# 1NC

## Off

#### Restrictions are prohibitions on action

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Vote neg---

#### Neg ground---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

## Off

### 1NC Link

#### The affirmative reduces the problem of executive authority to temporally distinct conjunctions of war and peace time---legal restrictions inevitably fail because they ignore the permanence of war in politics

Mary L. Dudziak 10, chaired prof of history and pol-sci and USC, Law, War, and the History of Time, 98 Cal. L. Rev. 1669

When President George W. Bush told the American people in September 2001 that the nation was at war, he drew upon an iconic American narrative. The onset of war, in American legal and political thought, is more than a cata- lytic moment. It is the opening of an era: a wartime. Wartime is thought to be an era of altered governance. It is not simply a time period when troops are sent into battle. It is also a time when presidential power expands, when individual rights are often compromised. An altered rule of law in wartime is thought to be tolerable because wartimes come to an end, and with them a government's emergency powers. That, at least, is the way law and wartime are understood.

War is thought to break time into pieces. War often marks the beginning of an era, the end of another, as in antebellum, postbellum, and simply "postwar" (meaning after World War II). War has its own time. During "wartime," regular, normal time is thought to be suspended. Wartime is when time is out of order.

Ideas about the temporality of war are embedded in American legal thought. A conception of time is assumed and not examined, as if time were a natural phenomenon with an essential nature, providing determined shape to human action and thought. This understanding of time is in tension with the experience of war in the twentieth century. The problem of time, in essence, clouds an understanding of the problem of war.

Much attention has been paid in recent years to wartime as a state of exception,' but not to wartime as a form of time. For philosopher Giorgio Agamben, a state of exception "is a suspension of the juridical order itself," marking law's boundaries.2 Viewing war as an exception to normal life, however, leads us to ignore the longstanding persistence of war. If wartime is actually normal time, as this Essay suggests, rather than a state of exception, then law during war can be seen as the form of law we in fact practice, rather than a suspension of an idealized understanding of law.

In scholarship on law and war, time is seen as linear and episodic. There are two different kinds of time: wartime and peacetime. Historical progression consists of moving from one kind of time to another (from wartime to peacetime to wartime, etc.). Law is thought to vary depending on what time it is. The relationship between citizen and state, the scope of rights, and the extent of government power depend on whether it is wartime or peacetime. A central metaphor is the swinging pendulum-swinging from strong protection of rights and weaker government power to weaker protection of rights and stronger government power.3 Moving from one kind of time to the next is thought to swing the pendulum in a new direction.

This conceptualization is embedded in scholarship in law and legal history,4 it is written into judicial opinions,5 it is part of popular culture.6 Even works that seek to be revisionist aim largely for a different way to configure the pendulum, leaving the basic conceptual structure in place.7 But the conception of time that has been embedded in thinking about law and war is in tension with the practice of war in the twentieth century. This understanding of time no longer fits experience, but it has continued to shape our thinking.8

There are three significant impacts of viewing wartime as exceptional, or viewing history as divided into different zones of time based on peace and war. First, there is a policy problem: war-related time zones cause us to think that war-related laws and policies are temporary. Second, there is a historiography problem: time zones can cause scholars to fail to look for war-related impacts on American law outside of the time zone of war. Finally, the model of the swinging pendulum does not lend itself to a broader analysis of the relationship between war and rights over time, or to the way rights are impacted by war- related state-building, which tends to endure.9

This Essay explores the role of wartime in legal thought. The starting point is an examination of time itself. Scholarship on time shows that "time" does not have an essential nature.' 0 Instead, as sociologist Emile Durkheim and others have argued, our understanding of time is a product of social life. This helps us to see that "wartime," like other kinds of time, does not have an essential character, but is historically contingent.

The Essay then turns to the way wartime is characterized in scholarship on law and war, arguing that a particular understanding of war and time is a feature of this literature. The idea of wartime found in twentieth-century legal thought is in tension with the American experience with war. To examine this dynamic, the Essay takes up an iconic twentieth-century war, World War II, finding that this war is harder to place in time than is generally assumed, in part because the different legal endings to the war span over a period of seven years.

Next, the Essay considers the way that scholarship on the history of rights during war attempts to periodize World War II, and finds that the fuzziness in the war's timing repeats itself in scholarship on law and war. Scholars who believe themselves to be writing about the same wartime are not always studying the same span of years.

The difficulty in confining World War II in time is an illustration of a broader feature of the twentieth century: wartimes bleed into each other, and it is hard to find peace on the twentieth-century American timeline. Meanwhile, although the Pearl Harbor attack was on the Territory of Hawaii, all twentieth- century military engagement occurred outside the borders of American states. Because of this, a feature of American military strategy has been to engage of the American people in a war at some times," and at other times to insulate them from war. Isolation from war in the late twentieth century, through the use of limited war and advanced technology, enabled the nation to participate in war without most citizens perceiving themselves to be in a wartime.12

The Essay closes with a discussion of the way the tension between war's seamlessness and our conception of temporally distinct wartimes surfaces in contemporary cases relating to Guantinamo detainees. In these cases, Supreme Court Justices first attempted to fit the post-September 11 era into the traditional and confined understanding of wartime. But ultimately, anxiety about war's temporality informed Justice Kennedy's argument for judicial review in Boumediene v. Bush.13

My aim in this Essay is to critique the way that the concept of wartime affects thinking about war and rights, but not to argue that war itself has no impact. One reason that wartime has so much power as a way of framing history is that the outbreak of war is often experienced as ushering in a new era, particularly when war follows a dramatic event like Pearl Harbor.14 After that attack, for example, Supreme Court Justice Felix Frankfurter said to his law clerk: "Everything has changed, and I am going to war."15 The onset of war is seen, however, not as a discrete event, but as the beginning of a particular era that has temporal boundaries on both sides. I do not wish to question the power of these catalytic moments, but rather to call attention to the way they bring into being a set of assumptions about their endings, because they are seen as the onset of a temporally confined war. Pearl Harbor, for example, was thought to launch the United States into an era-World War II-that would, by definition, come to an end. Unpacking war's temporality can be a path toward a more satisfactory understanding of the ongoing relationship between war and American law and politics.

#### Security renders lawfare a tool of violent biopolitical governance---the result is endless violence

John Morrissey 11, Lecturer in Political and Cultural Geography, National University of Ireland, Galway; has held visiting research fellowships at University College Cork, City University of New York, Virginia Tech and the University of Cambridge. Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror, Geopolitics, Volume 16, Issue 2, 2011

Security, not liberty: the ‘permanent emergency’ of the security society

The US military’s evident disdain for international law, indifference to the pain of ‘Others’ and endless justifying of its actions via the language of ‘emergency’ have prompted various authors to reflect on Giorgio Agamben’s work, in particular, on bare life and the state of exception in accounting for the functioning of US sovereign power in the contemporary world.111 Claudio Minca, for example, has used Agamben to attempt to lay bare US military power in the spaces of exception of the global war on terror; for Minca, “it is precisely the absence of a theory of space able to inscribe the spatialisation of exception that allows, today, such an enormous, unthinkable range of action to sovereign decision”.112 This critique speaks especially to the excessive sovereign violence of our times, all perpetrated in the name of a global war on terror.113 Minca’s argument is that geography as a discipline has failed to geo-graph and theorise the spatialization of the ‘pure’ sovereign violence of legitimated geopolitical action overseas. He uses the notion of the camp to outline the spatial manifestation and endgame of a new global biopolitical ‘nomos’ that has unprecedented power to except bare life.114

In the ‘biopolitical nomos’ of camps and prisons in the Middle East and elsewhere, managing detainees is an important element of the US military project. As CENTCOM Commander General John Abizaid made clear to the Senate Armed Services Committee in 2006, “an essential part of our combat operations in both Iraq and Afghanistan entails the need to detain enemy combatants and terrorists”.115 However, it is a mistake to characterize as ‘exceptional’ the US military’s broader biopolitical project in the war on terror. Both Minca’s and Agamben’s emphasis on the notion of ‘exception’ is most convincing when elucidating how the US military has dealt with the ‘threat’ of enemy combatants, rather than how it has planned for, legally securitized and enacted, its ‘own’ aggression against them. It does not account for the proactive juridical warfare of the US military in its forward deployment throughout the globe, which rigorously secures classified SOFAs with host nations and protects its armed personnel from transfer to the International Criminal Court. Far from designating a ‘space of exception’, the US does this to establish normative parameters in its exercise of legally sanctioned military violence and to maximize its ‘operational capacities of securitization’.

A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially ‘exceptional’ in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in ‘spaces of exceptions’ or are they, in fact, simply contemporary examples of Foucault’s ‘spaces of security’ that are neither exceptional nor indeed a departure from, or perversion of, liberal democracy? As Mark Neocleous so aptly puts it, has the “liberal project of ‘liberty’” not always been, in fact, a “project of security”?116 This ‘project of security’ has long invoked a powerful political dispositif of ‘executive powers’, typically registered as ‘emergency powers’, but, as Neocleous makes clear, of the permanent kind.117 For Neocleous, the pursuit of ‘security’ – and more specifically ‘capitalist security’ – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the ‘rule of law’, but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the ultimate safeguard of democracy is simply false – a key point affirmed by considering the US military’s extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who “carries the briefcase of rules and restrictions” has long been replaced by the lawyer who “participate[s] in discussions of strategy and tactics”.118

The US military’s liberal lawfare reveals how the rule of law is simply another securitization tactic in liberalism’s ‘pursuit of security’; a pursuit that paradoxically eliminates fundamental rights and freedoms in the ‘name of security’.119 This is a ‘liberalism’ defined by what Michael Dillon and Julian Reid see as a commitment to waging ‘biopolitical war’ for the securitization of life – ‘killing to make live’.120 And for Mark Neocleous, (neo)liberalism’s fetishization of ‘security’ – as both a discourse and a technique of government – has resulted in a world defined by anti-democratic technologies of power.121 In the case of the US military’s forward deployment on the frontiers of the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been made possible by constant reference to a neoliberal ‘project of security’ registered in a language of ‘endless emergency’ to ‘secure’ the geopolitical and geoeconomic goals of US foreign policy.122 The US military’s continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a ‘permanent emergency’,123 the new ‘normal’ in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic ‘need’ to securitize volatility and threat.

Conclusion: enabling biopolitical power in the age of securitization

“Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force” – David Kennedy, Of War and Law 124

Can a focus on lawfare and biopolitics help us to critique our contemporary moment’s proliferation of practices of securitization – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of US military’s war on terror, I have argued above that it can. If, as David Kennedy points out, the “emergence of a global economic and commercial order has amplified the role of background legal regulations as the strategic terrain for transnational activities of all sorts”, this also includes, of course, ‘warfare’; and for some time, the US military has recognized the “opportunities for creative strategy” made possible by proactively waging lawfare beyond the battlefield.125 As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a “lawmaking character”.126 And it is this ‘lawmaking character’ that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. US lawfare focuses “the attention of the world on this or that excess” whilst simultaneously arming “the most heinous human suffering in legal privilege”, redefining horrific violence as “collateral damage, self-defense, proportionality, or necessity”.127 It involves a mobilization of the law that is precisely channelled towards “evasion”, securing 23 classified Status of Forces Agreements and “offering at once the experience of safe ethical distance and careful pragmatic assessment, while parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war”.128

Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its ‘operational capacities’ in its multiples ‘spaces of security’ across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American ‘leasehold empire’. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and legally condition the ‘milieux’ of military commanders; and in so doing they render operational the pivotal spaces of overseas intervention of contemporary US national security conceived in terms of ‘global governmentality’.129 In the US global war on terror, it is lawfare that facilitates what Foucault calls the “biopolitics of security” – when life itself becomes the “object of security”.130 For the US military, this involves the eliminating of threats to ‘life’, the creating of operational capabilities to ‘make live’ and the anticipating and management of life’s uncertain ‘future’.

Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of ‘security’, ‘precarity’ and ‘risk’ function centrally in the governing dispositifs of our contemporary world.131 In a society of (in)security, such discourses have a profound power to invoke danger as “requiring extraordinary action”.132 In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where ‘risk’, it seems, has become permanently binded to ‘securitization’. As Claudia Aradau and Rens Van Munster point out, the “perspective of risk management” seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.133 US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing 24 of international law, and the securing of SOFAs – are vital security dispositifs of a broader ‘risk- securitization’ strategy involving the deployment of liberal technologies of biopower to “manage dangerous irruptions in the future”.134 It may well be fought beyond the battlefield in “a war of the pentagon rather than a war of the spear”,135 but it is lawfare that ultimately enables the ‘toxic combination’ of US geopolitics and biopolitics defining the current age of securitization.

#### The impact is massive structural violence as a majority of the globe is reduced to bare life---the war on terror represents an extension of necropolitical impulse of colonialism---investigating the historical constitution of war via asymmetrical power relations is necessary to solve endless violence

Heike Harting 6, prof at University of Montreal, Global Civil War and Post-colonial Studies, globalautonomy.ca/global1/servlet/Xml2pdf?fn=RA\_Harting\_GlobalCivilWar

¶ The Necropolitics of Global Civil War¶ As with other civil wars, global civil war affects society as a whole. It "tends," as Hardt and Negri argue, "towards the absolute" (2004, 18) in that it polices civil society through elaborate security and surveillance systems, negates the rule of law, militarizes quotidian space, diminishes civil rights to the degree in which it increases torture, illegal incarceration, disappearances, and emergency regulations, and fosters a culture of fear, intolerance, and violent discrimination. Hardt and Negri, therefore, rightly argue that war itself has become "a permanent social relation" and thereby the "primary organizing principle of society, and politics merely one of its means or guises" (ibid., 12). What Hardt and Negri suggest is new about today's global civil war is its biopolitical agenda. "War," they write, "has become a regime of biopower, that is, a form of rule aimed not only at controlling the population but producing and reproducing all aspects of social life" (ibid., 13). For example, the biopolitics of war entails the production of particular economic and cultural subjectivities, "creating new hearts and minds through the construction of new circuits of communication, new forms of social collaboration, and new modes of interaction" (ibid., 81). The ambiguity of Hardt and Negri's notion of biopower subtly resides in their adaptation of the language of social and political revolution, for it seems to be the regime of biopower, rather than the multitude, that absorbs and transvalues the revolutionary, that is, anti-colonial, spirit inscribed in the rhetoric of "new hearts and minds." At the same time, they argue, that a biopolitical definition of war "changes war's entire legal framework" (ibid., 21-22), for "whereas war previously was regulated through legal structures, war has become regulating by constructing and imposing its own legal framework" (ibid. 22). If none of this, at least in my mind, is marked by a particular originality of thought, then this may have to do with Hardt and Negri's reluctance to address the historical continuities between earlier wars of decolonization and contemporary global wars, the legacies of imperialism, and the imperative of race in orchestrating imperial, neo-colonial, and today's global civil wars. ¶ In fact, while biopolitical global warfare might be a new phenomenon on the sovereign territory of the United States of America, specifically after 11 September 2001, it is hardly news to "people in the former colonies, who," as Crystal Bartolovich points out, "have long lived ???at the 'crossroads' of global forces" (2000, 136), violence, and wars. For example, in Sri Lanka global civil war has been a permanent, everyday reality since the country's Sinhala Only Movement in 1956, and become manifest in the normalization of racialized violence as a means of politics since President Jayawardene's election campaign for a referendum in 1982, which led to the state-endorsed anti-Tamil pogrom in 1983. Similarly, according to Achille Mbembe, biopolitical warfare was intrinsic to the European imperial project in "Africa," where "war machines emerged" as early as "the last quarter of the twentieth century" (2003, 33). In other words, although Hardt and Negri argue convincingly that it is the ubiquity of global war that restructures social relationships on the global and local level, their concept tends to dehistoricize different genealogies and effects of global civil war. Indeed, not only do Hardt and Negri refrain from reading wars of decolonization as central to the construction of what David Harvey sees as the uneven "spatial exchange relations" (2003, 31) necessary for the expansion of capital accumulation and of which global war is an intrinsic feature, but they also dissociate global civil wars from the nation-state's still thriving ability to implement and exercise rigorous regimes of violence and surveillance. As for the term's epistemological formation, global civil war has been sanitized and no longer evokes the conventional association of civil war with "insurrection and resistance" (Agamben 2005, 2). Instead, it has become the effect of a diffuse new sovereignty (i.e., Hardt and Negri's Empire), a sovereignty that no longer decides over but has itself become a disembodied, that is, denationalized and normalized, state of exception. Yet, to talk about the disembodiment of global war not only reinforces media-supported ideologies of high-tech precision wars without casualties, but it also represses narratives about the ways in which the modi operandi of global war come to be embodied differently in different sites of war.¶ In her short story "Man Without a Mask" (1995), the Sri Lankan writer Jean Arasanayagam describes the global dimensions of a war that is usually considered an ethnic civil war restricted to internally competing claims to territorial, cultural, and national sovereignty between the country's Sinhalese and Tamil population. Told by an elite mercenary who clandestinely works for the ruling members of the government and leads a group of highly trained assassins, the story follows the thoughts of its narrator and contemplates the politicization of violence and death. As a mercenary and possibly an ex-SAS (British Special Air Service) veteran the Sri Lankan Government hired after the failure of the Indo-Lankan Accord, the narrator signifies the "privatization of [Sri Lanka's] war" (Tambiah 1996, 6) and, thus, the reign of a global free market economy through which the state hands over its institutions and services to private corporations, including its army, and profits from the unrestricted global and illegal trade in war technologies. Like a craftsman, the mercenary finds satisfaction in the precision and methodical cleanliness of his work, in being, as he says, "a hunter. Not a predator" in his ability to leave "morality" out of "this business" (Arasanayagam 1995, 98). He is an extreme and perverted version of what Martin Shaw describes as the " 'soldier-scholar,'???the archetype of the new [global] officer" (1999, 60). As a self-proclaimed "scholar or scribe" (ibid., 100), the mercenary plots maps of death. Shortly before he reaches his victim, a politician who underestimated the political ambition of his enemy, he comments that bullet holes in a human body comprise a new kind of language: "The machine gun splutters. The body is pitted, pricked out with an indecipherable message. They are the braille marks of the new fictions. People are still so slow to comprehend their meaning" (ibid., 100). These new maps or fictions of global war, I suggest, describe what Etienne Balibar calls ultra-objective and ultra-subjective violence and characterize how global civil war both generates bare life and manages and instrumentalizes death.¶ According to Balibar, ultra-objective violence suggests the systematic "naturalization of asymmetrical relations of power" (2001, 27) brought about, for instance, by the Sri Lankan government's prolonged abuse of the Prevention of Terrorism Act, which, in the past plunged the country into a permanent state of emergency, facilitated the random arrest of and almost absolute rule over citizens, and thus created a culture of fear and a reversal of moral and social values. As the story clarifies, under conditions of systematic or ultra-objective violence, "corruption" becomes "virtue" and "the most vile" man wears the mask of the sage and "innocent householder" (Arasanayagam 1995, 102). In this milieu, the mercenary has no need for a mask, because he bears a face of ordinary violence that is "perfectly safe" (ibid., 102) in a society structured by habitual and systemic violence. But the logic of the "new fictions" of political violence is also ultra-subjective because it is "intentional" and has a "determinate goal" (Balibar 2001, 25), namely the making and elimination of what Balibar calls "disposable people" in order to generate and maintain a profitable global economy of violence. The logic of ultra-subjective violence presents itself through the fictions of ethnicity and identity as they are advanced and instrumentalized in the name of national sovereignty. The mercenary perfectly symbolizes what Balibar means when he writes that "we have entered a world of the banality of objective cruelty" (ibid.). For if the fictions of global violence are scratched into the tortured bodies of war victims, the mercenary's detached behavior dramatizes a "will to 'de-corporation'," that is, to force disaffiliation from the other and from oneself ??? not just from belonging to the community and the political unity, but from the human condition" (ibid.). In other words, while global civil war becomes embodied in those whom it negates as social beings and thereby reduces to mere "flesh," it remains a disembodied enterprise for those who manage and orchestrate the politics of death of global war. It is through the dialectics of the embodiment and disembodiment of global violence that the dehumanization of the majority of the globe's population takes on a normative and naturalized state of existence.¶ Arasanayagam's short story also casts light on the limitations of Hardt and Negri's understanding of the biopolitics of global civil war, for the latter can account neither for the new fictions of violence in former colonial spaces nor for what Mbembe calls the "necropolitics" (2003, 11) of late modernity. Mbembe's term refers to his analysis of global warfare as the continuation of earlier and the development of new "forms of subjugation of life to the power of death" and its attendant reconfiguration of the "the relationship between resistance, sacrifice, and terror" (2003, 39). 4 Despite the many theoretical intersections of Hardt and Negri's and Mbembe's work, Mbembe's notion of necropolitics sees contemporary warfare as a species of such earlier "topographies of cruelty" (2003, 40) as the plantation system and the colony. Thus, in contrast to Hardt and Negri, Mbembe argues that the ways in which global violence and warfare produce subjectivities cannot be dissociated from the ways in which race serves as a means of both deciding over life and death and of legitimizing and making killing without impunity a customary practice of imperial population control. If global civil war is a continuation of imperial forms of warfare, it must rely on strategies of embodiment, that is, of politicizing and racializing the colonized or now "disposable" body for purposes of self-legitimization, specifically when taking decisions over the value of human life. After all, on a global level, race propels the ideological dynamics of ethnic and global civil war, while, on the local plane, it serves to orchestrate the brutalization and polarization of the domestic population, reinforcing and enacting patterns of racist exclusion and violence on the non-white body. In contrast to Hardt and Negri, then, Mbembe invites us to articulate imperial genealogies for the necropolitics of today's global civil wars.¶ In other words, if imperialism was a form of perpetual low-intensity global war, the biopolitics of imperialism aimed at creating different forms of subjectivization. For example, while in India, the imperial administration sought to create a functional class of native informants, in Africa and the Caribbean, the British Empire created the figure of homo sacer. The latter, as Agamben argues, refers to the one who can be killed but not sacrificed. Homo sacer, Agamben clarifies, constitutes "the originary exception in which human life is included in the political order in being exposed to an unconditional capacity to be killed" (1998, 85). Thus, the native is included in the imperial order only through her exclusion, while, simultaneously her humanity is stripped of social life and transformed into bare life, ready to be commodified on slavery's auction blocs and foreclosed from the dominant imperial psyche. Agamben's understanding of bare life derives from his reading of the Nazi death camps as the paradigmatic space of modernity in which the distinction between "fact and law" (ibid., 171), "outside and inside, exception and rule, licit and illicit" (ibid., 170) dissolves and in which biopolitics takes the place of politics and "homo sacer" replaces the "citizen" (ibid., 171). While the notion of bare life is instrumental for theorizing biopolitics and the normalization and legalization of state violence under the pretense of, for example, protective arrests and preemptive strikes, it also suggests that the human body can be read as pure matter or in empirical terms. What goes unnoticed is to what extent the production of bare life depends on ideologies of race, that is, on the racialization of bodies, citizenship, and the concept of the human. For instance, under imperial rule, bare life is subjected to death and its politics in ways slightly different from those suggested by Agamben. More specifically, the killing of natives or slaves as bare life ??? then and today, as Rwanda's race-based genocide clarifies ??? not only configures human life in terms of its "capacity to be killed" (Agamben 1998, 114), that is as homicide and genocide outside of law and accountability, but also measures the value of human life on grounds of race. The making of bare life is a racialized and racializing process rooted within the necropolitics of colonialism. For, killing the native or slave presupposes the remaking of the human into bare life both through ideologies of pseudo-scientific racism and by subjecting them to what Orlando Patterson calls the "social death" (1982, 38) of the slave, that is, to a symbolic death of the human as a communal and social being that precedes physical death. 5 Thus, imperialism's necropolitics involves the making of disposable lives through practices of zombification and the "redefinition of death" itself (Agamben 1998, 161). In this sense, imperialism not only facilitated the extreme forms of racialized violence characteristic of global civil war, but it also helped create the conditions for making bare life the acceptable state of being for the present majority of the globe's population.¶ Not unlike Jean Arasanayagam's short story, Mbembe's account of the Rwandan genocide and the Palestinian intifada suggests that the new global subjectivities are not so much the networked multitude Hardt and Negri imagine. Rather, emerging from the "new fictions" of global war, they are the suicide bomber, the mercenary, the martyr, the child soldier, the victim of mass rape, the refugee, the woman dispossessed of her family and livelihood, the mutilated civilian, and the skeleton of the disappeared and murdered victims of global civil war. What these subjectivities witness is that, on one hand, living under conditions of global civil war means to live in "permanent???pain" (Mbembe 2003, 39) and, on the other hand, they refer back to the dialectical mechanisms of colonial violence. For under the Manichaean pressures of colonialism, colonial violence always inaugurates a double process of subjection and subject formation. Frantz Fanon famously argues that anti-colonial violence operates historically on both collective and individual subject formation. For, on the one hand, "the native discovers reality [colonial alienation] and transforms it into the pattern of this customs, into the practice of violence and into his plan for freedom" (1963, 58), and on the other, a violent "war of liberation" instills in the individual a sense of "a collective history" (ibid., 93). Thus, as Robert Young suggests, anti-colonial violence "functions as a kind of psychotherapy of the oppressed" (2001, 295). Yet, it seems that read through the necropolitics of imperialism, global civil warfare no longer aims at the "pacification" of the colonial subject or the "degradation" of the "postcolonial subject" (ibid., 293) but, as I suggested earlier, at the complete abolishment of the human per se. We may therefore say that if global civil war produces new subjectivities, it does so through, what I have referred to as a process of zombification. Understood as sustained acts of negation, zombification ??? a term that harks back to Fanon ??? refers to a dialectical process of the embodiment and disembodiment of global war. The former refers to the exercise of ultra-objective violence ??? that is, the systematic "naturalization of asymmetrical relations of power" (Balibar 2001, 27) ??? in order to regulate, racialize, and extinguish human life at will, while the latter suggests the production of narratives of "de-corporation" (ibid., 25) and detachment by those who manage and administrate global civil war. The notion of zombification, however, connotes not only the exercise of, but also the exorcism of, the ways in which global war is scripted on and through the racialized body. Thus, a post-colonial understanding of global war needs to think through the necropolitics of war, including the uneven value historically and presently assigned to human life and the politicization of death. The latter issue will be addressed in the last section of this paper. The next section examines the cultural production and perpetuation of normative narratives of global warfare.¶ The Rhetoric of the Archaic and Michael Ondaatje's "Anil's Ghost"¶ Published shortly after Sri Lanka's civil war became entangled with the global politics of the South and the rise of the Sri Lankan nation-state to one of the war's principal and most corrupt actors, Ondaatje's novel Anil's Ghost dramatizes both the transformation of the country's civil war into a permanent state of exception and the failure of global non-governmental organizations (NGOs) to intervene in the war's rising human rights abuses and violent excesses. While the novel presents an extraordinary search for social justice through narrative and seeks to understand the operative modes of violence beyond their historical and social configurations, it also tends to sublimate and aestheticize violence by treating it as a normative element of human and, indeed, planetary life. My purpose here is to indicate that the novel's own project of dramatizing the complicity between religious and secular, anti-colonial and nationalist agents of war, and civilians and global actors (i.e., NGOs) remains compromised by the novel's aesthetic investment in a particular rhetoric of the archaic. The latter, I argue, unwittingly coincides with normative narratives of global war and facilitates the reader's detachment from the ways in which the Global North has reconstructed global life as a permanent state of exception.¶ Ondaatje's novel (2000) opens with an Author's Note that locates the narrative at a time when "the antigovernment insurgents in the south and the separatist guerrillas in the north???had declared war on the government" and "legal and illegal government squads were???sent out to hunt down" both groups. In this instance, the Hobbesian rhetoric of a "war of all against all" is more than a clich??. In fact, it is symptomatic of the novel's ambiguous critique of the role of the Sri Lankan nation-state and its elaborate, modernist discourse of violence. The Note foreshadows what the narrator later repeats on several occasions, namely that Sri Lanka's war is a war fought "for the purpose of war" (ibid., 98) and for which "[t]here is no hope of affixing blame" (ibid., 17). In short, the "reason for war was war" (ibid., 43). At first glance, the narrative's emphasis on the war's self-perpetuating dynamics implies a Hobbesian understanding of violence as the natural state of human existence. At the same time, it translates the actual politics of Sri Lanka's war into the Deleuzean idiom of the "war machine." For, according to Deleuze and Guattari, armed conflict functions outside the control and accountability of the "state apparatus???prior to its laws" (1987, 352), and beyond its initial causes. Although such an interpretation of Sri Lanka's war reflects what the political scientist Jayadeva Uyangoda calls the "intractability of the Sri Lankan crisis" (1999, 158), its political and ethical stakes outweigh its gains. 6¶ To begin with, the novel's leitmotif of "perpetual war" situates Sri Lanka's conflict within a general context of global war, because, as the narrator reports, it is fought with "modern weaponry," supported by "backers on the sidelines in safe countries," and "sponsored by gun-and drug-runners" (Ondaajte 2000, 43). In this scenario, the rule of law has deteriorated into "a belief in???revenge" (ibid., 56), and the state is either absent or part of the country's all-consuming anarchy of violence. This absence suggests that the state no longer functions, in Max Weber's famous words, as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory" (2002, 13). It is of course possible to argue that the novel's critique of the Sri Lankan nation-state lies in its absence. It seems to me, however, that the narrative's tendency to locate the dynamics of Sri Lanka's war outside the state and within a post-national vision of a new global order generates a normative narrative of global war. On the one hand, it resonates with the popular ??? though misleading ??? notion that the "appearance of 'failed states'," as Samuel Huntington argues in his controversial study The Clash of Civilizations, intensifies "tribal, ethnic, and religious conflict" and thus "contributes to [the] image of a world in anarchy" (1996, 35). On the other, situating Sri Lanka's war outside the institutions of the state re-inscribes a Hobbesian notion of violence that helps legitimize and cultivate structural violence as a permissive way of conducting politics. Such a reading of violence, however, overlooks that in a global context violence has become "profoundly anti-Hobbesian" (Balibar 2001, xi). Balibar usefully suggests that the twentieth century history of extreme violence has made it impossible to regard violence as "a structural condition that precedes institutions." Instead, he maintains, "we have had to accept???that extreme violence is not post-historical but actually post-institutional." It "arises from institutions as much as it arises against them" (ibid., xi). Thus, in such popular post-colonial narratives of war as Anil's Ghost, the normalization of violence figures as a forgetting of the institutional entrenchment and historical use of violence as a state-sanctioned political practice.¶ If Ondaatje's novel presents Sri Lanka's war as an "inherently violent" event (Das 1998), it is also an event narrated through the symbolism and logic of archaic primitivism. For example, in the novel's central passage on the nature of human violence, the narrator observes, "The most precisely recorded moments of history lay adjacent to the extreme actions of nature or civilisation ???Tectonic slips and brutal human violence provided random time-capsules of unhistorical lives???A dog in Pompeii. A gardener in Hiroshima" (Ondaatje 2002, 55). The symbolic leveling of the arbitrariness of primordial chaos and the apparently ahistorical anarchism of violence create a rhetoric of the archaic that is characteristic, as Nancy argues, of "anything that is properly to be called war" (2000, 128). He convincingly argues that archaic symbolism "indicates that [war] escapes from being part of 'history' understood as the progress of a linear/or cumulative time" and can be rearticulated as no more than a "regrettable" remnant of an earlier age (ibid., 128). In that, Nancy's observation coincides with Hardt and Negri's that the "war on terror" employs a medievalist rhetoric of just and unjust wars that moralizes rather than legitimizes the use of global violence by putting it outside the realm of reason and critique. In Nancy's observation, however, two things are at stake. First, what initially appears to be a postmodern critique of the grand narratives of history in fact demonstrates that a non-linear account of history may lend itself to the transformation of extreme violence into exceptional events. In this way violence is normalized as a transhistorical category that fails to address the unequal political and economic relations of power, which lie at the heart of global wars.¶ Second, Nancy rightly warns us against treating war as an archaic relic that is "tendentiously effaced in the progress and project of a global humanity" (2000, 128). For not only does war return in the process of negotiating sovereignty on a global and local plane, but the representation of war in terms of archaic images also repeats a primordialist explanation of what are structurally new wars. As theorists such as Appadurai and Kaldor have argued, the primordialist hypothesis of global wars merely reinforces those mass mediated images of global violence that dramatize ethnic wars as pre-modern, tribalist forms of strife. Huntington's notion of civilization or "fault-line" wars as communal conflicts born out of the break-up of earlier political formations, demographic changes, and the collision of mutually exclusive religions and civilizations presents the most prominent and politically influential version of a primordialist and bipolar conceptualization of global war. In contrast to Huntington's approach, however, the narrative of Anil's Ghost contends that all forms of violence "have come into their comparison" (Ondaatje 2000, 203). Notwithstanding its universalizing impetus, the novel thus insists on the impossibility to think the nation and a new global order outside the technologies of violence and modernity. Indeed, in the novel's narrative it is the suffering of all war victims that "has come into their comparison" and suggests that the new wars breed a culture of violence that shapes everyone's life yet for which no one appears to be accountable. On the one hand, then, the novel's self-critical humanitarian project seeks to initiate a communal and individual process of mourning by naming, and therefore accounting for, in Anil's words, "the unhistorical dead" (ibid, 56). On the other hand, read as its critical investment in the war's politics of complicity, the novel's humanitarian endeavor is countered by the narrator's tendency to articulate violence in archaic and anarchistic terms. For, to revert to the symbolic language of "primitivism and anarchy" and "to treat [the new wars] as natural disasters," as Kaldor observes (2001, 113), designates a common way of dealing with them. Thus the rhetoric of the archaic not merely dehistoricizes violence but contributes to the making of a normative and popular imaginary through which to make global wars thinkable and comprehensible. Thus, their violent excesses appear to be rooted in primordialist constructions of the failed post-colonial nation-state rather than a phenomenon with deep-seated roots in the global histories of the present. Such a normative imaginary of global war is produced for the Global North so as to dehistoricize its own position in the various colonial processes of nation formation and global economic restructuring of the Global South. In this way, as Ondaatje's novel equally demonstrates, the Global North can detach itself from the Global South and create the kind of historical and cultural distance needed to accept ultra-objective violence as a normative state of existence.¶ Conceptualizing war as a phenomenon of criminal and anarchistic violence, however, may do more than merely conform to the popular imagination about the chaotic and untamable nature of contemporary warfare. Indeed, anarchistic notions of violence tend to compress the grand narratives and petite recits of history into a total, singular present of perpetual uncertainty, fear, and political confusion and generate what the post-colonial anthropologist David Scott sees as Sri Lanka's "dehistoricized" history. Given the important role the claiming of ancient Sinhalese and Hindu history played in the violent identity politics that drive Sri Lanka's war, Scott suggests that devaluing or dehistoricizing history as a founding category of Sri Lanka's narrative of the nation breaks the presumably "natural???link between past identities and the legitimacy of present political claims" (1999, 103). This strategy seems useful because it uncouples Sri Lanka's colonially shaped and glorified Sinhalese past from its present claims to political power. We need to note, however, that, according to Scott, dehistoricizing the past does not suggest writing from a historical vacuum. Rather, it refers to a process of denaturalizing and, thus, de-legitimizing the normative narratives of ethnicized and racialized narratives of national identity.¶ Anil's Ghost engages in this process of "dehistoricizing" by foregrounding the fictitious and fragmented, the elusive and ephemeral character of history. Indeed, as the historian Antoinette Burton suggests, the novel offers "a reflection on the continued possibility of History itself as an exclusively western epistemological form" (2003, 40). The latter clearly finds expression in what Sarath's brother, Gamini, condemns as "the last two hundred years of Western political writing" (Ondaatje 2000, 285). Steeped in the imperial project of the West, such writing is facilitated by and serves to erase the figure of the non-European cultural Other in order to produce and maintain what Jacques Derrida famously called the "white mythology" (1982, 207) of Western metaphysics. The novel usefully extends its reading of violence into a related critique of knowledge production, so that the latter becomes legible as being complicit in the production of perpetual violence and war. This critique is perhaps most articulated through the character of Palipana, Sarath's teacher and Sri Lanka's formerly renowned but now fallen anthropologist. Once an agent of Sri Lanka's anti-colonial liberation movement, Palipana represents the generation of cultural nationalist who sought history and national identity in an essentially Sinhalese culture and natural environment. Rather than employing empirical and colonial methods of knowledge production and historiography, Palipana had left the path of scientific objectivity, tinkered with translations of historical texts, and "approached runes???with the pragmatic awareness of locally inherited skills" (Ondaatje 2000, 82) until "the unprovable truth emerged" (ibid., 83). Now, years after his fall from scientific grace, Palipana lives the life of an ascetic, following the "strict principles of" a "sixth-century sect of monks" (ibid., 84). To him, history and nature have become one, for "all history was filled with sunlight, every hollow was filled with rain" (ibid., 84). Yet, Ondaatje's construction of Palipana and his account of the eye-painting ritual of a Buddha statue ??? a ritual that assumes a central place in the novel's cosmopolitan vision of artisanship as a practice of cultural and religious syncretism in the service of post-conflict community building ??? are themselves built on a number of historical texts listed in the novel's "Acknowledgment" section. As Antoinette Burton astutely observes, "the orientalism of some of the texts on Ondaatje's list is astonishing, a phenomenon which suggests the ongoing suppleness of 'history' as an instrument of political critique and ideological intervention" (2003, 50). Rather than effectively "dehistorizing" the character of Palipana, then, Ondaatje bases this character and the eye-painting ceremony on a central Sri Lankan modernist text, Ananada K. Coomaraswamy's Mediaeval Sinhalese Art (1908/1956).¶ Cont ¶ For Hardt and Negri, then, the state of exception functions as the universal condition and legitimization of global civil war, while positioning the United States as a global power, which transforms war "into the primary organizing principle of society" (2004, 12). They rightly observe that the state of exception blurs the boundaries between peace and war, violence and mediation. Yet, curiously enough, Hardt and Negri's understanding of the state of exception largely emphasizes the concept's regulatory and pragmatic politics, so that the United States emerges as a sovereign power on grounds of its ability to decide on the state of exception. By exempting itself from international law and courts of law, protecting its military from being subjected to international control, allowing preemptive strikes, and engaging in torture and illegal detention (ibid., 8), the United States instrumentalizes and maintains war as a state of exception in the name of global security and thus seeks to consolidate its hegemonic role within Empire. Although Hardt and Negri openly disagree with Agamben's reading of the state of exception as defining "power itself as a 'monopoly of violence' " (2004, 364), it seems to me that Agamben's theory of the state of exception, as put forward in Homo Sacer rather than in States of Exception, might be usefully read alongside Hardt and Negri's crucial claim that global civil war as well as resistance movements depend on the "production of subjectivity" through immaterial labour (2000, 66). What this argument overlooks is that, according to Agamben, the state of exception constitutes an abject space or "a zone of indistinction between outside and inside, exclusion and inclusion" (1998, 181), where subjectivity enters a political and legal order solely on grounds of its exclusion. Moreover, the sovereign ??? albeit a nation, sovereign power, or global network of power ??? can only transform the rule of law into the force of law by suspending the legal system from a position that is simultaneously inside and outside the law. Through these mechanisms of exclusion and contradiction, subjectivity is not so much created as it is deprived of its social and political relationships. Thus the "originary activity" of global civil war is the violent conflation of political and social relationship and thereby the "production of bare life" (ibid., 83), of life that need not be accounted for, as is the case with the civilian casualties of the US-led war against Iraq. The state of exception, however, also figures as a prominent concept in post-colonial theory, for it raises questions not only about the ways in which we configure the human but also how we understand imperial or global war. ¶ In 1940, Benjamin famously wrote, "the tradition of the oppressed teaches us that the 'state of emergency' in which we live is not the exception but the rule. We must attain to a conception of history that is in keeping with this insight" (1968, 257). Benjamin's statement, as Homi Bhabha reminds us half a century later in his essay "Interrogating Identity," can be usefully advanced for a critical analysis of the dialectical ??? if not revolutionary ??? relationship between oppression, violence, and anti-colonial historiography. Indeed, "the state of emergency," as Bhabha says, "is also always a state of emergence" (1994, 41). Read in the context of today's global state of exception, namely the recurrence and intensification of ethnic civil wars across the globe and the coincidence of democratic and totalitarian forms of political rule, Bhabha's statement entails a number of risks and suggestions for a post-colonial historiography of global civil war.¶ First, Bhabha's notion of emergency/emergence reflects his critical reading of Fanon's vision of national identity and thus reconsiders the state of emergency as a possible site of "the occult instability where the people dwell" (Fanon 1963, 227) and give birth to popular movements of national liberation. In this context, the state of exception might be understood as both constitutive to the alienation that is intrinsic to liberation movements and instrumental for a radical euphoria and excessive hope that create and spectralize the post-colonial nation-state as a deferred promise of decolonization. It is through this perspective that we can critically evaluate Hardt and Negri's endorsement of what they call "democratic violence" (2004, 344). This kind of violence, they argue, belongs to the multitude. It is neither creative nor revolutionary but used on political rather than moral grounds. When organized horizontally, according to democratic principles of decision making, democratic violence serves as a means of defending "the accomplishments" of "political and social transformation" (ibid., 344). Notwithstanding the concept's romantic and utopian inflections, democratic violence also derives from Hardt and Negri's earlier argument that "the great wars of liberation are (or should be) oriented ultimately toward a 'war against war,' that is, an active effort to destroy the regime of violence that perpetuates our state of war and supports the systems of inequality and oppression." This, they conclude, is "a condition necessary for realizing the democracy of the multitude" (ibid., 67). In one quick stroke, Hardt and Negri move anti-colonial liberation wars into their post-national paradigm of Empire and divest them of their cultural and historical particularities. Moreover, translating explicitly national liberation movements into a universalizing narrative of global pacifism precludes a critique of violence within its particular historical and philosophical formation. In contrast, a post-colonial analysis of global war must tease out the intersections between the ways in which racialized violence constitutes colonial and post-colonial processes of nation formation and helps construct an absolute enemy through which to legitimize global war and to abdicate responsibility for the dehumanizing effects of global economic restructuring.¶ Second, while Bhabha's pun is symptomatic of the resisting properties that he sees as operative in the various practices of colonial ambiguity, it also, despite Benjamin's opinion, draws attention to the possibility that oppression alters the linear flow of Western history and challenges "the transparency of social reality, as a pre-given image of human knowledge" (Bhabha 1994, 41). Here, Bhabha rightfully asks to what extent do states of emergency or acts of extreme violence constitute a historical rupture and, more importantly, call into question the nature of the human subject. It is at this point that a post-colonial reading of the state of exception fruitfully coincides with Agamben's notion of exception. For in both cases, the focus of inquiry is the construction of disposable life through the logic of necropower and the collapse of social and political relationships that enable the exercise of particularly racialized forms of violence, including torture and disappearances.¶ Third, Bhabha's notion of the double movement of emergency and emergence envisions an anti-colonialist historiography in terms of a dialectical process of perpetual transformation. It is at this point, however, that the coupling of emergency or exception and emergence becomes problematic for at least two reasons. First, combining both terms prematurely translates the violence of the political event into that of metaphor and risks erasing the micro- or quotidian narratives of violence ??? such as Arasanayagam's account of war ??? that both legitimate and are perpetuated by political and social states of emergency. In order to examine the relationship between global and communal forms of violence, a critical practice of post-colonial studies, I suggest, must reassess the term "transformation" and, concurrently, the assumption that acts of extreme global violence can be advanced in the service of "making history" (Balibar 2001, 26). In other words, if, as Hannah Arendt argues, there has been a historical "reluctance to deal with violence as a separate phenomenon in its own right" (2002, 25), it is time to examine the possibility of employing post-colonial studies in the service of a non-dialectical critique of global war. This kind of critique must ask to what extent those on whose bodies extreme violence was exercised are a priori excluded from articulating any transformative theory of violence. How, in other words, does bare life ??? if at all possible ??? attain the status of subjectivity within the dehumanizing logic of exception or global civil war?¶ Fourth, like Bhabha, we need to take seriously Benjamin's insight into the intrinsic relationship between violence and the conceptualization of history. Notwithstanding Bhabha's pivotal argument that the violence of a "unitary notion of history" generates a "unitary," and therefore extremely violent, "concept of man" (1994, 42), I wish to caution, alongside Benjamin's analysis of fascism, that what enables today's global civil war is that even "its opponents treat it as a historical norm" (Benjamin 1968, 257). What is at stake, then, in dominant as well as critical narratives of global civil war is their representation as natural rather than political phenomena, and the acceptance of globalization as a political fait accompli. Both of these aspects, I believe, contribute to the proliferation of dehistoricized concepts of the global increase of racialized violence and war. It seems to me, however, that the enormous rise of violence inflicted by global civil wars requires a post-colonial historiography and critique of global war that questions notions of history based on cultural fragmentation, rupture, and totalization. Instead, such a historiography must seek out patterns of connection and connectivity. But more importantly, as I have argued in this paper, it must trace the post-colonial moment of global civil war and begin to read contemporary war through the interconnected necropolitics of global and imperial warfare. Thus, to understand the logic and practice of global war we need to develop a greater understanding precisely of those civil wars and national liberation wars that do not appear to threaten the new global order. Furthermore, a post-colonial critique of global civil war should facilitate the decoding and rescripting of both the normalizing narratives and racialized embodiment of global civil warfare.¶

