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#### Confining executive accountability to external branches overlooks decades of executive prerogative.

[Osborn 8 - prof of political theory at Whitman (Timothy V](http://search.proquest.com.libproxy.usc.edu/indexinglinkhandler/sng/au/Kaufman-Osborn,+Timothy+V/$N?accountid=14749) Kaufman-Osborn, prof of Political Theory at Whitman University, Ph.D., Princeton University, Politics, "We are all torturers now": Accountability After Abu Ghraib, Theory & Event11.2 (2008)) BN

As the preceding discussion indicates, when the question of accountability for Abu Ghraib in particular and torture more generally has been posed in recent debates within the United States, the terms of that exchange have been predictable, if not hackneyed. On the one hand, there are those who, for reasons of political expediency, seek to sever the chain of mutual political implication and so confine accountability to those most immediately involved. On the other hand, there are those who seek to re-connect the links of this chain, whether in an effort to hold accountable officials in Washington, D.C. or, sometimes, all citizens of the United States. None, however, step beyond the terrain defined by a social contractarian conception of liberal political order, and none ask about the adequacy of this characterization to the regime in which we now find ourselves. If the question of specifically collective accountability for wrong-doing, like that committed at Abu Ghraib, is to be more adequately formulated, transformation of the United States into what Iris Young labeled a "security state"12 must be appreciated. To understand that transformation requires an excursus into the history of liberalism's efforts to ensure the accountability of political power, especially as exercised by executive agencies. In large measure, whatever success this effort has enjoyed has turned on its capacity to erect and then effectively patrol specific borders between this and that. Although others might be cited, in this section, I am particularly concerned, first, with the spatial boundary between domestic and foreign, and, second, with the temporal boundary between routine and emergency. Working in tandem, these distinctions have helped sustain the claim that when executive agencies find it necessary to act at odds with liberalism's commitment to the rule of law, and so beyond the structure of accountability inherent in law's articulation of popular will, the harm done to democracy can be minimized by confining such damage to the realm of the external and episodic. If these walls have now been breached, perhaps irreparably, then neither affirmations of collective accountability for torture and other misdeeds committed by those who are said to act in "our" name, nor calls to employ conventional liberal mechanisms (e.g., lawsuits and elections) to rein in executive power, retain much plausibility. The historical tale I relate here has been told by others with far more nuance and detail. Even in barebones fashion, though, this is a tale that bears repeating in a post 9/11 context, if only because its specific content will invariably be informed by the present's distinct imperatives. In saying this, I do not mean to endorse the claim, advanced by persons whose political views are as different as those of George W. Bush and Anthony Lewis,13 that 9/11 and its aftermath ushered in a fundamentally new order. Although I will indicate what I believe is in fact distinctive about the political present in the next section, I also want to claim that the constitution of the security state has deep and tangled roots in American history. And I want to claim that reflection on the question of accountability will remain compromised as long as we accept the foreshortened historical perspective implicit in the claim that everything changed after 9/11, especially since that claim echoes and reinforces the pinched temporal perspective inherent in liberal legal efforts to assign blame for evils like those perpetrated at Abu Ghraib. Erosion of the border between domestic and foreign can be introduced by recalling the implications of the aggrandizement of executive power for the traditional doctrine of separation of powers. Among other things, the separation of powers is intended to constrain power by creating a system of checks and balances among the principal branches of government: "Ambition must be made to counteract ambition," as James Madison wrote in Federalist 51. In principle, this system enables the national legislature, acting in the name of the people, to check executive unilateralism and so safeguard the rule of law from arbitrary power; and, in principle, this system enables the federal courts, acting in the name of the people's will, as that will is expressed in the higher law that is the constitution, to rein in an unbalanced executive. On the domestic front, one can find reason to doubt the efficacy of this structure of countervailing powers even in the earliest years of the republic; think, for example, of Alexander Hamilton's aggressive promotion of a national bank as well as the federal government's assumption of debts incurred by the several states. That said, the expansion of executive power was relatively constrained until at least the Progressive era when it gained momentum, first, as a result of efforts to regulate the U.S. domestic economy (e.g., through establishment of regulatory agencies such as the Interstate Commerce Commission); and, second, as a result of efforts to mobilize the economy in support of the American military campaign in World War I. Far more rapid acceleration occurred in conjunction with the New Deal's creation, following passage of sweeping Congressional authorizations, of various social welfare programs, including, for example, the National Labor Relations Act, the Agricultural Adjustment Act, and the National Industrial Recovery Act. Each of these programs dramatically expanded the scope of executive power in the form of administrative agencies whose officials are formally subject to legislative oversight, but, for the most part, operate in its absence. The cumulative effect of the New Deal's programmatic and institutional innovations, to quote Sheldon Wolin, was to tie a vast number of Americans "into the system of state power, a system based on bureaucratic, military, and corporate institutions and operated by elites equally at home in any one of the components."14 These ties were twisted still more tightly, argues Wolin, during the Reagan (and, I would add, the second Bush) administration not simply through enormous increases in military expenditures and adoption of more comprehensive efforts to rationalize the national economy, but also, to cite a very small sample of possible examples, through "the strengthening of agencies of law enforcement; the relative indifference to the rights of the accused; the steady development of surveillance techniques, especially those relying on centralized data collections; federal drug-testing programs; and tightened security procedures for federal employees."15 Significant expansion of executive power in the realm of foreign affairs can also be traced to the late nineteenth and early twentieth centuries, especially in conjunction with the early forays of the United States into colonialism (e.g., in the Philippines). That said, the high water mark of this expansion is most plausibly located in the aftermath of World War II as the United States sought to secure its global supremacy during the Cold War. Institutionalization of this expansion was effectively marked in 1947 when Congress adopted the National Security Act, which, among other things, resulted in unification of the command structure of the military under the Joint Chiefs of Staff and creation of two new entities, the National Security Council and the Central Intelligence Agency, each of which report directly to the president. Since passage of the National Security Act, augmentation of executive power in the realm of foreign affairs has continued apace, as illustrated by the conduct of the Vietnam War during the Johnson and Nixon administrations, the Iran-Contra scandal during the Reagan administration, and, last but certainly not least, the Bush administration's undeclared war in Iraq. Granted, especially following the Vietnam debacle, Congress sought to rein in the executive's near monopolization of this domain, for example, via the War Powers Resolution (1973) and the Foreign Intelligence Surveillance Act (1978). But, to quote Kim Scheppele, these efforts have proven "quite ineffectual. Not only has the president asked permission of the Congress before committing the country to military engagements or foreign policy obligations only as a matter of courtesy rather than as a matter of law (and then only sometimes), but Congress has typically not attempted to enforce any of its powers under the 1970s-era legislation...The balance of powers struck during the Cold War, with a bulked-up executive, a wizened Congress, their disputes only partly subject to refereeing by courts, remains largely intact."16 The aggrandizement of executive power at home and abroad has over time corroded the very distinction between domestic and foreign, and that in turn has vitiated a key premise undergirding liberalism's affirmation of power's accountability. Vitiation of the border between domestic and foreign is signified by familiarization of the phrase "national security," which, Scheppele notes, had not been part of common parlance before World War II. Its employment postulates the interrelatedness of so many different political, economic, and military factors that developments halfway around the globe are seen to have automatic and direct impact on America's core interests. Virtually every development in the world is perceived to be potentially crucial. An adverse turn of events anywhere endangers the United States. Problems in foreign relations are viewed as urgent and immediate threats. Thus, desirable foreign policy goals are translated into issues of national survival, and the range of threats becomes limitless. The doctrine is characterized by expansiveness, a tendency to push the subjective boundaries of security outward to more and more areas, to encompass more and more geography and more and more problems. It demands that the country assume a posture of military preparedness; the nation must be on permanent alert.17 Among other consequences, chronic invocation of the imperatives of "national security" has encouraged the cult of secrecy that shields large swaths of executive conduct from scrutiny. Consider, for example, the Truman Administration's announcement in 1951 of its authority to classify information bearing on national security, which made it more difficult for Congress, let alone ordinary citizens, to know what actions were being taken by the executive branch and hence to hold it accountable for those deeds. Still more important, appeals to national security have had the effect of turning inward exercises of power once more typically confined to foreign affairs. In this regard, consider executive initiation of various programs of internal surveillance during the Cold War, which effectively confused the domestic law enforcement responsibilities of the FBI and the foreign intelligence responsibilities assigned to the CIA. (In this sense, the Bush administration's decision to authorize the National Security Agency to eavesdrop on citizen and non-citizen alike in order to search for evidence of terrorist-related activity without the court-approved warrants ordinarily required for domestic spying is a continuation by more sophisticated technological means of accomplishing executive ambitions long in the making.) What we see here is not simply the aggrandizement of executive power in the name of national security, but, to turn to the second concern of this section, the executive's growing reliance on the doctrine of emergency to justify such expansion. As already noted, liberal political theory has always been haunted by the specter of unaccountable power, especially when exercised by an executive in response to situations that appear to demand action absent or even violative of legal authorization. A key response to this anxiety, argues Jules Lobel, has been to divide executive action into two distinct spheres: "normal constitutional conduct, inhabited by law, universal rules, and reasoned discourse; and a realm where universal rules are inadequate to meet the particular emergency situation and where law must be replaced by discretion and politics."18 Here, once again, the building of a wall, and the subsequent policing of the boundary it marks, is central to sustaining the tenability of the distinction said to demarcate liberal political orders from those in which power, because unbounded, cannot be held to account.19 This distinction was elaborated by John Locke in his account of prerogative power, and that account was well-known to the framers of the U.S. Constitution. It suggests that under non-exceptional circumstances executive power will respect the separation of powers, civil liberties, and the rule of law. However, under conditions of political emergency, which are most likely to arise in the context of international relations (which Locke distinguishes as the domain of the "federative power," although he effectively folds this domain into the executive branch), such respect will be supplanted by forms of extra-constitutional executive discretion, even, as Locke states, "without the prescription of law, and sometimes even against it."20 As a rule, Locke believed that a desire for collective security will induce people to acquiesce in the executive's possession and exercise of prerogative power, and that acquiescence, understood as a form of tacit consent, suffices to render this power legitimate. At the same time, though, Locke insisted that a people is forever authorized to initiate a revolution aimed at restoring violated or purloined rights. Admittedly, given his contention that persons are more disposed to endure than to remedy governmental abuse,21 this insistence may ring hollow. That Locke himself did not in fact find it empty is largely a measure of his confidence in the meaningfulness of the distinction between ordinary and extraordinary. The extraordinary form of power labeled prerogative, on Locke's account, does not fundamentally compromise or imperil the rule of law, and the commitment to popular sovereignty it expresses, because its exercise can be distinguished from everyday political life and confined to truly exceptional circumstances. In the context of U.S. history, it was Thomas Jefferson who offered the most vigorous expression of Locke's insistence on the ultimate accountability of executive rule, when exercised in the mode of prerogative power. In 1803, for example, Jefferson acknowledged that the Louisiana Purchase was extra-constitutional and, strictly speaking, illegal insofar as it was completed absent a "previous and special sanction by law."22 However, and going beyond Locke's contention that popular acquiescence in the legitimacy of prerogative power should be presupposed unless it meets with express rejection, Jefferson insisted that each specific exercise of such power must secure express ex post facto legislative ratification. In the absence of such ratification, executive agents are subject to legal sanctions for violating the dictates of the law, no matter how noble their motivations might have been. Arguably, the most significant challenge to the Jeffersonian understanding can be found in Abraham Lincoln's suspension of habeas corpus in 1861 (although how one understands that act depends in large measure on whether or not one thinks that in doing so Lincoln affirmed a doctrine of inherent constitutional powers, including emergency powers, which would then imply that actions taken in the name of necessity are constitutional and so do not require ex post facto ratification).23 Less ambiguous harbingers of the growing irrelevance of liberalism's distinction between the everyday and the emergency can be located in the late nineteenth and early twentieth centuries. Consider, for example, Theodore Roosevelt's statement that, in responding to national crises, the president has the "legal right to do whatever the needs of the people demand, unless the Constitution or the laws explicitly forbid him to do it."24 Still more pointedly, consider Franklin Roosevelt's claim that the economic crisis of the Great Depression created an emergency akin to that posed by an invading foreign power, and that the powers granted by the Constitution may expand in order to deal with such a crisis. This view was effectively granted the imprimatur of the Supreme Court, first, in 1934 when it applied the emergency powers doctrine to a situation outside the context of war;25 and, second, in 1936 when the Court stated that, in matters relating to national security, the president enjoys exclusive powers that extend beyond the specific affirmative grants found in the Constitution but are nonetheless inherent within it.26 These precedents notwithstanding, Scheppele is surely correct when she suggests that it was the Cold War that witnessed "an indefinite future of crises and a perpetual alteration of both separation of powers and individual rights. In short, the Cold War ushered in an era of 'permanent emergency' in which the constitutional sacrifices to be made were not clearly temporary or reversible."27 Indeed, from the Great Depression through the Cold War, Congress passed no fewer than 470 statutes granting the executive discretionary authority to wield one power or another, ordinarily exercised by the legislature, in response to specific states of "national emergency." Many of these statutes, remaining in effect long after dissipation of the circumstances that initially prompted their passage, were subsequently trotted out by the executive for very different purposes (as when the Feed and Forage Act of 1861 was invoked as authorization for the allocation of funds to invade Cambodia in 1971). A nominal measure of restraint was imposed by Congress in 1976 when, in response to abuses of executive power, including the Watergate scandal, it passed the National Emergencies Act, terminating all existing states of emergency and requiring, among other restrictions, that the president report to Congress on emergency orders and expenditures. An additional layer of largely symbolic restraint was imposed the following year when Congress passed the International Emergency Economic Powers Act of 1977, which included an affirmation of the authority of Congress to suspend any declared emergency by concurrent resolution, but, at the same time, formally authorized the president to declare such emergencies in response to "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States."28 Reviewing presidential invocation of these statutes to impose trade, travel, and technology restrictions, to adopt wage and salary controls, to detain immigrants and refugees, to deploy military personnel alongside civilian law enforcement officials engaged in the so-called "war on drugs," and so forth, Lobel concludes that the success of Congressional efforts to restrain executive emergency authority has proven "dismal. These statutes lie in shambles, wrecked by presidential defiance, congressional acquiescence and judicial undermining."29 To summarize, since the New Deal and, still more emphatically, since the Cold War (but well before 9/11), the principal borders erected by liberalism in order to protect against unaccountable power, especially unchecked power exercised by the national executive, have eroded, if not collapsed outright. Also, and perhaps best illustrated by official establishment of the National Security Agency in 1954, disintegration of the spatial distinction between domestic and foreign as well as the temporal distinction between the ordinary and the emergency has generated not a political vacuum, but a complex of recalcitrant bureaucratic institutions, whether as a result of broad delegations of power from Congress and/or as a result of sweeping executive reorganizations. The net result is constitution of a security state that bears only passing resemblance to the liberal political order imagined by social contract theory.

