphate leaves **little room for a negotiated political settlement** with governments in the Middle East. A more effective U.S. approach would involve a two-front strategy:¶ Make policing and intelligence the backbone of U.S. efforts. Al Qa'ida consists of a network of individuals who need to be tracked and arrested. This requires careful involvement of the Central Intelligence Agency and Federal Bureau of Investigation, as well as their cooperation with foreign police and intelligence agencies.¶ Minimize the use of U.S. military force. In most operations against al Qa'ida, local military forces frequently have more legitimacy to operate and a better understanding of the operating environment than U.S. forces have. This means a light U.S. military footprint or none at all.¶ Key to this strategy is **replacing the war-on-terrorism orientation** with the kind of counterterrorism approach that is employed by most governments facing significant terrorist threats today. Calling the efforts a war on terrorism raises public expectations — both in the United States and elsewhere — that there is a battlefield solution. It also tends to legitimize the terrorists' view that they are conducting a jihad (holy war) against the United States and elevates them to the status of holy warriors. Terrorists should be perceived as criminals, not holy warriors.

**Failure to codify existing policy into law risks spreading executive targeted killings and indefinite detention---plan’s key**

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 161 U. Pa. L. Rev. 1165, Lexis

Fifth, and critically, while the **U**nited **S**tates might be confident that it will exercise its authorities responsibly, it **cannot assure that other states will** follow suit. What is to prevent Russia, for example, from asserting that [\*1233] it is engaged in an armed conflict with Chechen rebels, and can, consistent with the law of war, **kill** **or** **detain** any person **anywhere** in the world which it deems to be a "functional member" of that rebel group? Or **Turkey** from doing so with respect to alleged "functional members" of **Kurdish rebel groups?** If such a theory ultimately resulted in the targeted killing or detaining without charge of an American citizen, the United States would have few principled grounds for objecting.¶ Capitalizing on **the** strategic **benefits of restraint**, the **U**nited **S**tates should **codify into law** what is **already**, in many key respects, **national policy**. As a first step, the President should sign an Executive order requiring that out-of-battlefield target and capture operations be based on individualized threat assessments and subject to a least-harmful-means test, clearly articulating the standards and procedures that would apply. As a next step, Congress should mandate the creation of a review system, as described in detail in this Article. In doing so, **the U**nited **S**tates will **set an important example**, one that **can become a building block upon which to develop an international consensus** as to **the rules that apply to detention** and **targeted killings** **outside the conflict zone**.

#### Plan’s statute prevents circumvention

David J. Barron 8, Professor of Law at Harvard Law School and Martin S. Lederman, Visiting Professor of Law at the Georgetown University Law Center, “The Commander in Chief at the Lowest Ebb -- A Constitutional History”, Harvard Law Review, February, 121 Harv. L. Rev. 941, Lexis

In addition to offering important guidance concerning the congressional role, our historical review also illuminates the practices of the President in creating the constitutional law of war powers at the "lowest ebb." Given the apparent advantages to the Executive of possessing preclusive powers in this area, it is tempting to think that Commanders in Chief would always have claimed a unilateral and unregulable authority to determine the conduct of military operations. And yet, as we show, for most of our history, the presidential **practice was otherwise**. Several of our most esteemed Presidents - Washington, Lincoln, and both Roosevelts, among others - never invoked the sort of preclusive claims of authority that some modern Presidents appear to embrace without pause. In fact, no Chief Executive did so in any clear way until the onset of the Korean War, even when they confronted problematic restrictions, some of which could not be fully interpreted away and some of which even purported to regulate troop deployments and the actions of troops already deployed. Even since claims of preclusive power emerged in full, the practice within the executive branch has waxed and waned. No consensus among modern Presidents has crystallized. Indeed, rather than denying the authority of Congress to act in this area, some **modern Presidents**, like their predecessors, have **acknowledged** the **constitutionality of legislative regulation**. They have therefore concentrated their efforts on making effective use of other presidential authorities and institutional [\*949] advantages to shape military matters to their preferred design. n11 In sum, there has been much less executive assertion of an inviolate power over the conduct of military campaigns than one might think. And, perhaps most importantly, until recently there has been almost no actual defiance of statutory limitations predicated on such a constitutional theory. This repeated, though not unbroken, deferential executive branch stance is not, we think, best understood as evidence of the timidity of prior Commanders in Chief. Nor do we think it is the accidental result of political conditions that just happened to make it expedient for all of these Executives to refrain from lodging such a constitutional objection. This consistent pattern of executive behavior is more accurately viewed as reflecting deeply rooted norms and understandings of how the Constitution structures conflict between the branches over war. In particular, this well-developed executive branch practice appears to be premised on the assumption that the constitutional plan requires the nation's chief commander **to guard his supervisory powers** over the military chain of command **jealously**, to be willing to act in times of exigency if Congress is not available for consultation, and to use the very powerful weapon of the veto to forestall unacceptable limits proposed in the midst of military conflict - but that otherwise, the Constitution compels the Commander in Chief to comply with legislative restrictions. In this way, the founding legal charter itself exhorts the President to justify controversial military judgments to a sympathetic but sometimes skeptical or demanding legislature and nation, not only for the sake of liberty, but also for effective and prudent conduct of military operations. Justice Jackson's famous instruction that "with all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations" n12 continues to have a strong pull on the constitutional imagination. n13 What emerges from our analysis is how much pull it seemed to [\*950] have on the executive branch itself for most of our history of war powers development.

#### 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

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

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.

#### Solving the root causes of terrorism is impossible because of expansive jihadist demands---reconciliation collapses causes global violence

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While different U.S. policies may be more or less important at differ- ent times, most experts agree that it is American actions (“what we do”), not American values (“who were are”) that have made the United States the target of salafist jihad. While in his ideal world Bin Laden would cer- tainly like to see the United States ditch its barbaric culture and convert to Islam, that is low on his list of concerns. As he himself has pointed out, if Al Qaeda were offended primarily by the licentiousness Western societies practice at home, it would have attacked Sweden. ¶ The problem is that while salafists might theoretically leave the United States alone if we left them alone, their concerns are vast and their hostility to liberal values is profound. Salafism is not a universalist ideology in the way that Communism was. (That is not to say its devotees do not dream of a world completely under God’s rule—they do—only that the cultural barriers preventing, say, an Argentinean from adopting the religion of Qutb are far greater than the barriers preventing him from adopting the religion of Marx.) But neither is salafism easy to avoid. Bin Laden has said the United States can escape “this ordeal” of terrorism if “it leaves the Arabian Peninsula, and stops its involvement in Palestine, and in all the Islamic world.” Unfortunately, Zawahiri, his second in command, has defined the Islamic world as stretching from “Eastern Turkestan [ Xinjiang, in western China] to Andalusia [Spain and Portugal].” Azzam has gone further, including among the territory that must be “returned to us so that Islam will reign again” sub- Saharan African countries like Chad, Eritrea, and Somalia and Asian nations like Burma and the Philippines. Salafists want to restore the caliphate that once ruled much of the Islamic world. But even at its eighth- century peak, the caliphate only stretched from In- dia to Spain. Under Al Qaeda’s more expansive definition, it seems to include every country or region once under Muslim rule. To comply with those terms, the United States would have to **retreat** virtually **to the Western Hemisphere.** ¶ Needless to say, for the United States to withdraw from a swath of territory stretching from West Africa to Southeast Asia would constitute a geostrategic revolution. American power is the guarantor of last resort for the government of Pakistan, which has nuclear weapons, a volatile border with nuclear- armed India, and salafist elements in its security services. It plays the same role in Jordan and Egypt, the lynchpins of peace between Israel and the Arab world. And, of course, America protects the Saudi monarchy, whose kingdom sits atop one quarter of the world’s proven oil reserves. As the Bush administration has rightly recognized, these relation- ships are unsustainable in their current form, and America’s long-t erm safety requires that its clients evolve in a democratic direction, even if it means they prove less compliant. But were the jihadist movement to force the United States to withdraw its military, political, or economic influence ¶ from these crucial areas—producing governments with dramatically dif- ferent orientations—**the consequences for American security, the world economy, and regional peace could be grave**. ¶ And a withdrawal from the Muslim world would not only imperil American interests, it would also imperil American values. Al Qaeda may not hate us for “who we are”—unless “who we are” obligates us to oppose what might be called “religious cleansing,” the violent purification of large swaths of the globe. After all, **if the U**nited **S**tates **withdrew from its war against salafism, salafism would still be at war**. Al Qaeda’s ultimate goal is not to expel the United States from Islamic lands; it is to establish a new caliphate that ushers in God’s rule on earth. And the many enemies of that effort—non- Muslims, apostate Muslims, liberated female Muslims, gay and lesbian Muslims—would still blemish the Islamic world, representing jahiliyyah in its myriad sinful forms. ¶ Where those enemies have no army to defend them, the result has been terror. Where they do, the result has been endless war. It is a virtual axiom of international politics that salafists will try to seize control of any local conflict—from the Philippines to Chechnya to Kashmir to Iraq—that pits Sunni Muslims against their neighbors. And the more they succeed, the less likely it is that such a conflict will end. Many Muslims, including many non-s alafist Islamists, also support Muslim insurgencies around the world. In Iraq, they may support attacks on American troops. But since they see jihad as a means to some concrete goal, political compromise is possible. Salafists, however, who see jihad as a means to usher in a messianic age, will accept no outcome that leaves Muslims under non- Muslim rule, because such a compromise threatens the path to paradise.

**Al Qaeda’s actions, statements, and internal documents prove they want nuclear weapons and mass casualty attacks**

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However, there is evidence that a small number of terrorist organizations in recent history, and at least one presently, have nuclear ambitions. These groups include Al Qaeda, Aum Shinrikyo, and Chechen separatists (Bunn, Wier, and Friedman; 2005). Of these, Al Qaeda appears to have made the most serious attempts to obtain or otherwise develop a nuclear weapon. Demonstrating these intentions, in 2001 Osama Bin Laden, Ayman al Zawahiri, and two other al Qaeda operatives met with two Pakistani scientists to discuss weapons of mass destruction development (Kokoshin, 2006). Additionally, Al Qaeda has made significant efforts to justify the use of mass violence to its supporters. Sulaiman Abu Ghaith, an al Qaeda spokesman has stated that al Qaeda, “has the right to kill 4 million Americans – 2 million of them children,” in retaliation for deaths that al Qaeda links to the U.S. and its support of Israel (as cited in Bunn, Wier, and Friedman; 2005). Indeed Bin Laden received a fatwa in May 2003 from an extreme Saudi cleric authorizing the use of weapons of mass destruction against U.S. civilians (Bunn, Wier, and Friedman; 2005). Further evidence of intent is the following figure taken from al Qaeda documents seized in Afghanistan. **It depicts a workable design for a nuclear weapon.** Additionally, the text accompanying the design sketch includes some **fairly advanced weapons design parameters** (Boettcher & Arnesen, 2002). Clearly **maximizing the loss of life is key among al Qaeda’s goals**. Thus their use of conventional means of attack presently appears to be a **result of their current capabilities** and not a function of their pure preference (Western Europe, 2005).

#### Their evidence is all just like “there are a lot of steps”---our authors considered all of them --- the risk is real

Peter Beinart 8, associate professor of journalism and political science at CUNY, The Good Fight; Why Liberals – and only Liberals – Can Win the War on Terror and Make America Great Again, 106-7

For all these reasons, jihadists seem less intent on acquiring a finished nuclear weapon than on acquiring weapons- grade uranium and building the bomb themselves. In the early 1990s, Al Qaeda bought a 3- foot- long cylinder from a Sudanese military officer who said it contained South African highly enriched uranium. It turned out to be a hoax. Jihadists have reportedly made other failed attempts as well. Eventually, however, they could succeed. Moscow may adequately protect its nuclear weapons, but the National Academy of Sciences has warned that “large inventories of SNM [fissile material] are stored at many sites that apparently lack inventory controls.” And the Russians reportedly experience one or two attempted thefts of that material a year—that they know of. ¶ If Al Qaeda obtained 50 kilograms of weapons-g rade uranium, the hardest part would be over. The simplest nuke to build is the kind the United States dropped on Hiroshima, a “gun- type,” in which a mass of highly enriched uranium is fired down a large gun barrel into a second uranium mass. Instructions for how to make one are widely available. Just how widely available became clear to an elderly nuclear physicist named Theodore Taylor in 2002, when he looked up “atomic bomb” in the World Book Encyclopedia in his upstate New York nursing home, and found much of the information you’d need. ¶ Even with directions, building a nuclear bomb would still be a monumental task. According to a New York Times Magazine article by Bill Keller, in 1986 five Los Alamos nuke builders wrote a paper called “Can Terrorists Build Nuclear Weapons?” They concluded that it would require people who understood “the physical, chemical and metallurgical proper-¶ 107¶ ties of the various materials to be used, as well as characteristics affecting their fabrication; neutronic properties; radiation effects, both nuclear and biological; technology concerning high explosives and/or chemical pro- pellants; some hydrodynamics; electrical circuitry.” That sounds daunting. **Yet, at the end of the paper, the scientists answered their question: “Yes, they can.”** ¶Finally, once terrorists built a nuclear weapon, they’d still have to smuggle it into the United States. The best way might be to put it in a shipping container, on one of the many supertankers that bring oil into American ports every day. The containers are huge, more than big enough to fit a gun-t ype nuke, which could be as small as 6 feet in length and 6 inches in diameter. Highly enriched uranium emits much less radiation than plutonium, and inside a supertanker’s thick double-steel hull it would be hard for sensors to detect. What’s more, a single ship can carry several thousand containers, most of which are never searched. On September 11, 2002, ABC News smuggled a 15- pound cylinder of depleted uranium in a cargo container past U.S. customs. On September 11, 2003, they performed the same exercise—and got the uranium past customs again.

