## 1NC

### 1NC T

#### Courts affs have to specify the grounds

Dragich 95 - Martha J. Dragich, Associate Professor of Law at Missouri-Columbia, 2-1995 44 Am. U.L. Rev. 757

Opinions also permit readers to view the law in historical context. Insofar as opinions identify the precedents on which the court relied, they allow readers to form an understanding of the law's maturity. 164 In addition, the highly specialized citators on which legal research depends allow readers to gauge the continuing vitality of a decision [\*784] based on the frequency and approval with which it is cited. 165 Often, the determination whether or not a particular opinion is lawmaking cannot be made until years later, when further developments in the law demonstrate what the authoring judge could not forecast. 166 Moreover, the lasting authority of a decision depends largely on the quality of its reasoning, which can be evaluated only by reading the opinion. At a minimum, the tasks of researching and applying the law require that the law be findable and knowable, that the precedential value of prior decisions be ascertainable with some degree of reliability, and that prior decisions provide guidance for future cases. These conditions, in turn, can be satisfied only by the publication of judicial opinions stating the facts of the case, the issues considered, the court's reasoning, and the result.

#### Vote neg – all ground and education revolve around judicial reasoning

### 1NC Politics of Schmitt K

#### Politics is Schmittian – trying to fight the executive on their own battlefield is naïve – the aff is just a liberal knee-jerk reaction that swells executive power

Kinniburgh, 5/27 **–** (Colin, Dissent, 5-27, <http://www.dissentmagazine.org/blog/partial-readings-the-rule-of-law>)

The shamelessness of the endeavor is impressive—a far cry, in many ways, from the CIA’s secretive Cold War–era assassination plots. Obama has succeeded in anchoring a legal infrastructure for state-sponsored assassinations on foreign soil while trumpeting it, in broad daylight, as a framework for accountability. Peppered with allusions to the Constitution and to “the law” more generally, the call for transparency instead appears to provide an Orwellian foil for a remarkable expansion of executive powers. Existing laws, domestic or international, are proving a hopelessly inadequate framework with which to hold the Obama administration accountable for arbitrary assassinations abroad. No doubt it is tempting to turn to the Constitution, the Universal Declaration of Human Rights, and other relevant legal documents as a litmus test for the validity of government actions. Many progressive media outlets have a tendency to seize on international law, especially, as a straightforward barometer of injustice: this is particularly true in the case of the Israel-Palestine conflict, as an editorial in the current issue of Jacobin points out. Both domestic and international legal systems often do afford a certain clarity in diagnosing excesses of state power, as well as a certain amount of leverage with which to pressure the states committing the injustices. To hope, however, that legal systems alone can redress gross injustices is naive. Many leftists—and not just “bloodless liberals”—feel obliged to retain faith in laws and courts as a lifeline against oppression, rather than as mere instruments of that same oppression. Even Marx, when he was subjected, along with fellow Communist League exiles, to a mass show trial in Prussian courts in the 1850s, was convinced that providing sufficient evidence of his innocence would turn the case against his accuser, Wilhelm Stieber, a Prussian secret agent who reportedly forged his evidence against the communists. In his writings, Marx expressed his disillusionment with all bourgeois institutions, including the courts; in practice, he hoped that the law would serve him justice. Richard Evans highlights this tension in his insightful review of Jonathan Sperber’s Karl Marx: A Nineteenth-Century Life, published in the most recent London Review of Books. “Naively forgetting,” writes Evans, “what they had said in the Manifesto – that the law was just an instrument of class interests – Marx and Engels expected [their evidence against Stieber] to lead to an acquittal, but the jury found several of the defendants guilty, and Stieber went unpunished.” Marx’s disappointment is all too familiar. It is familiar from situations of international conflict, illustrated by Obama’s drone strikes justifications; it is evident, too, when a police officer shoots dead an unarmed Bronx teenager in his own bathroom, and the charge of manslaugher—not murder—brought against the officer is dropped for procedural reasons by the presiding judge. This is hardly the first such callous ruling by a New York court in police violence cases; the last time charges were brought against an NYPD officer relating to a fatal shooting on duty, in 2007, they were also dropped. Dozens of New Yorkers have died at the hands of the police since then, and Ramarley Graham’s case was the first that even came close to a criminal conviction—only to be dropped for ludicrous reasons. Yet New York’s stop-and-frisk opponents are still fighting their battle out in the courts. In recent months, many activists have invested their hopes for fairer policing in a civil class action suit, Floyd, et. al. vs. City of New York, which may just convict the NYPD of discrimination despite the odds. District court judge Shira Scheindlin, profiled in this week’s New Yorker, has gained a reputation for ruling against the NYPD in stop-and-frisk cases, even when it has meant letting apparently dangerous criminals off the hook. In coming weeks, she is likely to do the same for the landmark Floyd case, in what may be a rare affirmation of constitutional law as a bulwark against state violence and for civil liberties. Even if the city wins the case, the spotlight that stop-and-frisk opponents have shined on the NYPD has already led to a 51 percent drop in police stops in the first quarter of this year. Still, when the powerful choose the battlefield and write the laws of war, meeting them on their terms is a dangerous game.

#### Legality is what feeds a new form of muscular liberalism where these illusions cannot see how much they sustain it which legitimizes wars for democracies and doctrines of pre-emption

Motha 8 \*Stewart, Senior Lecturer, Kent Law School, University of Kent, Canterbury, Kent, Journal of Law, Culture, and Humanities Forthcoming 2008, Liberal Cults, Suicide Bombers, and other Theological Dilemmas

A universalist liberal ideology has been re-asserted. It is not only neo-con hawks or Blairite opportunists that now legitimise wars for democracy. Alarmingly, it is a generation of political thinkers who opposed the Nixonian logic of war (wars to show that a country can ‘credibly’ fight a war to protect its interests1), and those humbled by the anticolonial struggles of liberation from previous incarnations of European superiority that are renewing spurious civilizational discourses. This ‘muscular liberalism’ has found its voice at the moment of a global political debate about the legality and effectiveness of ‘just wars’ – so called ‘wars for democracy’ or ‘humanitarian war’. The new political alignment of the liberal left emerged in the context of discussions about the ‘use of force’ irrespective of UN Security Council endorsement or the sovereign state’s territorial integrity, such as in Kosovo – but gained rapid momentum in response to attacks in New York City and Washington on September 11, 2001. Parts of the liberal left have now aligned themselves with neoconservative foreign policies, and have joined what they believe is a new anti-totalitarian global struggle – the ‘war on terror’ or the battle against Islamist fundamentalism. One task of this essay, then, is to identify this new formation of the liberal left. Much horror and suffering has been unleashed on the world in the name of the liberal society which must endure. However, when suicide bombing and state-terror are compared, the retort is that there is no moral equivalence between the two. Talal Asad in his evocative book, On Suicide Bombing, has probed the horror that is felt about suicide bombing in contrast to state violence and terror.2 What affective associations are formed in the reaction to suicide bombing? What does horror about suicide bombing tell us about the constitution of inter-subjective relations? In this essay I begin to probe these questions about the relation between death, subjectivity, and politics. I want to excavate below the surface oppositions of good deaths and bad, justifiable killing and barbarism, which have been so central to left liberal arguments. As so much is riding on the difference between ‘our good war’ and ‘their cult of death’, it seems apt to examine and undo the opposition. The muscular liberal left projects itself as embodying the values of the ‘West’, a geo-political convergence that is regularly opposed to the ‘East’, ‘Muslims’, or the ‘Islamic World’. I undo this opposition, arguing that thanatopolitics, a convergence of death, sacrifice, martyrdom and politics, is common to left liberal and Islamist political formations. How does death become political for left liberals and Islamist suicide bombers? In the case of the latter, what is most immediately apparent is how little is known about the politics and politicization of suicide bombers. Suicide bombers are represented as a near perfect contrast to the free, autonomous, self-legislating liberal subject – a person overdetermined by her backward culture, oppressive setting, and yet also empty of content, and whose death can have no temporal political purchase. The ‘suicide bomber’ tends to be treated by the liberal left as a trans-historical ‘figure’, usually represented as the ‘Islamo-fascist’ or the ‘irrational’ Muslim.3 The causes of suicide bombing are often implicitly placed on Islam itself – a religion that is represented as devoid of ‘scepticism, doubt, or rebellion’ and thus seen as a favourable setting for totalitarianism.4 The account of the suicide bomber as neo-fascist assassin supplements a lack – that is, that the association of suicide bombing with Islam explains very little. The suicide bomber is thus made completely familiar as totalitarian fascist, or wholly other as “[a] completely new kind of enemy, one for whom death is not death”.5 So much that is written about the suicide bomber glosses over the unknown with political subjectivities, figures, and paradigms (such as fascism) which are familiar enough to be vociferously opposed. By drawing the suicide bomber into a familiar moral register of ‘evil’, political and historical relations between victim and perpetrator are erased.6 In the place of ethnographically informed research the ‘theorist’ or ‘public intellectual’ erases the contingency of the suicide bomber and reduces her death to pure annihilation, or nothingness. The discussion concludes by undoing the notion of the ‘West’, the very ground that the liberal left assert they stand for. The ‘West’ is no longer a viable representation of a geo-political convergence, if it ever was. Liberal discourse has regarded itself as the projection of the ‘West’ and its enlightenment. But this ignores important continuities between Islam, Christianity, and contemporary secular formations. The current ‘clash of monotheisms’, I argue after J-L Nancy, reveals a crisis of sense, authority, and meaning which is inherent to the monotheistic form. An increasingly globalised world is made up of political communities and juridical orders that have been ‘emptied’ of authority and certainty. This crisis of sense conditions the horror felt by the supposedly rational liberal in the face of Islamist terrorism. Horror at terrorism is then the affective bond that sustains a grouping that otherwise suffers the loss of a political project with a definite end. The general objective of this essay is to challenge the unexamined assumptions about politics and death that circulate in liberal left denunciations of Islamic fascism. The horror and fascination with the figure of the suicide bomber reveals an unacknowledged affective bond that constitutes the muscular liberal left as a political formation. This relies on disavowing the sacrificial and theological underpinnings of political liberalism itself – and ignores the continuities between what is called the ‘West’ and the theologico-political enterprise of monotheism. Monotheism is not the preserve of something called the ‘West’, but rather an enterprise that is common to all three Religions of the Book. The article concludes by describing how the writings of Jean-Luc Nancy on monotheism offer liberal left thinkers insights for rethinking the crisis of value that resulted from the collapse of grand emancipatory enterprises as well as the fragmentation of politics resulting from a focus on political identification through difference. I opened with a reference to the ‘liberal left’. Of course the ‘liberal left’ signifies a vast and varied range of political thinking and activism – so I must clarify how I am deploying this term. In this essay the terms ‘liberal left’ or ‘muscular liberal’ are used interchangeably. Paul Berman and Nick Cohen, whose writing I will shortly refer to, are exemplars of the new political alignment who self-identify as ‘democrats and progressives’, but whose writings feature bellicose assertions about the superiority of western models of democracy, and universal human rights.7 Among this liberal left, democracy and freedom become hemispheric and come to stand for the West. More generally, now, the ‘liberal left’ can be distinguished from political movements and thinkers who draw inspiration from a Marxist tradition of thought with a socialist horizon. The liberal left I am referring to would view the Marxist tradition as undervaluing democratic freedoms and human rights. Left liberals also tend to dismiss the so called post-Marxist turn in European continental philosophy as ‘postmodern relativism’.8 PostMarxists confronted the problem of the ‘collective’ – addressing the problem of masses and classes as the universal category or agent of historical transformation. This was a necessary correction to all the disasters visited on the masses in the name of a universal working class. The liberal state exploited these divisions on the left. It is true that a left fragmented through identity politics or the politics of difference were reduced to group based claims on the state. However, liberal multiculturalism was critiqued by anti-racist and feminist thinkers as early as the 1970s for ignoring the structural problems of class or as yet another nation-building device. The new formation of the muscular liberal left have only just discovered the defects of multiculturalism. The dismissal of liberal multiculturalism is now code for ‘too much tolerance’ of ‘all that difference’. The liberal left, or muscular liberal, as I use these terms, should not be conflated with the way ‘liberal’ is generally used in North America to denote ‘progressive’, ‘pro-choice’, open to a multiplicity of forms of sexual expression, generally ‘tolerant’, or ‘left wing’ (meaning socialist). It might be objected that it is not the liberal left, but ‘right wing crazies’ driven by Christian evangelical zeal combined with neo-liberal economic strategies that have usurped a post-9/11 crime and security agenda to mount a global hegemonic enterprise in the name of a ‘war on terror’. It might also be said that this is nothing new – global expansionist enterprises such as 18th and 19th century colonialism mobilised religion, science, and theories of economic development to secure resources and justify extreme violence where necessary. Global domination, it might be argued, has always been a thanatopolitical enterprise. So what’s different now? What is crucial, now, is that the entire spectrum of liberalism, including the ‘rational centre’, is engaged in the kind of mindset whereby a destructive and deadly war is justified in the name of protecting or establishing democracy, the rule of law, and human rights. It might then be retorted that this ‘rational centre’ of liberalism have ‘always’ been oriented in this way. That is partly true, but it is worth recalling that the liberal left I have in mind is the generation that came of age with opposition to the war in Vietnam, other Indo-Chinese conflagrations, and the undoing of empire. This is a left that observed the Cold War conducted through various ‘hot wars’ in Africa, Central and Latin America, and South East Asia and thus at least hoped to build a ‘new world order’ of international law and multilateralism. This is a left that was resolved, by the 1970s, not to repeat the error of blindly following a scientific discourse that promised to produce a utopia – whether this was ‘actually existing socialism’ or the purity of ‘blood and soil’. But now, a deadly politics, a thanatopolitics, is drawn out of a liberal horror and struggle against a monolithically drawn enemy called Islamic fundamentalism. What is new is that Islam has replaced communism/fascism as the new ‘peril’ against which the full spectrum of liberalism is mobilized. Islamist terrorism and suicide bombers, a clash between an apparently Islamic ‘cult of death’ versus modern secular rationality has come to be a central preoccupation of the liberal left. In the process, as Talal Asad has eloquently pointed out, horror about terrorism has come to be revealed as one way in which liberal subjectivity and its relation to political community can be interrogated and understood.9 Moreover, the potential for liberal principles to be deployed in the service of legitimating a doctrine of pre-emption as the ‘new internationalism’ is significant. The first and second Gulf Wars, according to the liberal left, are then not wars to secure control over the supply of oil, or regional and global hegemony, as others on the left might argue, but anti-fascist, anti-totalitarian wars of liberation fought in the name of ‘democracy’. Backing ‘progressive wars’ for ‘freedom and democracy’, those who self-identify as a left which is reasserting liberal democratic principles start by asking questions such as: “Are western freedoms only for westerners?”.10 In the process, freedom becomes ‘western’, and its enemy an amorphous legion behind an unidentifiable line between ‘west’ and the rest (the ‘Muslim world’). The ‘war for democracy’ waged against ‘Islamist terrorism’ and Muslim fundamentalism is the crucible on which the new alignment of the liberal left is forged.

