# 1NC

## Off

#### War powers authority is enumerated in prior statutes---doesn’t include CIC power because it’s not a congressionally authorized source of Presidential power

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The scope of the President’s independent war powers is **notoriously unclear**, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.1 For the most part, the Supreme Court has also followed this approach in deciding executive power issues relating to the war on terror. In Hamdi v. Rumsfeld, for example, Justice O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2 Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3 The Court’s decision in Boumediene v. Bush4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus re‐ view in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detainees.5 In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.

#### Vote negative---

#### Limits---commander-in-chief power blows the lid off the topic to include anything that might be a potential authority---makes adequate research impossible

#### Precision---Congress can only restrict authority which it has granted, which means any other reading of the topic is incoherent

## Off

### 1NC Link 1

#### 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

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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.

### 1NC Link 2

#### The affirmative’s reduction of the world to zones of conflict ignores that the state of exception and conflict can no longer be spatialized---security renders lawfare a tool of violent biopolitical governance---the result is endless violence

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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.

### 1NC Jabri Impact

#### The impact is permanent warfare---security and fear-driven politics create the enabling conditions for executive overreach and violence which means it’s try or die and we turn the case

Vivienne Jabri 6, Director of the Centre for International Relations and Senior Lecturer at the Department of War Studies, King’s College London, War, Security and the Liberal State, Security Dialogue, 37;47

LATE MODERN TRANSFORMATIONS are often conceived in terms of the sociopolitical and economic manifestations of change emergent from a globalized arena. What is less apparent is how late modernity as a distinct era has impacted upon our conceptions of the social sphere, our lived experience, and our reflections upon the discourses and institutions that form the taken-for-granted backdrop of the known and the knowable. The paradigmatic certainties of modernity – the state, citizenship, democratic space, humanity’s infinite capacity for progress, the defeat of dogma and the culmination of modernity’s apotheosis in the free-wheeling market place – have in the late modern era come face to face with uncertainty, unpre- dictability and the gradual erosion of the modern belief that we could indeed simply move on, assisted by science and technology, towards a condition where instrumental rationality would become the linchpin of government and human interaction irrespective of difference. Progress came to be associated with peace, and both were constitutively linked to the universal, the global, the human, and therefore the cosmopolitan. What shatters such illusions is the recollection of the 20th century as the ‘age of extremes’ (Hobsbawm, 1995), and the 21st as the age of the ever-present condition of war. While we might prefer a forgetting of things past, a therapeutic anamnesis that manages to reconfigure history, it is perhaps the continuities with the past that act as antidote to such righteous comforts.

How, then, do we begin to conceptualize war in conditions where distinctions disappear, where war is conceived, or indeed articulated in political discourse, in terms of peace and security, so that the political is somehow banished in the name of governmentalizing practices whose purview knows no bounds, whose remit is precisely the banishment of limits, of boundaries and distinctions. Boundaries, however, do not disappear. Rather, they become manifest in every instance of violence, every instance of control, every instance of practices targeted against a constructed other, the enemy within and without, the all-pervasive presence, the defences against which come to form the legitimizing tool of war.

Any scholarly take on the present juncture of history, any analysis of the dynamics of the present, must somehow render the narrative in measured tones, taking all factors into account, lest the narrator is accused of exaggeration at best and particular political affiliations at worst. When the late modern condition of the West, of the European arena, is one of camps, one of the detention of groups of people irrespective of their individual needs as migrants, one of the incarceration without due process of suspects, one of overwhelming police powers to stop, search and detain, one of indefinite detention in locations beyond law, one of invasion and occupation, then language itself is challenged in its efforts to contain the description of what is. The critical scholarly take on the present is then precisely to reveal the conditions of possibility in relation to how we got here, to unravel the enabling dynamics that led to the disappearance of distinctions between war and criminality, war and peace, war and security. When such distinctions disappear, impunity is the result, accountability shifts beyond sight, and violence comes to form the linchpin of control. We can reveal the operations of violence, but far more critical is the revelation of power and how power operates in the present. As the article argues, such an exploration raises fundamental questions relating to the relationship of power and violence, and their mutual interconnection in the complex interstices of disrupted time and space locations. Power and violence are hence separable analytical categories, separable practices; they are at the same time connected in ways that work on populations and on bodies – with violence often targeted against the latter so that the former are reigned in, governed. Where Michel Foucault sought, in his later writings, to distinguish between power and violence, to reveal the subtle workings of power, now, in the present, this article will venture, perhaps the distinction is no longer viable when we witness the indistinctions I highlight above

The article provides an analysis of the place of war in late modern politics. In particular, it concentrates on the implications of war for our conceptions of the liberty–security problematique in the context of the modern liberal state. The first section of the article argues the case for the figure of war as analyser of the present. The second section of the article reveals the con- ditions of possibility for a distinctly late modern mode of war and its imbri- cations in politics. The final section of the article concentrates on the political implications of the primacy of war in late modernity, and in particular on possibilities of dissent and articulations of political agency. The aim through- out is to provide the theoretical and conceptual tools that might begin to meet the challenges of the present and to open an agenda of research that concentrates on the politics of the present, the capacities or otherwise of contestation and accountability, and the institutional locations wherein such political agency might emerge.

The Figure of War and the Spectre of Security

The so-called war against terrorism is constructed as a global war, transcend- ing space and seemingly defiant of international conventions. It is dis- tinguished from previous global wars, including the first and the second world wars, in that the latter two have, in historiography, always been analysed as interstate confrontations, albeit ones that at certain times and in particular locations peripherally involved non-state militias. Such distinc- tions from the old, of course, will be subject to future historical narratives on the present confrontation and its various parameters. What is of interest in the present discussion is the distinctly global aspect of this war, for it is the globality1 of the war against terrorism that renders it particularly relevant and pertinent to investigations that are primarily interested in the relation- ship between war and politics, war and the political processes defining the modern state. The initial premise of the present article is that war, rather than being confined to its own time and space, permeates the normality of the political process, has, in other words, a defining influence on elements con- sidered to be constitutive of liberal democratic politics, including executive answerability, legislative scrutiny, a public sphere of discourse and inter- action, equal citizenship under the law and, to follow liberal thinkers such as Habermas, political legitimacy based on free and equal communicative practices underpinning social solidarity (Habermas, 1997). War disrupts these elements and is a time of crisis and emergency. A war that has a permanence to it clearly normalizes the exceptional, inscribing emergency into the daily routines of social and political life. While the elements of war – conflict, social fragmentation, exclusion – may run silently through the assemblages of control in liberal society (Deleuze, 1986), nevertheless the persistent iteration of war into politics brings these practices to the fore, and with them a call for a rethinking of war’s relationship to politics.

The distinctly global spatiality of this war suggests particular challenges that have direct impact on the liberal state, its obligations towards its citizenry, and the extent to which it is implicated in undermining its own political institutions. It would, however, be a mistake to assume that the practices involved in this global war are in any way anathema to the liberal state. The analysis provided here would argue that while it is crucial to acknowledge the transformative impact of the war against terrorism, it is equally as important to appreciate the continuities in social and political life that are the enabling conditions of this global war, forming its conditions of possibility. These enabling conditions are not just present or apparent at global level, but incorporate local practices that are deep-rooted and institu- tionalized. The mutually reinforcing relationship between global and local conditions renders this particular war distinctly all-pervasive, and poten- tially, in terms of implications, far more threatening to the spaces available for political contestation and dissent.

Contemporary global politics is dominated by what might be called a ‘matrix of war’2 constituted by a series of transnational practices that vari- ously target states, communities and individuals. These practices involve states as agents, bureaucracies of states and supranational organizations, quasi-official and private organizations recruited in the service of a global machine that is highly militarized and hence led by the United States, but that nevertheless incorporates within its workings various alliances that are always in flux. The crucial element in understanding the matrix of war is the notion of ‘practice’, for this captures the idea that any practice is not just situated in a system of enablements and constraints, but is itself constitutive of structural continuities, both discursive and institutional. As Paul Veyne (1997: 157) writes in relation to Foucault’s use of the term, ‘practice is not an agency (like the Freudian id) or a prime mover (like the relation of produc- tion), and moreover for Foucault, there is no agency nor any prime mover’. It is in this recursive sense that practices (of violence, exclusion, intimidation, control and so on) become structurated in the routines of institutions as well as lived experience (Jabri, 1996). To label the contemporary global war as a ‘war against terrorism’ confers upon these practices a certain legitimacy, suggesting that they are geared towards the elimination of a direct threat. While the threat of violence perpetrated by clandestine networks against civilians is all too real and requires state responses, many of these responses appear to assume a wide remit of operations – so wide that anyone interested in the liberties associated with the democratic state, or indeed the rights of individuals and communities, is called upon to unravel the implications of such practices.

When security becomes the overwhelming imperative of the democratic state, its legitimization is achieved both through a discourse of ‘balance’ between security and liberty and in terms of the ‘protection’ of liberty.3 The implications of the juxtaposition of security and liberty may be investigated either in terms of a discourse of ‘securitization’ (the power of speech acts to construct a threat juxtaposed with the power of professionals precisely to so construct)4 or, as argued in this article, in terms of a discourse of war. The grammars involved are closely related, and yet that of the latter is, para- doxically, the critical grammar, the grammar that highlights the workings of power and their imbrications with violence. What is missing from the securitization literature is an analytic of war, and it is this analytic that I want to foreground in this article.

The practices that I highlight above seem at first hand to constitute differ- ent response mechanisms in the face of what is deemed to be an emergency situation in the aftermath of the events of 11 September 2001. The invasion and occupation of Iraq, the incarceration without due process of prisoners in camps from Afghanistan to Guantánamo and other places as yet un- identified, the use of torture against detainees, extra-judicial assassination, the detention and deportation – again without due process – of foreign nationals deemed a threat, increasing restrictions on refugees, their confine- ment in camps and detention centres, the construction of the movement of peoples in security terms, and restrictions on civil liberties through domestic legislation in the UK, the USA and other European states are all represented in political discourse as necessary security measures geared towards the protection of society. All are at the same time institutional measures targeted against a particular other as enemy and source of danger.

It could be argued that the above practices remain unrelated and must hence be subject to different modes of analysis. To begin with, these practices involve different agents and are framed around different issues. Afghanistan and Iraq may be described as situations of war, and the incarceration of refugees as encompassing practices of security. However, what links these elements is not so much that they constitute a constructed taxonomy of dif- ferentiated practices. Rather, what links them is the element of antagonism directed against distinct and particular others. Such a perspective suggests that the politics of security, including the production of fear and a whole array of exclusionary measures, comes to service practices that constitute war and locates the discourse of war at the heart of politics, not just domes- tically, but, more crucially in the present context, globally. The implications for the late modern state and the distinctly liberal state are monumental, for a perpetual war on a global scale has implications for political structures and political agency, for our conceptions of citizenship and the role of the state in meeting the claims of its citizens,5 and for the workings of a public sphere that is increasingly global and hence increasingly multicultural.

The matrix of war is centrally constituted around the element of antago- nism, having an association with existential threat: the idea that the continued presence of the other constitutes a danger not just to the well-being of society but to its continued existence in the form familiar to its members, hence the relative ease with which European politicians speak of migrants of particular origins as forming a threat to the ‘idea of Europe’ and its Christian origins.6 Herein lies a discourse of cultural and racial exclusion based on a certain fear of the other. While the war against specific clandestine organiza- tions7 involves operations on both sides that may be conceptualized as a classical war of attrition, what I am referring to as the matrix of war is far more complex, for here we have a set of diffuse practices, violence, disci- plinarity and control that at one and same time target the other typified in cultural and racial terms and instantiate a wider remit of operations that impact upon society as a whole.

The practices of warfare taking place in the immediate aftermath of 11 September 2001 combine with societal processes, reflected in media representations and in the wider public sphere, where increasingly the source of threat, indeed the source of terror, is perceived as the cultural other, and specifically the other associated variously with Islam, the Middle East and South Asia. There is, then, a particularity to what Agamben (1995, 2004) calls the ‘state of exception’, a state not so much generalized and generalizable, but one that is experienced differently by different sectors of the global population. It is precisely this differential experience of the exception that draws attention to practices as diverse as the formulation of interrogation techniques by military intelligence in the Pentagon, to the recent provisions of counter-terrorism measures in the UK,8 to the legitimizing discourses surrounding the invasion of Iraq. All are practices that draw upon a discourse of legitimization based on prevention and pre-emption. Enemies constructed in the discourses of war are hence always potential, always abstract even when identified, and, in being so, always drawn widely and, in consequence, communally. There is, hence, a ‘profile’ to the state of exception and its experience. Practices that profile particular communities, including the citizens of European states, create particular challenges to the self-understanding of the liberal democratic state and its capacity, in the 21st century, to deal with difference.

While a number of measures undertaken in the name of security, such as proposals for the introduction of identity cards in the UK or increasing surveillance of financial transactions in the USA, might encompass the population as a whole, the politics of exception is marked by racial and cul- tural signification. Those targeted by exceptional measures are members of particular racial and cultural communities. The assumed threat that under- pins the measures highlighted above is one that is now openly associated variously with Islam as an ideology, Islam as a mode of religious identi- fication, Islam as a distinct mode of lifestyle and practice, and Islam as a particular brand associated with particular organizations that espouse some form of a return to an Islamic Caliphate. When practices are informed by a discourse of antagonism, no distinctions are made between these various forms of individual and communal identification. When communal profiling takes place, the distinction between, for example, the choice of a particular lifestyle and the choice of a particular organization disappears, and diversity within the profiled community is sacrificed in the name of some ‘pre- cautionary’ practice that targets all in the name of security.9 The practices and language of antagonism, when racially and culturally inscribed, place the onus of guilt onto the entire community so identified, so that its indi- vidual members can no longer simply be citizens of a secular, multicultural state, but are constituted in discourse as particular citizens, subjected to particular and hence exceptional practices. When the Minister of State for the UK Home Office states that members of the Muslim community should expect to be stopped by the police, she is simply expressing the condition of the present, which is that the Muslim community is particularly vulnerable to state scrutiny and invasive measures that do not apply to the rest of the citizenry.10 We know, too, that a distinctly racial profiling is taking place, so that those who are physically profiled are subjected to exceptional measures.

Even as the so-called war against terrorism recognizes no boundaries as limits to its practices – indeed, many of its practices occur at transnational, often indefinable, spaces – what is crucial to understand, however, is that this does not mean that boundaries are no longer constructed or that they do not impinge on the sphere of the political. The paradox of the current context is that while the war against terrorism in all its manifestations assumes a boundless arena, borders and boundaries are at the heart of its operations. The point to stress is that these boundaries and the exclusionist practices that sustain them are not coterminous with those of the state; rather, they could be said to be located and perpetually constructed upon the corporeality of those constructed as enemies, as threats to security. It is indeed the corporeal removal of such subjects that lies at the heart of what are constructed as counter-terrorist measures, typified in practices of direct war, in the use of torture, in extra-judicial incarceration and in judicially sanctioned detention. We might, then, ask if such measures constitute violence or relations of power, where, following Foucault, we assume that the former acts upon bodies with a view to injury, while the latter acts upon the actions of subjects and assumes, as Deleuze (1986: 70–93) suggests, a relation of forces and hence a subject who can act. What I want to argue here is that violence is imbricated in relations of power, is a mode of control, a technology of governmentality. When the population of Iraq is targeted through aerial bombardment, the consequence goes beyond injury and seeks the pacifica- tion of the Middle East as a political region.