#### Policy relevant debate about war powers is critical to hold the government accountable --- must engage specific proposals to solve

Ewan E. Mellor 13, European University Institute, Political and Social Sciences, Graduate Student, Paper Prepared for BISA Conference, “Why policy relevance is a moral necessity: Just war theory, impact, and UAVs”, <http://www.academia.edu/4175480/Why_policy_relevance_is_a_moral_necessity_Just_war_theory_impact_and_UAVs>

This section of the paper considers more generally the need for just war theorists to engage with policy debate about the use of force, as well as to engage with the more fundamental moral and philosophical principles of the just war tradition. It draws on John Kelsay’s conception of just war thinking as being a social practice,35 as well as on Michael Walzer’s understanding of the role of the social critic in society.36 It argues that the just war tradition is a form of “practical discourse” which is concerned with questions of “how we should act.”37¶ Kelsay argues that:¶ [T]he criteria of jus ad bellum and jus in bello provide a framework for structured participation in a public conversation about the use of military force . . . citizens who choose to speak in just war terms express commitments . . . [i]n the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfil the desire that military actions be both wise and just.38¶ He also argues that “good just war thinking involves continuous and complete deliberation, in the sense that one attends to all the standard criteria at war’s inception, at its end, and throughout the course of the conflict.”39 This is important as it highlights the need for just war scholars to engage with the ongoing operations in war and the specific policies that are involved. The question of whether a particular war is just or unjust, and the question of whether a particular weapon (like drones) can be used in accordance with the jus in bello criteria, only cover a part of the overall justice of the war. Without an engagement with the reality of war, in terms of the policies used in waging it, it is impossible to engage with the “moral reality of war,”40 in terms of being able to discuss it and judge it in moral terms.¶ Kelsay’s description of just war thinking as a social practice is similar to Walzer’s more general description of social criticism. The just war theorist, as a social critic, must be involved with his or her own society and its practices. In the same way that the social critic’s distance from his or her society is measured in inches and not miles,41 the just war theorist must be close to and must understand the language through which war is constituted, interpreted and reinterpreted.42 It is only by understanding the values and language that their own society purports to live by that the social critic can hold up a mirror to that society to¶ demonstrate its hypocrisy and to show the gap that exists between its practice and its values.43 The tradition itself provides a set of values and principles and, as argued by Cian O’Driscoll, constitutes a “language of engagement” to spur participation in public and political debate.44 This language is part of “our common heritage, the product of many centuries of arguing about war.”45 These principles and this language provide the terms through which people understand and come to interpret war, not in a deterministic way but by providing the categories necessary for moral understanding and moral argument about the legitimate and illegitimate uses of force.46 By spurring and providing the basis for political engagement the just war tradition ensures that the acts that occur within war are considered according to just war criteria and allows policy-makers to be held to account on this basis.¶ Engaging with the reality of war requires recognising that war is, as Clausewitz stated, a continuation of policy. War, according to Clausewitz, is subordinate to politics and to political choices and these political choices can, and must, be judged and critiqued.47 Engagement and political debate are morally necessary as the alternative is disengagement and moral quietude, which is a sacrifice of the obligations of citizenship.48 This engagement must bring just war theorists into contact with the policy makers and will require work that is accessible and relevant to policy makers, however this does not mean a sacrifice of critical distance or an abdication of truth in the face of power. By engaging in detail with the policies being pursued and their concordance or otherwise with the principles of the just war tradition the policy-makers will be forced to account for their decisions and justify them in just war language. In contrast to the view, suggested by Kenneth Anderson, that “the public cannot be made part of the debate” and that “[w]e are necessarily committed into the hands of our political leadership”,49 it is incumbent upon just war theorists to ensure that the public are informed and are capable of holding their political leaders to account. To accept the idea that the political leadership are stewards and that accountability will not benefit the public, on whose behalf action is undertaken, but will only benefit al Qaeda,50 is a grotesque act of intellectual irresponsibility. As Walzer has argued, it is precisely because it is “our country” that we are “especially obligated to criticise its policies.”51

#### Their critique is crude caricature of the distinct legal framework implemented by the plan----the alt fails to convince anybody and has no way to deal with terrorism

Nick Basciano 13, 11/3/13, intern at Brookings. Notre Dame Grad, Book Review: Dirty Wars: The World is a Battlefield by Jeremy Scahill, www.lawfareblog.com/2013/11/dirty-wars-the-world-is-a-battlefield/

Scahill’s project is to depict the “dark side” of what he considers to be America’s unrestrained pursuit of security through the “institutionalization of assassination as a central component of U.S. national security policy.” His main case study for this portrait is the 2011 targeting of U.S. citizen and alleged Al Qaeda in the Arabian Peninsula leader Anwar Al-Awlaki. Scahill weaves together the story of Awlaki’s life and death with the activities of CIA-backed warlords in Mogadishu, operations across the JSOC-infested mountains of Yemen, and the rise of a supposedly-unshackled U.S. military-intelligence complex. Scahill sees these apparently-disparate issues as coming together, and his book describes a vision of CIA and JSOC as the standard-bearers of a new and bloody counterterrorism agenda defined by assassination. Using commando raids, missile strikes, and the ultimate killing of Awlaki himself, Scahill paints what he sees as the new reality of U.S. counterterrorism policy: the entire world is a battlefield, one in which the U.S. government feels at liberty to assassinate its own citizens, without oversight, and without trial.¶ ¶ Let’s start with the redeeming feature: Dirty Wars contains a great deal of on-the-ground reporting from places many journalists don’t go, and Scahill had access to voices Americans don’t often hear from about the consequences of drone strikes and other military and covert operations. The book draws on interviews with sources from warlords to foot-soldiers to civilians in countries like Yemen and Somalia in portraying a Machiavellian U.S. government ready to make a deal with almost anyone willing to help strike at its enemies. Scahill blasts this end-justifies-the-means approach and the inherent duplicity of covert liaison with nasty people, which he sees as dangerously shortsighted. Many readers will be more sympathetic to the Real Politik of U.S. action than he is, and Scahill certainly is not the first person to worry that aggressive counterterorism operations may lead to radicalization. But his reporting does show how blowback from U.S. involvement in the Horn of Africa, especially a potential alliance with warlords and occupying forces from Ethiopia, may well pose significant problems to its long-term goals in the region by increasing violence and further destabilizing local governance. Similar problems exist in Yemen, where the former regime of former president Ali Abdullah Saleh played both sides of the terrorism coin—fighting terrorists energetically enough to keep control of the country but not so energetically as to defeat them and thus dry up military funding from the U.S. As American intelligence continued to grasp at any ally that would allow it to strike terrorists, Scahill claims these policies, born of fear, have a reverse effect; it is the toxic relationships and “global assassination program” that would become the “recruitment device for the very forces the United States claimed to be destroying.” This is certainly overstated, but it’s not entirely wrong, and it’s an important caution.¶ ¶ ¶ Perhaps the strongest part of the book are the first-hand reports Scahill has amassed of desperate and enraged family members of those killed in botched raids and strikes. In a particularly disturbing account of a failed raid, Scahill relays one survivor’s desire: “I wanted to wear a suicide jacket and blow myself up among the Americans.” The death of Awlaki’s own teenage son in an ill-directed drone strike adds an exclamation point to the argument that strikes have killed civilians in a dangerously-unaccountable manner. Such harsh realities underscore the tangible human toll strikes impart on their targets. Wholly-utilitarian or overly-legalistic defenders of attacks may criticize these depictions as nothing more than the tragedies of war or mere depictions of perfectly-lawful collateral damage. But Scahill’s personal interactions with survivors remind us that a targeting program that relies on shortsighted agreements with foreign governments, poor intelligence, and aggressive tactics can produce serious negative consequences that are detrimental to security—even if it produces short-term tactical benefits.¶ ¶ The trouble is that Dirty Wars aims to be far more than a mere reminder of the costs of the counterterrorism. It aims to indict the entire project with those costs, but Scahill does not count either the costs or the benefits accurately or honestly. Instead, he selectively highlights certain glaring failures from over a decade of war while failing to discuss any of its successes. There are hundreds of cases over the past several years of highly-focused and discriminate operations; they are missing almost entirely from Scahill’s account. And when they do show up, it tends to be by accident. Scahill inadvertently points to successful operations such as the capture of terrorism suspect Ahmed Abdulkadir Warsame, but he never dwells on the favorable outcomes of the operations in which they were captured. Comprehensive studies place civilian fatality rates for all alleged drone strikes in Yemen from as low as 5 percent and to as high as 19 percent, rates which have continued to decline over time. Even the high end of these estimates indicate that strikes are dramatically more discriminate than one would believe from Scahill’s account, in which the one group of people the United States never seems to kill are terrorists. To be sure, this fact in no way diminishes the human suffering created by failed operations, nor does it excuse the deaths of innocents or errors that have certainly taken place in certain strikes. But by exclusively describing the program’s most public failures while wholly ignoring its successes, the argument stacks the deck, severely limiting Scahill’s ability to persuade those who do not already agree with him. If you only look at the strikes in which civilians get killed, and without taking account of the person being targeted, of course high-value targeting will seem immoral or illegal.¶ ¶ For that matter, if one simply asserts the illegality of all terrorist targeting, as Scahill does, you can make any targeting program look pretty lawless. Scahill makes a deliberate choice to label all U.S. drone, missile, and Special Operations Forces (SOF) strikes as “assassinations”—casting a pall of illegality over all such strikes. But he never makes a real legal argument about when or why targeting is or isn’t lawful. Assassination is banned by executive order, and Scahill admits that “no president’s executive orders actually defined what constituted an assassination.” We might add, too, that authoritative statements by US government officials have said what is not covered by the assassination ban: it does not include killings that are otherwise lawful as, for example, Reagan-era State Department Legal Adviser Abraham Sofaer stated in a famous speech and Obama administration officials have repeated several times.¶ ¶ Seemingly unaware of this, Scahill fails to offer any definition of his own or to engage either the U.S. government’s view of the subject or that available in academic literature. He simply asserts that the executive branch has promulgated “a blanket rebranding of assassinations as ‘High Value Targeting’.” He does not consider possibilities like an argument of self-defense, the existence of a non-international armed conflict with Al Qaeda, the proper scope of the 2001 AUMF, or the simple fact that it is an executive order, not a law, and the executive can interpret or revoke it. Scahill also doesn’t appear to differentiate between a variety of methods, locations, and parameters that make big legal differences under any targeting program. The cruise missile attack that recklessly takes the lives of civilians is no different in his lexicon from a boot-on-the-ground capture raid or a highly-selective and discriminate drone strike. While word substitution provides Scahill a rhetorical soapbox on which to stand, it’s ultimately a pretty cheap trick. And it’s no substitute for specifying a clear legal framework as to when and why lethal tactics amount to illegal assassinations.¶ ¶ Scahill has a third method for making all drones strikes illegal—one that involves a significant rebranding of his own: He sometimes just suggests senior terrorists don’t pose any threat. He largely builds the argument for the illegality of targeted killing in the most unlikely figure of Anwar Awlaki. As the only known American specifically targeted for death by drone, Awlaki presents a unique model to probe Scahill’s central question: “Could the American government assassinate it [sic] own citizens without due process?” To answer this, Dirty Wars sets off to show Alwaki, widely considered one of Al Qaeda’s most dangerous terrorists, in an alternative, more favorable light. While admitting that a deluge “US media outlets, terror ‘experts’ and prominent government officials were identifying Awlaki as a leader of AQAP,” Scahill dismisses these as “dubious” allegations. So in his view, an official government statement describing how Awlaki “involved himself in every aspect of the supply chain of terrorism…training operatives, and planning attacks,” provides “no evidence” for the allegations against Awlaki. And while Scahill is happy to rely on the New York Times and other news outlets for quotes and facts when it is convenient to do so, he treats those same sources with suspicion when they suggest that Awlaki was actually a bad guy. In a particularly striking example of this tendency, Scahill cites “intelligence sources” from an NPR article as to how many times the U.S. tried to kill Awlaki, but he neglects to mention that the same sources go on in the same article to indicate that Awlaki ran a terrorist “cell” in Yemen.¶ ¶ Elsewhere, Scahill simply skips over facts that don’t promote his narrative of Awlaki. One such example comes in Awlaki’s relationship with Umar Farouk Abdulmutallab, the “Christmas Day Bomber” who attempted to detonate almost three ounces of PETN aboard Northwest flight 253 on its descent to Detroit. A publically-available and widely-cited sentencing memorandum for Abdulmutallab describes how Awlaki housed Abdulmutallab in Yemen and took him to AQAP’s primary bomb-maker, Ibrahim Al Asiri. There, they “discussed a plan for martyrdom mission” and Awlaki himself gave the bombing plot “final approval and instructed Defendant Abdulmutallab on it.” Awlaki’s “last instructions,” the memorandum continues, “were to wait until the airplane was over the United States and then to take the plane down.” Without dealing with this evidence from the Abdulmutallab trial, Scahill admits that Awlaki was only “in touch” with Abdulmutallab, insisting that “no conclusive evidence [was] presented, at least not publicly, that Awlaki had played an operational role in any attacks.” Why such a relevant piece of evidence isn’t included in Scahill’s retelling of the Abdulmuttallab plot is unclear, but it isn’t the only instance of turning a blind eye to evidence linking Awlaki directly to terrorism. In early 2010 Awlaki corresponded with Rajib and Tehzeeb Karim, two brothers who had plotted to plant a bomb on U.S.-bound flight. In encrypted emails confiscated from Rajib’s hard drive by British authorities, Awlaki asks Rajib to “please specify your role in the airline industry, how much access do you have to airports, what information do you have on the limitations and cracks in present airport security systems.” These questions largely contradict Scahill’s contention that Awlaki was not involved in operational planning. In another email, Awlaki names the ultimate target for smuggling a bomb on a plane: “Our highest priority is the US. Anything there, even if on a smaller scale . . . would be our choice. So the question is: with the people you have, is it possible to get a package or a person with a package on board a flight heading to the US?” These emails quite convincingly provide evidence that Awlaki was intimately involved in AQAP’s operational mission to attack America. Scahill fails entirely to mention either the Karim brother’s plot or Awlaki’s emails.¶ ¶ By stacking the deck through omission of evidence and unsubstantiated disbelief of official statements, Scahill claims that Awlaki was not a operational member of AQAP and therefore not an immediate threat. With this false ambiguity in hand, Scahill argues that the U.S. unlawfully killed Awlaki without due process. That the U.S. has a right to defend itself against immediate and ongoing threats, that Awlaki’s active engagement in hostilities against the United States might affect his right to due process, that Yemen was unwilling or unable to arrest him, or that any unilateral capture operation poses tremendous difficulties Scahill fails to address at all.¶ ¶ Dirty Wars delivers a significant argument against destructive counterterrorism operations by recounting the terrible human loss involved in at least some strikes and raids. Beyond the obvious human cost, it suggests that overly-aggressive and lethal tactics can, in some cases, play a role in increasing radicalization and thereby hampering the effectiveness of these tactics. Yet, Scahill’s depiction of American efforts to “kill its way to victory” is a crude caricature, one that fails to address countless aspects of a complex and broad set of policies and tactics on which any serious treatment would dwell at length. His wholesale disapproval of all closed-door agreements, intelligence operations, and the use of lethal force yields few viable options for dealing with the cold realities of global terrorism. The tactics of law enforcement bring hope that there is, in fact, a way forward, a way that offers protection without necessitating lethal force. But Dirty Wars utterly fails to offer the necessary clarity, balance, or sobriety in which to weigh the risks and benefits of integrating military and intelligence approaches into counterterrorism. America needs people like Scahill to remind it of the moral and human costs involved when it wages war, but it also needs those people to count those costs carefully—something Dirty Wars fails to do.