#### The alt is to reject the aff in favor of building a culture of resilience

Vermeule and Posner 11 Adrian Vermeule, prof of Law at Harvard University Law School, Eric A Posner., prof of Law at the University of Chicago Law School, *Executive Unbound: After the Madisonian Republic*, Oxford University Press 2011

We do not yet live under a plebiscitary presidency. In such a system, the president has unchecked legal powers except for the obligation to submit to periodic elections. In our system, Congress retains the formal power to make law. It has subjected presidential lawmaking to complex procedures and bureaucratic checks,1 and it has created independent agencies over which the president in theory has limited control. The fed­eral courts can expect the executive to submit to their orders, and the Supreme Court retains certain quasi-lawmaking powers, which it exercises by striking down statutes and blocking executive actions. The federal system is still in place. State legal institutions retain considerable power over their populations. But these legal checks on executive authority (aside from the electoral constraint) have eroded considerably over the last two hundred years. Congress has delegated extensive powers to the executive. For new initia­tives, the executive leads and Congress follows. Congress can certainly slow down policymaking, and block bills proposed by the executive; but it cannot set the agenda. It is hard to quantify the extent of congressional control over regulatory agencies, but it is fair to say that congressional intervention is episodic and limited, while presidential control over both the executive and independent agencies is strong and growing stronger. The states increasingly exercise authority at the sufferance of the national government and hence the president. The federal courts have not tried to stop the erosion of congressional power and state power. Some commentators argue that the federal courts have taken over Con­gress’s role as an institutional check. It is true that the Supreme Court has shown little compunction about striking down statutes (although usually state statutes), and that it rejected some of the legal theories that the Bush administration used to justify its counterterrorism policies. However, the Court remains a marginal player. The Court ducked any legal rulings on counterterror policies until the 2004 Hamdi decision, and even after the Boumediene decision in 2008, no detainee has been released by final judicial order, from Guantanamo or elsewhere, except in cases where the government chose not to appeal the order of a district judge. The vast majority of detainees have received merely another round of legal process. Some speculate that judicial threats to release detainees have caused the administration to release them preemptively. Yet the judges would incur large political costs for actual orders to release suspected terrorists, and the government knows this, so it is unclear that the government sees the judi­cial threats as credible or takes them very seriously. The government, of course, has many administrative and political reasons to release detainees, quite apart from anything the courts do. So the executive submits to judi­cial orders in part because the courts are careful not to give orders that the executive will resist. In general, judicial opposition to the Bush administration’s counterter­rorism policies took the form of incremental rulings handed down at a gla­cial pace, none of which actually stopped any of the major counterterrorism tactics of that administration, including the application of military power against Al Qaeda, the indefinite detention of members of Al Qaeda, tar­geted assassinations, the immigration sweeps, even coercive interrogation. The (limited) modifications of those tactics that have occurred resulted not from legal interventions but from policy adjustments driven by changed circumstances and public opinion, and by electoral victory of the Obama administration. However, the Obama administration has mostly confirmed and in some areas even expanded the counterterrorism policies of the Bush administration. Strong executive government is bipartisan. The 9/11 attack provided a reminder of just how extensive the presi­dent’s power is. The executive claimed the constitutional authority to, in effect, use emergency powers. Because Congress provided redundant stat­utory authority, and the Supreme Court has steadfastly refused to address the ultimate merits of the executives constitutional claims, these claims were never tested in a legal or public forum. But it is worth trying to ima­gine what would have happened if Congress had refused to pass the Autho­rization for Use of Military Force and the Supreme Court had ordered the executive to release detainees in a contested case. We think that the execu­tive, backed up as it was by popular opinion, would have refused to obey. And, indeed, for just that reason, Congress would, never have refused its imprimatur and the Supreme Court would never have stood in the execu­tive’s way. The major check on the executives power to declare an emer­gency and to use emergency powers is—political. The financial crisis of 2008-2009 also revealed the extent of executive power. Acting together, the Fed, the Treasury, and other executive agencies spent hundreds of billions of dollars, virtually nationalizing parts of the financial system. Congress put up a fuss, but it could not make policy and indeed hardly even influenced policy. Congress initially refused to supply a blank check, then in world-record time changed its mind and gave the blank check, then watched helplessly as the administration adopted pol­icies different from those for which it said the legislation would be needed. Courts played no role in the crisis except to ratify executive actions in tension with the law.2 What, then, prevents the executive from declaring spurious emergencies and using the occasion to consolidate its power—or for that matter, consolidating its power during real emergencies so that it retains that power even after normal times return? In many countries, notably in Latin America, presidents have done just that. Citing an economic crisis, or a military threat, or congressional gridlock, executives have shut down independent media, replaced judges with their cronies, suppressed political opposition, and ruled by dictate. Could this happen in the United States? The answer is, very probably, no. The political check on the executive is real. Declarations of emergency not justified by publicly visible events would be met with skepticism. Actions said, to be justified by emergency would not be approved if the justification were not plausible. Separation of powers may be suffering through an enfeebled old age, but electoral democracy is alive and well. We have suggested that the historical developments that have under­mined separation of powers have strengthened democracy. Consider, for example, the communications revolution, which has culminated (so far) in the Internet Age. As communication costs decrease, the size of markets expand, and hence the scale of regulatory activity must increase. Localities and states lose their ability to regulate markets, and the national govern­ment takes over. Meanwhile, reduced communication costs increase the relative value of administration (monitoring firms and ordering them to change their behavior) and reduce the relative value of legislation (issuing broad-gauged rules), favoring the executive over Congress. At the same time, reduced communication costs make it easier for the public to mon­itor the executive. Today, whistleblowers can easily find an audience on the Internet,; people can put together groups that focus on a tiny aspect of the government s behavior; gigabytes of government data are uploaded onto the Internet and downloaded by researchers who can subject them to rigorous statistical analysis. It need not have worked out this way. Govern­ments can also use technology to monitor citizens for the purpose of suppressing political opposition. But this has not, so far, happened in the United States. Nixon fell in part because his monitoring of political enemies caused an overwhelming political backlash, and although the Bush administration monitored suspected terrorists, no reputable critic suggested that it targeted domestic political opponents. Our main argument has been methodological and programmatic: researchers should no longer view American political life through the Madisonian prism, while normative theorists should cease bemoaning the decline of Madisonianism and instead make their peace with the new political order. The center of gravity has shifted to the executive, which both makes policy and administers it, subject to weak constraints imposed by Congress, the judiciary, and the states. It is pointless to bewail these developments, and futile to argue that Madisonian structures should be reinvigorated. Instead, attention should shift to the political constraints on the president and the institutions through, which those political con­straints operate—chief among them elections, parties, bureaucracy, and the media. As long as the public informs itself and maintains a skeptical attitude toward the motivations of government officials, the executive can operate effectively only by proving over and over that it deserves the public s trust. The irony of the new political order is that the executive, freed from the bonds of law, inspires more distrust than in the past, and thus must enter ad hoc partnerships with political rivals in order to persuade people that it means well. But the new system is more fluid, allowing the executive to form those partnerships when they are needed to advance its goals, and not otherwise. Certain types of partnership have become recurrent pat­terns—for example, inviting a member of the opposite party to join the president’s cabinet. Others are likely in the future. In the place of the clockwork mechanism bequeathed to us by the Enlightenment thinking of the founders, there has emerged a more organic system of power sharing and power constraint that depends on shifting political alliances, currents of public opinion, and the particular exigencies that demand government action. It might seem that such a system requires more attention from the public than can reasonably be expected, but the old system of checks and balances always depended on public opinion as well. The centuries-old British parliamentary system, which operated in. just this way, should provide reason, for optimism. The British record on executive abuses, although hardly perfect, is no worse than the American record and arguably better, despite the lack of a Madisonian separation of legislative and executive powers

### 1NC DA

#### Now key push for CIR – pc key

Kuhnhenn, 1-12-’14 (Jim, “Obama, Congress face crucial immigration push” Albuquerque Journal News, http://www.abqjournal.com/335144/news/obama-congress-face-crucial-immigration-push.html)

His agenda tattered by last year’s confrontations and missteps, President Barack Obama begins 2014 clinging to the hope of winning a lasting legislative achievement: an overhaul of immigration laws. It will require a deft and careful use of his powers, combining a public campaign in the face of protests over his administration’s record number of deportations with quiet, behind-the-scenes outreach to Congress, something seen by lawmakers and immigration advocates as a major White House weakness. In recent weeks, both Obama and House Speaker John Boehner, R-Ohio, have sent signals that raised expectations among overhaul supporters that 2014 could still yield the first comprehensive change in immigration laws in nearly three decades. If successful, it would fulfill an Obama promise many Latinos say is overdue. Hung up in House The Senate last year passed a bipartisan bill that was comprehensive in scope that addressed border security, provided enforcement measures and offered a path to citizenship for 11 million immigrants in the United States illegally. House leaders, pressed by tea party conservatives, demanded a more limited and piecemeal approach. Indicating a possible opening, Obama has stopped insisting the House pass the Senate version. And two days after calling Boehner to wish him happy birthday in November, Obama made it clear he could accept the House’s bill-by-bill approach, with one caveat: In the end, “we’re going to have to do it all.” Boehner, for his part, in December hired Rebecca Tallent, a former top aide to Sen. John McCain and most recently the director of a bipartisan think tank’s immigration task force. Even opponents of a broad immigration overhaul saw Tallent’s selection as a sign legislation had suddenly become more likely. Boehner also fed speculation he would ignore tea party pressure, bluntly brushing back their criticism of December’s modest budget agreement. “The question is what are the core things that Republicans can’t move away from, what are the core things that Democrats can’t walk away from,” said Republican pollster David Winston, who regularly consults with the House leadership. “You may have preferences and then you may have core elements. That’s part of the process of going back and forth.”

#### 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.

#### CIR solves multiple internal links to the economy

Beadle 12/10 Amanda Peterson, Reporter/Blogger at ThinkProgress.org. She received her B.A. in journalism and Spanish from the University of Alabama, where she was editor-in-chief of the campus newspaper The Crimson White and graduated with honors. Before joining ThinkProgress, she worked as a legislative aide in the Maryland House of Delegates. “Top 10 Reasons Why The U.S. Needs Comprehensive Immigration Reform” http://thinkprogress.org/justice/2012/12/10/1307561/top-10-reasons-why-the-us-needs-comprehensive-immigration-reform-that-includes-a-path-to-citizenship/