### Norms

#### Reformist measures aimed at regulation of warfare are grounded in the West’s attempts at define itself as civilized against the savage other---their impacts can’t be separated from the process of colonial identity formation---turns the case because it causes ineffective modeling that displaces effective local forms of regulating violence

Frédéric Mégret 6, Assistant-Professor, Faculty of Law, University of Toronto, From ‘savages’ to ‘unlawful combatants’: a postcolonial look at international law’s ‘other’, http://people.mcgill.ca/files/frederic.megret/Megret-SavagesandtheLawsofWar.pdf

Far from being merely a perversion, I have sought to show how exclusion and the creation of an ‘other’ may have been at the very foundation of international humanitarian law, a phenomenon bound to re-emerge in times of strain. I have tried to show how the laws of war have always stood for a particular vision of what legitimate warfare is which is almost entirely informed by the European experience. Although the laws of war have accomplished something of a Copernican anthropological revolution over the last fifty years, there is more to practices such as Guantánamo than the mere onslaught of power and violence against the Law: something like the discreet exclusionary work of law itself.

It is this model — putatively universal but profoundly exclusive — that has been expanded the world over, to the point of saturating legal and moral public discourse about war. It is this model that exercises a monopoly over our imaginations about state violence and what can be done about it. In the process of expansion of the laws of war, warfare the world over has become something very much like (if not much worse than) what nineteenth century humanitarians had sought to avert. In that respect, humanitarian lawyers rightly prophesized the danger, but that prophecy also ended up being a startlingly self-realizing one. In many ways, international humanitarian law was the solution to the problem it simultaneously crystallized (something that could be said of much of international law).

It may be that such is the price to pay if one is to ever achieve a modicum of regulation in warfare. It is also important, however, to assess what has been lost in embracing a regulatory model that is so tainted with the ideology that gave rise to it, and so committed to the entrenchment of state power. In the nineteenth Century, one of the already mentioned fathers of international humanitarian law, de Martens, felt it was axiomatic that ‘the mission of European nations is precisely to inculcate oriental tribes and peoples ideas about the law, and to initiate them to the eternal and benevolent principles that have placed Europe at the head of civilization and humanity’.174 The question international humanitarian lawyers should be asking themselves as a matter of some urgency is: how have the laws of war been instrumental in reinforcing the very categories from which they supposedly drew and, with the benefit of hindsight, what is the balance sheet of international humanitarian law’s mediation of the colonial encounter?

Through colonization, did the non-Western world at least get the benefits of forms of regulation which were either unknown to them or in bad need of being updated for the purposes of international interaction? The laws of war beyond the West have been simultaneously enthusiastically embraced as part of the standard baggage of civilization, and routinely trampled. They have often proved far less effective than had been hoped at protecting the victims of armed conflict. The improbability of legal transplants is partly to blame. The laws of war presuppose a number of social ideal-types — the responsible commander, the chivalrous officer, the reliable NCO, the disciplined foot-soldier — that cannot be recreated at a moment’s notice once the laws of war have been cut off from their cultural base. Much of the sustainability of the laws of war relies on these shared assumptions about role-playing to make sense of otherwise enigmatic legal injunctions. By transferring only the thinnest of superstructure, the risk is that non-Western militaries will have inherited legal forms uninhabited by social purpose. The irony of course, is that by the time the non-Western world had committed to some of the archetypes implicit in the laws of war, international humanitarian law turned out to not be very good at restraining warfare at all and, in fact, particularly hopeless in regulating warfare among or within the recent converts.

But perhaps more attention should be paid to what the laws of war have excluded or obscured, instead of simply to what the laws of war have failed or succeeded in doing. Much international humanitarian scholarship over the past thirty years has been devoted to the worthy task of showing how traditions of restraint in warfare have existed in many non- Western cultures.175 This is undeniably a welcome (re)discovery that was long overdue. Maybe the laws of war were indeed merely giving a universal expression to what was otherwise an extremely widespread aspiration, in which case no culture could be said to have been specifically dispossessed of anything.

But typically this scholarship may well end up overemphasizing the similarities between such traditions, at the expense of what was specific about the development of the contemporary laws of war. That traditions of restraint in the use of violence by social entities against each other have existed almost universally is quite clear. The modern version of the laws of war, however, that which became globalized, is clearly, as I hope to have demonstrated, about more than a simple intuition that not all is permitted in times of war. The particular way that fundamental idea was expressed (through international law, through the language of statehood) for example will often have been as important as the message (the disincarnated idea that restraint in warfare is an obligation).

One fruitful and so far hardly pursued avenue of research, therefore, would try to assess the extent to which the contemporary laws of war ended up displacing existing, richly situated traditions for the benefit of a relatively decontextualised universalism. A history of how the laws of war have consequently impoverished cultural registers to deal with organized violence is still to be written, but it might shed light on the devastating consequences of conflicts in places like Africa for example.

In the meantime, it is tempting to think that the universalization of the laws of war has often left the non-Western world in the worst of places: one where existing traditions have been sufficiently destabilized to be discredited, but where the promise of ‘civilization’, hailed as the prize for massive societal transformation along Western lines, has failed to materialize.

The (missed) encounter between colonialism and the laws of war has also had implications for the ‘civilized world’ itself and our understanding of the emergence and development of international law. The exclusion of the non-civilized was obviously a consequence of international law’s prescriptions. But it was also a cause of the tonality of these prescriptions, part of a complex dialectical process of constitution (in the sense of ‘coming into being’) of international law, which conferred it its particular civilizational hue. The relation of public international law to the problem of war was never, needless to say, that of an already constituted set of norms to be applied to a novel and, to a degree, extraneous social problem. Instead, international law became what it eventually became by upholding itself as a vision of ‘civilization’ against the simultaneously constituted ‘savagery’, fantasized or not, of the non-Western warrior, so that this contrast, recycled through the ages and the endless echo of repetition, would be received as the original matrix through which international law ‘saw the world’. As such, the emergence of the modern laws of war was as much about identity as it was about norms.176 The ‘law of humanity’, as Ruti Teitel put it, ‘did the work of drawing the line between the ‘civilized’ and the ‘barbarians’’ and ‘supplied the sense that there was such a thing as international law’.177 Indeed, because of the centrality of the problem of war to international relations, the laws of war became central to international law’s self-image and still retain a unique place in the framing of a distinct reformist sensitivity, not to mention the discipline’s relatively good conscience.

#### Sovereignty is a western-construct that ignores alternate forms of political organization---global legal regimes not only inevitably fail to contain the aff’s impacts, but also result in a violent extermination of alterity

Tayyab Mahmud 10, Professor of Law and Director, Center for Global Justice, Seattle University School of Law. ARTICLE: COLONIAL CARTOGRAPHIES, POSTCOLONIAL BORDERS, AND ENDURING FAILURES OF INTERNATIONAL LAW: THE UNENDING WARS ALONG THE AFGHANISTAN-PAKISTAN FRONTIER, 36 Brooklyn J. Int'l L.

During the phase of decolonization, borders became a crucial issue for postcolonial states. In most cases, the inherited borders were in large measure determined by geopolitical, economic, and administrative policies of colonial powers that had occupied these territories. Colonial claims were often carved up with little regard to the coherence of historic, cultural, and ethnic zones. As a result, historical and cultural units were split, and different cultures, religions, languages, identities, and affiliations were enclosed in demarcated territorial units. The connection between a people and their territory, assumed and prescribed by Eurocentric theories of the "nation-state," found no room in these configurations. These inherited colonial demarcations, reinforced by postcolonial states, often provoke challenge and resistance from below by assertions of identity and difference. Power-blocs of postcolonial formations, in an effort to legitimize their new-found hegemony, impose a firm control over the inherited borders to draw "sharper lines between citizens, invested with certain rights and duties, and 'aliens' or 'foreigners.'" n135 The [\*26] result is territorial disputes with adjacent polities and/or suppression of difference within, two intractable issues that quickly become the primary preoccupations of the postcolonial states. The career of the Durand Line is an evocative story of these intractable conflicts and the inability of existing legal regimes to resolve them.

III. IMPERIAL GREAT GAMES AND DRAWING OF LINES

What the map cuts up, the story cuts across. n136

A. Great Game I: The Genesis of the "Buffer to a Buffer"

The Durand Line emerged as an instrumentality in the so-called Great Game, n137 the contest between British colonial expansion in India and eastward colonial expansion of Czarist Russia, one that turned the intermediate region into "a cockpit of international rivalry." n138 During the nineteenth century, issues of frontiers, boundaries, and borders within the Persian Plateau as a geographical unit were contentious. n139 Imperial efforts to fix boundaries of control that conflicted with the practices and experience of native populations for whom frontiers were essentially mobile and porous, compounded these contentions. This mobility and porosity stemmed from the region's location at the junction of historic trade routes between China, India, Central Asia, Persia, and the Arab [\*27] world. n140 The Great Game was a contest, both overt and shadowy, over territory where different imperial orders came into volatile proximity. The conflicts turned on questions of territory, zones of influence, and spatial buffers.

The British were unequivocal about their empire's need to have "scientific frontiers" that had to be demarcated under "European pressure and by the intervention of European agents." n141 Lord Curzon, the arch-imperialist and Viceroy of India, proposed a specific recipe for colonial India--a "threefold Frontier." n142 British imperial strategists were mindful of the simultaneous expansion of British and Russian empires in the heartland of Asia. A "frontier of separation" rather than a "frontier of contact" was to be the solution which led to the creation of protectorates, neutral zones, and buffers in between. n143 This policy of a "three-fold frontier" was choreographed and implemented in the northwest of colonial India. The first frontier, at the edge of directly controlled territory, enabled the colonial regime to exercise full authority and impose its legal and political order. The second frontier, just beyond the first, was a zone of indirect rule where colonial domination proceeded through existing institutions of social control. The third frontier was a string of buffer states which, while maintaining formal political autonomy and trappings of statehood, aligned foreign relations with the interests of the British.

[\*28] Fig. 2: Contemplated Northwest Frontier of Colonial India n144

The story of the Durand Line shows that colonial map-making simultaneously exhibits "both delusions of grandeur and delusions of engulfment." n145 Historically, the river Indus was seen as the western boundary of India. n146 The region west of the Indus and south of the Oxus river, was home to the dominant ethnic group of the region, the Pashtun, who have a recorded history going well before 500 B.C. n147 Located at the southern [\*29] edge of Central Asia and flanking the Chinese, Persian, and Indian empires, the Pashtun saw different phases of unity and fragmentation, along with Hindu, Buddhist, and Muslim cultural influences. Regional geopolitical maneuverings shaped the formation of the modern state of Afghanistan out of shards of rival tribal fiefdoms, ethnic loyalties, and shifting alliances and allegiances. n148 In 1747, as the Mughal and Persian empires were imploding, Ahmad Khan Durrani, a Pashtun military commander, took control of the region and created an Afghan tribal confederacy dominated by the Pashtuns, as a distinct political entity in the region--giving birth to what came to be called Afghanistan. n149 Given the circumstances of its emergence, Lord Curzon was to call the state "purely accidental." n150 The Durrani dynasty came to an end only in 1974, when Afghanistan became a republic.

Just as Afghanistan was emerging as a unified political entity, the British East India Company established political control over the fertile delta [\*30] of Bengal in 1757, and began the process of colonizing India. n151 Over the next century, British colonial rule in India expanded westward. At the time, Russia's sense of its eastern border was "vague and protean, shaped by the constellation of power on its frontiers at any given moment." n152 Imperial Russia started to expand southwards and eastwards through the Caucasus, just when British colonial rule was expanding westward and northward in India. n153 Unavoidably, Central Asia, the zone of confluence of two expanding imperial empires, became the terrain of the Great Game. As the frontlines of two empires approached each other, the Great Game intensified. n154 To check Russia's growing presence in Central Asia in the early nineteenth century, the British aimed to turn Afghanistan into a "buffer state" governed by a compliant ruler. The "three fold frontier," that Curzon was later to articulate, n155 came into play.

An internal struggle for the throne of Kabul in the 1830's gave the British their first opening to play kingmakers in Afghanistan. In June 1838, the British signed a secret agreement with Ranjit Singh, the Sikh ruler of Punjab, and Shah Shujah, a claimant to the Kabul throne. n156 In return for their help in putting him in power, Shujah renounced Afghan claims to Kashmir and substantial areas between the Indus river and the Khyber Pass in favor of Ranjit Singh and agreed to become an ally of the British in their struggle with Russia. This agreement triggered what mainstream history styles the First Afghan War, when a 21,000-strong British "Army of the Indus" invaded Afghanistan in 1839 and installed Shujah as the Amir. n157 The license to colonize and dominate granted by contemporaneous international law to the "Great Powers" of the day [\*31] proved useful. However, the initial British success proved short-lived--resistance against the occupation force and their puppet leader broke out, and in 1842 the deposed Amir, Dost Mohammad Kahn, was returned to power, and the British invasion force was decimated. n158

During the subsequent twenty years, the British started to bring the region west of the Indus river under colonial rule. Occupation of the Punjab in 1849, until then an independent state, brought under British control traditionally Afghan areas up to the eastern end of the legendary Khyber Pass that Punjab had annexed before the First Afghan War. n159 In 1857, India erupted in an anti-colonial revolt ignited by a mutiny of the Bengal Army. The revolt proved to be a watershed moment in the history of colonial rule, and led to a reordering of the Punjab as the "sword arm of the Raj." n160 British forces finally suppressed the revolt, and the governance of colonial India passed from the East India Company to the Crown, but "British fears of rebellion, conspiracies, holy wars, and possible foreign provocation" heightened. n161 Through innovative colonial legal regimes, a "military-fiscal state" was turned into a "military state," the Bengal Army was disbanded, and a reconstituted Punjab began to serve as "the military bulwark of the Raj." n162 The British deployed a racist recruiting doctrine known as the "martial race theory," to raise a new "Indian Army," with over half of it recruited from the Punjab, to serve as the "Empire's 'fire brigade.'" n163 This army was to be "the iron fist in the velvet glove of [\*32] Victorian expansionism . . . the major coercive force behind the internationalization of industrial capitalism." n164

As the pace of Russian eastward expansion picked up after the Crimean War (1854-56), the British "became obsessed with the Great Game," and the Punjab as "the garrison province of the Raj . . . [was] reoriented . . . to meet[] the challenge of an external danger." n165 The rapid transformation of the Punjab into a "garrison state" involved novel colonial legal orders of land tenure, revenue extraction, military recruitment, resettlement of indigenous communities, rural social control, and political governance. n166 Colonial social engineering included refashioning of religious affiliations, identities, and practices. n167 To orchestrate this enterprise, a suitable administrative system was fashioned for the Punjab that "in both form and spirit . . . had a strong military flavor." n168 A century later, this reconstruction of the Punjab became the grounds for "Punjabisation of the state" n169 of Pakistan, its praetorian tenor, and the source of its "post-independence propensity towards a military-dominated state." n170

[\*33] British occupation and reordering of the Punjab in the middle of the nineteenth century produced the northwest border problem in the territories to the west of the river Indus that remains a source of conflict to this day. The northwest edge of this region, a great belt of mountains stretching over 1200 miles from Pamir to Persia, was home of scores of Pashtun tribes that had a long history of effective armed resistance against encroachers and of retaining their autonomy from the political orders around them. n171 Fierce resistance by these tribes started as soon as colonial rule came to their vicinity. n172 It was then that the British policy of creating a frontier zone between Afghanistan and colonial directly-administered areas came into force. n173 This so-called "close border" policy, also known as "masterly inactivity," provided that no further westward expansion of direct colonial rule was possible or warranted, and therefore British sovereignty should not be extended to areas and tribes that could not be subdued and governed effectively. n174 First implemented in Baluchistan and later further north, n175 the close border policy created a peculiar frontier zone--a narrow stretch of territory inhabited by Pashtun tribes maintaining their modes of self-governance, dotted with colonial military outposts, absent direct colonial administration, but discouraged from maintaining their traditional political relations with Afghanistan. Foothills at the edge of directly-administered "settled" areas were fortified to keep out the tribes, who, in exchange for monetary subsidies, were to keep access to military outposts open, and, in contravention to their tribal code, were to deny sanctuary to fugitives from the settled areas. n176 The system did not work well. The Pashtun tribes of the frontier zone remained restive, resulting in twenty-three British military operations between 1857 and 1881 to subdue them. n177

A new British policy, initiated by the Disraeli government to build a new strategic line of defense against Russian pressure in Central Asia, led in 1876 to the abandonment of the "close border" policy in favor of the so-called "forward policy." n178 The new policy called for aggressive [\*34] expansion into and control over the frontier regions. Strong points in the tribal belt were to be captured, fortified, garrisoned, and connected with protected roads. This "forward policy," in its extreme, envisaged pushing the boundary as far west as the Hindu Kush mountain range in the middle of Afghanistan, with the Kabul-Ghazni-Kandahar arc forming the first line of defense for colonial India. n179 As the new policy unfolded, British meddling in Afghan and Persian affairs increased. n180 Decisions of a British Commission demarcating the disputed border between Afghanistan and Persia and permanent stationing of British garrisons nearby, heightened Afghan concerns about hostile encirclement. n181 The Afghans made overtures towards the Russians to counter-balance the growing British influence. n182 The result was the Second Afghan War, when, in November 1878, the British launched a three-pronged attack on Afghan territory. n183 The Amir abdicated in favor of his son. n184 The son then ceded control over the Khyber Pass and agreed to become a vassal of the British, who were to control the external relations of his country. n185 After some pacification campaigns around the country, the British troops withdrew from Afghanistan in 1880. n186 One result of the Second Afghan War was the institution of a joint Russo-British commission to determine the border between Russia and Afghanistan, with the latter to serve as a buffer between the two imperial empires. n187

[\*35] Confronted with increasing demands for more concessions by the colonial government of India, in 1892, the Afghan Amir sought to visit Britain to negotiate directly with the British government. n188 The algebra of differentiated sovereignties came into play--British authorities refused his request, forcing him to negotiate with British colonial authorities in India. n189 The Amir yielded to British pressure to delineate Afghanistan's eastern boundary. n190 The British proceeded to "dictate a boundary settlement," n191 signed by the Amir and Henry Mortimer Durand, foreign secretary of British India, on 12 November 1893. n192 This agreement adjusted the "the eastern and southern frontier of His Highness's [the Amir's] dominions, from Wakhan to the Persian border." n193 The result was the Durand Line, which pushed colonial India's border with Afghanistan from the eastern foot of the frontier hills to their crest. n194 Curzon's dream of "scientific frontiers" demarcated under "European pressure and by the intervention of European agents," appeared to be coming true. n195

The Durand Line proved more difficult to delineate on the ground than to draw on paper. n196 Initially surveyed in 1894-5, most of the demarcation was completed by 1896, though the section around the Khyber Pass was only demarcated after the Third Afghan War in 1921. n197 While some [\*36] inaccessible sections remained unmarked, the line created a strategic frontier that "did not correspond to any ethnic or historical boundary." n198 Slicing through tribes, villages, and clans, it "cut the Pukhtoon people in two." n199 The Pashtun tribes resisted attempts at demarcation, including, in some cases, burning down camps of the Boundary Commission. The British response was to station substantial permanent garrisons. n200 The Pashtuns remained restive, with religious leaders often playing leading roles in the insurgencies. n201

In tune with the colonial project of reordering colonized bodies and spaces, in 1901, British authorities severed the "settled areas" of the northwest region under British control from the Punjab to form an evocatively named North-West Frontier Province ("NWFP"), though with a status not on par with other provinces. n202 Control over the tribal belt between the "settled areas" of NWFP and the Durand Line remained with the central government. The belt, now designated Federally Administered Tribal Area ("FATA"), was to serve as a "buffer to a buffer." n203 The legal order of colonial India did not extend to this zone and the tribes on the grounds that "[r]igour is inseparable from the government of such a people. We cannot rein wild horses with silken braids." n204 Tribes were to conduct their internal affairs under their customary norms. However, to supervise matters that touched the security interests of the British, a unique set of rules and procedures, draconian even by colonial standards, were enforced under the Frontier Crimes Regulation. n205 This created yet another "anomalous legal zones" n206 like others that came into existence in many European colonies. In the case of FATA, Pashtun tribes, "though not [] fully-fledged British subject[s] in the legal sense of the [\*37] term, lived within the territorial boundaries of India." n207 To facilitate such territorial arrangements within British colonies, the Parliament had established a process for outlying districts intended "to remove those districts from beyond the pale of the law." n208 Tribes on both sides of the Durand Line continued to disregard it, and incessant tribal resistance prompted successive punitive expeditions. Even the semblance of order broke down with the Third Afghan War of 1919, when Afghanistan declared war, an effort joined by FATA tribes and Pashtun troops who deserted the colonial forces. n209 This short war resulted in Afghanistan regaining control over its foreign affairs. n210 However, the FATA tribes remained restive, and colonial efforts to quell incessant revolts included the first use of aerial bombardment in the history of India, laying waste to the country where local tribes had supported the invasion. n211 The tribes maintained their traditional connections with Afghanistan while negotiating the new FATA dispensation.