# 2AC

## Allies

### AT: NSA

#### NSA scandal won’t taint relations---even if it’s never ending

David Francis 11/4, The Fiscal Times, "Why Europe Won't Punish the U.S. over NSA Scandal", 2013, www.thefiscaltimes.com/Articles/2013/11/04/Why-Europe-Won-t-Punish-US-over-NSA-Scandal

At this point, the National Security Agency spying scandal seems never-ending. It’s been ongoing since June, when the first of Edward Snowden’s stolen documents was made public. Each time it appears to be dying, another round of documents appear and the scandal lives on.¶ The latest series of leaks is perhaps the most serious. Less than two weeks ago, on the eve of a European Union summit in Brussels, reports emerged that the NSA had been spying on European leaders, including German Chancellor Angela Merkel.¶ The outcry from the German public and politicians continues to this day. German officials have demanded and been granted meetings with high-level Obama administration officials to complain about the spying and Merkel called President Obama to voice her displeasure with the practice.¶ Hans-Christian Stroebele, a legislator for the Germany's opposition Greens party, said that Snowden might be called to testify in a German investigation into NSA practices.¶ "He made it clear he knows a lot and that as long as the National Security Agency blocks investigations, he is essentially prepared to come to Germany and give testimony, but the conditions must be discussed," Stroebele, who met with Snowden in Russia last week, said.¶ Similar anger has been expressed around the European continent. Some are saying that irreparable damage has been done to the relationship between the United States and its European partners.¶ But is this truly the case? Expressing anger over NSA practices is one thing; actually making policy changes because of the behavior is entirely another. A close examination of statements made by European officials shows their tone softening.¶ There is not likely to be any long-term fallout in two key areas: economic negotiations over a $287 billion EU/U.S. trade pact are going to continue, and intelligence is still likely to pass back and forth across the Atlantic. The only real damage has been to the standing of the United States with the European public and fringe lawmakers.

### NATO Add-On

**Obama overreach triggers end of allied intel cooperation and dooms NATO**

Tom **Parker 12**, Former Policy Dir. for Terrorism, Counterterrorism and H. Rts. at Amnesty International, U.S. Tactics Threaten NATO, September 17, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>

A growing chasm in operational practice is opening up between the **U**nited **S**tates and its allies in NATO. This rift is **putting the Atlantic alliance at risk**. Yet no one in Washington seems to be paying attention. The escalating use of **u**nmanned **a**erial **v**ehicle**s** to **strike terrorist suspects** in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, **coupled** with the continued use of military commissions and **indefinite** **detention**, is driving a wedge between the **U**nited **S**tates and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now **forced to pay attention by their own courts**, which will **restrict cooperation in the future**.As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a **very different set of constraints than their U.S. counterparts**. The **E**uropean **C**ourt of **H**uman **R**ights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that **intel**ligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now **raises serious criminal liability issues** for the Europeans. The **U**nited **S**tates conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But **not one other member of NATO shares this legal analysis**, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic **intel**ligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an **obstacle to intelligence sharing**. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place **more** and more **constraints on working with U.S. forces**. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and **it may just be the Atlantic alliance**.

#### Nuclear war

Brzezinski 9 (Zbigniew, former U.S. National Security Adviser, Sept/Oct 2009, “An Agenda for NATO,” Foreign Affairs, 88.5, Ebsco)

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

## Coloniality K

### AT: Fear of Death

#### Life is a pre-requisite to death’s symbolic value---fearing death doesn’t preclude recognizing life’s finitude and its inevitability

Cara Kalnow 9 A Thesis Submitted for the Degree of MPhil at the University of St. Andrews “WHY DEATH CAN BE BAD AND IMMORTALITY IS WORSE” https://research-repository.st-andrews.ac.uk/bitstream/10023/724/3/Cara%20Kalnow%20MPhil%20thesis.PDF

(PA) also provided us with good reason to reject the Epicurean claim that the finitude of life cannot be bad for us. With (PA), we saw that our lives could accumulate value through the satisfaction of our desires beyond the boundaries of the natural termination of life. But Chapter Four determined that the finitude of life is a necessary condition for the value of life as such and that many of our human values rely on the finite temporal structure of life. I therefore argued that an indefinite life cannot present a desirable alternative to our finite life, because life as such would not be recognized as valuable. In this chapter, I have argued that the finitude of life is instrumentally good as it provides the recognition that life itself is valuable. Although I ultimately agree with the Epicureans that the finitude of life cannot be an evil, this conclusion was not reached from the Epicurean arguments against the badness of death, and I maintain that (HA) and (EA) are insufficient to justify changing our attitudes towards our future deaths and the finitude of life. Nonetheless, the instrumental good of the finitude of life that we arrived at through the consideration of immortality should make us realize that the finitude of life cannot be an evil; it is a necessary condition for the recognition that life as such is valuable.¶ Although my arguments pertaining to the nature of death and its moral implications have yielded several of the Epicurean conclusions, my position still negotiates a middle ground between the Epicureans and Williams, as (PA) accounts for the intuition that it is rational to fear death and regard it as an evil to be avoided. I have therefore reached three of the Epicurean conclusions pertaining to the moral worth of the nature of death: (1) that the state of being dead is nothing to us, (2) death simpliciter is nothing to us, and (3) the finitude of life is a matter for contentment. But against the Epicureans, I have argued that we can rationally fear our future deaths, as categorical desires provide a disutility by which the prospect of death is rationally held as an evil to be avoided. Finally, I also claimed against the Epicureans, that the prospect of death can rationally be regarded as morally good for one if one no longer desires to continue living.¶ 5.3 Conclusion¶ I began this thesis with the suggestion that in part, the Epicureans were right: death—when it occurs—is nothing to us. I went on to defend the Epicurean position against the objections raised by the deprivation theorists and Williams. I argued that the state of being dead, and death simpliciter, cannot be an evil of deprivation or prevention for the person who dies because (once dead), the person—and the grounds for any misfortune—cease to exist. I accounted for the anti-Epicurean intuition 115 that it is rational to fear death and to regard death as an evil to be avoided, not because deathsimpliciter is bad, but rather because the prospect of our deaths may be presented to us as bad for us if our deaths would prevent the satisfaction of our categorical desires. Though we have good reasons to rationally regard the prospect of our own death as an evil for us, the fact that life is finite cannot be an evil and is in fact instrumentally good, because it takes the threat of losing life to recognize that life as such is valuable. In this chapter, I concluded that even though death cannot be of any moral worth for us once it occurs, we can attach two distinct values to death while we are alive: we can attach a value of disutility (or utility) to the prospect of our own individual deaths, and we must attach an instrumentally good value to the fact of death as such. How to decide on the balance of those values is a matter for psychological judgment.

### AT: Security/Policing K – Aff Effective/Alt Fails

#### No alternative from radical security standpoint---ends progressive politics that should be focused on effective interventions like the aff

Ian Loader 7, Professor of Criminology and Director of the Centre for Criminology at the University of Oxford and Neil Walker, Professor of European Law in the Department of Law at the EU Institute, Florence, "Civilizing Security", 2007, guessoumiss.files.wordpress.com/2011/08/civilizing-security.pdf

Against security?

The strands of radical thought outlined in this chapter offer a cogent critique of the state and its securitizing practices. It is a critique that appears able to capture important aspects of a historical record that has seen states time and again, in both authoritarian and democratic contexts, allocate the benefits and burdens of policing in ways that systematically protect the security interests of powerful constituencies at the expense of those of the poor and dispossessed. It supplies, in addition, a cogent account of the dangers of placing security at the ideological heart of government, of the capacity of security politics to colonize public policy and pervade social life in ways that threaten democratic values and sustain fear-laden, other-disregarding forms of political subjectivity and collective identity. In these respects, this variant of state scepticism offers a critique of the operation and effects of state power that in many significant respects we share (N. Walker 2000; Loader 2002). But it also poses what are undoubtedly some pro- found challenges to the position we wish here to construct and defend. If we are to make a persuasive case for both the good of security, and the indispensability of the state to the production of that good, then we need to find a means of rising to them.¶ These objections then are far from trivial, and we have not devoted this chapter to them simply in order to knock them down. But they nonetheless arise from a standpoint that is not itself without shortcomings, as we hope to show in meeting them. As a prelude to the more sustained effort along these lines that we offer in part II, let us consider briefly what these shortcomings are. For analytic purposes, they may usefully be put into three groups.¶ This radical variant of state scepticism tends, first of all, to underplay the openness of political systems and the theoretical and political prospects that this affords. It displays, in particular, a structural fatalism that overlooks the overlap between the production of specific and general order, such that disadvantaged groups and communities have a considerable stake not only in controlling state power, but also in using public resources (including policing resources) as a means of generating more secure forms of economic and social existence. It also remains insufficiently attentive to how the mix between general and specific order (the extent, in other words, to which policing is shaped by common as well as factional interests) is conditioned by political struggle and the varieties of institutional settlement to which this gives rise, thereby varying over time and between polities. Much the same point, moreover, can be directed at the radical critique of the violence that underpins liberal political orders that aim to be free of such violence. One finds here a quite proper insistence on the troubling conundrum that democratic polities ultimately depend upon coercion to enforce collective decisions and protect democratic institutions. But this point is hammered home in terms that are overly sweeping and reductionist - often, as in the writings of Agamben (2004a), as a philosophical claim that invites but resists sociological scrutiny. If 'there is always a violence at the heart of every form of political and legal authority' (Newman 2004:575), upon what grounds can we distinguish between, or develop a critique of, the security-seeking practices of particular states - and why would we bother?¶ Radical anti-statism evinces, secondly, a preference for social and political criticism over social and political reconstruction. It favours a politics that privileges the monitoring, exposure and critique of the sys- tematic biases of state power {as, for instance, in the indefatigable efforts of the British-based NGO Statewatch), one that implicitly or expressly holds that 'security' is so stained by its uncivil association with the (military and police) state that the only available radical strat- egy is to destabilize the term itself, while contesting the practices that are enacted under its name (Dalby 1997: 6; see, also, Dillon 1996: ch. 1). There can, from this vantage point, be no progressive democratic politics aimed at civilizing security. Rather, one is left with a politics of critique, and a failure of political imagination, that leaves radically underspecified the feasible or desirable alternatives to current institutional configurations and practices, or else merely gestures towards the possibility of transcendent forms of non-state communal ordering - as in George Rikagos's (2002: 150) claim that 'the only real alternatives to current policing practices are pre-capitalist, non-commodified security arrangements'.¶ Finally, one finds what we think of as a one-sided appraisal of the sources of inequality and insecurity in the world today. This leftist anti- statist sensibility tends, in the ways we have demonstrated, towards an account of social injustice that views it as the product of the state's malign and coercive interventions rather than of its impotence and neglect. Here one finds a curious parallel with the neo-liberalism con- sidered in the last chapter - the state remains the problem. But one also encounters a critique of security politics that views it as tied to the pro- duction of authoritarian government - as if security is in some essential fashion inimical to democracy and human rights. Here the radical critic begins to inhabit similar ground to that occupied by what we characterized in chapter 1 as the 'security lobby'. They assess the landscape very differently and commit to diametrically opposed political purposes. But they cling commonly and tenaciously to the belief that security stands opposed to liberty.¶ Our aim, in part II, is to move beyond these positions and opposi- tions: first, by retrieving the idea of security as a public good that is axiomatic both to the production of other goods (most directly, liberty) and to the constitution of democratic political communities; second, by arguing that the production of this good demands not the wholesale critique and transcendence of state forms, but more robust regulatory interventions by democratized state institutions. We must first, however, factor into our positive case two further critiques of the state, starting with the claim that it is a cultural monolith.