When legislative and bureaucratic measures are put in place in the name of security, those targeted are categories of population. At the same time, the war against terrorism and the security discourses utilized in its legitimiza- tion are conducted and constructed in terms that imply the defence or protection of populations. One option is to limit policing, military and intel- ligence efforts through the targeting of particular organizations. However, it is the limitless construction of the war against terrorism, its targeting of particular racial and cultural communities, that is the source of the challenge presented to the liberal democratic state. In conditions constructed in terms of emergency, war permeates discourses on politics, so that these come to be subject to the restraints and imperatives of war and practices constituted in terms of the demands of security against an existential threat. The implications for liberal democratic politics and our conceptions of the modern state and its institutions are far-reaching,11 for the liberal democratic polity that considers itself in a state of perpetual war is also a state that is in a permanent state of mobilization, where every aspect of public life is geared towards combat against potential enemies, internal and external.

One of the most significant lessons we learn from Michel Foucault’s writ- ings is that war, or ‘the distant roar of battle’ (Foucault, 1977: 308), is never quite so distant from liberal governmentality. Conceived in Foucaultian terms, war and counter-terrorist measures come to be seen not as discontinuity from liberal government, but as emergent from the enabling conditions that liberal government and the modern state has historically set in place. On reading Foucault’s renditions on the emergence of the disciplinary society, what we see is the continuation of war in society and not, as in Hobbes and elsewhere in the history of thought, the idea that wars happen at the outskirts of society and its civil order. The disciplinary society is not simply an accumulation of institutional and bureaucratic procedures that permeate the everyday and the routine; rather, it has running through its interstices the constitutive elements of war as continuity, including confrontation, struggle and the corporeal removal of those deemed enemies of society. In Society Must Be Defended (Foucault, 2003) and the first volume of the History of Sexuality (Foucault, 1998), we see reference to the discursive and institutional continuities that structurate war in society. Reference to the ‘distant roar of battle’ suggests confrontation and struggle; it suggests the ever-present construction of threat accrued to the particular other; it suggests the immediacy of threat and the construction of fear of the enemy; and ultimately it calls for the corporeal removal of the enemy as source of threat. The analytic of war also encompasses the techniques of the military and their presence in the social sphere – in particular, the control and regulation of bodies, timed pre- cision and instrumentality that turn a war machine into an active and live killing machine. In the matrix of war, there is hence the level of discourse and the level of institutional practices; both are mutually implicating and mutually enabling. There is also the level of bodies and the level of population. In Foucault’s (1998: 152) terms: ‘the biological and the historical are not con- secutive to one another . . . but are bound together in an increasingly com- plex fashion in accordance with the development of the modern technologies of power that take life as their objective’.

What the above suggests is the idea of war as a continuity in social and political life. The matrix of war suggests both discursive and institutional practices, technologies that target bodies and populations, enacted in a complex array of locations. The critical moment of this form of analysis is to point out that war is not simply an isolated occurrence taking place as some form of interruption to an existing peaceful order. Rather, this peaceful order is imbricated with the elements of war, present as continuities in social and political life, elements that are deeply rooted and enabling of the actuality of war in its traditional battlefield sense. This implies a continuity of sorts between the disciplinary, the carceral and the violent manifestations of government.

### ILAW/Sov---Colonialism Link

#### Sovereignty is a western-construct that ignores alternate forms of political organization---SQ 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

### General LOW/Norms---Link 3

#### Reformist measures aimed at the laws of war 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.

### General LOW/Norms---Impact

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

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

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

3. LAW AS A MODERN LEGAL INSTITUTION

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

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

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

4. AMBIGUITIES AND CONTIGENCIES OF THE CONTEMPORARY LAW OF WAR

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

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

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

### Rana Alt

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

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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

## Drones Advantage

### 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).

### Drones Fail

#### Drones fail

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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

### 1NC Terror Link

#### Apocalyptic terrorism scenarios are grounded in vested political interests and violent modes of national-identity formation in which political reforms like the plan are used to carve the world into liberal and illiberal spheres---the impact is a racist extermination of alterity and expansive structural violence

Desiree Bryan 12, Research Assistant Intern at Middle East Institute. MScECON Candidate: Security Studies at Aberystwyth University, The Popularity of the ‘New Terrorism’ Discourse, http://www.e-ir.info/2012/06/22/the-popularity-of-the-new-terrorism-discourse/

New Terrorism vs. Old Terrorism

The opening sentence of a textbook on terrorism states, “Terrorism has been a dark feature of human behavior since the dawn of recorded history” (Martin, 2010, 3). If this is the case, what makes the ‘new terrorism’ different from the old? According to the mainstream orthodoxy on terrorism, the old terrorism was generally characterized by: left wing ideology; the use of small scale, conventional weapons; clearly identifiable organizations or movements with equally clear political and social messages; specific selection of targets and “explicit grievances championing specific classes or ethnonational groups” (Martin, 2010, 28).¶ Also according to the orthodoxy, the shift to the new terrorism, on the other hand, is thought to have emerged in the early 1990s (Jackson, 2011) and took root in mass consciousness with the September 11, 2001 terrorist attacks on the U.S. (Martin, 2010, 3). The new terrorism is characterized by: “loose, cell-based networks with minimal lines of command and control,” “desired acquisition of high-intensity weapons and weapons of mass destruction” (Martin, 2010, 27), “motivated by religious fanaticism rather than political ideology and it is aimed at causing mass causality and maximum destruction” (Jackson, 2007, 179-180).¶ However, these dichotomous definitions of the old and new types of terrorism are not without problems. The first major problem is that terrorism has been characterized by the same fundamental qualities throughout history. Some of the superficial characteristics, the means of implementation (e.g. the invention of the Internet or dynamite) or the discourse (communism vs. Islam) may have evolved, but the central components remain the same. The second major problem is that the characterization of new terrorism is, at best, rooted in a particular political ideology, biased and inaccurate. At worst, it is racist, promotes war mongering and has contributed to millions of deaths. As David Rapoport states:¶ Many contemporary studies begin … by stating that although terrorism has always been a feature of social existence, it became ‘significant’ … when it ‘increased in frequency’ and took on ‘novel dimensions’ as an international or transnational activity, creating in the process a new ‘mode of conflict’ (1984, 658).¶ Isabelle Duyvesteyn points out that this would indicate evidence for the emergence of a new type of terrorism, if it were not for the fact that the article was written in 1984 and described a situation from the 1960s (Duyvesteyn, 2004, 439). It seems that there have been many new phases of terrorism over the years. So many so that the definition of ‘new’ has been stretched significantly and applied relatively across decades. Nevertheless, the idea that this terrorism, that which the War on Terror (WoT) is directed against, is the most significant and unique form of terrorism that has taken hold in the popular and political discourse. Therefore, it is useful to address each of the so-called new characteristics in turn.¶ The first characteristic is the idea that new terrorism is based on loosely organized cell-based networks as opposed to the traditional terrorist groups, which were highly localized and hierarchical in nature. An oft-cited example of a traditional terrorist group is the Irish Republican Army (IRA), who operated under a military structure and in a relatively (in contrast to the perceived transnational operations of al-Qaeda) localized capacity. However, some of the first modern terrorists were not highly organized groups but small fragmented groups of anarchists. These groups were heeding the call of revolutionary anarchist Mikhail Bakunin and other contemporary anarchists to achieve anarchism, collectivism and atheism via violent means (Morgan, 2001, 33). Despite the initial, self-described “amorphous” nature of these groups, they were a key force in the Russian Revolution (Maximoff, G.). Furthermore, leading anarchist philosophers of the Russian Revolution argued that terrorists “should organize themselves into small groups, or cells” (Martin, 2010, 217). These small groups cropped up all around Russia and Europe in subsequent years and formed an early form of a “loosely organized cell-based network” not unlike modern day al Qaeda. Duyvesteyn further notes that both the Palestine Liberation Organization (PLO), which was founded in 1964, and Hezbollah, founded 1982, operate on a network structure with very little central control over groups (2004, 444).¶ The second problematic idea of new terrorism is that contemporary terrorist groups aim to acquire and use weapons of mass destruction (WMDs). This belief is simply not supported by empirical evidence. One of the key problems with this theory is that WMDs are significantly more difficult to obtain and utilize than most people understand. Even if a terrorist group were to obtain a biological WMD, “Biologist Matthew Meselson calculates that it would take a ton of nerve gas or five tons of mustard gas to produce heavy causalities among unprotected people in an open area of one square kilometer” (Mueller, 2005, 488). And that’s only an example of the problem with the implementation of WMDs, assuming they are acquired, transported and desirable by a terrorist group in the first place. Additional problems, such as the fact that WMDs “are extremely difficult to deploy and control” (Mueller, 2005, 488) and that making a bomb “is an extraordinarily difficult task” (Mueller, 2005, 489), further diminish the risk. It is interesting to note that, while the potential dangers of WMDs are much lauded, the attacks of September 11th were low tech and had been technologically possible for more than 100 years. Mueller also states, “although nuclear weapons have been around for well over half a century, no state has ever given another state (much less a terrorist group) a nuclear weapon that the recipient could use independently” (2005, 490).¶ All of this talk about the difficultly of acquiring and deploying WMDs (by non-state agents), is not to diminish the question of what terrorists have to gain by utilizing these weapons. It is important to question whether it would even further the aims of terrorists to use WMDs. The evidence suggests otherwise. In the “Politics of Fear” Jackson states, “Mass casualties are most often counterproductive to terrorist aims – they alienate their supporters and can provoke harsh reprisals from the authorities […]” in addition, “[…] they would undermine community support, distort the terrorist’s political message, and invite over-whelming retaliation” (2007, 196-197). Despite popular rhetoric to the contrary, terrorists are “rational political actors and are acutely aware of these dangers” (Jackson, 2007, 197). Government appointed studies on this issue have supported these views.¶ This leads us to the third problem with new terrorism, which is the idea that we are facing a new era of terrorism motivated by religious fanaticism rather than political ideology. As stated previously, earlier, so-called traditional forms of terrorism are associated with left wing, political ideology, whereas contemporary terrorists are described as having “anti-modern goals of returning society to an idealized version of the past and are therefore necessarily anti-democratic, anti-progressive and, by implication, irrational” (Gunning and Jackson, 3). Rapoport argues the idea that religious terrorists are irrational, saying, “what seems to be distinctive about modern [religious] terrorists, their belief that terror can be organized rationally, represents or distorts a major theme peculiar to our own culture […]” (1984, 660). Conveniently for the interests of the political elites, as we shall see later, the idea of irrational fanaticism makes the notion of negotiation and listening to the demands of the other impossible. In light of this, it is interesting to note that the U.S. has, for decades, given billions of dollars in aid to the State of Israel, which could be argued to be a fundamentalist, religious organization that engages in the terrorization of a group of people. Further, it is difficult to speak of The Troubles in Northern Ireland without speaking of the religious conflict, yet it was never assumed that the IRA was “absolutist, inflexible, unrealistic, lacking in political pragmatism, and not amenable to negotiation” (Gunning and Jackson, 4). Rapaport further reinforces the idea that religious terrorism goes back centuries by saying, “Before the nineteenth century, religion provided the only acceptable justifications for terror…” (1984, 659).¶ As we have seen here, problems with the discourse of new terrorism include the fact that these elements of terrorism are neither new nor are the popular beliefs of the discourse supported by empirical evidence. The question remains, then, why is the idea of new terrorism so popular? This question will be addressed next.¶ Political Investment in New Terrorism¶ There are two main categories that explain the popularity of new terrorism. The first category is government and political investment in the propagation of the idea that a distinct, historically unknown type of terrorism exists. The mainstream discourse [1] reinforces, through statements by political elites, media, entertainment and every other way imaginable, the culture of violence, militarism and feelings of fear. Through mass media, cultural norms and the integration of neoliberal ideology into society, people are becoming increasingly desensitized to human rights issues, war, social justice and social welfare, not to mention apathetic to the political process in general.¶ The discourse of the WoT is merely the contemporary incarnation of this culture of fear and violence. In the past, various threats have included American Indians, women, African Americans, communists, HIV/AIDS and drugs, to name but a few (Campbell, 1992). It can be argued that there are four main political functions of terrorism discourse. The first is as a distraction from other, more immediate and domestic social problems such as poverty, employment, racial inequality, health and the environment. The second, more sinister function is to control dissent. In looking at both of these issues Jackson states:¶ There are a number of clear political advantages to be gained from the creation of social anxiety and moral panics. In the first place, fear is a disciplining agent and can be effectively deployed to de-legitimise dissent, mute criticism, and constrain internal opponents. […] Either way, its primary function is to ease the pressures of accountability for political elites. As instrument of elite rule, political fear is in effect a political project aimed at reifying existing structures of power. (Politics of Fear, 2007, 185).¶ Giroux further reinforces the idea that a culture of fear creates conformity and deflects attention from government accountability by saying, “the ongoing appeal to jingoistic forms of patriotism divert the public from addressing a number of pressing domestic and foreign issues; it also contributes to the increasing suppression of dissent” (2003, 5).¶ Having a problem that is “ubiquitous, catastrophic, and fairly opaque” (Jackson, Politics of Fear, 2007, 185) is useful to political elites, because it is nearly impossible to address the efficacy of combating the problem. At least, empirical evaluation can be, and is, easily discouraged in academic circles through research funding directives. Domestic problems such as the unemployment rate or health care reform, on the other hand, are directly measurable and heavily monitored by domestic sources. It is possible to account for the success or failure of policies designed to address these types of problems and the (re)election of politicians often depends heavily on success in these areas. However, the public is neither involved on a participative level nor, often, socially aware of what is happening in murkier and unreachable areas like foreign policy.¶ The third political investment in maintaining the terrorism discourse has to do with economics. “At a material level, there are a great many vested interests in maintaining the widespread condition of fear, not least for the military-industrial complex which benefits directly from increased spending on national security” (Jackson, Politics of Fear, 2007, 186). This is true with all forms of crime and insecurity as all of them factor into the greater security-industrial complex. Not only do these industries employ millions of people and support their families, they boost the economy. Barry Buzan talks of these the importance of these issues to both the government and the public in terms of a ‘threat-deficit’ – meaning that U.S. policy and society is dependent on having an external threat (Buzan, 2007, 1101).¶ The fourth key political interest in terrorism discourse is constructing a national identity. This will be discussed more thoroughly in the following section, however, it is important to acknowledge the role the WoT (and previous threats) has had on constructing and reinforcing a collective identity. Examples of this can be seen in the discourse and the subsequent reaction to anyone daring to step outside the parameters of the Bush Administration-established narrative in the days immediately following the September 11th attacks. A number of journalists, teachers and university professors lost their jobs for daring to speak out in criticism of U.S. policy and actions following the attacks. In 2001, Lynne Cheney attacked the then deputy chancellor of the New York City Schools, Judith Rizzo, for saying “terrorist attacks demonstrated the importance of teaching about Muslim cultures” (Giroux, 2003, 22). According to Giroux, this form of jingoistic patriotism “becomes a euphemism for shutting down dissent, eliminating critical dialogue, and condemning critical citizenship in the interest of conformity and a dangerous departure from what it means to uphold a viable democracy” (2003, 24). The message is, we are not the other (Muslims), patriotism equals agreement and compliance and our identity is based on the shared values of liberty and justice.¶ According to Carol Winkler, “Negative ideographs contribute to our collective identity by branding behavior that is unacceptable … American society defines itself as much by its opposition to tyranny and slavery as it does by a commitment to liberty” (Winkler, 2006, 12). Terrorism, and by association in this case, Islam, functions as a negative ideograph of American values. It thereby tells us what our values and our identity are by telling us who the enemy is and who we are not. According to Jackson, “[…] some have argued that Western identity is dependent on the appropriation of a backward, illiberal, violent Islamic ‘other’ against which the West can organize a collective liberal, civilized ‘self’ and consolidate its cultural and political norms” (Jackson, Constructing Enemies, 2007, 420).¶ Through this analysis we can see there are four key ways in which the hegemonic system is invested in propagating a culture of fear and violence and terrorism discourse. Not only is it key for political elites to support this system, it is also crucial that there be an ever renewing threat that is uniquely different from past threats. These new threats allow for the investment of significantly more resources, the continuation of the economy, the renewal of a strong sense of cultural identity and the indoctrination and obedience of new generations of society. This essay will now look at how individual and collective psychology supports the popularity of the new terrorism discourse.¶ Psychology of the Masses¶ The second category of reasons why new terrorism discourse is popular can be called the psychology of the masses. There are a number of factors that fall under this category such as: the hyper-reality of the modern era; the culture of fear; the carryover of historical archetypes and the infiltration of neoliberal values into cultural norms. The topic of social and individual psychology and how it relates to the propagation and acceptance of hegemonic discourse is broad. It is also an important aspect of critical terrorism studies and merits further exploration. However, in this section will outline the basis for the popularity of new terrorism discourse and discuss several ways in which this popularity is manifested and reinforced in contemporary society.