#### Liberal institutionalism is an imperial ideology disguised by the language of science. Liberal institutionalism requires the elimination of non-liberal forms of life to achieve national security

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Writing in 1952, Reinhold Niebuhr expressed this point in what remains arguably the single best book on the United States in world affairs, The Irony of American History. 'There is a deep layer of Messianic consciousness in the mind of America,' the theologian wrote. Still, 'We were, as a matter of fact, always vague, as the whole liberal culture is fortunately vague, about how power is to be related to the allegedly universal values which we hold in trust for mankind' (Niebuhr 2008: 69). 'Fortunate vagueness', he explained, arose from the fact that 'in the liberal version of the dream of managing history, the problem of power is never fully elaborated' (Niebuhr 2008: 73). Here was a happy fact that distinguished us from the communists, who assumed, thanks to their ideology, that they could master history, and so were assured that the end would justify the means, such that world revolution under their auspices would bring about universal justice, freedom , and that most precious of promises, peace. In contrast, Niebuhr could write: On the whole, we have as a nation learned the lesson of history tolerably well. We have heeded the warning 'let not the wise man glory in his wisdom, let not the mighty man glory in his strength.' Though we are not without vainglorious delusions in regard to our power, we are saved by a certain grace inherent in common sense rather than in abstract theories from attempting to cut through the vast ambiguities of our historic situation and thereby bringing our destiny to a tragic conclusion by seeking to bring it to a neat and logical one ... This American experience is a refutation in parable of the whole effort to bring the vast forces of history under the control of any particular will, informed by a particular ideal ... [speaking of the communists] All such efforts are rooted in what seems at first glance to be a contradictory combination of voluntarism and determinism. These efforts are on the one hand excessively voluntaristic, assigning a power to the human will and the purity to the mind of some men which no mortal or group of mortals possesses. On the other, they are excessively deterministic since they regard most men as merely the creatures of an historical process. (Niebuhr 2008: 75, 79) The Irony of American History came out in January 1952, only months after the publication of Hannah Arendt's The Origins of Totalitarianism, a book that reached a conclusion similar to his. Fundamentalist political systems of thought, Arendt (1966: 467-9) wrote, are known for their scientific character; they combine the scientific approach with results of philosophical relevance and pretend to be scientific philosophy . .. Ideologies pretend to know the mysteries of the whole historical process—the secrets of the past, the intricacies of the present, the uncertainties of the future—because of the logic inherent in their respective ideas ... they pretend to have found a way to establish the rule of justice on earth ... All laws have become laws of movement. And she warned: Ideologies are always oriented toward history .... The claim to total explanation promises to explain all historical happenings ... hence ideological thinking becomes emancipated from the reality that we perceive with our five senses, and insists on a ' truer' reality concealed behind all perceptible things, dominating them from this place of concealment and requiring a sixth sense that enables us to become aware of it. ... Once it has established its premise, its point of departure, experiences no longer interfere with ideological thinking, nor can it be taught by reality. (Arendt 1966: 470) For Arendt as for Niebuhr, then, a virtue of liberal democracy was its relative lack of certitude in terms of faith in an iron ideology that rested on a pseudoscientific authority that its worldwide propagation would fulfill some mandate of history, or to put it more concretely, that the United States had been selected by the logic of historical development to expand the perimeter of democratic government and free market capitalism to the ends of the earth, and that in doing so it would serve not only its own basic national security needs but the peace of the world as well. True, in his address to the Congress asking for a declaration of war against Germany in 1917, Wilson had asserted, 'the world must be made safe for democracy. Its peace must be planted upon the tested foundations of political liberty.' (Link 1982: 533). Yet just what this meant and how it might be achieved were issues that were not resolved intellectually—at least not before the 1990s. Reinhold Niebuhr died in 1971, Hannah Arendt in 1975, some two decades short of seeing the 'fortunate vagueness' Niebuhr had saluted during their prime be abandoned by the emergence of what can only be called a ' hard liberal internationalist ideology', one virtually the equal of Marxism- Leninism in its ability to read the logic of History and prescribe how human events might be changed by messianic intervention into a world order where finally justice, freedom , and peace might prevail. The authors of this neo-liberal, neo-Wilsonianism: left and liberal academics. Their place of residence: the United States, in leading universities such as Harvard, Yale, Princeton, and Stanford. Their purpose: the instruction of those who made foreign policy in Washington in the aftermath of the Cold War. Their ambition: to help America translate its 'unipolar moment' into a 'unipolar epoch' by providing American leaders with a conceptual blueprint for making the world safe for democracy by democratising the world, thereby realizing through 'democratic globalism' the century-old Wilsonian dream—the creation of a structure of world peace. Their method: the construction of the missing set of liberal internationalist concepts whose ideological complexity, coherence, and promise would be the essential equivalence of MarxismLeninism, something most liberal internationalists had always wanted to achieve but only now seemed possible. Democratic globalism as imperialism in the 1990s The tragedy of American foreign policy was now at hand. Rather than obeying the strictures of a ' fortunate vagueness' which might check its ' messianic consciousness', as Niebuhr had enjoined, liberal internationalism became possessed of just what Arendt had hoped it might never develop, 'a scientific character ... of philosophic relevance' that 'pretend[s] to know the mysteries of the whole historical process,' that 'pretend[s] to have found a way to establish the rule of justice on earth ' (Niebuhr 2008: 74; Arendt 1966: 470). Only in the aftermath of the Cold War, with the United States triumphant and democracy expanding seemingly of its own accord to many comers of the world—from Central Europe to different countries in Asia (South Korea and Taiwan), Africa (South Africa), and Latin America (Chile and Argentina)—had the moment arrived for democracy promotion to move into a distinctively new mode, one that was self-confidently imperialist. Wilsonians could now maintain that the study of history revealed that it was not so much that American power had won the epic contest with the Soviet Union as that the appeal of liberal internationalism had defeated proletarian internationalism. The victory was best understood, then, as one of ideas, values, and institutions—rather than of states and leaders. In this sense, America had been a vehicle of forces far greater than itself, the sponsor of an international convergence of disparate class, ethnic, and nationalist forces converging into a single movement that had created an historical watershed of extraordinary importance. For a new world, new ways of thinking were mandatory. As Hegel has instructed us, 'Minerva's owl flies out at dusk' , and liberal scholars of the 1990s applied themselves to the task of understanding the great victories of democratic government and open market economies over their adversaries between 1939 and 1989. What, rather exactly, were the virtues of democracy that made these amazing successes possible? How, rather explicitly, might the free world now protect, indeed expand, its perimeter of action? A new concept of power and purpose was called for. Primed by the growth of think-tanks and prestigious official appointments to be 'policy relevant' , shocked by murderous outbreaks witnessed in the Balkans and Central Africa, believing as the liberal left did that progress was possible, Wilsonians set out to formulate their thinking at a level of conceptual sophistication that was to be of fundamental importance to the making of American foreign policy after the year 2000.6 The jewel in the crown of neo-liberal internationalism as it emerged from the seminar rooms of the greatest American universities was known as ' democratic peace theory'. Encapsulated simply as ' democracies do not go to war with one another', the theory contended that liberal democratic governments breed peace among themselves based on their domestic practices of the rule of law, the increased integration of their economies through measures of market openness, and their participation in multilateral organisations to adjudicate conflicts among each other so as to keep the peace. The extraordinary success of the European Union since the announcement of the Marshall Plan in 1947, combined with the close relations between the United States and the world's other liberal democracies, was taken as conclusive evidence that global peace could be expanded should other countries join ' the pacific union ', ' the zone of democratic peace'. A thumb-nail sketch cannot do justice to the richness of the argument. Political scientists of an empirical bent demonstrated conclusively to their satisfaction that 'regime type matters ', that it is in the nature of liberal democracies to keep the peace with one another, especially when they are integrated together economically. Theoretically inclined political scientists then argued that liberal internationalism could be thought of as ' non-utopian and non-ideological ', a scientifically validated set of concepts that should be recognized not only as a new but also a dominant form of conceptual ising the behaviour of states (Moravcsik 1997). And liberal political philosophers could maintain on the basis of democratic peace theory that a Kantian (or Wilsonian) liberal world order was a morally just goal for progressives worldwide to seek so that the anarchy of states, the Hobbesian state of nature, could be superseded and a Golden Age of what some dared call 'post-history' could be inaugurated (Rawls 1999). Yet if it were desirable that the world's leading states be democratised, was it actually possible to achieve such a goal? Here a second group of liberal internationalists emerged, intellectuals who maintained that the transition from authoritarian to democratic government had become far easier to manage than at earlier historical moments. The blueprint of liberal democracy was now tried and proven in terms of values, interests, and institutions in a wide variety of countries. The seeds of democracy could be planted by courageous Great Men virtually anywhere in the world. Where an extra push was needed, then the liberal world could help with a wide variety of agencies from the governmental (such as the Agency for International Development or the National Endowment for Democracy in the United States) to the non-governmental (be it the Open Society Institute, Human Rights Watch, Amnesty International, or Freedom House). With the development of new concepts of democratic transition, the older ideas in democratization studies of 'sequences' and ' preconditions' could be jettisoned. No longer was it necessary to count on a long historical process during which the middle class came to see its interests represented in the creation of a democratic state, no longer did a people have to painfully work out a social contract of tolerance for diversity and the institutions of limited government under the rule of law for democracy to take root. Examples as distinct as those of Spain, South Korea, Poland, and South Africa demonstrated that a liberal transformation could be made with astonishing speed and success. When combined, democratic peace theory and democratic transition theory achieved a volatile synergy that neither alone possessed. Peace theory argued that the world would benefit incalculably from the spread of democratic institutions, but it could not say that such a development was likely. Transition theory argued that rapid democratisation was possible, but it could not establish that such changes would much matter for world politics. Combined, however, the two concepts came to be the equivalent of a Kantian moral imperative to push what early in the Clinton years was called ' democratic enlargement' as far as Washington could while it possessed the status of the globe's sole superpower. The result would be nothing less than to change the character of world affairs that gave rise to war—international anarchy system and the character of authoritarian states—into an order of peace premised on the character of democratic governments and their association in multilateral communities basing their conduct on the rule of law that would increasingly have a global constitutional character. The arrogant presumption was, in short, that an aggressively liberal America suddenly had the possibility to change the character of History itself toward the reign of perpetual peace through democracy promotion. Enter the liberal jurists. In their hands a 'right to intervene' against states or in situations where gross and systematic human rights were being violated or weapons of mass destruction accumulated became a 'duty to intervene' in the name of what eventually became called a state 's 'responsibility to protect.' (lCISS 200 I). The meaning of 'sovereignty' was now transformed. Like pirate ships of old, authoritarian states could be attacked by what Secretary of State Madeleine Albright first dubbed a 'Community of Democracies', practicing ' muscular multilateralism' in order to reconstruct them around democratic values and institutions for the sake of world peace. What the jurists thus accomplished was the redefinition not only of the meaning of sovereignty but also that of 'Just War'. Imperialism to enforce the norms a state needed to honor under the terms of its 'responsibility to protect' (or 'R2P' as its partisans liked to phrase it) was now deemed legitimate. And by moving the locus of decision-making on the question of war outside the United Nations (whose Security Council could not be counted on to act to enforce the democratic code) to a League, or Community, or Concert of Democracies (the term varied according to the theorist), a call to arms for the sake of a democratising crusade was much more likely to succeed.

**The aff legitimizes the war on terror and the executive's targeted killing.**

**Wainstein ‘13**

[STATEMENT OF ¶ KENNETH L. WAINSTEIN, PARTNER ¶ CADWALADER, WICKERSHAM & TAFT LLP ¶ BEFORE THE ¶ COMMITTEE ON FOREIGN RELATIONS ¶ UNITED STATES SENATE ¶ CONCERNING ¶ COUNTERTERRORISM POLICIES AND PRIORITIES: ¶ ADDRESSING THE EVOLVING THREAT ¶ PRESENTED ON ¶ MARCH 20, 2013. <http://www.foreign.senate.gov/imo/media/doc/Wainstein_Testimony.pdf> ETB]

It has recently become clear, however, that the Al Qaeda threat that occupied our attention after 9/11 is no longer the threat that we will need to defend against in the future. Due largely to the effectiveness of our counterterrorism efforts, the centralized leadership that had directed Al Qaeda operations from its sanctuary in Afghanistan and Pakistan -- known as “Al Qaeda Core” -- is now just a shadow of what it once was. While still somewhat relevant as an inspirational force, Zawahiri and his surviving lieutenants are reeling from our aerial strikes and no longer have the operational stability to manage an effective global terrorism campaign. The result has been a migration of operational authority and control from Al Qaeda Core to its affiliates in other regions of the world, such as Al Qaeda in the Arabian Peninsula, Al Qaeda in Iraq and Al Qaeda in the Islamic Maghreb. As Andy Liepman of the RAND Corporation cogently explained in a recent article, this development is subject to two different interpretations. While some commentators diagnose Al Qaeda as being in its final death throes, others see this franchising process as evidence that Al Qaeda is “coming back with a vengeance as the new jihadi hydra.” As is often the case, the truth likely falls somewhere between these polar prognostications. Al Qaeda Core is surely weakened, but its nodes around the world have picked up the terrorist mantle and continue to pose a threat to America and its allies -- as tragically evidenced by the recent violent takeover of the gas facility in Algeria and the American deaths at the U.S. Mission in Benghazi last September. This threat has been compounded by a number of other variables, including the opportunities created for Al Qaeda by the events following the Arab Spring; the ongoing threat posed by Hizballah, its confederates in Iran and other terrorist groups; and the growing incidence over the past few years of home-grown violent extremism within the United States, such as the unsuccessful plots targeting Times Square and the New York subway. We are now at a pivot point where we need to reevaluate the means and objectives of our counterterrorism program in light of the evolving threat. The Executive Branch is currently engaged in that process and has undertaken a number of policy shifts to reflect the altered threat landscape. First, it is working to develop stronger cooperative relationships with governments in countries like Yemen where the Al Qaeda franchises are operating. Second, they are coordinating with other foreign partners -- like the French in Mali and the African Union Mission in Somalia -- who are actively working to suppress these new movements. Finally, they are building infrastructure -- like the reported construction of a drone base in Niger -- that will facilitate counterterrorism operations in the regions where these franchises operate. While it is important that the Administration is undergoing this strategic reevaluation, it is also important that Congress participate in that process. Over the past twelve years, Congress has made significant contributions to the post-9/11 reorientation of our counterterrorism program. First, it has been instrumental in strengthening our counterterrorism capabilities. From the Authorization for Use of Military Force passed within days of 9/11 to the Patriot Act and its reauthorization to the critical 2008 amendments to the Foreign Intelligence Surveillance Act, Congress has repeatedly answered the government’s call for strong but measured authorities to fight the terrorist adversary. Second, Congressional action has gone a long way toward institutionalizing measures that were hastily adopted after 9/11 and creating a lasting framework for what will be a “long war” against international terrorism. Some argue against such legislative permanence, citing the hope that today’s terrorists will go the way of the radical terrorists of the 1970’s and largely fade from the scene over time. That, I’m afraid, is a pipe dream. The reality is that international terrorism will remain a potent force for years and possibly generations to come. Recognizing this reality, both Presidents Bush and Obama have made a concerted effort to look beyond the threats of the day and to focus on regularizing and institutionalizing our counterterrorism measures for the future -- as most recently evidenced by the Administration’s effort to develop lasting procedures and rules of engagement for the use of drone strikes. Finally, Congressional action has provided one other very important element to our counterterrorism initiatives -- a measure of political legitimacy that could never be achieved through unilateral executive action. At several important junctures since 9/11, Congress has undertaken to carefully consider and pass legislation in sensitive areas of executive action, such as the legislation authorizing and governing the Military Commissions and the amendments to our Foreign Intelligence Surveillance Act. On each such occasion, Congress’ action had the effect of calming public concerns and providing a level of political legitimacy to the Executive Branch’s counterterrorism efforts. That legitimizing effect -- and its continuation through meaningful oversight -- is critical to maintaining the public’s confidence in the means and methods our government uses in its fight against international terrorism. It also provides assurance to our foreign partners and thereby encourages them to engage in the operational cooperation that is so critical to the success of our combined efforts against international terrorism.

#### A drone attack has a massive psychological effect on those it leaves behind, beyond just physical injury and death.

Bhojani 1/28 H. H. Bhojani spent a few days with Rafiq ur-Rehman and his family when they were in New York for the testimony to Congress about the death of their grandmother by drone strike in Pakistan. “The terrible human price of Obama’s drone war” http://www.salon.com/2014/01/28/the\_terrible\_human\_price\_of\_obamas\_drone\_war\_partner/