### AT: Security/Policing K – Serial Policy Failure Wrong

#### Serial policy failure is hogwash---policing/security are not static and can be remade to be more inclusive through state policies

\*\*also affect perm

Ian Loader 7, Professor of Criminology and Director of the Centre for Criminology at the University of Oxford and Neil Walker, Professor of European Law in the Department of Law at the EU Institute, Florence, "Civilizing Security", 2007, guessoumiss.files.wordpress.com/2011/08/civilizing-security.pdf

Yet critical work in policing and security studies remains, in our view, skewed in its account of these associations. It concludes too easily from the above that there can be no progressive democratic politics aimed at civilizing security, that security is so stained by its uncivil association with the (military and police) state and its monolithic affects and effects, that the only radical strategy left open is to deconstruct and move beyond it (e.g. Dillon 1996: ch. 1). In so doing, this strand of state scepticism commits two mistakes, both of which flow from its failure to appreciate or at least sufficiently to acknowledge what we tried to demonstrate in an earlier section of the chapter; namely, that state policing, however culpable it might be in exacerbating certain of the tensions involved in applying general order in any particular context, is not the fixed and fundamental source of these tensions. It forgets, first of all, that while the affective connections between security, state and nation are deeply entrenched, they take no necessary or essential substantive form. They can, in other words, be remade and reimagined in ways that connect policing and security to other more inclusive, cosmopolitan forms of belonging - to political communities that 'do not necessarily equate difference with threat\* (Dalby 1997: 9). It tends, secondly, to forget that the 'pursuit of security' through general order is not only the product of forms of technocratic, authoritarian government that impoverishes our sense of the political (Dillon 1996: 15). Security, in the sense of a broadly responsive and acceptable conception of order, can also be, and indeed - if we examine the political aspirations which preceded and have survived the modern state - must also be, conceived of in a prior and abstract sense as a valuable human good, one that in concrete application is a key ingredient of the good society as well as being axiomatic to the production of other individual goods (most directly, liberty). It is our contention that security can be rethought along these lines, and that the state through its ordering and cultural work continues to possess a central place in the production of security thus conceived; we develop this argument in part II. We must first, however, consider one further critique of the modern state tradition.

### No Securitization from Speech Act

#### One speech act doesn’t cause securitization

Irina Ghughunishvili 10, “Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies”, Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

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

### AT: Endless War

#### No risk of endless warfare

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: Global War – Chandler

#### The affirmatives embrace of a law enforcement approach to terrorism is necessary to solve global war---the alt reifies the status quo which embraces uncertainty

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

International law evolved on the basis of the ever-present possibility of real war between real enemies. Today’s global wars of humanitarian intervention and the ‘war on terror’ appear to be bypassing or dismantling this framework of international order. Taken out of historical context, today’s period might seem to be analogous to that of the imperial and colonial wars of the last century, which evaded or undermined frameworks of international law, which sought to treat the enemy as a justus hostis – a legitimate opponent to be treated with reciprocal relations of equality. Such analogies have enabled critical theorists to read the present through past frameworks of strategic political contestation, explaining the lack of respect for international law and seemingly arbitrary and ad hoc use of military force on the basis of the high political stakes involved. Agamben’s argument that classical international law has dissipated into a ‘permanent state of exception’, suggesting that we are witnessing a global war machine – constructing the world in the image of the camp and reducing its enemies to bare life to be annihilated at will – appears to be given force by Guantánamo Bay, extraordinary rendition and Abu Ghraib.

Yet, once we go beyond the level of declarations of policy values and security stakes, the practices of Western militarism fit uneasily with the policy discourses and suggest a different dynamic: one where the lack of political stakes in the international sphere means that there is little connection between military intervention and strategic planning. In fact, as Laïdi suggests, it would be more useful to understand the projection of violence as a search for meaning and strategy rather than as an instrumental outcome. To take one leading example of the ‘unlimited’ nature of liberal global war: the treatment of terrorist suspects held at Guantánamo Bay, in legal suspension as ‘illegal combatants’ and denied Geneva Red Cross conventions and prisoner-of-war status. The ‘criminalization’ of the captives in Guantánamo Bay is not a case of reducing their status to criminals but the development of an exceptional legal category. In fact, far from criminalizing fundamentalist terrorists, the USA has politically glorified them, talking up their political importance.

It would appear that the designation of ‘illegal combatants’ could be understood as an ad hoc and arbitrary response to the lack of a clear strategic framework and ‘real enemy’. In this context, the concept of criminalization needs to be reconsidered. Guantánamo Bay can be seen instead as an attempt to create an enemy of special status. In fact, with reference to Agamben’s thesis, it would be better to understand the legal status of the ‘illegal combatants’ as sacralizing them rather than reducing them to the status of ‘bare life’. In acting in an exceptional way, the USA attempted to create a more coherent and potent image of the vaguely defined security threat

This approach is very different, for example, from the framework of criminalization used by the British government in the fight against Irish republicanism, where the withdrawal of prisoner-of-war status from republican prisoners was intended to delegitimize their struggle and was a strategic act of war. Ironically, whereas the criminalization of the republican struggle was an attempt to dehumanize the republicans – to justify unequal treatment of combatants – the criminalization of global terrorists has served to humanize them in the sense of giving coherence, shape and meaning to a set of individuals with no clear internally generated sense of connection. Far from ‘denying the enemy the very quality of being human’, it would appear that the much-publicized abuses of the ‘war on terror’ stem from the Western inability to cohere a clear view of who the enemy are or of how they should be treated.

The policy frameworks of global war attempt to make sense of the implosion of the framework of international order at the same time as articulating the desire to recreate a framework of meaning through policy activity. However, these projections of Western power, even when expressed in coercive and militarized forms, appear to have little connection to strategic or instrumental projects of hegemony. The concept of ‘control’, articulated by authors such as Carl Schmitt and Faisal Devji, seems to be key to understanding the transition from strategic frameworks of conflict to today’s unlimited (i.e. arbitrary) expressions of violence. Wars fought for control, with a socially grounded telluric character, are limited by the needs of instrumental rationality: the goals shape the means deployed. Today’s Western wars are fought in a nonstrategic, non-instrumental framework, which lacks a clear relationship between means and ends and can therefore easily acquire a destabilizing and irrational character. To mistake the arbitrary and unlimited nature of violence and coercion without a clear strategic framework for a heightened desire for control fails to contextualize conflict in the social relations of today.

## Lawfare K

### 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.

#### Political simulation is empathic and better for decision-making

Harri **Raisio 10**, RESEARCHER AT THE UNIVERSITY OF VAASA --- Researcher, Faculty of Public Administration, University of Vaasa and PhD student in Social and Health Management, at the University of Vaasa, “The Public as Policy Expert: Deliberative Democracy in the Context of Finnish Health Care Reforms and Policies,” Journal of Public Deliberation, Volume 6, Issue 2, 2010, http://services.bepress.com/cgi/viewcontent.cgi?article=1159&context=jpd

In deliberation something happens that typically fails to occur during ordinary political discourse. Much political discussion takes place within groups of persons having similar beliefs and values. Deliberation, in contrast, with its intentional commitment to inclusion, diversity, and equality of participation, makes possible a “moral discussion”—“**a kind of ideal role-taking**”—in which participants are asked to **view issues from the perspectives of others** (Fishkin 2009: 125). Deliberation **enhances moral perception and facilitates empathy,** which make possible **decisions that are not only sounder but also morally better** (Fouke 2009). Precisely because self-interest is acknowledged and given its due, it can be transcended and the common good can emerge as an idea with concrete attributes (see Murphy 2005). Fishkin (2009) points to tentative **empirical proofs** which support the notion that **public deliberation leads citizens to focus more on the public good.**

### AT: Law Bad

#### Pragmatic approach is critical to productive change---alt fails

William J. Novak 8, Associate Professor of History at the University of Chicago and Research Professor at the American Bar Foundation, “The Myth of the “Weak” American State”, June, http://www.history.ucsb.edu/projects/labor/speakers/documents/TheMythoftheWeakAmericanState.pdf

There is an alternative. In the early twentieth century, amid a first wave of nation- state and economic consolidation and assertiveness, American social science generated some fresh ways of looking at power in all its guises—social, economic, political, and legal. Overshadowed to some extent by exuberant bursts of American exceptionalism that greeted confrontations with totalitarianism and then terrorism, the pragmatic, critical, and realistic appraisal of American power is worth recovering. From Lester Frank Ward and John Dewey to Ernst Freund and John Commons to Morris Cohen and Robert Lee Hale, early American socioeconomic theorists developed a critique of a thin, private, and individualistic conception of American liberalism and interrogated the location, organization, and distribution of power in a modernizing United States. All understood the problem of power in America as complex and multifaceted, not simple or one-dimensional, especially as it concerned the relationship of state and civil society. Rather than spend endless time debating the proper definition of law or the correct empirical measure of the state, they concentrated instead on detailed investigations of power in action in the everyday practices and policies that constituted American public life. Rather than confine the examination of power to the abstract realm of political theory or the official political acts of elites, electorates, interest groups, or social movements, these analysts instead embraced a more capacious conception of governance as “an activity which is apt to appear whenever men are associated together.”35 More significantly, these political and legal realists never forgot, amid the rhetoric of law and the pious platitudes that routinely flow from American political life, the very real, concrete consequences of the deployment of legal and political power. They never forgot the brutal fact that Robert Cover would later state so provocatively at the start of his article “Violence and the Word” that legal and political interpretation take place “in a field of pain and death.” 36 The real consequences of American state power are all around us. In a democratic republic, where force should always be on the side of the governed, writing the history of that power has never been more urgent.

## Death Drive K

### FW – Wight

#### The neg must connect their alternative to policy concerns and institutional practices---absent these questions, shifts in knowledge production are useless---governments’ obey institutional logics that exist independently of individuals and constrain decision-making

Colin Wight 6, Professor of IR @ University of Sydney, “Agents, Structures and International Relations: Politics as Ontology”, pgs. 48-50

One important aspect of this relational ontology is that these relations constitute our identity as social actors. According to this relational model of societies, one is what one is, by virtue of the relations within which one is embedded. A worker is only a worker by virtue of his/her relationship to his/her employer and vice versa. ‘Our social being is constituted by relations and our social acts presuppose them.’ At any particular moment in time an individual may be implicated in all manner of relations, each exerting its own peculiar causal effects. This ‘lattice-work’ of relations constitutes the structure of particular societies and endures despite changes in the individuals occupying them. Thus, the relations, the structures, are ontologically distinct from the individuals who enter into them. At a minimum, the social sciences are concerned with two distinct, although mutually interdependent, strata. There is an ontological difference between people and structures: ‘people are not relations, societies are not conscious agents’. Any attempt to explain one in terms of the other should be rejected. If there is an ontological difference between society and people, however, we need to elaborate on the relationship between them. Bhaskar argues that we need a system of mediating concepts, encompassing both aspects of the duality of praxis into which active subjects must fit in order to reproduce it: that is, a system of concepts designating the ‘point of contact’ between human agency and social structures. This is known as a ‘positioned practice’ system. In many respects, the idea of ‘positioned practice’ is very similar to Pierre Bourdieu’s notion of habitus. Bourdieu is primarily concerned with what individuals do in their daily lives. He is keen to refute the idea that social activity can be understood solely in terms of individual decision-making, or as determined by surpa-individual objective structures. Bourdieu’s notion of the habitus can be viewed as a bridge-building exercise across the explanatory gap between two extremes. Importantly, the notion of a habitus can only be understood in relation to the concept of a ‘social field’. According to Bourdieu, a social field is ‘a network, or a configuration, of objective relations between positions objectively defined’. A social field, then, refers to a structured system of social positions occupied by individuals and/or institutions – the nature of which defines the situation for their occupants. This is a social field whose form is constituted in terms of the relations which define it as a field of a certain type. A habitus (positioned practices) is a mediating link between individuals’ subjective worlds and the socio-cultural world into which they are born and which they share with others. The power of the habitus derives from the thoughtlessness of habit and habituation, rather than consciously learned rules. The habitus is imprinted and encoded in a socializing process that commences during early childhood. It is inculcated more by experience than by explicit teaching. Socially competent performances are produced as a matter of routine, without explicit reference to a body of codified knowledge, and without the actors necessarily knowing what they are doing (in the sense of being able adequately to explain what they are doing). As such, the habitus can be seen as the site of ‘internalization of reality and the externalization of internality.’ Thus social practices are produced in, and by, the encounter between: (1) the habitus and its dispositions; (2) the constraints and demands of the socio-cultural field to which the habitus is appropriate or within; and (3) the dispositions of the individual agents located within both the socio-cultural field and the habitus. When placed within Bhaskar’s stratified complex social ontology the model we have is as depicted in Figure 1. The explanation of practices will require all three levels. Society, as field of relations, exists prior to, and is independent of, individual and collective understandings at any particular moment in time; that is, social action requires the conditions for action. Likewise, given that behavior is seemingly recurrent, patterned, ordered, institutionalised, and displays a degree of stability over time, there must be sets of relations and rules that govern it. Contrary to individualist theory, these relations, rules and roles are not dependent upon either knowledge of them by particular individuals, or the existence of actions by particular individuals; that is, their explanation cannot be reduced to consciousness or to the attributes of individuals. These emergent social forms must possess emergent powers. This leads on to arguments for the reality of society based on a causal criterion. Society, as opposed to the individuals that constitute it, is, as Foucault has put it, ‘a complex and independent reality that has its own laws and mechanisms of reaction, its regulations as well as its possibility of disturbance. This new reality is society…It becomes necessary to reflect upon it, upon its specific characteristics, its constants and its variables’.