### Drones Bad

#### 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.

## Legal Regimes Advantage

### AT: Norms

#### 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.

### LOAC Pounders

#### PMC’s jack the LOAC

Daniel P. Ridlon, A.F. Captain, JD Harvard, 2008, “CONTRACTORS OR ILLEGAL COMBATANTS? THE STATUS OF ARMED CONTRACTORS IN IRAQ,” 62 A.F. L. Rev. 199, ln

In addition to legal liability, the United States' employment of PMF personnel in future conflicts has potential negative policy ramifications. Employing PMF personnel who are potentially viewed as illegal combatants may undermine the public image that the United States conducts its military operations in accordance with the laws of war. This would not only serve as a public relations problem for the United States, but it could also be used as justification for other nations or non-state actors to violate the laws of war, especially if those states or groups are engaged in a conflict against the United States. In the end, the employment of illegal combatants could reduce prisoner of war [\*253] protections afforded to United States military personnel if they are captured.

#### Goldstone report destroys the LOAC

Michael A. Newton 10, Law Prof @ Vanderbilt, “LAWFARE AND THE ISRAELI-PALESTINE PREDICAMENT: Illustrating Illegitimate Lawfare,” 43 Case W. Res. J. Int'l L. 255, ln

After detailing the content of the leaflet and radio broadcast warnings, the Report concluded that the warnings did not comply with the obligations of Protocol I because Israeli forces were presumed to have had the capability to issue more effective warnings, civilians in Gaza were uncertain about whether and where to go for safety, and some places of shelter were [\*277] struck after the warnings were issued. n91 Thus, despite giving more extensive warnings to the civilian population than in any other conflict in the long history of war, the efforts of the Israeli attackers were equated with attacks intentionally directed against the civilian population. This approach eviscerates the appropriate margin of appreciation that commanders who respect the law and endeavor to enforce its constraints should be entitled to rely upon--and which the law itself provides. There is simply no legal precedent for taking the position that the civilians actually respond to such warnings, particularly in circumstances such as Gaza where the civilian population is intimidated and often abused by an enemy that seeks to protect itself by deliberately intermingling with the innocent civilian population. The newly minted Goldstone standard for warning the civilian population would displace operational initiative from the commander in the attack to the defender who it must be remembered commits a war crime by intentionally commingling military objectives with protected civilians. This aspect of the report would itself serve to amend the entire fabric of the textual rules that currently regulate offensive uses of force in the midst of armed conflict.¶ This, then, is the essence of illegitimate lawfare. Words matter--particularly when they are charged with legal significance and purport to convey legal rights and obligations. When purported legal "developments" actually undermine the ends of the law, they are illegitimate and inappropriate. Legal movements that foreseeably serve to discredit the law of armed conflict even further in the eyes of a cynical world actually undermine its utility. Lawfare that creates uncertainty over the application of previously clear rules must be opposed vigorously because it does perhaps irrevocable harm to the fabric of the laws and customs of war. Illegitimate lawfare will marginalize the precepts of humanitarian law if left unchecked, and may serve to create strong disincentives to its application and enforcement. Knowledge of the law and an accompanying professional awareness that the law is binding remains central to the professional ethos of military forces around our planet irrespective of the reality that incomplete compliance with the jus in bello remains the regrettable norm. Hence, it logically follows that any efforts to distort and politicize fundamental principles of international law cannot be meekly accepted as inevitable developments.

#### UN peace operations undermine the LOAC

Matthew E. Dunham 13, JD Dickinson, “SACRIFICING THE LAW OF ARMED CONFLICT IN THE NAME OF PEACE: A PROBLEM OF POLITICS,” 69 A.F. L. Rev. 155, ln

Peace operations are the United Nation's (UN's) core business and its most visible activity. n3 Between 1948 and 2012, the UN Department of Peacekeeping Operations (DPKO) conducted sixty-seven peace operations with the general purpose of ending violence. n4 The worldwide presence of peace operation forces is even larger when one adds operations carried out by states under unified command. n5 [\*157] When conducting peace operations, the DPKO maintains that successful operations are based in the rule of law. n6 This principle clearly follows from one of the major purposes of the UN to "maintain international peace and security . . . in conformity with the principles of justice and international law." n7 Nevertheless, to sustain political support for some peace operations, the UN and its member states intentionally ignore the applicability of the law of armed conflict (LOAC) n8 by refusing to classify hostilities as an armed conflict and by wrongly denying that peace operation forces have become belligerents in armed conflict. If the international community wishes to conduct high-intensity peace operations without causing the LOAC to be cast aside in future conflicts, it must promote the rule of law by ceasing to pretend that such operations are passive and impartial. This paper provides three examples where the UN and its member states improperly circumvented the LOAC. The first two examples concern intervention of peace operation forces in East Timor by Australia and then the UN between 1999 and 2000. Both Australia and the UN determined the LOAC did not apply to hostilities even though the facts on the ground required its application. n9 The third example examines the UN's intervention in the Ivory Coast in 2011, where the UN conducted air assaults against one party to a non-international armed conflict (NIAC). After the offensive, the UN Secretary-General implausibly denied the UN had become a party to the conflict, thereby denying the application of the LOAC as a matter of law to those UN actions. n10 The UN and its member states sacrifice the LOAC in peace operations because of conflicting concepts of sovereignty and an unsustainable adherence to traditional peacekeeping doctrine. Under traditional peacekeeping doctrine, a peace operation force must gain consent from the parties, remain impartial to the conflict, and only use force in self-defense. n11 Traditional peacekeeping is based on a Westphalian concept of sovereignty, which absolutely prohibits interference in the [\*158] internal affairs of another state. n12 More recently, however, peace operations have become more robust and aggressive. n13 Particularly since the mid-1990s, the UN Security Council has typically authorized peace operations under Chapter VII of the UN Charter to not only use force for individual and unit self-defense, but also to further the mission's mandate and protect civilians. n14 These more aggressive peace operations are based on a post-Westphalian view that a sovereign's inability or unwillingness to protect its citizens could result in involuntary forfeiture of sovereignty. n15 Further obscuring the application of the LOAC in peace operations is the fact that the international community lacks accepted definitions for peace operations and its different forms, such as "peacekeeping" and "peace enforcement." n16 While the DPKO distinguishes five types of peace operations (conflict prevention, peacekeeping, peace enforcement, peacemaking, and peace building), it only generically describes the activities. n17 The lack of clear definitions makes it difficult [\*159] to consistently apply the terms. While Part II of this paper generally distinguishes between peacekeeping and peace enforcement, the majority of the paper uses the generic term "peace operation" when feasible to emphasize the importance of consistency in the application of terms. n18 The international community is forcing a square peg into a round hole by trying to apply traditional Westphalian principles of consent, impartiality, and the use of force in self-defense to robust peace operations justified under a post-Westphalian concept of sovereignty. To fit the peg into the Westphalian idea of a valid peace operation, the UN and its member states avoid objective classification of hostilities and proper characterization of participants in hostilities. Unfortunately, such political maneuvering sacrifices the LOAC--represented by the pieces shaved off the square peg as it breaks down to fit the round hole. Instead of avoiding the LOAC, peace operation forces should promote and respect the LOAC by objectively identifying their role and the nature hostilities. Otherwise, states may use examples of peace operations to justify unlawful actions in armed conflict. The next section of this paper, Part II, focuses on the evolution of peace operations as background for considering why the UN and states conducting peace operations sacrifice the LOAC in the name of peace. It discusses the origin of peace operations under a Westphalian concept of sovereignty and shows how such operations have expanded with a shifting view of sovereignty. This section also examines the evolution of the application of the LOAC to peace operations--from an initial perspective that the LOAC never applies to peacekeepers, to a view that the LOAC will apply if peacekeepers become a party to a conflict. Despite theoretical progression on the application of the LOAC to peace operations, Part III analyzes hostilities in East Timor between 1999 and 2000, and the Ivory Coast in early 2011, to illustrate intentional avoidance of the LOAC in peace operations. Within these contexts, Part IV shows how peace operation forces in East Timor and the Ivory Coast applied traditional Westphalian peacekeeping principles to post-Westphalian peace operations for political purposes. Further, this section shows [\*160] why such political calculations undermine the LOAC. Finally, Part V argues the error in sacrificing the LOAC to justify humanitarian intervention. This section contends that intentional avoidance of the LOAC in peace operations creates a model for states to ignore the LOAC in other conflicts. It also shows that the apparent success in one peace operation undertaken by political maneuver may, in fact, be detrimental to the next humanitarian crisis. Accordingly, the UN and its member states must properly categorize hostilities and the participant's status if they wish to use military force in peace operations. II. THE EVOLUTION OF PEACE OPERATIONS AND THE APPLICABILITY OF THE LAW OF ARMED CONFLICT Peace operations are a core activity of the UN, which is charged with maintaining international peace and security in accordance with the rule of law. When conducting such operations, however, traditional notions of sovereignty undermine the ability of the UN and its member states to effectively adhere to the LOAC. To explore this problem, this section examines the origin of peace operations in light of the Westphalian concept of sovereignty in which they were developed, n19 and it shows how the purpose of peace operations has expanded with a shifting concept of sovereignty. The section then discusses the types of circumstances that trigger the LOAC. Finally, it addresses the evolving application of the LOAC to peace operations and identifies the political dilemma of applying the LOAC to certain types of peace operations.

### AT: Conflation

#### Conflation between jus ad bellum and jus in bello is globally inevitable

Robert Sloane 9, Associate Professor of Law, Boston University School of Law, 2009, “The Cost of Conflation: Preserving the Dualism of Jus ad Bellum and Jus in Bello in the Contemporary Law of War,” Yale Journal of International law, http://www.yale.edu/yjil/files\_PDFs/vol34/Sloane

This case reflects, in microcosm, a pressing issue in the contemporary law of war. After 9/11, countless scholars and statesmen have called for changes in the jus ad bellum, the law governing resort to force, or the jus in bello, the law governing the conduct of hostilities.10 These invitations to reform, whatever their merit, raise an equally vital but distinct legal issue that has been largely neglected in recent legal scholarship: the relationship between the traditional branches of the law of war.11 Since the U.N. Charter introduced a positive jus ad bellum into international law, the reigning dogma has been that reflected in the SCSL Appeals Chamber’s opinion: the jus ad bellum and the jus in bello are, and must remain, analytically distinct. In bello rules and principles apply equally to all combatants, whatever each belligerent’s avowed ad bellum rationale for resorting to force: self-defense, the restoration of democratic government, territorial conquest, or the destruction of a national, ethnic, racial, or religious group, as such.12 It is immaterial, on this view, whether the ad bellum intent of the militia leaders indicted by the SCSL had been to restore a democratic government or to topple that government and install a brutal regime in its stead: they must adhere to and be judged by the same in bello rules and principles.

Postwar international law regards this analytic independence as axiomatic,13 as do most just war theorists. They insist that “[i]t is perfectly possible for a just war to be fought unjustly and for an unjust war to be fought in strict accordance with the rules.”14 In theory, then, any use of force may be simultaneously lawful and unlawful: unlawful, because its author had no right to resort to force under the jus ad bellum; lawful, if and to the extent that its author observes “the rules,” that is, the jus in bello. 15 I will refer to this particular rule, which insists on the analytic independence of ad bellum and in bello, as the dualistic axiom. Despite its widespread acceptance,16 the axiom, as we will see, is logically questionable, 17 undertheorized, and at times disregarded or misapplied in practice—with troubling consequences for the policies that underwrite these components of the contemporary law of war. Consider briefly a few examples, which, among others, will be explored in greater detail below:

• In 1999, the North Atlantic Treaty Organization (NATO) carried out a four-month air campaign against Serbia. At the outset, NATO’s leaders made an in bello decision: its pilots would fly at a minimum height of 15,000 feet to reduce their risk from anti-aircraft fire essentially to zero, even though that would increase the risk to Serbian civilians because it often prevented visual confirmation of legitimate military targets. Many would argue that the in bello principle of proportionality obliges combatants to take some risk in an effort to reduce the risk to enemy civilians.18 If so, the perceived legitimacy of NATO’s avowed ad bellum goal, i.e., to halt the incipient ethnic cleansing of ethnic Albanian Kosovars, influenced the international ex post appraisal of NATO’s in bello conduct in the conflict.19

• After 9/11, the Bush administration launched and prosecuted what it described as a “Global War on Terror.” In this war, if it is a war,20 political elites and their lawyers invoked ad bellum factors—for example, the novel nature of the conflict or the enemy and the imperative to avoid at any cost another catastrophic terrorist attack— to justify or excuse in bello violations.21 Both treaties and custom, for example, categorically prohibit the in bello tactic of torture. It is difficult to dispute that the United States deliberately tortured some detainees in its custody. Alberto R. Gonzales also wrote in what has become an infamous memorandum that “the war against terrorism is a new kind of war,” which “renders obsolete Geneva’s strict limitations on questioning of enemy prisoners and renders quaint some of its provisions.” 22 One might recharacterize this assertion in the framework of this Article as a suggestion that ad bellum considerations may justifiably relax, or even vitiate, what some see as anachronistic in bello constraints.23

• In 1996, the International Court of Justice (ICJ) considered the legality of the threat or use of nuclear weapons.24 This required it to analyze both the jus ad bellum and the jus in bello. The Court concluded that the jus in bello generally prohibits nuclear weapons— with a curious qualification. It could not say “whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.”25 Again, to recharacterize this statement in the framework of this Article: if the ad bellum consequences for one party to a conflict become bad enough, a weapon otherwise categorically prohibited by the jus in bello might become legal for that party, although presumably it would remain illegal for the other—unless that other party, too, “a State,” faced an “extreme circumstance of self-defence.”