The terrible human price of Obama’s drone war Nabila’s drawings are like any other nine-year-old’s. A house rests besides a winding path, a winding path on which wander two stick figures. Tall trees, rising against the back drop of majestic hills. Clouds sprinkled over a clear sky. Nabila’s drawings are like any other nine-year-old’s. With one disturbing exception. Hovering over the house, amidst the clouds, above the people, are two drone aircraft. Perhaps this is the scene she saw moments before the drone strike, a mental photograph captured with crayons. Nabila lives in the village of Tapi, in the northwest of Pakistan, an area perpetually under drones. With the strokes of her crayons, she lets her reality spill out onto paper. Drones started appearing in Nabila’s drawings after she saw her Dadi (grandmother) blown to pieces by a hellfire missile in 2012, a strike that left her, her 12-year-old brother Zubair and 7 other children injured. Beyond the harrowing tragedy of death and injury, living under drones leaves deep psychological wounds. An Arbitrary Threat A night spent in agony. “I spent my Eid in the hospital,” Zubair tells me about the day he was injured in the drone strike, running his finger down the faded shrapnel scar above his knee. The physical scar may have faded but the mental scars are etched much deeper. Nabila lifts up her sleeve to show me where she got hurt. She then grabs my camera and bounces off the walls, snapping photos. I’m in a New York hotel room with Nabila, Zubair and their father Rafiq. Pizza boxes litter the room; the TV drones on, indistinct and irrelevant. The day before, a crisp October 29th, 2013, they had testified at a Congressional hearing, recounting the events of last year. The family is exhausted from the countless, constant interviews with the media; from the cab rides zigzagging through New York City (“New York is like Peshawar, while DC is like Islamabad,” Zubair remarks while we’re on our way to yet another interview); from reciting the same story over and over again. The family is featured in filmmaker Robert Greenwald’s documentary Unmanned: America’s Drone Wars. Greenwald and the fantastic teams at Brave New Foundation and Reprieve toiled tirelessly for months to bring them in front of American lawmakers. ADVERTISEMENT October 24th, 2012, the day Nabila’s Dadi Mamina Bibi was killed, was much like the day in her drawings. A blue canopy stretching out as far as the eye could see. Drones lingering overhead. Nabila and her Zubair working with Dadi in the field next to their home. The drones hovered lower than usual that day, casting a particularly loud thrum over the village. Zubair had grown much too used to their incessant buzzing. He ignored them; no reason to be worried. After all, Zubair isn’t a terrorist. He was more preoccupied with the Muslim holiday of Eid which was the next day–a “magical time filled with joy.” Although English was his favorite class, he was eager to get out of school to get home. After wolfing down his roti(bread), he appeared before God for the afternoon prayer. Dadi had promised him that celebrations would start as soon as he finished his chores. As Zubair cut grass, he saw two beams of light hit Dadi. A scream pierced through the shroud of smoke that had descended onto the field, blotting out the sun. His thigh burned. Although, it happened over a year ago, Zubair and Nabila cannot assume that the threat is over since they have not been told why their home was targeted in the first place. In his congressional testimony their father Rafiq asked, “Congressman Grayson, as a teacher, my job is to educate. But how do I teach something like this? How do I explain what I myself do not understand? How can I in good faith reassure the children that the drone will not come back and kill them, too, if I do not understand why it killed my mother?” Discussions around drones often revolve around discrepancies in the number of those killed, often glossing over the experiences of those still living. Mamina Bibi’s grandchildren live in perpetual fear of the drones that lurk overhead. “They whiz around in a circle, sometimes two, sometimes four,” Rafiq says, making a circling gesture with his right index figure. Dr. Mian Iftikhar, who has been practicing in the northwest of Pakistan for 26 years, told me that he has received many cases of “anxiety disorder –generalized anxiety disorder when the anxiety symptoms are persistent, and phobic anxiety disorders— [when the patient has a] phobia of going to public places, schools, institutions, markets, which attract suicide bombings, terrorism or drone strikes.” “Anxiety disorder is always associated with threat or risk,” he explains. The arbitrary nature of drone strikes is exactly what makes them so scary. Like terrorism, drones generate disproportionate fear because they can happen anytime. “I’m afraid to go outside. I don’t even see my friends anymore,” Nabila says. Living Under Drones, a report outlining the terrorizing effects of Obama’s drone assaults, is the result of nine months of intensive research. The report is “based on over 130 detailed interviews with victims and witnesses of drone activity, their family members, current and former Pakistani government officials, representatives from five major Pakistani political parties, subject matter experts, lawyers, medical professionals, development and humanitarian workers, members of civil society, academics, and journalists.” People living under drones can’t have survival strategies- they don’t know when or where or who a drone can strike. Bhojani 1/28 H. H. Bhojani spent a few days with Rafiq ur-Rehman and his family when they were in New York for the testimony to Congress about the death of their grandmother by drone strike in Pakistan. “The terrible human price of Obama’s drone war” http://www.salon.com/2014/01/28/the\_terrible\_human\_price\_of\_obamas\_drone\_war\_partner/ Before he joined the faculty at Stanford Law School, Stephen Sonnenberg, the co-author of the Living Under Drones report, had worked in many conflict zones. “In most war zones, civilians will be able to tell you how to protect yourself, ‘if you don’t go out here, if you don’t do this.’ There are strategies for survival,” he tells me. Sonnenberg’s experiences in the north west of Pakistan were different. “One of the things that struck me personally in talking to drone victims was that they didn’t have any survival strategies. They didn’t know how to behave themselves. [It was remarkable] the way people perceived that this all-seeing eye could strike you from nowhere.” People don’t have “survival strategies” because the drone program is shrouded under a cloak of secrecy. The US government does not disclose how they classify a militant or a civilian, or what constitutes behaviour warranting a drone strike. A report in the New York Times from May, 2012 reveals that the American government counts all military-age males in a strike zone as “militants.” Hence the Pentagon’s low count of collateral deaths. In four years Zubair can be counted as a militant. Furthermore, the Obama administration executes “signature strikes,” based on a “pattern of life” analysis in which suspicious behaviour is sufficient to warrant an attack. What exactly constitutes suspicious behaviour is not entirely clear. Previously, drone strikes have crashed weddings, schools, funerals, rescuers, and Jirga gatherings (town hall meetings). “While the number of drone strikes have drastically reduced since they first started, the policy hasn’t become any clearer,” Sonnenberg says. This is especially true for the civilians in remote, tribal areas who have even more limited access to information than the rest of us do. January 23rd marked the 5th anniversary of Obama’s war on drones. “The program is not over. It’s changing, and the changes are not in a way that is transparent,” says Sonnenberg.

#### Our alternative - challenge to *conceptual* framework of national security. Only our alternative displaces the source of executive overreach. Legal restraint without conceptual change is futile.

Rana 11 - Law at Cornell (Aziz Rana, “Who Decides on Security?” Cornell Law Faculty Working Papers, Paper 87, http://scholarship.law.cornell.edu/clsops\_papers/87\_

The prevalence of these continuities between Frankfurter’s vision and contemporary judicial arguments raise serious concerns with today’s conceptual framework. Certainly, Frankfurter’s role during World War II in defending and promoting a number of infamous judicial decisions highlights the potential abuses embedded in a legal discourse premised on the specially-situated knowledge of executive officials and military personnel. As the example of Japanese internment dramatizes, too strong an assumption of expert understanding can easily allow elite prejudices—and with it state violence—to run rampant and unconstrained. For the present, it hints at an obvious question: How skeptical should we be of current assertions of expertise and, indeed, of the dominant security framework itself? One claim, repeated especially in the wake of September 11, has been that regardless of normative legitimacy, the prevailing security concept—with its account of unique knowledge, insulation, and hierarchy—is simply an unavoidable consequence of existing global dangers. Even if Herring and Frankfurter may have been wrong in principle about their answer to the question “who decides in matters of security?” they nevertheless were right to believe that complexity and endemic threat make it impossible to defend the old Lockean sensibility. In the final pages of the article, I explore this basic question of the degree to which objective conditions justify the conceptual shifts and offer some initial reflections on what might be required to limit the government’s expansive security powers. VI. CONCLUSION: THE OPENNESS OF THREATS The ideological transformation in the meaning of security has helped to generate a massive and largely secret infrastructure of overlapping executive agencies, all tasked with gathering information and keeping the country safe from perceived threats. In 2010, The Washington Post produced a series of articles outlining the buildings, personnel, and companies that make up this hidden national security apparatus. According to journalists Dana Priest and William Arkin, there exist “some 1271 government organizations and 1931 private companies” across 10,000 locations in the United States, all working on “counterterrorism, homeland security, and intelligence.”180 This apparatus is especially concentrated in the Washington, D.C. area, which amounts to “the capital of an alternative geography of the United States.”181 Employed by these hidden agencies and bureaucratic entities are some 854,000 people (approximately 1.5 times as many people as live in Washington itself) who hold topsecret clearances.182 As Priest and Arkin make clear, the most elite of those with such clearance are highly trained experts, ranging from scientists and economists to regional specialists. “To do what it does, the NSA relies on the largest number of mathematicians in the world. It needs linguists and technology experts, as well as cryptologists, known as ‘crippies.’”183 These professionals cluster together in neighborhoods that are among the wealthiest in the country—six of the ten richest counties in the United States according to Census Bureau data.184 As the executive of Howard County, Virginia, one such community, declared, “These are some of the most brilliant people in the world. . . . They demand good schools and a high quality of life.”185 School excellence is particularly important, as education holds the key to sustaining elevated professional and financial status across generations. In fact, some schools are even “adopting a curriculum . . . that will teach students as young as 10 what kind of lifestyle it takes to get a security clearance and what kind of behavior would disqualify them.”186 The implicit aim of this curriculum is to ensure that the children of NSA mathematicians and Defense Department linguists can one day succeed their parents on the job. In effect, what Priest and Arkin detail is a striking illustration of how security has transformed from a matter of ordinary judgment into one of elite skill. They also underscore how this transformation is bound to a related set of developments regarding social privilege and status—developments that would have been welcome to Frankfurter but deeply disillusioning to Brownson, Lincoln, and Taney. Such changes highlight how one’s professional standing increasingly drives who has a right to make key institutional choices. Lost in the process, however, is the longstanding belief that issues of war and peace are fundamentally a domain of common care, marked by democratic intelligence and shared responsibility. Despite such democratic concerns, a large part of what makes today’s dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. Thus, the best response is the further entrenchment of Herring’s national security state, with the U.S. permanently mobilized militarily to gather intelligence and to combat enemies wherever they strike—at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs. Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are not objective empirical judgments but rather are socially complex and politically infused interpretations. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves riddled with ideological presuppositions and subjective biases. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that the question of who decides—and with it the issue of how democratic or insular our institutions should be—remains open as well. Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers.189 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view—such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy. In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have—at times unwittingly—reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states. The key point is that regardless of whether one agrees with such an underlying project, the value of this project is ultimately an open political question. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers—which have been consistent in recent years—place the gravity of the threat in perspective. Rather than a condition of endemic danger—requiring everincreasing secrecy and centralization—such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling. It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions—like the centrality of global primacy or the view that instability abroad necessarily implicates security at home—shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge. If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. 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 both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean 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 no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

### TPA

#### TPA will pass – Reid opposition is just posturing

CNN, 2-1-’14 (Jason Seher, “Kerry, Hagel rebuke Reid on fast-track trade bill” http://politicalticker.blogs.cnn.com/2014/02/01/kerry-hagel-rebuke-reid-on-fast-track-track-bill/)

In a rare joint appearance at the Munich Security Conference, Secretary of State John Kerry and Defense Secretary Chuck Hagel dismissed Senate Majority Leader Harry Reid's opposition to renewing fast-track trade authority and predicted that the bill will ultimately pass in spite of Reid's opposition. "I've heard plenty of statements in the Senate on one day that are categorical, and we've wound up finding accommodations and a way to find our way forward," Kerry told the audience of European allies. "I respect Harry Reid, worked with him for a long time," Kerry said. "I think all of us have learned to interpret a comment on one day in the United States Senate as not necessarily what might be the situation in a matter of months." Reid said Wednesday he is unlikely to consider a bill on the issue anytime soon. "I’m against fast track," said Reid, who controls which bills get to the Senate floor. "I think everyone would be well-advised not to push this right now." With several outstanding trade pacts - including a major deal with the European Union - securing President Barack Obama's "trade promotion authority" remains a priority for the administration. The power would limit Congress' ability to influence American trade policy, only allowing them up or down votes on massive trade deals while leaving negotiations with other nations entirely under the purvey of the President. Proponents of the measure say the TPA prevents crucial trade agreements from getting bogged down in the bureaucratic slog and would help open new markets for U.S. goods. Democrats oppose the measure, arguing past trade deals led companies to ship jobs overseas. Heralding the ability as something that could "have a profound impact" on the American economy, Kerry said the extension of President Obama's authority could pay dividends and help further drive down the unemployment rate. "It's worth millions of jobs," he said. Kerry also was emphatic that Reid's opposition would not stall progress. "I wouldn't let it deter us one iota, not one iota," he said. Hagel echoed his counterpart's tone on the issue, saying that Reid's decision to put the bill on hold was imprudent. "Let's be smart and let's be wise and let's be collaborative and use all of the opportunities and mechanisms that we have to enhance each other - culturally, trade, commerce, exchanges," Hagel said.

#### Plan tanks capital and derails the agenda – empirics prove

Kriner ’10 Douglas L. Kriner, assistant professor of political science at Boston University, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### PC key to momentum

Parnes 1/21

Amie Parnes The Hill “Obama: Give me fast track trade” 01/21 http://thehill.com/homenews/administration/195858-white-house-works-to-convince-dems-to-give-obama-fast-track-on-trade

The White House is making a major push to convince Congress to give the president trade promotion authority, which would make it easier for President Obama to negotiate pacts with other countries. ¶ A flurry of meetings has taken place in recent days since legislation was introduced to give the president the authority, with U.S. Trade Representative Mike Froman meeting with approximately 70 lawmakers on both sides of the aisle in the House and Senate.¶ White House Chief of Staff Denis McDonough has also been placing calls and meeting with key Democratic lawmakers in recent days to discuss trade and other issues.¶ Republicans have noticed a change in the administration’s interest in the issue, which is expected to be a part of Obama’s State of the Union address in one week.¶ While there was “a lack of engagement,” as one senior Republican aide put it, there is now a new energy from the White House since the bill dropped. ¶ The effort to get Congress to grant Obama trade promotion authority comes as the White House seeks to complete trade deals with the European Union and a group of Asian and Latin American countries as part of the Trans-Pacific Partnership or TPP.¶ The authority would put time limits on congressional consideration of those deals, and prevent the deals from being amended by Congress. That would give the administration more leverage with trading partners in its negotiations.¶ The trade push dovetails with the administration’s efforts to raise the issue of income inequality ahead of the 2014 midterm elections. The White House is pressing Republicans to raise the minimum wage and to extend federal unemployment benefits.¶ The difference is that on the minimum wage hike and unemployment issue, Obama has willing partners in congressional Democrats and unions, who are more skeptical of free trade. Republicans are more the willing partner on backing trade promotion authority.¶ Legislation introduced last week to give Obama trade promotion authority was sponsored by Ways and Means Committee Chairman Dave Camp (R-Mich.) and Senate Finance Committee Chairman Max Baucus (D-Mont.), as well as Sen. Orrin Hatch (R-Utah), the ranking member on Finance.¶ No House Democrats are co-sponsoring the bill, however, and Rep. Sander Levin (D-Mich.), the Ways and Means ranking member, and Rep. Charles Rangel (D-N.Y.), the panel’s former chairman, have both criticized it. They said the legislation doesn’t give enough leverage and power to Congress during trade negotiations.¶ Getting TPA passed would be a major victory for the administration and one that would please business groups, but the White House will first have to convince Democrats to go along with it.¶ One senior administration official said the White House has been in dialogue with lawmakers on both sides of the aisle “with a real focus on Democrats” to explain TPA and take into account their concerns. ¶ “Any trade matter presents challenges,” the senior administration official said, adding that the White House officials are “devoted” to working with members on the issue.

#### TPA is critical to US economic growth and restoring America’s free trade credibility

Riley and Kim 4/16

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www.heritage.org/research/reports/2013/04/advancing-trade-freedom-key-objective-of-trade-promotion-authority-renewal

Trade Promotion Authority (TPA) has been a critical tool for advancing free trade and spreading its benefits to a greater number of Americans. TPA, also known as “fast track” authority, is the legislative power Congress grants to the President to negotiate reciprocal trade agreements. Provided the President observes certain statutory obligations under TPA, Congress agrees to consider implementing those trade pacts without amending them.¶ More than a decade has passed since TPA was last renewed in 2002, and its authority expired in 2007. Reinstituting TPA may well be the most important legislative action on trade for both Congress and the President in 2013 given the urgency of restoring America’s credibility in advancing open markets and securing greater benefits of two-way trade for Americans. As the case for timely reinstallation of an effective and practical TPA is stronger than ever, the quest for renewing TPA should be guided by principles that enhance trade freedom, a vital component of America’s economic freedom.¶ Emerging TPA Renewal Debates¶ Both House Ways and Means Committee chairman David Camp (R–MI) and Senate Finance Committee chairman Max Baucus (D–MT) have announced plans to pursue TPA legislation. However, many lawmakers have correctly pointed out that a proactive push from President Obama is critical, given that trade bills have been a thorny issue for many Democrats in recent years.¶ Historically, it has been common practice, although not formally required, to have the President request that Congress provide renewed TPA. In fact, except for President Obama, every President since Franklin Roosevelt has either requested or received trade negotiating authority.[1]¶ After four years of informing Congress it would seek TPA at “the appropriate time,” early this year the Obama Administration finally indicated its interest in working with Congress to get TPA done. The President’s 2013 trade agenda offered the Administration’s most forward-leaning language yet, specifying that “to facilitate the conclusion, approval, and implementation of market-opening negotiating efforts, we will also work with Congress on Trade Promotion Authority.”[2]¶ In the 2002 Bipartisan Trade Promotion Authority Act, Congress—whose role in formulating U.S. trade policy includes defining trade negotiation objectives—made it clear that¶ [t]he expansion of international trade is vital to the national security of the United States. Trade is critical to the economic growth and strength of the United States and to its leadership in the world. Stable trading relationships promote security and prosperity.… Leadership by the United States in international trade fosters open markets, democracy, and peace throughout the world.[3]

**Nuclear war**

Burrows and Harris 9 Mathew J. Burrows counselor in the National Intelligence Council and Jennifer Harris a member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” The Washington Quarterly 32:2 https://csis.org/files/publication/twq09aprilburrowsharris.pdf