### No Death Drive

#### Death drive doesn’t explain violence

Havi Carel 6, Senior Lecturer in Philosophy at the University of the West of England, “Life and Death in Freud and Heidegger”, Google Books

Secondly, the constancy principle on which these ideas are based is incompatible with observational data. Once the passive model of the nervous system has been discarded, there was no need for external excitation in order for discharge to take place, and more generally, "the behavioural picture seemed to negate the notion of drive, as a separate energizer of behaviour" {Hcbb. 1982. p.35). According to Holt, the nervous system is not passive; it does not take in and conduct out energy from the environment, and it shows no tendency to discharge its impulses. 'The principle of constancy is quite without any biological basis" (1965, p. 109). He goes on to present the difficulties that arise from the pleasure principle as linked to a tension-reduction theory. The notion of tension is "conveniently ambiguous": it has phenomenological, physiological and abstract meaning. But empirical evidence against the theory of tension reduction has been "mounting steadily" and any further attempts to link pleasure with a reduction of physiological tension are "decisively refuted" (1965, pp. 1102). Additionally, the organism and the mental system are no longer considered closed systems. So the main arguments for the economic view collapse, as does the entropic argument for the death drive (1965, p. 114). A final, more general criticism of Freud's economic theory is sounded by Compton, who argues, "Freud fills in psychological discontinuities with neurological hypotheses" (1981, p. 195). The Nirvana principle is part and parcel of the economic view and the incomplete and erroneous assumptions about the nervous system (Hobson, 1988, p.277). It is an extension ad extremis of the pleasure principle, and as such is vulnerable to all the above criticisms. The overall contemporary view provides strong support for discarding the Nirvana principle and reconstructing the death drive as aggression.

### AT: Psycho

#### Threats aren’t psychological projections and the alt fails

Stanley Hoffman 86, Center for European Studies at Harvard,  “On the Political Psychology of Peace and War: A Critique and an Agenda,” *Political Psychology* 7.1 JSTOR

The traditionalists, even when, in their own work, they try scrupulous-ly to transcend national prejudices and to seek scientific truth, believe that **it is unrealistic to expect statesmen to stand above the fray**: By definition, the statesmen are there to worry not only about planetary survival, but — first of all—about national survival and safety. To be sure, they ought to be able to see how certain policies, aimed at enhancing security, actually increase in-security all around. But there are sharp limits to how far they can go in their mutual empathy or in their acts (unlike intellectuals in their advice), as long as the states' antagonisms persist, as long as uncertainty about each other's intentions prevails, and as long as there is reason to fear that one side's wise restraint, or unilateral moves toward "sanity," will be met, not by the rival's similar restraint or moves, but either by swift or skillful political or military exploitation of the opportunity created for unilateral gain, or by a for-midable domestic backlash if national self-restraint appears to result in ex-ternal losses, humiliations or perceptions of weakness. There is little point in saying that the state of affairs which imposes such limits is "anachronistic" or "unrational." To traditionalists, the radicals' stance — condemnation from the top of Mount Olympus — can only impede understanding of the limits and possibilities of reform. To be sure, the fragmentation of mankind is a formidable obstacle to the solution of many problems that cannot be handled well in a national framework, and a deadly peril insofar as the use of force, the very distinctive feature of world politics, now entails the risk of nuclear war. But one can hardly call anachronistic a phenomenon—the assertion of national identity — that, to the bulk of **[HU]**mankind, appears not only as a necessity but also as a positive good, since humanity's fragmentation results from the very aspiration to self-determination. Many people have only recently emerged from foreign mastery, and have reason to fear that the alternative to national self-mastery is not a world government of assured fairness and efficiency, but alien domination. As for "unrationality," the drama lies in the contrast between the ra-tionality of the whole, which scholars are concerned about—the greatest good of the greatest number, in utilitarian terms — and the rationality or greatest good of the part, which is what statesmen worry about and are responsible for. What the radicals denounce as irrational and irresponsible from the viewpoint of mankind is what Weber called the statesman's ethic of responsibility. What keeps ordinary "competitive conflict processes" (Deutsch, 1983)— the very stuff of society — from becoming "unrational" or destructive, is precisely what the nature of world politics excludes: the restraint of the partners either because of the ties of affection or responsibility that mitigate the conflict, or because of the existence of an outsider — marriage counselor, arbitrator, judge, policeman or legislator— capable of inducing or imposing restraints. Here we come to a third point of difference. The very absence of such safeguards of rationality, the obvious discrepancy between what each part intends, and what it (and the whole world) ends with, the crudeness of some of the psychological mechanisms at work in international affairs—as one can see from the statements of leaders, or from the media, or from inflamed publics—have led many radicals, especially among those whose training or profession is in psychoanalysis or mental health, to treat the age-old contests of states in terms, not of the psychology of politics, but of individual psychology and pathology. There are two manifestations of this. One is the tendency to look at nations or states as individuals writ large, stuck at an early stage of development (similarly, John Mack (1985) in a recent paper talks of political ideologies as carrying "forward the dichotomized structures of childhood"). One of my predecessors writes about "the correspondence between development of the individual self and that of the group or nation," and concludes "that intergroup or international conflict contains the basic elements of the conflict each individual experiences psychologically" (Volkan, 1985). Robert Holt, from the viewpoint of cognitive psychology, finds "the largest part of the American public" immature, in a "phase of development below the Conscientious" (Holt, 1984). The second related aspect is the tendency to look at the notions statesmen or publics have of "the enemy," not only as residues of childhood or adolescent phases of development, but as images that express "disavowed aspects of the self" (Stein, 1985), reveal truths about our own fears and hatreds, and amount to masks we put on the "enemy," because of our own psychological needs. Here is where the clash between traditionalists and radicals is strongest. Traditionalists do not accept a view of group life derived from the study of individual development or family relations, or a view of modern society derived from the simplistic Freudian model of regressed followers identifying with a leader. They don't see in ideologies just irra-tional constructs, but often rationally selected maps allowing individuals to cope with reality. They don't see national identification as pathological, as an appeal to the people's baser instincts, more aggressive impulses or un-sophisticated mental defenses; it is, as Jean-Jacques Rousseau so well understood, the competition of sovereign states that frequently pushes people from "sane" patriotism to "insane" nationalism (Rousseau's way of preventing the former from veering into the latter was, to say the least, im-practical: to remain poor in isolation). Nor do they see anything "primitive" in the nation's concern for survival: It is a moral and structural requirement. Traditionalists also believe that the "intra-psychic" approach distorts reality. **Enemies are not mere projections of negative identities; they are** often quite **real.** To be sure, the Nazis' view of the Jews fits the metaphor of the mask put on the enemy for one's own needs. But were, in return, those Jews who understood what enemies they had in the Nazis, doing the same? Is the Soviet domination of Eastern Europe, is the Soviet regime's treatment of dissidents, was the Gulag merely a convenient projection of our intrapsychic battles? Clichés such as the one about how our enemy "understands only force" may tell us a great deal about ourselves; but sometimes they contain half-truths about him, and not just revelations about us. Our fears flow not only from our private fantasies but also from concrete realities and from the fantasies which the international state of nature generates. In other words, the psychology of politics which traditionalists deem adequate is not derived from theories of psychic development and health; it is derived from the logic of the international milieu, which breeds the kind of vocabulary found in the historians and theorists of the state of nature: fear and power, pride and honor, survival and security, self-interest and reputation, distrust and misunderstanding, commitment and credibility. It is also derived from the social psychology of small or large groups, which resorts to the standard psychological vocabulary that describes mental mechanisms or maneuvers and cognitive processes: denial, projection, guilt, repression, closure, rigidity, etc.... But using this vocabulary does not imply that a group whose style of politics is paranoid is therefore composed of people who, as private individuals, are paranoid. Nor does it relieve us of the duty to look at the objective reasons and functions of these mental moves, and of the duty to make explicit our assumptions about what constitutes a "healthy," wise, or proper social process. Altogether, traditionalists find the mental health approach to world affairs unhelpful. Decisions about war and peace are usually taken by small groups of people; the temptation of analyzing their behavior either, literal-ly, in terms of their personalities, or, metaphysically, in terms borrowed from the study of human development, rather than in those of group dynamics or principles of international politics is understandable. But it is misleading. What is pathological in couples, or in a well-ordered community, is, alas, frequent, indeed normal, among states, or in a troubled state. What is malignant or crazy is usually not the actors or the social process in which they are engaged: it is the possible results. The grammar of motives which the mental health approach brands as primitive or immature is actually rational for the actors. Traditionalists fear that this particular approach leads to the substitution of labels for explanations, to bad analysis and fanciful prescriptions. Bad analysis: the tendency to see in group coherence a regressive response to a threat, whereas it often is a rational response to the "existential" threats entailed by the very nature of the international milieu. Or the tendency to see in the effacement or minimization of individual differences in a group a release of unconscious instincts, rather than a phenomenon that can be perfectly adaptive—in response to stress or threats—or result from governmental manipulation or originate in the code of conduct inculcated by the educational system, etc.. . The habit of comparing the state, or modern society, with the Church or the army, and to analyze human relations in these institutions in ways that stress the libidinal more than the cognitive and superego factors, or equate libidinal bonds and the desire for a leader. The view that enemies are above all products of mental drives, rather than inevitable concomitants of social strife at every level. Or the view that the contest with the rival fulfills inter-nal needs, which may be true, but requires careful examination of the nature of these needs (psychological? bureaucratic? economic?), obscures the objective reasons of the contest, and risks confusing cause and function. Indeed, such analysis is particularly misleading in dealing with the pre-sent scene. The radicals are so (justifiably) concerned with the nuclear peril that the traditional ways in which statesmen and publics behave seem to vindicate the pathological approach. But this, in turn, incites radicals to overlook the fundamental ambiguity of contemporary world politics. On the one hand, there is a nuclear revolution—the capacity for total destruction. On the other hand, many states, without nuclear weapons, find that the use of force remains rational (in terms of a rationality of means) and beneficial at home or abroad—ask the Vietnamese, or the Egyptians after October 1973, or Mrs. Thatcher after the Falklands, or Ronald Reagan after Grenada. The superpowers themselves, whose contest has not been abolished by the nuclear revolution (it is the stakes, the costs of failure that have, of course, been transformed), find that much of their rivalry can be conducted in traditional ways — including limited uses of force —below the level of nuclear alarm. They also find that nuclear weapons, while—perhapsunusable rationally, can usefully strengthen the very process that has been so faulty in the prenuclear ages: deterrence (this is one of the reasons for nuclear proliferation). The pathological approach interprets deterrence as expressing the deterrer's belief that his country is good, the enemy's is bad. This is often the case, but it need not be; it can also reflect the conviction that one's country has interests that are not mere figments of the imagination, and need to be protected both because of the material costs of losing them, and because of the values embedded in them. As for war planning, it is not a case of "psychological denial of unwelcome reality" (Montville, 1985). but a — perhaps futile, perhaps dangerous—necessity in a world where deterrence may once more fail. The prescriptions that result from the radicals' psychological approach also run into traditionalist objections. Even if one accepts the metaphors of collective disease or pathology, one must understand that the "cure" can only be provided by politics. All too often, the radicals' cures consist of perfectly sensible recommendations for lowering tensions, but fail to tell us how to get them carried out —they only tell us how much better the world would be, if only "such rules could be established" (Deutsch, 1983). Sometimes, they express generous aspirations — for common or mutual security—without much awareness of the obstacles which conflict-ing interests, fears about allies or clients, and the nature of the weapons themselves, continue to erect. Sometimes, they too neglect the ambiguity of life in a nuclear world: The much lamented redundancy of weapons, a calamity if nuclear deterrence fails, can also be a cushion against failure. Finally, many of the remedies offered are based on an admirable liberal model of personality and politics: the ideal of the mature, well-adjusted, open-minded person (produced by liberal education and healthy family relations) transposed on the political level, and thus accompanied by the triumph of democracy in the community, by the elimination of militarism and the spread of functional cooperation abroad. But three obstacles remain unconquered: first, a major part of the world rejects this ideal and keeps itself closed to it (many of the radicals seem to deny it, or to ignore it, or to believe it doesn't matter). Second, the record shows that real democracies, in their behavior toward non-democratic or less "advanced" societies, do not conform to the happy model (think of the US in Central America). Third, the task of reform, both of the publics and of the statesmen, through consciousness raising and education is hopelessly huge, incapable of being pursued equally in all the important states, and — indeed — too slow if one accepts the idea of a mortal nuclear peril. These, then, are the dimensions of a split that should not be minimized or denied.