The logic in each of these examples is contrary to the dualistic axiom, which insists that in bello constraints apply equally to all parties to a conflict. They do not vary based on ad bellum appraisals of the justice, legitimacy, or even urgency of one side’s asserted casus belli (cause or justification for resort to force). 26 Yet these examples reflect a trend in contemporary international law to relax or disregard the dualistic axiom, that is, to allow ad bellum considerations to influence and, at times, even to vitiate the jus in bello—an outcome that degrades the efficacy of both components of the law of war. Recent state practice and some jurisprudence also suggest a related, and equally misguided, tendency to collapse the distinct ad bellum and in bello proportionality constraints imposed by the law of war. As explained in greater detail below, today, in contrast to the pre-U.N. Charter era, all force must be doubly proportionate: that is, proportionate relative to both the jus ad bellum and the jus in bello. 27 Yet, at times, the ICJ has confused, neglected, or misapplied the two principles, as have belligerents—again to the detriment of the key values and policies that underwrite the contemporary law of war.

### AT: Israel Strikes

#### No escalation

Ferguson 6 (Niall, Professor of History at Harvard University, Senior Research Fellow of Jesus College, Oxford, and Senior Fellow of the Hoover Institution, Stanford, LA Times, July 24)

Could today's quarrel between Israelis and Hezbollah over Lebanon produce World War III? That's what Republican Newt Gingrich, the former speaker of the House, called it last week, echoing earlier fighting talk by Dan Gillerman, Israel's ambassador to the United Nations. Such language can — for now, at least — safely be dismissed as hyperbole. This crisis is not going to trigger another world war. Indeed, I do not expect it to produce even another Middle East war worthy of comparison with those of June 1967 or October 1973. In 1967, Israel fought four of its Arab neighbors — Egypt, Syria, Jordan and Iraq. In 1973, Egypt and Syria attacked Israel. Such combinations are very hard to imagine today. Nor does it seem likely that Syria and Iran will escalate their involvement in the crisis beyond continuing their support for Hezbollah. Neither is in a position to risk a full-scale military confrontation with Israel, given the risk that this might precipitate an American military reaction. Crucially, Washington's consistent support for Israel is not matched by any great power support for Israel's neighbors. During the Cold War, by contrast, the risk was that a Middle East war could spill over into a superpower conflict. Henry Kissinger, secretary of State in the twilight of the Nixon presidency, first heard the news of an Arab-Israeli war at 6:15 a.m. on Oct. 6, 1973. Half an hour later, he was on the phone to the Soviet ambassador in Washington, Anatoly Dobrynin. Two weeks later, Kissinger flew to Moscow to meet the Soviet leader, Leonid Brezhnev. The stakes were high indeed. At one point during the 1973 crisis, as Brezhnev vainly tried to resist Kissinger's efforts to squeeze him out of the diplomatic loop, the White House issued DEFCON 3, putting American strategic nuclear forces on high alert. It is hard to imagine anything like that today. In any case, this war may soon be over. Most wars Israel has fought have been short, lasting a matter of days or weeks (six days in '67, three weeks in '73). Some Israeli sources say this one could be finished in a matter of days. That, at any rate, is clearly the assumption being made in Washington.

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### 1NC Impact/AT Perm

#### The permutation is a tactic to legitimize the violence of the law--- their appeal to juridical legitimation results in malleable legal conventions that are ultimately meaningless

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

Nearly two centuries ago, Prussian military strategist, Carl von Clausewitz, observed how war is merely a “continuation of political commerce” by “other means”.70 Today, the lawfare of the US military is a continuation of war by legal means. Indeed, for US Deputy Judge Advocate General, Major General Charles Dunlap, it “has become a key aspect of modern war”.71 For Dunlap and his colleagues in the JAG corps, the law is a “force multiplier”, as Harvard legal scholar, David Kennedy, explains: it “structures logistics, command, and control”; it “legitimates, and facilitates” violence; it “privileges killing”; it identifies legal “openings that can be made to seem persuasive”, promissory, necessary and indeed therapeutic; and, of course, it is “a communication tool” too because defining the battlefield is not only a matter of “privileging killing”, it is also a “rhetorical claim”.72 Viewed in this way, the law can be seen to in fact “contribute to the proliferation of violence rather than to its containment”, as Eyal Weizman has instructively shown in the case of recent Israeli lawfare in Gaza.73

In the US wars in Iraq, Afghanistan and broader war on terror, the Department of Defense has actively sought to legalize its use of biopolitical violence against all those deemed a threat. Harvey Rishikof, the former Chair of the Department of National Security Strategy at the National War College in Washington, recently underlined ‘juridical warfare’ (his preferred designation over ‘lawfare’) as a pivotal “legal instrument” for insurgents in the asymmetric war on terror.74 For Rishikof and his contemporaries, juridical warfare is always understood to mean the legal strategies of the weak ‘against’ the United States; it is never acknowledged as a legal strategy ‘of’ the United States. However, juridical warfare has been a proactive component of US military strategy overseas for some time, and since the September 11 attacks in New York and Washington in 2001, a 15 renewed focus on juridical warfare has occurred, with the JAG Corps playing a central role in reforming, prioritizing and mobilizing the law as an active player in the war on terror.75

Deputy Judge Advocate General, Major General Charles Dunlap, recently outlined some of the key concerns facing his corps and the broader US military; foremost of which is the imposing of unnecessary legal restraints on forward-deployed military personnel.76 For Dunlap, imposing legal restraints on the battlefield as a “matter of policy” merely “play[s] into the hands of those who would use [international law] to wage lawfare against us”.77 Dunlap’s counter-strategy is simply “adhering to the rule of law”, which “understands that sometimes the legitimate pursuit of military objectives will foreseeably – and inevitably – cause the death of noncombatants”; indeed, he implores that “this tenet of international law be thoroughly understood”.78 But ‘the’ rule of international law that Dunlap has in mind is merely a selective and suitably enabling set of malleable legal conventions that legitimate the unleashing of military violence.79 As David Kennedy illuminates so brilliantly in Of War and Law:

We need to remember what it means to say that compliance with international law “legitimates.” It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified”.80

The recent ‘special issue on juridical warfare’ in the US military’s flagship journal, Joint Force Quarterly, brought together a range of leading judge advocates, specialists in military law, and former legal counsels to the Chairman of the Joint Chiefs of Staff. All contributions addressed the question of “[w]hich international conventions govern the confinement and interrogation of terrorists and how”.81 The use of the term ‘terrorists’ instead of suspects sets the tone for the ensuing debate: in an impatient defense of ‘detention’, Colonel James Terry bemoans the “limitations inherent in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006” (which he underlines only address detainees at the US Naval Base at Guantanamo) and asserts that “requirements inherent in the war on terror will likely warrant expansion of habeas 16 corpus limitations”;82 considering ‘rendition’, Colonel Kevin Cieply asks the shocking question “[i]s rendition simply recourse to the beast at a necessary time”;83 Colonel Peter Cullen argues for the necessity of the “role of targeted killing in the campaign against terror”;84 Commander Brian Hoyt contends that it is “time to re-examine U.S. policy on the [international criminal] court, and it should be done through a strategic lens”;85 while Colonel James Terry furnishes an additional concluding essay with the stunningly instructive title ‘The International Criminal Court: A Concept Whose Time Has Not Come’.86 These rather chilling commentaries attest to one central concern of the JAG Corps and the broader military-political executive at the Pentagon: that enemies must not be allowed to exploit “real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting American military power”.87 And such thinking is entirely consistent with the defining National Defense Strategy of the Bush administration, which signalled the means to win the war on terror as follows: “we will defeat adversaries at the time, place, and in the manner of our choosing”.88

If US warfare in the war on terror is evidently underscored by a ‘manner of our choosing’ preference – both at the Pentagon and in the battlefield – this in turn prompts an especially proactive ‘juridical warfare’ that must be simultaneously pursued to legally capacitate, regulate and maximize any, and all, military operations. The 2005 National Defense Strategy underlined the challenge thus:

Many of the current legal arrangements that govern overseas posture date from an earlier era. Today, challenges are more diverse and complex, our prospective contingencies are more widely dispersed, and our international partners are more numerous. International agreements relevant to our posture must reflect these circumstances and support greater operational flexibility.89 It went on to underline its consequent key juridical tactic and what I argue is a critical weapon in the US military-legal arsenal in the war on terror: the securing of ‘Status of Forces Agreements’ – 17 to “provide legal protections” against “transfers of U.S. personnel to the International Criminal Court”.90

### 2NC Legal Focus Turns Case

#### Legal delineation of the battlefield is ethically and methodologically suspect---the politicization of law means the aff gets circumvented

Derek Gregory 13, Peter Wall Distinguished Professor of geography at the University of British Columbia, “The individuation of warfare?” August 26, 2013, <http://geographicalimaginations.com/2013/08/26/the-individuation-of-warfare/>

These new modalities increase the asymmetry of war – to the point where it no longer looks like or perhaps even qualifies as war – because they preclude what Joseph Pugliese describes as ‘“a general system of exchange” [the reference is to Achille Mbembe’s necropolitics] between the hunter-killer apparatus ‘and its anonymous and unsuspecting victims, who have neither a right of reply nor recourse to judicial procedure.’ Pugliese insists that drones materialise what he calls a ‘prosthetics of law’, and the work of jurists and other legal scholars provides a revealing window into the constitution of later modern war and what, following Michael Smith, I want to call its geo-legal armature. To date, much of this discussion has concerned the reach of international law – the jurisdiction of international law within(Afghanistan) and beyond (Pakistan, Yemen and Somalia) formal zones of conflict – and the legal manoeuvres deployed by the United States to sanction its use of deadly force in ‘self-defence’ that violates the sovereignty of other states (which includes both international law and domestic protocols like the Authorization for the Use of Military Force and various executive orders issued after 9/11) . These matters are immensely consequential, and bear directly on what Frédéric Mégret [calls](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1986548) ‘[the deconstruction of the battlefield](http://geographicalimaginations.com/2012/11/21/gaza-stripped-the-deconstruction-of-the-battlefield/)’ It’s important to understand that the ‘battlefield’ is more than a physical space; it’s also a normative space – the site of ‘exceptional norms’ within whose boundaries it is permissible to kill other human beings (subject to particular codes, rules and laws). Its deconstruction is not a new process. Modern military violence has rarely been confined to a champ de mars insulated from the supposedly safe spaces of civilian life. Long-range strategic bombing radically re-wrote the geography of war. This was already clear by the end of the First World War, and in 1921 Giulio Douhetcould already confidently declare that ‘By virtue of this new weapon, the repercussions of war are no longer limited by the farthest artillery range of guns, but can be felt directly for hundreds and hundreds of miles… The battlefield will be limited only by the boundaries of the nations at war, and all of their citizens will become combatants, since all of them will be exposed to the aerial offensives of the enemy. There will be no distinction any longer between soldiers and civilians.’ The laboratory for these experimental geographies before the Second World War was Europe’s colonial (dis)possessions – so-called ‘air control’ in North Africa, the Middle East and along the North-West Frontier – but colonial wars had long involved ground campaigns fought with little or no distinction between combatants and civilians. What does seem to be novel about more recent deconstructions, so Mégret argues, is ‘a deliberate attempt to manipulate what constitutes the battlefield and to transcend it in ways that liberate rather than constrain violence.’ This should not surprise us. Law is not a deus ex machina that presides over war as impartial tribune. Law, Michel Foucault reminds us, ‘is born of real battles, victories, massacres and conquests’; law ‘is born in burning towns and ravaged fields.’ Today so-called ‘operational law’ has incorporated military lawyers into the kill-chain, moving them closer to the tip of the spear, but law also moves in the rear of military violence: in Eyal Weizman’s [phrase](http://www.e-flux.com/journal/the-least-of-all-possible-evils/), ‘violence legislates.’ In the case that most concerns him, that of the Israel Defense Force, military lawyers work in the grey zone between ‘the black’ (forbidden) and ‘the white’ (permitted) and actively seek to turn the grey into the white: to use military violence to extend the permissive envelope of the law. The liber(alis)ation of violence that Mégret identifies transforms the very meaning of war. In conventional wars combatants are authorised to kill on the basis of what Paul Kahn [calls](http://www.iilj.org/courses/documents/2011Colloquium.Kahn.pdf) their corporate identity: ‘…the combatant has about him something of the quality of the sacred. His acts are not entirely his own…. ‘The combatant is not individually responsible for his actions because those acts are no more his than ours…. [W]arfare is a conflict between corporate subjects, inaccessible to ordinary ideas of individual responsibility, whether of soldier or commander. The moral accounting for war [is] the suffering of the nation itself – not a subsequent legal response to individual actors.’ The exception, Kahn continues, which also marks the boundary of corporate agency, is a war crime, which is ‘not attributable to the sovereign body, but only to the individual.’ Within that boundary, however, the enemy can be killed no matter what s/he is doing (apart from surrendering). There is no legal difference between killing a general and killing his driver, between firing a missile at a battery that is locking on to your aircraft and dropping a bomb on a barracks at night. ‘The enemy is always faceless,’ Kahn explains, ‘because we do not care about his personal history any more than we care about his hopes for the future.’ Combatants are vulnerable to violence not only because they are its vectors but also because they are enrolled in the apparatus that authorizes it: they are killed not as individuals but as the corporate bearers of a contingent (because temporary) enmity.