Increased Potential for Global Conflict¶ Of course, the report encompasses more than economics and indeed believes the¶ future is likely to be the result of a number of intersecting and interlocking¶ forces. With so many possible permutations of outcomes, each with ample opportunity for unintended consequences, there is a growing sense of insecurity.¶ Even so, history may be more instructive than ever. While we continue to¶ believe that the Great Depression is not likely to be repeated, the lessons to be¶ drawn from that period include the harmful effects on fledgling democracies and¶ multiethnic societies (think Central Europe in 1920s and 1930s) and on¶ the sustainability of multilateral institutions (think League of Nations in the¶ same period). There is no reason to think that this would not be true in the¶ twenty-first as much as in the twentieth century. For that reason, the ways in¶ which the potential for greater conflict could grow would seem to be even more¶ apt in a constantly volatile economic environment as they would be if change¶ would be steadier.¶ In surveying those risks, the report stressed the likelihood that terrorism and¶ nonproliferation will remain priorities even as resource issues move up on the¶ international agenda. Terrorism’s appeal will decline if economic growth¶ continues in the Middle East and youth unemployment is reduced. For those¶ terrorist groups that remain active in 2025, however, the diffusion of¶ technologies and scientific knowledge will place some of the world’s most¶ dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a¶ combination of descendants of long established groupsinheriting¶ organizational structures, command and control processes, and training¶ procedures necessary to conduct sophisticated attacksand newly emergent¶ collections of the angry and disenfranchised that become self-radicalized,¶ particularly in the absence of economic outlets that would become narrower¶ in an economic downturn.¶ The most dangerous casualty of any economically-induced drawdown of U.S.¶ military presence would almost certainly be the Middle East. Although Iran’s¶ acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed¶ Iran could lead states in the region to develop new security arrangements with¶ external powers, acquire additional weapons, and consider pursuing their own¶ nuclear ambitions. It is not clear that the type of stable deterrent relationship¶ that existed between the great powers for most of the Cold War would emerge¶ naturally in the Middle East with a nuclear Iran. Episodes of low intensity¶ conflict and terrorism taking place under a nuclear umbrella could lead to an¶ unintended escalation and broader conflict if clear red lines between those states¶ involved are not well established. The close proximity of potential nuclear rivals¶ combined with underdeveloped surveillance capabilities and mobile¶ dual-capable Iranian missile systems also will produce inherent difficulties in¶ achieving reliable indications and warning of an impending nuclear attack. The¶ lack of strategic depth in neighboring states like Israel, short warning and missile¶ flight times, and uncertainty of Iranian intentions may place more focus on¶ preemption rather than defense, potentially leading to escalating crises.Types of conflict that the world continues¶ to experience, such as over resources, could¶ reemerge, particularly if protectionism grows and¶ there is a resort to neo-mercantilist practices.¶ Perceptions of renewed energy scarcity will drive¶ countries to take actions to assure their future¶ access to energy supplies. In the worst case, this¶ could result in interstate conflicts if government¶ leaders deem assured access to energy resources,¶ for example, to be essential for maintaining domestic stability and the survival of¶ their regime. Even actions short of war, however, will have important geopolitical¶ implications. Maritime security concerns are providing a rationale for naval¶ buildups and modernization efforts, such as China’s and India’s development of¶ blue water naval capabilities. If the fiscal stimulus focus for these countries indeed¶ turns inward, one of the most obvious funding targets may be military. Buildup of¶ regional naval capabilities could lead to increased tensions, rivalries, and¶ counterbalancing moves, but it also will create opportunities for multinational¶ cooperation in protecting critical sea lanes. With water also becoming scarcer in¶ Asia and the Middle East, cooperation to manage changing water resources is¶ likely to be increasingly difficult both within and between states in a more¶ dog-eat-dog world.¶

### CP

#### The president of the United States should limit the war power authority of the president for self-defense targeted killings to outside an armed conflict.

**Solves better than the plan**

Brzezinski 12 Zbigniew, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America. To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America. This is true even in the face of determined opposition. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

### solvo

#### zone of active hostility/hot battlefield is a legal fiction

Corn 13 Geoffrey, South Texas College of Law Presidential Research Professor of Law and former JAG officer and chief of the law of war branch of the international law division of the US Army, Lieutenant Colonel, U.S. Army (Retired), Senate Armed Services Committee Hearing, "The law of armed conflict, the use of military force, and the 2001 Authorization for Use of Military Force," Congressional Documents and Publications, 6-16-13, l/n, accessed 8-23-13

I believe much of the momentum for asserting some arbitrary geographic limitation on the scope of operations conducted to disrupt or disable al Qaeda belligerent capabilities is the result of the commonly used term "hot battlefield." This notion of a "hot" battlefield is, in my opinion, **an**operational and legal fiction. Nothing in the law of armed conflict or military doctrine defines the meaning of "battlefield."Contrary to the erroneous assertions that the use of combat power is restricted to defined geographic locations such as Afghanistan (and previously Iraq), the geographic scope of armed conflict must be dictated by a totality assessment of a variety of factors, ultimately driven by the strategic end state the nation seeks to achieve. The nature and dynamics of the threat -including key vulnerabilities - is a vital factor in this analysis. These threat dynamics properly influence the assessment of enemy capabilities and vulnerabilities, which in turn drive the formulation of national strategy, which includes determining when, where, and how to leverage national power (including military power) to achieve desired operational effects. Thus, threat dynamics, and not some geographic "box", have historically driven and must continue to drive the scope of armed hostilities. The logic of this premise is validated by (in my opinion) the inability to identify an armed conflict in modern history where the scope of operations was legally restricted by a conception of a "hot" battlefield. Instead, threat dynamics coupled with policy, diplomatic considerations and, in certain armed conflicts the international law of neutrality, dictate such scope. Ultimately, battlefields become "hot" when persons, places, or things assessed as lawful military objectives pursuant to the law of armed conflict are subjected to attack.

#### Congress will never restrain the president

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Already commentators suspicious of American military power or foreign policy have decried the rise of JSOC for eroding Congressional checks on war-making power or for enabling America to embark on a path of perpetual conflict. Inexplicably, some American commentators worry over the decline of Congressional authority over war-making power. However, this fear is both somewhat ahistorical and very optimistic in its assessment of Congress today. Congressional authority for war does not require a formal declaration of war, nor is the approval of Congress necessary for a state of war to exist. Congressional authority is merely required to initiate a state of war that was not already brought about by hostile action. So long as Congress continues to fund and approve the war, the war is essentially retroactively legalized by Congressional action. Regardless of how legal JSOC’s activities are abroad though, relying on Congress to hold JSOC accountable assumes that Congress actually cares to do so. There is an unexamined belief about the pacific inclinations of legislative bodies that absolutely does not reflect modern realities. As should be obvious, the current Congress is not interested in restraining the war powers of the executive, nor is it interested in undermining JSOC. And really, since when has Congress been a reliable dovish influence on American military power? Since never – Congress has been supported wide-ranging, undeclared wars since the beginning of American history. In the Quasi-War with France , Congress approved and funded an undeclared war across the world’s oceans against France – a geopolitically risky activity considering the relative power of France to the young United States. This war was not merely limited to commerce – it also involved naval landings against France’s ally Spain (specifically its colony in what is now the Dominican Republic), despite the United States not being at war with Spain . Congress has displayed no qualms about declaring offensive wars either – the Mexican-American War and the Spanish-American War, both officially declared wars, were also two of the most nakedly territorially aggrandizing wars in U.S. history. Members of Congress have even tried to push the executive into wars it did not desire, or forced it to take hawkish positions that it might have preferred to avoid. In American relations with China, for example, Congress has generally been the more belligerent of the branches, while the presidency has generally sought to preserve the diplomatic entente Nixon forged. Even before the existence of the People’s Republic of China, a strong China lobby enabled funding of the Republic of China’s war-making effort against Japan. During the Cold War that lobby continued to militate for action to defend the Republican Chinese government in Taiwan. Eisenhower and the military did not want to become engaged in a war to defend Taiwan during the Quemoy and Matsu crisis, which they thought would require using nuclear weapons against the Chinese mainland and compromise America’s other diplomatic prerogatives. Yet many of the so-called isolationists in Congress vigorously pushed the President towards a more confrontational stance.

#### Plan's restrictions causes a shift to the CIA.

Alston 11 President and Fellows of Harvard College. All Rights Reserved. Harvard National Security Journal 2011 Harvard National Security Journal 2 Harv. Nat'l Sec. J. 283 The CIA and Targeted Killings Beyond Borders Philip Alston John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. lexis

But the most significant problem by far with double-hatting is its impact in terms of accountability. Already in 2003, Colonel Kathryn Stone had noted that "[w]hen the CIA and SOF operate together on the battlefield, the legal distinctions regarding operating authorities and procedures, and accountability, can become blurred." n247 In Singer's view one of the motivations for the practice was to avoid accountability. He argues that the CIA was given operational responsibilities because "no one wanted to have a public debate about the use of force in a third country" and this could be avoided by secretly using the CIA instead. The result, he says, is to flout "the intent, if not the letter, of the most important legal codes that originally divided out roles in realms of policy and war." n248 A recent Congressional study also concludes that one of the actual objectives of the "unprecedented use of U.S. SOF in clandestine and covert roles as well as being assigned to the CIA" is precisely to blur the boundaries of responsibility and accountability. n249 This deliberate undermining of the distinction between intelligence gathering and operational activities has grave implications in terms of both domestic and international accountability. Domestically, DOD and especially JSOC foreign killing operations are subject to virtually no meaningful accountability, and the same applies to the CIA.

### conflation

#### There’s no such thing as ‘self-defense targeted killings’ – jus ad bellum only allows the use of self-defense against states that facilitate non-state actors’ attacks. The plan codifies an expansive notion of jus ad bellum that increases the risk of armed conflict

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**NSA = Non State Actors**

In sum, the proposition that states can use force against NSAs as such, and thereby against states with little responsibility for the NSAs actions, is not consistent with the current jus ad bellum system, and moreover there are good reasons why this is so. It will be objected that this tends to create something of an asymmetry, as well as to give rise to something of a paradox—for while under the current law a terrorist attack may constitute an armed attack in jus ad bellum terms, a response to the attack is not permissible if there was not sufficient state complicity in the NSAs operation. Thus, so the objection would go, the jus ad bellum regime recognizes that NSAs can mount armed attacks, but then it insulates them from the responding use of force in self-defense.75 There is thereby a recognition of a wrong, but the denial of a remedy. Of course, in response to this it must be pointed out that the current law exists precisely because the remedy sought would be inflicted on states that are not themselves guilty of the kind of wrong that legitimates the use of force against them. But even to this the detractors would argue that from a philosophical and moral perspective it might be entirely defensible to inflict a remedy on a not entirely blameless state. As between Utopia, the innocent victim of terrorist attacks, and Oceania, which while not sufficiently responsible for the attacks to justify a response in selfdefense is not blameless, surely we should permit harm to the latter.76 However, in response to this entire line of argument it has to be emphasized that the modern jus ad bellum regime is not primarily grounded in such moral balancing, or even in a sense of justice, but rather is founded on the profound need to prevent war among states. Permitting the use of force against states that have not assisted terrorists acting from within their territory would create a different and far more serious asymmetry, which would distort and undermine the integrity of the jus ad bellum regime, and increase the risk of armed conflict among nations.

Such risk is not mere idle speculation. In Columbian raids against NSAs in Ecuador in 2006, and Turkish attacks on Kurds in Iraq in 2007–08, there was a serious risk of escalation. Consider the ramifications if India had characterized the Mumbai attack of 2008 as an “armed attack” justifying the use of force in selfdefense against Lashkar-e-Taiba, quite independent of whether there was sufficient evidence to establish that its operations could be attributed to Pakistan. The use of force against the group within the territory of Pakistan would have nonetheless been viewed as an act of war by Pakistan, and there would have been a real risk of a full-blown armed confl ict between nuclear powers.77

#### No impact-conflation doesn’t lower the threshold for conflict-it increases it.

Benvenisti 9Eyal, Tel Aviv law professor, “Rethinking the Divide between Jus Ad Bellum and Jus in Bello in Warfare Against Nonstate Actors”, 5-13, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1403882>

However, as mentioned above, the growing involvement in such conflicts of third parties, with their diverse modalities for reviewing the belligerents’ actions, shifts the incentive structure from the traditional dyadic dynamic of reciprocity between the parties to a much broader dynamic.23 The dueling parties must take the attitude of those third parties into account as the combat is played out not only bilaterally but also concurrently in the global arena. Toleration or condemnation by key international actors, including public and private actors and observers, as well as by foreign and international courts, often proves to be an effective constraint at least on the state party to the conflict. The state party will not descend into barbarism regardless of what the enemy does if it has an incentive to maintain its good reputation globally or to avoid criminal sanctions. Since third-party observers assess both ad bellum and in bello considerations, the percolation of ad bellum considerations into the jus in bello proportionality analysis can prove a rather sophisticated and effective constraint on the stronger regular army. The introduction of ad bellum considerations into the analysis of jus in bello’s vaguer concepts—which often call for balancing of competing considerations, such as the determination of excessive harm to civilians or the targeting of individuals “for such time as they take a direct part in hostilities”24—would not provide either side with more freedom of action or impose greater risks to noncombatants. Quite to the contrary, a state party must convince the international community that its military operations are aimed at just causes to be able to justify the military goals it pursues. This fuller account of the jus in bello proportionality analysis 25 examines not only the necessity of the collateral harm to noncombatants but also the legitimacy of the pursuit of the military goals. What the traditional law takes for granted—that in bello all military goals are equally and always legitimate—can now be questioned by the emerging new assessors and indirect enforcers of the law.

#### Proportionalities makes conflation inevitable.

Blank 11 - 1ac authorLaurie, Emory International Humanitarian Law Clinic director, “A New Twist on an Old Story: Lawfare and the Mixing of Proportionalities”, 43 Case W. Res. J. Int'l L. 707, lexis, 2011