#### Pyschoanalysis is non-falsifiable hindsight thinking

Samuels 93—Training Analyst – Society of Analytical Psychology and Science Associate – American Academy of Psychoanalysis (Andrew, Free Associations, “The mirror and the hammer: depth psychology and political transformation”, Vol. 3D, Psychoanalytic Electronic Publishing)

The paper is about the depth psychology of political processes, focusing on processes of political change. It is a contribution to the longstanding ambition of depth psychology to develop a form of political and cultural analysis that will, in Freud's words, 'under-stand the riddles of the world'. It has to be admitted that there is an equally longstanding reluctance in the non-psychological commun¬ity to accept the many and varied ideas and suggestions concerning political matters that have been offered by analysts of all persua¬sions. I do not believe this can all be put down to resistance. There is something offensive above reductive interpretations of complex socio-political problems in exclusively psychological terms. The tendency to panpsychism on the part of some depth psychologists has led me to wonder if an adequate methodology and ethos actually exists with which to make an engagement of depth psychology with the public sphere possible.¶ By 'politics' I mean the arrangements within a culture for the organization and distribution of power, especially economic power, and the way in which power is deployed to maintain the survival and enhance the quality of human life. Economic and political power includes control of processes of information and representation as well as the use of physical force and possession of vital resources such as land, food and water. On a more personal level, political power reflects the ability to choose freely whether to act and what action to take in a given situation. 'Politics' refers to the interplay between the personal and public dimensions of power. That is, there is an articulation between public, economic power and power as expressed on the personal, private level. This articulation is demonstrated in family organization, gender and race relations, and in religious and artistic assumptions as they affect the life of individuals. (I have also tried to be consistent in my use of the terms 'culture', 'society' and 'collective'.)'¶ Here is an example of the difficulty with psychological rcduc-tionism to which I am referring. At a conference 1 attended in London in 1990, a distinguished psychoanalyst referred to the revolutionary students in Paris in 1968 as 'functioning as a regressive group'. Now, for a large group of students to be said to regress, there must be, in the speaker's mind, some sort of normative developmental starting point for them to regress to. The social group is supposed to have a babyhood, as it were. Similarly, the speaker must have had in mind the possibility of a healthier, progressive group process — what a more mature group of revolutionary students would have looked like. But complex social and political phenomena do not conform to the individualistic, chronological, moralistic, pathologizing framework that is often imported.¶ The problem stems from treating the entire culture, or large chunks of it, as if it were an individual or, worse, as if it were a baby. Psychoanalysts project a version of personality development couched in judgemental terms onto a collective cultural and political process. If we look in this manner for pathology in the culture, we will surely find it. As we are looking with a psychological theory in mind, then, lo and behold, the theory will explain the pathology, but this is a retrospective prophecy (to use a phrase of Freud's), twenty-twenty hindsight. In this psychoanalytic tautologizing there is really nothing much to get excited about. Too much psychological writing on the culture, my own included, has suffered from this kind of smug 'correctness' when the 'material' proves the theoretical point. Of course it does! If we are interested in envy or greed, then we will find envy or greed in capitalistic organization. If we set out to demonstrate the presence of archetypal patterns, such as projection of the shadow, in geopolitical relations, then, without a doubt, they will seem to leap out at us. We influence what we analyse and so psychological reflection on culture and politics needs to be muted- there is not so much 'aha!' as one hoped.

### Acting/Anxiety Good

#### Acting generates meaning

Todd May 5, philosophy prof at Clemson, “To change the world, to celebrate life”, Philosophy & Social Criticism, vol 31, nos 5–6, 517–531

What are we to make of these references? We can, to be sure, see the hand of Heidegger in them. But we may also, and for present purposes more relevantly, see an intersection with Foucault’s work on freedom. There is an ontology of freedom at work here, one that situates freedom not in the private reserve of an individual but in the unfinished character of any historical situation. There is more to our historical juncture, as there is to a painting, than appears to us on the surface of its visibility. The trick is to recognize this, and to take advantage of it, not only with our thoughts but with our lives. And that is why, in the end, there can be no such thing as a sad revolutionary. To seek to change the world is to offer a new form of life-celebration. It is to articulate a fresh way of being, which is at once a way of seeing, thinking, acting, and being acted upon. It is to fold Being once again upon itself, this time at a new point, to see what that might yield. There is, as Foucault often reminds us, no guarantee that this fold will not itself turn out to contain the intolerable. In a complex world with which we are inescapably entwined, a world we cannot view from above or outside, there is no certainty about the results of our experiments. Our politics are constructed from the same vulnerability that is the stuff of our art and our daily practices. But to refuse to experiment is to resign oneself to the intolerable; it is to abandon both the struggle to change the world and the opportunity to celebrate living within it. And to seek one aspect without the other – life-celebration without world-changing, world-changing without life-celebration – is to refuse to acknowledge the chiasm of body and world that is the wellspring of both. If we are to celebrate our lives, if we are to change our world, then perhaps the best place to begin to think is our bodies, which are the openings to celebration and to change, and perhaps the point at which the war within us that I spoke of earlier can be both waged and resolved. That is the fragile beauty that, in their different ways, both MerleauPonty and Foucault have placed before us. The question before us is whether, in our lives and in our politics, we can be worthy of it.

#### Anxiety is vital to avert extinction

Mark **Shepard 7**, Anxiety - the ultimate survival tool!, Neuro Linguistic Programming Expert, http://www.scribd.com/doc/2050501/Anxiety-The-Ultimate-Survival-Skill)

Anxiety, The Ultimate Survival Skill

As much pain and suffering that highly sensitive people go through because of our worry and **anxiety habits**, these are traits that **have** **ensured** humanity's survival since time immemorial. What do I mean? First of all you have to understand that anxiety is a thought process. It is not a mental disease. When you are anxious, what are you thinking about? What's great? What's wonderful? How everything is going to turn out better than you can possibly imagine? No! You are imagining the worst case scenario. Anxiety is thinking about what you do not want to have happen. Think about it! Let's float back in time for a moment to One Gazillion B.C. You are hanging out with your hunter gatherer buddies and it's summer time...There's plenty to eat and it's warm. All of a sudden you have an anxious thought. You think of something unpleasant about the future. You suddenly think of the coming... winter! You imagine digging through snow drifts scavenging for whatever scraps of food you can find. You imagine starving. You imagine your children, hungry, cold, sick. That's anxiety. Thinking about what you do not want to have happen. What it's supposed to do is trigger a resourceful response. In this case, you come up with a brilliant idea. In order to avoid starvation in the coming winter you start drying food and storing it in underground containers. Thinking about the cold, you come up with the idea that you can make warm clothing. Come Fall you gladly trade that little summer loin cloth in for a nice woolly mammoth coat. Thus the first root cellar is born and the fur coat is invented, because of anxiety.

Your ability to think ahead and visualize bad things happening **enables you to plan ahead and take decisive action to create a different outcome**. This planning for the winter results in your family and tribe surviving! Your children and their children pass along this anxiety gene. The "lug-heads" who don't have this ability perish. Survival is good, isn't it?

So those who were able to foreseethe future and imagine the worst were able to better plan and as a result create a better future. Now. Fast forward to today. I would be willing to bet that you've been using this wonderful imagination of yours to imagine the worst. The added factor here is that your unconscious mind does not know the difference between what is real and what is imagined, so when you imagine the worst, your body reacts as if that bad thing is really happening. That releases all sorts of stress hormones and chemicals in your body. The point is to stop beating yourself up for having anxiety. Anxiety is merely an excellent survival tool that's been pushed beyond its original purpose. You can reclaim it's usefulness by doing what ancient people did. Become aware of a possible negative outcome in the future and then take positive, decisive action to make sure something better happens. If it's something beyond your control, practice imagining it working out positively and see how that feels in your body. For example: if you are worried about your kids driving home from college in a snow storm imagine them arriving safely and sitting in front of the fire sipping hot cocoa.

### Psycho Alt Fails

#### Alt fails --- psychoanalysis can’t change politic or the human psyche

Hutchens 4 Assistant Professor at James Madison University “The Senselessness of a Curable World: Jean-Luc Nancy on Freudian Massenpsychologie,” theory @ Buffalo 9, http://wings.buffalo.edu/theory/archive/archive.html, 115-116

Yet Nancy does have a viable objection that the very distinction between curable and incurable already implies the linkages that enable socialization amongst narcissistic egos. In other words, this vacillation of commitment is the result of indebtedness to biological and metaphysical presumptions concerning the ego. Insofar as the egos of this scheme **neither compose nor have access to social reality, they lack the very ‘world’ which singular beings**, someones, **must compose**. There is thus a lacuna of sense in the play of signifyingness around narcissistic egos. Psychoanalytic theory offers **only a “severe punctuation of truth**, that is, a pure privation of sense” that might ultimately demand an excessive sense. The inaugural thought of psychoanalysis merely “dissolves all sense”, renders it “destitute” by reducing it to a “mere demand of sense” and by “exposing truth as the disappointment of that demand” (The Sense of the World 46). **It lacks world and access to the sense with which the world is coextensive**. It therefore offers only a description of an unrequited demand for sense that is confused with sense itself. It is precisely this “disappointment” of the psycho-analytics of culture that provides it with the mission to cure a world; yet, paradoxically, the analyst would never settle for such a disappointment if it were not already striving to endow itself with authority over a “curable” world it feared might prove incurable. I concur with Nancy that psychoanalysis endeavors to lead politics to its truth, yet **achieves only the annihilation of the political truth** it needs for the purpose of resolving the difficulties engendered by the espousal of the metaphysical egology. Scanning political truth in a lapidary fashion, without arche, possessing no end or ground by which its success could be determined, psychoanalysis **fails either to resolve the political deficiencies it identifies or to offer a purview of its own conceptual capacity to do so**. In more general terms, one might propose that the effort to appropriate political truth into a tenable psychoanalysis of culture serves only to depropriate the very subject of culture. Perhaps there is a sickness, a collective neurosis that leaves all non-relating narcissistic egos in a state of panic. Yet, psychoanalysis has neither devolved its actual sense nor provided therapeutic means by which to address it. Sense, anterior to sanity and insanity, is not indicative of the sickness that psychoanalysis construes. In its infinite reticulations of singularity, sense is ‘mad’ and thus cannot be produced by any theory whose intended praxis is therapy (The Sense of the World 49) Psychoanalysis composes its own neurotic fantasy of social illusion. It does not confront the manner in which there might be ‘sickness’ in the very groundless insubstantiality of social relations, or perhaps no such sickness of that kind at all.

### AT: Alt – Wright

#### The alt’s all-or-nothing choice fails --- small reforms like the plan are key to institutional change and getting others to sign on to the alt

Erik Olin Wright 7, Vilas Distinguished Professor of Sociology at the University of Wisconsin, “Guidelines for Envisioning Real Utopias”, Soundings, April, www.ssc.wisc.edu/~wright/Published%20writing/Guidelines-soundings.pdf

5. Waystations¶ The final guideline for discussions of envisioning real utopias concerns the importance of waystations. The central problem of envisioning real utopias concerns the **viability of institutional alternatives** that embody emancipatory values, but the practical achievability of such institutional designs often **depends upon the existence of smaller steps**, intermediate institutional innovations **that move us in the right direction but only partially embody these values.** Institutional proposals which have an **all-or-nothing quality** to them are both **less likely to be adopted in the first place, and may pose more difficult transition-cost problems** if implemented. The catastrophic experience of Russia in the “shock therapy” approach to market reform is historical testimony to this problem.¶ Waystations are a difficult theoretical and practical problem because there are many instances in which partial reforms may have very different consequences than full- bodied changes. Consider the example of unconditional basic income. Suppose that a very limited, below-subsistence basic income was instituted: not enough to survive on, but a grant of income unconditionally given to everyone. One possibility is that this kind of basic income would act mainly as a subsidy to employers who pay very low wages, since now they could attract more workers even if they offered below poverty level¶ earnings. There may be good reasons to institute such wage subsidies, but they would not generate the positive effects of a UBI, and therefore might not function as a stepping stone.¶ What we ideally want, therefore, are **intermediate reforms** that have two main properties: first, they concretely **demonstrate the virtues of the fuller program of transformation, so they contribute to the ideological battle of convincing people that the alternative is credible and desirable;** and second, they **enhance the capacity for action of people**, increasing their ability to push further in the future. Waystations that increase popular participation and **bring people together in problem-solving deliberations** for collective purposes are particularly salient in this regard. This is what in the 1970s was called “nonreformist reforms”: reforms that are **possible within existing institutions** and that **pragmatically solve real problems** while at the same time **empowering people in ways which** **enlarge their scope of action in the future.**

### AT: V2L

#### “No value to life” doesn’t outweigh---prioritize existence because value is subjective and could improve in the future

Torbjörn Tännsjö 11, the Kristian Claëson Professor of Practical Philosophy at Stockholm University, 2011, “Shalt Thou Sometimes Murder? On the Ethics of Killing,” online: http://people.su.se/~jolso/HS-texter/shaltthou.pdf