### 2NC Role of Ballot

#### Our framework is necessary to reclaim the political from state-focused methods that constrict democratic dialogue. Vote negative to reject simplistic yes/no legal debates and the threat of immediate consequences in favor of intellectual recalibration

Shampa Biswas 7 Prof of Politics @ Whitman “Empire and Global Public Intellectuals: Reading Edward Said as an International Relations Theorist” Millennium 36 (1) p. 117-125

The recent resuscitation of the project of Empire should give International Relations scholars particular pause.1 For a discipline long premised on a triumphant Westphalian sovereignty, there should be something remarkable about the ease with which the case for brute force, regime change and empire-building is being formulated in widespread commentary spanning the political spectrum. Writing after the 1991 Gulf War, Edward Said notes the US hesitance to use the word ‘empire’ despite its long imperial history.2 This hesitance too is increasingly under attack as even self-designated liberal commentators such as Michael Ignatieff urge the US to overcome its unease with the ‘e-word’ and selfconsciously don the mantle of imperial power, contravening the limits of sovereign authority and remaking the world in its universalist image of ‘democracy’ and ‘freedom’.3 Rashid Khalidi has argued that the US invasion and occupation of Iraq does indeed mark a new stage in American world hegemony, replacing the indirect and proxy forms of Cold War domination with a regime much more reminiscent of European colonial empires in the Middle East.4 The ease with which a defence of empire has been mounted and a colonial project so unabashedly resurrected makes this a particularly opportune, if not necessary, moment, as scholars of ‘the global’, to take stock of our disciplinary complicities with power, to account for colonialist imaginaries that are lodged at the heart of a discipline ostensibly interested in power but perhaps far too deluded by the formal equality of state sovereignty and overly concerned with security and order. Perhaps more than any other scholar, Edward Said’s groundbreaking work in Orientalism has argued and demonstrated the long and deep complicity of academic scholarship with colonial domination.5 In addition to spawning whole new areas of scholarship such as postcolonial studies, Said’s writings have had considerable influence in his own discipline of comparative literature but also in such varied disciplines as anthropology, geography and history, all of which have taken serious and sustained stock of their own participation in imperial projects and in fact regrouped around that consciousness in a way that has simply not happened with International Relations.6 It has been 30 years since Stanley Hoffman accused IR of being an ‘American social science’ and noted its too close connections to US foreign policy elites and US preoccupations of the Cold War to be able to make any universal claims,7 yet there seems to be a curious amnesia and lack of curiosity about the political history of the discipline, and in particular its own complicities in the production of empire.8 Through what discourses the imperial gets reproduced, resurrected and re-energised is a question that should be very much at the heart of a discipline whose task it is to examine the contours of global power. Thinking this failure of IR through some of Edward Said’s critical scholarly work from his long distinguished career as an intellectual and activist, this article is an attempt to politicise and hence render questionable the disciplinary traps that have, ironically, circumscribed the ability of scholars whose very business it is to think about global politics to actually think globally and politically. What Edward Said has to offer IR scholars, I believe, is a certain kind of global sensibility, a critical but sympathetic and felt awareness of an inhabited and cohabited world. Furthermore, it is a profoundly political sensibility whose globalism is predicated on a cognisance of the imperial and a firm non-imperial ethic in its formulation. I make this argument by travelling through a couple of Said’s thematic foci in his enormous corpus of writing. Using a lot of Said’s reflections on the role of public intellectuals, I argue in this article that IR scholars need to develop what I call a ‘global intellectual posture’. In the 1993 Reith Lectures delivered on BBC channels, Said outlines three positions for public intellectuals to assume – as an outsider/exile/marginal, as an ‘amateur’, and as a disturber of the status quo speaking ‘truth to power’ and self-consciously siding with those who are underrepresented and disadvantaged.9 Beginning with a discussion of Said’s critique of ‘professionalism’ and the ‘cult of expertise’ as it applies to International Relations, I first argue the importance, for scholars of global politics, of taking politics seriously. Second, I turn to Said’s comments on the posture of exile and his critique of identity politics, particularly in its nationalist formulations, to ask what it means for students of global politics to take the global seriously. Finally, I attend to some of Said’s comments on humanism and contrapuntality to examine what IR scholars can learn from Said about feeling and thinking globally concretely, thoroughly and carefully. IR Professionals in an Age of Empire: From ‘International Experts’ to ‘Global Public Intellectuals’ One of the profound effects of the war on terror initiated by the Bush administration has been a significant constriction of a democratic public sphere, which has included the active and aggressive curtailment of intellectual and political dissent and a sharp delineation of national boundaries along with concentration of state power. The academy in this context has become a particularly embattled site with some highly disturbing onslaughts on academic freedom. At the most obvious level, this has involved fairly well-calibrated neoconservative attacks on US higher education that have invoked the mantra of ‘liberal bias’ and demanded legislative regulation and reform10, an onslaught supported by a well-funded network of conservative think tanks, centres, institutes and ‘concerned citizen groups’ within and outside the higher education establishment11 and with considerable reach among sitting legislators, jurists and policy-makers as well as the media. But what has in part made possible the encroachment of such nationalist and statist agendas has been a larger history of the corporatisation of the university and the accompanying ‘professionalisation’ that goes with it. Expressing concern with ‘academic acquiescence in the decline of public discourse in the United States’, Herbert Reid has examined the ways in which the university is beginning to operate as another transnational corporation12, and critiqued the consolidation of a ‘culture of professionalism’ where academic bureaucrats engage in bureaucratic role-playing, minor academic turf battles mask the larger managerial power play on campuses and the increasing influence of a relatively autonomous administrative elite and the rise of insular ‘expert cultures’ have led to academics relinquishing their claims to public space and authority.13 While it is no surprise that the US academy should find itself too at that uneasy confluence of neoliberal globalising dynamics and exclusivist nationalist agendas that is the predicament of many contemporary institutions around the world, there is much reason for concern and an urgent need to rethink the role and place of intellectual labour in the democratic process. This is especially true for scholars of the global writing in this age of globalisation and empire. Edward Said has written extensively on the place of the academy as one of the few and increasingly precarious spaces for democratic deliberation and argued the necessity for public intellectuals immured from the seductions of power.14 Defending the US academy as one of the last remaining utopian spaces, ‘the one public space available to real alternative intellectual practices: no other institution like it on such a scale exists anywhere else in the world today’15, and lauding the remarkable critical theoretical and historical work of many academic intellectuals in a lot of his work, Said also complains that ‘the American University, with its munificence, utopian sanctuary, and remarkable diversity, has defanged (intellectuals)’16. The most serious threat to the ‘intellectual vocation’, he argues, is ‘professionalism’ and mounts a pointed attack on the proliferation of ‘specializations’ and the ‘cult of expertise’ with their focus on ‘relatively narrow areas of knowledge’, ‘technical formalism’, ‘impersonal theories and methodologies’, and most worrisome of all, their ability and willingness to be seduced by power.17 Said mentions in this context the funding of academic programmes and research which came out of the exigencies of the Cold War18, an area in which there was considerable traffic of political scientists (largely trained as IR and comparative politics scholars) with institutions of policy-making. Looking at various influential US academics as ‘organic intellectuals’ involved in a dialectical relationship with foreign policy-makers and examining the institutional relationships at and among numerous think tanks and universities that create convergent perspectives and interests, Christopher Clement has studied US intervention in the Third World both during and after the Cold War made possible and justified through various forms of ‘intellectual articulation’.19 This is not simply a matter of scholars working for the state, but indeed a larger question of intellectual orientation. It is not uncommon for IR scholars to feel the need to formulate their scholarly conclusions in terms of its relevance for global politics, where ‘relevance’ is measured entirely in terms of policy wisdom. Edward Said’s searing indictment of US intellectuals – policy-experts and Middle East experts - in the context of the first Gulf War20 is certainly even more resonant in the contemporary context preceding and following the 2003 invasion of Iraq. The space for a critical appraisal of the motivations and conduct of this war has been considerably diminished by the expertise-framed national debate wherein certain kinds of ethical questions irreducible to formulaic ‘for or against’ and ‘costs and benefits’ analysis can simply not be raised. In effect, what Said argues for, and IR scholars need to pay particular heed to, is an understanding of ‘intellectual relevance’ that is larger and more worthwhile, that is about the posing of critical, historical, ethical and perhaps unanswerable questions rather than the offering of recipes and solutions, that is about politics (rather than techno-expertise) in the most fundamental and important senses of the vocation.21

### 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.

### aSov

#### The impact is endless warfare---the colonial impulse underlying the laws of war requires periodic crisis in order to cohere itself

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

It is in this light that the curious and tragic unraveling of the war-humanizing project in its very place of birth must be analyzed. Ironically, what came to haunt European nations was not the warfare of ‘savages’, as had been feared. Rather, it was the West’s own savageness, revealed to itself in the process of repressing the colonial ‘other’. Wars of colonization kept alive the savagery within that the laws of war were supposed to have expunged. This is so in the sense that the violence of colonization (both symbolic and actual) inexorably set the stage for wars of liberation that would be mimetically violent in their desire for enfranchisement, turning the violence of the colonizer against it — and in turn triggering an ever-more violent response by the colonizer himself, a legacy that would come back to haunt many newly independent states. But it is also more crucially in the sense that colonial wars constituted a testing ground for the denial of the ‘other’ at home, the transformation of warfare into genocide, the experimental blueprint for ‘civilized savagery’. These tactics, honed in the streets of Damascus or the Ethiopian desert, would one day be turned by the West against itself, whether it be in the repression of resistance, the waging of total war, or the planning of the Holocaust.178 In the end, it was less the ‘savages’ who were ‘civilized’, than the ‘civilized’ who ‘savaged’ themselves, through no responsibility other than their own.

But there is a deeper point at stake that has implications for both the West and the rest of the world. The West’s denial of the applicability of the laws of war to non-Western peoples was firmly grounded in the supposed ‘civilization’ of the ‘civilized’ and the ‘savagery’ of ‘savages’ as the founding and structuring dichotomy of the attempt to regulate warfare. Whatever humanitarians of the nineteenth century may have thought, this is a dichotomy that must surely appear under a very different light in our era.

The perceived ‘savagery’ of ‘savages’, perhaps even more than Europe’s self-perception as ‘civilized’, was the initial moment of the laws of war, the instant glimpse of ‘otherness’ that allowed the constitution of the ‘civilized’ self. It is far from clear, however, as has emerged from various contemporary anthropological and historical debates, that ‘savage’ warfare was ever that ‘savage’.179 It is not my purpose to comment on these debates in detail but suffice it to say that, at the very least, the image that can be garnered from specialized discussions on the relative ‘savagery’ of ‘civilized’ and ‘savage’ warfare challenges any stark contrast between the two. It would of course be dangerous to fall into the trap of idealizing the ‘noble savage’: the evidence of ‘barbarous’ conduct in non-Western warfare is simply too obvious to be denied. But there is consistent evidence that, although they may have been proportionally more violent, primitive conflicts were also much less destructive. This is partly because of the ritualized nature of much internecine violence,180 and partly, more relevantly, because the weak logistical base of primitive non-statal entities ensured that campaigns were short-lived.

The state, on the contrary — and this is arguably what nineteenth century humanitarians saw before everyone else — introduced the prospect of wars that would draw on the massive economies of scale brought about by greater territory and modern technology. It should be fairly clear, in this context, that even the most violent of ‘tribal’ skirmishes paled in comparison to the systematic onslaught of the state’s war machinery.

Whatever the case may be, even as we rediscover the relativity of ‘savagery’, we are inexorably led to find the claim of ‘civilization’ increasingly indefensible on its own terms. The ‘civilization’ of ‘civilized’ warfare was already a dubious claim when it was first made. The ‘modern European wars’ that Lieber mentions would presumably have included various Napoleonic wars, wars that were rife with cities set ablaze, mass killing, and rape of civilians. When it comes to their ‘descendants in other portions of the globe’, it is worth reminding ourselves that the Lieber Code was promulgated at the outset of the US Civil War, a conflict in which irregulars committed countless atrocities and where thousands died in dismal conditions in prisoners’ camps. Moreover, it is a contention that must seem almost obscene with the benefit of hindsight, two World Wars and the Holocaust. Paradoxically, the formalization of the laws of war turned out to be the prelude to a deluge of violence, as if the rules had only been formulated to be broken.

It may well be, therefore, that the spread of the West’s own model of centralized, industrialized violence — essentially the fabrication of a dehumanized war machinery — to the rest of the world, manifested itself in an exponential increase in the overall amount of violence experienced by humankind.

The crumbling of the founding dichotomy between ‘civilization’ and ‘savagery’, moreover, can only send the laws of war stumbling down into a spiral of decomposition, and inaugurate the crisis that we may now be witnessing; it may also explain why, paradoxically, the laws of war need their ‘savages’, whether they be war criminals, terrorists or unlawful combatants, and go through periodic ‘crises of otherness’ that lead them to reassert, almost spasmodically, their foundational counter-image.

### 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

### ILAW/Sov---Alt

#### Reject the forced choice of international law’s universality---aligning yourself with those living under contemporary colonialism opens political space for alternatives

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The doctrine of uti possidetis, far from being grounded in any sound legal principle, is thus more a political instrument to legitimize existing state boundaries. The precarious status of the norm was underscored by the Beagle Channel Arbitration's observation that it is "possibly, at least at first, a political tenet rather than a true rule of law." n405 Koskenniemi sees in the recognition of uti possidetis an acknowledgment that the ethical conception of international law cannot override the sociological. n406 Demarcation of boundaries is, essentially, a political act. However, when reified by international law, these boundaries appear to have an identity separate from politics of the international system. The primary rationale for the adoption of the principle has been to avoid territorial conflict among post-colonial states, particularly in the light of international law's primary role--preservation of order. n407 While peace and order remain elusive in the global system, uti possidetis furnishes a cloak of legitimacy [\*66] over colonial disposition of territories of the global South by sidestepping the questions of the origins of these dispositions. By forcing disparate people to circumscribe their political aspirations within predetermined territorial bounds, uti possidetis reverses the vision of self-determination that seeks to protect vulnerable populations by allowing them political and territorial arrangements of their own. n408 Ian Brownlie is unequivocal in stating that "it is uti possidetis which creates the ambit of the pertinent unit of self-determination, and which in that sense has a logical priority over self-determination." n409 The problem is that this logical priority furnishes the grounds for actually giving territory priority over people when confronted with assertions of the right of self-determination.

C. Colonial Boundaries, Unequal Treaties, and International Law

Treaties between imperial powers and a variety of agreements between colonizers and native authorities played a key role in determining the spatial scope of spheres of control and influence. n410 The Durand Line, [\*67] like borders of most postcolonial states, is a legacy of such treaties, particularly the 1893 agreement between the Afghan Amir and the British. n411 As disputes arise about the validity of these borders, questions about the legal status of the treaties that determined these borders surface. Most salient among these is the issue of unequal treaties. However, in tune with its gloss on the doctrine of uti possidetis to protect the status quo, modern international law has similarly resisted confronting the question of unequal treaties for the same purpose.

The Durand Line raises the question of the validity of the 1893 agreement dictated by the British to the reluctant Amir of Afghanistan, a vassal installed over a protectorate in all but name. n412 While examining the validity of such arrangements, one is confronted with the fact that the question of unequal treaties appears to have "evaporated as an issue from the domain of international law," and stands "consigned to the dustbin of 'redundant ideas,'" n413 deemed a mere "political" argument with scant legal valance. n414 How does a question implicated in colonial territorial treaties that imprison the postcolonial world in arbitrary spatial cages become invisible to international law? It took a series of conceptual and institutional maneuvers to make it disappear from sight.