The nation needs a comprehensive immigration plan, and it is clear from a recent poll that most Americans support reforming the U.S.’s immigration system. In a new poll, nearly two-thirds of people surveyed are in favor of a measure that allows undocumented immigrants to earn citizenship over several years, while only 35 percent oppose such a plan. And President Obama is expected to “begin an all-out drive for comprehensive immigration reform, including seeking a path to citizenship” in January.¶ Several top Republicans have softened their views on immigration reform following November’s election, but in the first push for reform, House Republicans advanced a bill last month that would add visas for highly skilled workers while reducing legal immigration overall. Providing a road map to citizenship for the millions of undocumented immigrants living in the U.S. would have sweeping benefits for the nation, especially the economy.¶ Here are the top 10 reasons why the U.S. needs comprehensive immigration reform:¶ 1. Legalizing the 11 million undocumented immigrants in the United States would boost the nation’s economy. It would add a cumulative $1.5 trillion to the U.S. gross domestic product—the largest measure of economic growth—over 10 years. That’s because immigration reform that puts all workers on a level playing field would create a virtuous cycle in which legal status and labor rights exert upward pressure on the wages of both American and immigrant workers. Higher wages and even better jobs would translate into increased consumer purchasing power, which would benefit the U.S. economy as a whole.¶ 2. Tax revenues would increase. The federal government would accrue $4.5 billion to $5.4 billion in additional net tax revenue over just three years if the 11 million undocumented immigrants were legalized. And states would benefit. Texas, for example, would see a $4.1 billion gain in tax revenue and the creation of 193,000 new jobs if its approximately 1.6 million undocumented immigrants were legalized.¶ 3. Harmful state immigration laws are damaging state economies. States that have passed stringent immigration measures in an effort to curb the number of undocumented immigrants living in the state have hurt some of their key industries, which are held back due to inadequate access to qualified workers. A farmer in Alabama, where the state legislature passed the anti-immigration law HB 56 in 2011, for example, estimated that he lost up to $300,000 in produce in 2011 because the undocumented farmworkers who had skillfully picked tomatoes from his vines in years prior had been forced to flee the state.¶ 4. A path to citizenship would help families access health care. About a quarter of families where at least one parent is an undocumented immigrant are uninsured, but undocumented immigrants do not qualify for coverage under the Affordable Care Act, leaving them dependent on so-called safety net hospitals that will see their funding reduced as health care reforms are implemented. Without being able to apply for legal status and gain health care coverage, the health care options for undocumented immigrants and their families will shrink.¶ 5. U.S. employers need a legalized workforce. Nearly half of agricultural workers, 17 percent of construction workers, and 12 percent of food preparation workers nationwide lacking legal immigration status. But business owners—from farmers to hotel chain owners—benefit from reliable and skilled laborers, and a legalization program would ensure that they have them.¶ 6. In 2011, immigrant entrepreneurs were responsible for more than one in four new U.S. businesses. Additionally, immigrant businesses employ one in every 10 people working for private companies. Immigrants and their children founded 40 percent of Fortune 500 companies, which collectively generated $4.2 trillion in revenue in 2010—more than the GDP of every country in the world except the United States, China, and Japan. Reforms that enhance legal immigration channels for high-skilled immigrants and entrepreneurs while protecting American workers and placing all high-skilled workers on a level playing field will promote economic growth, innovation, and workforce stability in the United States.¶ 7. Letting undocumented immigrants gain legal status would keep families together. More than 5,100 children whose parents are undocumented immigrants are in the U.S. foster care system, according to a 2011 report, because their parents have either been detained by immigration officials or deported and unable to reunite with their children. If undocumented immigrants continue to be deported without a path to citizenship enabling them to remain in the U.S. with their families, up to 15,000 children could be in the foster care system by 2016 because their parents were deported, and most child welfare departments do not have the resources to handle this increase.¶ 8. Young undocumented immigrants would add billions to the economy if they gained legal status. Passing the DREAM Act—legislation that proposes to create a roadmap to citizenship for immigrants who came to the United States as children—would put 2.1 million young people on a pathway to legal status, adding $329 billion to the American economy over the next two decades.¶ 9. And DREAMers would boost employment and wages. Legal status and the pursuit of higher education would create an aggregate 19 percent increase in earnings for young undocumented immigrants who would benefit from the DREAM Act by 2030. The ripple effects of these increased wages would create $181 billion in induced economic impact, 1.4 million new jobs, and $10 billion in increased federal revenue.¶ 10. Significant reform of the high-skilled immigration system would benefit certain industries that require high-skilled workers. Immigrants make up 23 percent of the labor force in high-tech manufacturing and information technology industries, and immigrants more highly educated, on average, than the native-born Americans working in these industries. For every immigrant who earns an advanced degree in one of these fields at a U.S. university, 2.62 American jobs are created.

#### Global economic crisis causes nuclear war

Cesare Merlini 11, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs, May 2011, “A Post-Secular World?”, Survival, Vol. 53, No. 2

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism**.**

### 1NC CP

#### The Executive Branch of the United States should create “executive v. executive” divisions as per our Katyal evidence to promote internal separation of powers via separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts.

#### Presidential veto power and executive deference mean external restraints fail – internal separation of powers constrains the president and leads to better decision making

Katyal ’6 Neal Katyal, Professor of Law @ Georgetown, The Yale Law Journal, “Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within” 115 Yale L.J. 2314, 2006

After all, Publius's view of separation of powers presumes three branches with equivalent ambitions of maximizing their powers, yet legislative abdication is the reigning modus operandi. It is often remarked that "9/11 changed everything"; 2 particularly so in the war on terror, in which Congress has been absent or content to pass vague, open-ended statutes. The result is an executive that subsumes much of the tripartite structure of government. Many commentators have bemoaned this state of affairs. This Essay will not pile on to those complaints. Rather, it begins where others have left off. If major decisions are going to be made by the President, then how might separation of powers be reflected within the executive branch? The first-best concept of "legislature v. executive" checks and balances must be updated to contemplate second-best "executive v. executive" divisions. And this Essay proposes doing so in perhaps the most controversial area: foreign policy. It is widely thought that the President's power is at its apogee in this arena. By explaining the virtues of internal divisions in the realm of foreign policy, this Essay sparks conversation on whether checks are necessary in other, domestic realms. That conversation desperately needs to center on how best to structure the ever-expanding modern executive branch. From 608,915 employees working in agencies in 1930, 3 to 2,649,319 individuals in 2004, 4 the growth of the executive has not generated a systematic focus on internal checks. We are all fond of analyzing checks on judicial activism in the post-Brown, post-Roe era. So too we think of checks on legislatures, from the filibuster to judicial review. But [\*2317] there is a paucity of thought regarding checks on the President beyond banal wishful thinking about congressional and judicial activity. This Essay aims to fill that gap. A critical mechanism to promote internal separation of powers is bureaucracy. Much maligned by both the political left and right, bureaucracy creates a civil service not beholden to any particular administration and a cadre of experts with a long-term institutional worldview. These benefits have been obscured by the now-dominant, caricatured view of agencies as simple anti-change agents. This Essay celebrates the potential of bureaucracy and explains how legal institutions can better tap its powers. A well-functioning bureaucracy contains agencies with differing missions and objectives that intentionally overlap to create friction. Just as the standard separation-of-powers paradigms (legislature v. courts, executive v. courts, legislature v. executive) overlap to produce friction, so too do their internal variants. When the State and Defense Departments have to convince each other of why their view is right, for example, better decision-making results. And when there is no neutral decision-maker within the government in cases of disagreement, the system risks breaking down. In short, the executive is the home of two different sorts of legitimacy: political (democratic will) and bureaucratic (expertise). A chief aim of this Essay's proposal is to allow each to function without undermining the other. This goal can be met without agency competition - overlapping jurisdiction is simply one catalyzing agent. Other ideas deserve consideration, alongside or independent of such competition, such as developing career protections for the civil service modeled more on the Foreign Service. Executives of all stripes offer the same rationale for forgoing bureaucracy-executive energy and dispatch. 5 Yet the Founders assumed that massive changes to the status quo required legislative enactments, not executive decrees. As that concept has broken down, the risks of unchecked executive power have grown to the point where dispatch has become a worn-out excuse for capricious activity. Such claims of executive power are not limited to the current administration, nor are they limited to politicians. Take, for example, Dean Elena Kagan's rich celebration of presidential administration. 6 Kagan, herself a former political appointee, lauded the President's ability to trump bureaucracy. Anticipating the claims of the current administration, Kagan argued that the [\*2318] President's ability to overrule bureaucrats "energizes regulatory policy" because only "the President has the ability to effect comprehensive, coherent change in administrative policymaking." 7 Yet it becomes clear that the Kagan thesis depends crucially on oversight by the coordinate legislative branch (typically controlled by a party in opposition to the President). Without that checking function, presidential administration can become an engine of concentrated power. This Essay therefore outlines a set of mechanisms that create checks and balances within the executive branch. The apparatuses are familiar - separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts. But these restraints have been informally laid down and inconsistently applied, and in the wake of September 11 they have been decimated. 8 A general framework statute is needed to codify a set of practices. In many ways, the status quo is the worst of all worlds because it creates the facade of external and internal checks when both have withered. I. THE NEED FOR INTERNAL SEPARATION OF POWERS The treacherous attacks of September 11 gave Congress and the President a unique opportunity to work together. Within a week, both houses of Congress passed an Authorization for Use of Military Force (AUMF); 10 two months later they enacted the USA PATRIOT Act to further expand intelligence and law enforcement powers. 11 But Congress did no more. It passed no laws authorizing or regulating detentions for U.S. citizens. It did not affirm or regulate President Bush's decision to use military commissions to try unlawful belligerents. 12 It stood silent when President Bush accepted thinly reasoned legal views of the Geneva Conventions. 13 The administration was content to rely on vague legislation, and Congress was content to enact little else. 14 There is much to be said about the violation of separation of powers engendered by these executive decisions, but for purposes of this Essay, I want [\*2320] to concede the executive's claim - that the AUMF gave the President the raw authority to make these decisions. A democratic deficit still exists; the values of divided government and popular accountability are not being preserved. Even if the President did have the power to carry out the above acts, it would surely have been wiser if Congress had specifically authorized them. Congress's imprimatur would have ensured that the people's representatives concurred, would have aided the government's defense of these actions in courts, and would have signaled to the world a broader American commitment to these decisions than one man's pen stroke. Of course, Congress has not passed legislation to denounce these presidential actions either. And here we come to a subtle change in the legal landscape with broad ramifications: the demise of the congressional checking function. The story begins with the collapse of the nondelegation doctrine in the 1930s, which enabled broad areas of policymaking authority to be given to the President and to agencies under his control. That collapse, however, was tempered by the legislative veto; in practical terms, when Congress did not approve of a particular agency action, it could correct the problem. But after INS v. Chadha, 15 which declared the legislative veto unconstitutional, that checking function, too, disappeared. In most instances today, the only way for Congress to disapprove of a presidential decree, even one chock full of rampant lawmaking, is to pass a bill with a solid enough majority to override a presidential veto. The veto power thus becomes a tool to entrench presidential decrees, rather than one that blocks congressional misadventures. And because Congress ex ante appreciates the supermajority-override rule, its members do not even bother to try to check the President, knowing that a small cadre of loyalists in either House can block a bill. 16 For example, when some of the Senate's most powerful Republicans (John McCain, Lindsay Graham, and John Warner) tried to regulate detentions and trials at Guantanamo Bay, they were told that the President would veto any attempt to modify the AUMF. 17 The result is that once a court [\*2321] interprets a congressional act, such as the AUMF, to give the President broad powers, Congress often cannot reverse the interpretation, even if Congress never intended to give the President those powers in the first place. Senator McCain might persuade every one of the other ninety-nine Senators to vote for his bill, but that is of no moment without a supermajority in the House of Representatives as well. 18 At the same time, the executive branch has gained power from deference doctrines that induce courts to leave much conduct untouched - particularly in foreign affairs. 19 The combination of deference and the veto is especially insidious - it means that a President can interpret a vague statute to give himself additional powers, receive deference in that interpretation from courts, and then lock that decision into place by brandishing the veto. This ratchet-and-lock scheme makes it almost impossible to rein in executive power. All legislative action is therefore dangerous. Any bill, like Senator McCain's torture bill, can be derailed through compromise. A rational legislator, fearing this cascading cycle, is likely to do nothing at all. This expansion of presidential power is reinforced by the party system. When the political branches are controlled by the same party, loyalty, discipline, and self-interest generally preclude interbranch checking. That reluctance is exacerbated by a paucity of weapons that check the President. Post-Chadha, Congress only has weapons that cause extensive collateral damage. The fear of that damage becomes yet another reason why Congress is plagued with inertia. And the filibuster, the last big check in periods of single-party government, is useless against the host of problems caused by Presidents who take expansive views of their powers under existing laws (such as the AUMF). Instead of preserving bicameralism, Chadha has led to its subversion and "no-cameralism." A Congress that conducts little oversight provides a veneer of legitimacy to an adventurist President. The President can appeal to the historic sense of checks and balances, even if those checks are entirely compromised by modern political dynamics. With this system in place, it is no surprise that recent calls [\*2322] for legislative revitalization have failed. No successful action-forcing mechanisms have been developed; instead we are still in John Hart Ely's world of giving a "halftime pep-talk imploring that body to pull up its socks and reclaim its rightful authority." 20 It is time to consider second-best solutions to bring separation of powers into the executive. Bureaucracy can be reformed and celebrated (instead of purged and maligned), and neutral conflict-decision mechanisms can be introduced. Design choices such as these can help bring our government back in line with the principles envisioned by our Founders. 21

#### Internal checks comparatively solve better and don’t link to politics

Metzger ‘9, Gillian E. Metzger, Professor of Law @ Columbia Law School, “The Interdependent Relationship Between Internal and External Separation of Powers” 59 Emory L.J. 423, Emory Law Journal, 2009

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they avoid the delay in application that can hamper both judicial and congressional oversight. 76 Second, internal mechanisms often operate continuously, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. 77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. 78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. 79

### Case – Drones

#### WOT practices shifting towards capture over kill – options are zero-sum

Dillow, 13 – (Clay, “Obama Set To Reboot Drone Strike Policy And Retool The War On Terror “, 5/23/13, <http://www.popsci.com/technology/article/2013-05/obama-set-reboot-drone-strike-policy-and-retool-war-terror>)

These three topics are deeply intertwined, of course. With the drawdown of troops in Iraq and Afghanistan and a reduced American presence in the regions regarded as power bases for the likes of al-Qaeda, al-Shabab, and the Taliban, American security and intelligence forces have only two real options. Strike at suspected terrorists with drones, or somehow capture those suspects and detain them (at some place like Guantanamo). It would seem that if the war on terror is going to continue (and it is--for another 10 or 20 years according to one recently-quoted Pentagon official) then it seems that either detention or the use of lethal strikes must increase. But that’s not really the case, and in today’s speech Obama is expected to outline why the administration thinks so. In his first major counterterrorism address of his second term, the President is expected to announce new restrictions on the unmanned aerial strikes that have been the cornerstone of his national security agenda for the last five years. For all the talk about drone strikes--and they did peak under Obama--such actions have been declining since 2010. And it seems the administration finally wants to come clean (somewhat) about what it has been doing with its drone program, acknowledging for the first time that it has killed four American citizens in its shadow drone wars outside the conflict zones of Afghanistan and Iraq, something the public has known for a while now but the government has refused to publicly admit. The Obama administration will also voluntarily rein in its drone strike program in several ways. A new classified policy signed by Obama will more sharply define how drones can be used**,** the New York Times reports, essentially extending to foreign nationals the same standards currently applied to American citizens abroad. That is, lethal force will only be used against targets posing a “continuing, imminent threat to Americans” and who cannot be feasibly captured or thwarted in any other way. This indicates that the administration’s controversial use of “signature strikes”--the killing of unknown individuals or groups based on patterns of behavior rather than hard intelligence--will no longer be part of the game plan. That’s a positive signal, considering that signature strikes are thought to have resulted in more than a few civilian casualties. Reportedly there’s another important change in drone policy in the offing that President Obama may or may not mention in today’s speech: the shifting of the drone wars in Pakistan and elsewhere (likely Yemen and Somalia as well) from the CIA to the military over the course of six months. This is good for all parties involved. The CIA’s new director, John Brennan, has publicly said he would like to transition the country’s premier intelligence gathering agency back to actual intelligence gathering and away from paramilitary operations--a role that it has played since 2001 but that isn’t exactly in its charter. Putting the drone strike program in the Pentagon also places it in a different category of public scrutiny. The DoD can still do things under the veil of secrecy of course, but not quite like the CIA can (the military is subject to more oversight and transparency than the clandestine services in several respects, and putting drones in the hands of the military also changes the governing rules of engagement). So what does this all mean for the war on terror? If Obama plans to create a roadmap for closing Guantanamo Bay and draw down its drone strike program, it suggests that the administration thinks we are winning--as much as one can win this kind of asymmetric war. It appears the war on terror is shifting toward one in which better intelligence will lead to more arrests and espionage operations to thwart terrorists rather hellfire missile strikes from unseen robots in the sky.