I suppose it is correct to say that, if Schopenhauer is right, if life is never worth living, then according to utilitarianism we should all commit suicide and put an end to humanity. But this does not mean that, each of us should commit suicide. I commented on this in chapter two when I presented the idea that utilitarianism should be applied, not only to individual actions, but to collective actions as well.¶ It is a well-known fact that people rarely commit suicide. Some even claim that no one who is mentally sound commits suicide. Could that be taken as evidence for the claim that people live lives worth living? That would be rash. Many people are not utilitarians. They may avoid suicide because they believe that it is morally wrong to kill oneself. It is also a possibility that, even if people lead lives not worth living, they believe they do. And even if some may believe that their lives, up to now, have not been worth living, their future lives will be better. They may be mistaken about this. They may hold false expectations about the future.¶ From the point of view of evolutionary biology, it is natural to assume that people should rarely commit suicide. If we set old age to one side, it has poor survival value (of one’s genes) to kill oneself. So it should be expected that it is difficult for ordinary people to kill themselves. But then theories about cognitive dissonance, known from psychology, should warn us that we may come to believe that we live better lives than we do.¶ My strong belief is that most of us live lives worth living. However, I do believe that our lives are close to the point where they stop being worth living. But then it is at least not very far-fetched to think that they may be worth not living, after all. My assessment may be too optimistic.¶ Let us just for the sake of the argument assume that our lives are not worth living, and let us accept that, if this is so, we should all kill ourselves. As I noted above, this does not answer the question what we should do, each one of us. My conjecture is that we should not commit suicide. The explanation is simple. If I kill myself, many people will suffer. Here is a rough explanation of how this will happen: ¶ ... suicide “survivors” confront a complex array of feelings. Various forms of guilt are quite common, such as that arising from (a) the belief that one contributed to the suicidal person's anguish, or (b) the failure to recognize that anguish, or (c) the inability to prevent the suicidal act itself. Suicide also leads to rage, loneliness, and awareness of vulnerability in those left behind. Indeed, the sense that suicide is an essentially selfish act dominates many popular perceptions of suicide. ¶ The fact that all our lives lack meaning, if they do, does not mean that others will follow my example. They will go on with their lives and their false expectations — at least for a while devastated because of my suicide. But then I have an obligation, for their sake, to go on with my life. It is highly likely that, by committing suicide, I create more suffering (in their lives) than I avoid (in my life).

# 1AR

### AT: Mueller

#### Their authors are wrong about everything

Graham Allison 9**,** Douglas Dillon Professor of Government and Director of the Belfer Center for Science and International Affairs at Harvard University's Kennedy School of Government, “A Response to Nuclear Terrorism Skeptics” Brown Journal of World Affairs, Hein Online

What drives Mueller and other skeptics to arrive at such different conclusions?¶ They make four major claims that merit serious examination and reflection.¶ CLAIM 1: No ONE IS SERIOUSLY MOTIVATED TO CONDUCT A NUCLEAR TERRORIST ATTACK.¶ More than a decade ago, no one could have imagined that a Japanese doomsday cult would be sufficiently motivated to disseminate sarin gas on the Tokyo subway. Indeed, at the time of that attack, the consensus among terrorism experts was that terrorists wanted an audience and sympathy-not casualties. The leading American student of terrorism, Brian Jenkins, summarized the consensus judgment in 1975: "terrorists seem 34 to be more interested in having a lot of people watching, not a lot of people dead.""¶ As intelligence officials later testified, an inability to recognize the shifting modus operandi of some terrorist groups was part of the reason why members of Aum Shinrikyo "were simply not on anybody's radar screen."" This, despite the fact that the group owned a 12-acre chemical weapons factory in Tokyo, had $1 billion in its bank account, and had a history of serious nuclear ambitions.'9¶ Similarly, before the 9/11 attacks on the World Trade Center and Pentagon that extinguished 3,000 lives, few imagined that terrorists could mount an attack upon the American homeland that would kill more Americans than the Japanese attack at Pearl Harbor. As Secretary Rice testified to the 9/11 Commission, "No one could have imagined them taking a plane, slamming it into the Pentagon and into the World Trade Center, using planes as a missile." 20 For most Americans, the idea of international terrorists mounting an attack on our homeland and killing thousands of citizens was not just unlikely, but inconceivable. But assertions about what is "imaginable" or "conceivable" are propositions about individuals' mental capacities, not about what is objectively possible.¶ In fact, Al Qaeda's actions in the decade prior to the 9/11 attacks provided clear evidence both of intent and capability. While its 1993 attack on the World Trade Center succeeded in killing only six people, Ramzi Yousef, the key operative in this case, had planned to collapse one tower onto the second, killing 40,000. In the summer of 1996, Osama bin Laden issued a fatwa declaring war upon the United States. Two years later, Al Qaeda attacked the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, killing more than 200 people. In October 2000, Al Qaeda attacked the warship USS Cole. Throughout this period, Al Qaeda's leadership was running thousands of people through training camps, preparing them for mega-terrorist attacks.¶ Notwithstanding Aum Shinrikyo's brazen attack, Al Qaedas audacious 9/11 attack, and the recent attacks in Mumbai that killed 179 people, Mueller maintains that "terrorists groups seem to have exhibited only limited desire... they have discovered that the tremendous effort required is scarcely likely to be successful." He asserts that the evidence about Al Qaedas nuclear intentions ranges from the "ludicrous to the merely dubious," and that those who take Al Qaeda's nuclear aspiration seriously border on "full-on fantasyland."1¶ Even scholars who would have been inclined to agree with this point of view have revised their judgment as new facts have accumulated. In 2006, for example, Jenkins reversed the basic proposition that he had set forth three decades earlier. In his summary: "In the 1970s the bloodiest incidents caused fatalities in the tens. In the 1980s, fatalities from the worst incidents were in the hundreds; by the 1990s, attacks on this scale had become more frequent. On 9/11 there were thousands of fatalities, and there could have been far more. We now contemplate plausible scenarios in which tens of 35 thousands might die." Underlining the contrast with his own 1975 assessment, Jenkins now says: "Jihadists seem ready to murder millions, if necessary. Many of today's terrorists want a lot of people watching and a lot of people dead."22 (Emphasis added.)¶ Al Qaeda has been deadly clear about its ambitions. In 1998, Osama bin Laden declared that he considered obtaining weapons of mass destruction "a religious duty."" In December 2001, he urged his supporters to trump the 9/11 attacks: "America is in retreat by the grace of God Almighty..but it needs further blows."2 A few months later, Al Qaeda announced its goal to "kill four million Americans."5 It eVen managed to gain religious sanction from a radical Saudi cleric in 2003 to kill "ten million Americans" with a nuclear or biological weapon.26¶ We also now know that Al Qaeda has been seriously seeking a nuclear bomb. According to the Report of the 9/11 Commission, "Al Qaeda has tried to acquire or make nuclear weapons for at least ten years... and continues to pursue its strategic goal of obtaining a nuclear capability." It further reveals "bin Laden had reportedly been heard to speak of wanting a 'Hiroshima." The Commission provides evidence of Al Qaedas effort to recruit nuclear expertise-including evidence about the meeting between two Pakistani nuclear weapon scientists, bin Laden, and his deputy Ayman al-Zawahiri in Afghanistan to discuss nuclear weapons.2 These scientists were founding members of Ummah Tamer-e-Nau (UTN), a so-called charitable agency to support projects in Afghanistan. The foundation's board included a fellow nuclear scientist knowledgeable about weapons construction, two Pakistani Air Force generals, one Army general, and an industrialist who owned Pakistan's largest foundry.28¶ In his memoir, former CIA Director George Tenet offers his own conclusion that "the most senior leaders of Al Qaeda are still singularly focused on acquiring WMD" and that "the main threat is the nuclear one." In Tenet's view, Al Qaedas strategic goal is to obtain a nuclear capability. He concludes as follows: "I am convinced that this is where Osama bin Laden and his operatives desperately want to go."2 9¶ CLAIM 2: IT IS IMPOSSIBLE FOR TERRORISTS TO ACQUIRE FISSILE MATERIAL.¶ Assuming that terrorists have the intent-could they acquire the necessary materials for a Hiroshima-model bomb? Tenet reports that after 9/11, President Bush showed President Putin his briefing on UTN. In Tenet's account of the meeting, Bush "asked Putin point blank if Russia could account for all of its material." Putin responded that he could guarantee it was secure during his watch, underlying his inability to provide assurance about events under his predecessor, Boris Yeltsin.3o¶ When testifying to the Senate Intelligence Committee in February 2005, Commit- 36 tee Vice-Chairman John Rockefeller (D-WV) asked CIA Director Porter Goss whether the amount of nuclear material known to be missing from Russian nuclear facilities was sufficient to construct a nuclear weapon. Goss replied, "There is sufficient material unaccounted for that it would be possible for those with know-how to construct a weapon.. .I can't account for some of the material so I can't make the assurance about its whereabouts."¶ Mueller sidesteps these inconvenient facts to assert a contrary claim. According to his telling, over the last 10 years, there have been only 10 known thefts of highly enriched uranium (HEU), totaling less than 16 pounds, far less than required for an atomic explosion. He acknowledges, however, that "There may have been additional thefts that went undiscovered."32¶ Yet, as Matthew Bunn testified to the Senate in April 2008, "Theft of HEU and plutonium is not a hypothetical worry, it is an ongoing reality." He notes that "nearly all of the stolen HEU and plutonium that has been seized over the years had never been missed before it was seized." The IAEA Illicit Nuclear Trafficking Database notes 1,266 incidents reported by 99 countries over the last 12 years, including 18 incidents involving HEU or plutonium trafficking. 130 research reactors around the world in 40 developing and transitional countries still hold the essential ingredient for nuclear weapons. As Bunn explains, "The world stockpiles of HEU and separated plutonium are enough to make roughly 200,000 nuclear weapons; a tiny fraction of one percent of these stockpiles going missing could cause a global catastrophe."¶ Consider the story of Russian citizen Oleg Khinsagov. Arrested in February 2006 in Georgia, he was carrying 100 grams of 89-percent enriched HEU as a sample and attempting to find a buyer for what he claimed were many additional kilograms. Mueller asserts that "although there is a legitimate concern that some material, particularly in Russia, may be somewhat inadequately secured, it is under lock and key, and even sleepy, drunken guards, will react with hostility (and noise) to a raiding party.""¶ CLAIM 3: IT IS EXTREMELY DIFFICULT TO CONSTRUCT A NUCLEAR DEVICE THAT WORKS.¶ Rolf Mowatt-Larssen, former director of the Department of Energy's Office of Intelligence and Counterintelligence, testified that, "The 21s' century will be defined first by the desire and then by the ability of non-state actors to procure or develop crude nuclear weapons."6 In contrast, Mueller contends that, "Making a bomb is an extraordinarily difficult task... the odds, indeed, are stacked against the terrorists, perhaps massively so." 37¶ Mueller argues that his conclusion follows from an analysis of 20 steps an atomic terrorist would have to accomplish in what he judges to be the most likely nuclear terrorism scenario. On the basis of this list, he claims that there is "worse than one in a 37 million" chance of success. 38¶ His approach, however, misunderstands probabilistic risk assessment. For example, some of the steps on the list would have to be completed before an attempt to acquire material could begin (therefore, the success rate for any of those steps during the path would, by definition, be 100 percent). Other steps are unnecessary, such as having a technically sophisticated team pre-deployed in the target country. Although he assumes that stolen materials will be missed, in none of the 18 documented cases mentioned earlier had the seized material been reported missing."¶ At U.S. weapons labs and among the U.S. intelligence community, experts who have examined this issue largely agree. John Foster, a leading American bomb maker and former director of the Lawrence Livermore National Laboratories, wrote a quarter century ago, "If the essential nuclear materials are at hand, it is possible to make an atomic bomb using information that is available in the open literature." 4 Similarly, Theodore Taylor, the nuclear physicist who designed America's smallest and largest atomic bombs, has repeatedly stated that, given fissile material, building a bomb is "very easy. Double underline. Very Easy." 4¶ Inquiring into such claims, then-Senator Joe Biden (D-DE) asked the major nuclear weapons laboratories whether they could make such a device if they had nuclear materials. All three laboratories answered affirmatively. The laboratories built a gun-type device using only components that were commercially available and without breaking a single U.S. law.¶ The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, known as the Silberman-Robb Commission, reported in 2005 that the intelligence community believed Al Qaeda "probably had access to nuclear expertise and facilities and that there was a real possibility of the group developing a crude nuclear device." It went on to say that "fabrication of at least a 'crude' nuclear device was within Al Qaedas capabilities, if it could obtain fissile material."43¶ Skeptics argue that terrorists cannot replicate the effort of a multi-billion dollar nuclear program of a state. This claim does not distinguish between the difficulty of producing nuclear materials for a bomb (the most difficult threshold) and the difficulty of making a bomb once the material has been acquired. The latter is much easier. In the Iraq case, for example, the CIA noted that if Saddam Hussein had stolen or purchased nuclear materials from abroad, this would have cut the time Iraq needed to make a bomb from years to months.1 Moreover, terrorists do not require a state-of-the art weapon and delivery system, since for blowing up a single city a crude nuclear device would suffice.¶ The grim reality of globalization's dark underbelly is that non-state actors are 38 increasingly capable of enacting the kind of lethal destruction heretofore the sole reserve of states.¶ CLAIM 4: IT IS TOO DIFFICULT TO DELIVER A NUCLEAR DEVICE TO THE UNITED STATES.¶ In the spring of 1946, J. Robert Oppenheimer was asked whether units of the atom bomb could be smuggled into New York and then detonated. He answered, "Of course it could be done, and people could destroy New York." As for how such a weapon smuggled in a crate or a suitcase might be detected, Oppenheimer opined, "with a screwdriver." He went on to explain that because the HEU in a nuclear weapon emits so few radioactive signals, a bomb disguised with readily available shielding would not be detected when inspectors opened the crates and examined the cargo.41¶ The nuclear weapon that terrorists would use in the first attack on the United States is far more likely to arrive in a cargo container than on the tip of a missile. In his appearance before a Senate subcommittee in March 2001, six months before 9/11, National Intelligence Officer Robert Walpole testified that "non-missile delivery means are less costly, easier to acquire, and more reliable and accurate."' 6¶ Citing the 1999-2003 U.S. Congressional Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (the Gilmore Commission), Mueller states that transporting an improvised nuclear device would require overcoming "Herculean challenges.""¶ He does not explain, however, why bringing a crude nuclear weapon into an American city would be materially different than the challenge faced by drug smugglers or human traffickers. According to the Government Accountability Organization, an average of 275 metric tons of cocaine have arrived in Mexico each year for transshipment to the United States since 2000. Reported seizures averaged about 36 tons a year, a 13 percent success rate for the intelligence and law enforcement community. Three million illegal immigrants enter the country each year, and only one in three gets caught."