The status of unequal treaties n415 in international law first arose in the nineteenth century in the context of treaties between Western powers and East Asian states n416 and was rehearsed in the early twentieth century by [\*68] Soviet jurists. n417 Drawing on extra-textual contexts that animated the texts of colonial treaties, Asian states and Soviet jurists argued that because imperial powers had used their dominant military position to gain concessions through treaties forced upon weaker states, such treaties were invalid. Because these agreements were the products of coercion, they implicated questions of status of parties, the context in which agreements were secured, and the nature of consent involved. The issue of inequality arises both in terms of unequal bargaining power of the parties and the substantive lack of equilibrium with respect to benefits and burdens allocated by these treaties. Note here that in some instances, the harsh and humiliating terms of unequal treaties were instrumental in the rise of anti-colonial resistance and nationalism in Asia and unprecedented collective military action by Western powers to quell this resistance. n418 Indeed it was the coordinated military action in China by Western powers to put down the anti-Western Boxer Uprising of 1900 that fashioned a new and enduring stratagem of international politics--collective military action by the Western powers in the global South. n419

Faced with questions about the validity of unequal treaties, the initial Western response was that these treaties were necessary given the "backwardness" of Asian societies and legal orders, and that once those "shortcomings" are remedied, the treaties will lose their force by the absence [\*69] of their raison d'etre. n420 By the late nineteenth century, international law's turn to positivism, with its recognition of differentiated sovereignties, stepped in to acknowledge and accommodate a diplomatic practice rooted in culture and history as the primary source of norms. n421 The contemporary Concert of Europe rested upon the Act of the Vienna Congress (1815), the peace treaty at the culmination of the Napoleonic Wars, and related agreements. n422 Preservation of the Concert of Europe and the attendant distribution of power became a primary preoccupation of international law. n423 Since peace treaties are unavoidably unequal in nature, international law now framed the question of sovereign consent as a purely formal one subject to overarching norms of preservation of order in the international system. n424 The classic notion that validity of [\*70] treaties rests upon consent by formally equal and sovereign states gave way to a positivist recognition that "[t]he obligation of treaties, by whatever denomination they may be called, is founded, not merely upon the contract itself, but upon those mutual relations between the two states, which may have induced them to enter into certain engagements." n425 Political realities trumped formal legal categories now deemed quaint. In this frame, unequal treaties of yesterday, however secured, furnished the grounds of the prevailing international order. To question their validity retrospectively raised the specter of unraveling the fragile order of things. With the question of state consent rendered a formal one, today any arguments based on consent to explain validity of treaties become "deceptively simple. . . . [because t]heir theoretical power lies in the suggestion that perhaps nothing really needs to be justified." n426

International lawyers deployed the same line of reasoning to defang the classic doctrine of ribus sic stantibus (things thus standing), whereby a fundamental change of circumstances can justify unilateral termination of treaties. Unequal treaties are particularly vulnerable to this line of attack with the passage of time and changes in the post-Napoleonic European balances of power. n427 When the issue arose within Europe in the late nineteenth century, international law's response was that because sanctity of treaties is essential to the maintenance of order, even in the face of changed circumstances, termination or modification of treaty obligations requires the consent of other parties. n428 As pressure for revision of treaty arrangements mounted, in light of a changed balance of power within Europe in the early twentieth century, international law's turn to institutions to deal with problems of order, now seen as essentially political in nature, provided an opening--signaling "a movement from a moment of law to politics." n429 The doctrine of ribus sic stantibus was now read as embracing two separate issues to be framed and resolved along two separate tracks. The political issue of accommodating changes in the [\*71] interests and powers of states was to be dealt with by the League of Nations under article 19 of its Charter. n430 The legal issue was to be narrowly construed as one of clausula--the relationship between underlying consent and changed circumstances--deemed suitable for judicial determination by the Permanent Court of International Justice ("PCIJ"). n431 As now enshrined in article 62 of the Vienna Convention, the doctrine of rebus sic stantibus stands confined within narrow limits as a legal question--a treaty is terminable only when unforeseen changes in the circumstances underlying the conclusion of the treaty transform radically the extent of the obligations still to be performed. n432 In the end, rebus sic stantibus stands sacrificed at the altar of pacta sunt servanda (agreements must be kept).

International law deals with the issue of coercion, duress, and unequal treaties with institutional and interpretive moves. The Vienna Convention on the Law of Treaties addresses the issue through articles 51 and 52--making coercion and threat or use of force "in violation of the principles of international law in the Charter of the United Nations" grounds for voiding a treaty. n433 With this iteration of a classic rule, "the problem has been legislated away." n434 The repackaging of what coercion, threat, or use of force is impermissible subtly altered the classic treaty law rule on duress that condemned all coercion. The prohibition on duress in the formation of a treaty now stands conditioned by the legal status of the coercion used. The qualifier "in violation of international law" on the [\*72] prohibition against the threat or use of force is to be read in the light of the U.N. Charter that does not outlaw use of force, only unlawful use of force. n435 Consequently, with unequal treaties of the past, the question becomes not the exercise of coercion and duress, but one of the legal status of threat or use of force in the eye of international norms in place at the time the treaties were made. The imperial bent of international law in the colonial age already stood recognized and legitimate by the positivist turn that international law took. n436 The implication is that any alleged use of force in treaties of the past may well have been lawful under contemporaneous norms. For good measure, the ICJ has held that any accusation of coercion to dispute the validity of a treaty must be accompanied by "clear evidence" that goes beyond, e.g., the mere presence of naval forces off the coast of the complaining party. n437 This narrow definition of coercion is particularly troubling in today's global order where effective instruments of economic coercion increasingly complement weapons of physical coercion in relations between states. n438 In the face of these conceptual and institutional moves, any continuing expectation that international law as it stands may interrogate unequal colonial treaties to rescue territorially imprisoned postcolonial formations is futile. To those who may still raise the question of unequal treaties, Brierly has an unequivocal response: "we must not invent a pseudo-legal principle to justify such action. The remedy has to be sought elsewhere, in political, not in juridical action." n439 While the question of colonial unequal treaties stands brushed aside, what about contemporary treaties that reflect existing international relations of domination? Here, it appears that it is sufficient to acknowledge that "bargaining frequently takes place in a world of uneven resources and opportunity costs," n440 and move on.

[\*73] The history of unequal treaties underscores that "the history of the international system is a history of inequality par excellence." n441 International law's posture towards legacies of colonialism has created a "legalized hegemony: the realization through legal forms of Great Power prerogatives." n442 The fleeting and ephemeral career of the unequal treaties doctrine in international law underscores an apparently foundational canon of the law: the specter of disorder necessitates defense of order, even an unjust order. This is in tune with Kant, author of the celebrated foundational injunction of the Enlightenment--"dare to know"--who declaimed that:

The origin of supreme power, for all practical purposes, is not discoverable by the people who are subject to it. In other words, the subject ought not to indulge in speculations about its origin with a view to acting upon them, as if its right to be obeyed were open to doubt . . . . [W]hether the power came first, and the law only appeared after it, or whether they ought to have followed this order--these are completely futile arguments for a people which is already subject to civil law, and they constitute a menace to the state. n443

International law, like modern law itself, is not so daring after all. It turns out that its primary function is to enable "[s]tates to carry on their day-to-day intercourse along orderly and predictable lines." n444 It is of little concern to it that the lines within which states have to exist in order "to carry out their day-to-day intercourse" are unstable, contested, and fruits of the exercise of imperial domination.

V. CONCLUSION

Modern colonialism was nothing if not an exercise in audacity. The global reach of colonial rule reordered subjects and reconfigured space. Fixed territorial demarcations of colonial possessions played a pivotal role in this process. Issuing from imperatives of colonial rule and compulsions of rivalries between colonial powers, these demarcations often cut across age-old cultural and historical social units. Postcolonial states inherited these demarcations and, with them, a host of endemic political and security afflictions. The unmistakable spatiality of the so-called [\*74] Great Games, both old and new, brings into relief the continuing salience of space and territory in an age when the forces and processes of globalization had supposedly rendered them irrelevant.

Modem international law, which in its incipient stage lent license to colonial rule, today legitimates colonial cartographies, thereby accentuating postcolonial dilemmas and conflicts. This accords with the larger affliction that plagues international law: its refusal to squarely face its complicity in the process of empire building combines with its inability to break free of the shadow of a sordid past. The career of the Durant Line highlights that when addressing many of today's intractable conflicts, the law as it exists is more of a problem than a solution. As humanity struggles to imagine political communities beyond the straitjackets of territorial states, a primary challenge is to clear the conceptual and doctrinal hurdles that remain in the way. This necessitates breaking free of imperial geographies and economies of knowledge that undergird modem legal constructs and international regimes. Albert Einstein cautioned us that "it is theory which decides what can be observed." The first step in that direction is to align our inquiries and sights with the other side of the lines drawn by international law.

#### Rejecting the naturalization of sovereignty is the only ethical option

Sebastien Jodoin 8, Legal Research Fellow at theCentre for InternationalSustainableDevelopment Law, International Law and Alterity: The State and the Other, www.sjodoin.ca/wp-content/uploads/2012/06/International-Law-and-Alterity1.pdf

Another set of strategies must be aimed more directly at the ontology of statehood. Althoughcritiquesofitsstate-centriccharacterarecommonplace, international law continues to take the natural primacy of the state as a dominant form of political organization for granted.We must oppose the idea that states exist as natural beings, for, as Campbell explains,

[T]he greatest acts of violence in history have been made possible by the apparent natural-ness of their practices, by the appearance that those carrying them out are doing no more than following commands necessitated by the order of things, and how that order has often been understood in terms of the survival of a (supposedly pre-given) state, a people, or a culture.146

Therefore we must continue to engage in the task of decentring the Self of the state by putting in doubt its sovereignty and majesty in relation to sub-national actors and movements, other states, and transnational regimes, forces, and actors, and especially in relation to the law.We must explainthewayinwhich stateissocially, culturally, and legally inscribed – that is, it is bound by or in interaction with its environmentandincapableofescapingthisformofinscriptionorinteraction.Most notably, we must reveal to the state the way in which it is in fact constituted by the Other, transcendedbytheOther,andincapableofunderstandingtheOther. In sum, we seek to destabilize the idea that the state forms a Self.147 There is an implicit move here from the modern to the post-modern. Indeed, if modernity bore witness to the rise of both the Self and the state, the post-modern condition is characterized by their decline. Or, perhaps, this project need not be conﬁgured as a move to the post-modern, but as a return to the baroque: with non-exclusive, overlapping, non-territorial, dissimilar, heteronomous logics of organization whereby individuals were subject to multiple sovereignties and authorities.148 Such deconstructive strategies may be pursued in academia, politics, public policy, culture, and indeed the law itself. In the latter case, we may through a decentring of the state and a celebration of alterity engage in normative world-building.149 By looking at international law beyond the state, we give new meaning to the law and thereby enact new forms of international law.

Of course, non-state actors are not always benign forces – they may be uncivil and criminal150 – and the international is not a space of inﬁnite justice. In the pursuit of the ethics of alterity, we must furthermore remain open to the possibility that the state itself may also form the Other and guard against the danger of founding international law on simply a different ontology, even one which moves away from the state. Rather, new forms of law and organization must be developed in response to our ethics and remain subject to inﬁnite reconsideration and deconstruction. Indeed, deconstruction isthe primary mode through which we may pursue the ethics of alterity.151

Conclusion

Beholden to the ontology of statehood, international law remains a law for states, made by them and made for them. It remains so through its focus on the interiority of the state at the expense of the exteriority of the Other. The pursuit of the ethics of alterity in international law requires an inversion of international law’s priorities in this regard. There must ﬁrst be a move from the interiority of the state to the exteriority of the law. The force of international law must be conceived as anterior to, as opposed to subsumed by, the force of the state. There must also be a move towards the exteriority of the Other with the emergence of new ways of existing and viewing the world, although these new ontologies and epistemologies must remain informed by our ethical responsibilities and thus critically open to their inherent violence and arbitrariness. These two projects are complementary, for as long as international law is perceived as a legal system which governs the relations between states, then the latter is likely to remain at its centre. Likewise, as long as states serve as the models for and arbiters of international personality as well as the gatekeepers of international community and normativity, international law will be statist in orientation. Our understanding of international legal subjecthood must be reconceived on primarily ethical grounds in terms of our responsibility to the Other and deployed as the calling into question of the state through an encounter with the legal Other and the human Other:

Ethical subjectivity dispenses with the idealizing subjectivity of ontology, which re- duces everything to itself. The ethical ‘I’ is subjectivity precisely insofar as it kneels before the other, sacriﬁcing its own liberty to the more primordial call of the other. The heteronomy of our response to the human other, or to God as the absolute other, precedes the autonomy of our subjective freedom. As soon as I acknowledge that it is ‘I’ who am responsible, I accept that my freedom is anteceded by an obligation to the other. Ethics redeﬁnes subjectivity as this heteronomous responsibility, in contrast to autonomous freedom.152

An ethical approach to subjecthood requires openness towards diversity of being and towards ever greater participation and inclusiveness, awareness of its own inher ent exclusionary character, and a characterization of the legal subject as responsible before the Law and before the Other.

There are a number of tensions at play in this project: ontology—ethics, statehood— alterity, and law—politics. This last tension is likely to be invoked by international lawyers, as one constant of the discipline has been an affirmation of international law as law and not as ethics. However, the anxieties about the importance and distinctiveness of the discipline simply bring us back to ontology, while my per spective is informed by an ethical concern for legal pluralism. International lawyers should therefore also support the move to ethics for the same reason that they might strongly oppose it: they themselves have been victims of the ontological imperialism of those who deny the status of law to international law 153 A related objection would advance the idea that this project is relativistic and political whereas international law is seen as an escape from politics into justice and objectivity. This demonstrates obliviousness to the violence which international law perpetrates on the Other as well as calls for an abdication of our responsibility to the Other in his singular alterity. There is finally an undercurrent of fear of the political, ‘of the necessities of politics per se, necessities that can be contested and negotiated, but not escaped or transcended’.’54

Moreover, moving away from the state or from ontology might also appear to the international lawyer to be naive, imprudent, or foolish. How can we have intelligent discussions about what to do and what should be without first establishing what exists in the world? But the point is not so much that ontology or statehood are irrelevant to ethical reflection, but rather that they must be apprehended from a primarily ethical perspective. States most assuredly matter at a number of levels, but they are not all that matters. As international lawyers, we must contend with the existing ontology and epistemology of statehood, but they need not be the primary schemes through which we view the world. This article has sought to establish the ethics of alterity as the pre-eminent concern of our discipline, but never in the belief that it might be possible to do away completely with the state as a category of thought, or ontology as a mode of thought. Lévinas’s writing itself rests on a constant tension between the Same and the Other wherein he seeks to preserve both. Indeed, Lévinas argues that ‘the interhurnan is thus an interface: a double axis where what is of the world” qua phenomenological intelligibility is juxtaposed with what is “not of the world” qua ethical responsibilitÿ.’55

This back and forth is both necessary and futile. ft is necessary because the pursuit of the ethics of akerity in international law requires a constant negotiation of the tension which exists between statehood and alterity.’S6 ft is futile because the commitment which some have to statehood and others have to alterity are emotional, ideological, ontological, and epistemological all at once. These are two worlds with different paradigmatic points of reference whose ultimate origins lie in a certain sensibility about the world. This is why the question of alterity in international law is more than justa problem of ‘source and method’,’S7 but in fact arises out of deeper ideas and feelings which we hold about the relationship between the ‘is’ and the ‘ought’.

L.évinas acknowledged that establishing ethics as first philosophy was a bold move in the light of the obvious pre-eminence of ontology, but he also believed that ‘approaching philosophy through this critique has at least the virtue of returning to its source, beyond the problems and pathos of Iiterature’.’8 The same maybe said of the approach adopted in this article, that by returning to the source — the ontology of statehood — we may move beyond the ontological difficulties which international law has invariably faced throughout its existence as well as better understand the violence which it has perpetrated on the Other. If Lévinas’s philosophy is haunted by the memory of Auschwitz,’ S9 then international law today appears haunted by the memory of colonialism. But in our haste to apologize for Berlin,’6° we should not forget about the violence of the original exclusion of Westphalia. And perhaps, at a deeper level still, the origins of the tragedy of international law are not German, or American (the new sovereigntists), but irrevocably Greek.