When the Indian struggle for decolonization gained momentum in the early 20th century, Pashtuns of "settled areas" quickly gravitated towards the movement. n212 The struggle forced the British to take initial steps towards allowing natives to participate in political governance in 1920 under the Montagu-Chelmsford "reforms," which envisaged an "advance towards self-government in stages." n213 The NWFP and FATA, however, were left out of the scheme on the grounds that, as the chief colonial administrator of the region put it, the Pashtuns "w[ere] not ready for ... 'responsible government." n214 In response, Pashtuns gave their anticolonial movement an organized form aimed at braiding "factors of history, geography, culture, and language to transform the relatively back-ward, [\*38] divided, and disorganized Pukhtuns into a national community." n215 This movement, which came to be known as Surkhposh (Red-shirts), expressly adopted non-violence as a foundational principle of social and political action and became politically allied with the Indian National Congress, the spearhead of India's independence movement. n216

When India's anti-colonial struggle escalated into a civil-disobedience movement in the early 1930s, it had "only a marginal effect on the Punjab" thanks to the entrenched administrative, political, and social order in that "garrison province." n217 NWFP, on the other hand, proved receptive to the call, and in 1930 colonial authorities declared martial law in order to quell the civil-disobedience movement and to prevent armed tribes of FATA from making common cause with residents of the settled areas. n218 In 1935, the British enacted the Government of India Act in response to the ascending independence movement in India. n219 This Act provided for increased political participation through an enlarged franchise to elect provincial legislative assemblies with broadened powers. n220 When the first-ever elections took place in NWFP in 1937, the Indian National Congress, the secular nationalist party, won handily and formed the provincial government. n221 Because the 1935 Act was applicable only to provinces, FATA, the "buffer to a buffer," remained outside the ambit of constitutional reforms and the right to vote and representation. n222 The result was a spike in armed resistance in FATA, triggering more campaigns of "'pacification' by British and Indian troops." n223

[\*39] In 1947, "the tectonic plates of South Asian politics shifted abruptly." n224 The British partitioned colonial India into two independent states--India and Pakistan--surgically dividing "Hindi majority" areas from "Muslim majority" ones, substantiating once again the wonderful artificiality of states, n225 and triggering "one of the great human convulsions of history." n226 That Pashtuns, while overwhelmingly Muslim, had consistently voted for the secular Indian National Congress and helped it form the provincial government in NWFP, struck the colonial Viceroy's office, which presided over the religion-based partition, as "a bastard situation." n227 To bring NWFP in line with the designed partition, the colonial authorities bypassed the generally prescribed process of allowing elected representatives of provinces in their respective legislative assemblies to determine the future of the province. A referendum to choose between India and Pakistan was offered instead. n228 Most Pashtuns, including both the "Red Shirts" and the governing political party of the province, boycotted the referendum in protest against NWFP having been made an exception to the prescribed process, and because the substitute process of referendum did not offer a third option, namely, separate independent statehood. n229 This demand for a separate state for the Pashtuns, styled Pashtunistan, emerged as the partition of India became [\*40] inevitable. n230 In the end, NWFP was awarded to Pakistan following a controversial referendum. n231 For FATA tribes, yet another mode to determine their fate was devised. In special tribal jirgas (tribal assemblies) orchestrated by the colonial administrators, hand-picked leaders of the FATA tribes were asked to signify their allegiance to Pakistan and received the assurance that monetary allowances and autonomous status of the tribes would continue undisturbed. n232

Decolonization and the partition of India drew into sharp relief the contested status of the Durand Line, which now became a disputed matter between Afghanistan and Pakistan. n233 As soon as India was partitioned, Afghanistan renewed claims to the area between the Durand Line and the Indus. n234 In 1947, Afghanistan joined the demand for Pashtunistan, opposed Pakistan's admission to the United Nations, and later conditioned its recognition upon granting the right of self determination to the people of NWFP and FATA, who were caught in between. n235 "In 1949, an Afghan loya jirga [(grand tribal assembly) formally] declared the Durand Line invalid." n236 Thus, Pakistan started its postcolonial career as successor to a territorial dispute and with an ambivalent relationship with a section of the population located within its designated territorial bounds.

B. Great Game II. The Cold War and the Frontline State

The partition of India and inclusion of NWFP and FATA in Pakistan was, in no small measure, connected with the next phase of the Great Game--the Cold War. The British colonial authorities saw the partition of colonial India as offering the possibility to remain in the northwest [\*41] region "for an indefinite period ... [with] British control of the vulnerable North-Western . . . frontiers." n237 The northwest region was envisaged as "the most suitable area from which to conduct the defense" of oil supplies of the Middle East, and "the keystone of the strategic arc of the wide and vulnerable waters of the Indian Ocean." n238 As the importance of oil from the Persian Gulf increased, Western powers called for a "close accord between the States which surround this Muslim lake, an accord underwritten by the Great powers whose interests are engaged." n239 The Western world "went east in search of oil--and found Islam." n240 Pakistan, the only state in the modem world created in the name of Islam, was to now be turned into a frontline state of the Cold War, with the Durand Line to serve as the frontline.

After cultivating close military ties with Britain and the U.S., Pakistan formally entered a Mutual Defense Agreement with the US and joined the Central Treaty Organization ("CENTO") in 1954 and the Southeast Asia Treaty Organization ("SEATO") a year later. n241 It is important to note that British military officers retained control of Pakistan's military, now seen as "the kingpin of U.S. interests," n242 for many years after decolonization. n243 Pakistan provided the U.S. with military bases in the NWFP. n244 All this helped Pakistan secure recognition by Britain n245 and [\*42] the U.S. n246 of the Durand Line as a legitimate international border. As Pakistan consolidated its role in the anti-Communist military alliances of the Cold War, Afghanistan drew closer to the Soviet Union, hardened its position about the Durand Line, and again raised the issues of self-determination for the Pashtuns in Pakistan and the formation of Pashtunistan. n247 In December, 1955, the Soviet Union declared support for the Afghan position regarding the Durand Line and Pashtunistan. n248

Pakistan's assumption of the role as a frontline state in the Cold War had a profound impact on the political order within the country. This included ascendency of the military as a political force, derailment of constitutional governance, and centralization of political power in defiance of the federal architecture of the state. This turn to praetorianism had a direct impact on the NWFP and FATA. In 1954, the same year that Pakistan formalized its partisan role in the Cold War, a "gang of four" n249 representing the military-bureaucracy combine overturned the constitutional order in Pakistan, a step validated by a docile judiciary under the doctrine of state necessity. n250 The new order then moved to erase the separate existence of NWFP in 1955, when the bureaucratic-military combine ruling Pakistan amalgamated all four provinces of the western wing of the country into the so-called "One Unit." n251 FATA, however, retained its status as a distinct federally administered zone. Afghanistan reacted sharply to the dissolution of NWFP and accelerated its demand for Pashtunistan, leading to a break in diplomatic relations. n252 Trade blockades and border skirmishes followed. Relations remained seriously strained [\*43] until 1963, when the King of Afghanistan removed his prime minister, Sardar Daud, a Pastun and an ardent advocate of Pashtunistan. n253 In the meantime, strengthened and emboldened by its Cold War alliances, Pakistan's military formally usurped political power by declaring martial law in 1958, a move validated by the courts through a misapplication of Kelsen's theory of revolutionary legality. n254 In 1969, a mass-protest movement forced the removal of Pakistan's military dictator. The new government dissolved the "One Unit" and restored NWFP as a separate province. n255 FATA, however, retained its distinct dispensation.

A serious downturn in relations between Afghanistan and Pakistan came in 1973, when Afghanistan declared itself a republic, and Sardar Daud, now its new president, revived the issue of Pashtunistan. n256 Pakistan immediately responded by giving sanctuary to Afghan dissidents and began training and arming disaffected Afghans to destabilize the new Afghan regime. n257 From 1973-77, Pakistan trained an estimated 5,000 Afghan militants and channeled material support to groups inside Afghanistan. n258 This was the beginning of Pakistan's prolonged engagement in training and arming Afghan militants professing the establishment of an "Islamic order." n259 This also ushered in an era when the FATA, the "buffer to a buffer," became the staging ground for Pakistani military's involvement in Afghan militants' operation across the Durand Line with its intelligence agency Inter Services Intelligence ("ISI") taking the lead. n260 It is important to note that this engagement was choreographed by Pakistan's Prime Minister Z. A. Bhutto, a self-professed master of [\*44] geopolitics, who held that "geography continues to remain the most important single factor in the formation of a country's foreign policy . . . . Territorial disputes . . . are the most important of all disputes." n261 This was by no means the first instance of the use of FATA by Pakistan in its military strategies. As early as 1948, Pakistan had used sections of the FATA tribes in its campaigns in Kashmir. n262

The Soviet invasion of Afghanistan in 1979 dramatically accelerated the decline of Afghan-Pakistan relations. During the 1979-84 Afghan "jihad," FATA served as a "launching pad for the mujahidin" and as a "base for their covert operation[s]." n263 The U.S. and Saudi Arabia poured in $ 7.2 billion in covert aid for the jihad, channeled through the ISI, and given primarily to the most radical religious groupings, thus bypassing the moderate Afghan nationalists. n264 The Afghan jihad furnished a justification for the tacit support by Western powers for the consolidation of military dictatorship in Pakistan under General Zia ul-Haq, a development that initiated and entrenched the process of "Islamization" of Pakistan. n265 After the Geneva Accord of 1984 to end the Afghan conflict, and subsequent withdrawal of Soviet forces, Afghanistan plunged into a civil war, with Pakistan and other regional powers supporting different factions. n266 The relative disengagement of the U.S. during this period is now seen by the American policy makers as a "strategic mistake." n267

FATA continued to be used by the ISI and Afghan Islamist groups for their engagements in the Afghan civil war. By now, Pakistan's military had developed the so-called doctrine of "strategic depth" with regards to Afghanistan, because it regarded India to the east as the primary military [\*45] threat to Pakistan's interests. n268 In order to counter India, Pakistan, given its significantly smaller territorial size, sought a compliant Afghanistan on its western border. It was against this backdrop that Pakistan in effect created the Taliban in the early 1990s, a development that dramatically affected the Afghan civil war and, later on, the whole region. n269 Pakistan's military saw continued support for the Taliban as a strategic imperative. n270 Pakistan's desire to open trade routes to former Soviet Central Asian republics contributed to its patronage of the Taliban in Afghanistan. n271 Having helped the Taliban capture power in Afghanistan in 1996, Pakistan was among the handful of states that quickly recognized the new regime, and for some time even paid the salaries of the Taliban administration in Kabul. n272 Pakistan's search for "strategic depth," however, remained elusive. While Afghanistan is a multi-ethnic country, the Taliban were exclusively Pashtuns, who make up over 50% of the country's population. n273 Consequently, Pakistan's patronage notwithstanding, the radical Islamic regime of the Taliban refused to accept the Durand Line as a legitimate international border or to drop Afghan claims over FATA and areas of NWFP east of the Line. n274

[\*46] Taliban's brutal political and social order n275 did not derail global geopolitics of energy supplies, when all neighboring states and many others, including the U.S., started "romancing the Taliban" during a "battle for pipelines" in the late 1990s. n276 By the late twentieth century, global capital and its attendant state machinations had moved well beyond territorial colonialism to neo-imperial modes of exploitation and accumulation. n277 The spatial dimension to the cycle of accumulation, however, remained indispensable. n278 This is particularly true of the geopolitical imperatives of the global energy markets. n279 The break-up of the Soviet Union triggered an intense competition between global oil companies and their sponsoring states, including the U.S. and Pakistan, to extract and transport oil and gas from Central Asia via Afghanistan. n280 In immediate contention were two plans for alternative gas pipelines from Turkmenistan to run through Afghanistan: one would go to Pakistan, and the other would go to Iran and Turkey with a possible link to Europe. Alternatives to transport oil from Kazakhstan via the Caspian Sea further complicated the picture. n281

The events of September 11, 2001, dramatically transformed the geopolitical profile of the region. The very next day the U.S. demanded that Pakistan stop terrorist operatives in its border areas or "be prepared to be bombed back to the Stone Age." n282 Pakistan made its decision "swiftly . . . [\*47] [and] agreed to all . . . demands," n283 also making available airbases and transit facilities for supplies for U.S. forces in Afghanistan. n284 However, Pakistan's military continued its special relations with the Taliban across the Durand Line in Afghanistan. When the U.S. launched its attack on Afghanistan, the Taliban "escaped in droves into Pakistan, where they melted into their fellow tribesmen in the FATA." n285 After the now infamous "battle of Tora Bora," n286 Pakistani authorities "looked the other way as foreign fighters crossed over to the Pakistani side and many in the ISI arranged safe passage[s]." n287 In collaboration with ISI, the borderlands became a "safe haven for the Taliban and other insurgent and terrorist elements." n288 FATA, long a sanctuary for fugitives from state law, n289 now became a sanctuary and staging ground for Afghan militants resisting the U.S.-led war effort in Afghanistan. n290

As Pakistan's active support of U.S. war efforts increased, Afghan militants made common cause with religious militants among the Pashtun tribes of FATA. n291 Pakistan's military, designed for conventional warfare on its eastern border with India, was "ill-prepared to tackle this new kind of . . . conflict that slipped across its western border." n292 As a result, Pakistan vacillated between military operations against the militants and peace deals with them. n293 In the meantime, militants started to extend their area of influence beyond FATA, the "buffer to a buffer," into [\*48] NWFP and beyond. n294 In the midst of all this, Pakistan stood firm that the Durand Line be recognized and respected as an international border, while its military considered Afghanistan "within Pakistan's security perimeter." n295 On the other hand, Afghanistan continued to reject the Durand Line because "it has raised a wall between the two brothers." n296

This story of the Durand Line is a more than century-long saga of predatory colonialism, postcolonial insecurities, and incessant conflict. This is a tale of colonial cartography bequeathed to a postcolonial formation, bringing in its wake bitter fruits of oppression, violence, and war. This leads to the broader questions of the challenges colonial borders present to postcolonial states and the role of international law.

IV. COLONIAL BORDERS AND POSTCOLONIAL INSECURITIES

Every established order tends to produce . . . the naturalization of its own arbitrariness. n297

A. Inherited Borders and Postcolonial State-nations

Forged on the anvil of modern European history and enshrined in modern international law, modern statehood and sovereignty are deemed the preserve of differentiated "nations" existing within exclusive and defined territories. While "the struggle to produce citizens out of recalcitrant people accounts for much of what passes for history in modern times," n298 the prototype of the "nation-state" combines a singular national [\*49] identity with state sovereignty, understood as the territorial organization of unshared political authority. "The territoriality of the nation-state" seeks to "impose supreme epistemic control in creating the citizen-subject out of the individual." n299 "Inventing boundaries" n300 and "imagining communities" n301 work together "to naturalize the fiction of citizenship." n302 Modem international law underscores this schema. It extends recognition only to the national form, with acceptance attached to the ability to hold territory in tune with "Western patterns of political organization." n303 As a result, the "nation-state" is the dominant model of organized sovereignty today. This spatially bounded construct, one that frames both the geography of actualizing self-determination and the order of the resulting political unit, put in circulation a "territorialist epistemology." n304 Postcolonial formations had to subscribe to this Eurocentric grammar of state-formation to secure eligibility in the inter-state legal order. n305 This statist frame precludes imaginative flowerings of self-determination in tune with the interests and aspirations of diverse communities both within and beyond received colonial boundaries.

Across the global South, colonial demarcations of zones of control and influence left in their wake political units lacking correspondence between [\*50] their territorial frame and the cohesion of culture and political identity. n306 The colonial demarcations, with little regard for the history, culture, or geography of the region, often split cultural units or placed divergent cultural identities within a common boundary. n307 As a consequence, the crisis of the postcolonial state stems from its artificial boundaries and the specter of the colonial still haunt the postcolonial nation. n308 The "retrospective illusion" n309 of nationalism remains "suspended forever in the space between the ex-colony and not-yet-nation." n310 Decolonization movements and postcolonial states adopted and retained the construct [\*51] of a territorially bound "nation-state" even as they attempted to imagine the "nation" at variance from its European iterations. n311 Imprisoned in inherited colonial territorial cartographies, postcolonial formations inverted this grammar to produce state-nations. While conventional understanding assumes a preexisting nation that subsequently forms a state, post-colonial formations start with a territorial state that aims to constitute a homogenized nation.

Building state-nations generates conflicts about minorities, ethnicities, ethno-nationalism, separatism, and sub-state nationalism. "[T]he nation dreads dissent" n312 and "the nation-state's limits implicate its geographic peripheries as central to its self-fashioning." n313 In the process, a co-constitutive role of "nation and ethnicity" develops as a "productive and dialectical dyad." n314 It is by the construction of ethnicity as a "problem" that the "nation" becomes the resolution and the state incarnates itself as the authoritative problem solver. In this way often "the very micropolitics of producing the nation are responsible for its unmaking or unraveling." n315 Incessant rhetoric of endangerment and discursive production of threats to the nation render "nation-building" a coercive enterprise and facilitate the overdevelopment of the coercive apparatuses of the state. n316 While inherited boundaries represent the postcolonial state-nation's "geo-body," n317 cultural and ethnic heterogeneity within induces "geopiety." n318 It is no surprise, then, that most postcolonial states have as their raison d'etre the production, maintenance, and reproduction of the discourses and apparatuses of national security. n319 The career of Pakistan as [\*52] a postcolonial state circumscribed within an inherited territorial frame substantiates this political grammar.

Fig 3. Major Ethno-Linguistic Groups of Pakistan in relation to international boundaries of the region n320

Pakistan, hailed as "the triumph of ideology over geography," n321 is literally caught and exists between lines drawn by colonial powers--the Durand Line (1893) in the northwest, the Goldsmid Line (1872) to the west, the Radcliffe Line (1947) in the east, and the MacMahon Line (1904) to the north. n322 For good measure, in the northeast, a Line of Control, [\*53] "a sequence of ellipses" "[d]rawn and redrawn by battles and treaties . . . identifiable by traces of blood, bullets, watchtowers, and ghost settlements left from recurring wars," n323 provisionally divides Kashmir into areas held by India and Pakistan. n324 The "state-building" and "nation-building" saga that unfolded between these lines since 1947 has produced what is variously characterized as the "viceregal system," n325 the "overdeveloped state," n326 the "hyper-extended state," n327 and the "praetorian" state. n328 In efforts to constitute a state-nation, coercion always outweighed persuasion in claims of domination, in tune with a political grammar set in place by colonial rule. n329 The project of "conjuring Pakistan," n330 that would envelop ethnic, linguistic, and cultural differences within inherited borders, necessitated deployment of "security as hegemony." n331 Festering territorial disputes with neighboring states furnished the primary justification for the military to consume a disproportionate [\*54] share of resources and to play a leading ideological and political role. n332 Denial of representation, suppression of federalism, and destruction of alterity are the hallmarks of the state since its inception. As successor to the colonial "garrison state" in the Punjab, a Punjab-centered military-bureaucracy oligarchy retains a dominant position in the ruling bloc. n333 Denial of equal citizenship to the people of the provinces of Balochistan, East Bengal, NWFP, and Sind--even when they constituted the majority of the population--remains a defining feature of the state. Dissent and resistance were squelched by unbridled state violence, including repeated military actions--the most infamous being the one in 1971 that prompted the eastern wing of Pakistan to break off and establish a separate state of Bangladesh. n334 Phases of coups d'etat, martial laws, abrogation of constitutions, and declarations of emergency rule constitute the "constitutional" history of the country. A docile judiciary serially deployed doctrines of "state necessity," "revolutionary legality," "constitutional deviation," and de facto power to furnish legitimacy to repressive orders. n335

In building a postcolonial state-nation, the FATA, the colonial "buffer to a buffer," retained its special status--approximating spaces of exception as invoked by Giorgio Agamben. n336 Today, FATA is "a Massachusetts-sized [\*55] wedge between Afghanistan and NWFP of Pakistan," with a population of about 4 million, "virtually all of whom are Pashtuns." n337 Since 1901, this zone has been governed by a unique colonial-era administrative and judicial order--an indirect rule that combines modern technologies of power with instrumental use of customary norms and traditional power structures. n338 The colonial design aimed to govern through selected tribal notables who would be loyal to the British in exchange for fixed monetary allowances. No taxes would be levied on the tribes, who would be left alone to manage their internal affairs through the customary Pakhtunwali code in their tribal jirgas, which has been characterized as "probably the closest thing to Athenian democracy that has existed since the original." n339 However, any matter that implicated the security [\*56] interests of colonial authorities was to be handled by a parallel system--a hybrid construct that retains the name jirga, but empties it of any semblance to "Athenian democracy" to make room for a process and a set of sanctions designed for harsh control and violent discipline to facilitate external domination. n340 This system took the shape of the Frontier Crimes Regulation ("FCR"), originally formulated in 1858, and amended in 1872 and 1901, turning FATA into a constitutional and legal anomaly. n341 Decolonization did not bring any change. Since 1947, FATA is formally a part of Pakistan. n342 However FCR remains entrenched, and sets the FATA tribes apart from and unequal to other citizens of the country. n343

To enable this state and space of exception, Pakistan's constitution reposes all executive and legislative authority for FATA in the President of Pakistan, who is given the authority to exercise his powers regarding FATA "as he may deem necessary." n344 Parliamentary enactments do not apply to FATA, unless the President so directs. n345 FATA is placed outside the jurisdiction of the Supreme Court and High Courts that otherwise have extensive powers to guarantee fundamental rights. n346 The Supreme [\*57] Court has recognized these "special provisions" for the area "so that their inhabitants are governed by laws and customs with which they are familiar and which suit their genius." n347

The FATA itself stands divided into 7 administrative units styled "agencies." An evocatively titled "Political Agent" ("PA"), appointed in each agency by the federal government and backed by a para-military militia, is the locus of Pakistan's authority. Besides exercising extensive executive, judicial, and revenue powers, the PA is also each agency's development administrator. n348 He is assisted by maliks, paid intermediaries from among tribal elders, who are appointed and removed at his discretion. n349 Maintenance of order and suppression of crime are deemed the PA's primary responsibilities. n350 The PA is authorized to dispose of any civil or criminal matter at his discretion. n351 The PA may decide the matter himself, or refer it to a tribal jirga, consisting of tribal maliks chosen by the PA. The PA initiates cases, appoints the jirga, presides over trials, and the final decision is subject to his discretion. n352 The jirga is supposed to decide the matter under FCR, supplemented by customary tribal norms. n353 The PA retains the discretion to sentence the accused as determined by the jirga, refer the matter back to the jirga, or appoint a new jirga. n354 The determinations of the PA are not subject to review by any court of law. n355 The process is that of an inquiry rather than presentation [\*58] of evidence and cross examination. Assistance of counsel is prohibited. n356

Draconian sanctions under the FCR, executed at the discretion of the PA, include: detention and imprisonment to prevent crime or sedition; requiring "a person to execute a bond for good behavior or for keeping the peace;" expulsion from the agency of "dangerous fanatics" and those involved in blood feuds; removal or prevention of settlements close to the border; demolition of buildings used for "criminal purposes;" collective punishment of fines and blockade; and the "right to cause the death of a person" on suspicion of intent to use arms to evade arrest. n357 The federal agency charged with overseeing FATA considers FCR an "effective 'iron-hand'" whose withdrawal would create an "administrative vacuum." n358

In 1962, under a design of limited franchise, an electoral college of 35,000 tribal maliks, appointed by the PA, selected representatives to the national parliament. n359 In 1996, direct election of representatives was introduced, though "politics and political parties are curse words in official circles." n360 Because the law prohibits political parties from extending their activities in FATA, only "non-party/independent" representatives can be elected. This makes for a unique political anomaly: FATA residents elect representatives to a legislature whose legislation does not extend to FATA. FATA also suffers from abysmal levels of poverty, illiteracy, and lack of health care. n361 Analysts find FATA "a virtual prison for public-spirited and reform-minded individuals. Dissenting voices are quickly dubbed anti-state and silenced by imprisonment." n362 State functionaries, however, claim that the system in place for over a hundred years "suits the genius of the people and has stood the test of time." n363 It is more appropriate to characterize FATA as a zone where bodies and [\*59] spaces are placed on the other side of universality, a "moral and legal no man's land, where universality finds its spatial limits." n364

FATA, admittedly an extreme case, is symptomatic of the problem of reconciling territorial straitjackets with the principle of self-determination. n365 For the territorial state, self-determination has always been a concept "loaded with dynamite." n366 In postcolonial formations, its explosive potential increases. The primary problem is not how to determine identities and desires of a people eligible for self-determination; n367 the problem, rather, is how to reconcile realization of this right with existing territorial configurations. The unresolved questions surrounding the Durand Line, FATA, and Pashtun political identity persist because their resolution is sought within a territorial "nation-state." Nesiah terms the imprisonment of postcolonial polities within modern territorial constructs of statehood "failures of the imagination." n368 A major hurdle in breaking free of this imprisonment is international law itself.

B. International Law and the Territorial Straitjacket

For many a postcolonial "contrived state" n369 the crisis of identity and security "lies in its 'artificiality."' n370 International law enforces the territorially-bound grammar of the "nation-state" upon postcolonial formations plagued by cartographicc anxiety inscribed into [their] very genetic code," n371 through the doctrine of uti possidetis. Based on a maxim of Roman law, the doctrine of uti possidetis ita possidetis (as you possess, so you possess), treats the acquisition and possession of a state's territory as given, with no territorial adjustments allowable without the consent of the currently occupying parties. n372 Applied to international [\*60] borders, it favors actual possession irrespective of how it was achieved, assumes that valid title belongs to current possessor, and does not seek to differentiate between the de facto and de jure possession. n373 By recognizing legitimate title to de facto territorial holdings, it becomes an instrument to maintain the status quo and impedes imaginative resolutions of territorial conflicts.

The doctrine of uti possidetis was formulated in connection with colonialism in Latin America in the early nineteenth century when Spanish colonies agreed to apply the principle both in their frontier disputes with each other and in those with Brazil. n374 During the decolonization era of the twentieth century, this norm was extended to the withdrawal of colonial powers from Asia and Africa. n375 The principle mandated that "new States . . . come to independence with the same borders that they had when they were administrative units within the territory or territories of one colonial power." n376 This froze colonial boundaries and presented a challenge to postcolonial formations to imagine and manage a "nation" and "national identity" in the heterogeneity contained within inherited boundaries. n377 In some instances, particularly in Africa, this attempt failed completely and ended in genocide and/or fracturing of the state. n378

[\*61] The ICJ n379 and international tribunals n380 were quick to put their imprimatur on the doctrine of uti possidetis and its application to postcolonial states. The ICJ has designated it "a general principle, which is logically connected with the phenomenon of [] obtaining [] independence, wherever it occurs." n381 The ICJ went on to state that "[i]ts obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power." n382 The bottom line is that through "application of the principle of uti possidetis," colonial "administrative boundaries" are "upgraded" and "transformed into international frontiers in the full sense of the term." n383

The ICJ acknowledged that by giving fixity and legitimacy to colonial boundaries, the principle uti possidetis "at first sight . . . conflicts outright with another one, the right of peoples to self-determination." n384 In [\*62] the face of this dilemma, the ICJ fell back on pragmatism to claim that "maintenance of the territorial status quo" is essential to "preserve what has been achieved by peoples who have struggled for their independence." n385 The Court sought support for this claim with a gesture toward the practice of post-colonial states:

[t]he essential requirement of stability in order to survive, to develop and gradually to consolidate their independence in all fields, has induced African States judiciously to consent to the respecting of colonial frontiers, and to take account of it in the interpretation of the principle of self-determination. n386

Here Nesiah rightly sees a "double bind" infecting the Court as it is committed to decolonization but "[t]erritorial integrity emerges here as a statist spatial representation intelligible to international law, and posited as indispensable to the self-determination of the postcolony." n387

As the saga of the Durand Line shows, colonial frontiers, boundaries, and borders fluctuated over time. This raises the question of the exact territorial bounds of postcolonial states. The ICJ injected an unequivocal temporal cut-off in this historically ambivalent temporal and spatial issue, by holding that:

[U]ti possidetis--applies to the new State (as a State) not with retroactive effect, but immediately and from that moment onwards. It applies to the State as it is, i.e., to the photograph of the territorial situation then existing. The principle of uti posidetis freezes the territorial title; it stops the clock but does not put back the hands. n388

As fashioned by the ICJ:

[\*63] the critical date as a legal concept posits that there is a certain moment at which the rights of the parties crystallize, so that acts after that date cannot alter the legal position. It is a moment which is more decisive than any other for the purpose of the formulation of the rights of the parties in question. n389

This freeze-framing of boundaries on the date of decolonization by one definitive gesture renders the issue of the history of these boundaries moot. The rationale appears to be that "freezing the carved-up territory in the format it exhibited at the moment of independence" n390 will deter territorial disputes among post-colonial states. Pervasive postcolonial territorial and self-determination conflicts, however, reveal that such a mandated spatial fixity and temporal clarity of boundaries does not keep these conflicts in check. n391 Uti posidetis combined with critical date as a legal concept trumps conflicting post-colonial assertion and exercise of effective authority as grounds for sovereign title under the doctrine of effectivites. n392 Post-colonial effectivities has significance only if colonial practice fails to furnish definitive demarcation and thus trigger application of uti posseditis. n393

The concern with order has been central to modern international law. n394 Decolonization, coming on the heels of two World Wars, raised the specter [\*64] of disorder. As a result, the norm of self-determination gave way to the caveat of order. n395 Order trumped self-determination, deemed a concept "loaded with dynamite," n396 and the transition from colonialism to postcoloniality proceeded with the basic requirement that external boundaries remain in place. Managers of postcolonial formations were equally quick to subscribe to the doctrine, and international bodies like the United Nations were quick to give their imprimatur. The same 1960 UN resolution that affirmed that "[a]ll peoples have the right of self-determination," also declared that "[a]ny attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." n397 As a way out of this contradiction, the United Nations contemplates the possibility of non-state modes of actualizing self-determination, by holding that "[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right of self-determination." n398 This contradiction points to the Janus-faced nature of the right of self-determination in a system of states with fixed and inviolable territorial bounds. The right has a "justifying, stabilizing, conserving effect and it has a criticizing, subversive, revolutionizing one." n399 International law and the practice of states have been content with the justifying, stabilizing, and conserving effect. n400