### AT: Roleplaying Bad

#### Projecting desire into the future propels activity in the present

Rosi Braidotti 6, contemporary philosopher and feminist theoretician, Transpositions: On Nomadic Ethics, 273

Prophetic or visionary minds are thinkers of the future- The future as an active object of desire propels us forth and we can draw from it the strength and motivation to be active in the here and now of a present that hangs on in-between the 'no longer' and the 'not yet' of advanced postmodernity- The present is always the future present: it will have made a positive difference in the world. Only the yearning for sustainable futures can construct a liveable present. The sheer thinkability of the future is the necessary precondition for inhabiting creatively the present. The anticipation of endurance, of making it to a possible 'tomorrow', transposes energies from the future back into the present. This is how sustainability enacts modes of creative becoming. This is a non-entropic model of energy-flow and hence of transferral of desire. Drawing energy from the thinkabilitv of the future means that our desires are sustainable to the extent that they engender the conditions of possibility for the future. In order to get there, a nomadic subject position of flow and multilayeredness is a major facilitator. This is not a leap of faith, but an active transposition, a transformation at the in-depth level, a change of culture akin to genetic mutations, but registered also at the ethical level.

### DD False

#### Death drive is false

Andrew Robinson 5, PhD in Political Theory, U of Nottingham, Theory and Event, 8:1, ProjectMuse

Guattari's critique of psychoanalysis makes clear the myths which underlie it. 'Psychoanalysis transforms and deforms the unconscious by forcing it to pass through the grid of its system of inscription and representation. For psychoanalysis, the unconscious is always already there, genetically programmed, structured, and finalized on objectives of conformity to social norms'104. Similarly, Reich has already exposed a predecessor of the idea of "constitutive lack" - the Freudian "death instinct" - as a denial that "I don't know". It is, he says, a metaphysical attempt to explain as yet inexplicable phenomena, an attempt which gets in the way of fact-finding about these phenomena. He provides a detailed clinical rebuttal of the idea of the "death instinct" which is equally apt as an attack on Lacanians (who seem unaware of Reich's intervention). In Reich's view, the masochistic tendencies Freud associates with the "death instinct" are secondary drives arising from anxiety, and are attributable to 'the disastrous effect of social conditions on the biopsychic apparatus. This entailed the necessity of criticizing the social conditions which created the neuroses - a necessity which the hypothesis of a biological will to suffer had circumvented'106. The idea of the "death instinct" leads to a cultural philosophy in which suffering is assumed to be inevitable, whereas Reich's alternative - to attribute neurosis to frustrations with origins in the social system - leads to a critical sociological stance. The relevance of Reich's critique to the political theory of constitutive lack is striking. The "death instinct" is connected to an idea of primordial masochism which, in the form of "aphanisis" or "subjective destitution", recurs throughout Lacanian political theory. Zizek in particular advocates masochism, in the guise of "shooting at" or "beating" oneself, as a radical gesture which reveals the essence of the self and breaks the constraints of an oppressive reality108, although the masochistic gesture is present in all Lacanian theorists. The death instinct is typified by Zizek as a pathological (in the Kantian sense), contingent attitude which finds satisfaction in the process of self-blockage109. It is identical with the Lacanian concept of jouissance or enjoyment. For him, 'enjoyment (jouissance) is not to be equated with pleasure: enjoyment is precisely "pleasure in unpleasure"; it designates the paradoxical satisfaction procured by a painful encounter with a Thing that perturbs the equilibrium of the pleasure principle. In other words, enjoyment is located "beyond the pleasure principle"'110. It is also the core of the self, since enjoyment is 'the only "substance" acknowledged by psychoanalysis', and 'the subject fully "exists" only through enjoyment'111. Primordial masochism is therefore central to the Lacanian concept of the Real, which depends on there being a universal moment at which active desire - sometimes given the slightly misleading name of the "pleasure principle" - is suspended, not for a greater or delayed pleasure, but out of a direct desire for unpleasure (i.e. a primary reactive desire). Furthermore, this reactive desire is supposed to be ontologically prior to active desire. Dominick LaCapra offers a similar but distinct critique to my own, claiming that Lacanian and similar theories induce a post-traumatic compulsion repetition or an 'endless, quasi-transcendental grieving that may be indistinguishable from interminable melancholy'112. Reich has already provided a rebuttal of "primordial masochism", which, paradoxically given Zizek's claims to radicalism, was denounced by orthodox Freudians as communist propaganda. In Reich's view, masochism operates as a relief at a lesser pain which operates as armouring against anxiety about an underlying trauma113. Regardless of what one thinks of Reich's specific account of the origins of masochism, what is crucial is his critique of the idea of a death drive. 'Such hypotheses as are criticised here are often only a sign of therapeutic failure. For if one explains masochism by a death instinct, one confirms to the patient his [sic] alleged will to suffer'114. Thus, Lacanian metaphysics conceal Lacanians' encouragement of a variety of neurosis complicit with oppressive social realities. Politically, the thesis of primordial masochism provides a mystifying cover for the social forces which cause and benefit from the contingent emergence of masochistic attachments (i.e. sadistic power apparatuses). One could compare this remark to Butler's claim that Zizek 'defends the trauma of the real... over and against a different kind of threat'115.

#### Humans channel the death drive into a force for good—the most ethical decision is not to try to confront and overcome the death drive, but rather to divert the energy into political actions that minimize human suffering and violence

Havi Carel 1, Department of Philosophy at the U of Essex, “Born to be Bad: Is Freud’s Death Drive the Source of Human Evilness?” http://www.wickedness.net/Carel.pdf

This theory of the death drive has been conceived as the height of Freud’s pessimism, as admitting that we are indeed born evil. But is this the only ethical position that can be deduced from the death drive? This same death drive, I claim, can actually offer a solution to the problem of innate aggression. The way out lies in the fact that aggression is a force whose objects can be changed and direction reversed. This flexibility in direction and aim means that **aggression is not necessarily harmful, nor inherently evil**. Aggression can also be conceptualised as neutral energy, as a resource that can be implemented to ethically diverse aims. The death drive is an inherent tendency, which cannot be eliminated, but can be diverted or sublimated. So although “there is no question of getting rid entirely of human aggressive impulses”, we can control aggression via sublimation and a strengthening of the superego, resulting in a tame but unhappy social order.5 In Civilisation and its Discontents Freud ties the dualistic model of the life and death drives to the question of war and civilisation in order to explain civilisation as a process of sublimation and intellectual control over instinctual life. Civilisation is an evolutionary process that develops through the action of Eros, striving to unite people, families and nations into one human unity. Against this synthetic drive stands the opposite destructive force, attempting to disintegrate biological, psychological, and social unities. Human development evolved out of this struggle between Eros and destruction, between affirmation and negation: And now, I think, the meaning of the evolution of civilization is no longer obscure to us. It must present the struggle between Eros and Death, between the instinct of life and the instinct of destruction as it works itself out in the human species. This struggle is what all life essentially consists of… 6 But the civilisatory process does not go hand in hand with the promotion of happiness. Freud has already concluded that violence and aggression cannot be extirpated from human existence. The idea that people can be totally satisfied and thus released from the need for violence is for Freud a naive illusion. So human aggression is innate, but nonetheless not uncontrollable. The first step is to acknowledge its presence in life, in human behaviour and psychic processes. Freud’s initial step is to try and overcome the resistance to acknowledging the fact that we contain aggressive tendencies. The interpretation of this assumption is what will actually give content to Freud’s claims, as the question of how to handle our aggression is the one that has practical implications, both on a clinical level and on a social and political level. In this sense the ethical question is not whether aggression can be abolished from the human psyche, but rather how this aggression can be channelled to non-destructive activities and turned into a positive energy source, a will to power. We can conclude that the thesis of inherent aggression does not necessarily lead to ethical determinism. Aggression can be regarded as neutral energy, which can be used for various purposes. This idea is reinforced by abandoning the dualistic model, so the death drive is no longer a destructive force whose antidote is Eros, but rather a fundamental human force.

### Life Good/Death Bad---AT: You Devalue Death

#### No link---death’s symbolic value does not deny the value of life---the option to continue living should always be available

Amien Kacou 8 WHY EVEN MIND?On The A Priori Value Of “Life” Cosmos and History: The Journal of Natural and Social Philosophy, Vol 4, No 1-2 (2008) cosmosandhistory.org/index.php/journal/article/view/92/184

I. What we mean (in more detail)¶ Regardless of whether or not we find that it is the “fundamental question” of philosophy,[8] we can see that judging whether life is or is not worth living is, in one sense at least, when understood with a general character, a fundamentally philosophical question. The question calls on the living individual to make a value judgment (which seems of the most serious extent) about the condition it most basically, most generally, and in a sense most intimately, “finds itself” in—and in this sense, the question must be seen as a “personal” one.[9] But the judgment called for only becomes especially interesting for philosophical exercise once we attempt to make it “objective,” so to speak.¶ On the one hand, from a “subjective” point of view, the question whether life is or is not worth living **reduces simply to the question whether** **or not**—or how—**we the living** already in fact, in our variable situations, **desire or not to live**. Its answer is a function of descriptions of motivational dispositions as they may vary from individual to individual and circumstance to circumstance. (For instance, some may find certain cases of euthanasia justified, or find certain forms of suicide honorable.) In other words, from a subjective point of view, the answer would simply be that life is worth living to the extent that, while we could have a different attitude, we just happen to want it (to be disposed towards it), perhaps in light of circumstantial considerations. And, thus, the question could be **quickly addressed** in some cases, without much need for philosophical inquiry—except perhaps on collateral issues. Similarly, typical answers referring simply to how “fun” or “beautiful” life is, or (perhaps the contemporary scientist’s favorite) how “fascinating” or “mysterious”—these answers are, as stated, inadequate for our purposes, to the extent that they are primitive (uncritical) generalizations expressing our preexisting desire for (or infatuation with) life.¶ On the other hand, from a point of view that purports to be “objective,” we must have a more complex approach. We must “problematize” the value of life in general. The question is not simply whether (or how, or even why in the broad sense of an explanation) we happen to desire or not to live, but rather whether (or why in the narrow sense of a justification) we should or should not ever desire to live in the first place.¶ a. The objective approach¶ In seeking a justification, we must look, beyond the mere “freedom” (or given-ness) of any primitive desire, for something like a final “authority” that we could show through some fact or logical inference[10] to make us “right” (i.e., as a matter of reasoning) to have such a desire. In other words, we must try to present life as being instrumental or not to some uncontested value (or purpose)—and, thus, as either “useful” or “futile.” In this sense, the word “meaningful” (pertaining to life) would be basically synonymous with the word “useful”—a relation between objects and moments, on the one hand, and how what we value can be served, on the other hand.¶ In addition, we do not look for conditions that would sustain or increase the value of a proposed venture; we look for a demonstration that the venture can have any value. Accordingly, in order to find the objective position, we must avoid in our picture of life or death any variable circumstance that could be taken to make either one of them arbitrarily more or less attractive or pursuable. Furthermore, any description of how we desire to live **may well entail conditions under which we would not prefer to live**. **But** even if such conditions exist**, it does not necessarily follow that life is without value when those conditions prevail**. Indeed, by analogy, that we would prefer ten dollars to five dollars if we could choose does not mean at all that the five dollars would then have no value. Other example: that we would happily accept an ice cream cone if it were free but refuse it if we had to pay for it does not mean at all that ice cream has no value to us. The distinction can be expressed as follows: the value of ice cream in light of its cost, we call its a posteriori value; the value of ice cream irrespective of its cost, we call its a priori value.¶ What we seek in this inquiry is the a priori value of life-as-such—**the value that subsists in, or is essential to, or is the initial value in,** any life**,** irrespective of its circumstances, including, to any extent possible, any explanation for its existence.[11] (The objective question calls for an a priori answer.) In contrast, we are not interested in questions such as whether se

ppuku is honorable or how end-of-life decisions should be made. (The subjective question, the question of circumstances and the a posteriori answer coincide.)