### 2NC Causes Extinction

#### Structural violence locks in social and environmental tension---culminates in extinction and makes war inevitable

Tamás Szentes 8, Professor Emeritus at the Corvinus University of Budapest. “Globalisation and prospects of the world society” 4/22/08 http://www.eadi.org/fileadmin/Documents/Events/exco/Glob.\_\_\_prospects\_-\_jav..pdf

It’ s a common place that human society can survive and develop only in a lasting real peace. Without peace countries cannot develop. Although since 1945 there has been no world war, but --numerous local wars took place, --terrorism has spread all over the world, undermining security even in the most developed and powerful countries, --arms race and militarisation have not ended with the collapse of the Soviet bloc, but escalated and continued, extending also to weapons of mass destruction and misusing enormous resources badly needed for development, --many “invisible wars” are suffered by the poor and oppressed people, manifested in mass misery, poverty, unemployment, homelessness, starvation and malnutrition, epidemics and poor health conditions, exploitation and oppression, racial and other discrimination, physical terror, organised injustice, disguised forms of violence, the denial or regular infringement of the democratic rights of citizens, women, youth, ethnic or religious minorities, etc., and last but not least, in the degradation of human environment, which means that --the “war against Nature”, i.e. the disturbance of ecological balance, wasteful management of natural resources, and large-scale pollution of our environment, is still going on, causing also losses and fatal dangers for human life. Behind global terrorism and “invisible wars” we find striking international and intrasociety inequities and distorted development patterns , which tend to generate social as well as international tensions, thus paving the way for unrest and “visible” wars. It is a commonplace now that peace is not merely the absence of war. The prerequisites of a lasting peace between and within societies involve not only - though, of course, necessarily - demilitarisation, but also a systematic and gradual elimination of the roots of violence, of the causes of “invisible wars”, of the structural and institutional bases of large-scale international and intra-society inequalities, exploitation and oppression. Peace requires a process of social and national emancipation, a progressive, democratic transformation of societies and the world bringing about equal rights and opportunities for all people, sovereign participation and mutually advantageous co-operation among nations. It further requires a pluralistic democracy on global level with an appropriate system of proportional representation of the world society, articulation of diverse interests and their peaceful reconciliation, by non-violent conflict management, and thus also a global governance with a really global institutional system. Under the contemporary conditions of accelerating globalisation and deepening global interdependencies in our world, peace is indivisible in both time and space. It cannot exist if reduced to a period only after or before war, and cannot be safeguarded in one part of the world when some others suffer visible or invisible wars. Thus, peace requires, indeed, a new, demilitarised and democratic world order, which can provide equal opportunities for sustainable development. “Sustainability of development” (both on national and world level) is often interpreted as an issue of environmental protection only and reduced to the need for preserving the ecological balance and delivering the next generations not a destroyed Nature with overexhausted resources and polluted environment. However, no ecological balance can be ensured, unless the deep international development gap and intra-society inequalities are substantially reduced. Owing to global interdependencies there may exist hardly any “zero-sum-games”, in which one can gain at the expense of others, but, instead, the “negative-sum-games” tend to predominate, in which everybody must suffer, later or sooner, directly or indirectly, losses. Therefore, the actual question is not about “sustainability of development” but rather about the “sustainability of human life”, i.e. survival of mankind – because of ecological imbalance and globalised terrorism. When Professor Louk de la Rive Box was the president of EADI, one day we had an exchange of views on the state and future of development studies. We agreed that development studies are not any more restricted to the case of underdeveloped countries, as the developed ones (as well as the former “socialist” countries) are also facing development problems, such as those of structural and institutional (and even system-) transformation, requirements of changes in development patterns, and concerns about natural environment. While all these are true, today I would dare say that besides (or even instead of) “development studies” we must speak about and make “survival studies”. While the monetary, financial, and debt crises are cyclical, we live in an almost permanent crisis of the world society, which is multidimensional in nature, involving not only economic but also socio-psychological, behavioural, cultural and political aspects. The narrow-minded, election-oriented, selfish behaviour motivated by thirst for power and wealth, which still characterise the political leadership almost all over the world, paves the way for the final, last catastrophe. One cannot doubt, of course, that great many positive historical changes have also taken place in the world in the last century. Such as decolonisation, transformation of socio-economic systems, democratisation of political life in some former fascist or authoritarian states, institutionalisation of welfare policies in several countries, rise of international organisations and new forums for negotiations, conflict management and cooperation, institutionalisation of international assistance programmes by multilateral agencies, codification of human rights, and rights of sovereignty and democracy also on international level, collapse of the militarised Soviet bloc and system-change3 in the countries concerned, the end of cold war, etc., to mention only a few. Nevertheless, the crisis of the world society has extended and deepened, approaching to a point of bifurcation that necessarily puts an end to the present tendencies, either by the final catastrophe or a common solution. Under the circumstances provided by rapidly progressing science and technological revolutions, human society cannot survive unless such profound intra-society and international inequalities prevailing today are soon eliminated. Like a single spacecraft, the Earth can no longer afford to have a 'crew' divided into two parts: the rich, privileged, wellfed, well-educated, on the one hand, and the poor, deprived, starving, sick and uneducated, on the other. Dangerous 'zero-sum-games' (which mostly prove to be “negative-sum-games”) can hardly be played any more by visible or invisible wars in the world society. Because of global interdependencies, the apparent winner becomes also a loser. The real choice for the world society is between negative- and positive-sum-games: i.e. between, on the one hand, continuation of visible and “invisible wars”, as long as this is possible at all, and, on the other, transformation of the world order by demilitarisation and democratization. No ideological or terminological camouflage can conceal this real dilemma any more, which is to be faced not in the distant future, by the next generations, but in the coming years, because of global terrorism soon having nuclear and other mass destructive weapons, and also due to irreversible changes in natural environment.

## T

#### The Court separates war powers that can be restricted by Congress and inherent Presidential authority---proves circumvention or no solvency

David J. Barron 8, S. William Green Professor of Public Law at Harvard Law School , & Martin S. Lederman, THE COMMANDER IN CHIEF AT THE LOWEST EBB — FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING, HLR 121;3

4. Judicial Enforcement of Implied Statutory Restrictions. — The way the Supreme Court approaches war powers generally, when com- bined with the increased mass of potentially relevant legislative restric- tions on the conduct of this military conflict, further increases the like- lihood that the “lowest ebb” issue will be joined in the future. Principles of deference to executive authority tend to dominate aca- demic discussion of statutory interpretation and war powers. As we have indicated, however, Hamdan, Youngstown, and other modern war powers cases demonstrate that the Court cannot be counted on to give the President the benefit of the doubt. And in many war powers cases, the Court has been perfectly willing to construe ambiguous statutory language against certain background rules that it presumes Congress intended to honor,84 including a presumption that the Executive must comply with the laws of war.85

This general and longstanding judicial willingness to find implied limitations in ambiguous texts concerning the use of military force and national security powers is sometimes controversial. But whether jus- tified or not, such an interpretive approach is of particular import now, given the sheer mass of preexisting statutes potentially applicable to the conflict with al Qaeda and the likelihood that this body of law will grow. Executive branch lawyers may be hard-pressed to advise their client agencies that creative construction can overcome the apparent statutory restrictions, at least if there is a reasonable prospect of judi- cial review (as there often will be in the war on terrorism due to its pe- culiar domestic connections). Instead, the prospect of judicial review will impel these lawyers to advise that the courts could well construe the potentially restrictive language to impose hard constraints on the Executive’s preferred course of conduct — and that only the assertion of a superseding constitutional power of the President could, possibly, overcome such limits. Thus, the relatively weak deference the Court has long shown the President in many war powers cases, when combined with the relatively high likelihood in the war on terrorism of the applicability of restrictive but ambiguous statutory language and a jus- ticiable case to hear, make constitutional assertions of preclusive executive powers a more likely occurrence than war powers scholarship typically assumes.

## Drones Adv

### Circumvention

#### Covert action statute allows the exec to completely avoid the plan

Lohmann 13 [Julia, director of the Harvard Law National Security Research Committee, BA in political science from the University of California, Berkeley, “Distinguishing CIA-Led from Military-Led Targeted Killings,” 1/28, <http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/effects-of-particular-tactic-on-issues-related-to-targeted-killings/>]

The U.S. military—in particular, the Special Operations Command (SOCOM), and its subsidiary entity, the Joint Special Operations Command (JSOC)—is responsible for carrying out military-led targeted killings.¶ Military-led targeted killings are subject to various legal restrictions, including a complex web of statutes and executive orders. For example, because the Covert Action Statute does not distinguish among institutions undertaking covert actions, targeted killings conducted by the military that fall within the definition of “covert action” set forth in 50 U.S.C. § 413(b) are subject to the same statutory constraints as are CIA covert actions. 50 U.S.C. § 413b(e). However, as Robert Chesney explains, many military-led targeted killings may fall into one of the CAS exceptions—for instance, that for traditional military activities—so that the statute’s requirements will not always apply to military-led targetings. Such activities are exempted from the CAS’s presidential finding and authorization requirements, as well as its congressional reporting rules.¶ Because such unacknowledged military operations are, in many respects, indistinguishable from traditional covert actions conducted by the CIA, this exception may provide a “loophole” allowing the President to circumvent existing oversight mechanisms without substantively changing his operational decisions. However, at least some military-led targetings do not fall within the CAS exceptions, and are thus subject to that statute’s oversight requirements. For instance, Chesney and Kenneth Anderson explain, some believe that the traditional military activities exception to the CAS only applies in the context of overt hostilities, yet it is not clear that the world’s tacit awareness that targeted killing operations are conducted (albeit not officially acknowledged) by the U.S. military, such as the drone program in Pakistan, makes those operations sufficiently overt to place them within the traditional military activities exception, and thus outside the constraints of the CAS..

### Drones Fail

#### 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

#### Empirics wrong

Richard Jackson 9, Reader in the Department of International Politics, Aberystwyth University, and a Senior Researcher at the Centre for the Study of Radicalisation and Contemporary Political Violence, 2009, “Knowledge, power and politics in the study of political terrorism,” in Critical Terrorism Studies: A New Research Agenda, p. 70-77

In sum, these frequent narratives within the literature construct the widely accepted ‘knowledge’ that non-state terrorism represents a major security threat to the international community and to democratic societies in particular, in part because their inherent freedoms make them more vulnerable to terrorist infiltration and attack. Moreover, these narratives construct a common sense and widely, though not totally, accepted ‘knowledge’ that contemporary terrorism is a new and deadlier form of terrorism than any encountered previously, one which creates an exceptional state of emergency requiring ‘new’ counterterrorism measures to defeat and which cannot be dealt with using negotiation and dialogue, methods which have been previously successful in dealing with the ‘old’ ideological and nationalist terrorism.

The origins and causes of terrorism6

A surprising number of terrorism studies texts promote the view that the roots and causes of terrorism lie in individual psychological abnormality, and religious or ideological extremism engendered through processes of ‘radicalisation’. Although theories of individual psychopathology among terrorists have fallen out of favour among most leading scholars in recent years, the notion that terrorist behaviour is rooted in the personality defects of individuals remains close to the surface of most texts, not least in the notion that weak-minded, uneducated, or emotionally vulnerable young Muslims fall prey to indoctrination and brainwashing – so-called ‘radicalisation’ – by terrorist recruiters operating through madrasahs, radical mosques, or extremist internet sites (see Haqqani, 2002). Related to this, it is not uncommon to find texts which argue that ‘Islamic’ suicide bombers are primarily young men driven by sexual frustration and impotence. In a much-cited text on contemporary ‘religious terrorism’ for example, Mark Juergensmeyer states that ‘the young bachelor self-martyrs in the Hamas movement .. . expect that the blasts that kill them will propel them to a bed in heaven where the most delicious acts of sexual consummation will be theirs for the taking’ (Juergensmeyer, 2000: 201). In any case, such narratives construct the accepted knowledge that terrorists are different and abnormal and, more importantly, that their actions are rooted in their personalities rather than other factors related to their political situation, strategic calculation or experiences of oppression and humiliation.

During the cold war, many terrorism studies texts suggested that the roots and causes of terrorism lay within communist ideology and the direct involvement of the Soviet Union (see Raphael, this volume). Claire Sterling’s (1981) popular book, The Terror Network, for example, posited the existence of a global terrorist network sponsored by the Soviets that was behind many of the revolutionary and anti-colonial movements. As Sam Raphael illustrates in this volume, a great many of the leading terrorism studies scholars at the time subscribed to the ‘Soviet network theory’ of terrorism.

In many ways, the cold war focus on left-wing ideology was replaced by what is now a vast and growing literature on the religious origins of terrorism, particularly as it relates to Islam (see Jackson, 2007a). Based on David Rapoport’s (1984) initial formulation of ‘religious terrorism’, the discourse of ‘Islamic terrorism’ argues that the roots and causes of much of the al-Qaeda-related terrorism today can be found in ‘Islamic extremism’. Walter Laqueur for example, suggests that while there is ‘no Muslim or Arab monopoly in the field of religious fanaticism . . . the frequency of Muslim- and Arab-inspired terrorism is still striking’ (Laqueur, 1999: 129). Similarly, a prominent counterterrorism think tank publication argues that ‘in the Islamic world one cannot differentiate between the political violence of Islamic groups and their popular support derived from religion . . . the present terrorism on the part of the Arab and Muslim world is Islamic in nature’ (Paz, 1998, emphasis added). Marc Sageman argues in relation to al-Qaeda: ‘Salafi ideology determines its mission, sets its goals, and guides its tactics’ (Sageman, 2004: 1). In sum, and similar to narratives of individual deviance, these narratives construct the widely accepted ‘knowledge’ that contemporary terrorism is primarily rooted in and caused by religious extremism and fanaticism, and not in rational calculation or other political, cultural, and sociological factors.

Responding to terrorism

A final set of assumptions and narratives within the broader literature relates to questions about how to respond to terrorism. Following the logic of the preceding notions of the existential threat posed by the ‘new terrorism’, as well as the fanatical nature and origins of religiously-inspired terrorism, it is frequently argued in the literature that ‘new’ methods of counterterrorism are required for its control, and that there are justifiable reasons to employ any means necessary, including torture, targeted killings, and restrictions on human rights, to deal with the threat (see Jackson, 2007d). Rohan Gunaratna, Paul Wilkinson, and Daniel Byman, all major figures in the field, for example, have openly condoned the extra-judicial assassination of terrorist leaders as a potentially effective method of counterterrorism (see Gunaratna, 2003: 233–235; Wilkinson, 2002: 68; Byman, 2006, 2007). At the very least, it is commonly accepted that coercive instruments, including sanctions, pre-emption and military force, are both legal and effective forms of counterterrorism (see for example, Shultz and Vogt, 2003; Byman, 2003). Often unstated, but appearing as a subtext, it is implicitly assumed that non-violent responses to terrorism such as dialogue and political reform are simply bound to fail in the current context (see Toros, forthcoming).