The most comprehensive example of this mixing of proportionalities appears in the Goldstone Report, the report of the U.N. Human Rights Council on violations of IHL and human rights law during the 2008-2009 conflict in Gaza. n71 Instead of examining the scale and nature of the Israeli [\*728] military response in relation to that which would be reasonably necessary to defend itself against the rocket attacks and prevent future attacks, the report focuses on the civilian casualties as the benchmark, n72 even though civilian casualties play no role in jus ad bellum proportionality determinations. Israel responded in self-defense to an eight-year campaign of rocket attacks from Gaza that terrorized the civilian population of southern Israel. n73 As the Goldstone Report documents, between April 2001 and December 2008, Palestinian armed groups launched more than eight thousand rockets and mortars into southern Israel from Gaza, including over five hundred in November and December 2008. n74 Operation Cast Lead's primary purpose was to destroy the rocket launchers and the tunnels used to smuggle the rockets and launchers into Gaza from Egypt. n75 Jus ad bellum provides the appropriate framework for analyzing the lawfulness of Israel's response, based on the requirements of necessity and proportionality. Whether Israel's use of force met those requirements may be debatable, but the Goldstone Report departs from the accepted jus ad bellum proportionality analysis. Instead, the Goldstone Report uses its assessments of Israeli attacks on particular targets under jus in bello--faulty in many cases n76 --to reach conclusions regarding the lawfulness of Israel's overall response under jus ad bellum. In so doing, the report thus reaches the conclusion that Operation Cast Lead was "a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability." n77 The Report does not examine whether Israel's objective of eliminating the rocket launchers and tunnels, and curtailing the ability of Hamas and other groups to fire rockets, was a proportionate response to the eight years of rocket attacks, which would be the appropriate jus ad bellum analysis. n78 Rather, [\*729] this sweeping conclusion stems directly from selected incidents in which the Goldstone Report found civilian casualties excessive in relation to the military advantage gained. In this way, the report's conclusion is a direct descendant of the arguments made --and rejected soundly--at Nuremberg about the criminality of specific German acts based on the German war of aggression. Although, as explained above, past conflations have generally involved using jus ad bellum violations to excuse jus in bello violations, the report's use of purported jus in bello violations to find an overall jus ad bellum violation is equally problematic. The same arguments appeared in media coverage of the conflict as well, with one editorial stating: "whatever pretext Israel has cited for launching massive air strikes on the Palestinian-controlled Gaza strip over the weekend, the high casualty figure among civilians makes this military action totally unacceptable." n79 This statement offers a clear example of how civilian casualties are simply substituted for the proportionality analysis required in the jus ad bellum, by directly disregarding the reason for the military operation, whether lawful or not under jus ad bellum, and treating civilian casualties as the definitive, indeed only, factor in any legal analysis. B. Strategic Impact on Contemporary Conflict The mixing of proportionalities in this particular way directly facilitates the burgeoning use of lawfare in today's conflicts on both the strategic and tactical levels. Lawfare at the strategic level seeks to chip away at the will of the technologically advanced military and country in an asymmetrical conflict and to undermine public support for the war, thus leading to a premature end to the conflict. n80 Insurgent groups use lawfare strategically on two levels. First, they promote allegations of IHL violations in the domestic and international media as a way to undermine support for the war because of public displeasure at alleged violations. Second, they use civilian casualties to introduce and bolster claims of unjust war, precisely the effect of the mixing of proportionalities discussed here. "Civilian casualty incidents are highly 'mediagenic' events that tend to receive high levels of re [\*730] porting by the press, and making the issue of civilian casualties more salient can lead the public to weigh the morality of wars against the importance of their aims." n81 Examples of the latter approach abound throughout recent conflicts, even to the extent that the governments of Serbia and Iraq used this type of lawfare as a primary strategy to counter the effect of United States military might. The government of the Former Republic of Yugoslavia saw civilian casualties and collateral damage incidents as an effective means of splitting NATO's coalition through the corrosive effect that civilian casualties were presumed to have on moral judgments about the war, and it accordingly went to great lengths to publicize--and enhance the possibilities for--such incidents. n82 Similarly, the Iraqi regime inflated the numbers of Iraqi casualties during the initial phase of Operation Iraqi Freedom in an attempt to highlight what it called the "criminal bombardment of Americans and British." n83 This strategic use of lawfare through the conflation of the two proportionalities poses three significant challenges. First, it sparks media coverage of military operations that encourages a retrospective approach to jus in bello proportionality, even though a fundamental component of that principle is its prospective view of decision-making. Second, it leads to significant errors of legal application in investigations and analysis of IHL compliance during military operations. Third, and most important, it consistently fosters a climate in which civilians are placed in ever greater danger, a result fundamentally at odds with the goals and purpose of IHL. 1. Media coverage and a retrospective approach to proportionality Civilian deaths are a horrible consequence of war, and while often unavoidable, should be minimized to the fullest extent possible. Indeed, one of the primary goals of IHL and, in particular, the Geneva Conventions, is the protection of civilians. Unfortunately, not only are civilians often in greater danger from military operations than in the past, but civilian casualties are now a tool in and of themselves. "News coverage is dominated by . . . the newest trend, civilian deaths, leaving coalition commanders to en [\*731] gage in an endless cycle of public apologies." n84 While significant media attention on innocent civilian deaths is not only appropriate, but also critical, during wartime, the way in which that coverage is manipulated and encouraged for strategic purposes raises serious concerns. It is now quite common for media reports on civilian casualties caused by state forces, whether in Gaza, Iraq, Pakistan, Lebanon, or Afghanistan, to produce an immediate outcry and claims of criminal liability. Interestingly, reports of civilian casualties caused by militants frequently receive little, if any, attention. For example, there remains a general perception that United States forces--and the use of air power in particular--in Afghanistan are responsible for large numbers of civilian deaths, notwithstanding documented evidence that civilian casualties caused by multinational forces are steadily decreasing and casualties caused by the Taliban are increasing. n85 Insurgents quickly see the strategic benefits of greater media attention to civilian casualties and claims of unjust war, including an erosion of domestic support for military operations, increased tension among coalition partners, and changes in strategy, targeting parameters, and tactics. As they increase their propaganda efforts, they have great motivation to use tactics that place civilians in greater danger, such as human shields, launching attacks from civilian buildings and areas, and so on. As detailed below, this practice is perhaps the most significant result of the increased tendency to use civilian casualties as a marker of violations of jus ad bellum proportionality. However, the link between the mixing of proportionalities and the increased media coverage of civilian casualties has a problematic effect on the application and understanding of IHL as well. The use of civilian casualties to reach conclusions of unjust war depends first and foremost on a direct and automatic link between civilian casualties and violations of IHL, or the jus in bello, which are then used to launch the claims of disproportionate uses of force under the jus ad bellum. Because all of these claims take place in the media--the so-called court of public opinion, in many ways--the pace is immediate and instant. The result is that civilian casualties become the IHL violation in and of themselves--and the subsequent effect is the application of jus in bello proportionality using a retrospective approach. Although the law demands a prospective approach in analyzing the propor [\*732] tionality of particular attacks under jus in bello, such an approach offers little benefit or appeal in the world of media coverage, where instant conclusions and graphic pictures are the key to success. Lengthy investigations into the commander's perspective at the time of the attack, what he knew or should have known and his expectations regarding civilian casualties and military advantage simply do not fit into today's media cycle. The easy math of the retrospective analysis--multiple civilian casualties therefore IHL violation--does, in contrast. For example, in September 2009, the NATO bombing of two tankers in Kunduz, Afghanistan on the orders of the commander of the nearby German army base, killed over 130 people, including at least ninety civilians. n86 The immediate reaction was that a violation of IHL must have been committed because of the number of civilian deaths, notwithstanding uncertainty about how many dead were insurgents and how many civilians. In fact, President Hamid Karzai of Afghanistan even suggested that the attack had targeted innocent civilians, issuing a statement that "targeting civilian men and women is not acceptable." n87 Events quickly unfolded showing precisely how the retrospective analysis of jus in bello proportionality feeds directly into the strategy of claiming jus ad bellum violations to weaken support for the war and drive wedges between coalition members. Germany's Minister of Defense, Deputy Minister of Defense and Army Chief of Staff all resigned over the incident as public support for the German mission in Afghanistan wavered substantially. n88 And yet, one year later, the federal prosecutor investigating the German commander for violations of both law and procedures dropped the case, concluding that he had violated no rules in ordering the airstrike--based on the information he had at the time of the strike. n89 The investigation, using a prospective approach to proportionality and targeting, was no match in the propaganda world for immediate claims of civilian casualties and disproportionate attacks in the media. As this example shows, the impact of media coverage of civilian casualties, particularly as a strategic tool for insurgents, promotes a retrospective analysis of jus in bello proportionality. From there it is a quick jump to using alleged [\*733] jus in bello violations to claim jus ad bellum violations. This growing tendency to apply incorrect legal standards is itself a problematic result of the mixing of proportionalities--its strategic and tactical impact is even more troubling.

#### Multiple barriers mean bioterror is extremely unlikely

Schneidmiller, Global Security Newswire, 1-13-09 (Chris, “Experts Debate Threat of Nuclear, Biological Terrorism,” http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php)

Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim, which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen. However, he disputed Mueller's assertion that nations can be trusted to secure their atomic weapons and materials. "I don't think the historical record shows that at all," Walsh said. Black-market networks such as the organization once operated by former top Pakistani nuclear scientist Abdul Qadeer Khan remain a problem and should not be assumed to be easily defeated by international intelligence services, Walsh said (see GSN, Jan. 13). It is also reasonable to worry about extremists gaining access to nuclear blueprints or poorly secured stocks of highly enriched uranium, he said. "I worry about al-Qaeda 4.0, kids in Europe who go to good schools 20 years from now. Or types of terrorists we don't even imagine," Walsh said. Greater consideration must be given to exactly how much risk is tolerable and what actions must be taken to reduce the threat, he added. "For all the alarmism, we haven't done that much about the problem," Walsh said. "We've done a lot in the name of nuclear terrorism, the attack on Iraq, these other things, but we have moved ever so modestly to lock down nuclear materials." Biological Terrorism Another two analysts offered a similar debate on the potential for terrorists to carry out an attack using infectious disease material. Milton Leitenberg, a senior research scholar at the Center for International and Security Studies at the University of Maryland, played down the threat in comparison to other health risks. Bioterrorism has killed five U.S. citizens in the 21st century -- the victims of the 2001 anthrax attacks, he said. Meanwhile, at least 400,000 deaths are linked each year to obesity in this country. The United States has authorized $57 billion in spending since the anthrax mailings for biological prevention and defense activities, Leitenberg said. Much of the money would have been better used to prepare for pandemic flu, he argued. "Mistaken threat assessments make mistaken policy and make mistaken allocation of financial resources," Leitenberg said. The number of states with offensive biological weapons programs appears to have stabilized at six beginning in the mid-1970s, despite subsequent intelligence estimates that once indicated an increasing number of efforts, Leitenberg said. Caveats in present analyses of those states make it near-impossible to determine the extent to which their activities remain offensive in nature, he added. There has been minimal proliferation of biological expertise or technology to nations of concern in recent decades, Leitenberg said. He identified roughly 12 Russian scientists who ended up in Iran and shipments of technology and pathogen strains to Iraq from France, Germany, the former Soviet Union and the United States between 1980 and 1990. No evidence exists of state assistance to nonstate groups in this sector. Two prominent extremist organizations, al-Qaeda and Aum Shinrikyo in Japan, failed to produce pathogenic disease strains that could be used in an attack, according to Leitenberg. Terrorists would have to acquire the correct disease strain, handle it safely, correctly reproduce and store the material and then disperse it properly, Leitenberg said. He dismissed their ability to do so. "What we've found so far is that those people have been totally abysmally ignorant of how to read the technical, professional literature," Leitenberg said. "What's on the jihadi Web sites comes from American poisoners' handbooks sold here at gun shows. Which can't make anything and what it would make is just garbage."

#### Aftermath of a preemptive attack on Iranian nuclear facilities wouldn’t be that bad

Pipes June 26, 2012 (12:00 A.M. After an Israeli Strike on Iran The consequences wouldn’t be cataclysmic. By Daniel Pipes, http://www.nationalreview.com/articles/303966/after-israeli-strike-iran-daniel-pipes)

How would Iranians respond to an Israeli strike against their nuclear infrastructure? The answers given to this question matter greatly, as predictions about Iran’s response will affect not only Jerusalem’s decision, but also how much other states will work to impede an Israeli strike. Analysts generally offer best-case predictions for policies of deterrence and containment (some commentators even go so far as to welcome an Iranian nuclear capability) while forecasting worst-case results from a strike. They foresee Tehran doing everything possible to retaliate, such as kidnapping, terrorism, missile attacks, naval combat, and closing the Strait of Hormuz. These predictions ignore two facts: Neither of Israel’s prior strikes against enemy states building nuclear weapons — Iraq in 1981 and Syria in 2007 — prompted retaliation; and a review of the Islamic Republic of Iran’s history since 1979 points to, in the words of Michael Eisenstadt and Michael Knights, “a more measured and less apocalyptic — if still sobering — assessment of the likely aftermath of a preventive strike.” Advertisement Eisenstadt and Knights of the Washington Institute for Near Eastern Policy provide an excellent guide to possible scenarios in “Beyond Worst-Case Analysis: Iran’s Likely Responses to an Israeli Preventive Strike.” Their survey of Iranian behavior over the past three decades leads them to anticipate that three main principles would likely shape and limit Tehran’s response to an Israeli strike: an insistence on reciprocity, a caution not to gratuitously make enemies, and a wish to deter further Israeli (or American) strikes. The mullahs, in other words, face serious limits on their ability to retaliate, including military weakness and a pressing need not to make yet more external enemies. With these guidelines in place, Eisenstadt and Knights consider eight possible Iranian responses, which must be assessed while keeping in mind the alternative to preemptive action — namely, apocalyptic Islamists controlling nuclear weapons: 1. Terrorist attacks on Israeli, Jewish, and U.S. targets. Likely, but causing limited destruction. 2. Kidnapping of U.S. citizens, especially in Iraq. Likely, but limited in impact, as in the 1980s in Lebanon. 3. Attacks on Americans in Iraq and Afghanistan. Very likely, especially via proxies, but causing limited destruction. 4. Missile strikes on Israel. Likely: a few missiles from Iran getting through Israeli defenses, leading to casualties likely in the low hundreds; missiles from Hezbollah limited in number due to domestic Lebanese considerations. Unlikely: Hamas getting involved, having distanced itself from Tehran; the Syrian government interfering, since it is battling for its life against an ever-stronger opposition army and possibly the Turkish armed forces. Overall, missile attacks are unlikely to do devastating damage. 5. Attacks on neighboring states. Likely: especially using terrorist proxies, for the sake of deniability. Unlikely: missile strikes, for Tehran does not want to make more enemies. 6. Clashes with the U.S. Navy. Likely, but, given the balance of power, doing limited damage. 7. Covertly mining the Strait of Hormuz. Likely, causing a run-up in energy prices. 8. Attempted closing of the Strait of Hormuz. Unlikely: difficult to achieve and potentially too damaging to Iranian interests, because the country needs the strait for commerce. The authors also consider three potential side effects of an Israeli strike. Yes, Iranians might rally to their government in the immediate aftermath of a strike, but in the longer term Tehran “could be criticized for handling the nuclear dossier in a way that led to military confrontation.” The so-called Arab street is perpetually predicted to rise up in response to outside military attack, but it never does; it’s likely that unrest among the Shiite Muslims of the Persian Gulf would be counterbalanced by the many Arabs quietly cheering the Israelis. As for Iran leaving the Nuclear Nonproliferation Treaty and starting an overt, crash nuclear-weapons program, while “a very real possibility,” the more the Iranians retaliated against a strike, the harder they would find it to obtain the parts for such a program. In all, these dangers are unpleasant but not cataclysmic, manageable not devastating. Eisenstadt and Knights expect a short phase of high-intensity Iranian response, to be followed by a “protracted low-intensity conflict that could last for months or even years” — much as already exists between Iran and Israel. An Israeli preventive strike, they conclude, while a “high-risk endeavor carrying a potential for escalation in the Levant or the Gulf . . . would not be the apocalyptic event some foresee.” This analysis makes a convincing case that the danger of nuclear weapons falling into Iranian hands far exceeds the danger of a military strike to prevent this from happening.

#### No risk of unilateral Israel strikes on Iran – media bias

Lindorff, 11-13-’11 (Dave, “Washington’s Fake ‘Concern’ About a Possible Israeli Attack on Iran” https://www.commondreams.org/view/2011/11/13-8)

When it comes to mainstream press reports about a possible Israeli attack on Iran’s nuclear facilities, it’s time to check the bullshit detector. Corporate media reports are claiming that the Pentagon and the White House are “worried” or “concerned” that the Israeli government may decide to attack Iran, and that the US is “trying to learn” what Israel’s real intentions are: is there a serious plan to attack or is this all just an effort to blackmail the US into taking stronger measures against Iran? As CNN put it in a Nov. 4 report: The United States has become increasingly concerned Israel could be preparing to strike Iran's nuclear program, a senior U.S. military official told CNN on Friday. The U.S. military and intelligence community in recent weeks have stepped up "watchfulness" of both Iran and Israel, according to the senior U.S. military official and a second military official familiar with the U.S. actions. Asked if the Pentagon was concerned about an attack, the senior military official replied "absolutely." Both officials declined to be identified because of the extreme sensitivity of the matter. Bzzzzzzzzzzz Oops! The Bullshit detector just went off. Missing from all these reports about Washington “concern,” and from statements being leaked by Pentagon and White House “sources,” is any mention of the fact that Israel’s entire air force consists of planes built in and funded by the United States. The F-15s and F-16s and the specially designed F-16I and F-15I, manufactured by Lockheed Martin and Boeing to Israeli Air Force specifications, are the planes that would have the job of delivering bombs to Iranian targets and providing cover against Iranian fighter defenses. One word from the US and those weapons systems would be grounded. After all, without US spare parts and US financing, Israel’s air force ceases to exist. So the claim that Washington is “worried” about Israel going it alone in a strike on Iran is, to put it bluntly, a lie. Now you could get deeper into it and speculate if you like that both the Israeli government and the Obama Administration want to promote media speculation that Israel may be planning an attack, and for the same reason: to allow, or to pressure, Washington to tighten the economic screws on Iran and perhaps to step up covert attacks on Iran. Or alternatively, Washington wants Israel to attack Iran, but wants to be able to claim that the US isn’t behind it. I tend to lean towards the first theory, because I don’t think that the US really wants the kind of explosion in the Middle East which would surely happen if Israel were to attack Iran. But then, who knows? The Neo-Cons have considerable sway in Washington, and these psychopaths do want such a conflict. Whatever the truth of what’s going on, let’s at least clear away the Big Lie. With the Israeli Air Force almost totally dependent upon the largesse of the United States, Israel is not going to do anything to Iran that is not 100 percent approved in advance by Washington.

1. No impact- they won’t go to war over the islands

The Economist 12 “Could Asia really go to war over these?” Sept 22 http://www.economist.com/node/21563316

THE countries of Asia do not exactly see the world in a grain of sand, but they have identified grave threats to the national interest in the tiny outcrops and shoals scattered off their coasts. The summer has seen a succession of maritime disputes involving China, Japan, South Korea, Vietnam, Taiwan and the Philippines. This week there were more anti-Japanese riots in cities across China because of a dispute over a group of uninhabited islands known to the Japanese as the Senkakus and to the Chinese as the Diaoyus. Toyota and Honda closed down their factories. Amid heated rhetoric on both sides, one Chinese newspaper has helpfully suggested skipping the pointless diplomacy and moving straight to the main course by serving up Japan with an atom bomb. That, thank goodness, is grotesque hyperbole: the government in Beijing is belatedly trying to play down the dispute, aware of the economic interests in keeping the peace. Which all sounds very rational, until you consider history—especially the parallel between China’s rise and that of imperial Germany over a century ago. Back then nobody in Europe had an economic interest in conflict; but Germany felt that the world was too slow to accommodate its growing power, and crude, irrational passions like nationalism took hold. China is re-emerging after what it sees as 150 years of humiliation, surrounded by anxious neighbours, many of them allied to America. In that context, disputes about clumps of rock could become as significant as the assassination of an archduke. One mountain, two tigers Optimists point out that the latest scuffle is mainly a piece of political theatre—the product of elections in Japan and a leadership transition in China. The Senkakus row has boiled over now because the Japanese government is buying some of the islands from a private Japanese owner. The aim was to keep them out of the mischievous hands of Tokyo’s China-bashing governor, who wanted to buy them himself. China, though, was affronted. It strengthened its own claim and repeatedly sent patrol boats to encroach on Japanese waters. That bolstered the leadership’s image, just before Xi Jinping takes over. More generally, argue the optimists, Asia is too busy making money to have time for making war. China is now Japan’s biggest trading partner. Chinese tourists flock to Tokyo to snap up bags and designer dresses on display in the shop windows on Omotesando. China is not interested in territorial expansion. Anyway, the Chinese government has enough problems at home: why would it look for trouble abroad? Asia does indeed have reasons to keep relations good, and this latest squabble will probably die down, just as others have in the past. But each time an island row flares up, attitudes harden and trust erodes. Two years ago, when Japan arrested the skipper of a Chinese fishing boat for ramming a vessel just off the islands, it detected retaliation when China blocked the sale of rare earths essential to Japanese industry.