This bias in favor of existing states is augmented by a doctrinal lacuna, with profound political implications, that remains at the heart of the uti possidetis doctrine as reformulated by modem international law and endorsed by the ICJ. In jus civil, rightful title via de facto possession could only be acquired by a prescriptive claim of usucapio established in good [\*65] faith. n401 Furthermore, in Roman law, uti possidetis is deemed an interim measure in contested vindication proceedings to determine title. n402 A critical restrictive qualifier, nec vi, nec clam, nec precario (without force, without secrecy, without permission), limits the scope of the doctrine. Possession would ripen into good title only if possession did not run afoul of the limitations. Modern international law conveniently elides this critical limitation, perhaps because given the colonial modes of acquisition of territory, colonial boundaries run afoul of it. n403 This gloss over the spatial history of colonialism, now bequeathed to post-colonial formations, by treating de facto control as rightful title is a foundational reworking of the original construct. n404

### Legitimacy Link

#### The discourse of legitimacy masks the violence of hegemony---the affirmative’s commitment to US leadership recreates gendered national identity that codes the US as a the masculine shepherd of the global-liberal architecture---turns the case because gendered security binaries are the root of executive overreach

John Landreau 11, associate professor of womenâs and gender studies at The College of New Jersey., Obamas My Dad: Mixed Race Suspects, Political Anxiety and the New Imperialism, www.thirdspace.ca/journal/article/viewArticle/landreau/408

Both during his campaign, and in his presidential inauguration speech, Barack Obama promised a "new beginning" in American foreign and national security policy (especially in relation to the Middle East) that would both keep us safe from enemies and "restore our moral standing" (Obama, Acceptance). In particular, this new beginning promised to distance U.S. foreign policy from the grim (and largely illegal) features of the Bush administration's "war on terror" such as the executive sanctioning of the torture of prisoners, the maintenance of a gulag of foreign detention centres where prisoners could be treated outside the guidelines of U.S. and international law, and illegal secret initiatives such as the program to assassinate Al-Qaeda operatives directed by Vice President Cheney (Mazzetti and Shane). In his first day in the White House, on January 22, 2009, Obama issued three executive orders that followed through on this promise.[2] In addition to these early executive orders, in the days and months following his election Obama showed great rhetorical sensitivity to the wide-spread negative perception in the Middle East of U.S. imperial behavior and designs, its uncritical support of Israel, and its disregard for civilian casualties and for the civil rights of prisoners. In an effort to reverse the tide of anti-American feeling, Obama's first post-inaugural interview was given to Hisham Melhem of Al Arabiya TV news (Interview). This was followed in April and May by major addresses in Ankara and Cairo whose primary intended audience was Middle Eastern and, more broadly, Islamic. Both of these speeches articulate a new rhetoric of hope for U.S.-Middle Eastern relations. In the speech to the Turkish parliament, for example, Obama declares:¶ I [...] want to be clear that America's relationship with the Muslim community, the Muslim world, cannot, and will not, just be based upon opposition to terrorism. We seek broader engagement based on mutual interest and mutual respect. We will listen carefully, we will bridge misunderstandings, and we will seek common ground. We will be respectful, even when we do not agree [...]. (para. 38)¶ Hope for a new era of U.S Middle East relations is here embodied by an attitude of respect, by a willingness to negotiate differences and find areas of mutual interest, and by an explicit criticism of the unilateral and monologic focus of the Bush administration on the 'war on terror'.¶ This apparent change in direction in national security and foreign policy seems to be characterized by an alternate version of presidential masculinity and by an alternate telling of the myth of American exceptionalism. Many have commented on the muscular character of George W. Bush's rhetoric of war and national security. Indeed, his policies in what he called the 'war on terror' depended almost exclusively on what Joseph Nye famously called "hard power", and were justified rhetorically by a conspicuously militarist and masculinist narrative about America's role in world history and politics.[3] In contrast to the "[...] stern projection of a tough national persona" (Ivie and Giner 288) in Bush's rhetoric and policies, Obama seems to articulate a gentler, more reasoned approach to national security and terrorism that includes the use of 'hard' military power but also depends importantly on 'soft' power in the form of diplomacy, international cooperation, and an emphasis on human rights, economic stability and political freedom. Ivie and Giner argue that the success of Obama's rhetorical appeal to 'soft' power during the 2008 presidential campaign was due to his ability to harness and resignify the deeply-resonant myth of American exceptionalism for a more democratic and community-minded projection of America's role in world affairs. In Obama's version of national security, they write:¶ A less tragic sense of order mandated a reduced sense of guilt and thereby decreased the need for redemption via the cult of killing. This expression of national mission in more democratic and practical terms indicated, at least "logologically," the possibility of aligning public culture with a more global and constructive perspective on matters of national security. It revealed the possibility of a founding myth reformed to relax the lethal grip of the Evil One on the conscience of a nation that might do more good in the world if it were burdened less by tragic guilt.[4] (296)¶ This conclusion requires a retrospective reassessment in the light of Obama's decision to escalate the war in Afghanistan. How do we reconcile Obama's seemingly dramatic shift from progressive presidential candidate who was proud to have opposed the war in Iraq from the beginning, and who abolished the use of torture and illegal detention in his first day in office, to the president who in December 2009 made the decision to pursue and significantly escalate military violence in Afghanistan? How do we reconcile Obama's seemingly contradictory use of both the soft rhetoric of hope and diplomacy and the hard rhetoric of fear and military violence in his national security statements and speeches?¶ In the analysis that follows I argue that while Obama at times articulates a softer version of foreign policy, and seems to perform a softer, more inclusive presidential masculinity in the area of global politics and terrorism, this does not fundamentally signify a different orientation to national security as some have argued. I emphasize how Obama's rhetoric and policies fall within the standard rhetorical oscillations that constitute the myth of American exceptionalism and presidential masculinity, and that those oscillations are principally and most significantly oriented by the more militarist and conventionally masculinist versions of the myth.¶ Presidential Masculinity in the Democratic Nomination Speech¶ Obama's speech at the Democratic National Convention in August 2008 marks the formal shift of his campaign focus from Democratic Party voters towards a national audience, and from his rivalry with Hillary Clinton to a campaign against John McCain. In terms of Obama's national security rhetoric, this is a fascinating moment because, in this new broader context, he makes an attitudinal shift to a more militarized and masculinized mode of speech. In fact, Obama's performance of soft masculinity on issues of national security during the primary campaign was an opportune product of the moment that did not reflect the principal orientation of his thinking.[5] This is quite clear in the nomination speech as he shifts his campaign towards a more conservative national audience, and directs his attention from a female rival to a male rival with military credentials.¶ Obama's first sentence about foreign policy in the nomination speech concerns his own stature and ability to lead American troops into battle, and to battle John McCain for the position of commander in chief. "If John McCain wants to have a debate about who has the temperament and judgment to serve as the next commander-in-chief, that's a debate I'm ready to have." (para. 79) What is most interesting about this lead-in to the topic of national security, terrorism, and foreign policy is that its main rhetorical function is to emphasize Obama's masculine capability. It does this by declaring his presidential mettle, but also through the performance of an 'I dare you' challenge to his political adversary. It seems to say, 'if you want to fight, then let's fight. Bring it on!'¶ Why does Obama begin this section of the speech with a flexing of muscle? In part, it has to do with the histrionics of presidential campaigns, and in this particular campaign with the anticipated challenge to Obama's military masculinity from John McCain, a candidate with a powerful story of military bravery and heroism to his credit. At the same time, the foregrounding of presidential masculinity in terms of the resolve and capacity to lead the armed forces into battle is nothing unusual. The most significant human protagonist in the narrative of American exceptionalism is almost always the figure of the president. This is especially true in times of danger, crisis or war. He is the commander in chief of the armed forces. To him goes the job of protecting the national family from outside threats and danger. To do this effectively, he must be brave, decisive and rational. He cannot afford to be feminized by being overly emotional or sympathetic to others; he cannot succumb to doubts, or become scared to act (Cohn, Cuordileone, Hopper, Lakoff, Sylvester, Tickner, Young). It is to this mythos that Obama's beginning performance of masculinity in the speech belongs. In the new context of a national audience, it stands out as a deeply-felt and vigorously articulated orientation towards national security.¶ After this initial show of male plumage, Obama continues the foreign policy section of the nomination speech by contrasting his youthful masculinity to McCain's elderly, bumbling masculinity.¶ For -- for while -- while Senator McCain was turning his sights to Iraq just days after 9/11, I stood up and opposed this war, knowing that it would distract us from the real threats that we face. When John McCain said we could just muddle through in Afghanistan, I argued for more resources and more troops to finish the fight against the terrorists who actually attacked us on 9/11, and made clear that we must take out Osama bin Laden and his lieutenants if we have them in our sights. (para. 80-81)¶ While McCain turns his sights away from the target, Obama stands up. While McCain muddles, Obama works to finish the fight and "take out" bin Laden if he's "in our sights." In the subtly crafted metaphor of aiming a gun at an enemy that organizes the passage, McCain appears as a distracted old soldier who aims at the wrong target and is generally confused. In contrast, vigorous and youthful, Obama stands up purposely, aims at the target, and fires. These metaphors all work to highlight the differences between McCain and Obama in terms of their embodiment of a properly militarized masculinity: which candidate can stand up, correctly identify the enemy, and fire the necessary shots to kill him.¶ Obama criticizes McCain for standing alone in "stubborn refusal" to recognize the realities of the conflict (that it is with al Qaeda in Pakistan and Afghanistan, not in Iraq), and therefore for lacking judgment. This lack of judgment is also narrated in terms of a contrast between a youthful and an aging masculinity: "We need a president who can face the threats of the future, not keep grasping at the ideas of the past." (para. 84) Obama declares. The contrast between a man who grasps at the past and one who "faces" the future is coded with messages about age and masculinity: youthful, confident stepping forward into the future versus old, unsteady back-stepping towards the past. At stake in this contrast is which strategy will "defeat" the enemy. "You don't defeat -- you don't defeat a terrorist network that operates in 80 countries by occupying Iraq", (para. 85) Obama argues. These are enemies who must be killed in order to protect the nation. To do this requires a commander-in-chief with masculine resolve and courage who can lead us into battle. This is not work for touchy-feely idealists who want to understand, communicate, and negotiate. And Republicans, Obama points out proudly, are not the only ones with the proper testicular size to lead the army into battle: "We are the party of Roosevelt. We are the party of Kennedy. So don't tell me that Democrats won't defend this country. Don't tell me that Democrats won't keep us safe." (para. 87) As in his opening statement, part of the effectiveness of these lines is their performance of a kind of "I'm up to the challenge masculinity" that talks tough, is aggressive with challengers ("don't tell me"), and does not back down. The rhetoric of American exceptionalism and presidential masculinity foregrounded here in the nomination clearly constitutes the dominant note of continuity in Obama's national security thinking. This is most evident in his two speeches from December 2009 in which he justifies his decision to escalate the war in Afghanistan as the following discussion will show.¶ Reasons for War: the December 1, 2009 Speech at West Point¶ Obama's December 2009 speech at West Point argues for the strategic necessity and ethical correctness of increased war effort in Afghanistan on the basis of history. The history begins with the 19 Al Qaeda operatives who committed the terrorist atrocities on 9/11 and moves quickly to focus on the Taliban who provided them with a secure base from which to operate. After 9/11, as Obama tells the story, we made great military inroads against the Taliban and Al Qaeda, but then mistakenly turned our attention to Iraq. This provided an opening for the Taliban, and for Al Qaeda, who are now coming back into Afghanistan from Pakistan. The Afghan government cannot fight them off and therefore, he says, summing it all up: "In short, the status quo is not sustainable" (para. 12). How does a rudimentary history like this serve as an explanation or justification for war? What is the mediating logic?¶ The over-simplification of contemporary U.S and Afghan history entailed in this schematic narrative is head-spinning.[6] But, even putting that aside, if one accepts the history at face value, it is still the case that our commitment to war is left unexplained and unjustified by the narrative. The history begins with 19 terrorists, and ends with the large-scale military action on the part of the United States. Should it not take a lot more than saying, 'well, the Taliban are gaining momentum and, remember, they are best friends with Al Qaeda' to justify the deployment of 100,000 U.S. troops, predator drones strikes all over northern Pakistan and eastern Afghanistan, full involvement of the CIA, major flows of capital and materiel, and huge contracts with private military contractors like XE Services (aka Blackwater)? Obama's historical narrative simply does not add up to a political argument for this kind of war, and for this kind of outlay of capital.¶ As a justification for war, it seems, rather, to be structured like a myth in the sense that Roland Barthes gave the word. Myth, according to Barthes, is paradoxically effective because, formally, it works like an alibi. It is an explanation based on an absence of evidence and meaning rather than its presence. In an alibi (the accused was absent not present at the scene) the meaning and the evidence are always elsewhere (121-127). Obama's narrative amounts to a mythological explanation for war in the sense that its significance lies not in the history itself but in the formal seriousness of a president telling a story to justify war. That is, its significance lies in the rhetorical gesture that serves to remind the audience of the president's authority as commander in chief and of his role to defend the nation from harm. By telling this story the president in effect quotes an array of motives, intentions, plot sequences and characters that are formally full even if their content in this instance is misleading or empty. To paraphrase Hayden White, in this case the content is the form. Here, the details of the story of the Taliban and Al Qaeda in Afghanistan are significant to the extent that they play a role in a larger narrative already familiar to the American audience: the Unites States stands for peace and prosperity, freedom and democracy but sometimes it is attacked by evil enemies whose irrational desire is to destroy all that is good. In that circumstance, the president must protect the national family through the use of military violence. War is the best and, in fact, the only way to make ourselves secure.¶ Following this schematic historical narrative with which he begins the West Point speech, Obama reassures the audience that his final decision to escalate the war was taken only after a serious and difficult deliberative process. This process, he says, "has allowed me to ask the hard questions, and to explore all the different options, along with my national security team, our military and civilian leadership in Afghanistan, and our key partners. And given the stakes involved, I owed the American people -- and our troops -- no less." (para. 13) The image of the president very seriously asking questions, exploring options, and consulting experts is one intended to produce a sense of citizen confidence both in the decision and in the decider (as George W. Bush famously called himself) again without revealing any of the details or particulars that constitute the decision. The rhetorical appeal here is essentially charismatic and depends on thick cultural associations with the president as benevolent paternal authority, and as rational but determined protector of the nation. The tone of the passage is that of a father reassuring his family that the big decision he has made today was made with great care, and with their communal welfare in mind.¶ Obama's stress on his careful deliberation process but not on the content of the deliberation is reminiscent of Iris Marion Young's emphasis on the "logic of masculinist protection" in national security thinking. This is a logic that connects the protective role of the father in the patriarchal family with the role of commander in chief. In both cases, she argues that one of the prices exacted by benevolent masculinist protection is that the protected woman/feminized citizen must concede "critical distance from decision-making autonomy." (120). In other words, if the fatherly president's allegiance to citizens and soldiers is expressed in the mindfulness with which he makes communal decisions of this magnitude, then it is equally true that our allegiance to the father-president is expressed in our acceptance of his authority and judgment to do what is best for us in these circumstances. The allegiance to the father quickly becomes the measure of our patriotism. As a rhetorical strategy, then, Obama's description of the seriousness of his decision-making process serves to legitimate his decision to escalate war through an appeal to an image of protective presidential masculinity. This appeal interpellates the audience in the role of a complicit, feminized citizenry that needs such fatherly protection.[7]¶ After the scant historical review, and a summary of where we are and why we are obliged to go to war, Obama devotes a good portion of the West Point speech to making a series of sequential points, statements of fact, and reasoned arguments. For example, he gives three specific goals for the Afghan intervention, and outlines how those goals will be achieved and how it will all be paid for. He also identifies three possible objections to the escalation and gives reasoned arguments for why these criticisms are incorrect. In sum, he says "As President, I refuse to set goals that go beyond our responsibility, our means, or our interests." (para. 37).As feminist International Relations scholars have argued, to talk about war in rationalist terms as Obama does here tends to divert attention from the cruelties of war, and to imagine the truth of war "abstracted from bodies"

(Ruddick 132). It becomes difficult, in this context, to focus on, or give weight to, the terrible details of war, and in particular to the death and destruction that modern wars exact mostly from civilians not soldiers.[8] As a rhetorical performance, the description of war in terms of rational sequences and formulas also tends to give authority to the rhetorician himself by distancing him from feminized forms of emotionality or care work (Cohn).¶ Obama ends his speech with the conclusion that presidential war speeches commonly have: an eloquent and solemn call to unity and patriotism. "Now, let me be clear: None of this will be easy. The struggle against violent extremism will not be finished quickly, and it extends well beyond Afghanistan and Pakistan. It will be an enduring test of our free society, and our leadership in the world." (para. 41) The logic of a bond between our free society and our leadership in the world is presupposed rather than described or explained. Like all heroes, the hero of the exceptionalist narrative faces a test. In this instance, he is us, and our essential quality of being a free society is linked to our dominance in the world.¶ Since the days of Franklin Roosevelt, and the service and sacrifice of our grandparents and great-grandparents, our country has borne a special burden in global affairs. We have spilled American blood in many countries on multiple continents.We have spent our revenue to help others rebuild from rubble and develop their own economies.We have joined with others to develop an architecture of institutions -- from the United Nations to NATO to the World Bank -- that provide for the common security and prosperity of human beings.¶ We have not always been thanked for these efforts, and we have at times made mistakes. But more than any other nation, the United States of America has underwritten global security for over six decades -- a time that, for all its problems, has seen walls come down, and markets open, and billions lifted from poverty, unparalleled scientific progress and advancing frontiers of human liberty.¶ For unlike the great powers of old, we have not sought world domination.Our union was founded in resistance to oppression. We do not seek to occupy other nations.We will not claim another nation's resources or target other peoples because their faith or ethnicity is different from ours.What we have fought for -- what we continue to fight for -- is a better future for our children and grandchildren. And we believe that their lives will be better if other peoples' children and grandchildren can live in freedom and access opportunity (para. 47-49).¶ Unlike other world powers, we are benevolent, seeking only that which will make the world a better place. We are, that is to say, a world power but not a world empire. Our history shows this: our military violence and our leadership have underwritten global security for over sixty years. Strangely, though, our fatherly sacrifice to protect the world from harm is sometimes misunderstood, and "we have not always been thanked for our efforts." Who are the unthankful and what is their story? In the standard-issue exceptionalist narrative, they are the enemies of freedom, the sowers of chaos, and the ideologically possessed. Obama certainly believes this. At the same time, the statement that "we have not always been thanked for our efforts" also expresses a deep anxiety about the details and the stories that are erased by the great father's version of history.¶ Making War, Talking Peace: The Nobel Peace Prize Speech¶ The Nobel Prize acceptance speech, given just nine days after Obama's announcement of the escalation of the war in Afghanistan, provides a fascinating expansion of the plot of "American as good vs. foreign as evil" that informs the narrative justification for war in the West Point speech. In this speech, Obama contextualizes both American exceptionalism in general, and his specific decision to expand the war in Afghanistan, in a sweeping historical narrative of global progress. "At the dawn of history," Obama declares, "war was routinely pursued between tribes and peoples quite simply as a way of 'seeking power and settling disputes." (para. 6) Later, as "man" progressed, legal and diplomatic efforts were made in an attempt to regulate war and the way it was pursued. Obama invokes just war theory citing it as one of the principle ways in which humans have tried to regulate and civilize war. In Obama's narrative, the United States is located at the upper end of this historical progression because it is the United States that has provided the leadership to produce the global "architecture" of peace in the form of the United Nations, support for human rights, nuclear arms reductions, and so on. Elaborating on the schematic history of the United States that appeared in the West Point speech, Obama says¶ The United States of America has helped underwrite global security for more than six decades with the blood of our citizens and the strength of our arms. The service and sacrifice of our men and women in uniform has promoted peace and prosperity from Germany to Korea, and enabled democracy to take hold in places like the Balkans.We have borne this burden not because we seek to impose our will.We have done so out of enlightened self-interest -- because we seek a better future for our children and grandchildren, and we believe that their lives will be better if others' children and grandchildren can live in freedom and prosperity (para. 18).¶ J. Ann Tickner argues that the idea of enlightened self interest corresponds to a masculinist model of international relations in which states are systematic and instrumental they are competitive "profit maximizers that pursue power and autonomy in an anarchic world system."(52) In this context, if international cooperation exists, it is explained not in terms of community or an interdependent notion of security and welfare, but rather in terms of rational choice and enlightened self-interest. Here, in Obama's version, we shoulder the burden of world peace and prosperity both heroically (with American blood and military power) but also as rational actors. We act not as an imperial power, but as a benign power exercising rational choices in a dangerous world in order to protect our interests. By virtue of the incantatory power of the exceptionalist narrative, our interests are identical with democratic values and the cause of economic justice.¶ The awkward context of the Nobel Prize speech both clarifies and complicates Obama's justification of war. While acknowledging the "moral force" of the theory of non-violence, he also argues that "evil does exist in the world" and that a realist assessment of the world "as it is" sometimes requires violence. This part of the speech is quite subtle, shuttling back and forth between the recognition that war is terrible and the insistence that it is sometimes necessary. The notion that war is sometimes just and sometimes necessary for building peace is modified throughout with an appeal to "responsibility" and to the rational, measured use of military violence. Obama argues that "all responsible nations must embrace the role that militaries with a clear mandate can play to keep the peace." (para. 26) The rationalist tone of responsibility and militaries with clear mandates is matched by Obama's framing of the philosophical question of war and peace as a matter of human imperfection. The ideals of peace are beautiful, but in the world as it is human beings are not perfect. They sometimes act unaccountably and irresponsibly. And sometimes they must be stopped from perpetrating evil.¶ At the end of the speech, Obama signals what for him is the chief human imperfection that is at the root of so much of the world's violence. He says,¶ As the world grows smaller, you might think it would be easier for human beings to recognize how similar we are; to understand that we're all basically seeking the same things; that we all hope for the chance to live out our lives with some measure of happiness and fulfillment for ourselves and our families. ¶ And yet somehow, given the dizzying pace of globalization, the cultural leveling of modernity, it perhaps comes as no surprise that people fear the loss of what they cherish in their particular identities -- their race, their tribe, and perhaps most powerfully their religion. In some places, this fear has led to conflict.At times, it even feels like we're moving backwards.We see it in the Middle East, as the conflict between Arabs and Jews seems to harden.We see it in nations that are torn asunder by tribal lines.¶ And most dangerously, we see it in the way that religion is used to justify the murder of innocents by those who have distorted and defiled the great religion of Islam, and who attacked my country from Afghanistan.T hese extremists are not the first to kill in the name of God; the cruelties of the Crusades are amply recorded. But they remind us that no Holy War can ever be a just war (para. 47-49).¶ In the context of globalization, what jams the machine is fear of loss of identity. This fear also gets in the way of our universal human aspirations for peace and prosperity. The most notable example of this kind of fear is, of course, the terrorism practiced by al Qaeda. This is a fear underwritten by megalomania: the idea that violence is mandated by God. What is striking about this passage is that it plots opposition to globalization as fear of change, almost as a kind of primitive or childish clinging to identity in a world whose universal characteristics are evident. But can this be the whole story? Can one explain the conflict between Israel and the Palestinians, as Obama appears to do here, as irrational fear of loss of identity? Is opposition to capitalist globalization American-style, and under the paternal arm of American power, always and everywhere a form of childishness or partial vision?¶ In his concluding comments, Obama quotes Martin Luther King's 1964 Nobel Prize acceptance speech in which he talks about the moral necessity of striving for what ought to be rather than accepting things as they are. This is an eloquent but highly impertinent frame for the speech. In his Nobel address, King soundly rejects those versions of history organized around notions of necessary violence. Accepting the prize on behalf of the entire civil rights movement, King says:¶ After contemplation, I conclude that this award which I receive on behalf of that movement is a profound recognition that nonviolence is the answer to the crucial political and moral question of our time - the need for man to overcome oppression and violence without resorting to violence and oppression. Civilization and violence are antithetical concepts. Negroes of the United States, following the people of India, have demonstrated that nonviolence is not sterile passivity, but a powerful moral force which makes for social transformation. Sooner or later all the people of the world will have to discover a way to live together in peace, and thereby transform this pending cosmic elegy into a creative psalm of brotherhood. If this is to be achieved, man must evolve for all human conflict a method which rejects revenge, aggression and retaliation. The foundation of such a method is love (para. 4).¶ King clearly rejects the idea that civilization sometimes requires violence, or that violence can sometimes be just or moral. Love, in King's terms, is antithetical to the discourse of innocence, guilt, power and violence that constitutes the narrative of American exceptionalism. Instead, King's ethic of love is consonant with Judith Butler's critique of violence:¶ The violent response is the one that does not ask, and does not seek to know. It wants to shore up what it knows, to expunge what threatens it with not-knowing, what forces it to reconsider the presuppositions of its world, their contingency, their malleability. The nonviolent response lives with its unknowingness about the Other in the face of the Other, since sustaining the bond that the question opens is finally more valuable than knowing in advance what holds us in common, as if we already have all the resources we need to know what defines the human, what its future life might be (35).¶ This is precisely what is wrong with the narrative of American exceptionalism, and with Obama's obligation to it. A story whose plot is organized entirely around the character of its hero does not seek to know. It is narcissistic. It shores up what it knows in fear of the Other, and in this gesture reconfirms that its view of the world is the truth. Obama seems oblivious to the contradictions in his assertion of American power as he struggles here to articulate the oxymoron of peace through war. In the end, what "makes sense" in his justification for war is the cultural and political sense that adheres to the image of embodied presidential masculinity, and to his military leadership performed in patriotic service to America's heroic global mission.¶ Conclusion¶ Obama's national security policies and rhetoric are, to be fair, significantly different in many ways than Bush's. Nonetheless, he steeps his rhetoric of hope for a new foreign policy in the old, familiar language of American exceptionalism. This illustrates how the political logic of a militarized and masculinized nation, presidency and citizenry has proved to be more enduring, significant and powerful than the strategy differences that have divided Democrats and Republicans over the last 60 years. It is important also because the cultural logic of American exceptionalism guaranteed by military power makes so many questions difficult to ask because the questions themselves seem absurd, effeminately nave, or simply out of rhetorical limits. These are unasked questions such as what violence was required to achieve our affluence and power? How can that violence be justified? Are there models for world peace, prosperity and freedom other than America's dominance and "leadership?" Does military power and violence produce security? What constitutes security? Is invulnerability a legitimate security goal? Is the authority of Commander-in-chief one that automatically adheres to the presidency at all times, or should the executive be more limited in its power as originally envisioned in the Constitution? Is citizenship best characterized in terms of a militarized and masculinized patriotism? Can terrorism be fought with large-scale military tactics?¶ Of course, it is impossible to know all the ins and outs of how Obama and his advisors reached the decision to escalate the war in Afghanistan. For those who voted for Obama over Clinton during the Democratic primary campaign because of his clear-spoken commitment to a different kind of foreign policy, the decision is disappointing to say the least. In the final analysis, when the decision was made, and its justification needed to be formulated into public rhetoric, what is clear is that the Obama administration felt at home in and oriented by - the old language of American exceptionalism. Familiar orientations, as Sara Ahmed argues, are an "effect of inhabitance." That is, their sense, their familiarity and their surety are products of their alignment with an already aligned world (7). My argument here is that the sense Obama makes of war is indebted to and made possible by - the familiarity and common-sense orientation of American exceptionalism. If the militarism and masculinism of his national security logic seem sensible or reassuring, it is because they are oriented in deeply familiar ways. The rhetoric of war and national security also works, of course, to recreate the familiar orientation from which it emerges. As Susan Jeffords argues, in the post-Vietnam context, heroic narratives about the war had the decisive (but indirectly manifested) effect of "remasculinizing American culture." This is why the work of disorientation that is proposed by feminist International Relations scholars and activists with its specific focus on the hidden injuries of gender in the familiar discourses of war and security is so important. It is also why it is so difficult.¶ I have argued that Obama's war logic is oriented by, and serves to reorient us towards, a national mythology grounded in narratives of glorified violence and masculinity. The difficulty of challenging and disorienting that prevailing narrative is eloquently described by Jorge Luis Borges in his story "The South." The story serves as an apt allegory of the mythology of American exceptionalism with its multiple commitments to masculinity and violence, and for the ways this mythology works to make military violence the seemingly inevitable and sensible locus where the national story is both resolved and reinvigorated. The main character in "The South" is named Juan Dahlmann. Dahlmann feels "deeply Argentine" despite the fact that his paternal grandfather was a northern European immigrant. Dahlmann's patriotic sense of identity involves, among other things, having purchased a little ranch in the south that had once been in his mother's family. Dahlmann lives in Buenos Aires, and for him the south has tremendous symbolic resonance as that place that retains the masculinist features of national mythology: the pampa, the gaucho, the singing bard, the tavern, the duel. Dahlmann dreams about the ranch and its old house, and takes comfort in imagining it waiting for him on the pampa, even though he never really gets a chance to actually go there. One day, Dahlmann is struck gravely ill with a terrible infection and is hospitalized with high fever. As is typical of so many of Borges' stories, it is impossible to tell if the subsequent narrated events are products of his hallucinatory state or are really happening to him. In any event, after some days of medical intervention, he is released and boards a train towards the south to convalesce at his ranch. He arrives, enters a tavern where he eats barbeque and drinks wine, and then is taunted by some young men who have been drinking too much. Although the bar owner tells him to pay them no mind, Dahlmann confronts them as any traditional male character in a gaucho story would be required to do. In seeming recognition of his decisive entrance into one of the enduring storylines of nationalist mythology (the knife fight between men at a watering hole on the pampa), the ancient gaucho in the corner of the bar who until now has remained motionless as if frozen in time, becomes "ecstatic" and throws him a dagger. The rest is preordained: Dahlmann will walk out of the tavern with a knife in his hand, he will fight bravely, and then die with the stranger's blade in his gut. It is, the narrator says, "as if the South had decided that Dahlmann should agree to the duel." (203) When he picks up the dagger, he feels two things: first, "that this almost instinctive act committed him to fighting" and, second, "that, in his clumsy hand, the weapon would not serve to defend him, but rather to justify their killing of him" (Borges, 203 translations mine).¶ For me, "The South" is a story about the masculinist mythology of national identity and violence. Intricate and contradictory is it dream or reality? the myth exercises its force both from within on Dahlmann's imagination and from without on his body. The logic of a militarized and masculinized rhetoric of national security, in concert with the economic logic of our military budget and the imperial logic of our global ambition, serves as our "south" leading us onward towards the use of large-scale military violence as if in a dream from which we cannot wake. We cannot hear the warnings of the barkeep who tries to tell us that we do not have to kill or be killed in this instance. Like Dahlmann, our politicians even the less bellicose among them when faced with security threats simply cannot imagine any alternative to masculinist bravado and the duel to the death.¶ "The South", then, is a cautionary tale. As long as presidents and politicians dare not challenge the role of the military budget as the primary organizing principle of our economy, and as long as the militarized and masculinized ideology of American exceptionalism remains the almost unitary language with which we speak of national security and foreign policy, there should be no surprise when ostensible doves from the Democratic Party such as Barack Obama pursue large-scale military campaigns in places like Afghanistan, and seem to do so as readily as their reputedly hawkish counterparts in the Republican Party. Alternate strategies to large-scale military violence require new story-lines of national identity and national security. We need to give ourselves a choice about whether taking up the knife is what the situation calls for. We need to ask questions about how we got into such a situation in the first place. We need to create alternatives to the logic that defines security as killing or being killed. Clearly, rhetoric plays a significant role in preparing these choices. But, as Obama's performance indicates, it is unlikely that our presidents and our politicians will do the rhetorical work necessary to disorient the prevailing exceptionalist narrative and reorient the debate towards the ethos of human security. It falls to us - citizens, activists and intellectuals - to turn our political rhetoric away from antagonisms that require violence towards the democratic task of contending with opponents with whom we share the world.

### Alt

#### Our alternative is to refuse technical debates about war powers in favor of subjecting the 1ac’s discourse to rigorous democratic scrutiny

Aziz Rana 12, Assistant Professor of Law, Cornell University Law School; A.B., Harvard College; J.D., Yale Law School; PhD., Harvard University, July 2012, “NATIONAL SECURITY: LEAD ARTICLE: Who Decides on Security?,” 44 Conn. L. Rev. 1417

But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit.

If the objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this meahn for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars-emphasizing new statutory frameworks or greater judicial assertiveness-is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants-danger too complex for the average citizen to comprehend independently-it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that it remains unclear which popular base exists in society to raise these questions. Unless such a base fully emerges, we can expect our prevailing security arrangements to become ever more entrenched.