More specifically, as I have shown elsewhere (Jackson, 2005), the global counterterrorism campaign known as the ‘war on terror’ is based on a particular series of defining narratives. The most important narrative at the heart of the war on terror is the notion that the attacks of 11 September 2001 amounted to an ‘act of war’. This narrative in turn, logically implies that a war-based counterterrorism strategy is both necessary to counter the threat and legal under international law. Consequently, a great many terrorism studies texts take it as axiomatic or common sense that the war on terror, and force-based counterterrorism in general, is both legitimate and efficacious. In this way, the notion that responding to terrorism requires force and counter-violence, and sometimes even war and torture, has come to assume a form of widely accepted ‘knowledge’. In short, the assumptions, narratives and knowledge-practices I have described above, and quite a few more besides, collectively make up much of the widely accepted body of terrorism ‘knowledge’, or, the discourse of terrorism studies. This ‘knowledge’ is reproduced, often with little deviation from the central assumptions and narratives, continuously in the field’s journals, conferences, and in literally thousands of publications every year by academics and think tanks. Furthermore, as Michael Stohl has recently illustrated, many of these core narratives or ‘myths’, as he terms them, have proved to be extremely durable over several decades (see Stohl, 1979, 2008).

A critical analysis of the terrorism studies discourse

Having briefly outlined some of its main characteristics, the purpose of this section is to provide a critical analysis of the broader terrorism studies discourse employing a first and second order critique. The main argument I wish to advance here is that most of what is accepted as well-founded ‘knowledge’ in terrorism studies is, in fact, highly debatable and unstable. More importantly, this ‘knowledge’ functions ideologically in society to reify existing power structures and advance particular political projects.

First order critique

As explained earlier, a first order or immanent critique employs the same modes of analysis and categories to criticise the discourse on its own terms and expose the events and perspectives that the discourse fails to acknowledge or address. From this perspective, and employing the same social scientific modes of analysis, terminology, and empirical and analytical categories employed within terrorism studies, as well as many of its own texts and authors, it can be argued that virtually all the narratives and assumptions described in the previous section are contestable and subject to doubt. There is not the space here to provide counterevidence or arguments to all the assumptions and narratives of the wider discourse; I have provided more detailed counter-evidence to many of them elsewhere (see Jackson, 2008a, 2008b, 2007a, 2007b, 2007c). It must instead suffice to discuss a few points which illustrate how unstable and contested this widely accepted ‘knowledge’ is. The following discussion therefore focuses on a limited number of core narratives, such as the terrorism threat, ‘new terrorism’, and counterterrorism narratives.

In the first instance, the conceptual practices which construct terrorism exclusively as a form of non-state violence are highly contestable. Given that terrorism is a violent tactic in the same way that ambushes are a tactic, it makes little sense to argue that some actors (such as states) are precluded from employing the tactic of terrorism (or ambushes). A bomb planted in a public place where civilians are likely to be randomly killed and that is aimed at causing widespread terror in an audience is an act of terrorism regardless of whether it is enacted by non-state actors or by agents acting on behalf of the state (see Jackson, 2008a). It can therefore be argued that if terrorism refers to violence directed towards or threatened against civilians which is designed to instil terror or intimidate a population for political reasons – a relatively uncontroversial definition within the field and wider society – then states can also commit acts of terrorism. Furthermore, as I and many others have documented elsewhere (for a summary, see Jackson, 2008b), states have killed, tortured, and terrorised on a truly vast scale over the past few decades, and a great many continue to do so today in places like Colombia, Zimbabwe, Darfur, Myanmar, Palestine, Chechnya, Iraq and elsewhere. Moreover, the deliberate and systematic use of political terror by Western democratic states during the colonial period, in the ‘terror bombing’ of World War II and other air campaigns, during cold war counter-insurgency and proinsurgency campaigns, through the sponsorship of right-wing terrorist groups and during certain counterterrorism campaigns, among others, is extremely well documented (see, among many others, Gareau, 2004; Grey, 2006; Grosscup, 2006; Sluka, 2000a; Blakeley, 2006, forthcoming; Blum, 1995; Chomsky, 1985; Gabelnick et al., 1999; Herman, 1982; Human Rights Watch, 2001, 2002; Klare, 1989; Minter, 1994; Stokes, 2005, 2006; McSherry, 2002).

The assumption that terrorism can be objectively defined and studied is also highly questionable and far more complex than this. It can be argued that terrorism is not a causally coherent, free-standing phenomenon which can be identified in terms of characteristics inherent to the violence itself (see Jackson, 2008a). In the first instance, ‘the nature of terrorism is not inherent in the violent act itself. One and the same act . . . can be terrorist or not, depending on intention and circumstance’ (Schmid and Jongman, 1988: 101) – and depending on who is describing the act. The killing of civilians, for example, is not always or inherently a terrorist act; it could perhaps be the unintentional consequence of a military operation during war. Terrorism is therefore a social fact rather than a brute fact, and like ‘security’, it is constructed through speech-acts by socially authorised speakers. That is, ‘terrorism’ is constituted by and through an identifiable set of discursive practices – such as the categorisation and collection of data by academics and security officials, and the codification of certain actions in law – which thus make it a contingent ‘reality’ for politicians, law enforcement officials, the media, the public, academics, and so on. In fact, the current discourse of terrorism used by scholars, politicians and the media is a very recent invention. Before the late 1960s, there was virtually no ‘terrorism’ spoken of by politicians, the media, or academics; instead, acts of political violence were described simply as ‘bombings’, ‘kidnappings’, ‘assassinations’, ‘hijackings’, and the like (see Zulaika and Douglass, 1996). In an important sense then, terrorism does not exist outside of the definitions and practices which seek to enclose it, including those of the terrorism studies field.

Second, an increasing number of studies suggest that the threat of terrorism to Western or international security is vastly over-exaggerated (see Jackson, 2007c; Mueller, 2006). Related to this, a number of scholars have convincingly argued that the likelihood of terrorists deploying weapons of mass destruction is in fact, miniscule (B. Jenkins, 1998), as is the likelihood that so-called rogue states would provide WMD to terrorists. A number of recent studies have also seriously questioned the notion of ‘new terrorism’, demonstrating empirically and through reasoned argument that the continuities between ‘new’ and ‘old’ terrorism are much greater than any differences. In particular, they show how the assertion that the ‘new terrorism’ is primarily motivated by religious concerns is largely unsupported by the evidence (Copeland, 2001; Duyvesteyn, 2004), as is the assertion that ‘new terrorists’ are less constrained in their targeting of civilians. Third, considering the key narratives about the origins and causes of terrorism, studies by psychologists reveal that there is little if any evidence of a ‘terrorist personality’ or any discernable psychopathology among individuals involved in terrorism (Horgan, 2005; Silke, 1998). Nor is there any real evidence that suicide bombers are primarily driven by sexual frustration or that they are ‘brainwashed’ or ‘radicalised’ in mosques or on the internet (see Sageman, 2004).

More importantly, a number of major empirical studies have thrown doubt on the broader assertion of a direct causal link between religion and terrorism and, specifically, the link between Islam and terrorism. The Chicago Project on Suicide Terrorism for example, which compiled a database on every case of suicide terrorism from 1980 to 2003, some 315 attacks in all, concluded that ‘there is little connection between suicide terrorism and Islamic fundamentalism, or any one of the world’s religions’ (Pape, 2005: 4). Some of the key findings of the study include: only about half of the suicide attacks from this period can be associated by group or individual characteristics with Islamic fundamentalism; the leading practitioners of suicide terrorism are the secular, Marxist-Leninist Tamil Tigers, who committed seventy-six attacks; of the 384 individual attackers on which data could be found, only 166, or 43 per cent, were religious; and 95 per cent of suicide attacks can be shown to be part of a broader political and military campaign which has a secular and strategic goal, namely, to end what is perceived as foreign occupation (Pape, 2005: 4, 17, 139, 210). Robert Pape’s findings are supported by other studies which throw doubt on the purported religion-terrorism link (see Bloom, 2005; Sageman, 2004; Holmes, 2005).

Lastly, there are a number of important studies which suggest that force-based approaches to counterterrorism are not only ineffective and counterproductive, but can also be damaging to individuals, communities, and human rights (see Hillyard, 1993; Cole, 2003). Certainly, there are powerful arguments to be made against the use of torture in counterterrorism (Brecher, 2007; Scarry, 2004; Jackson, 2007d), and a growing number of studies which are highly critical of the efficacy and wider consequences of the war on terrorism (see, among many others, Rogers, 2007; Cole, 2007; Lustick, 2006).

In sum, much of what is accepted as unproblematic ‘knowledge’ in terrorism studies is actually of dubious provenance. In a major review of the field, Andrew Silke has described it as ‘a cabal of virulent myths and half-truths whose reach extends even to the most learned and experienced’ (Silke, 2004b: 20). However, the purpose of the first order critique I have undertaken here is not necessarily to establish the real and final ‘truth’ about terrorism. Rather, first order critique aims simply to destabilise dominant understandings and accepted knowledge, expose the biases and imbalances in the field, and suggest that other ways of understanding, conceptualising, and studying the subject – other ways of ‘knowing’ – are possible. This kind of critical destabilisation is useful for opening up the space needed to ask new kinds of analytical and normative questions and to pursue alternative intellectual and political projects.

### 1NC/2NC Violence Bad---Epist Uncertainty

#### 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.

### AT: Terrorism – Nuclear

#### 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.

## Legal Norms Adv

### No Norms

#### Anderson is fantastic – US precedent doesn’t make sense – countries will race toward their interests

#### No ‘global precedent’ is affected by anything the U.S. does---states will inevitably pursue drones

Robert Wright 12, “The Incoherence of a Drone-Strike Advocate,” 11/14/12, http://www.theatlantic.com/international/archive/2012/11/the-incoherence-of-a-drone-strike-advocate/265256/

Naureen Shah of Columbia Law School, a guest on the show, had raised the possibility that America is setting a dangerous precedent with drone strikes. If other people start doing what America does--fire drones into nations that house somebody they want dead--couldn't this come back to haunt us? And haunt the whole world? Shouldn't the U.S. be helping to establish a global norm against this sort of thing? Host Warren Olney asked Boot to respond.

Boot started out with this observation:

I think the precedent setting argument is overblown, because I don't think other countries act based necessarily on what we do and in fact we've seen lots of Americans be killed by acts of terrorism over the last several decades, none of them by drones but they've certainly been killed with car bombs and other means.

That's true--no deaths by terrorist drone strike so far. But I think a fairly undeniable premise of the question was that the arsenal of terrorists and other nations may change as time passes. So answering it by reference to their current arsenal isn't very illuminating. In 1945, if I had raised the possibility that the Soviet Union might one day have nuclear weapons, it wouldn't have made sense for you to dismiss that possibility by noting that none of the Soviet bombs dropped during World War II were nuclear, right?

As if he was reading my mind, Boot immediately went on to address the prospect of drone technology spreading. Here's what he said:

You know, drones are a pretty high tech instrument to employ and they're going to be outside the reach of most terrorist groups and even most countries. But whether we use them or not, the technology is propagating out there. We're seeing Hezbollah operate Iranian supplied drones over Israel, for example, and our giving up our use of drones is not going to prevent Iran or others from using drones on their own. So I wouldn't worry too much about the so called precedent it sets..."

### AT: Israel Strikes

#### No strikes---Israel will compromise

Graham Allison 13 the director of the Belfer Center for Science and International Affairs at the Harvard Kennedy School, 8/1/13, "Will Iran Get a Bomb- or Be Bombed Itself- This Year?" The Atlantic, http://www.theatlantic.com/international/archive/2013/08/will-iran-get-a-bomb-or-be-bombed-itself-this-year/278253/

Israeli Prime Minister Netanyahu will continue to press for an early decision, arguing that sanctions are ineffective and only give Iran more time to expand its nuclear program. Expect President Obama, key members of the Israeli national security establishment, and others to continue arguing that sanctions and covert actions must be allowed more time to work, and that new sanctions and covert actions will be even more effective.¶ At the UN last September, Netanyahu drew a clear red line, near to but short of a nuclear bomb, and threatened that crossing it would trigger an attack on Iran. But his speech revealed his own frustration about the predicament in which he finds himself. He knows that Israel and the U.S. have been complicit in a drama in which they have repeatedly drawn red lines, asserted that Iran would never be allowed to cross them but, after watching Iran cross the line, retreated to the next operational obstacle on the path to a bomb, and declared it to be the real red line (see Table 8).¶ [Table removed]¶ Netanyahu himself was sounding the alarm as long ago as 1992, when he suggested Iran was "3 to 5 years" from a bomb; in 1996, he warned Congress that the "deadline for preventing an Iranian nuclear bomb is getting extremely close." Since then, Israeli politicians and officials have announced numerous "last chances" and "points of no return." In 2003, the head of Israeli military intelligence forecast that Iran would soon cross the "point of no return" at which "it would require no further outside aid to bring the program to fruition." A year later, Prime Minister Ariel Sharon warned that Iran would cross this point if it were allowed to develop a "technical capability" for operating an enrichment facility. As Iran approached that capability, Defense Minister Shaul Mofaz described the tipping point not as the capability, but as the "enrichment of uranium" itself. Simultaneously, the head of the Mossad, Meir Dagan, warned that Iran would reach this technological point of no return by the end of 2005. After Iran began enriching uranium, Prime Minister Ehud Olmert drew a new line in 2006 as enrichment "beyond a limited number of cascades."¶ As Iran has crossed successive red lines, Israel has retreated to the next and, in effect, hit the repeat button. From conversion of uranium; to production of LEU; to a stockpile of LEU sufficient (after further enrichment) to make one nuclear bomb; to a stockpile sufficient for a half dozen bombs; to enrichment beyond LEU to MEU; to the operation of centrifuges enriching MEU at the deep underground, formerly covert facility at Fordow, that created a "zone of immunity"; to achievement of an undefined "nuclear weapons capability," Israel's warnings have grown louder -- but no more effective. That these "points of no return" have been passed is a brute fact and hard to ignore.

### AT: Russia Aggression

#### Russia has abandoned aggression in favor of cooperation

Sawczak 11 [Dr. Peter Sawczak, Adjunct Research Fellow at Monash University, “Obama’s Russia Policy: The Wages and Pitfalls of the Reset,” peer reviewed paper presented at the 10th Biennial Conference of the Australasian Association for Communist and Post-Communist Studies, Feb 3-4 2011, <http://cais.anu.edu.au/sites/default/files/Sawczak_Obama.pdf>]

As a measure of their optimism, US officials like to point – cautiously – to a discernible shift in Russian foreign policy towards a more pragmatic, cooperative approach. Whether or not the Obama administration can claim credit for this, the United States has at least shown Russia the dividends which could flow from enhanced cooperation. This is most palpably reflected in the Russian foreign policy paper leaked in May 2010, which identifies a “need to strengthen relations of mutual interdependence with the leading world powers, such as the European Union and the US,” 5 as well as, more indirectly, in Medvedev’s modernisation agenda. The fact that Russia has sought, in the tragic circumstances attending commemoration ceremonies at Katyn, rapprochement with Poland and moved to demarcate its border with Norway,

in addition to partnering with the US on arms control, Iran and Afghanistan, suggests to US policy-makers that a rethink, however tenuous, is underway. Noteworthy also is the fact that Russia, gladdened by the emergence of more compliant leaders in Ukraine and Kyrgyzstan, has been remarkably restrained of late in its dealings closer to home, not having waged any major gas wars, threatened leaders, or incited civil war.

#### No impact

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Despite tensions that flare up, the United States and Russia are no longer enemies; **the chance of nuclear war or surprise attack is nearly zero**.

We trade in each other's equity markets. Russia has the largest audience of Facebook users in Europe, and is open to the world in a way the Soviet Union never was.