1. US won’t get drawn in

Washington Post 12 “Panetta to urge China and Japan to tone down dispute over islands” Sept 16 http://articles.washingtonpost.com/2012-09-16/world/35494846\_1\_senkaku-islands-diaoyu-china-and-japan

The Obama administration has said it does not take sides in the territorial disputes. But they have arisen at a delicate time as Washington has been seeking to reassert its strategic interests in Asia and shore up its alliances in the face of China’s rising military and economic power. U.S. officials have been reassuring Japan, the Philippines and other allies that they won’t cede influence in the region to China. But the Obama administration has been less clear about how it would respond if fighting broke out over the disputed islands or ignited a larger conflict. The most widespread anti-Japanese protests in a generation cascaded across China this weekend in response to the Japanese government’s recent efforts to assert control over some rocky outcroppings known as the Senkaku Islands. Demonstrators threw rocks at the Japanese Embassy in Beijing, attacked Japanese factories and looted Japanese department stores — egged on by anti-Japanese screeds in China’s state-run media. The protests followed a maritime standoff Friday when six Chinese maritime patrol ships entered Japanese waters to reinforce Beijing’s claim to the islands, which are known as Diaoyu in China. Japan’s Coast Guard responded quickly, and the Chinese vessels eventually backed away. Under a long-standing treaty with Tokyo, **the United States is obligated to come to Japan’s defense if it is attacked. But Washington has not spelled out if it considers the Senkaku Islands to be Japanese territory.** The tensions between China and Japan follow a similar dust-up this spring between China and the Philippines over disputed territory in the South China Sea. Patrol vessels from both countries engaged in a prolonged standoff after a Philippine navy ship — recently purchased from the United States — detained Chinese fishermen that it charged had been illegally operating in Philippine waters. The United States also has a mutual defense treaty with the Philippines. Although the Obama administration has been eager to bolster security cooperation with Manila, **U.S. officials don’t want to be forced to become militarily involved in obscure territorial feuds. “**I’m pretty frank with people: **I don’t think that we’d allow the U.S. to get dragged into a conflict over fish or over a rock,” said a senior U.S. military official**, speaking on the condition of anonymity to discuss deliberations within the Obama administration. “Having allies that we have defense treaties with, not allowing them to drag us into a situation over a rock dispute, is something I think we’re pretty all well-aligned on.” While the maritime feuds have concerned Washington, the U.S. military official noted that China has shown some restraint by sending maritime patrol boats to assert its territorial claims instead of heavily armed warships. “They’ve tended to deal with these things at the Coast Guard level,” the official said. The squabbles are occurring with more frequency because ownership of the obscure islands can bolster a country’s claim to more expansive maritime borders — and control over resource-rich seabeds of the South China and East China seas. “We’re going to face more of this,” Panetta said. “Countries are searching for resources. There are going to be questions raised as to who has jurisdiction over these areas. There has got to be a peaceful way to resolve these issues.” After Tokyo, Panetta is scheduled to stop in Beijing to meet with civilian and military leaders. The trip is his third to Asia since becoming defense secretary in July 2011 and follows a lengthy visit to the region this month by Secretary of State Hillary Rodham Clinton.

#### China-US relations are strong and sustainable – both know they need each other in the long term

Sieff, 1-5-‘12 [Martin Sieff, Three Time Pulitzer Prize Winner for International Reporting, Chief Global Analyst at The Globalist, MA History @ Oxford, “United States determined to maintain partnership with China,” January 5th 2012, http://apdforum.com/en\_GB/article/rmiap/articles/online/features/2012/01/05/china-us-partnership]

The rhetoric of domestic politics in China and the United States has obscured a fundamental truth the two nations understand well: The prosperity and well-being of China and the United States remain bound to each other. United States President Barrack Obama and U.S. Secretary of State Hillary Clinton are committed to a constructive partnership with China. They are not seeking to increase tensions or create a potentially destabilizing new confrontational posture against Beijing. Their goal is to stabilize Sino-American relations and the general balance of power in the East Asia and the western Pacific. The United States has advocated comprehensive negotiations in the South China Sea. “We both have much more to gain from cooperation than from conflict,” Clinton said. Clinton laid out the United States strategy to peacefully build a new era of peaceful cooperation with China in a major address published on the Foreign Policy magazine website in October. “We both have much more to gain from cooperation than from conflict,” she wrote. “We make the case to our Chinese colleagues that a deep respect for international law and a more open political system would provide China with a foundation for far greater stability and growth—and increase the confidence of China’s partners,” Clinton continued. “Without them, China is placing unnecessary limitations on its own development.” Obama recognizes that the United States and China are deeply dependent on each other. Obama has taken no actions to try to curtail Chinese exports into the United States and he does not intend to do so. The United States remains by far the largest and most lucrative market for Chinese exports. China ran a $273 billion trade surplus with the United States in 2010. It is projected to be even higher this year. If the United States curtailed the volume of its imports from China, Beijing’s leaders know that could set off a devastating economic crisis for them at home. China also holds more than $1 trillion in U.S. Treasury securities. It could cause a disastrous fall of the dollar and trigger a devastating economic double-dip back into recession on the U.S. economy if it sold too many of them too quickly on world markets. China’s greatest concern about the U.S. financial and economic policy is not a desire to see America grow weaker. On the contrary, Chinese Prime Minister Wen Jiabao repeatedly warned senior figures in the George W. Bush and Obama administrations to reduce the government’s ballooning annual federal budget deficit to restore investor confidence. Chinese leaders openly expressed their skepticism that boosting government spending too rapidly will not create jobs, but will threaten fiscal stability and undermine business confidence. These arguments reflect the clear recognition by China’s leaders that the United States and China remain deeply dependent upon each other for the continued prosperity and success of both nations. Also, Obama has made it clear that the United States remains committed to maintaining international security and stability in East Asia and the Western Pacific. The United States has rejected arguments to try to contain China or make it the enemy for a new generation of so-called neo-Cold War containment policies. China’s rise in economic and diplomatic influence across South-East Asia and through sub-Saharan Africa has been a stabilizing force. Chinese diplomats and companies are happy to work with secure governments throughout these regions as long as they can deliver stability and good conditions for economic development and investment. It enjoys mature relations with democratic Malaysia and Indonesia, as well as with authoritarian governments in Africa. China also has a vested interest, as does the United States, in global as well as in U.S. financial and economic stability and security. China has used its massive financial resources and global business clout to support the threatened euro currency and signal its support for European governments mired in massive national debts such as Italy and France. Like the United States, China remains a status quo power in is economic policies. U.S. interests also require a continuing stable, strong and friendly China. The U.S. government needs China to remain confident that its vast investment in U.S. Treasuries remains secure. Washington wants China also to go on attracting major Foreign Direct Investment, especially from the United States in the rapidly growing information technology and related high-tech sectors. China and the United States also share a concern in maintaining the security and stability of Indonesia and the Malacca Strait, through which so much of the oil imports from the Middle East for China, South Korea and Japan all have to pass. Many reported areas of apparent conflict or disagreement between the United States and China are either far less than generally realized, or have naturally subsided. China’s massive investment in solar and other forms of renewable and sustainable power has blunted previous criticism by American environmentalists of China’s energy policies. In reality, the United States and China both want to move to sustainable power sources as rapidly as possible while both countries recognize their need to remain dependent on traditional fossil fuel sources for the foreseeable future. Both countries are investing on a massive scale in clean natural gas which has a far smaller carbon footprint than oil or coal. China’s massive investment in hundreds of next-generation safe nuclear civilian power reactors has also been widely welcomed by American environmentalists. And both countries want to keep the Middle East stable, global oil prices down and global energy supplies secure. Disagreements over specific statements on individual issues have to be seen in this broader context. The United States, China and the entire Asia-Pacific region have benefitted tremendously from the decades of partnership and mutually beneficial growth between the world’s two largest economies. Obama’s administration is determined that it will continue.

China-US Relations in 2012: Caution Ahead

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#### Preemption will always be justified.

Jackson 05 Richard, Prof of Politics @ U. of Manchester, Writing the War on Terrorism, p. 98-99

Another feature of the discourse of threat and danger involves the construction of numerous and seemingly catastrophic threats and dangers. The purpose of this language is to suggest that not only is the threat 'new' and 'unprecedented' but it is of such massive proportions that it endangers our physical, psychological cultural and political lives. Moreover, it is a present. ongoing and imminent threat. Neither is it just about physical safety or a passing danger. Rather, it is a fundamental threat — a threat to our collective and individual existence, to our very essence. Constructing a danger this great is extremely useful for authorities because it creates a situation of extreme crisis, the 'supreme emergency' where normal politics is suspended and where the usual checks and balances on the exercise of power can be dispensed with. In international law, the notion of 'supreme emergency' denotes a situation where the very existence of the state is under threat: that is, where the national security foreign policy and economy of the state is at risk. Under such circumstances, states are permitted to take any measures deemed necessary for their survival — including pre emptive war, the suspension of constitutional rights, preventive detention or any other extraordinary measure. Thus, it gives a government immense power and freedom of action if they can construct their crisis as being so severe that it constitutes a 'supreme emergency'.

#### concept of terrorism is epistemologically suspect - any attack can be justified in response to terror because it is a political signifier, not an objective description of reality

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

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

#### Regimes are useless – ilaw can't determine what constitutes Al-Qaeda and won’t apply to clandestine nonstate actors.

#### Pedagogy first - the state is hijacked by the MIC, alternative modes of analysis are key to creating better skills for making politics better.

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In addition, as the state is hijacked by the financial-military-industrial complex, the “most crucial decisions regarding national policy are not made by representatives, but by the financial and military elites.”53 Such massive inequality and the suffering and political corruption it produces point to the need for critical analysis in which the separation of power and politics can be understood. This means developing terms that clarify how power becomes global even as politics continues to function largely at the national level, with the effect of reducing the state primarily to custodial, policing, and punishing functions—at least for those populations considered disposable. The state exercises its slavish role in the form of lowering taxes for the rich, deregulating corporations, funding wars for the benefit of the defense industries, and devising other welfare services for the ultra-rich. There is no escaping the global politics of finance capital and the global network of violence it has produced. Resistance must be mobilized globally and politics restored to a level where it can make a difference in fulfilling the promises of a global democracy. But such a challenge can only take place if the political is made more pedagogical and matters of education take center stage in the struggle for desires, subjectivities, and social relations that refuse the normalizing of violence as a source of gratification, entertainment, identity, and honor. War in its expanded incarnation works in tandem with a state organized around the production of widespread violence. Such a state is necessarily divorced from public values and the formative cultures that make a democracy possible. The result is a weakened civic culture that allows violence and punishment to circulate as part of a culture of commodification, entertainment, distraction, and exclusion. In opposing the emergence of the United States as both a warfare and a punishing state, I am not appealing to a form of left moralism meant simply to mobilize outrage and condemnation. These are not unimportant registers, but they do not constitute an adequate form of resistance .What is needed are modes of analysis that do the hard work of uncovering the effects of the merging of institutions of capital, wealth, and power, and how this merger has extended the reach of a military-industrial-carceral and academic complex, especially since the 1980s. This complex of ideological and institutional elements designed for the production of violence must be addressed by making visible its vast national and global interests and militarized networks, as indicated by the fact that the United States has over 1,000 military bases abroad.54 Equally important is the need to highlight how this military-industrial-carceral and academic complex uses punishment as a structuring force to shape national policy and everyday life. Challenging the warfare state also has an important educational component. C. Wright Mills was right in arguing that it is impossible to separate the violence of an authoritarian social order from the cultural apparatuses that nourish it. As Mills put it, the major cultural apparatuses not only “guide experience, they also expropriate the very chance to have an experience rightly called ‘our own.’”55 This narrowing of experience shorn of public values locks people into private interests and the hyper-individualized orbits in which they live. Experience itself is now privatized, instrumentalized, commodified, and increasingly militarized. Social responsibility gives way to organized infantilization and a flight from responsibility. Crucial here is the need to develop new cultural and political vocabularies that can foster an engaged mode of citizenship capable of naming the corporate and academic interests that support the warfare state and its apparatuses of violence, while simultaneously mobilizing social movements to challenge and dismantle its vast networks of power. One central pedagogical and political task in dismantling the warfare state is, therefore, the challenge of creating the cultural conditions and public spheres that would enable the U.S. public to move from being spectators of war and everyday violence to being informed and engaged citizens.Unfortunately, major cultural apparatuses like public and higher education, which have been historically responsible for educating the public, are becoming little more than market-driven and militarized knowledge factories. In this particularly insidious role, educational institutions deprive students of the capacities that would enable them not only to assume public responsibilities, but also to actively participate in the process of governing. Without the public spheres for creating a formative culture equipped to challenge the educational, military, market, and religious fundamentalisms that dominate U.S. society, it will be virtually impossible to resist the normalization of war as a matter of domestic and foreign policy. Any viable notion of resistance to the current authoritarian order must also address the issue of what it means pedagogically to imagine a more democratically oriented notion of knowledge, subjectivity, and agency and what it might mean to bring such notions into the public sphere. This is more than what Bernard Harcourt calls “a new grammar of political disobedience.”56 It is a reconfiguring of the nature and substance of the political so that matters of pedagogy become central to § Marked 09:06 § the very definition of what constitutes the political and the practices that make it meaningful. Critical understanding motivates transformative action, and the affective investments it demands can only be brought about by breaking into the hardwired forms of common sense that give war and state-supported violence their legitimacy. War does not have to be a permanent social relation, nor the primary organizing principle of everyday life, society, and foreign policy. The war of all-against-all and the social Darwinian imperative to respond positively only to one’s own self-interest represent the death of politics, civic responsibility, and ethics, and set the stage for a dysfunctional democracy, if not an emergent authoritarianism. The existing neoliberal social order produces individuals who have no commitment, except to profit, disdain social responsibility, and loosen all ties to any viable notion of the public good. This regime of punishment and privatization is organized around the structuring forces of violence and militarization, which produce a surplus of fear, insecurity, and a weakened culture of civic engagement—one in which there is little room for reasoned debate, critical dialogue, and informed intellectual exchange. Patricia Clough and Craig Willse are right in arguing that we live in a society “in which the production and circulation of death functions as political and economic recovery.”57 The United States understood as a warfare state prompts a new urgency for a collective politics and a social movement capable of negating the current regimes of political and economic power, while imagining a different and more democratic social order. Until the ideological and structural foundations of violence that are pushing U.S. society over the abyss are addressed, the current warfare state will be transformed into a full-blown authoritarian state that will shut down any vestige of democratic values, social relations, and public spheres. At the very least, the U.S. public owes it to its children and future generations, if not the future of democracy itself, to make visible and dismantle this machinery of violence while also reclaiming the spirit of a future that works for life rather than death—the future of the current authoritarianism, however dressed up they appear in the spectacles of consumerism and celebrity culture. It is time for educators, unions, young people, liberals, religious organizations, and other groups to connect the dots, educate themselves, and develop powerful social movements that can restructure the fundamental values and social relations of democracy while establishing the institutions and formative cultures that make it possible. Stanley Aronowitz is right in arguing that: the system survives on the eclipse of the radical imagination, the absence of a viable political opposition with roots in the general population, and the conformity of its intellectuals who, to a large extent, are subjugated by their secure berths in the academy [and though] we can take some solace in 2011, the year of the protester…it would be premature to predict that decades of retreat, defeat and silence can be reversed overnight without a commitment to what may be termed “a long march” through the institutions, the workplaces and the streets of the capitalist metropoles.58 The current protests among young people, workers, the unemployed, students, and others are making clear that this is not—indeed, cannot be—only a short-term project for reform, but must constitute a political and social movement of sustained growth, accompanied by the reclaiming of public spaces, the progressive use of digital technologies, the development of democratic public spheres, new modes of education, and the safeguarding of places where democratic expression, new identities, and collective hope can be nurtured and mobilized. Without broad political and social movements standing behind and uniting the call on the part of young people for democratic transformations, any attempt at radical change will more than likely be cosmetic.

#### They can only weigh the aff if they justify legalism as an epistemology - the aff's impact calculations are not benign, but mask the violence of law.

Dossa 99 Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

Law's imperial reach, it massive authority, in liberal politics is a **brute**, recurring **fact**. In Law's Empire, Dworkin attests to its scope and power with candour: "We live in and by the law. It makes us what we are" (vii). But he fails to appreciate that law equally traduces others, it systematically unmakes them. For Dworkin, a militant liberal legalist, law is the insiders' domain: legal argument has to be understood internally from the "judge's point of view"; sociological or historical readings are irrelevant and "perverse".2 Praising the decencies of liberal law is necessary in this world: rule of law, judicial integrity, fairness, justice are integral facets of tolerable human life. Lawfulness is and ought to be part of any decent regime of politics. But **law's rhetoric on its own behalf** systematically scants law's violent, dark underside, it skillfully masks law's commerce with **destruction and death.** None of this is visible from the internalist standpoint, and Dworkin's liberal apologia serves to mystify the gross reality of law's empire. In liberal political science, law's presumed, Olympian impartiality, is thus not a contested notion. Liberals still presuppose as a matter of course the juristic community's impartiality and neutrality, **despite empirical evidence to the contrary**.3 One consequence of the assumed sanctity of the judicial torso within the body politic, has been that law's genealogy, law's chronological disposition towards political and cultural questions, have simply not been of interest or concern to most liberal scholars. A further result of this attitude is the political science community's nearly total ignorance of liberal law's complicity in western imperialism, and in shaping western attitudes to the lands and cultures of the conquered natives. Liberal jurisprudence's subterranean life, its invidious consciousness is, however, not an archaic, intermittent annoyance as sensitive liberals are inclined to think: **indeed law is as potent now as it has been in last two centuries in articulating a dismissive image of the native Other**.