## Case

## Solvency

### Circumvention

#### Obama will circumvent the plan --- empirics prove

Levine 12 - Law Clerk; J.D., May 2012, University of Michigan Law School (David Levine, 2013 SURVEY OF BOOKS RELATED TO THE LAW: BOOK NOTICE: A TIME FOR PRESIDENTIAL POWER? WAR TIME AND THE CONSTRAINED EXECUTIVE, 111 Mich. L. Rev. 1195)

Both the Declare War Clause n49 and the War Powers Resolution n50 give Congress some control over exactly when "wartime" exists. While the U.S. military was deployed to Libya during the spring and summer of 2011, the Obama Administration advanced the argument that, under the circumstances, it was bound by neither clause. n51 If Dudziak is worried about "war's presence as an ongoing feature of American democracy" (p. 136), Libya is a potent case study with implications for the use of force over the coming decades.

Article I, Section 8 of the U.S. Constitution grants to Congress the power to "declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." n52 Although there is substantial debate on the precise scope of these powers, n53 this clause at least provides some measure of congressional control over significant commitments of U.S. forces to battle. However, it has long been accepted that presidents, acting pursuant to the commander-in-chief power, may "introduce[] armed forces into situations in which they encounter[], or risk[] encountering, hostilities, but which [are] not "wars' in either the common meaning or the [\*1207] constitutional sense." n54 Successive administrations have adopted some variant of that view and have invariably deployed U.S. forces abroad in a limited manner based on this inherent authority. n55

The Obama Administration has adopted this position - that a president has inherent constitutional authority to deploy forces outside of war - and even sought to clarify it. In the Office of Legal Counsel's ("OLC") memo to President Obama on the authority to use military force in Libya, n56 the Administration acknowledged that the Declare War Clause is a "possible constitutionally-based limit on ... presidential authority to employ military force." n57 The memo reasoned that the Constitution speaks only to Congress's ability to shape engagements that are "wars," and that presidents have deployed forces in limited contexts from the earliest days of the Union. n58 Acknowledging those facts, the memo concluded that the constitutional limit on congressional power must be the conceptual line between war and not war. In locating this boundary, the memo looked to the "anticipated nature, scope, and duration" of the conflict to which President Obama was introducing forces. n59 OLC found that the "war" standard "will be satisfied only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period." n60

The Obama Administration's position was not out of sync with previous presidential practice - the Declare War Clause did not require congressional approval prior to executive deployment of troops. In analyzing the "nature, scope, and duration" questions, the memo looked first to the type of missions that U.S. forces would be engaged in. The air missions envisioned for the Libya operation did not pose the threat of withdrawal difficulty or escalation risk that might indicate "a greater need for approval [from Congress] at the outset." n61 The nature of the mission, then, was not similar to full "war." Similarly, the scope of the intended operation was primarily limited, at the time the memo was written, to enforcing a no-fly zone. n62 Consequently, [\*1208] the operation's expected duration was not long. Thus, concluded OLC, "the use of force by the United States in Libya [did not rise] to the level of a "war' in the constitutional sense." n63 While this conclusion may have been uncontroversial, it highlights Dudziak's concerns over the manipulation of the idea of "wartime," concerns that were heightened by the Obama Administration's War Powers Resolution analysis. Congress passed the War Powers Resolution in 1973 in an attempt to rein in executive power in the wake of the Vietnam War. n64 The resolution provides that the president shall "in every possible instance ... consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." n65 Additionally, when the president sends U.S. forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated," the resolution requires him to submit a report to Congress describing the circumstances of the deployment and the expected involvement of U.S. troops in the "hostilities." n66 Within sixty days of receiving that report, Congress must either declare war or in some other way extend the deployment; in the absence of some ratifying action, the resolution requires that the president withdraw U.S. forces. n67 Though eschewing the plainly confrontational route of directly challenging Congress's power under the War Powers Resolution, the Obama Administration implicitly challenged Congress's ability to affect future operations. In declining to withdraw forces, despite Congress's lack of approving legislation, President Obama claimed that the conflict in Libya could not be deemed "hostilities" as that term is used in the resolution. This argument was made both in a letter to Congress during the summer of 2011 n68 and in congressional testimony given by Harold Koh, the State Department Legal Advisor under the Obama Administration. n69 [\*1209] Koh's testimony provides the most complete recitation of the Obama Administration's analysis and focuses on four factors that distinguish the fighting in Libya (or at least the United States' participation) from "hostilities": the scope of the mission, the exposure of U.S. forces, the risk of escalation, and the nature of the tactics to be used. First, "the mission is limited." n70 That is, the objectives of the overall campaign led by the North American Treaty Organization ("NATO") were confined to a "civilian protection operation ... implementing a U.N. Security Council resolution." n71 Second, the "exposure" of the U.S. forces involved was narrow - the conflict did not "involve active exchanges of fire with hostile forces" in ways that would endanger U.S. service members' safety. n72 Third, the fact that the "risk of escalation [was] limited" weighed in favor of not categorizing the conflict as "hostilities." n73 Finally, the "military means" the United States used in Libya were limited in nature. n74 The majority of missions were focused on "providing intelligence capabilities and refueling assets." n75 Those American flights that were air-to-ground missions were a mix of suppression-of-enemy-air-defenses operations to enforce a no-fly zone and strikes by armed Predator drones. n76 As a point of comparison, Koh noted that "the total number of U.S. munitions dropped has been a tiny fraction of the number dropped in Kosovo." n77 With the exception of this final factor, these considerations are quite similar to the factors that define whether a conflict is a "war" for constitutional purposes. n78

The result of this reasoning is a substantially relaxed restraint on presidential authority to use force abroad going forward. As armed drones begin [\*1210] to make up a larger portion of the United States' arsenal, n79 and as other protective technologies, such as standoff munitions n80 and electronic warfare techniques, gain traction, it is far more likely that the "exposure" of U.S. forces will decrease substantially. The force used in Yemen and the Horn of Africa is illustrative of this new paradigm where U.S. service members are not "involved [in] active exchanges of fire with hostile forces," n81 but rather machines use force by acting as human proxies. To the same point, if the "military means" used in Libya are markers of something short of "hostilities," the United States is only likely to see the use of those means increase in the coming decades. Pressing the logic of Koh's testimony, leeway for unilateral executive action will increase as the makeup of our arsenal continues to modernize. n82

Dudziak worries about the invocation of "wartime" as an argument for the perpetual exercise of extraordinary powers. The Libya scenario, of course, is somewhat different - the president has argued that the absence of "war" leaves him a residuum of power such that he may use force abroad without congressional input. The two positions are of a piece, though. Dudziak argues that legacy conceptions of "wartime" and "peacetime" have left us vulnerable to the former's use, in and of itself, as a reason for increased executive power. Such literal thinking - that "war" is something specific or that the word "hostilities" has certain limits - also opens the door to the Obama Administration's defense of its position on Libya. And looking at the substance of that position leaves much to be desired.

Both Koh's testimony and the OLC memo pay lip service to the idea that the policy considerations underlying their position are consistent with the policy considerations of the Framers with respect to the Declare War Clause and Congress with respect to the War Powers Resolution. But the primary, if not the only, consideration mentioned is the loss of U.S. forces. That concern is front and center when analyzing the "exposure" of service [\*1211] members, n83 and it is also on display with respect to discussions about the nature and scope of an operation. n84 This is not the only policy consideration that one might intuit from those two provisions, however. Using lethal force abroad is a very serious matter, and the U.S. polity might rationally want input from the more representative branch in deciding when, where, and how that force is used in its name. In that same vein, permitting one individual to embroil the nation in foreign conflicts - limited or otherwise - without the input of another coequal branch of government is potentially dangerous. n85

As Dudziak's framework highlights the limits of the Obama Administration's argument for expansive power, so does the Administration's novel dissection of "hostilities" illustrate the limits of Dudziak's analysis. Dudziak presents a narrative arc bending toward the expansion of wartime and, as a result, increased presidential power. That is not the case with Libya: the president finds power in "not war" rather than in "wartime." If the American public is guilty, as Dudziak asserts, of using the outmoded and misleadingly concrete terminology of "wartime" to describe an increasingly complex phenomenon, Dudziak herself is guilty of operating within a paradigm where wartime necessarily equals more executive power (than does "not war"), a paradigm that has been supplanted by a more nuanced reality. Although [\*1212] Dudziak identifies the dangers of manipulating the boundaries of wartime, her catalog of manipulations remains incomplete because of the inherent limits of her framework.

This realization does not detract from Dudziak's warnings about the perils of endless wartime, however. Indeed, the powers that President Obama has claimed seem, perhaps, more palatable after a decade in which war has been invoked as an argument for many executive powers that would, in other eras, seem extraordinary. Though he has not explicitly invoked war during the Libya crisis, President Obama has certainly shown a willingness to manipulate its definition in the service of expanded executive power in ways that seem sure to increase "war's presence as an ongoing feature of American democracy" (p. 136).

Conclusion Dudziak presents a compelling argument and supports it well. War Time is potent as a rhetorical device and as a way to frame decisionmaking. This is especially so for the executive branch of the U.S. government, for which wartime has generally meant increased, and ever more expansive, power. As the United States continues to transit an era in which the lines between "war" and "peace" become increasingly blurred and violent adversaries are a constant, the temptation to claim wartime powers - to render the extraordinary ordinary - is significant.

This Notice has argued that, contrary to Dudziak's concerns, the temptation is not absolute. Indeed, in some instances - notably, detention operations in Iraq and Afghanistan - we are still able to differentiate between "war" and "peace" in ways that have hard legal meaning for the actors involved. And, importantly, the executive still feels compelled to abide by these distinctions and act in accordance with the law rather than claim wartime exceptionalism.

That the temptation is not absolute, however, does not mean that it is not real or that Dudziak's concerns have not manifested themselves. This detachment of expansive power from temporally bound periods has opened the door for, and in some ways incentivized, limiting wartime rather than expanding it. While President Obama has recognized the legal constraints that "war" imposes, he has also followed in the footsteps of executives who have attempted to manipulate the definition of "war" itself (and now the definition of "hostilities") in order to evade those constraints as much as possible. To the extent he has succeeded in that evasion, he has confirmed what seems to be Dudziak's greatest fear: that "military engagement no longer seems to require the support of the American people, but instead their inattention" (p. 132).

### Battlefield Turn

#### No “global battlefield” now---assertions of TK authority are geographically limited and constrained

Geoffrey Corn 13, Professor of Law and Presidential Research Professor, South Texas College of Law, 2013, “Geography of Armed Conflict: Why it is a Mistake to Fish for the Red Herring,” International Legal Studies, 89 INT’L L. STUD. 77 (2013)

When the Bush administration originally coined the phrase “Global War on Terror” (GWOT), it was intended to put the terrorist enemy on notice that no longer were they functionally immune from the powerful U.S. combat arsenal. However, it also unleashed a decade long barrage of controversy, driven in large measure by the suggestion that this new “war” lacked any geographical limitation. Unlike wars of the recent past, all of which were conducted within a de facto geographically confined battlespace, the United States would, according to this new theory, take the fight to the enemy—an enemy so unconventional that this might include locations without even the slightest link to a theater of “active” combat operations, areas commonly characterized as “hot zones” today. Although President Obama abandoned the GWOT moniker, his administration nonetheless continues to strike targets of opportunity when and where they emerge, embracing the same threat–based scope of combat operations.29

In practice, these operations have never come close to matching the extreme rhetoric of power assertion invoked by opponents of the armed conflict with al Qaeda. The United States has never engaged in a cavalier assertion of combat power into the territory of a functioning State.30 Opponents to the GWOT concept like to erect the straw man of a U.S. attack in the streets of Berlin, London, Paris or Zurich to demonstrate the consequences of a geographically unconstrained armed conflict against an unconventional terrorist enemy. In reality, however, the actual scope of combat operations has always been much more constrained by the (at least implicit) recognition of sovereignty.

#### A drone court would legitimize TKs broadly

Garrett Epps 13, Professor of Law, University of Baltimore, 2/16/13, “Why a Secret Court Won't Solve the Drone-Strike Problem,” http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/

Finally, in time of war, there will be occasions when a target emerges and decisions must be made too quickly for even a secret court proceeding. And thus the "drone court" would not be able to rule on some cases; an ambitious president could find many exceptions.

In addition, an ambitious executive might also use the secret court as a means to extend the drone-strike authority beyond actions in time of authorized military action. With such a review mechanism in place, the argument might go, there's no danger in ceding the president's authority to use drones against enemies not so designated by Congress.

### Doesn’t Limit

#### A drone court wouldn’t limit overall drone strikes---it’d only legitimize current practices

Jameel Jaffer 13, Director of the ACLU's Center for Democracy, April 2013, “Judicial Review of Targeted Killings,” http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php

Since 9/11, the CIA and Joint Special Operations Command (JSOC) have used armed drones to kill thousands of people in places far removed from conventional battlefields. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out.

While judicial engagement with the targeted killing program is long overdue, those aiming to bring the program in line with our legal traditions and moral intuitions should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it.

The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats.

These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits.

It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges. Even Jeh Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged in a recent speech that judicial review could add “rigor” to the executive’s decisionmaking process. In explaining the function of the Foreign Intelligence Surveillance Court, which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse.

But to recognize that judicial review is indispensible in this context is not to say that Congress should establish a specialized court, still less that it should establish such a court to review contemplated killings before they are carried out.

First, the establishment of such a court would almost certainly entrench the notion that the government has authority, even far away from conflict zones, to use lethal force against individuals who do not present imminent threats. When a threat is truly imminent, after all, the government will not have time to apply to a court for permission to carry out a strike. Exigency will make prior judicial review infeasible. To propose that a court should review contemplated strikes before they are carried out is to accept that the government should be contemplating strikes against people who do not present imminent threats. This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it.

## Norms

### 1NC No Drone Wars

#### No risk of drone wars

Joseph Singh 12, researcher at the Center for a New American Security, 8/13/12, “Betting Against a Drone Arms Race,” http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2eSvaZnfQ

In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology. ¶ Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team. ¶ Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones. ¶ What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use. ¶ Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best. ¶ Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations. ¶ Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

### U.S. Not Key---1NC

#### No causal link between U.S. drone doctrine and other’ countries choices---means can’t set a precedent

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way:

Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat.

“Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.”

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?)

It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.

Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.

But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.

Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do – but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

### Restraint Fails---1NC

#### U.S. drone use doesn’t set a precedent, restraint doesn’t solve it, and norms don’t apply to drones at all in the first place

Amitai Etzioni 13, professor of international relations at George Washington University, March/April 2013, “The Great Drone Debate,” Military Review, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage.

Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of self constraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

I am not arguing that there are no natural norms that restrain behavior. There are certainly some that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). However drones are but one step—following bombers and missiles—in the development of distant battleﬁeld technologies. (Robotic soldiers—or future ﬁghting machines— are next in line). In such circumstances, the role of norms is much more limited.

### China---No Impact to Drones

#### China has no incentive to rise violently

Hugh White 13, Professor of Strategic Studies at the Strategic and Defence Studies Centre, Australian National University, 6/24/13, “The new security order,” http://epress.anu.edu.au/wp-content/uploads/2013/06/EAFQ-5.2-WEB-FINAL.pdf

The second view of China’s ambitions is that they are far-reaching. The examples of nazi Germany, Imperial Japan and stalinist Russia lead some to assume that any rising power must inevitably aim to overturn every aspect of the preexisting order—territorial, economic, political, ideological, even moral. many people fear that China too has these ambitions. but this fear underestimates China’s immense stake in many aspects of the current order of which it has been by far the biggest beneficiary. In this way, it is very unlike the disruptive rising powers of the 20th century—there is no evidence that China has territorial ambitions, notwithstanding its assertiveness in the south China sea. It has no political or ideological agendas, and no reason to change the economic order. In fact, China seems to want to change very little about the global or regional order except its own role in it, and even there its leadership ambitions seem primarily limited to Asia.

### AT: Senkakus

#### No Sino-Japanese/Senkaku conflict

Reuters 12, “Japan, China military conflict seen unlikely despite strain,” 9/23/12, http://www.reuters.com/article/2012/09/23/us-china-japan-confrontation-idUSBRE88M0F220120923

Hawkish Chinese commentators have urged Beijing to prepare for military conflict with Japan as tensions mount over disputed islands in the East China Sea, but most experts say chances the Asian rivals will decide to go to war are slim. ¶ A bigger risk is the possibility that an unintended maritime clash results in deaths and boosts pressure for retaliation, but even then Tokyo and Beijing are expected to seek to manage the row before it becomes a full-blown military confrontation. ¶ "That's the real risk - a maritime incident leading to a loss of life. If a Japanese or Chinese were killed, there would be a huge outpouring of nationalist sentiment," said Linda Jakobson, director of the East Asia Program at the Lowy Institute for International Policy in Sydney. ¶ "But I still cannot seriously imagine it would lead to an attack on the other country. I do think rational minds would prevail," she said, adding economic retaliation was more likely. ¶ A feud over the lonely islets in the East China Sea flared this month after Japan's government bought three of the islands from a private owner, triggering violent protests in China and threatening business between Asia's two biggest economies. ¶ Adding to the tensions, China sent more than 10 government patrol vessels to waters near the islands, known as the Diaoyu in China and the Senkaku in Japan, while Japan beefed up its Coast Guard patrols. Chinese media said 1,000 fishing boats have set sail for the area, although none has been sighted close by.¶ Despite the diplomatic standoff and rising nationalist sentiment in China especially, experts agree neither Beijing nor Tokyo would intentionally escalate to a military confrontation what is already the worst crisis in bilateral ties in decades.

## Accountability

### No Backlash

#### It’s impossible to solve cred or perception without completely banning drones

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

On the basis of undisclosed evidence, evaluated in unspecified procedures by rotating personnel with heterogeneous backgrounds, the US is continuing to kill those it classifies as suspected terrorists in Somalia, Yemen and Pakistan. It has certainly been eliminating militants who had nothing to do with 9/11, including local insurgents fighting local battles who, while posing no realistic threat to America, had allied themselves opportunistically with international anti-American jihadists. By following the latter wherever they go, the US is allowing ragtag militants to impose ever new fronts in its secret aerial war. Mistakes are made and can’t be hidden, at least not from local populations. Nor can the resentment of surrounding communities be easily assuaged. This is because, even when it finds its target, the US is killing not those who are demonstrably guilty of widely acknowledged crimes but rather those who, it is predicted, will commit crimes in the future. Of course, the civilian populations in the countries where these strikes take place will never accept the hunches of CIA or Pentagon futurologists. And so they will never accept American claims about the justice of Obama’s slimmed-down war on terror, but instead claim the right of self-defence, and this would be true even if drone operators could become as error-free as Brennan once claimed they already are. But of course collateral damage and mistaken-identity strikes will continue. They are inevitable accompaniments of all warfare. And they, too, along with intentional killings that are never publicly justified, will communicate resoundingly to the world that the arbitrary and unpredictable killing of innocent Muslims falls within America’s commodious concept of a just war.

### 1NC New Governance

#### Loss of U.S. legitimacy causes a global shift towards “new governance” models to solve problems

Patrick Cottrell 11, Assistant Professor of Political Science, Linfield College, July 2011, “Hope or Hype? Legitimacy and US Leadership in a Global Age,” Foreign Policy Analysis, Vol. 7, No. 3, p. 337-358

Many of today’s most prominent multilateral institutions were established in the years following World War II and thus reflect a very different era.34 However, while some of the more mainstream US foreign policy prescriptions that seek to revitalize these institutions —promoting UN Security Council reform, assuming a more proactive role on climate change, hosting a nuclear summit, and ratifying the Comprehensive Nuclear Test Ban Treaty—would help, they are unlikely to go far enough either in increasing the legitimacy of these institutions or in solving global problems. Accomplishing these goals requires the fundamental questioning of our received understandings of international law and institutions a globalized environment. Which legal and institutional constellations have the most potential to solve the complex problems we face? While the specific answers to these questions vary by issue area and circumstances, a general goal in updating and reinvigorating international institutions should be creating an order that recognizes the imperative of harnessing US power and ideals, but can still make progress in solving problems and retain legitimacy even when US leadership wanes. Recent developments in the study of experimental forms of governance in the international legal arena hold considerable potential in this regard.

#### Those new governance models are more effective at resolving all their impacts

Patrick Cottrell 11, Assistant Professor of Political Science, Linfield College, July 2011, “Hope or Hype? Legitimacy and US Leadership in a Global Age,” Foreign Policy Analysis, Vol. 7, No. 3, p. 337-358

While traditional legal arrangements might still have a prominent role to play in transnational regulation, updating the global institutional machinery requires some creative thought that extends beyond a renewed US commitment to multilateralism and addresses governance problems. As Iain Begg (2010) writes,

Why…is [policy] co-ordination so difficult to achieve? One obstacle is that countries have different priorities that can affect their willingness to commit to specific policy orientations; another is that the incentives to be a free-rider are often sizeable—why risk your own public finances if someone else is willing to risk theirs? But often the problem is simply that the institutional mechanisms that could enable better co-ordination are not in place, a problem that can be exacerbated when the crisis for which coordination might be the answer is unanticipated and unfamiliar.

A growing body of literature in the legal community is beginning to examine the emergence of “new governance” mechanisms in the US and EU regulatory contexts, which holds much promise in addressing the issues Begg raises and reconfiguring the broader global governance architecture.36 Rather than emphasizing “hard” legal mechanisms such as third-party verification and enforcement, new governance relies instead on an alternative set of non-binding mechanisms such as revisable standards, codes of conduct, best practices exchange, self-reporting, peer review, and benchmarking. Rather than following a centralized regulatory model, new governance opens up access to all the relevant stakeholders. Rather than relying primarily on coercion to secure compliance, new governance facilitates communicative processes of argumentation, persuasion, learning, and experimentation aimed at generating the social cohesion necessary to identify and solve common problems.37

There are several potential advantages to new governance mechanisms, either in conjunction with or as a substitute for traditional methods.38 First, many of today’s most pressing issues are complex, politically sensitive, and involve a high degree of uncertainty as to which solution will achieve the desired results. “Softer” forms of law allow for a range of possibilities for interpretation and trial and error without the constraints of uniform rules or the threat of sanction. This flexibility enables the governed to experiment and to tailor solutions to their specific problems, provides feedback mechanisms to share and build knowledge, and promotes the adaptability necessary to respond to ever evolving transnational challenges.

Second, new governance processes help deal with circumstances in which the gap between the aspired norm and existing reality is so large that hard regulatory provisions will be meaningless. They allow minimum levels of adherence to be established and formalize progressive advancement toward higher standards. And because many of the mechanisms such as peer review and standard setting are iterative, these process are well suited to adapt to the scope and pace of change, thereby maintaining the substantive basis of legitimacy by promoting incremental progress.

Third, new governance arrangements increase access to the policy process, thereby capitalizing on the best available expertise and enhancing the procedural basis for legitimacy. By engaging directly a diverse range of actors with different sources of know-how into the policy coordination apparatus, processes of experimentation and knowledge sharing are more likely to devise creative solutions required to solve problems. Moreover, the greater the degree of access for stakeholders, the lesser the chances [are] of a perceived “democratic deficit.”

Finally, because new governance focuses on creating a forum of continued dialog and interaction, it fosters common understandings about the problems and promotes the mutual trust necessary to maximize voluntarism, thus reducing the likelihood of non-compliance. In the event of non-compliance, the relevant community would be well equipped to identify the violation, agree upon an appropriate response (for example, increasing aid, exerting social pressure, or blacklisting), and to cultivate the political will necessary to implement it.

The move toward new governance is not just an abstract one. Indeed, there is reason to suggest that we are beginning to see a shift toward new governance even in areas such as security, which has long been dominated by the perspective that effective arrangements require rigorous third-party verification and enforcement.39 For example, although the Ottawa Convention (that is, the Mine Ban treaty) is legally binding on states, it arose from a bottom-up and participatory negotiation process driven by the common belief of a wide variety of actors that landmines were inhumane and of limited military utility (Cottrell 2009). Its implementation relies on informal mechanisms such as self-reporting and peer review and is widely considered to be making significant progress in addressing the landmines problem—all without sanctions and the formal participation of the United States, which has remained on the outside primarily because it still uses landmines in Korea, but has taken considerable steps to develop alternatives to landmines. Another example of new governance can be found in the Financial Action Task Force (FATF), a multilevel network that issues non-binding recommendations for countering money laundering and relies primarily on learning and persuasion, rather than enforcement, to ensure compliance.40 And even the United Nations, the world’s signature security institution and arguably the foremost target for legitimacy contests, has taken preliminary steps to integrate new governance mechanisms, as evinced by the creation of the 1540 committee, which is discussed below in order to provide a more detailed account of how these mechanisms might emerge and operate.

### Drone Court Doesn’t Solve Cred

#### A drone court wouldn’t solve U.S. credibility

Jeh Johnson 13, former Pentagon General Counsel, 3/18/13, “Keynote address at the Center on National Security at Fordham Law School: A “Drone Court”: Some Pros and Cons,” <http://www.lawfareblog.com/2013/03/jeh-johnson-speech-on-a-drone-court-some-pros-and-cons/>

The problem is that the American public is suspicious of executive power shrouded in secrecy. ¶ In the absence of an official picture of what our government is doing, and by what authority, many in the public fill the void by envisioning the worst. They see dark images of civilian and military national security personnel in the basement of the White House – acting, as Senator Angus King put it, as “prosecutor, judge, jury and executioner” — going down a list of Americans, deciding for themselves who shall live and who shall die, pursuant to a process and by standards no one understands. ¶ Our government, in speeches given by the Attorney General,[2] John Brennan,[3] Harold Koh,[4] and myself,[5] makes official disclosures of large amounts of information about its efforts, and the legal basis for those efforts, but it is never enough, because the public doesn’t know what it doesn’t know, but knows there are things their government is still withholding from them. ¶ The revelation 11 days ago that the executive branch does not claim the authority to kill an American non-combatant – something that was not, is not, and should never be an issue – is big news, and trumpeted as a major victory for congressional oversight. ¶ A senator who filibusters the government’s secrecy is compared in iconic terms to Jimmy Stewart. ¶ At the same time, through continual unauthorized leaks of sensitive information, our government looks to the American public as undisciplined and hypocritical. One federal court has characterized the government’s position in FOIA litigation as “Alice in Wonderland,”[6] while another, this past Friday, referred to it as “neither logical nor plausible.”[7] ¶ An anonymous, unclassified white paper leaked to NBC News prompts more questions than it answers. ¶ Our government finds itself in a lose-lose proposition: it fails to officially confirm many of its counterterrorism successes, and fails to officially confirm, deny or clarify unsubstantiated reports of civilian casualties. ¶ Our government’s good efforts for the safety of the people risks an erosion of support by the people. ¶ It is in this atmosphere that the idea of a national security court as a solution to the problem — an idea that for a long time existed only on the margins of the debate about U.S. counterterrorism policy but is now entertained by more mainstream thinkers such as Senator Diane Feinstein and a man I respect greatly, my former client Robert Gates – has gained momentum. ¶ To be sure, a national security court composed of a bipartisan group of federal judges with life tenure, to approve targeted lethal force, would bring some added levels of credibility, independence and rigor to the process, and those are worthy goals. ¶ In the eyes of the American public, judges are for the most part respected for their independence. ¶ In the eyes of the international community, a practice that is becoming increasingly controversial would be placed on a more credible footing.¶ A national security court would also help answer the question many are asking: what do we say to other nations who acquire this capability? A group of judges to approve targeted lethal force would set a standard and an example. ¶ Further, as so-called “targeted killings” become more controversial with time, I believe there are some decision-makers within the Executive Branch who actually wouldn’t mind the added comfort of judicial imprimatur on their decisions. ¶ But, we must be realistic about the degree of added credibility such a court can provide. Its proceedings would necessarily be ex parte and in secret, and, like a FISA court, I suspect almost all of the government’s applications would be granted, because, like a FISA application, the government would be sure to present a compelling case. So, at the same time the New York Times editorial page promotes a FISA-like court for targeted lethal force, it derides the FISA court as a “rubber stamp” because it almost never rejects an application.[8] How long before a “drone court” operating in secret is criticized in the same way?

### No Heg Impact

#### Reject their vague assertions for conflict scenarios absent hegemony – their authors overestimate the importance of the US

**Fettweis 11** [Christopher J. Fettweis - Department of Political Science Tulane University and Professor of National Security Affairs at the US Naval War College, “Free Riding or Restraint Examining European Grand Strategy”, Comparative Strategy; Sep/Oct2011, Vol. 30 Issue 4, p316-332, 17p, Chetan]

Assertions that without the combination of **U.S. capabilities, presence and commitments instability would return** to Europe and the Pacific Rim **are usually rendered in rather vague language**. If the United States were to decrease its commitments abroad, argued Robert Art, “**the world will become a more dangerous place** and, sooner or later, that will redound to America’s detriment.”53 **From where would this danger arise? Who** precisely **would do the fighting, and over what issues?** Without the United States, **would Europe really descend into Hobbesian anarchy? Would the Japanese attack** mainland **China again**, to see if they could fare better this time around? Would the Germans and French have another go at it? In other words, **where exactly is hegemony is keeping the peace?** With one exception, **these questions are rarely addressed**. That exception is in the Pacific Rim. Some analysts fear that a de facto surrender of U.S. hegemony would lead to a rise of Chinese influence. Bradley Thayer worries that Chinese would become “the language of diplomacy, trade and commerce, transportation and navigation, the internet, world sport, and global culture,” and that Beijing would come to “dominate science and technology, in all its forms” to the extent that soon theworldwould witness a Chinese astronaut who not only travels to the Moon, but “plants the communist flag on Mars, and perhaps other planets in the future.”54 Indeed Chin a is the only other major power that has increased its military spending since the end of the Cold War, even if it still is only about 2 percent of its GDP. Such levels of effort do not suggest a desire to compete with, much less supplant, the United States. The much-ballyhooed, **decade-long military buildup has brought Chinese spending up to somewhere between one-tenth and one-fifth of the U.S. level. It is hardly clear that a restrained United States would invite Chinese** regional, must less global, political **expansion.** Fortunately one need not ponder for too long the horrible specter of a red flag on Venus, since on the planet Earth, where war is no longer the dominant form of conflict resolution, the threats posed by even a rising China would not be terribly dire. The dangers contained in the terrestrial security environment are less severe than ever before. **Believers in the pacifying power of hegemony ought to keep in mind** a rather basic tenet: When it comes to policymaking, **specific threats are more significant than vague, unnamed dangers**. Without specific risks, it is just as plausible to interpret U.S. presence as redundant, as overseeing a peace that has already arrived. **Strategy should not be based upon vague images emerging from the dark reaches of the neoconservative imagination.**  Overestimating Our Importance One of **the most basic insights of cognitive psychology provides the final reason to doubt the power of hegemonic stability: Rarely are our actions as consequential** upon their behavior **as we perceive them to be.** A great deal of **experimental evidence exists to support the notion that** people (and therefore **states) tend to overrate the degree to which** **their behavior is responsible for the actions of others.** Robert Jervis has argued that two processes account for this overestimation, both ofwhichwould seem to be especially relevant in theU.S. case. 55 First, **believing that we are responsible** **for their actions gratifies our national ego** (which is not small to begin with; the United States is exceptional in its exceptionalism). The hubris of the United States, long appreciated and noted, has only grown with the collapse of the Soviet Union.56 **U.S. policymakers famously have comparatively little knowledge of—or interest in—events that occur outside of their own borders**. **If there is any state vulnerable to the overestimation of its importance due to the fundamental misunderstanding of the motivation of others, it would have to be the United States.** Second, policymakers in the United States are far more familiar with our actions than they are with the decision-making processes of our allies. Try as we might**, it is not possible to** fully **understand the threats, challenges, and opportunities that our allies see from their perspective.** The European great powers have domestic politics as complex as ours, and they also have competent, capable strategists to chart their way forward. **They react to many international forces, of which U.S. behavior is only one**. Therefore, for any actor trying to make sense of the action of others, Jervis notes, “in the absence of strong evidence to the contrary, the most obvious and parsimonious explanation is that he was responsible.”57 **It is natural**, therefore, **for U.S**. policymakers and **strategists to believe that the behavior of our allies (and rivals) is shaped largely by what Washington does**. Presumably Americans are at least as susceptible to the overestimation of their ability as any other people, and perhaps more so. At the very least, political psychologists tell us, **we are probably not as important to them as we think**. **The importance of U.S. hegemony in contributing to international stability is therefore almost certainly overrated**. In the end, one can never be sure why our major allies have not gone to, and do not even plan for, war. Like deterrence, **the hegemonic stability theory rests on faith; it can only be falsified, never proven**. It does not seem likely, however, that hegemony could fully account for twenty years of strategic decisions made in allied capitals if the international system were not already a remarkably peaceful place. **Perhaps these states have no intention of fighting one another to begin with**, and our commitments are redundant.