#### Detainee protections increase the incentives for kill rather than capture

Crandall 13 Carla, Law Clerk to the Honorable Carolyn Dineen King, U.S. Court of Appeals for the Fifth Circuit. J.D., J. Reuben Clark Law School, Brigham Young University. "If You Can't Beat Them, Kill Them: Complex Adaptive Systems Theory and the Rise in Targeted Killing,"Seton Hall Law Review: Vol. 43: Iss. 2, Article 3. http://erepository.law.shu.edu/shlr/vol43/iss2/3

But while these developments have been hailed as victories by civil libertarians, they have not come without significant cost. With increasing frequency, journalists and scholars have begun to document the marked expansion in the government’s use of drones to kill targets who purportedly pose a threat to U.S. national security.12 Though a few observers have intimated that there may be a causal connection between the increase in targeted killing and the growing dearth of unfettered detention options,13 the actual link between these phenomena has not been thoroughly explored. This Article fills that gap. Examining the connection between the government’s detention and targeted killing policies, this Article argues that attempts to remove the “stain” of Guantánamo Bay have created what might be an even greater crisis. Specifically, while civil libertarians have claimed success in executive and judicial efforts to grant detainees greater protections, this success has produced an unintended incentive for the government to kill rather than capture individuals involved in the war on terror. This perverse outcome has occurred not as a result of a foreseeable linear process whereby one phenomenon caused the other, but rather as an unanticipated reaction to changes thrust into the nonlinear dynamic systems14 of warfare and national security law.15 To uncover the relationship between the government’s detention and targeted killing programs, this Article invokes the insights of complex adaptive systems theory.16 While scholars have employed chaos and complexity theory to examine legal issues for some time,17 the more nuanced theory of complex adaptive systems is a relative newcomer.18 Nevertheless, scholars are increasingly making the case that the theory offers a useful means by which to understand the legal system and the effects that flow from changes introduced thereto.19 This Article explains and builds upon that work by arguing that legal policies regulating the war on terror actually implicate two systems—that of both warfare and law. Because these two systems “interact complexly with each other, as well as with all . . . other complex social and physical systems with which they are interconnected,”20 introducing even small changes into either of these complex adaptive systems can generate dramatic effects that are unforeseeable when the intervention initially is introduced.21 Within the context of the war on terror, altering detainee policies may have led to the unintended consequence of encouraging the government to dismiss the option of capturing high-value targets in favor of simply eliminating them with drones.22 This important insight suggests a broader one: thinking of war and national security law as interrelated complex adaptive systems can help policymakers, lawmakers, and judges gain a better appreciation of the practical consequences of their decision-making processes. 22 The law of unintended consequences suggests that well-intentioned efforts to attain a specific goal may actually produce results antithetical to the hoped for effect. See Frank B. Cross, Paradoxical Perils of the Precautionary Principle, 53 WASH. & LEE L. REV. 851, 862 (1996). To make these arguments, the Article proceeds as follows. Part II introduces the theory of complex adaptive systems and explains that law and war both exhibit properties of these systems. Part III provides a summary of significant post-9/11 legal developments related to war on terror detentions and interrogations, and describes how these developments gradually increased the protections afforded to detainees. Part IV argues that these efforts to protect the civil liberties of detainees may actually have had the perverse effect of encouraging targeted killing. More specifically, using complex adaptive systems theory, Part IV argues that the rise of the drone may be evidence of the adaptive and self-organizing properties inherent within the systems of law and war. Part V concludes that the government’s expanded use of drones is representative of an unexpected and unintended consequence that can arise as a result of human intervention into complex adaptive systems.

#### US drones get modeled---causes war

Roberts, 13 **–** (Kristen, news editor for the National Journal, master in security studies from Georgetown, “When the Whole World Has Drones”, March 22, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>)

The proliferation of drone technology has moved well beyond the control of the United States government and its closest allies. The aircraft are too easy to obtain, with barriers to entry on the production side crumbling too quickly to place limits on the spread of a technology that promises to transform warfare on a global scale. Already, more than 75 countries have remote piloted aircraft. More than 50 nations are building a total of nearly a thousand types. At its last display at a trade show in Beijing, China showed off 25 different unmanned aerial vehicles. Not toys or models, but real flying machines. It’s a classic and common phase in the life cycle of a military innovation: An advanced country and its weapons developers create a tool, and then others learn how to make their own. But what makes this case rare, and dangerous, is the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use. This technology is snowballing through a global arena where the main precedent for its application is the one set by the United States; it’s a precedent Washington does not want anyone following. America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts. To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order. Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan. This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself that would at minimum create a globally relevant standard for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation. THE WRONG QUESTION The United States is the indisputable leader in drone technology and long-range strike. Remote-piloted aircraft have given Washington an extraordinary ability to wage war with far greater precision, improved effect, and fewer unintended casualties than conventional warfare. The drones allow U.S. forces to establish ever greater control over combat areas, and the Pentagon sees the technology as an efficient and judicious force of the future. And it should, given the billions of dollars that have gone into establishing and maintaining such a capability. That level of superiority leads some national security officials to downplay concerns about other nations’ unmanned systems and to too narrowly define potential threats to the homeland. As proof, they argue that American dominance in drone warfare is due only in part to the aircraft itself, which offers the ability to travel great distances and loiter for long periods, not to mention carry and launch Hellfire missiles. The drone itself, they argue, is just a tool and, yes, one that is being copied aggressively by allies and adversaries alike. The real edge, they say, is in the unparalleled intelligence-collection and data-analysis underpinning the aircraft’s mission. “There is what I think is just an unconstrained focus on a tool as opposed to the subject of the issue, the tool of remotely piloted aircraft that in fact provide for greater degrees of surety before you employ force than anything else we use,” said retired Lt. Gen. David Deptula, the Air Force’s first deputy chief of staff for intelligence, surveillance, and reconnaissance. “I think people don’t realize that for the medium altitude aircraft—the MQ-1 [Predator] and MQ-9 [Reaper] that are generally written about in the press—there are over 200 people involved in just one orbit of those aircraft.… The majority of those people are analysts who are interpreting the information that’s coming off the sensors on the aircraft.” The analysts are part of the global architecture that makes precision strikes, and targeted killing, possible. At the front end, obviously, intelligence—military, CIA, and local—inform target decisions. But in as near-real time as technologically possible, intel analysts in Nevada, Texas, Virginia, and other locations watch the data flood in from the aircraft and make calls on what’s happening on target. They monitor the footage, listen to audio, and analyze signals, giving decision-makers time to adjust an operation if the risks (often counted in potential civilian deaths) outweigh the reward (judged by the value of the threat eliminated). “Is that a shovel or a rifle? Is that a Taliban member or is this a farmer? The way that warfare has advanced is that we are much more exquisite in our ability to discern,” Maj. Gen. Robert Otto, commander of the Air Force Intelligence, Surveillance, and Reconnaissance Agency, told National Journal at Nellis Air Force Base in Nevada. “We’re not overhead for 15 minutes with a fighter that’s about to run out of gas, and we have to make a decision. We can orbit long enough to be pretty sure about our target.” Other countries, groups, and even individuals can and do fly drones. But no state or group has nearly the sophisticated network of intelligence and data analysis that gives the United States its strategic advantage. Although it would be foolish to dismiss the notion that potential U.S. adversaries aspire to attain that type of war-from-afar, pinpoint-strike capability, they have neither the income nor the perceived need to do so. That’s true, at least today. It’s also irrelevant. Others who employ drones are likely to carry a different agenda, one more concerned with employing a relatively inexpensive and ruthlessly efficient tool to dispatch an enemy close at hand. “It would be very difficult for them to create the global-strike architecture we have, to have a control cell in Nevada flying a plane over Afghanistan. The reality is that most nations don’t want or need that,” said Peter Singer, director of the Brookings Institution’s Center for 21st Century Security and Intelligence and one of the foremost experts in advanced military technology. “Turkey’s not looking to conduct strikes into the Philippines.... But Turkey is looking to be able to carry out long-duration surveillance and potentially strike inside and right on its border.” And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.” BEHIND CLOSED DOORS The argument against public debate is easy enough to understand: Operational secrecy is necessary, and total opacity is easier. “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things,” said Dennis Blair, Obama’s former director of national intelligence. “The reason it’s not been undertaken by the administration is that they just make a cold-blooded calculation that it’s better to hunker down and take the criticism than it is to get into the public debate, which is going to be a hard one to win.” But by keeping legal and policy positions secret, only partially sharing information even with congressional oversight committees, and declining to open a public discussion about drone use, the president and his team are asking the world to just trust that America is getting this right. While some will, many people, especially outside the United States, will see that approach as hypocritical, coming from a government that calls for transparency and the rule of law elsewhere. “I know these people, and I know how much they really, really attend to the most important details of the job,” said Barry Pavel, a former defense and security official in the Bush and Obama administrations who is director of the Brent Scowcroft Center on International Security at the Atlantic Council. “If I didn’t have that personal knowledge and because there isn’t that much really in the press, then I would be giving you a different rendering, and much more uncertain rendering.” That’s only part of the problem with the White House’s trust-us approach. The other resides in the vast distance between the criteria and authorization the administration says it uses in the combat drone program and the reality on the ground. For example, according to administration officials, before a person is added to the targeted strike list, specific criteria should be met. The target should be a 1) senior, 2) operational 3) leader of al-Qaida or an affiliated group who presents 4) an imminent threat of violent attack 5) against the United States. But that’s not who is being targeted. Setting aside the administration’s redefining of “imminence” beyond all recognition, the majority of the 3,500-plus people killed by U.S. drones worldwide were not leaders of al-Qaida or the Taliban; they were low- or mid-level foot soldiers. Most were not plotting attacks against the United States. In Yemen and North Africa, the Obama administration is deploying weaponized drones to take out targets who are more of a threat to local governments than to Washington, according to defense and regional security experts who closely track unrest in those areas. In some cases, Washington appears to be in the business of using its drone capabilities mostly to assist other countries, not to deter strikes against the United States (another precedent that might be eagerly seized upon in the future). U.S. defense and intelligence officials reject any suggestion that the targets are not legitimate. One thing they do not contest, however, is that the administration’s reliance on the post-9/11 Authorization for Use of Military Force as legal cover for a drone-strike program that has extended well beyond al-Qaida in Afghanistan or Pakistan is dodgy. The threat that the United States is trying to deal with today has an ever more tenuous connection to Sept. 11. (None of the intelligence officials reached for this article would speak on the record.) But instead of asking Congress to consider extending its authorization, as some officials have mulled, the administration’s legal counsel has chosen instead to rely on Nixon administration adviser John Stevenson’s 1970 justification of the bombing of Cambodia during the Vietnam War, an action new Secretary of State John Kerry criticized during his confirmation hearing this year. Human-rights groups might be loudest in their criticism of both the program and the opaque policy surrounding it, but even the few lawmakers who have access to the intelligence the administration shares have a hard time coping with the dearth of information. “We can’t always assume we’re going to have responsible people with whom we agree and trust in these positions,” said Sen. Angus King, I-Maine, who sits on the Senate Intelligence Committee. “The essence of the Constitution is, it shouldn’t matter who is in charge; they’re still constrained by principles and rules of the Constitution and of the Bill of Rights.” PEER PRESSURE Obama promised in his 2013 State of the Union to increase the drone program’s transparency. “In the months ahead, I will continue to engage Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world,” the president said on Feb. 12. Since then, the administration, under pressure from allies on Senate Intelligence, agreed to release all of the legal memos the Justice Department drafted in support of targeted killing. But, beyond that, it’s not certain Obama will do anything more to shine light on this program. Except in situations where leaks help it tell a politically expedient story of its skill at killing bad guys, the administration has done little to make a case to the public and the world at large for its use of armed drones. Already, what’s become apparent is that the White House is not interested in changing much about the way it communicates strike policy. (It took Sen. Rand Paul’s 13-hour filibuster of CIA Director John Brennan’s nomination to force the administration to concede that it doesn’t have the right to use drones to kill noncombatant Americans on U.S. soil.) And government officials, as well as their surrogates on security issues, are actively trying to squash expectations that the administration would agree to bring the judicial branch into the oversight mix. Indeed, judicial review of any piece of the program is largely off the table now, according to intelligence officials and committee members. Under discussion within the administration and on Capitol Hill is a potential program takeover by the Pentagon, removing the CIA from its post-9/11 role of executing military-like strikes. Ostensibly, that shift could help lift the secret-by-association-with-CIA attribute of the program that some officials say has kept them from more freely talking about the legitimate military use of drones for counterterrorism operations. But such a fix would provide no guarantee of greater transparency for the public, or even Congress. And if the administration is not willing to share with lawmakers who are security-cleared to know, it certainly is not prepared to engage in a sensitive discussion, even among allies, that might begin to set the rules on use for a technology that could upend stability in already fragile and strategically significant places around the globe. Time is running out to do so. “The history of technology development like this is, you never maintain your lead very long. Somebody always gets it,” said David Berteau, director of the International Security Program at the Center for Strategic and International Studies. “They’re going to become cheaper. They’re going to become easier. They’re going to become interoperable,” he said. “The destabilizing effects are very, very serious.” Berteau is not alone. Zenko, of the Council on Foreign Relations, has urged officials to quickly establish norms. Singer, at Brookings, argues that the window of opportunity for the United States to create stability-supporting precedent is quickly closing. The problem is, the administration is not thinking far enough down the line, according to a Senate Intelligence aide. Administration officials “are thinking about the next four years, and we’re thinking about the next 40 years. And those two different angles on this question are why you see them in conflict right now.” That’s in part a symptom of the “technological optimism” that often plagues the U.S. security community when it establishes a lead over its competitors, noted Georgetown University’s Kai-Henrik Barth. After the 1945 bombing of Hiroshima and Nagasaki, the United States was sure it would be decades before the Soviets developed a nuclear-weapon capability. It took four years. With drones, the question is how long before the dozens of states with the aircraft can arm and then operate a weaponized version. “Pretty much every nation has gone down the pathway of, ‘This is science fiction; we don’t want this stuff,’ to, ‘OK, we want them, but we’ll just use them for surveillance,’ to, ‘Hmm, they’re really useful when you see the bad guy and can do something about it, so we’ll arm them,’ ” Singer said. He listed the countries that have gone that route: the United States, Britain, Italy, Germany, China. “Consistently, nations have gone down the pathway of first only surveillance and then arming.” The opportunity to write rules that might at least guide, if not restrain, the world’s view of acceptable drone use remains, not least because this is in essence a conventional arms-control issue. The international Missile Technology Control Regime attempts to restrict exports of unmanned vehicles capable of carrying weapons of mass destruction, but it is voluntary and nonbinding, and it’s under attack by the drone industry as a drag on business. Further, the technology itself, especially when coupled with data and real-time analytics, offers the luxury of time and distance that could allow officials to raise the evidentiary bar for strikes—to be closer to certain that their target is the right one. But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions.