#### Sequencing is crucial - cultural shifts need to occur first for law to be effective.

Nagin 5 Tomiko Brown, Visiting Associate Professor, University of Virginia School of Law, “ELITES, SOCIAL MOVEMENTS, AND THE LAW: THE CASE OF AFFIRMATIVE ACTION,” Columbia Law Review, 105 Colum. L. Rev. 1436

Those seeking to have an impact on the political and legal orders should not root a mass movement in the courts;instead, affirmative litigation about constitutional rights should be anchored upon and preceded by a mass movement. Efforts to achieve fundamental change **should** begin with the target constituency and be waged initially outside of the confines of institutionalized politics.Law should be understood as a tactic in an ongoing political struggle, where the struggle is the main event and favorable legal outcomes are its byproducts. There is **a crucially important temporal component** to this view. Legal claims can be tactically useful in a political strategy for achieving change - **but** only after social movements lay the groundwork **for legal change**. Social movements **must first create political pressure that frames issues in § Marked 09:06 § a favorable manner**, creates cultural norm shifts, and affects public opinion; these norm shifts then increase the likelihood that courts will reach outcomes favored by lawyers. [437](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n437) Again, my claims find support in the history of the mid-twentieth-century civil rights movement. This narrative posits an intimate relationship between the sociopolitical dynamics within black client communities and the success (or failure) of civil rights lawyers' litigation campaigns for rights. The postwar civil rights movement confirms that the moral suasion of participatory democratic groups of nonlawyers, and typically nonelites, was integral to law's movement from a Jim Crow regime to a [\*1523] constitutional order in which formal equality was the norm. During the past three decades, historians who have analyzed social change have discovered that small groups of inexpert individuals can be the leading edge of a social movement, especially when they work in coalition with those who traditionally wield influence in society. [438](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n438)Through their commitment to a social cause, ordinary people with no insider knowledge of the technical aspects of the broad issue on which they are mobilizing can create circumstances in which those with actual power (political, economic, and, ultimately, legal power) are persuaded to act in their favor.

#### The perm produces psychological cooption that naturalizes dominant ideologies and depletes momentum for larger movements

Lobel 7 **–** Assistant Professor of Law, University of San Diego, (Orly, Harvard Law Review, 120 Harv. L. Rev. 937)

Psychological cooptation is produced by the law precisely because law promises more than it can and will deliver. At the same time, law is unlike other sets of rules or systems in which we feel as though we have more choice about whether to participate. As described earlier, law presents itself simultaneously as the exclusive source of authority in a society and as the only engine for social change. It further presents itself as objective, situated outside and above politics. Thus, social actors who enter into formal channels of the state **risk transformation into a particular hegemonic consciousness.** Relying upon the language of law and legal rights to bring change legitimates an ideological system that masks inequality. [95](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n95) When social demands are fused into legal action and the outcomes are only moderate adjustments of existing social arrangements, the process in effect **naturalizes systemic injustice.** The legal process reinforces, rather than resists, the dominant ideologies, institutions, and social hierarchies of the time. For example, when a court decision declares the end of racial segregation but de facto segregation persists, individuals become blind to the root causes of injustice and begin to view continued inequalities as inevitable and § Marked 09:06 § irresolvable. Similarly, **rights-based discourse has a legitimation effect, since rights mythically present themselves as outside and above politics.** [96](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n96) Meanwhile, the legal framework allows the courts to implement a color blindness ideology and grant only symbolic victories rather than promote meaningful progress. [97](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n97) As such, the role of law is one that in fact ensures the [\*958] "continued subordination of racial and other minority interests," while **pacifying the disadvantaged who rely on it.** [98](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n98) Social movements **seduced by the "myth of rights" assume** a false sequence, namely "that litigation can evoke a declaration of rights from courts; that it can, further, be used to assure the realization of these rights; and, finally, that realization is tantamount to meaningful change."

#### The perm creates a grey hole - legal constraints on the executive masks the absence of real restraints.

Osborn 8 Timothy Kaufman is the Baker Ferguson Professor of Politics and Leadership at Whitman College; from 2002-06 as president of the American Civil Liberties of Washington; and he recently completed a term on the Executive Council of the American Political Science Association. Theory & Event > Volume 11, Issue 2

The examples cited in this section suggest not the formation of an utterly lawless regime, but, rather, within an order that continues to understand itself in terms of the categories provided by liberal contractarianism, the more insidious creation, multiplication, and institutionalization of what David Dyzenhaus calls "grey holes." Such holes are "spaces in which there are some legal constraints on executive action...but the constraints are so insubstantial that they pretty well permit government to do as it pleases."40 As such, they are more harmful to the rule of law than are outright dictatorial usurpations, first, because the provision of limited procedural protections masks the absence of any real constraint on executive power; and, second, because location of the authority to create such spaces within the Constitution implies that, in the last analysis, they bear ex ante authorization by the people. When created, in other words, they may receive but they do not require ratification, whether by Congress or by those whom its members are said to represent. What this means in effect is that the second Bush administration has dispensed with Jefferson's stipulation that extra-constitutional executive acts (or, rather, acts that Jefferson deemed to be outside those constitutionally permitted) require ex post facto ratification; and, in addition, that it has dispensed with Locke's contention that, however unlikely, at least in principle, specific exercises of extra-legal prerogative power (or, rather, acts that Locke deemed to be outside those legally permitted) are properly subject to revolutionary rejection. What one finds in the second Bush administration, then, is a denial of both models of accountability, combined with an aggressive commitment to the constitution of a security state that is liberal only in name. As it extends its reach, perfection of that state renders the prospect of popular repudiation of prerogative power ever more chimerical, and, indeed, renders recognition of the problematic character of its exercise ever less likely.

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

Contreras 8 Francisco, 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§ Marked 09:05 § . 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.

#### Dependence on drones locks us into an endless war.

Bacevich 12 Andrew Bacevich, professor of history and international relations at Boston University, Interview wil Bill Moyers, March 23 http://billmoyers.com/wp-content/themes/billmoyers/transcript-print.php?post=5190

Again, one would refer to Afghan history here, that this is simply not a place that accommodates foreign invaders who think they know how to run the place better than the local population. But what I would want to emphasize, I think, is that by last year, I think Obama himself had given up on the notion that counterinsurgency provided a basis for U.S. strategy and had, indeed, begun to implement Plan C. And Plan C is targeted assassination. Plan C is relying on drones, unmanned aerial vehicles with missiles, and also commandos, special operation forces, in order to conduct military operations, in essence on a global basis, identifying those who could pose a threat to us. And without regard to congressional authority, without regard to considerations of national sovereignty, to go kill the people we think need to be killed. Plan C is already being implemented. BILL MOYERS: Most people seem to accept it as an alternative to failure in Afghanistan, and as a way of keeping American soldiers out of harm's way. ANDREW BACEVICH: Well, and also they accept it because of course, it doesn't cost us anything. We are not, the people are not engaged in any serious way. The people are not asked to sacrifice. The people are asked only to applaud when we are told after the fact that an attack has succeeded. For example, the raid into Pakistan that killed Osama bin Laden. And I would applaud, and do applaud, the raid that killed Osama bin Laden. But I also have this question to ask. And that is, what is the political objective of a strategy of targeted assassination? How many people do we think we're going to kill? How long are we going to kill people in Yemen or in Somalia or in Pakistan before we get to some point where we can say, “Yes, now our political purposes have been achieved, and therefore the war can end, that Plan C will have run its course?” And my fear is that we'll never, we'll never run out of targets. And § Marked 09:05 § that describes where we are. BILL MOYERS: That's Option C, right? ANDREW BACEVICH: Option C is where we are. And I think that the reason-- but the reason Option-- we should critically scrutinize Option C is that permanent, open-ended war cannot be good for the country. Permanent, open-ended war, in essence, is an abdication of strategic thought. Are we so unimaginative, are we so wedded to the reliance on military means, that we cannot conceive of any way to reconcile our differences with groups, nations, in the Islamic world, and therefore bring this conflict to an end? And there may be some people who would answer, “No, there is no way.” Well, I-- woe betide our nation, if indeed there is no alternative but endless war. BILL MOYERS: But being a realist, as you are, I'm confident that you think as I do that somewhere, even as we speak, there are terrorists plotting how they can inflict harm on the United States. ANDREW BACEVICH: Let me emphasize. There is some value, there is some utility in Plan C. That there are people out there who are plotting. Whose minds cannot be changed. And we do need to identify them and do whatever is necessary to ensure that they cannot harm us. But, those groups, those individuals exist within a milieu, a political context, a culture. And it seems to me that the strategic imperative is to understand that milieu, to understand the grievances that ultimately gave rise to this animosity expressing itself in terrorist activity. And as a realist, and somebody who's not given to optimism, it seems to me that there are indications that we can engage or have some hope in positive change.

#### Empirically the informal restraints imposed by counter-hegemonic movements was a stronger and more important check on the Bush administration than formal external mechanisms.

Cole 11 David, Professor, Georgetown University Law Center. Wayne Law Review, Winter, 57 Wayne L. Rev. 1203

Yet perhaps the most important and surprising lesson of the past decade is that constitutional and human rights, which seemed so vulnerable in the attacks' aftermath, proved far more resilient than many would have predicted. President George W. Bush's administration initially chafed at the constraints of constitutional, statutory, and international law, which it treated as inconvenient obstacles on the path to security. 1 The administration acted as if no one would dare to--or could effectively--check it. But in time, the executive branch of the most powerful nation in the world was compelled to adapt its response to legal demands. Equally surprising is that these restraints for the most part were imposed not by the formal mechanisms of checks and balances, but by more informal influences, often sparked by efforts of civil society organizations that advocated, educated, organized, demonstrated, and litigated for constitutional and human rights. The American constitutional system is traditionally understood to rely on the separation of powers and judicial review to protect liberty and impose legal restrictions on government officials. After September 11, however, as in [\*1205] other periods of crisis in American history, all three branches were often compromised in their commitments to liberty, equality, dignity, fair process, and the "rule of law." 2 By contrast, civil society groups dedicated to constitutional and rule-of-law values, such as the American Civil Liberties Union, the Center for Constitutional Rights, the American Bar Association, Human Rights Watch, Human Rights First, the Bill of Rights Defense Committee, the Constitution Project, the Muslim Public Affairs Council, and the Council on American Islamic Relations, consistently defended constitutional and human rights--and in so doing reinforced the checking function of constitutional and international law. They issued reports identifying and condemning lawless ventures; 3 provided material and sources to the media to help spread the word; 4 filed lawsuits in domestic and international fora challenging allegedly illegal initiatives; 5 organized and educated the public about the importance of adhering to constitutional and human rights commitments; 6 testified in Congressional hearings on torture, illegal surveillance, and Guantanamo; 7 and coordinated with foreign governments and international nongovernmental organizations to bring diplomatic pressure to bear on the United States to conform its actions to constitutional and international law. 8 Scholars have long focused on the role constitutions and the formal structures of government that they create play in reinforcing commitments to long-term principles when ordinary political forces are [\*1206] inclined to seek shortcuts. 9 The United States' experience during the decade following September 11 suggests that this focus is incomplete; we should pay at least as much attention to the work civil society groups do to "enforce" constitutional rights. Much like a constitution itself, such groups stand for, and can shore up, commitments to principle when those commitments are most tested. And while we often speak metaphorically about a "living Constitution," civil society groups are actually living embodiments of these commitments, comprised of human beings who have joined together out of a shared, lived dedication to constitutional and human rights principles. As such, they are well positioned to influence the polity's and the government's reactions in real time, and in crisis periods may be the only institutional counterforce to the impulse to sacrifice rights for security. § Marked 09:05 § These organizations' interventions often call on the formal structures of government to heed their legal claims, but the post-9/11 experience suggests that their work can have traction beyond the formal confines of judicial opinions and enacted statutes. In the first decade after September 11, civil society appears to have played at least as critical a role in the restoration of constitutional and human rights values as the formal institutions of government. In this period, the constraints on executive power operated through what I will call "civil society constitutionalism," in which nongovernmental organizations advocated in multiple ways for adherence to the rule of law, in court and out, and in so doing, did much of the "work" of constitutionalism. In examining the nexus between civil society and constitutionalism, I am especially interested in those nongovernmental groups that define themselves by their collective commitment to constitutional or rule-of-law values. "Civil society" can mean many things to many people, but I will use it in this essay principally as shorthand for this particular subset of nongovernmental organizations. Ernest Gellner provisionally defined the broader civil society as "a set of diverse non-governmental institutions which is strong enough to counterbalance the stateand, while not preventing the state from fulfilling its role of keeper of the peace and arbitrator between major interests, can nevertheless prevent it from dominating and atomizing the rest of society." 10

#### There is a growing cacophony of voices bringing attention to the deaths of civilians by drone strikes- from the reports by Human Rights Watch and Amnesty International to the UN special reports. But still, not enough Americans are listening. The Rehman family flew 7,000 miles to tell their story at a Congressional hearing and only 5 members of Congress showed up. We need a mobilized community to restrain future use of drones.

Madea Benjamin, founder of CODEPINK in 2013 Medea Benjamin is cofounder of CODEPINK and the human rights organization Global Exchange. She is the author of Drone Warfare: Killing by Remote Control. “Drone Victims Come Out of the Shadows” Nov 5 http://fpif.org/drone-victims-come-shadows/?utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+FPIF+%28Foreign+Policy+In+Focus+%28All+News%29%29

At each of the over 200 cities I’ve traveled to this past year with my book Drone Warfare: Killing by Remote Control, I ask the audience an easy question: Have they ever seen or heard from drone strike victims in the mainstream U.S. press? Not one hand has ever gone up. This is an obvious indication that the media has failed to do its job of humanizing the civilian casualties that accompany President Obama’s deadly drone program. This has started to change, with new films, reports, and media coverage finally giving the American public a taste of the personal tragedies involved. On October 29, the Rehman family—a father with his two children—came all the way from the Pakistani tribal territory of North Waziristan to the U.S. Capitol to tell the heart-wrenching story of the death of the children’s beloved 67-year-old grandmother. And while the briefing, organized by Congressman Alan Grayson, was only attended by four other congresspeople, it was packed with media. Watching the beautiful 9-year-old Nabila relate how her grandmother was blown to bits while outside picking okra softened the hearts of even the most hardened DC politicos. From the congressmen to the translator to the media, tears flowed. Even the satirical journalist Dana Milbank, who normally pokes fun at everything and everyone in his Washington Post column, covered the family’s tragedy with genuine sympathy. The visit by the Rehman family was timed for the release of the groundbreaking new documentary Unmanned: America’s Drone Wars by Robert Greenwald of Brave New Foundation. The emotion-packed film is filled with victims’ stories, including that of 16-year-old Tariq Aziz, a peace-loving, soccer-playing teenager obliterated three days after attending an anti-drone conference in Islamabad. Lawyers in the film pose the critical question: If Tariq was a threat, why didn’t they capture him at the meeting and give him the right to a fair trial? Another just released documentary is Wounds of Waziristan, a well-crafted, 20-minute piece by Pakistani filmmaker Madiha Tahir that explains how drone attacks rip apart communities and terrorize entire populations. Just as the visit and the films have put real faces on drone victims, a plethora of new reports by prestigious institutions—five in total—have exposed new dimensions of the drone wars. On October 22, Human Rights Watch issued a report on drone strikes in Yemen and Amnesty International issued another on drone strikes in Pakistan. While not calling for an end to all drone strikes, the reports detail cases of civilian casualties and criticize the U.S. government for considering itself above the rule of law and accountability. A third report, License to Kill, released by the Geneva-based group Al Karama, is much more damning of U.S. policy. While Amnesty and Human Rights Watch say drones are lawful under certain circumstances and mainly push for transparency, Al Karama asserts that the U.S. drone war is a clear violation of international law. It calls for an end to extrajudicial executions and targeted killings; complete reparations to victims; and a resolution by the UN Human Rights Council opposing the U.S. practice of extrajudicial executions. Adding to these well-researched reports by non-governmental organizations are two documents commissioned by the United Nations. One is by Christof Heyns, the UN’s special rapporteur on extrajudicial, summary, or arbitrary executions. The other is by Ben Emmerson, the special rapporteur on human rights and counter-terrorism. Heyns

warns that while drones may be more targeted than other weapons, they are easier to use and may “lower social barriers against the use of lethal force.” He said that a “drones only” approach risks ignoring peaceful approaches such as individual arrests and trial, negotiations and building alliances. Emmerson said states have the obligation to capture terrorist suspects, when feasible, and should only use force as a last resort. He blasted the U.S. lack of transparency, calling it the single greatest obstacle to an evaluation of the civilian impact of drone strikes. He said states must be transparent about the acquisition and use of drones, the legal basis and criteria for targeting, and their impact. “National security does not justify keeping secret the statistical and methodological data about the use of drones,” he claimed. But perhaps more impactful than the UN reports themselves was the debate they engendered on the floor of the UN General Assembly. On October 26, for the first time ever, representatives from a broad swath of nations waited their turn to denounce the U.S. drone policy. Venezuela called drones “flagrantly illegal” and said they were a form of “collective punishment.” Brazil pushed the UN rapporteurs to take an even stronger stand. China called drones a “blank space in international law” and insisted that nations “respect the principles of UN charters, the sovereignty of states, and the legitimate rights of the citizens of all countries.” The representative of Pakistan tried to put to rest press reports that the Pakistani government secretly approved of the strikes. He stated that drones put all Pakistanis at risk and radicalize more people, and called for “an immediate cessation of drone strikes within the territorial boundaries of Pakistan.” This was the same sentiment expressed by Pakistani Prime Minister Nawaz Sharif in his October 23 meeting with President Obama. The U.S. government is feeling the pressure. It has taken steps to reduce civilian casualties and has reduced the actual number of strikes, but certainly not eliminated them. In fact, there was a drone strike in Somalia on October 28 and another one in Pakistan on October 31 that killed Taliban leader Hakimullah Mahsoud, who was about to engage in peace talks with the Pakistan government. While the reduction in the number of strikes is a partial victory, it cannot erase the hundreds of innocent lives lost over the years. Also, with the global proliferation of drones (thanks to the easing of restrictions on overseas sales and the introduction of domestic drones into U.S. skies by September 2015), their usage will inevitably increase. A mobilized global community is the only force that can serve as a restraining factor. It is also [the] best way to honor the Rehman family and other victims. As 13-year-old Zubair Rehman testified, “I hope that by telling you about my village and death of my grandmother, I can convince you that drones are not the answer. I hope I can return home to tell my community that Americans listened and are trying to help us solve the many problems we face. And maybe, just maybe, America may soon stop the drones.” Responding to this call is the Global Drone Summit November 16-17 in Washington DC, where hundreds of people from around the world will gather to strategize and to organize a global network. They will also announce campaigns to pressure the U.S. government to release the legal memos justifying drone strikes, and create a compensation fund for civilian victims. Check here to register for the summit or watch the livestream.