### AT: Pakistan Collapse

#### No impact

Tepperman 9—Deputy Editor at Newsweek. Frmr Deputy Managing Editor, Foreign Affairs. LLM, i-law, NYU. MA, jurisprudence, Oxford. (Jonathan, Why Obama Should Learn to Love the Bomb, http://jonathantepperman.com/Welcome\_files/nukes\_Final.pdf)

Note – Michael Desch = prof, polsci, Notre Dame

As for Pakistan, it has taken numerous precautions to ensure that its own weapons are insulated from the country’s chaos, installing complicated firing mechanisms to prevent a launch b

y lone radicals, for example, and instituting special training and screening for its nuclear personnel to ensure they’re not infiltrated by extremists. Even if the Pakistani state did collapse entirely—the nightmare scenario— the chance of a Taliban bomb would still be remote. Desch argues that the idea that terrorists “could use these weapons radically underestimates the difficulty of actually operating a modern nuclear arsenal. These things need constant maintenance and they’re very easy to disable. So the idea that these things could be stuffed into a gunnysack and smuggled across the Rio Grande is preposterous.”

# Block

## Accountability

### AT: Drones Good

#### Drones fail

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

Yet the evidence that drones inhibit the operational latitude of terrorist groups and push them towards collapse is more ambiguous than these accounts suggest. 57 In Pakistan, the ranks of Al-Qaeda have been weakened significantly by drone strikes, but its members have hardly given up the fight. Hundreds of Al-Qaeda members have fled to battlefields in Yemen, Somalia, Iraq, Syria and elsewhere. 58 These operatives bring with them the skills, experience and weapons needed to turn these wars into fiercer, and perhaps longer-lasting, conflicts. 59 In other words, pressure from drone strikes may have scattered Al-Qaeda militants, but it does not neutralize them. Many Al-Qaeda members have joined forces with local insur - gent groups in Syria, Mali and elsewhere, thus deepening the conflicts in these states. 60 In other cases, drones have fuelled militant movements and reordered the alliances and positions of local combatants. Following the escalation of drone strikes in Yemen, the desire for revenge drove hundreds, if not thousands, of Yemeni tribesmen to join Al-Qaeda in the Arabian Peninsula (AQAP), as well as smaller, indigenous militant networks. 61 Even in Pakistan, where the drone strikes have weakened Al-Qaeda and some of its affiliated movements, they have not cleared the battlefield. In Pakistan, other Islamist groups have moved into the vacuum left by the absence of Al-Qaeda, and some of these groups, particularly the cluster of groups arrayed under the name Tehrik-i-Taliban Pakistan (TTP), now pose a greater threat to the Pakistani government than Al-Qaeda ever did. 62 Drone strikes have distinct political effects on the ecology of militant networks in these countries, leaving some armed groups in a better position while crippling others. It is this dynamic that has accounted for the US decision gradually to expand the list of groups targeted by drone strikes, often at the behest of Pakistan. Far from concentrating exclusively on Al-Qaeda, the US has begun to use drone strikes against Pakistan’s enemies, including the TTP, the Mullah Nazir group, the Haqqani network and other smaller Islamist groups. 63 The result is that the US has weakened its principal enemy, Al-Qaeda, but only at the cost of earning a new set of enemies, some of whom may find a way to strike back. 64 The cost of this expansion of targets came into view when the TTP inspired and trained Faisal Shahzad to launch his attack on Times Square. 65 Similarly, the TTP claimed to be involved, possibly with Al-Qaeda, in attacking a CIA outpost at Camp Chapman in the Khost region of Afghanistan on 30 December 2009.66

#### Drones cause backlash creating more militants than they kill and undermining long-term stability

Lisa Schirch 12, Director of Human Security at the Alliance for Peacebuilding and a Research Professor at the Center for Justice and Peacebuilding at Eastern Mennonite University, 9 Costs of Drone Strikes, 6/28/12, http://www.huffingtonpost.com/lisa-schirch/drones\_b\_1630592.html

Proponents of using drones and "signature strikes" against suspected militants offer a variety of arguments supporting their use, including their comparative precision, lower risks to U.S. forces, and their impact on disrupting al Qaeda. With such benefits, the Obama administration directed the CIA to quadruple the number of drone attacks in the last three years. But wide evidence suggests drones carry far-reaching risks and long-term costs, including fueling more support for militant leaders in Pakistan, Yemen, Afghanistan and Somalia, increasing threats to the U.S., undermining local authorities, and damaging U.S. credibility on all human rights concerns -- thereby undermining U.S. attempts to support human rights in countries such as Syria. The seduction of drones' short-term impacts loses its appeal alongside the significant long-term strategic and moral costs of this tactic.¶ 1. Drones Substitute for a Coherent Strategy to Address Root Causes: Relying on the short-term tactics of drone strikes postpones and undermines the development of a comprehensive strategy to address the root causes driving militancy. Militant extremists are not simply a group of evil people without cause. Militant extremism is a mindset and a set of ideas. Drones do not kill their ideas. Rather drones amplify the voices of militant extremists who condemn foreign invasion and demand local control over their region. Drones bring legitimacy, credibility and sway public opinion toward the militant's arguments. Even if the drones kill militant extremists, it makes their ideas more powerful.¶ A more successful strategy will center on robust diplomatic engagement at all levels to address legitimate grievances. Tribal groups targeted by drones have legitimate grievances against their governments. A better strategy would draw tribal groups toward cooperation by fostering reconciliation and dialogue to address underlying grievances such as government corruption, vast unemployment and lack of basic services. In contrast, drone strikes decidedly turn local populations away from their own governments. A June 2012 International Crisis Group report argues that U.S. "focus on military funding has failed to deliver counter-terrorism dividends, instead entrenching the military's control over state institutions and delaying reforms. In order to help stabilize a fragile country in a conflict-prone region, the U.S. and other donors should focus instead on long-term civilian assistance to improve the quality of state services, in cooperation with local civil society organisations, NGOs with proven track records and national and provincial legislatures."¶ Civil society leaders in each country receiving drones plead with the U.S. to stop the counterproductive military attacks and instead use its global power to push for local and regional solutions to underlying diplomatic, humanitarian and development problems. But with a foreign policy that puts far more investment into military strategies than diplomatic strategies, U.S. diplomacy simply lacks the staff capacity and the training in principled negotiation to be the robust diplomatic presence needed in so many regions of the world.¶ 2. Drones Fuel al Qaeda Networks and Anti-Americanism: Measurable body counts of suspected militants appeal to some U.S. policymakers amidst a lack of any other tangible signs of progress in Afghanistan or Pakistan. U.S. officials who acknowledge drone related civilian deaths claim, "sometimes you have to take a life to save lives." Yet there is not credible evidence that lives are being saved by drone attacks.¶ Drones are fueling anti-American militancy. Using drones on tribal areas is like taking a hammer to a beehive. It creates a fury of anti-Americanism. In the war of ideas, drones turn locals toward Al Qaeda and away from the United States. Militant groups are growing and multiplying in response to the use of drones. While militants themselves are unpopular, drone strikes seem to unite rather than separate civilians from militants. Drone strikes inspire frequent public protests, reproachful media coverage, and public polls showing widespread condemnation and fear of the strikes. In May 2012, the Washington Post reported that "Across the vast, rugged terrain of southern Yemen, an escalating campaign of U.S. drone strikes is stirring increasing sympathy for al-Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States." CIA Pakistan station chief from 2004-2006, Robert Grenier states that drones create safe havens for militants. "It [the drone program] needs to be targeted much more finely. We have been seduced by them and the unintended consequences of our actions are going to outweigh the intended consequences."¶ 3. Drones Create Humanitarian Crises, Seeding Long-Term Instability: Over a million internally displaced Pakistanis have fled their homes, schools, and businesses to escape drone bombings, military bombing, and ground fighting. In Yemen, drones have displaced nearly 100,000. Seven aid agencies warn that Yemen is on the brink of a catastrophic food crisis with 10 million people -- nearly half of the population lacking food to eat. Drone-related displacement disrupts long-term stability by decreasing the capacity of local people to respond through civil society initiatives that foster stability, democracy and moderation and increase displaced people's vulnerability to insurgent recruitment. The U.S. is spending billions of dollars on the drone program while failing to adequately respond to the humanitarian crisis that may have significant long-term political and economic impacts.¶ 4. Drones Commit Human Rights Violations: Advocates of drones compare them with other bombs and note that they cause fewer civilian casualties than the "shock and awe" U.S. bombing in Iraq and Afghanistan that killed tens of thousands of civilians. U.S. officials waver on how many civilians have been killed in the drone program. Some say no civilians have been killed or reports of civilian deaths are only insurgent propaganda. The Obama Administration's low drone casualty rates rely on its own assumption that "all military-age males in a strike zone are combatants" and are guilty unless proven innocent, even if there is no proof linking young men to any type of militant activity. U.S. denial that significant numbers of civilians are being killed contradicts significant and diverse journalist and research reports on the ground.¶ At a June 2012 conference on drones, United Nations Special Rapporteur cited the Pakistan Human Rights Commission's estimates that U.S. drone strikes killed at least 957 people in Pakistan in 2010 and that on average 20% of drone victims are civilians, not militants. He concludes that perhaps thousands of civilians have been killed in 300 drone strikes there since 2004.¶ 5. Drones Risk "50 Years of International Law": A variety of actors challenge the legality of drone strikes. Former President Jimmy Carter claims drones violate the Universal Declaration of Human Rights, noting this violation "abets our enemies and alienates our friends." In July 2009, U.N. Human Rights Council Special Investigator Philip Alston chastised the U.S. for failing to track, investigate, and punish low ranking soldiers for drone strikes that kill civilians and for failing to tell the public the extent of civilian deaths. Alston also critiqued the U.S. military justice system for "failing to provide ordinary people... basic information on the status of investigations into civilian casualties or prosecutions resulting therefrom." Human rights experts point to the illegality of unacceptably high collateral damage to civilians, facilities, equipment, and property while resulting in the deaths of a disproportionately low number of lawful military targets.¶ Repeating the 2009 calls from the United Nations for the United States to account for its use of drone warfare and its denial that drones are killing civilians despite widespread evidence to the contrary, UN Special Rapporteur noted U.S. use of drones threatens to undermine "50 years of international law" and encourages other countries to ignore or redefine international law. Drones undermine U.S. credibility on human rights. As an example, Russia and China have called for investigations in U.S. drone in the U.N. Human Rights Council while the U.S. is pushing both of those countries to stop their support for the Syrian government. U.S. drone policy thereby undermines U.S. stated policy supporting human rights in Syria and elsewhere.¶ In Pakistan, repeated reports document that drones fire first on the target, and then on the mourners and humanitarian responders seeking to help the wounded or attend their funerals, as these people are deemed sympathizers and thus also counted as "combatants" rather than civilians, even though they include women and children. If this can be documented, the U.S. would be in direct violation of International Humanitarian Law. The U.S. lacks credibility to advocate for human rights and rule of law when it does not seem to apply equal standards to its own policies and citizens.¶ 6. Drones Contribute to Perceptions of U.S. Double Standards: The U.S. has blocked efforts for drone victims to pursue their claims in Pakistani courts. Meanwhile USAID fosters "rule of law" programs in Pakistan. But Pakistani's note these USAID efforts are undermined by the continuing series of events in Pakistan that grant Americans immunity for their crimes, such as civilian drone victims, the saga of Raymond Davis, the CIA's use of immunization campaigns to identify bin Laden, and accidental deaths of Pakistani forces.¶ Furthermore, citizens of countries where the U.S. uses drones ask whether American citizens would accept the use of drones on an American religious center or school if insurgents were hiding there alongside civilians. In local perspectives, drone attacks are undemocratic and illustrate that the U.S. devalues the lives of people in other countries, putting U.S. interests above the lives of Pakistanis, Somalis, and Yemenis.¶ 7. Drones Undermine Government Authority and Legitimacy, Cause State Fragility: Unilateral U.S. use of drones is seen to undermine state sovereignty and legitimacy, stir political unrest, and challenge alliances. The governments of Afghanistan and Pakistan publically denounced drone strikes to distance themselves from public anger. Rumors posit that the government's privately consented to the strikes. The public's already tenuous relationship with their governments suffer as the public critiques drones strikes as merely furthering U.S. interests and undermining their own interests and sovereignty.¶ 8. Drones Draw Attention Away from Greater Nuclear Security Threats in Pakistan: Supporting the legitimacy and authority of democratic governments is critical. The threat of anti-government militants overthrowing the government of Pakistan and gaining control of its nuclear capability is a far greater danger than threats from drone targets. Some argue the unpopular Pakistan government, accused of nodding consent to the U.S. drone bombings, prevents the growing number of anti-American militants from gaining access to a functioning nuclear missile arsenal.¶ 9. Drones Communicate Cowardice, Undermining Ability to Form Tribal Alliances: According to counterinsurgency expert David Kilcullen, "using robots from the air ... looks both cowardly and weak" to local populations. Anti-American cartoons and jokes feature the drones as symbols of American impotence or cowardice. Given the importance of bravery and courage in tribal cultures, the use of drone strikes signals untrustworthiness, making it more difficult for the U.S. to form agreements or even get information from key tribal leaders. The drone strikes undermine even basic cooperation and information sharing by local populations.

### Terror K

#### Violence can’t be controlled in a linear, predictable manner---you have to err ethically towards non-violence b/c the epistemological uncertainty surrounding the success of violence---the plan’s attempt to control it will inevitably fail

Richard Jackson 11, Director of the National Centre for Peace and Conflict Studies, the University of Otago. Former. Professor of International Politics at Aberystwyth University, Fantasy and the Epistemological Crisis of Counter-terrorism, Amputations and Crocodiles: Counter-Analogies of Political Violence, http://richardjacksonterrorismblog.wordpress.com/2011/08/07/amputations-and-crocodiles-analogies-of-political-violence/

It is common for politicians and commentators to use analogies and metaphors to describe and explain acts of political violence. Medical analogies are particularly common, such as the notion that terrorism is a ‘cancer’ or that aerial bombing can be ‘surgical’. The problem is that these analogies can influence the way we think; for example, they can make us believe that a massive bombing campaign against a country – a series of ‘surgical strikes’ or military ‘operations’ – can destroy the ‘cancer’ of terrorism or cure a lack of democracy; they can make us think that violence can sometimes be an instrument of healing. Particularly when the analogy or metaphor is inaccurate or misleading, it can obscure the reality of political violence and cause us to accept its legitimacy without really questioning its real-world effects or true nature. It can, in other words, lead to destructive policy choices.

Although no analogy is perfect and will contain its own distortions of the thing being described, I want to suggest two analogies which will help us to think more clearly and realistically about contemporary political violence. First, following the popularity of medical analogies, I want to suggest that we should always think about political violence as amputation rather than as general surgical operations or medical intervention. Adopting this analogy can help us to face some important truths about violence, such as that while amputation (violence) may sometimes be necessary in an extreme emergency to save a person’s life, it is always disfiguring and it will leave the patient (victim) a less than whole person who will suffer forever afterwards, even if prosthetics and other therapies make their life easier. In other words, violence can never be good or noble or positive in itself; it will always be destructive and cause suffering to its victims, even if it is viewed as necessary. Violence is permanently damaging and disfiguring by its very nature, as anyone who has ever been victimized will testify.

Another principle to take from this analogy is that amputation (violence) should always be the very last option and viewed as an extreme measure that we must first take every possible step to avoid. Accepting this analogy would limit the frequency with which our leaders go to war or intervene militarily in other countries, and encourage them to try a great deal harder to find non-violent alternatives to the policy of political violence. If the leaders of the world’s nations accepted that violent military intervention would be analogous to doctors chopping off a patient’s legs or arms, they might be more cautious and not necessarily advocate it as an almost automatic policy response to the lack of democracy, acts of terrorism, or humanitarian crisis. If we’re lucky, it might also convince the leaders of social movements to reconsider the decision to escalate their campaign to include violent strategies and tactics when they feel frustrated by the lack of progress on social justice.

A second analogy is to think of political violence as a crocodile, rather than as a dog or a horse (as in unleashing the ‘dogs of war’ or ‘war horse’). The fact is that, unlike dogs or horses, crocodiles can never be tamed or controlled. This is because crocodiles have very small, primitive brains which can only respond to instinctual survival needs. In other words, no matter how often someone feeds and cares for a crocodile, the crocodile will fail to recognize that person as anything more than a potential meal and a moment of carelessness will see the crocodile try to eat them, even after twenty years of loving care. It also means that even if the crocodile owner were to take it for a walk through town and it was not to try and eat every small child it came across, this would not be proof of the tameness of the crocodile; it would just be luck on that particular occasion.

The importance of this analogy lies in its application to humanitarian intervention and the application of military force as a policy option. The fact is that military force (like the crocodile) will always be an untamed beast that will try and devour its owner if it senses the opportunity. It cannot be tamed or controlled like a dog on a leash. This is because war and violence has its own inbuilt tendencies towards extreme action and unpredictable consequences, as Clausewitz explained a long time ago. Sometimes the application of violence will provoke violent resistance and further escalation; other times it will result in capitulation. Most often, it leads to the distortion of our thinking and impedes learning, and in every case, it has incalculable opportunity costs. There is no way to predict which way the crocodile will go, except that it will be painful and damaging for someone. Therefore, any politician who says that military success is assured is only expressing the hope that the crocodile won’t eat any small children on this particular occasion.

The emerging quagmire in Libya, with its thousands of civilian victims (the very ones the crocodile was deployed to protect), the growing prospects of civil war between rebel factions, and the lack of any measureable success, is testament to the crocodile nature of applying military force – as is the ten years of war so far in Afghanistan, the seven years of war so far in Iraq, and the inglorious record of military intervention in places like Lebanon, Gaza, Somalia, DRC, the former Yugoslavia, Chechnya, Kashmir, Colombia, and a hundred other conveniently forgotten places.

In sum, the lessons to take from these analogies are: if you take your crocodile for a walk, don’t ever forget that it can never be tamed and it will usually try to eat the little children who cross its path; also, it is not advisable to use a crocodile in an operation of surgical amputation, even when it’s for democracy or human rights or some other noble ideal. Try to find another approach instead. After all, there are plenty of tried and tested non-violent alternatives to resolving conflict, just as there are usually medical alternatives to amputation.

#### Their terrorism advantage is epistemologically suspect---the ballot is crucial to reject state-sponsored knowledge that legitimizes global violence

Raphael 9—IR, Kingston University (Sam, Critical terrorism studies, ed. Richard Jackson, 49-51) ellipses in orig.

Over the past thirty years, a small but politically-significant academic field of ‘terrorism studies’ has emerged from the relatively disparate research efforts of the 1960s and 1970s, and consolidated its position as a viable subset of ‘security studies’ (Reid, 1993: 22; Laqueur, 2003: 141). Despite continuing concerns that the concept of ‘terrorism’, as nothing more than a specific socio-political phenomenon, is not substantial enough to warrant an entire field of study (see Horgan and Boyle, 2008), it is nevertheless possible to identify a core set of scholars writing on the subject who together constitute an ‘epistemic community’ (Haas, 1992: 2–3). That is, there exists a ‘network of knowledge-based experts’ who have ‘recognised expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain’. This community, or ‘network of productive authors’, has operated by establishing research agendas, recruiting new members, securing funding opportunities, sponsoring conferences, maintaining informal contacts, and linking separate research groups (Reid, 1993, 1997). Regardless of the largely academic debate over whether the study of terrorism should constitute an independent field, the existence of a clearly-identifiable research community (with particular individuals at its core) is a social fact.2¶ Further, this community has traditionally had significant influence when it comes to the formulation of government policy, particularly in the United States. It is not the case that the academic field of terrorism studies operates solely in the ivory towers of higher education; as noted in previous studies (Schmid and Jongman, 1988: 180; Burnett and Whyte, 2005), it is a community which has intricate and multifaceted links with the structures and agents of state power, most obviously in Washington. Thus, many recognised terrorism experts have either had prior employment with, or major research contracts from, the Pentagon, the Central Intelligence Agency, the State Department, and other key US Government agencies (Herman and O’Sullivan, 1989: 142–190; RAND, 2004). Likewise, a high proportion of ‘core experts’ in the field (see below) have been called over the past thirty years to testify in front of Congress on the subject of terrorism (Raphael, forthcoming). Either way, these scholars have fed their ‘knowledge’ straight into the policymaking process in the US.3¶ The close relationship between the academic field of terrorism studies and the US state means that it is critically important to analyse the research output from key experts within the community. This is particularly the case because of the aura of objectivity surrounding the terrorism ‘knowledge’ generated by academic experts. Running throughout the core literature is a positivist assumption, explicitly stated or otherwise, that the research conducted is apolitical and objective (see for example, Hoffman, 1992: 27; Wilkinson, 2003). There is little to no reflexivity on behalf of the scholars, who see themselves as wholly dissociated from the politics surrounding the subject of terrorism. This reification of academic knowledge about terrorism is reinforced by those in positions of power in the US who tend to distinguish the experts from other kinds of overtly political actors. For example, academics are introduced to Congressional hearings in a manner which privileges their nonpartisan input:¶ Good morning. The Special Oversight Panel on Terrorism meets in open session to receive testimony and discuss the present and future course of terrorism in the Middle East. . . . It has been the Terrorism Panel’s practice, in the interests of objectivity and gathering all the facts, to pair classified briefings and open briefings. . . . This way we garner the best that the classified world of intelligence has to offer and the best from independent scholars working in universities, think tanks, and other institutions . . .¶ (Saxton, 2000, emphasis added)¶ The representation of terrorism expertise as ‘independent’ and as providing ‘objectivity’ and ‘facts’ has significance for its contribution to the policymaking process in the US. This is particularly the case given that, as we will see, core experts tend to insulate the broad direction of US policy from critique. Indeed, as Alexander George noted, it is precisely because ‘they are trained to clothe their work in the trappings of objectivity, independence and scholarship’ that expert research is ‘particularly effective in securing influence and respect for’ the claims made by US policymakers (George, 1991b: 77).¶ Given this, it becomes vital to subject the content of terrorism studies to close scrutiny. Based upon a wider, systematic study of the research output of key figures within the field (Raphael, forthcoming), and building upon previous critiques of terrorism expertise (see Chomsky and Herman, 1979; Herman, 1982; Herman and O’Sullivan, 1989; Chomsky, 1991; George, 1991b; Jackson, 2007g), this chapter aims to provide a critical analysis of some of the major claims made by these experts and to reveal the ideological functions served by much of the research. Rather than doing so across the board, this chapter focuses on research on the subject of terrorism from the global South which is seen to challenge US interests. Examining this aspect of research is important, given that the ‘threat’ from this form of terrorism has led the US and its allies to intervene throughout the South on behalf of their national security, with profound consequences for the human security of people in the region.¶ Specifically, this chapter examines two major problematic features which characterise much of the field’s research. First, in the context of anti-US terrorism in the South, many important claims made by key terrorism experts simply replicate official US government analyses. This replication is facilitated primarily through a sustained and uncritical reliance on selective US government sources, combined with the frequent use of unsubstantiated assertion. This is significant, not least because official analyses have often been revealed as presenting a politically-motivated account of the subject. Second, and partially as a result of this mirroring of government claims, the field tends to insulate from critique those ‘counterterrorism’ policies justified as a response to the terrorist threat. In particular, the experts overwhelmingly ‘silence’ the way terrorism is itself often used as a central strategy within US-led counterterrorist interventions in the South. That is, ‘counterterrorism’ campaigns executed or supported by Washington often deploy terrorism as a mode of controlling violence (Crelinsten, 2002: 83; Stohl, 2006: 18–19).¶ These two features of the literature are hugely significant. Overall, the core figures in terrorism studies have, wittingly or otherwise, produced a body of work plagued by substantive problems which together shatter the illusion of ‘objectivity’. Moreover, the research output can be seen to serve a very particular ideological function for US foreign policy. Across the past thirty years, it has largely served the interests of US state power, primarily through legitimising an extensive set of coercive interventions in the global South undertaken under the rubric of various ‘war(s) on terror’. After setting out the method by which key experts within the field have been identified, this chapter will outline the two main problematic features which characterise much of the research output by these scholars. It will then discuss the function that this research serves for the US state.

### AT: Nuke Terror

#### No risk of nuclear terrorism---too many obstacles

John J. Mearsheimer 14, R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, “America Unhinged”, January 2, nationalinterest.org/article/america-unhinged-9639?page=show

Am I overlooking the obvious threat that strikes fear into the hearts of so many Americans, which is terrorism? Not at all. Sure, the United States has a terrorism problem. But it is a minor threat. There is no question we fell victim to a spectacular attack on September 11, but it did not cripple the United States in any meaningful way and another attack of that magnitude is highly unlikely in the foreseeable future. Indeed, there has not been a single instance over the past twelve years of a terrorist organization exploding a primitive bomb on American soil, much less striking a major blow. Terrorism—most of it arising from domestic groups—was a much bigger problem in the United States during the 1970s than it has been since the Twin Towers were toppled.¶ What about the possibility that a terrorist group might obtain a nuclear weapon? Such an occurrence would be a game changer, but the chances of that happening are virtually nil. No nuclear-armed state is going to supply terrorists with a nuclear weapon because it would have no control over how the recipients might use that weapon. Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the United States already has detailed plans to deal with that highly unlikely contingency.¶ Terrorists might also try to acquire fissile material and build their own bomb. But that scenario is extremely unlikely as well: there are significant obstacles to getting enough material and even bigger obstacles to building a bomb and then delivering it. More generally, virtually every country has a profound interest in making sure no terrorist group acquires a nuclear weapon, because they cannot be sure they will not be the target of a nuclear attack, either by the terrorists or another country the terrorists strike. Nuclear terrorism, in short, is not a serious threat. And to the extent that we should worry about it, the main remedy is to encourage and help other states to place nuclear materials in highly secure custody.

#### No retaliation

Ruwe 8 (Daniel, 5/27, http://danielruwe.blogspot.com/2008/05/barack-obama-gaffe-machine.html)

Another revealing Obama quote is his answer to a debate question regarding a hypothetical terrorist attack on an American city. (Remember when there was a presidential debate about every two weeks? That seems so long ago). Obama’s answer: “the first thing we’d have to do is make sure we’ve got an effective emergency response, something that this administration failed to do when we had a hurricane in New Orleans. And I think we have to review how we operate in the event of not only a natural disaster but also a terrorist attack. The second thing is to make sure that we’ve got good intelligence. . . . But what we can’t do is then alienate the world community based on faulty intelligence, based on bluster and bombast.” If that answer still is Obama’s position (Obama’s views are maddeningly hard to pin down), then he clearly has not the vaguest idea of how to respond to a terrorist attack. The emergency response required for a terrorist attack is completely different than that required for a natural disaster—for example, natural disasters are handled first by state and local governments, while terrorist attacks fall squarely into the federal government’s bailiwick. In addition, terrorist attacks are preventable. Also, Obama might want to consider retaliating against those who attacked us, a concept missing from his reply. Lack of retaliation against America’s enemies seems to be a premise of his foreign policy—if we talk to them, they won’t attack us. He seems to base his opposition to the Iraq War not so much on the strategic reasons behind it, but because he seems to think that war in general is almost always unacceptable. This quote is revealing because he rarely enunciates this idea so openly.

### AT: Russia Impact

#### No Russia escalation

Quinlan 9 [Michael Quinlan, former British Permanent Under Secretary of State for Defence, former Director of the Ditchley Foundation, Visiting Professor at King's College London, “Thinking About Nuclear Weapons: Principles, Problems, Prospects,” Oxford University Press, p. 63-4]

Even if initial nuclear use did not quickly end the fighting, the supposition of inexorable momentum in a developing exchange, with each side rushing to overreaction amid confusion and uncertainty, is implausible. It fails to consider what the situation of the decisionmakers would really be. Neither side could want escalation. Both would be appalled at what was going on. Both would be desperately looking for signs that the other was ready to call a halt. Both, given the capacity for evasion or concealment which modern delivery platforms and vehicles can possess, could have in reserve significant forces invulnerable enough not to entail use-or-lose pressures. (It may be more open to question, as noted earlier, whether newer nuclear weapon possessors can be immediately in that position; but it is within reach of any substantial state with advanced technological capabilities, and attaining it is certain to be a high priority in the development of forces.) As a result, neither side can have any predisposition to suppose, in an ambiguous situation of fearful risk, that the right course when in doubt is to go on copiously launching weapons. And none of this analysis rests on any presumption of highly subtle or pre-concerted rationality. The rationality required is plain.

## Norms

### No Precedent

#### U.S. drone use doesn’t set a precedent, restraint doesn’t solve it, and norms don’t apply to drones at all in the first place

Amitai Etzioni 13, professor of international relations at George Washington University, March/April 2013, “The Great Drone Debate,” Military Review, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage.

Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of self constraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

I am not arguing that there are no natural norms that restrain behavior. There are certainly some that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). However drones are but one step—following bombers and missiles—in the development of distant battleﬁeld technologies. (Robotic soldiers—or future ﬁghting machines— are next in line). In such circumstances, the role of norms is much more limited.

### China Not Violenct

Not violent

#### No impact to Chinese drones---their ev is irrational media hype

Trefor Moss 13, journalist for The Diplomat covering Asian politics, defense and security, formerly Asia-Pacific Editor at Jane’s Defence Weekly, 3/2/13, “Here Come…China’s Drones,” The Diplomat, http://thediplomat.com/2013/03/02/here-comes-chinas-drones/?print=yes

Unmanned systems have become the legal and ethical problem child of the global defense industry and the governments they supply, rewriting the rules of military engagement in ways that many find disturbing. And this sense of unease about where we’re headed is hardly unfamiliar. Much like the emergence of drone technology, the rise of China and its reshaping of the geopolitical landscape has stirred up a sometimes understandable, sometimes irrational, fear of the unknown.

It’s safe to say, then, that Chinese drones conjure up a particularly intense sense of alarm that the media has begun to embrace as a license to panic. China is indeed developing a range of unmanned aerial vehicles/systems (UAVs/UASs) at a time when relations with Japan are tense, and when those with the U.S. are delicate. But that hardly justifies claims that “drones have taken center stage in an escalating arms race between China and Japan,” or that the “China drone threat highlights [a] new global arms race,” as some observers would have it. This hyperbole was perhaps fed by a 2012 U.S. Department of Defense report which described China’s development of UAVs as "alarming."

That’s quite unreasonable. All of the world’s advanced militaries are adopting drones, not just the PLA. That isn’t an arms race, or a reason to fear China, it’s just the direction in which defense technology is naturally progressing. Secondly, while China may be demonstrating impressive advances, Israel and the U.S. retain a substantial lead in the UAV field, with China—alongside Europe, India and Russia— still in the second tier. And thirdly, China is modernizing in all areas of military technology – unmanned systems being no exception.

### AT: Senkakus

#### Zero chance of miscalc escalating---tons of checks and points where conflict would be restrained

Reuters 12, “Japan, China military conflict seen unlikely despite strain,” 9/23/12, http://www.reuters.com/article/2012/09/23/us-china-japan-confrontation-idUSBRE88M0F220120923

Diplomatic and economic relations chilled sharply in 2010 after Japan arrested a Chinese trawler captain whose boat collided with a Japan Coast Guard vessel. This time, tensions are already high and China is contending with a tricky once-in-a-decade leadership change while Japan's ruling party faces a probable drubbing in an election expected in months.

"Two rational governments of major countries would not intentionally decide to enter into a major war with each other over a few uninhabited rocks," said Denny Roy, an Asia security expert at the East-West Center in Hawaii.

"But unfortunately, you can arrive at war in ways other than that - through unintended escalation, in which both countries start out at a much lower level, but each of them think that they must respond to perceived provocation by the other side, both very strongly pushed into it by domestic pressure. That seems to be where we are now and it is difficult to see how countries can get out of that negative spiral."

Others, however, were more confident that an unplanned clash could be kept from escalating into military conflict.

"That's not really a major possibility, because there are still broad channels of communication between the two sides, and they would help prevent that happening. Both sides could still talk to each other," said former senior PLA officer Xu.