#### Current debate about drones focuses only on the number of casualties but ignores the context in which drone strikes take place- the act of drone strikes themselves cause more than just civilian casualties, they inflict psychological harm, spur revenge killings, and increase recruitment for terrorist organizations. A concern for those affected by drones is a necessary pre-requisite for ending the drone war.

Luban 12 Daniel Luban is a doctoral student in political science at the University of Chicago. He was formerly a correspondent for the Washington bureau of Inter Press Service. “An Important New Study of the Drone War” Sept 26 http://www.lobelog.com/an-important-new-study-of-the-drone-war/

As the report makes clear, however, the civilian death toll is only the most obvious human cost of the drone war. David Rohde, the New York Times journalist who spent months in captivity with the Taliban, has described life in the Pakistani tribal areas during the war on terror as “hell on earth,” and the accounts of the damage drones inflict on everyday life back up this assessment. Civilians living with the perpetual buzzing of drones overhead have been increasingly afraid to send their children to school, attend social gatherings, and even to provide first aid or burials for the victims of previous drone strikes. While the authors do not engage in diagnosis, their accounts suggest that an enormous chunk of the population of these areas must be living with something like PTSD. Finally, the much-touted strategic benefits of the drone war appear to be quite overblown. An extremely low percentage of the “militants” killed seem to have been significant operational leaders responsible for terrorist attacks, and the deep unpopularity of the drone strikes has further alienated the Pakistani public and raised the likelihood that the next government might swing in a sharply anti-American direction. As I’ve written before, there seems to be no major constituency at present pushing to hold the Obama administration accountable for its conduct of the drone war. Democrats have been more than happy to prove their toughness by claiming “terrorist” scalps — witness Osama bin Laden’s starring role at the Democratic convention earlier this month — while Republicans’ down-the-line opposition to the administration’s every move does not seem to extend to a concern for the rights of dark-skinned civilians in far-off Muslim countries. Until that changes, sad to say, the domestic political benefits of the drone war seem likely to ensure that it will continue.

#### Plan causes extraordinary rendition shift

Kenneth Anderson 09, Professor of International Law at American University, 5/31, “Security Issues Like Squeezing Jello? Reversion to the Mean? Jack Goldsmith on the Effects of Security Alternatives,” http://opiniojuris.org/2009/05/31/security-issues-like-squeezing-jello-reversion-to-the-mean-jack-goldsmith-on-the-effects-of-security-alternatives/#sthash.TB1xcePu.dpuf

One way you might look at this is that there is a sort-of national security constant that remains in equilibrium over time, using one tactic or another, gradually evolving but representing over time a reversion to the national security mean. Or you might say that national security, seen over time, looks a little like squeezing jello – if squeezed one place it pops out another. ¶ I think Jack is right that the administration – any administration – tends to strive for a certain equilibrium, as it is confronted with a flow of threats that the public discounts to near-zero but which it does not see itself quite so able to do, however much it might want to. However, as the op-ed also notes, and I agree, these methods are not completely equivalent or compensating. That is so not just with regards to third party costs, but also with respect to security as such. Intelligence gathering, by all accounts not very effective to begin with, has become much more difficult. This is not compensation, it is a seemingly permanent downward shift in the security mean. ¶ Besides the consequences that Jack identifies, I would add that the current move to semi-compensating policies means two things. First, intelligence is likely to be increasingly outsourced to foreign intelligence services. That can provide valuable information, but it will be increasingly uncorroborated and subject to filtering by those services. That is not good. ¶ Second, in a somewhat unrelated matter, I would guess that future conflicts, where not fought by Predator, will be increasingly outsourced to proxy forces. ¶ In the focus on intelligence and security, I think this second point has not received sufficient attention. The United States has a long familiarity with proxy forces as a form of deniability, among other things – Ronald Reagan, for example, faced with many limitations placed by Congress on his uses of force, found proxy forces an essential element of his foreign policy, in Central America particularly. The domestic risks that policy can entail are illustrated by the Iran-Contra contra-temps; on the other hand, Reagan was reasonably successful in pursuing his administration’s anti-Communist and anti-Soviet policy aims in Salvador and Nicaragua, among other places, by proxy forces. ¶ But I would be quite surprised if proxy war were not today under active discussion for places like Somalia (where we have already undertaken measures close to it) and other places. More precisely, I would surprised if it were not an active discussion among the New Liberal Realists of the Obama administration, whatever the transnationalists say or think.¶ In any case, whether those last two speculations prove true or not, the tendency of the administration to seek compensating policies seems likely at a minimum to complicate the issues of Guantanamo, Bagram, and other matters besides.

### Case – Solvency

#### The executive will give the Congress the finger – secrecy, media and lying

Branfman 13 Fred, Director of Project Air War, interviewed the first Lao refugees brought down to Vientiane from the Plain of Jars in northern Laos, visited U.S. airbases in Thailand and South Vietnam, talking with U.S. Embassy officials, Alternet, 6-9

Whatever his personal beliefs prior to becoming President Mr. Obama, as the Executive's titular leader, has necessarily signed up to support the secrecy, lying, and disinformation it employs to enjoy maximum flexibility from democratic oversight in order to pursue its policies of overt and covert violence. Two important new books - Jeremy Scahill's Dirty Wars and Mark Mazzetti's The Way of the Knife - describe how, in near-total secrecy, the U.S. Executive is a world of its own. Over the last 12 years, Executive officials have unilaterally and secretly launched, escalated or deescalated wars; installed and supported massively corrupt governments, savage warlords, or local paramilitary forces, and overthrown leaders that have displeased it; created the first unit of global American assassins and fleets of machines waging automated war; engaged in vicious turf wars for more money and budget; spied on Americans including the media and activists on a scale unmatched in U.S. history; compiled 3 different sets of global "kill lists" independently operated by the White House, CIA and Pentagon/JSOC; used police-state tactics while claiming to support democracy, e.g. when it fed retina scans, facial recognition features and fingerprints of over 3 million Iraqi and Afghani males into a giant data base; incarcerated and tortured, either directly or indirectly, tens of thousands of people without evidence or trial; and much more. All of these major activities are conducted entirely by the Executive Branch, without meaningful Congressional oversight or the knowledge of the American people. The foundational principle of the U.S. Constitution is that governments can only rule with the "informed consent" of the people. But the U.S. Executive Branch has not only robbed its people of this fundamental right. It has prosecuted those courageous whistleblowers who have tried to inform them. The U.S. mass media, dependent upon the Executive for their information and careers, and run by corporate interests benefiting from Executive largesse, predominately convey Executive Branch perspectives on an hourly basis to the American people. Even on the relatively few occasions when they publish information the Executive wishes to keep secret, it has little impact on Executive policies while maintaining the illusion that the U.S. has a "free press". The U.S. Executive is essentially free to conduct its activities as it wishes. In future articles in this space we will explore three key features of the U.S. Executive Branch: (1) Evil - If evil consists of murdering, maiming, and making homeless the innocent, and/or waging the “aggressive war” judged the “supreme international crime” at Nuremberg, the U.S. Executive Branch is today clearly the world’s most evil institution. It has killed, wounded or made refugees of an officially-estimated 21 million people in Iraq and Indochina alone, far more than any other institution since the time of Stalin and Mao. President Obama is the first U.S. President to acknowledge, in his recent "counterterrorism" speech, that this number has included killing "hundreds of thousands" of civilians in Vietnam whom it officially claimed it was trying to protect. Former Secretary of Defense Robert McNamara put the total number of Vietnamese killed at 3.4 million. [38] (2) Lawlessness - If illegality consists of refusing to obey the law, the Executive is clearly the most lawless institution in the world. It routinely violates even timid legislative attempts to control its unilateral war-making. And no nation on earth has signed fewer international laws, and so failed to observe even those it has signed. These include measures like those intended to clean up the tens of millions of landmines and cluster bombs [39] with which it has littered the world, refused to clean up, and which continue to murder and maim tens of thousands of innocent people until today. (3) Authoritarianism - And if "authoritarianism" consists of a governing body acting unilaterally, regularly deceiving its own citizenry, neutering its legislature ,and prosecuting those who expose its lies, the U.S. Executive is clearly the most undemocratic institution in America. Indeed its deceiving its own people - keeping its activities secret and then lying about and covering them up when caught - throws its very legitimacy into question.

#### The administration won’t follow through

Roth, 13 – Kenneth, Executive Director Human Rights Watch, Testimony from May 16 Senate Armed Services Committee Hearing on the AUMF, 5-16

The administration now clings to the AUMF, but the factual predicate for it—US involvement in the conflict with the Taliban and al-Qaeda—is also coming to an end. And, in any event, people detained in the context of an armed conflict between a government and an armed group—such as the current conflict in Afghanistan—should be charged and tried, not detained. The administration’s misuse of the AUMF to rationalize prolonged detention without trial in Guantanamo is another reason why the AUMF should not be extended. Moreover, when it comes to combatants in an armed conflict, the power to detain can easily be linked to the power to kill. If the United States is going to claim the right to detain “combatants” without end on the basis of a global war unconnected to a traditional battlefield, against a non-state enemy that does not control any substantial territory, other nations will undoubtedly make similar claims. And, once governments identify people as combatants, however wrongful that may be, they will inevitably claim the power not only to detain them without charge or trial but also to kill them. Although the United States currently detains many people who are clearly not combatants – those drivers, cooks, doctors and financiers, among others – it should be mindful of how its policies can be interpreted. The best solution is still to try suspects in regular federal courts, with their entrenched procedural protections designed to provide fair trials. Security concerns can reasonably be handled; for example, if trials in the regular United States Courthouse for the Southern District of New York are deemed too difficult despite its long history of trying dangerous criminals such as drug czars and mafia dons, trials could be held securely and with little disruption on nearby Governor’s Island. However, the United States has already tried former CIA- and Guantanamo-detainee Ahmed Ghailani without incident in the regular courthouse for the Southern District of New York. By contrast, Congress’s insistence on using military commissions at Guantanamo has been an unmitigated disaster. The only two convictions obtained after full trials have both been overturned by the United States Court of Appeals for the District of Columbia Circuit; the five other convictions obtained were by plea bargain. During the same time that the military commissions have obtained these seven convictions, federal courts have prosecuted some 500 terrorism suspects. In addition there are profound and legitimate concerns about the fairness of a system that, among other things, permits the introduction into evidence of coerced statements from witnesses, allows the military to hand-pick the jury pool, and severely compromises the attorney-client privilege. Roughly half of the Guantanamo detainees have theoretically been approved for transfer to their home or third countries, and those transfers can proceed if the administration certifies that appropriate security arrangements have been made. The administration should accelerate its efforts to make those arrangements. However, the administration also claims that there remains a category of detainees who are “too dangerous” to release but who cannot be tried because either there is insufficient admissible evidence to prosecute them or their acts did not amount to a chargeable crime. The administration purports to hold these men under the above-described war powers. But even under war rules, the purpose of detention is to keep the enemy from returning to the battlefield. As the US involvement in the Afghan war winds down, it is not clear what war the men released from Guantanamo would return to. And if the fear is that they would join in criminal activity, the answer lies in criminal prosecution, including for such inchoate crimes as conspiracy or attempt, not the “Minority Report” approach of detaining them for crimes that they might at some future point plan to commit. Given Guantanamo’s enormous stain on America’s reputation, there is good reason to believe that these continuing detentions are causing more harm than good to America’s security and counterterrorism efforts. President Obama himself has stated that keeping Guantanamo open weakens US national security. And for the same reasons that long-term detention without trial is wrong and counterproductive in Guantanamo, it would be wrong and counterproductive if moved to the United States. That would simply replicate Guantanamo in another locale

#### The plan is another chapter in the story of Congressional stripping of judicial rulings increasing the rights of detainees

#### A) Overturned the first two Supreme Court cases that attempted to limit indefinite detention

Nikkel 12, 2012, J.D. Candidate, 2012, William S. Boyd School of Law, Las Vegas; B.A., 2009, University of Nevada, Reno. Nevada Law Journal. Spring 2012. The Author would like to thank Professor Christopher L. Blakesley, Professor Terrill Pollman, and the Nevada Law Journal staff for helping with the research and writing of this Note.) Web, Lexis Nexis.