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### Solvency

#### Obama is committed to transitioning drones to the DOD now away from the CIA—the plan messes up the calibrated process and turns the case.

Klaidman 13 (Daniel, The Daily Beast, “Exclusive: No More Drones for CIA”, Mar 19, 2013, http://www.thedailybeast.com/articles/2013/03/19/exclusive-no-more-drones-for-cia.html, ZBurdette)

At a time when controversy over the Obama administration’s drone program seems to be cresting, the CIA is close to taking a major step toward getting out of the targeted killing business. Three senior U.S. officials tell The Daily Beast that the White House is poised to sign off on a plan to shift the CIA’s lethal targeting program to the Defense Department. The move could potentially toughen the criteria for drone strikes, strengthen the program’s accountability, and increase transparency. Currently, the government maintains parallel drone programs, one housed in the CIA and the other run by the Department of Defense. The proposed plan would unify the command and control structure of targeted killings and create a uniform set of rules and procedures. The CIA would maintain a role, but the military would have operational control over targeting. Lethal missions would take place under Title 10 of the U.S. Code, which governs military operations, rather than Title 50, which sets out the legal authorities for intelligence activities and covert operations. “This is a big deal,” says one senior administration official who has been briefed on the plan. “It would be a pretty strong statement.” Officials anticipate a phased-in transition in which the CIA’s drone operations would be gradually shifted over to the military, a process that could take as little as a year. Others say it might take longer but would occur during President Obama’s second term. “You can’t just flip a switch, but it’s on a reasonably fast track,” says one U.S. official. During that time, CIA and DOD operators would begin to work more closely together to ensure a smooth hand-off. The CIA would remain involved in lethal targeting, at least on the intelligence side, but would not actually control the unmanned aerial vehicles. Officials told The Daily Beast that a potential downside of the agency’s relinquishing control of the program was the loss of a decade of expertise that the CIA has developed since it has been prosecuting its war in Pakistan and beyond. At least for a period of transition, CIA operators would likely work alongside their military counterparts to target suspected terrorists. The policy shift is part of a larger White House initiative known internally as “institutionalization,” an effort to set clear standards and procedures for lethal operations. More than a year in the works, the interagency process has been driven and led by John Brennan, who until he became CIA director earlier this month was Obama’s chief counterterrorism adviser. Brennan, who has presided over the administration’s drone program from almost day one of Obama’s presidency, has grown uncomfortable with the ad hoc and sometimes shifting rules that have governed it. Moreover, Brennan has publicly stated that he would like to see the CIA move away from the kinds of paramilitary operations it began after the September 11 attacks, and return to its more traditional role of gathering and analyzing intelligence. Lately, Obama has signaled his own desire to place the drone program on a firmer legal footing, as well as to make it more transparent. He obliquely alluded to the classified program during his State of the Union address in January. “In the months ahead,” he declared, “I will continue to work with Congress to ensure that not only our targeting, detention, and prosecution of terrorists remain consistent with our laws and systems of checks and balances, but that our efforts are even more transparent to the American people and to the world.” Shortly after taking office, Obama dramatically ramped up the drone program, in part because the government’s targeting intelligence on the ground had vastly improved and because the precision technology was very much in line with the new commander in chief’s “light footprint” approach to dealing with terrorism. As the al Qaeda threat has metastasized, U.S. drone operations have spread to more remote, unconventional battlefields in places like Yemen and Somalia. With more strikes, there have been more alleged civilian casualties. Adding to the mounting pressure for the administration to provide a legal and ethical rationale for its targeting polices was the killing of Anwar al-Awlaki, a senior commander of al Qaeda’s Yemen affiliate, who also happened to be a U.S. citizen. (Two weeks later, his 16-year-old son was killed in a drone strike, which U.S. officials have called an accident.) The recent nomination of Brennan to head the CIA became a kind of proxy battle over targeted killings and the administration’s reluctance to be more forthcoming about the covert program. At issue were a series of secret Justice Department legal opinions on targeted killing that the administration had refused to make public or turn over to Congress. It looks like the White House may now be preparing to launch a campaign to counter the growing perception—with elites if not the majority of the public—that Obama is running a secretive and legally dubious killing machine. For weeks, though the White House has not confirmed it, administration officials have been whispering about the possibility that Obama would make a major speech about counterterrorism policy, including efforts to institutionalize—but also reform—the kinds of lethal operations that have been a hallmark of his war on terrorism. With an eye on posterity, Obama may feel the time has come to demonstrate publicly that his policies, for all of the criticism, have stayed within the law and American values. “Barack Obama has got to be concerned about his legacy,” says one former adviser. “He doesn’t want drones to become his Guantánamo.” But for the president to step out publicly on the highly sensitive subject of targeted killings, he’s going to have to do more than simply give an eloquent speech. An initiative like shifting the CIA program to the military, as well as other aspects of the institutionalization plan, may be just what he needs.

#### Shift to DOD is coming now

Bennett 13 White House Quietly Shifts Armed Drone Program from CIA to DoD May. 24, 2013 By JOHN T. BENNETT Senior Congressional Reporter at Defense News http://www.defensenews.com/article/20130524/DEFREG02/305240010/White-House-Quietly-Shifts-Armed-Drone-Program-from-CIA-DoD

The White House has quietly shifted lead responsibility for its controversial armed drone program from the CIA to the Defense Department, a move that could encounter resistance on Capitol Hill. The decision is a landmark change in America’s 12-year fight against al-Qaida and raises new legal and operational questions while solving others. The shift could set off a bitter congressional turf war among the leaders of the committees that oversee the military and intelligence community, who already have sparred over the issue. At issue is a months-long debate about whether the CIA should remain the lead organization for planning and conducting aerial strikes on al-Qaida targets from remotely piloted aircraft. The Obama administration appears to have settled that debate, opting to hand the military control of most drone strikes while returning the CIA to its core missions of collecting and analyzing intelligence. In a landmark counterterrorism speech Thursday at National Defense University in Washington, Obama did not directly acknowledge the spy agency has been running the drone-strike program for years. Nor did he formally announce the Defense Department would be handed the lead role in the targeted-killing program. The president offered some clues into the status of the program, opaquely signaling it will now primarily be conducted by the United States military. When discussing the thorny issue that is the legality of the drone program, Obama called strikes from remotely piloted aircraft a “military tactic.” “To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance, for the same progress that gives us the technology to strike half a world away also demands the discipline to constrain that power, or risk abusing it,” Obama said. Minutes later, Obama, while noting drone strikes present unique geopolitical challenges for Washington, again seemed to hint his administration has concluded the military should run the drone-strike effort. “Now, this is not to say that the risks are not real,” Obama said. “Any U.S. military action in foreign lands risks creating more enemies and impacts public opinion overseas.” Military 'Preference' A senior Obama administration official who briefed reporters before the president’s speech spoke more clearly, announcing the White House indeed has concluded the military soon will take over the lead role for planning and carrying out drone strikes on al-Qaida targets. “What we do express in the PPG, though, is the preference that the United States military have the lead for the use of force not just in war zones like Afghanistan, but beyond Afghanistan where we are fighting against al-Qaida and its associated forces,” the senior administration official said. The official was referring to a new presidential policy guidance Obama signed this week that adjusts Washington’s counterterrorism approach and includes the drone-program shift. In that classified document, “there’s an indication of a preference for the Department of Defense to engage in the use of force outside of war zones,” the senior administration official told reporters. That official, however — by calling it “a preference” that the military take the lead role — provided important wiggle room and signaled the CIA is not out of the targeted-killing business for good. To that end, a former senior CIA official told Defense News earlier this week following a not-for-attribution event in Washington that Obama and his senior national security advisers have wanted for some time to return the CIA to its core missions. “Do you want the nation’s top espionage agency conducting a paramilitary mission or performing espionage?” the former senior official asked rhetorically. “The agency, since 9/11, and it’s understandable, has gotten away from its core missions. A lot of the collection and analysis really is now used for targeting.”

#### Getting the CIA out is key to all your advantages

Weber 13 Peter, The Week, February 6, http://theweek.com/article/index/239716/will-congress-curb-obamas-drone-strikes

"The U.S. is, in effect, waging two different drone wars," one run by the Pentagon, mainly in places like Yemen and Somalia, and the other carried out by the CIA in Afghanistan and, more often, Pakistan, says Bloomberg View in an editorial. The military's drone program is "operated by military professionals, trained in and bound by international and U.S. military law," and thus "much more appropriate." There are lots of things Congress and the Obama team can and should change — making the goal to capture, not kill, terrorists, say, and codifying the rules for drone warfare internationally — but getting the CIA out of the drone game is a key first step. Limiting the CIA's role to intelligence sharing and putting the program under Title 10 of the U.S. Code, which lays out the role of the military, would increase congressional oversight and transparency while still allowing necessary secrecy. And it would get the U.S. out of the ridiculous situation in which the only way for the administration to be honest with the public is to leak information about supposedly covert operations. [Bloomberg]

### Conflation

#### No risk of unilateral Israel strikes on Iran – media bias

Lindorff, 11-13-’11 (Dave, “Washington’s Fake ‘Concern’ About a Possible Israeli Attack on Iran” https://www.commondreams.org/view/2011/11/13-8)

When it comes to mainstream press reports about a possible Israeli attack on Iran’s nuclear facilities, it’s time to check the bullshit detector. Corporate media reports are claiming that the Pentagon and the White House are “worried” or “concerned” that the Israeli government may decide to attack Iran, and that the US is “trying to learn” what Israel’s real intentions are: is there a serious plan to attack or is this all just an effort to blackmail the US into taking stronger measures against Iran? As CNN put it in a Nov. 4 report: The United States has become increasingly concerned Israel could be preparing to strike Iran's nuclear program, a senior U.S. military official told CNN on Friday. The U.S. military and intelligence community in recent weeks have stepped up "watchfulness" of both Iran and Israel, according to the senior U.S. military official and a second military official familiar with the U.S. actions. Asked if the Pentagon was concerned about an attack, the senior military official replied "absolutely." Both officials declined to be identified because of the extreme sensitivity of the matter. Bzzzzzzzzzzz Oops! The Bullshit detector just went off. Missing from all these reports about Washington “concern,” and from statements being leaked by Pentagon and White House “sources,” is any mention of the fact that Israel’s entire air force consists of planes built in and funded by the United States. The F-15s and F-16s and the specially designed F-16I and F-15I, manufactured by Lockheed Martin and Boeing to Israeli Air Force specifications, are the planes that would have the job of delivering bombs to Iranian targets and providing cover against Iranian fighter defenses. One word from the US and those weapons systems would be grounded. After all, without US spare parts and US financing, Israel’s air force ceases to exist. So the claim that Washington is “worried” about Israel going it alone in a strike on Iran is, to put it bluntly, a lie. Now you could get deeper into it and speculate if you like that both the Israeli government and the Obama Administration want to promote media speculation that Israel may be planning an attack, and for the same reason: to allow, or to pressure, Washington to tighten the economic screws on Iran and perhaps to step up covert attacks on Iran. Or alternatively, Washington wants Israel to attack Iran, but wants to be able to claim that the US isn’t behind it. I tend to lean towards the first theory, because I don’t think that the US really wants the kind of explosion in the Middle East which would surely happen if Israel were to attack Iran. But then, who knows? The Neo-Cons have considerable sway in Washington, and these psychopaths do want such a conflict. Whatever the truth of what’s going on, let’s at least clear away the Big Lie. With the Israeli Air Force almost totally dependent upon the largesse of the United States, Israel is not going to do anything to Iran that is not 100 percent approved in advance by Washington.

#### US won’t get drawn in

Washington Post 12 “Panetta to urge China and Japan to tone down dispute over islands” Sept 16 http://articles.washingtonpost.com/2012-09-16/world/35494846\_1\_senkaku-islands-diaoyu-china-and-japan

The Obama administration has said it does not take sides in the territorial disputes. But they have arisen at a delicate time as Washington has been seeking to reassert its strategic interests in Asia and shore up its alliances in the face of China’s rising military and economic power. U.S. officials have been reassuring Japan, the Philippines and other allies that they won’t cede influence in the region to China. But the Obama administration has been less clear about how it would respond if fighting broke out over the disputed islands or ignited a larger conflict. The most widespread anti-Japanese protests in a generation cascaded across China this weekend in response to the Japanese government’s recent efforts to assert control over some rocky outcroppings known as the Senkaku Islands. Demonstrators threw rocks at the Japanese Embassy in Beijing, attacked Japanese factories and looted Japanese department stores — egged on by anti-Japanese screeds in China’s state-run media. The protests followed a maritime standoff Friday when six Chinese maritime patrol ships entered Japanese waters to reinforce Beijing’s claim to the islands, which are known as Diaoyu in China. Japan’s Coast Guard responded quickly, and the Chinese vessels eventually backed away. Under a long-standing treaty with Tokyo, **the United States is obligated to come to Japan’s defense if it is attacked. But Washington has not spelled out if it considers the Senkaku Islands to be Japanese territory.** The tensions between China and Japan follow a similar dust-up this spring between China and the Philippines over disputed territory in the South China Sea. Patrol vessels from both countries engaged in a prolonged standoff after a Philippine navy ship — recently purchased from the United States — detained Chinese fishermen that it charged had been illegally operating in Philippine waters. The United States also has a mutual defense treaty with the Philippines. Although the Obama administration has been eager to bolster security cooperation with Manila, **U.S. officials don’t want to be forced to become militarily involved in obscure territorial feuds. “**I’m pretty frank with people: **I don’t think that we’d allow the U.S. to get dragged into a conflict over fish or over a rock,” said a senior U.S. military official**, speaking on the condition of anonymity to discuss deliberations within the Obama administration. “Having allies that we have defense treaties with, not allowing them to drag us into a situation over a rock dispute, is something I think we’re pretty all well-aligned on.” While the maritime feuds have concerned Washington, the U.S. military official noted that China has shown some restraint by sending maritime patrol boats to assert its territorial claims instead of heavily armed warships. “They’ve tended to deal with these things at the Coast Guard level,” the official said. The squabbles are occurring with more frequency because ownership of the obscure islands can bolster a country’s claim to more expansive maritime borders — and control over resource-rich seabeds of the South China and East China seas. “We’re going to face more of this,” Panetta said. “Countries are searching for resources. There are going to be questions raised as to who has jurisdiction over these areas. There has got to be a peaceful way to resolve these issues.” After Tokyo, Panetta is scheduled to stop in Beijing to meet with civilian and military leaders. The trip is his third to Asia since becoming defense secretary in July 2011 and follows a lengthy visit to the region this month by Secretary of State Hillary Rodham Clinton.