"Even before anything happened, you would also have the U.N Secretary General and others stepping in to ensure that the situation does not get out of control."

### Asia K

#### Their Asia impacts are all wrong and empirically denied—they’re an attempt to project our regrets about the Cold War onto the region

**Kang, 3.** David (Professor of International Relations and Business, Director of Korean Studies Institute), Getting Asia Wrong: The Need for New Analytical Frameworks International Security, Volume 27, Number 4, Spring 2003, pp. 57-85 MUSE

Following the end of the Cold War in 1991, some scholars in the West began to predict that Asia was “ripe for rivalry.”12 They based this prediction on the following factors: wide disparities in the levels of economic and military power among nations in the region; their different political systems, ranging from democratic to totalitarian; historical animosities; and the lack of international institutions. Many scholars thus envisaged a return of power politics after de- cades when conºict in Asia was dominated by the Cold War tension between the United States and the Soviet Union. In addition, scholars envisaged a re- turn of arms racing and the possibility of major conflict among Asian coun- tries, almost all of which had rapidly changing internal and external environments. More specific predictions included the growing possibility of Japanese rearmament;13 increased Chinese adventurism spurred by China’s rising power and ostensibly revisionist intentions;14 conºict or war over the status of Taiwan;15 terrorist or missile attacks from a rogue North Korea against South Korea, Japan, or even the United States;16 and arms racing or even conflict in Southeast Asia, prompted in part by unresolved territorial disputes.17 More than a dozen years have passed since the end of the Cold War, yet none of these pessimistic predictions have come to pass. Indeed there has not been a major war in Asia since the 1978–79 Vietnam-Cambodia-China conºict; and with only a few exceptions (North Korea and Taiwan), Asian countries do not fear for their survival. Japan, though powerful, has not rearmed to the ex- tent it could. China seems no more revisionist or adventurous now than it was before the end of the Cold War. And no Asian country appears to be balancing against China. In contrast to the period 1950–80, the past two decades have witnessed enduring regional stability and minimal conºict. Scholars should directly confront these anomalies, rather than dismissing them. Social scientists can learn as much from events that do not occur

as from those that do. The case of Asian security provides an opportunity to examine the usefulness of accepted international relations paradigms and to determine how the assumptions underlying these theories can become misspecified. Some scholars have smuggled ancillary and ad hoc hypotheses about preferences into realist, institutionalist, and constructivist theories to make them fit various aspects of the Asian cases, including: assumptions about an irrational North Korean leadership, predictions of an expansionist and revisionist China, and depictions of Japanese foreign policy as “abnormal.”18 Social science moves forward from the clear statement of a theory, its causal logic, and its predictions. Just as important, however, is the rigorous assessment of the theory, especially if predictions flowing from it fail to materialize. Exploring why scholars have misunderstood Asia is both a fruitful and a necessary theoretical exercise. Two major problems exist with many of the pessimistic predictions about Asia. First, when confronted with the nonbalancing of Asian states against China, the lack of Japanese rearmament, and five decades of noninvasion by North Korea, scholars typically respond: Just wait. This reply, however, is intellectually ambiguous. Although it would be unfair to expect instantaneous national responses to changing international conditions, a dozen years would seem to be long enough to detect at least some change. Indeed Asian nations have historically shown an ability to respond quickly to changing circum- stances. The Meiji restoration in Japan in 1868 was a remarkable example of governmental response to European and American encroachment, and by 1874 Japan had emerged from centuries of isolation to occupy Taiwan.19 More re- cently, with the introduction of market reforms in late 1978, when Deng Xiaoping famously declared, “To get rich is glorious,” the Chinese have trans- formed themselves from diehard socialists to exuberant capitalists beginning less than three years after Mao’s death in 1976.20 In the absence of a speciªc time frame, the “just wait” response is unfalsiªable. Providing a causal logic that explains how and when scholars can expect changes is an important as- pect of this response, and reasonable scholars will accept that change may not be immediate but may occur over time. Without such a time frame, however, the “just wait” response is mere rhetorical wordplay designed to avoid trou- bling evidence.

## K

### Harting Colonial Subjectivity FW/Link

#### Reducing war to a question of legal restrictions banalizes global imperial violence---contemporary warfare is an interconnected process driven by the generation of militarized knowledge and subjectivities---it’s your foremost ethical task to investigate the affirmative’s imaginary of global war

Heike Harting 6, prof at University of Montreal, Global Civil War and Post-colonial Studies, globalautonomy.ca/global1/servlet/Xml2pdf?fn=RA\_Harting\_GlobalCivilWar

This essay addresses the lack of a post-colonial critique of emerging political and cultural theories of global war (Hardt and Negri 2004; Kaldor 2001; Held 2003; Clark 2003). With the exception of Paul Gilroy's study Postcolonial Melancholia (2005) and Gayatri Spivak's essay "Terror: A Speech After 9-11," which in part examine how discourses of racialized violence legitimize contemporary global wars and their "extreme" "civilizing mission" (Spivak 2004, 82), post-colonial theorists have so far been reluctant to engage in a sustained critique of global warfare. On the one hand, this reluctance might derive from the field's preferred critical engagement, as Tim Brennan observes, with Eurocentrism rather than questions of "military occupation" (2004, 132). On the other, such a reluctance seems surprising given that post-colonial studies is traditionally concerned with the ways in which past and contemporary forms of imperial, colonial, and racialized violence have shaped present subjectivities and political, economic, and social relationships. More importantly, the task of post-colonial studies remains the unsettling of contemporary configurations of what Diana Brydon identifies as "imperial and colonial habits of mind" (1995, 10-11), and along with David Goldberg and Ato Quayson, the "dismantling of the conditions that produce [social] violence and anguish" (2002, xiii). Thus, a critical post-colonial anatomy of the social and cultural logic of global civil warfare would seem intrinsic to the field's traditional research concerns. More specifically, while, amongst many others, such theorists and writers as Frantz Fanon, Edward Said, Ngugi Wa Thiongo, Anne McClintock, Wole Soyinka, Ken Saro Wiva, and Bapsi Sidhwa have written extensively about civil and communal warfare, they have done so in the context of particular anti-colonial liberation struggles and post-colonial and neo-colonial nation formation. In part, these writers' works underlie but are not sufficiently acknowledged as a constitutive force in the articulation of dominant contemporary notions of global civil war.¶ The central argument of this paper builds on the understanding of global civil war which Michael Hardt and Antonio Negri advance in their study Multitude: War and Democracy in the Age of Empire, the sequel to Empire. They suggest that global civil war designates both an absolute "regime of biopower" (2004, 13) and a form of warfare that is no longer fought between two sovereign states but on one, steadily expanding territory not demarcated by conventional national boundaries. In this sense, global civil war is intrinsic to what the two theorists call empire, namely the formation of a new global sovereignty that supersedes colonialism and imperialism, is dissociated from national and supranational institutions, and emerges from the autonomous and immanent logic of capital expansion and management. By the same logic of immanence, empire is a cultural, economic, and political formation that gives rise to its own movement of resistance or counter-empire. 1 In contrast to Hardt and Negri's at times limited notion of global civil war, I suggest to conceptualize global civil war as a social and historical formation rooted in the history of imperial and colonial modernity. As with imperial wars, global civil wars both appropriate the guerilla tactics of insurgency warfare ??? an argument also made by Hardt and Negri ??? and, in contrast to their theory of global civil war, rely on the historical deployment of racialized violence and the perpetual brutalization and surveillance of civil society, often ??? but not exclusively ??? in the name of a humanitarian, peacekeeping, or protective cause. 2 The notion of the "civil" in "global civil war" is thus frequently synonymous with the dismantling of civil rights and an internationally condoned assignment to "civilize" so-called rogue or failed nation states. In this sense, we may call the US-led "war against terror" a "global civil war" without, however, reducing the latter concept to a post-9-11 phenomenon. For, polemically speaking, despite its involvement of a wide range of global actors, the "war on terror" remains a national project of the United States. It mobilizes patriotic sentiments of US-American national destiny on a global scale and depends on the simultaneous denial and reinvention of the United States' imperial past.¶ Contextualizing the notion of global civil war in the history of imperial modernity and violence, then, seeks to adumbrate some of the ways in which contemporary theories of global civil war tend to eclipse the post-colonial moment of these wars. In particular, I wish to ask how contemporary representations of war contribute to the construction of a normalizing global imaginary of war. I use the latter term to refer to those hegemonic narratives through which the West comes to imagine itself as a civilizing bulwark against the violent forces of unruly and terrorist rogue states and to accept global war and racial violence as a historical inevitability of the rule of neo-liberal globalization. Furthermore, how should we conceptualize the post-colonial moment of global civil war, and how does identifying and problematizing such a moment expand and trouble present concepts of global warfare?¶ To engage with these questions, the first part of this paper provides a brief survey of the ways in which a number of post-colonial theorists have begun to address the particular phenomena of global armed conflict but, by and large, refrained from a systematic discussion of global civil warfare. The paper's second part elaborates my critique of dominant notions of global civil war through a discussion of Hardt and Negri's and, to a lesser extent, Jean-Luc Nancy's writings on globalization and war. Their work, I argue, situates global civil war outside earlier narratives of violence, resistance, and imperialism, when, in fact, all of these narratives either underlie or bleed into the present causes, investments, and media representations of global civil war. In order to develop a post-colonial understanding of global civil war that helps us think beyond presentist models of global war, parts four and five of this paper draw from Jean Arasanayagam's and Michael Ondaatje's fictional accounts of Sri Lanka's prolonged civil war to question received ways of legitimizing violence and to reread the putatively biopolitical character of global civil wars through, what Achille Mbembe calls, the "necropolitics" (2003, 11) of global imperialism. Such a rereading, I propose, emphasizes how global civil war operates through the long-term militarization and brutalization of former colonial societies. The sixth and last part of this paper suggests a post-colonial reading of the ways in which the assumed state of a permanent global emergency relies on routinized forms of racial violence and extreme violent global warfare in order to generate disposable human beings and, to use Giorgio Agamben's phrase, "politicize death" (1998, 160).¶ Post-colonial Readings of Global War Recent developments in post-colonial studies suggest, according to Brennan, that scholars in the field had to "retool" themselves as "globalization theorists" and consider themselves "as functioning in a larger division of intellectual labor" (2004, 138). What does this "retooling" look like? In particular, how do post-colonial scholars enter and shape debates on global war and violence? 3 While there has been prolific research on the construction of diasporic, hybrid, and cosmopolitan subjectivities and transnational imaginaries, or on what Simon Gikandi sees as globalization's discourse of cultural "celebration" (2001, 629), less attention has been paid to globalization as "a discourse of failure and atrophy" (ibid., 638). To understand the latter, for example, Gikandi argues, we have to track back the death of two young Guinean men "whose bodies were found in the ca rgo hold of a plane in Brussels in August 1998" (ibid., 630) to particular Enlightenment discourses of autonomy and rationality, time, and progress that inform colonial and global modernities. In Gikandi's reading ??? which would warrant a much more detailed analysis than I can offer here ??? the death of these two young African men provides the opportunity to conceptualize globalization as a new version of post-colonialism's critique of Eurocentrism and the failure of the post-colonial nation-state. The global, he maintains, "had to be reinvented as a substitute for nationalism" and the ideologically and politically "vanishing 'Third World'" (ibid., 646) in the wake of the post-Cold War era. In this context, globalization is a violent process that erases the political, historical and cultural presence of the erstwhile colonized from the global present. Their presence seems to be registered only with reference to the ways in which it upsets Eurocentric notions of the nation, belonging, affect, and subjectivity.¶ Similarly, yet from a different political perspective, Neil Larsen enters the debate on globalization through a "material genealogy of postcolonialism" (2000, 33) and foregrounds the historical and economic continuities between imperialism, colonialism, post-colonialism, and globalization. Larsen traces the role of the nation as the grounding figure that binds all of these terms. Yet, in contrast to those who tend to announce globalization as a new post-national era, Larsen suggests that imperialism and its culmination in World War I and II, along with the wars' concomitant mass migrations, made it impossible, if not obsolete, to reflect on the "world" in terms of homogenous, "particular national histories and experiences" (ibid., 32). Rather, the violent crises of imperialism (WW I and II, Bandung era) gave rise to both a "transeuropean" (ibid., 31) configuration of anti-imperial and revolutionary movements and a cultural conceptualization of the nation as a space of liberation, reflected in national liberation struggles that "re-essentialized, or de-europeanized national space or imaginary" (ibid., 34). Under today's economic pressures of globalization, the Fanonian and Marxian ideal of a transeuropean nation ??? an ideal, which, as Fanon argues, has always been threatened by the co-optation of the colonial elites into a neo-colonial European appropriation of the newly independent nation-state ??? has collapsed. In particular, the transeuropean nation is being transformed into "an institutional/ideological entity that, precisely because it has been rendered inoperative as a site of the accumulation and control of capital, seeks to compensate for this in undergoing a radical reparticularization verging, in the most extreme cases (e.g., Afghanistan, Serbia) on a desecularization" (ibid., 43). In other words, Larsen suggests that contemporary ethnic and civil wars are both a result of the financial restructuring of the globe and its attending disintegration of the nation-state. Yet, what remains troubling and unexplained is why the disintegration of the nation should automatically lead to a violent return to cultural and religious particularism and essentialism. Are we to assume that in all cases of global civil war we are confronted with a return of archaic and primordialist attitudes of ethnic absolutism, to use Paul Gilroy's term, previously kept in check by the authoritative rather than emancipatory operations of the post-colonial nation-state? Indeed, to what extent does a culturalist ??? if not primordialist ??? reading of global war account for the at once global and local politicization and racialization of violence? Larsen, however, reminds us that the destruction of the "nationalized economic regimes in the third (and former 'second' world)" presents a global crisis whose consequences are also "dire" for the "global hegemons [US, Western Europe, Japan]" (ibid., 42). Thus, rather than abandoning the nation-state as politically compromised and ineffective in a global world, he affords it a central and by far not yet resolved role in dealing with the production of a new global order.¶ If Larsen sees contemporary wars as a product of the economic disempowerment of nation-states, Arjun Appadurai locates the extreme violence of contemporary global civil wars in larger cultural and ideological formations. Although Appadurai concedes that these wars must be read within the context of the crisis of legitimation of the nation-state (1996, 157) and the biopolitics of the colonial and modern nation-state, he suggests that they are culturalist in that they operate through the "conscious mobilization of cultural differences in the service of a larger national and transnational politics" (ibid., 15). Culturalist movements, he suggests, create communities of sentiment that are "comprehensible only within specific cultural frames of meaning and style and larger historical frames of power and discipline" (ibid., 148), the distribution of images, and the "imagination" (ibid., 149). Culturalist or ethnic violence, he argues, should not be conceptualized as a "primordial sentiment" (ibid., 149). Instead, understanding such violence involves addressing the local, social, and cultural construction of intimacy and the physical and psychic embodiment of rage and pain. Here, Appadurai's insistence on a social critique of the embodiment and localization of culturalist violence in a post-national or global context can serve as a possible trajectory for a post-colonial critique of global civil war. Indeed, as I will argue in section three, it is the historical production of pain and death, or of what Mbembe describes as the "necropolitics" (2003, 11) of modernity, that allows us to understand global civil war in localized and historically situated terms.¶ What all these post-colonial readings of global civil war have in common is their desire to respond to war in an ethical fashion. What does this entail? In her essay "Terror: A Speech After 9-11," Spivak considers the "war on terror" as synonymous with global civil war and emphasizes its archaic and coercive rhetoric of cultural incommensurability. Here the term global war distracts from the fact that the war on terror, despite its involvement of the Northern alliance, refers to an imperial war fought unilaterally by the United States without UN sanction. "The war," Spivak explains, "is part of an alibi every imperialism has given itself, a civilising mission carried to the extreme, as it always must be. It is a war on terrorism reduced at home to due process, to a criminal case???a war zoomed down to a lawsuit and zoomed up to face an abstraction" (2004, 82). In this sense, Spivak's assessment coincides with Hardt and Negri's (2000, 13) observation that the primordialist and Manichaean rhetoric global civil war banalizes war as a form of "police action," creates an absolute enemy, and "sacrilizes" war by grounding military pursuits in putatively ethical claims that protect and reinstate democracy, "order and peace." In other words, global civil war depends on the construction of an enemy by mobilizing and criminalizing cultural Otherness. For this reason, the humanities have an important role to play in responding to and containing global civil war. The foremost pedagogical task, Spivak argues, consists in training "for the eruption of the ethical [understood as] an interruption of the epistemological, which is the attempt to construct the other as object of knowledge" (2004, 83). In other words, a post-colonial critique of global civil war ought to examine how global civil war generates human subjects differentially on a global scale. Thus, what post-colonial studies needs to bring to bear on globalization studies is, first, a detailed analysis of the ways in which post-colonial writing participates in the cultural production of competing narratives of global civil warfare, and, second, a critique of global civil war that accounts for the racialized violence and identity politics that frequently fuel global conflict or are mobilized in its service. Analyzing the ways in which global war generates particular subjectivities is of great importance since global capitalism thrives and depends on both the violent production and commodification of identity and the total militarization of national and global social relationships.¶ The next section of this paper examines the ways in which a number of cultural narratives of global civil war rearticulate traditional concepts of war. However, by contextualizing war in a presentist and, at times, Eurocentric understanding of globalization, these narratives risk reinforcing rather than destabilizing dominant legitimizing practices of global warfare.¶ Situating Global Civil War¶ If globalization refers to the uneven process of restructuring social, political, and economic space within and beyond the nation-state, then a change of the concept of war, its means and purposes, as well as its present ubiquity seem logical effects of globalization. For example, in Empire, Hardt and Negri suggest that although the world has never been at peace, presently war seems to be the single most characteristic feature of "Empire." The latter, they argue, is continuously embroiled in bloodshed, yet "always dedicated to peace ??? a perpetual and universal peace outside of history" (2000, xv). The Kantian allusion provides a first glimpse at how we might begin to address the complex phenomenon of global war. As a preliminary hypothesis, I wish to suggest that global civil war cannot be reduced to exceptional forms of extreme violence enacted in different or unconnected theatres of war. Rather, it relates to indirect yet systemic forms of political and economic coercion. Practically, the concept of global civil war, as, for example, Mary Kaldor suggests, has three characteristics: first, global civil war works through the strategic as well as indiscriminate abuse of human rights, frequently legitimized on grounds of exclusive identity politics; second, the war is not winnable but serves to rally the population around political causes; third, global war generates an economy of plunder and piracy while the state maintains and defends its stakes by deploying mercenaries and engaging in illegal global arms trade. Although this description helps elucidate the global aspects of such historically prolonged armed conflicts as Sri Lanka's and Rwanda's, it brushes over the epistemological dimension of global warfare, namely its frequently dehistoricized conceptualization and its need to mobilize exclusionary identity politics. What remains invisible is that global civil war is intrinsic to predatory global capitalism and aims at maintaining a historically received global order of unequal power relationships. Moreover, the extreme and often genocidal violence of global civil war ??? a phenomenon that connects old and new theatres of war ??? frequently "attempts to eradicate the concept of human altogether, replacing it with the idea of an irrevocable progress towards the eradication of superfluous human beings" (Razack 2004, 160).¶ Hardt and Negri, then, examine the capitalist, biopolitical, and cultural logic of contemporary warfare by relating global war to both the development of digital technologies for military uses and the increasing importance of immaterial labour, namely, labour engaged in the production of ideas, knowledge, and subjectivities. Their analysis primarily serves to navigate a way out of what they see as a permanent state of exception and to map strategies of resistance for the multitude, their term for a new global class of people loosely and strategically united in their struggle against globalization. Hardt and Negri's reading of global civil war is instructive for its delineation of the ways in which the "war machinery" ??? to use Hardt and Negri's Deleuzean terminology ??? of the United States and its allied partners has appropriated methods of guerrilla and liberation warfare, formerly used in the struggle against colonialism. It seems to me, however, that this kind of appropriation cannot be reduced to the ways in which the non-hierarchical organization of guerrilla troops and warfare have been transformed into an authoritarian chain of command structure, characteristic of conventional armies.¶ Moreover, emphasizing that war is quickly "becoming a general phenomenon, global and interminable" (2004, 3), they propose to read all contemporary wars as "global civil wars" (ibid., 4) or "netwars" (ibid., 55). Thus, Hardt and Negri tend to conceptualize these wars as postmodern phenomena rather than wars that either pursue particular imperial projects of reordering current global geopolitics or that have long-standing post-colonial roots but have mutated into global civil warfare. Understood as "counterinsurgencies" (ibid., 37), global civil wars change a people's entire social and political makeup, are connected with other war zones, and designate a process in which the distinction between war and civil society has become obsolete. Unlike conventional civil wars, which are considered atavistic remnants of modernity and effects of imperial forms of nation-formation (Horowitz 1985) and emerge out of competing claims to territorial sovereignty, global civil wars are fought by mercenary forces across a global rather than national terrain and aim at population control rather than territorial autonomy. ¶ What, then, is new about global civil war? If war is presumably no longer bound to territorial control and direct conquest but, instead, has become a reflection of media velocity, high-tech combat (Der Derian 2001) and capitalism's need to restructure the planet's markets and geopolitics of resource control, to what extent, we may ask, does global civil war present a qualitatively new phenomenon, rather than, say, a quantitative change of the intensity of warfare, depending on technological development. Furthermore, is global civil war merely another term for the recently revived rhetoric of just wars in a global context? What differentiates Hardt and Negri's notion of "global civil war" from Michael Ignatieff's (1998, 5) notion of "postmodern war," since both terms refer to changes in the organization and modes of contemporary ethnic civil war? Or, how does the term relate to Jean-Luc Nancy's notion of the "confronted community" (2003a, 23)? For, Nancy vehemently opposes such primordialist explanations of contemporary warfare as put forward by Samuel Huntington. Instead, global civil war designates an epistemological and material war of a specific yet globalized civilization, namely of the West, whose values of monotheism, self-presence, and truth have exhausted themselves. Nancy's approach to global war not only makes legible the ways in which global civil war arises as an epistemological problem of Western metaphysics but, by the same token, situates global war within a particularly localized critique of Eurocentrism.¶ To Nancy, then, contemporary global warfare is symptomatic of the ways in which the idea of community is confronted with itself, with its insistence on and desire for essence, unequivocal identity, propriety, omnipresence, and purity. Indeed, global civil war suggests that Western civilization, understood, in Nancy's words, as a "work of death" (2003a, 24), is finally confronted with its own spiritual emptiness and self-destructive logic of sameness. In this context, global civil war is symptomatic for the disintegration of Western values and truth claims and is interpreted solely as a critique of Eurocentrism, an argument that inadvertently remains indebted to the idea that civil wars result from the disintegration of the nation-state and its attendant epistemologies of belonging. What we find at the horizon of Nancy's critique, then, is the hope of inventing new ways in which the "Euro-Mediterranean world" relates to itself as "Other," to "'value', to the 'absolute', to 'truth'" (2003b, 53). Such a critique of contemporary warfare, however, can think global civil war neither beyond the West's concern with itself nor within different genealogies of both failed and ongoing processes of decolonization. Instead, it begs the question of what or who is the "global" in "global civil war." Indeed, as I argue throughout this essay, the way in which we define the "global" in the context of global war largely determines how we read the particular political investments and interests that underlie global war. For example, if global war is primarily a byproduct of and intrinsic to Empire and its consolidation, it appears to be inevitable and takes place outside discourses of political legitimization and accountability. From a different perspective, conceptualizing global civil war as being engineered by the Global North, that is, predominantly by the United States and its allied nations, reveals the ways in which global war deeply invests in and ensures the continuous accumulation of global capital and centralized practices of uneven capital distribution. Furthermore, if "the global" designates ??? as I think it does ??? a cultural and social space inhabited by those who are impoverished, dispossessed, and violated by the economic and geopolitical restructuring of the world, then the "global" also delineates a process of subject constitution governed by the construction of absolute difference, abjection, and dehumanization.¶ With its implication of having superseded national politics and interests, the term global civil war appears to require that we accept Hardt and Negri's often criticized assumption that the nation-state no longer mediates claims to sovereignty and power (Tilly 2003; Brennan 2003). For the moment, however, I will refrain from participating in the controversy over the role of the nation in Hardt and Negri's work. Instead, I suggest that while their understanding of global civil war does not explicitly engage in a critique of global violence, but instead focuses on an analysis of the structures of command and strategies of contemporary warfare, it helps raise questions through which to sketch a post-colonial critique of global violence. More specifically, in the next three parts of this paper, I wish to relocate three aspects of their argument in a post-colonial framework: first, the preponderance of biopolitics in their notion of global civil war; second, the construction of normalizing narratives of global civil war, specifically the rhetoric of the archaic; and third, the relationship between global civil war and the notion of the state of exception or emergency. As Hannah Arendt already implied in 1963, the terms global civil war and the state of exception function in tandem as signs and instruments of modern totalitarianism. Today, the state of exception has become globalization's most coercive instrument in regulating the limits of global citizenship and the legal status of particular individuals such as prisoners of war and refugees. More specifically, I suggest that the term "global civil war," specifically when understood as a version of the US-led "war against terror," serves to normalize and legitimize the transformation of constitutional democracy into a permanent but unacknowledged state of exception. The latter is either smothered in a propagandistic rhetoric of fear or shrouded in a misleading public debate over political prevention. From a post-colonial perspective, however, the state of exception, as I propose in the last section of this paper, also designates a cultural and intellectual disposition toward accepting global war and its reliance on the operations of racialized violence as a historical norm and inevitable outcome of Western history. The next part shifts a predominantly biopolitical understanding of global civil war towards an analysis of the necropolitics of these wars.

### 2NC Perm

#### Links swamp the permutation---it instrumentalizes the alternative which only masks the plan’s violent governmentality---internal contradictions means it inevitably fails

Laura Sjoberg 13, Department of Political Science, University of Florida , Gainesville The paradox of security cosmopolitanism?, Critical Studies on Security, 1:1, 29-34

Particularly, Burke suggests that security cosmopolitanism ‘rejects a procedural faith in strongly post-Westphalian forms of government and democracy’ (p. 17) and reiterates that such an approach includes ‘no automatic faith in any one institutional design’ (p. 24). This seems to move away from one of the prominent critiques of, in Anna Agathangelou and Ling’s (2009) words, the ‘neoliberal imperium,’ as reliant on Western, liberal notions of governance to the detriment of those on whom such a form of government is imposed. Burke clearly problematizes this imposition, framing many of the serious problems in global politics as a result of ‘choices that create destructive dynamics and constraints’ (p. 15) at least in part by Western, liberal governments – characterizing modernity as culpable for insecurity. At the same time, the solution seems to be clearly situated within the discursive framework of the problem. Burke suggests that there should be a primary concern for ‘effectiveness, equality, fairness, and justice – not for states, per se, but for human beings, and the global biosphere’ (p. 24). Unless the only problem with modernity is the post- Westphalian structure of the state (which this approach does not eschew, but claims not to privilege), then this statement of values might entrench the problem. Many of the ideas of equality, fairness, and justice that come to mind with the (somewhat rehearsed) use of those words in progressive politics are inseparable from an ethos of enlightenment modernity.

This may be problematic on a number of levels. First, it may fail to interrupt the series of choices that Burke suggests produce a cycle of insecurity. Second, it may fold back onto itself in the recommendations that security cosmopolitanism produces. This especially concerned me in Burke’s discussion of how to end ‘dangerous processes,’ where he places ‘greater faith in the ethical, normative, and legal suppression of dangerous processes and actions than in formalistic or procedural solutions’ (p. 24). It seems to me that there is a good argument that ‘suppression’ is itself a ‘dangerous process,’ yet Burke’s framework does not really include a mechanism for internal critique.

Another problem that seems to confound security cosmopolitanism is evaluating the relationships between power, governance, and governmentality. There are certainly several ways in which Burke uses a notion of the state that distinguishes security cosmopolitanism from the mainstream neoliberal literature. For example, he characterizes the ‘state as an entity whose national survival depends on its global participation, obligations, and depen- dencies,’ (citing Burke 2013a, 5). This view of the state sees it as not only survival-seeking (in the neo-neo synthesis sense) but also dependent on its positive interactions with other states for survival. Burke’s approach to government/governance initially appears to be global rather than state-based, another potentially transformative move. For example, he sees the job of security cosmopolitanism as to ‘theorize and defend norms for the respon- sible conduct and conceptualization of global security governance’ (p. 21). At the same time, later in the article, Burke suggests entrenching the current structure of the state. His practical approach of looking for the ‘solidarity of the governing with the governed’ seems to simultaneously interrogate the current power structures and reify them. Burke says:

Such a ‘solidarity of the governed’ that engages in a ‘practical interrogation of power’ ought to be a significant feature of security cosmopolitanism. At the same time, however, security cosmopolitanism must be concerned with improving the global governance of security by elites and experts. (p. 21)

This attachment to the improvement of existing structures of governance seems to be at the heart of what I see as the failure of the radical potential in the idea of security cosmopolitanism. When discussing how the power dynamics between the elite and the subordinated might change, Burke suggests that ‘voluntary renunciation of the privileges and powers of both state and corporate sovereignty will no doubt be a necessary feature of such an order’ (p. 25). Relying on the voluntary renunciation of power by the powerful seems both unrealistic and not particularly theoretically innovative.

This seems to be at the center of a paradox inherent in security cosmopolitanism: Faith in the Western liberal state is insidious, but the Western liberal state does not have to be. Modernity causes insecurity, but need not be discarded fully. Some universalizations are dangerous, others are benign. Dangerous processes must be stopped, even if by dangerous processes. Moral entrepreneurship is the key, but ther e is no clear foundation for what counts as moral. The security cosmopolitanism critique is inspired by consequentialism, but lacks deontological foundations despite deontological implications. Burke calls for (and indeed demands) to ‘take responsibility for it’ (p. 23) in terms of ‘both formal and moral accountability’ (p. 24). In so doing, he endorses (Booth’s vision of) ‘moral progress’ (p. 25), despite understanding the insidious deployment of various notions of moral progress by others.

Security cosmopolitanism, then, is a proclamation for radical change that is initially stalled by its internal contradictions and further handicapped by its lack of capacity to enact the very sort of radical change Burke sees it as fundamental to righting the wrongs he sees in the world. The result seems to be the (potential) reification of existing governments/governmentality through what essentially appears to be a non-anthropocentric ‘human security’ which cannot be clearly distinguished from current notions of human security (p. 15). It appears to remain top-down and without clear moral foundation while claiming significant improvement over existing approaches. This appearance/seduction of improvement without real promise for change might be more insidious than the nihilism of which many post-structuralists are accused, as it seductively appears to solve a problem it does not solve.