The first challenges to the detention program came in the form of Rasul and Hamdi, both decisions handed down on June 28, 2004, by the Supreme Court.93 Sixteen detainees—two British, two Australian, and twelve Kuwaiti citizens—brought the Rasul action, seeking a writ of habeas corpus in federal court.94 In the 6 to 3 Rasul decision, the Supreme Court held Guant´anamo prisoners could challenge the lawfulness of their detention in federal court because Cuba’s “ultimate sovereignty” over the base did not preclude access.95 On the other hand, in Hamdi, a plurality of the Court found the government could detain an American citizen as an enemy combatant pursuant to the AUMF, but had to offer him the opportunity to challenge the factual basis for his detention with the benefit of a fair hearing before a neutral tribunal and access to counsel.96 Justice O’Connor’s plurality opinion warned “a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens.”97 O’Connor thought the war against the Taliban closely resembled wars of the past, and the president’s traditional war powers likely did not apply in the war against al Qaeda or in conflicts against other non-state actors.98 Furthermore, as critical as the Government’s interest may have been in addressing immediate threats to national security, “history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.”99 O’Connor concluded enemy combatant proceedings should be carefully tailored to alleviate “their uncommon potential to burden the Executive at a time of ongoing military conflict.”100 Therefore, the Court attempted to strike a balance in Rasul and Hamdi: although the president could detain unlawful combatants, the administration needed to provide basic due process for captured persons. In response to the Rasul and Hamdi decisions, the government responded twofold to limit due process for Guant´anamo detainees: first with the Combatant Status Review Tribunal (“CSRT”)101 and then with the Detainee Treatment Act of 2005 (“DTA”).102 A mere nine days after the Rasul and Hamdi decisions, allowed Guant´anamo detainees to contest their designations as enemy combatants. 103 The CSRT allowed the detainees to consult a “personal representative” (a military officer “with the appropriate security clearance”) to review “any reasonably available information” possessed by the Department of Defense regarding the detainee’s classification.104 After a preparation and consultation period of thirty days, the Department of Defense would convene a tribunal, composed of three neutral commissioned military officers, to review the detainee’s status.105 However, the rules of evidence did not apply and the tribunal allowed admission of hearsay.106 The detainee could only call “reasonably available” witnesses and the memo created a rebuttable presumption in favor of the government’s evidence.107 Therefore, although the executive branch complied with the Court’s mandate for a neutral tribunal before which detainees could challenge their classifications as “enemy combatants,” the limited due process protections led to criticism that the CSRTs were not in place to discover the truth about the detainees, but rather to prolong their detentions.108 Anticipating more judicial challenges from Guant´anamo detainees due to the shortcomings of the CSRT process, Congress finally entered the fray on December 30, 2005, by passing the Detainee Treatment Act.109 The Act amended 28 U.S.C § 2241, the federal habeas statute, and stripped federal courts of their jurisdiction to hear habeas petitions filed by detainees.110 Couched in language about prohibiting “cruel, inhuman, or degrading treatment” of persons in the United States’ custody,111 the Act codified Wolfowitz’s CSRT memo112 and provided, “no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guant´anamo Bay, Cuba.”113

#### B) When the courts responded to give more rights, Congress stripped that decision of meaning too.

Nikkel 12, 2012, J.D. Candidate, 2012, William S. Boyd School of Law, Las Vegas; B.A., 2009, University of Nevada, Reno. Nevada Law Journal. Spring 2012. The Author would like to thank Professor Christopher L. Blakesley, Professor Terrill Pollman, and the Nevada Law Journal staff for helping with the research and writing of this Note.) Web, Lexis Nexis.

The DTA threw pending habeas claims by Guant´anamo detainees, like that of Salim Ahmed Hamdan (allegedly Osama bin Laden’s chauffer and bod-yguard),114 into chaos because it was unclear if pending claims could still be heard by federal courts.115 The Supreme Court, in its 5 to 3 Hamdan v. Rumsfeld decision, found the DTA did not retroactively strip habeas jurisdiction over pending cases.116 Furthermore, the Court invalidated the system of military tribunals the Bush administration created in the wake of 9/11 because the system violated Article 3 of the Geneva Conventions.117 The administration modeled these tribunals after those President Roosevelt used to try the prisoners in Quirin and Eisentrager, but the new tribunals lacked the express authorization from Congress, either by statute or declaration of war.118 At President Bush’s behest, Congress responded yet again, this time in the form of the Military Commissions Act of 2006 (“MCA”), which scholars have called “a harsh rebuke of the Hamdan court.”119 In order to provide President Bush with the “tools he need[ed] to protect [the] country” by allowing military tribunals to provide swift justice for terrorists and to combat future attacks,120 Section 7 of the MCA struck the DTA’s amendment to the federal habeas statute and inserted a new subsection:¶ [N]o court, justice, or judge shall have jurisdiction to hear or consider an application¶ for a writ of habeas corpus filed by or on behalf of an alien detained by the United¶ States who has been determined by the United States to have been properly detained¶ as an enemy combatant or is awaiting such a determination.121¶ The MCA avoided the pitfalls of Hamdan’s challenge by ensuring that its¶ provisions would apply to pending cases as well.122 The Act also defined new¶ offenses the Commission could try,123 permitted testimony obtained through¶ coercive techniques,124 and even prohibited combatants from invoking the protections¶ of the Geneva Conventions.125 The jurisdiction-stripping provisions of¶ the MCA triggered Suspension Clause concerns, setting the stage for¶ Boumediene, the principal case in the Guant´anamo litigation.

#### Stripping guts the case solvency and turns the case—all rights protections would go completely unenforced—trampling meaningful rights:

Barry W. Lynn 4, 2004 bachelor's degree at Dickinson College, theology degree from Boston University School of Theology, minister in the United Church of Christ, of the Washington, D.C. bar, law degree from Georgetown University Law Center, the Executive Director of Americans United for Separation of Church and State, 2004[“Congress and Court Stripping: Just Keep Your Shirts On” Church and State Magazine, May]

Another measure, the misnamed "Constitution Restoration Act of 2004," was written by former Alabama Supreme Court Chief Justice Roy Moore and his allies. It would ban all cases challenging state-sponsored acknowledgement of "God as the sovereign source of law, liberty, or government." For good measure, it would also retroactively overturn all existing rulings in this area and establish a mechanism for impeaching federal judges who dare to uphold church-state separation! One wonders if the legislators who wrote these bills slept through high school civics class. The separation of powers means that the U.S. government consists of three co-equal branches: the president, the Congress and the courts. Congress does not have the power, through simple legislation, to decimate the authority of the courts over issues dealing with the Bill of Rights. Such power would rapidly make the courts superfluous. Whenever a judge ruled in a manner that displeased a legislator, a court-stripping bill would be drawn up and passed. Pretty soon the courts would be nothing but a rubber-stamp body for Congress. Some members of Congress might want that, but it would be a disaster for American democracy. Courts exist to make hard decisions. When lawmakers overstep their bounds and infringe on constitutional rights, courts are there to pull them back. Without the judiciary to protect us, Americans would quickly be at the mercy of the momentary whims of the majority. Our rights would be trampled on.

### Case – Butler

#### Their aff’s proscribed grief is re-appropriated to justify the War on Terror

Schneider and Butler 10

Nathan (writer on religion and resistance for Harper’s, The Nation, the New York Times, editor of Waging Nonviolence and Killing the Buddha, author of two books) and Judith (Maxine Elliot Professor in Rhetoric and Comparative Literature at UC-Berkeley). “A Carefully Crafted F\*\*k You.” An Interview with Judith Butler. Guernica. The European Graduate School. March 2010.

Guernica: **Forms of grief are deployed, through certain deplorable exemplars, to justify a military regime**—**the Holocaust, for example, and now 9/11**. Why, then, **can’t grief just as easily be used to justify more war?**

Judith Butler: Well, **I** do **worry about those instances in which public mourning is explicitly proscribed**, and that invariably happens in the context of war. I think **there were ways, for instance, of producing icons of those who were killed in the 9/11 attacks in such a way that the desire for revenge and vindication was stoked**. So we have to distinguish between modes of **mourning [can]** that actually extend our ideas about equality, and those that **produce differentials, such as “this population is worth protecting” and “this population deserves to die**.”

Guernica: **The hawkish wing in the “war on terror” has quite effectively claimed the banner of feminism.** Is feminism as it has been articulated in part to blame for this?

Judith Butler: No, I think that **we have seen quite cynical uses of feminism for the waging of war.** The vast majority of feminists oppose these contemporary wars, and object to the false construction of **Muslim women “in need of being saved**” as a cynical use of feminist concerns with equality. There are some very strong and interesting Muslim feminist movements, and casting Islam as anti-feminist not only disregards those movements, but displaces many of the persisting inequalities in the first world onto an imaginary elsewhere.

Guernica: After millions of protesters around the world could do nothing to prevent the Iraq War, what do you think is the most effective form of protest? Disobedience? Or even thinking?

Judith Butler: Let us remember that Marx thought of thinking as a kind of practice. Thinking can take place in and as embodied action. It is not necessarily a quiet or passive activity. Civil disobedience can be an act of thinking, of mindfully opposing police force, for instance. I continue to believe in demonstrations, but I think they have to be sustained. We see the continuing power of this in Iran right now. The real question is why people thought with the election of Obama that there was no reason to still be on the street? It is true that many people on the left will never have the animus against Obama that they have against Bush. But maybe we need to protest policies instead of individuals. After all, it takes many people and institutions to sustain a war.

Guernica: Anyone who went to an anti-war protest during the Bush administration surely saw the violence of the anger directed personally against the president. People have a need to personalize. It seems to me the strength of your book, though, is that it counter-personalizes, turning our focus not so much to policies or policy-makers as to victims and potential victims.

Judith Butler: It is personal, but it asks what our obligations are to those we do not know. So in this sense, it is about the bonds we must honor even when we do not know the others to whom we are bound.

Guernica: Your account of nonviolence revolves around recognizing sociality and interconnection as well. Does it also rely on the kind of inner spiritual work that was so important, for instance, to Gandhi?

Judith Butler: I am not sure that the work is “inner” in the way that Gandhi described. But I do think that one has to remain vigilant in relation to one’s own aggression, to craft and direct it in ways that are effective. This work on the self, though, takes place through certain practices, and by noticing where one is, how angry one is, and even comporting oneself differently over time. **I think this has to be a social practice, one that we undertake with others.** That **support and solidarity are crucial to maintaining it**. **Otherwise, we think we should become heroic individuals, and that takes us away from effective collective action.**

Guernica: What can philosophy, which so often looks like a kind of solitary heroism, offer against the military-industrial complexes and the cowboy self-image that keep driving us into wars? At what register can philosophy make a difference?

Judith Butler: Let’s remember that the so-called military-industrial complex has a philosophy, even if it is not readily published in journals. The contemporary cowboy also has, or exemplifies, a certain philosophical vision of power, masculinity, impermeability, and domination. So the question is how philosophy takes form as an embodied practice. Any action that is driven by principles, norms, or ideals is philosophically informed. So we might consider: what practices embody interdependency and equality in ways that might mitigate the practice of war waging? My wager is that there are many.

#### TURN – Butler argues for a mourning backed by rage. That rage can only lead to violence toward the Other

McIvor 12, David W. (PhD from Duke University, research associate @ The Kettering Foundation) “Bringing Ourselves to Grief: Judith Butler and the Politics of Mourning” *Political Theory.* 2 May 2012. <http://ptx.sagepub.com/content/40/4/409>

Butler turns to Levinas and Adorno for the cultivation of ethical dispositions in which mourning is refigured as a site of dispossession. Yet this move repeats the melancholic refrain. **Under the thrall of the unforgiving superego figure derived from Levinas and Adorno, the political expression of mourning becomes a curious (if not paradoxical) enraged nonviolence, which Butler calls the “carefully crafted ‘fuck you.’**”80 **Butler presumes that** acts of ek-static **acknowledgement** beneath the gaze of a revised superego **will allow enraged claims to take on a nonviolent character, but it is difficult to accept this idea** at face value. **On the contrary, the deep anger of the political “fuck you”—no matter how carefully crafted—seems to inevitably drift towards violence that,** far from remaining in touch with the ek-static nature of subjectivity, **obliterates the ambivalence of both the targeted other and the social-political world composed of a plurality of multi-faceted others**.81

## 2NC

### 2NC K Cards

#### All of our solvency arguments are *net offense*---legalism creates the façade that the executive is being constrained while allowing the government to do as it pleases under the guise of constraint---this swells executive power and turns the case

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.

#### Politics is Schmittian – congress and courts cannot effectively constrain the executive

Vermeule and Posner, 11 – Adrian Vermeule, prof of Law at Harvard University Law School, Eric A Posner., prof of Law at the University of Chicago Law School, Executive Unbound: After the Madisonian Republic, Oxford University Press 2011

Our thesis is that these modifications to liberal legalism fail. Either they do not go far enough to square with the facts, or they go so far as to effec­tively abandon the position they seek to defend. We live in a regime of executive-centered government, in an age after the separation of powers, and the legally constrained executive is now a historical curiosity. As against liberal constitutional theorists like Janies Madison, Bruce Acker­man,1 and Richard Epstein,2 and liberal theorists of the rule of law like ..Albert Venn Dicey3 and David Dyzenhaus,4 we argue that in the modern administrative state the executive governs, subject to legal constraints that are shaky in normal times and weak or nonexistent in times of crisis. Whereas Madison is an exemplar of liberal legalism, particularly in the domain of constitutional theory, we draw upon the thought of the Weimar legal theorist Carl Schmitt. We do not agree with all of Schmitt’s views, by any means. To the. extent Schmitt thought that democratic poli­tics do not constrain the executive, or thought that in the administrative state the executive is not only largely unconstrained by law but also uncon­strained tout court, we disagree. Indeed, to the extent that Schmitt thought this, he fell into a characteristic error of liberal legalism, which equates lack of legal constraint with unbounded power. But Schmitt’s critical arguments against liberal legalism seem to us basically correct, at least when demysti­fied and rendered into suitably pragmatic and institutional terms. A central theme in Schmitt s work, growing outof Weimar’s running economic and security crises in the 1920s and early 1930s, involves the relationship between the classical rule-of-law state, featuring legislative enactment of general rules enforced by courts, and the administrative state, featuring discretionary authority and ad hoc programs, administered by the executive, affecting particular individuals and firms. The nub of Schmitt s view is the idea that liberal lawmaking institutions frame, general norms that are essentially “oriented to the past,” whereas “the dictates of modern interventionist politics cry out for a legal system conducive to a present- and future-oriented ‘steering’ of complex, ever-changing eco­nomic scenarios.”3 Legislatures and courts, then, are continually behind the pace of events in the administrative state; they play an essentially reac­tive and marginal role, modifying and. occasionally blocking executive policy initiatives, but rarely taking the lead. And in crises, the executive governs nearly alone, at least so far as law is concerned. In our view, the major constraints on the executive, especially in crises, do not arise from law or from the separation-of-powers framework defended by liberal legalists, but from politics and public opinion. Law and politics are hard to separate and lie on a continuum—elections, for example, are a complicated mix: of legal rules and political norms—but the poles are clear enough for our purposes, and the main constraints on the executive arise from the political end of the continuum. A central fallacy of liberal legalism, we argue, is the equation of a constrained executive with an executive constrained by law. The pressures of the administrative state loosen legal constraints, causing liberal legalists to develop tyrannophobia, or unjustified fear of dictatorship. They overlook the de facto political con­straints that have grown up and, to some degree, substituted for legal constraints on the executive.6 As the bonds of law have loosened, the bonds of politics have tightened their grip. The executive, “unbound” from the standpoint of liberal legalism, is in some ways more constrained than ever before. We do not claim that these political constraints necessarily cause the executive to pursue the public interest, however defined, or that they pro­duce optimal executive decision-making. We do claim that politics and public opinion at least block the most lurid forms of executive abuse, that courts and Congress can do no better, that liberal legalism goes wrong by assuming that a legally unconstrained executive is unconstrained overall, and that in any event there is no pragmatically feasible alternative to exec­utive government under current conditions. The last point has normative implications, because of the maxim “Ought implies can.” Executive gov­ernment is best in the thin sense that there is no feasible way to improve upon it, under the conditions of the administrative state.

#### Their method is bad – (1) it’s rooted in tyrannaphobia (2) the state is hijacked by elites who control decision making and normalize an authoritarian state that wages war on populations – debate should focus on how cultural elements combat normalization of violence

Giroux 13 Henry A. is a social critic and educator, and the author of many books. He currently holds the Global Television Network Chair in English and Cultural Studies at McMaster University, Ontario, Monthly Review, Volume 65, Issue 01 (May)

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 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.

#### Legalism is epistemologically flawed and violent.

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 DA – alt has to come first or movements get sapped

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 shouldbegin 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 - butonly after social movements lay the groundworkfor legal change. Social movements must first create political pressure that frames issues in 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.

#### Aff gets lost in the details of specifics like \_\_\_\_\_ policy which ignores broader systemic criticism and normalizes war on terror

Saas, 12 \*\*William O. Pf Department of Communication Arts and Sciences at the Pennsylvania State University. symploke > Volume 20, Numbers 1-2

How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current political climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current political situation, are best won through the broad strokes of what Slavoj Žižek calls "systemic" critique. For Žižek, looking squarely at interpersonal or subjective violences (e.g., torture, drone strikes), drawn as we may be by their gruesome and immediate appeal, distorts the critic's broader field of vision. For a fuller picture, one must pull one's critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek's mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique? For practical purposes, this essay leaves off discussion of neoliberal economic domination, vital as it may be to a full accounting for the U.S.' latest and most desperate expressions of state solvency.

#### Bad for the left – as progressives stay focused on the law, conservatives chalk up more wins. Reliance on the law is WORSE than doing nothing

West 6, Pf Law @ Georgetown, (Robin, *Harvard Journal of Law & Gender*, Winter, lexis)

And law is indeed a strikingly conservative and conserving set of institutions and practices. I argued in the book that legal critics, feminist and otherwise, should elevate the concept of harm in our thinking about law. And when we do so, we should think much more than we currently do about the harms sustained by various subordinated groups, including women. All I want to add here in response to some of Halley's remarks is that harm- and law-focused inquiries with respect to gender or otherwise that come from such a focus are indeed reformist projects. They are projects about how law could do better, instrumentally, what it claims to do, and what it does do some of the time, what it does not do at all well most of the time, and often does not do at all, period. However, while it is important to get judge-made law to do better what it already does, it is even more important. I think, to put law in its place. Law--meaning here, adjudicative law--is (lo and behold) not politics. It cannot do what politics might be able to do. It has been a tragic mistake, I think, of liberals, radicals, identitarian theorists, critical legal scholars, and progressives of all stripes involved in law, legal theory, and legalism of the past half century, to assert, and so repetitively and confidently, the contrary. The domain of adjudicative law has its own ethics. It is for the most part deeply moored in conservative values. It has some redemptive potential and therefore some play for progressive gains, but really not much. More important, it has the potential, all in the name of justice, to further aggravate the harmsit manages to so successfully avoid. *Caring for Justice* was an attempt to expose the aggravation of harm done by law in the name of justice, exploit its redemptive potential, and argue that others should do this also. But completely aside from the arguments of that book, I think this is still a very important and very much under-examined question for progressive lawyers to ask: how much can be asked of adjudicative law? Again, my answer is "not much." Others disagree. My current retrospective on the place of Catharine MacKinnon's jurisprudence in our law and letters, for example, argues that a part of the brilliance of her labors over the last thirty years has been her quite conscious embrace of law and legalism, rather than the domain of politics, culture, or education, to achieve evolutionary changes in our understanding of both sexual injury and sexual justice. [**97**](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n97) She has been phenomenally successful in pushing law to become a **[\*48]** vehicle for that evolutionary change. By contrast, I think, the benighted attempt over the last half century of progressive constitutional lawyers and theorists to employ the stratagems and ethics of legalism so as to refigure our fundamental politics, to achieve substantive equality, expand liberty, and the like--and to do so by urging on courts the development of progressive interpretations of their constitutional corollaries--has been a pretty striking failure, and not only because of the current Republican staffing of the courts. Obviously, the arguments put forward by progressives, radicals, and liberals in their thousands upon thousands of pages of briefs--arguments about what equality should look like, about what freedoms we all should or should not have, about democracy, about speech, about reproduction, about race, about sex, and so on and so on and so on, as well as their constitutional corollaries, from *Brown* [98](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n98) to *Roe* [99](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n99) to *Casey* [100](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n100) to *Lawrence* [101-](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n101-)-are vital arguments with which to engage. The problem is that these arguments should be--and are not--the bread and butter of very ordinary politics, completely traditionally understood. The repeated insistence by liberal legalists over the last half-century that these arguments are, in fact, in law's domain has not secured progressive victories and has had the perverse effect instead of impoverishing our politics. [**102**](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n102) The repeated insistence by critical legal scholars over the last thirty years that, contra liberalism, there is no difference between law and politics--and that what follows is simply that all those legal arguments in all of those endless Supreme Court opinions pontificating over the meaning of liberty and equality are in fact political arguments--has not changed this dynamic one bit. It has not only underscored the total absence of any coherent progressive instrumentalism from left understandings of the potential of law. Of greater consequence, it has also even **further emasculated and eviscerated** our politics, worse than liberalism could have done if it had tried, and it did not. The critical insistence on the deconstruction of the differences between law and politics has only reinforced, rather than challenged in any meaningful way, the liberal legalist conceit that law, rather than politics ordinarily understood, is the domain of radical and liberal political thought. We have no political "left" in this country, in part, because those who would otherwise be inclined to make one have instead poured their thought, their passion, and their commitments into litigation [\*49] strategies or into the project of pointing out over and over the politics of those projects**.** The result of this has been an entrenched conservatism across the board**-**-the board, that is, of both law and politics. Progressives need to re-direct their political arguments, including the radical arguments, out of law and law reviews and into the domain of politics. We first have to get over the lazy assumption that there is no need to do so--either because law is much loftier than ordinary politics, such that ennobling political arguments *ought* to be made in judicial fora (liberalism); or because there's no difference between law and politics, so that pointing out that legal arguments are through and through political is the beginning and end of political thought (critical). There are alternatives to both, and we ought to start figuring out what they are.

#### Complacency DA – relying on the law create psychological co-option and satisfaction with what he we have done

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 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."

### 2NC Courts Defer

#### the only way to solve any of this is to have courts step in---that will never happen

Driesen 9 \* David M. University Professor, Syracuse University; Fordham Law Review, October, 78 Fordham L. Rev. 71

The executive branch often interprets the vast body of law it administers unilaterally. In some areas, courts have no opportunity to review its decisions. 217 Even when reviewable, the courts usually approach executive branch decisions deferentially and often correct errors in ways that leave continuing latitude for executive branch shaping of the law. 218 Because of the awkwardness of impeachment and funding cutoffs, congressional oversight provides only a very limited remedy for executive excess, and executive decisions to withhold information can further weaken oversight's effectiveness. 219 Because modern Presidents are so profoundly political, a danger exists that they will interpret the law opportunistically, to increase their own power and advance their faction's political agenda, rather than faithfully execute the laws Congress has publicly passed. 220 The opportunities for abuse have recently multiplied, because of the specter of terrorism, which tends to drive the executive toward secret policy making of his own largely unrestrained by law. 221

#### They acquiesce responsibility

**Glennon, 8 –**  (Michael, Professor of international law at the Fletcher School of Law & Diplomacy, “A Conveniently Unlawful War”, http://www.hoover.org/publications/policyreview/26119169.html)

John marshall is famous for having fathered a system of judicial supremacy, reflected in his ringing assertion in Marbury v. Madison, 5 U.S. 137 (1803) that it is

“emphatically the province and duty of the judicial department to say what the law is. ” As Bas v. Tingy, Talbot v. Seeman, and Little v. Barreme all reveal, Marshall and his colleagues did not hesitate to decide cases bearing upon war and peace. But American courts today say little on such matters, strikingly less than did their Federalist predecessors, whose power was more recently claimed and more precariously held. The courts today routinely decline to hear war powers cases for three doctrinal reasons, any one of which would likely prove fatal to an effort to achieve judicial redress in the war in Iraq. The first is the political question doctrine. The reach of the doctrine was summarized by the Supreme Court in the 1962 reapportionment case of Baker v. Carr. It said: Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court ’s undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.21 A dispute that falls into one of more of those categories will be dismissed in the belief the courts should leave its resolution to the political branches. In recent decades, the courts have not reached the merits in any war powers controversy, and the political question doctrine has been a frequent rationale for abstaining. This is lamentable, because it undercuts the American commitment to a rule of law enforced by independent courts against all law violators, high or low. John Marshall well knew that some cases present political questions not appropriate for adjudication, something he noted explicitly (and only in passing) in Marbury. Yet his Court decided Bas, Talbot, and Little without ever noting that any of these cases might have presented a political question; the possibility was not even worth addressing. And with good reason: In such cases, arguments for the political question doctrine are in fact arguments for unfettered executive hegemony. The executive always wins when it can present Congress and the country with a fait accompli, using force free of judicial review. Such abstention, it is true, keeps the courts out of the political hot-seat and in a sense protects their legitimacy. But it is worth remembering that political legitimacy is a double-edged sword: Not deciding a case that presents a manifest constitutional violation can undermine public respect for the courts even more than deciding it. When the political system is incapable of righting itself and re-establishing an equilibrium of power, the courts ’ legitimacy is enhanced by intervening.