### Finishing Landreau

(Ruddick 132). It becomes difficult, in this context, to focus on, or give weight to, the terrible details of war, and in particular to the death and destruction that modern wars exact mostly from civilians not soldiers.[8] As a rhetorical performance, the description of war in terms of rational sequences and formulas also tends to give authority to the rhetorician himself by distancing him from feminized forms of emotionality or care work (Cohn).¶ Obama ends his speech with the conclusion that presidential war speeches commonly have: an eloquent and solemn call to unity and patriotism. "Now, let me be clear: None of this will be easy. The struggle against violent extremism will not be finished quickly, and it extends well beyond Afghanistan and Pakistan. It will be an enduring test of our free society, and our leadership in the world." (para. 41) The logic of a bond between our free society and our leadership in the world is presupposed rather than described or explained. Like all heroes, the hero of the exceptionalist narrative faces a test. In this instance, he is us, and our essential quality of being a free society is linked to our dominance in the world.¶ Since the days of Franklin Roosevelt, and the service and sacrifice of our grandparents and great-grandparents, our country has borne a special burden in global affairs. We have spilled American blood in many countries on multiple continents.We have spent our revenue to help others rebuild from rubble and develop their own economies.We have joined with others to develop an architecture of institutions -- from the United Nations to NATO to the World Bank -- that provide for the common security and prosperity of human beings.¶ We have not always been thanked for these efforts, and we have at times made mistakes. But more than any other nation, the United States of America has underwritten global security for over six decades -- a time that, for all its problems, has seen walls come down, and markets open, and billions lifted from poverty, unparalleled scientific progress and advancing frontiers of human liberty.¶ For unlike the great powers of old, we have not sought world domination.Our union was founded in resistance to oppression. We do not seek to occupy other nations.We will not claim another nation's resources or target other peoples because their faith or ethnicity is different from ours.What we have fought for -- what we continue to fight for -- is a better future for our children and grandchildren. And we believe that their lives will be better if other peoples' children and grandchildren can live in freedom and access opportunity (para. 47-49).¶ Unlike other world powers, we are benevolent, seeking only that which will make the world a better place. We are, that is to say, a world power but not a world empire. Our history shows this: our military violence and our leadership have underwritten global security for over sixty years. Strangely, though, our fatherly sacrifice to protect the world from harm is sometimes misunderstood, and "we have not always been thanked for our efforts." Who are the unthankful and what is their story? In the standard-issue exceptionalist narrative, they are the enemies of freedom, the sowers of chaos, and the ideologically possessed. Obama certainly believes this. At the same time, the statement that "we have not always been thanked for our efforts" also expresses a deep anxiety about the details and the stories that are erased by the great father's version of history.¶ Making War, Talking Peace: The Nobel Peace Prize Speech¶ The Nobel Prize acceptance speech, given just nine days after Obama's announcement of the escalation of the war in Afghanistan, provides a fascinating expansion of the plot of "American as good vs. foreign as evil" that informs the narrative justification for war in the West Point speech. In this speech, Obama contextualizes both American exceptionalism in general, and his specific decision to expand the war in Afghanistan, in a sweeping historical narrative of global progress. "At the dawn of history," Obama declares, "war was routinely pursued between tribes and peoples quite simply as a way of 'seeking power and settling disputes." (para. 6) Later, as "man" progressed, legal and diplomatic efforts were made in an attempt to regulate war and the way it was pursued. Obama invokes just war theory citing it as one of the principle ways in which humans have tried to regulate and civilize war. In Obama's narrative, the United States is located at the upper end of this historical progression because it is the United States that has provided the leadership to produce the global "architecture" of peace in the form of the United Nations, support for human rights, nuclear arms reductions, and so on. Elaborating on the schematic history of the United States that appeared in the West Point speech, Obama says¶ The United States of America has helped underwrite global security for more than six decades with the blood of our citizens and the strength of our arms. The service and sacrifice of our men and women in uniform has promoted peace and prosperity from Germany to Korea, and enabled democracy to take hold in places like the Balkans.We have borne this burden not because we seek to impose our will.We have done so out of enlightened self-interest -- because we seek a better future for our children and grandchildren, and we believe that their lives will be better if others' children and grandchildren can live in freedom and prosperity (para. 18).¶ J. Ann Tickner argues that the idea of enlightened self interest corresponds to a masculinist model of international relations in which states are systematic and instrumental they are competitive "profit maximizers that pursue power and autonomy in an anarchic world system."(52) In this context, if international cooperation exists, it is explained not in terms of community or an interdependent notion of security and welfare, but rather in terms of rational choice and enlightened self-interest. Here, in Obama's version, we shoulder the burden of world peace and prosperity both heroically (with American blood and military power) but also as rational actors. We act not as an imperial power, but as a benign power exercising rational choices in a dangerous world in order to protect our interests. By virtue of the incantatory power of the exceptionalist narrative, our interests are identical with democratic values and the cause of economic justice.¶ The awkward context of the Nobel Prize speech both clarifies and complicates Obama's justification of war. While acknowledging the "moral force" of the theory of non-violence, he also argues that "evil does exist in the world" and that a realist assessment of the world "as it is" sometimes requires violence. This part of the speech is quite subtle, shuttling back and forth between the recognition that war is terrible and the insistence that it is sometimes necessary. The notion that war is sometimes just and sometimes necessary for building peace is modified throughout with an appeal to "responsibility" and to the rational, measured use of military violence. Obama argues that "all responsible nations must embrace the role that militaries with a clear mandate can play to keep the peace." (para. 26) The rationalist tone of responsibility and militaries with clear mandates is matched by Obama's framing of the philosophical question of war and peace as a matter of human imperfection. The ideals of peace are beautiful, but in the world as it is human beings are not perfect. They sometimes act unaccountably and irresponsibly. And sometimes they must be stopped from perpetrating evil.¶ At the end of the speech, Obama signals what for him is the chief human imperfection that is at the root of so much of the world's violence. He says,¶ As the world grows smaller, you might think it would be easier for human beings to recognize how similar we are; to understand that we're all basically seeking the same things; that we all hope for the chance to live out our lives with some measure of happiness and fulfillment for ourselves and our families. ¶ And yet somehow, given the dizzying pace of globalization, the cultural leveling of modernity, it perhaps comes as no surprise that people fear the loss of what they cherish in their particular identities -- their race, their tribe, and perhaps most powerfully their religion. In some places, this fear has led to conflict.At times, it even feels like we're moving backwards.We see it in the Middle East, as the conflict between Arabs and Jews seems to harden.We see it in nations that are torn asunder by tribal lines.¶ And most dangerously, we see it in the way that religion is used to justify the murder of innocents by those who have distorted and defiled the great religion of Islam, and who attacked my country from Afghanistan.T hese extremists are not the first to kill in the name of God; the cruelties of the Crusades are amply recorded. But they remind us that no Holy War can ever be a just war (para. 47-49).¶ In the context of globalization, what jams the machine is fear of loss of identity. This fear also gets in the way of our universal human aspirations for peace and prosperity. The most notable example of this kind of fear is, of course, the terrorism practiced by al Qaeda. This is a fear underwritten by megalomania: the idea that violence is mandated by God. What is striking about this passage is that it plots opposition to globalization as fear of change, almost as a kind of primitive or childish clinging to identity in a world whose universal characteristics are evident. But can this be the whole story? Can one explain the conflict between Israel and the Palestinians, as Obama appears to do here, as irrational fear of loss of identity? Is opposition to capitalist globalization American-style, and under the paternal arm of American power, always and everywhere a form of childishness or partial vision?¶ In his concluding comments, Obama quotes Martin Luther King's 1964 Nobel Prize acceptance speech in which he talks about the moral necessity of striving for what ought to be rather than accepting things as they are. This is an eloquent but highly impertinent frame for the speech. In his Nobel address, King soundly rejects those versions of history organized around notions of necessary violence. Accepting the prize on behalf of the entire civil rights movement, King says:¶ After contemplation, I conclude that this award which I receive on behalf of that movement is a profound recognition that nonviolence is the answer to the crucial political and moral question of our time - the need for man to overcome oppression and violence without resorting to violence and oppression. Civilization and violence are antithetical concepts. Negroes of the United States, following the people of India, have demonstrated that nonviolence is not sterile passivity, but a powerful moral force which makes for social transformation. Sooner or later all the people of the world will have to discover a way to live together in peace, and thereby transform this pending cosmic elegy into a creative psalm of brotherhood. If this is to be achieved, man must evolve for all human conflict a method which rejects revenge, aggression and retaliation. The foundation of such a method is love (para. 4).¶ King clearly rejects the idea that civilization sometimes requires violence, or that violence can sometimes be just or moral. Love, in King's terms, is antithetical to the discourse of innocence, guilt, power and violence that constitutes the narrative of American exceptionalism. Instead, King's ethic of love is consonant with Judith Butler's critique of violence:¶ The violent response is the one that does not ask, and does not seek to know. It wants to shore up what it knows, to expunge what threatens it with not-knowing, what forces it to reconsider the presuppositions of its world, their contingency, their malleability. The nonviolent response lives with its unknowingness about the Other in the face of the Other, since sustaining the bond that the question opens is finally more valuable than knowing in advance what holds us in common, as if we already have all the resources we need to know what defines the human, what its future life might be (35).¶ This is precisely what is wrong with the narrative of American exceptionalism, and with Obama's obligation to it. A story whose plot is organized entirely around the character of its hero does not seek to know. It is narcissistic. It shores up what it knows in fear of the Other, and in this gesture reconfirms that its view of the world is the truth. Obama seems oblivious to the contradictions in his assertion of American power as he struggles here to articulate the oxymoron of peace through war. In the end, what "makes sense" in his justification for war is the cultural and political sense that adheres to the image of embodied presidential masculinity, and to his military leadership performed in patriotic service to America's heroic global mission.¶ Conclusion¶ Obama's national security policies and rhetoric are, to be fair, significantly different in many ways than Bush's. Nonetheless, he steeps his rhetoric of hope for a new foreign policy in the old, familiar language of American exceptionalism. This illustrates how the political logic of a militarized and masculinized nation, presidency and citizenry has proved to be more enduring, significant and powerful than the strategy differences that have divided Democrats and Republicans over the last 60 years. It is important also because the cultural logic of American exceptionalism guaranteed by military power makes so many questions difficult to ask because the questions themselves seem absurd, effeminately nave, or simply out of rhetorical limits. These are unasked questions such as what violence was required to achieve our affluence and power? How can that violence be justified? Are there models for world peace, prosperity and freedom other than America's dominance and "leadership?" Does military power and violence produce security? What constitutes security? Is invulnerability a legitimate security goal? Is the authority of Commander-in-chief one that automatically adheres to the presidency at all times, or should the executive be more limited in its power as originally envisioned in the Constitution? Is citizenship best characterized in terms of a militarized and masculinized patriotism? Can terrorism be fought with large-scale military tactics?¶ Of course, it is impossible to know all the ins and outs of how Obama and his advisors reached the decision to escalate the war in Afghanistan. For those who voted for Obama over Clinton during the Democratic primary campaign because of his clear-spoken commitment to a different kind of foreign policy, the decision is disappointing to say the least. In the final analysis, when the decision was made, and its justification needed to be formulated into public rhetoric, what is clear is that the Obama administration felt at home in and oriented by - the old language of American exceptionalism. Familiar orientations, as Sara Ahmed argues, are an "effect of inhabitance." That is, their sense, their familiarity and their surety are products of their alignment with an already aligned world (7). My argument here is that the sense Obama makes of war is indebted to and made possible by - the familiarity and common-sense orientation of American exceptionalism. If the militarism and masculinism of his national security logic seem sensible or reassuring, it is because they are oriented in deeply familiar ways. The rhetoric of war and national security also works, of course, to recreate the familiar orientation from which it emerges. As Susan Jeffords argues, in the post-Vietnam context, heroic narratives about the war had the decisive (but indirectly manifested) effect of "remasculinizing American culture." This is why the work of disorientation that is proposed by feminist International Relations scholars and activists with its specific focus on the hidden injuries of gender in the familiar discourses of war and security is so important. It is also why it is so difficult.¶ I have argued that Obama's war logic is oriented by, and serves to reorient us towards, a national mythology grounded in narratives of glorified violence and masculinity. The difficulty of challenging and disorienting that prevailing narrative is eloquently described by Jorge Luis Borges in his story "The South." The story serves as an apt allegory of the mythology of American exceptionalism with its multiple commitments to masculinity and violence, and for the ways this mythology works to make military violence the seemingly inevitable and sensible locus where the national story is both resolved and reinvigorated. The main character in "The South" is named Juan Dahlmann. Dahlmann feels "deeply Argentine" despite the fact that his paternal grandfather was a northern European immigrant. Dahlmann's patriotic sense of identity involves, among other things, having purchased a little ranch in the south that had once been in his mother's family. Dahlmann lives in Buenos Aires, and for him the south has tremendous symbolic resonance as that place that retains the masculinist features of national mythology: the pampa, the gaucho, the singing bard, the tavern, the duel. Dahlmann dreams about the ranch and its old house, and takes comfort in imagining it waiting for him on the pampa, even though he never really gets a chance to actually go there. One day, Dahlmann is struck gravely ill with a terrible infection and is hospitalized with high fever. As is typical of so many of Borges' stories, it is impossible to tell if the subsequent narrated events are products of his hallucinatory state or are really happening to him. In any event, after some days of medical intervention, he is released and boards a train towards the south to convalesce at his ranch. He arrives, enters a tavern where he eats barbeque and drinks wine, and then is taunted by some young men who have been drinking too much. Although the bar owner tells him to pay them no mind, Dahlmann confronts them as any traditional male character in a gaucho story would be required to do. In seeming recognition of his decisive entrance into one of the enduring storylines of nationalist mythology (the knife fight between men at a watering hole on the pampa), the ancient gaucho in the corner of the bar who until now has remained motionless as if frozen in time, becomes "ecstatic" and throws him a dagger. The rest is preordained: Dahlmann will walk out of the tavern with a knife in his hand, he will fight bravely, and then die with the stranger's blade in his gut. It is, the narrator says, "as if the South had decided that Dahlmann should agree to the duel." (203) When he picks up the dagger, he feels two things: first, "that this almost instinctive act committed him to fighting" and, second, "that, in his clumsy hand, the weapon would not serve to defend him, but rather to justify their killing of him" (Borges, 203 translations mine).¶ For me, "The South" is a story about the masculinist mythology of national identity and violence. Intricate and contradictory is it dream or reality? the myth exercises its force both from within on Dahlmann's imagination and from without on his body. The logic of a militarized and masculinized rhetoric of national security, in concert with the economic logic of our military budget and the imperial logic of our global ambition, serves as our "south" leading us onward towards the use of large-scale military violence as if in a dream from which we cannot wake. We cannot hear the warnings of the barkeep who tries to tell us that we do not have to kill or be killed in this instance. Like Dahlmann, our politicians even the less bellicose among them when faced with security threats simply cannot imagine any alternative to masculinist bravado and the duel to the death.¶ "The South", then, is a cautionary tale. As long as presidents and politicians dare not challenge the role of the military budget as the primary organizing principle of our economy, and as long as the militarized and masculinized ideology of American exceptionalism remains the almost unitary language with which we speak of national security and foreign policy, there should be no surprise when ostensible doves from the Democratic Party such as Barack Obama pursue large-scale military campaigns in places like Afghanistan, and seem to do so as readily as their reputedly hawkish counterparts in the Republican Party. Alternate strategies to large-scale military violence require new story-lines of national identity and national security. We need to give ourselves a choice about whether taking up the knife is what the situation calls for. We need to ask questions about how we got into such a situation in the first place. We need to create alternatives to the logic that defines security as killing or being killed. Clearly, rhetoric plays a significant role in preparing these choices. But, as Obama's performance indicates, it is unlikely that our presidents and our politicians will do the rhetorical work necessary to disorient the prevailing exceptionalist narrative and reorient the debate towards the ethos of human security. It falls to us - citizens, activists and intellectuals - to turn our political rhetoric away from antagonisms that require violence towards the democratic task of contending with opponents with whom we share the world.

### Hegemony Link

#### The historical record proves.

Gray 11—John Gray is a Canadian journalist and author whose work includes Paul Martin: The Power of Ambition, a biography with an emphasis on Martin's lifelong quest to be Prime Minister. A former journalist with the Ottawa Citizen, Gray also had many roles in 20 years of work for The Globe and Mail, including writer, editor, foreign correspondent, and Ottawa bureau chief. He won three National Newspaper Awards [September 21, 2011, “Delusions of Peace,” Prospect, http://www.prospectmagazine.co.uk/magazine/john-gray-steven-pinker-violence-review/]

“Today we take it for granted that war happens in smaller, poorer and more backward countries,” Steven Pinker writes in his new book, The Better Angels of Our Nature: the Decline of Violence in History and Its Causes. The celebrated Harvard professor of psychology is discussing what he calls “the Long Peace”: the period since the end of the second world war in which “the great powers, and developed states in general, have stopped waging war on one another.” As a result of “this blessed state of affairs,” he notes, “two entire categories of war—the imperial war to acquire colonies, and the colonial war to keep them—no longer exist.” Now and then there have been minor conflicts. “To be sure, [the super-powers] occasionally fought each other’s smaller allies and stoked proxy wars among their client states.” But these episodes do not diminish Pinker’s enthusiasm about the Long Peace. Chronic warfare is only to be expected in backward parts of the world. “Tribal, civil, private, slave-raiding, imperial, and colonial wars have inflamed the territories of the developing world for millennia.” In more civilised zones, war has all but disappeared. There is nothing inevitable in the process; major wars could break out again, even among the great powers. But the change in human affairs that has occurred is fundamental. “An underlying shift that supports predictions about the future,” the Long Peace points to a world in which violence is in steady decline.

A sceptical reader might wonder whether the outbreak of peace in developed countries and endemic conflict in less fortunate lands might not be somehow connected. Was the immense violence that ravaged southeast Asia after 1945 a result of immemorial backwardness in the region? Or was a subtle and refined civilisation wrecked by world war and the aftermath of decades of neo-colonial conflict—as Norman Lewis intimated would happen in his prophetic account of his travels in the region, A Dragon Apparent (1951)? It is true that the second world war was followed by over 40 years of peace in North America and Europe—even if for the eastern half of the continent it was a peace that rested on Soviet conquest. But there was no peace between the powers that had emerged as rivals from the global conflict.

In much the same way that rich societies exported their pollution to developing countries, the societies of the highly-developed world exported their conflicts. They were at war with one another the entire time—not only in Indo-China but in other parts of Asia, the Middle East, Africa and Latin America. The Korean war, the Chinese invasion of Tibet, British counter-insurgency warfare in Malaya and Kenya, the abortive Franco-British invasion of Suez, the Angolan civil war, decades of civil war in the Congo and Guatemala, the Six Day War, the Soviet invasion of Hungary in 1956 and of Czechoslovakia in 1968, the Iran-Iraq war and the Soviet-Afghan war—these are only some of the armed conflicts through which the great powers pursued their rivalries while avoiding direct war with each other. When the end of the Cold War removed the Soviet Union from the scene, war did not end. It continued in the first Gulf war, the Balkan wars, Chechnya, the Iraq war and in Afghanistan and Kashmir, among other conflicts. Taken together these conflicts add up to a formidable sum of violence. For Pinker they are minor, peripheral and hardly worth mentioning. The real story, for him, is the outbreak of peace in advanced societies, a shift that augurs an unprecedented transformation in human affairs.

#### Hegemony is based on an ideological fantasy of US exceptionalism which necessitates permanent war-making---you should look at the benefits of hegemony from the outside-looking-in---their theoretically scary impacts obscure the real consequences of hegemony which have been untold suffering

Richard Jackson 11, Director of the National Centre for Peace and Conflict Studies, the University of Otago. Former. Professor of International Politics at Aberystwyth University, The World’s Most Warring Nation, www.e-ir.info/2011/07/02/the-world’s-most-warring-nation/

The history of US foreign policy is a violent and bloody one, although this is not necessarily the dominant perception of most Americans. From the frontier wars of subjugation against Native Peoples to colonial wars against Mexico, Spain and the Philippines, the Cold War interventions in Korea, Cuba, the Dominican Republic, Vietnam, Nicaragua, Grenada, Lebanon, Panama, Libya and elsewhere, the post-Cold War interventions in Somalia, Iraq, Sudan, Afghanistan, and Kosovo, and the post-9/11 interventions in Afghanistan, Iraq, Pakistan, Somalia, Yemen and Libya today, the US has an unrivaled record of war and foreign military intervention. There are in fact, few periods in its history when the US has not been engaged in war or military attacks on other countries. In addition, the US is the world’s largest manufacturer and exporter of military weapons, and has a military budget several times greater than all its nearest rivals combined. It is in fact, the most warring nation in modern history. It is in this historical context that we have to try and understand its current military involvement in Iraq, Afghanistan, Pakistan, Yemen, the Horn of Africa and Libya.

Although it is sometimes argued by apologists that these military actions are always defensive in nature rather than proactive and expansionist, and are the result of real and serious threats to US security or the wider international system, the virtually impregnable security position of the US, notwithstanding the 9/11 attacks a decade ago, makes this argument unconvincing. The reality is that the size of the US landmass and population, the vast oceans to its eastern and western borders and the friendly countries to its north and south, and the extent of its economic and military power, means that there are no serious obstacles to the adoption of an isolationist foreign policy or even the adoption of a pacifist role in international affairs. In other words, there is nothing inevitable or predetermined about its long record of war and intervention. Explaining the historical record of US foreign intervention requires a careful evaluation of both its strategic interests and its ideological system, as it is the almost unique combination of these factors and the way in which they underpin and interact with each other which helps to explain why the US continues to be the most violent state in the international system today.

Strategically, the US is today the world’s dominant power. In order to maintain this hegemonic position in the international system, which is the primary and preeminent goal of all US foreign policy (or at least, no major foreign policy initiative can seriously contradict this first principle goal), necessitates a number of key measures, such as: maintaining military advantage over rivals, which in turn requires a permanent internal military-industrial complex; a system of allies and a military presence in bases stretched around the globe, especially in strategic regions like the Middle East and the Horn of Africa; influence over or control of strategic resources such as oil; domination or at least influence over the global economic and trading system; significant influence in international institutions; and preventing the rise of serious challengers to its overall hegemony.

At the same time, the US has evolved since the founding of the republic a core set of ideological beliefs which are now deeply embedded culturally and accepted by both the political elite and the wider society. Some of these beliefs are necessitated by, and functional to, the military power of the US: maintaining a costly and permanent military-industrial complex capable of staying ahead of its rivals, for example, requires a supporting set of cultural values which valorize military prowess, patriotism and sacrifice in war. These values are now part of the military-industrial-media complex in which video games and movies, among others, serve as recruitment tools for the military, narrative frames for interpreting foreign threats and as propaganda for generating support for foreign military intervention. Importantly, this military-industrial-media complex has come to generate its own material and political interests, in part because it requires actual wars to reproduce and sustain itself.

Other important ideological values include the strongly-held belief that the US has been called by history (or God) to protect the so-called free world from major threats. Thus, it is believed that the US was first called to defeat the threat posed by the Axis powers, then the communist threat, and today, the global threat of terrorism. This ideological belief rests on the notion that the US is uniquely placed – by virtue of its military and economic power, and its moral values – to ensure the safety of the civilized world; it is the ‘exceptional nation’ which must lead the world. Related to this, the US has come to believe that its core values of liberty and democracy are actually universal values which is it bound to protect at home and spread abroad. As with its military values, these ideological beliefs are ubiquitous in popular and political culture.

It is the combination of the US’s strategic interests and its ideological dispositions in the past two hundred years or more which explains the frequency and geographical distribution of its military interventions. In some cases, interventions have been launched primarily to protect perceived strategic interests, such as the case of the first Gulf War in which Iraq took control of Kuwait oil reserves and appeared to seriously threaten Saudi oil reserves. In other cases, the US’s strategic interests coincided with strong ideological imperatives, such as the Libyan intervention today where the presence of significant oil reserves and the desire to create a pro-US regime in a strategic region has combined with the US ideological value of spreading democracy and overthrowing a long-term dictator and US opponent. The key point however, is that ideological values such as democracy promotion only rarely generate sufficient will by themselves for military intervention, although Somalia and Kosovo may be considered exceptions (although there were strategic interests involved in both cases). In many other cases, such as Rwanda in the 1990s and Syria today, such ideological imperatives are insufficient on their own to generate US-led military intervention. At the same time, no wars can be justified or defended to the American public, except by claiming that they fit US ideological values; US politicians cannot admit that they are ever at war solely to secure strategic advantage.

Of course, during some periods such as the cold war and to a lesser degree the war on terror, US strategic interests simply overrode ideological commitments to human rights or democracy promotion, as it supported a series of brutal dictatorships in places like Latin America, Asia and Africa. In some cases, the US even approved of mass murder, such as the Indonesian government’s suppression of Communists in 1965 which killed 500,000 people, its support for the Pol Pot regime in Cambodia, and its support for Latin American death squad activities in places like Chile and El Salvador. In other special cases, such as Israel and Saudi Arabia, US strategic interests override ideological commitment entirely and little real effort is made to promote values-based policies.

The war on terror, particularly the Iraq and Afghanistan interventions, demonstrates the interplay of these two factors, with both strategic interests – dealing with the threat of terrorism, the securing of Iraq’s oil and Afghanistan’s potential role as an access-point to Central Asian oil reserves, fashioning pro-US regimes, and the construction of military bases in strategic regions to put pressure on countries like Iran – and ideological imperatives – bringing liberty and democracy to countries wracked by human rights abuses – driving the interventions. Paradoxically, of course, the war on terror, like many previous US interventions, has resulted in massive human rights abuses around the world and the denial of liberty to millions, with torture, rendition, and the denial of civil rights commonplace, among others. At the same time, it has also endangered US strategic interests: the attack on Iraq strengthened and emboldened Iran, destabilized Pakistan, and greatly damaged the reputation and standing of the US in the Middle East and large parts of the Muslim world.

In the end, the culturally and politically embedded ideology of the US – its militarized patriotism – blinds its leaders and public to the interests and consequences of its military interventions, and sustains the likelihood of future interventions. Few Americans accept that its country’s wars have killed, injured and displaced literally millions of people in the last few decades, most often for little or no positive result in either strategic or ideological terms – that in fact the real-world consequences of its interventions are virtually always the denial of its own stated values of liberty and democracy. Fewer still question why the US is willing to sacrifice thousands or even millions of lives to secure its strategic interests, or why the US population is so perennially vulnerable to ideological appeals by leaders which mask the deeper strategic reasons for violent intervention. While it is unlikely that its strategic interests will change any time soon or that the military-industrial complex can be significantly reduced in size, there is always the hope that new leaders might arise and peace movements might emerge which are able to challenge, and perhaps even change, the militarized patriotism and deeply-embedded culture of violence which makes the US the most violent state in the world.

### Alt Solves Norms

#### The alternative allows for a moment of ethics in the face of the affirmative’s rush to tinker with the status quo in order to leave it fundamentally unchanged---this is the only way to assert agency and actuate an ethical form of diplomacy that solves truly peaceful norms---if they win their FW arguments, we’ll win that this is a better role for diplomats

Roberto Toscano 1, Public Policy Scholar, Middle East Program, Wilson Center. Former Italian ambassador to India “The ethics of modern diplomacy.” in *Ethics and international affairs: Extent and limits*, 55-8

Yet we cannot stop here. If we did we would deprive the single individual as diplomat of the possibility of ethically relevant action. There would be no choice. Obedience would have to be of the no-questions- asked type, whatever the policy and whatever its consequences.34 But this is not so, and has never been so even in practice. It is by now widely accepted that for all kinds of public servants (and this includes diplo- mats), obedience to bureaucratic orders is not a cause of exemption from moral ± and legal ± responsibility. This is especially evident in the case of major crimes. The road that was opened in Nuremberg35 has now taken us to Rome, where in July 1998 the approval of the statutes of the per- manent International Criminal Court would not have been possible without a wide global consensus on the moral/legal responsibility of individuals who serve their state in different capacities but who, by so doing, are in no way exempt from ethical scrutiny and legal sanction. ¶ It would be untenable to maintain that diplomats are exempt from such scrutiny (and sanctions), and that the mandate of the International Criminal Court covers only the actual physical purveyors of violence. It would indeed be a bizarre limitation, especially in a world in which the distinction between military action and diplomacy is more and more blurred in the framework of complex conflictive situations; all the more so since the mandate of the court includes (though for the time being still wanting a definition) the crime of aggression, one in which diplomats can play as big a role as soldiers.36 ¶ How can we square the contradictory needs of impersonal bureaucratic discipline and persistent moral responsibility? The fact is that we cannot. The fact is that there must be a limit, a certain threshold beyond which¶ 56¶ the duty of allegiance and obedience is overruled, annulled by the moral outrage of certain acts in which the individual ``servant of the state'' is instructed to participate. The ethics of the public servant (with its corol- lary of obedience, of non-personalization of behaviour and choices) can take us only so far. A morally sane human being should be capable of determining when that limit is reached, when one must be able to breach one's allegiance and say ``no'' to the crossing of that threshold. ¶ It is necessary to recall that decisions to rebel against orders that are legitimate as to the line of command but that become illegitimate by their moral unacceptability are de®nitely not unheard of in the annals of diplomacy. Several historians of the Holocaust have stressed the role (sometimes merely passive, often active) of Italians, of®cially allied with the Germans, in saving thousands of Jews from detention and deporta- tion to death camps.37 Among those Italians were many military of®cers, but also several diplomats. Though the policy of the highest levels of fascist Italy, starting from Mussolini himself, was often wavering, contra- dictory, and ambiguous, there is no doubt that on many occasions Italian diplomats, in particular in the Balkans, proceeded totally on their own to perform acts of political indiscipline and to infringe very basic bureau- cratic rules, for instance by giving Italian passports to Jews whose only link with Italy was having visited it once: a rather serious breach of the ethics of an of®cial and one that would make any self-respecting consu- lar of®cer cringe. 38 In an unforgettable interview (included in Joseph Rochlitz's documentary The Righteous Enemy), the former Italian consul in Salonica, Guelfo Zamboni, replied in a half-surprised, half-amused tone to the interviewer, amazed at this most unusual concession of pass- ports to aliens: ``Well, they were in danger of death, weren't they? So, what was I supposed to do, let them be deported and exterminated?''39 ¶ The threshold at which personal assessment of moral duties becomes destructive of the ethics of the public servant is not a clearly defined line. Each - but that of course is no news in ethical discourse - has to draw that line and act accordingly. Certainly, if we were to allow the possibility for each diplomat to turn personal disagreement and mental reservation on any given issue into undisciplined behaviour and active rebellion we would revert to that individualistic free-for-all that is the antithesis of a functioning polis, even the most open and pluralistic one. And yet, there is always, even in cases that are not as monumentally horrendous as the Holocaust, a path for a digni®ed stand in the presence of radical moral disagreement with speci®c policies. In those cases one can avoid taking the extreme, always-questionable step of breaking loyalty by opting out ± by resignation. Of course, in non-democratic regimes such an act can entail consequences that may be as dire as those provoked by open re- bellion, but outside those regimes resigning means losing income, pres-¶ 57¶ tige, and career, but not life or freedom. Thus it becomes more feasible. But where has it happened more frequently, in the past decades? It seems not without signi®cance to note that it is in the USA that many diplomats have resigned (over policy issues from Viet Nam to Bosnia), a country whose citizens give a special relevance to debate on ethical issues and at the same time are frequently haunted by the awareness of the respon- sibility that their government's actions or omissions entail in terms of human consequences around the world. To be able to raise ethical issues in diplomacy you indeed need both: moral sensitivity, and the perception of the impact on human beings outside your borders of the power wielded by your country in the international arena. ¶ If there is this sort of ``ethical switch'' that can interrupt allegiance to the state in the case of moral dissent, wouldn't it be safer for a state, any state, to privilege staunch nationalists as their diplomats, at least in the highest-ranking positions? Wouldn't they be more reliable in all con- ditions and facing any sort of problem, any sort of dilemma? The fallacy of this sort of reasoning lies in forgetting what a government of®cial is supposed to be. It is true that public servants are not justi®ed in sacri®c- ing their loyalty to the state and their disciplined behaviour within their administrations to the vagaries of personal taste, nor to political inclina- tions, local partiality, or special interests. However, by the same token it is not necessary, and even counterproductive, that they should be mili- tants of the nation-state, true believers in king and country. They can be such as citizens, but no one demands that they be such as of®cials. The confusion between the two roles (citizen and of®cial) is typically totali- tarian, and amounts to saying that the only good lawyers are those who believe that their clients are innocent ± and possibly love them, too. ¶ Going back to diplomats, we indeed see that if we cast them as lawyers, and not as crusaders for the cause of their own nation-state, we will have solved part of our ethical dilemmas. Diplomats involved in a negotiation or dispute, no more than lawyers in court, do not have to believe in the righteousness of the cause they are defending. That is the essence of professionalism, a much more reliable foundation for good performance and loyalty than is belief. But the diplomat, as well as the lawyer, may decide at a certain point that there are some causes that are just too morally uncomfortable to defend, and opt out. It is of course easier to abandon litigation than to resign from government service, but concep- tually there do not seem to be radical moral differences between the two instances. Both are rare, but both are possible. ¶ The ethical dimension of diplomacy, however, should not be seen only in negative terms ± as a limit to bureaucratic allegiance, as a moral safety valve allowing us to escape complicity with morally outrageous actions. The assumption one should challenge, in this context, is that of a ``status ¶ 58¶ quo diplomatic system''.40 Actually, status quo leaves very limited room for ethical discourse, since it confronts the individual actor with the stark alternative between playing by the existing rules or becoming a sort of conscientious objector and dropping out of the ``regular'' game. In real history - and real diplomacy - we are instead confronted with a moving framework of rules, with diplomats themselves playing a relevant role in the evolutionary process. Here ethics ``gains space'', in so far as individual practitioners of diplomacy, even those who stick to the strictest allegiance to existing norms, are allowed to bring their own ethical inspiration to bear in shaping new international rules.41