### 2NC Congress Won’t Check

#### congress will not check the president, but just follow suit

Nzelibe 6—Jide Nzelibe, Professor of Law @ Northwestern University [“A positive theory of the war-powers constitution,” *Iowa Law Review*, 2006; 91(3) pg. 993-1062]

The theoretical framework laid out in this Article suggests that as long as the President has control over the crisis-escalation agenda, it is unlikely that either more sophisticated institutional tools or greater judicial intervention will significantly alter Congress's war-powers role. Once the President has escalated an international crisis and mobilized the domestic audience in favor of war, there is a strong tendency that Congress will follow suit and accede to the President's agenda. In other words, electoral factors are more likely to influence the congressional role in war-powers issues than empire-building concerns." Moreover, even if the courts force Congress to play a more active role by requiring that it authorize ex-ante all uses of force, the President's unique ability to shape public opinion even before a war is initiated will make it very likely that members of Congress will simply rubberstamp the President's use-of-force initiatives. Thus, although the courts can plausibly force Congress to play a more formal role in initiating wars, this does not mean that Congress will have any incentive to take such a task seriously. Pg. 1000

### 2NC Title Switching/Rendition

#### Obama will redefine policies

NYT 12 (New York Times, “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will”, 5/29/12, <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all&_r=0>)

What the new president did not say was that the orders contained a few subtle loopholes. They reflected a still unfamiliar Barack Obama, a realist who, unlike some of his fervent supporters, was never carried away by his own rhetoric. Instead, he was already putting his lawyerly mind to carving out the maximum amount of maneuvering room to fight terrorism as he saw fit. It was a pattern that would be seen repeatedly, from his response to Republican complaints that he wanted to read terrorists their rights, to his acceptance of the C.I.A.’s method for counting civilian casualties in drone strikes. The day before the executive orders were issued, the C.I.A.’s top lawyer, John A. Rizzo, had called the White House in a panic. The order prohibited the agency from operating detention facilities, closing once and for all the secret overseas “black sites” where interrogators had brutalized terrorist suspects. “The way this is written, you are going to take us out of the rendition business,” Mr. Rizzo told Gregory B. Craig, Mr. Obama’s White House counsel, referring to the much-criticized practice of grabbing a terrorist suspect abroad and delivering him to another country for interrogation or trial. The problem, Mr. Rizzo explained, was that the C.I.A. sometimes held such suspects for a day or two while awaiting a flight. The order appeared to outlaw that. Mr. Craig assured him that the new president had no intention of ending rendition — only its abuse, which could lead to American complicity in torture abroad. So a new definition of “detention facility” was inserted, excluding places used to hold people “on a short-term, transitory basis.” Problem solved — and no messy public explanation damped Mr. Obama’s celebration. “Pragmatism over ideology,” his campaign national security team had advised in a memo in March 2008. It was counsel that only reinforced the president’s instincts. Even before he was sworn in, Mr. Obama’s advisers had warned him against taking a categorical position on what would be done with Guantánamo detainees. The deft insertion of some wiggle words in the president’s order showed that the advice was followed. Some detainees would be transferred to prisons in other countries, or released, it said. Some would be prosecuted — if “feasible” — in criminal courts. Military commissions, which Mr. Obama had criticized, were not mentioned — and thus not ruled out. As for those who could not be transferred or tried but were judged too dangerous for release? Their “disposition” would be handled by “lawful means, consistent with the national security and foreign policy interests of the United States and the interests of justice.” A few sharp-eyed observers inside and outside the government understood what the public did not. Without showing his hand, Mr. Obama had preserved three major policies — rendition, military commissions and indefinite detention — that have been targets of human rights groups since the 2001 terrorist attacks.

#### The U.S. will still functionally detain through rendition – Takes out every advantage

OSJI 13 (Open Society Justice Initiative, “Globalizing Torture: CIA Secret Detention and Extraordinary Rendition”, February 2013, <http://www.opensocietyfoundations.org/reports/globalizing-torture-cia-secret-detention-and-extraordinary-rendition>)

Following the terrorist attacks of September 11, 2001, the U.S. Central Intelligence Agency (CIA) commenced a secret detention program under which suspected terrorists were held in CIA prisons, also known as “black sites,” outside the United States, where they were subjected to “enhanced interrogation techniques” that involved torture and other abuse. At about the same time, the CIA gained expansive authority to engage in “extraordinary rendition,” defined here as the transfer— without legal process—of a detainee to the custody of a foreign government for purposes of detention and interrogation. 2 Both the secret detention program and the extraordinary rendition program were highly classified, conducted outside the United States, and designed to place detainee interrogations beyond the reach of the law. Torture was a hallmark of both. The two programs entailed the abduction and disappearance of detainees and their extra-legal transfer on secret flights to undisclosed locations around the world, followed by their incommunicado detention, interrogation, torture, and abuse. The administration of President George W. Bush embraced the “dark side,” a new paradigm for countering terrorism with little regard for the constraints of domestic and international law. Today, more than a decade after September 11, there is no doubt that highranking Bush administration officials bear responsibility for authorizing human rights violations associated with secret detention and extraordinary rendition, and the impunity that they have enjoyed to date remains a matter of significant concern. But responsibility for these violations does not end with the United States. Secret detention and extraordinary rendition operations, designed to be conducted outside the United States under cover of secrecy, could not have been implemented without the active participation of foreign governments. These governments too must be held accountable. However, to date, the full scale and scope of foreign government participation—as well as the number of victims—remains unknown, largely because of the extreme secrecy maintained by the United States and its partner governments. The U.S. government has refused to publicly and meaningfully acknowledge its involvement in any particular case of extraordinary rendition or disclose the locations of secret overseas CIA detention facilities. While President Bush acknowledged that the CIA had secretly detained about 100 prisoners, the U.S. government has only identified 16 “high value detainees” as individuals who were secretly held in CIA detention prior to being transferred to U.S. Defense Department custody in Guantánamo Bay. The United States also has refused to disclose the identities of the foreign governments that participated in secret detention or extraordinary rendition, and few of these governments have admitted to their roles. This report provides for the first time the number of known victims of secret detention and extraordinary rendition operations and the number of governments that were complicit. Based on credible public sources and information provided by reputable human rights organizations, this report is the most comprehensive catalogue of the treatment of 136 individuals reportedly subjected to these operations. There may be many more such individuals, but the total number will remain unknown until the United States and its partners make this information publicly available. The report also shows that as many as 54 foreign governments reportedly participated in these operations in various ways, including by hosting CIA prisons on their territories; detaining, interrogating, torturing, and abusing individuals; assisting in the capture and transport of detainees; permitting the use of domestic airspace and airports for secret flights transporting detainees; providing intelligence leading to the secret detention and extraordinary rendition of individuals; and interrogating individuals who were secretly being held in the custody of other governments. Foreign governments also failed to protect detainees from secret detention and extraordinary rendition on their territories and to conduct effective investigations into agencies and officials who participated in these operations. The 54 governments identified in this report span the continents of Africa, Asia, Australia, Europe, and North America, and include: Afghanistan 3 , Albania, Algeria, Australia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Djibouti, Egypt, Ethiopia, Finland, Gambia, Georgia, Germany, Greece, Hong Kong, 4 Iceland, Indonesia, Iran, Ireland, Italy, Jordan, Kenya, Libya, Lithuania, Macedonia, Malawi, Malaysia, Mauritania, Morocco, Pakistan, Poland, Portugal, Romania, Saudi Arabia, Somalia, South Africa, Spain, Sri Lanka, Sweden, Syria, Thailand, Turkey, United Arab Emirates, United Kingdom, Uzbekistan, Yemen, and Zimbabwe. 5 By engaging in torture and other abuses associated with secret detention and extraordinary rendition, the U.S. government violated domestic and international law, thereby diminishing its moral standing and eroding support for its counterterrorism efforts worldwide as these abuses came to light. By enlisting the participation of dozens of foreign governments in these violations, the United States further undermined longstanding human rights protections enshrined in international law—including, in particular, the norm against torture. As this report shows, responsibility for this damage does not lie solely with the United States, but also with the numerous foreign governments without whose participation secret detention and extraordinary rendition operations could not have been carried out. By participating in these operations, these governments too violated domestic and international laws and further undermined the norm against torture. Torture is not only illegal and immoral, but also ineffective for producing reliable intelligence. Indeed, numerous professional U.S. interrogators have confirmed that torture does not produce reliable intelligence, and that rapport-building techniques are far more effective at eliciting such intelligence. A telling example of the disastrous consequences of extraordinary rendition operations can be seen in the case of Ibn al-Sheikh al-Libi, documented in this report. After being extraordinarily rendered by the United States to Egypt in 2002, al-Libi, under threat of torture at the hands of Egyptian officials, fabricated information relating to Iraq’s provision of chemical and biological weapons training to Al Qaeda. In 2003, then Secretary of State Colin Powell relied on this fabricated information in his speech to the United Nations that made the case for war against Iraq. In December 2012, the U.S. Senate Select Committee on Intelligence voted to approve a comprehensive report on CIA detention and interrogation. Although the report is classified, and was not publicly available at the time of this writing, the committee chairman, Senator Dianne Feinstein, stated that she and a majority of the committee believed that the creation of long-term, clandestine black sites and the use of so-called enhanced interrogation techniques were “terrible mistakes.” She added that the report would “settle the debate once and for all over whether our nation should ever employ coercive interrogation techniques such as those detailed in the report.” Despite the scale of torture and other human rights violations associated with secret detention and extraordinary rendition operations, the United States and most of its partner governments have failed to conduct effective investigations into secret detention and extraordinary rendition. The U.S. Justice Department’s investigation into detainee abuse was limited to ill-treatment that went beyond what its Office of Legal Counsel had previously authorized, and concluded without bringing any criminal charges, despite ample evidence of CIA torture and abuse. Italy is the only country where a court has criminally convicted officials for their involvement in extraordinary rendition operations. Canada is the only country to issue an apology to an extraordinary rendition victim, Maher Arar, who was extraordinarily rendered to, and tortured in, Syria. Only three countries in addition to Canada—Sweden, Australia, and the United Kingdom—have issued compensation to extraordinary rendition victims, the latter two in the context of confidential settlements that sought to avoid litigation relating to the associated human rights violations. Moreover, it appears that the Obama administration did not end extraordinary rendition, choosing to rely on anti-torture diplomatic assurances from recipient countries and post-transfer monitoring of detainee treatment. As demonstrated in the cases of Maher Arar, who was tortured in Syria, and Ahmed Agiza and Muhammed al-Zery, who were tortured in Egypt, diplomatic assurances and posttransfer monitoring are not effective safeguards against torture. Soon after taking office in 2009, President Obama did issue an executive order that disavowed torture, ordered the closure of secret CIA detention facilities, and established an interagency task force to review interrogation and transfer policies and issue recommendations on “the practices of transferring individuals to other nations.” But the executive order did not repudiate extraordinary rendition, and was crafted to preserve the CIA’s authority to detain terrorist suspects on a shortterm transitory basis prior to rendering them to another country for interrogation or trial. Moreover, the interagency task force report, which was issued in 2009, continues to be withheld from the public. The administration also continues to withhold documents relating to CIA Office of Inspector General investigations into extraordinary rendition and secret detention. In addition, recent reports of secret detention by or with the involvement of the CIA or other U.S. agencies remain a source of significant concern. These include reports of a secret prison in Somalia run with CIA involvement, secret Defense Department detention facilities in Afghanistan where detainees were abused, and the twomonth long secret detention of a terrorist suspect aboard a U.S. Navy ship. Despite the efforts of the United States and its partner governments to withhold the truth about past and ongoing abuses, information relating to these abuses will continue to find its way into the public domain. At the same time, while U.S. courts have closed their doors to victims of secret detention and extraordinary rendition operations, legal challenges to foreign government participation in these operations are being heard in courts around the world. Maher Arar’s U.S. lawsuit was dismissed on grounds that judicial intervention was inappropriate in a case that raised sensitive national security and foreign policy questions. Similarly, U.S. courts dismissed on state secrets grounds Khaled El-Masri’s lawsuit challenging his abduction, torture, and secret detention by the CIA. In contrast, the European Court of Human Rights recently held that Macedonia’s participation in that operation violated El-Masri’s rights under the European Convention on Human Rights, and that his ill-treatment by the CIA amounted to torture. In addition, Italy’s highest court recently upheld the convictions of U.S. and Italian officials for their role in the extraordinary rendition of Abu Omar to Egypt. Moreover, at the time of this writing, other legal challenges to secret detention and extraordinary rendition are pending before the European Court of Human Rights against Poland, Lithuania, Romania, and Italy; against Djibouti before the African Commission on Human and Peoples’ Rights; and against domestic authorities or officials in Egypt, Hong Kong, Italy, and the United Kingdom. In the face of this trend, the time has come for the United States and its partner governments to own up to their responsibility for secret detention and extraordinary rendition operations. If they do not seize this opportunity, chances are that the truth will emerge by other means to embarrass them. The taint of torture associated with secret detention and extraordinary rendition operations will continue to cling to the United States and its partner governments as long as they fail to air the truth and hold their officials accountable. The impunity currently enjoyed by responsible parties also paves the way for future abuses in counterterrorism operations. There can be no doubt that in today’s world, intergovernmental cooperation is necessary for combating terrorism. But such cooperation must be effected in a manner that is consistent with the rule of law. As recognized in the Global CounterTerrorism Strategy adopted by the United Nations General Assembly in 2006, “effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.” Consistent with this principle, it is incumbent on the United States and its partner governments to repudiate secret detention and extraordinary rendition, secure accountability for human rights violations associated with these operations, and ensure that future counterterrorism operations do not violate human rights standards.

#### The plan stops indefinite detention---obama will say that he is doing “prolonged detention”

**NYT, 9** – (President’s Detention Plan Tests American Legal Tradition, www.nytimes.com/2009/05/23/us/politics/23detain.html?\_r=0

President Obama’s proposal for a new legal system in which terrorism suspects could be held in “prolonged detention” inside the United States without trial would be a departure from the way this country sees itself, as a place where people in the grip of the government either face criminal charges or walk free. There are, to be sure, already some legal tools that allow for the detention of those who pose danger: quarantine laws as well as court precedents permitting the confinement of sexual predators and the dangerous mentally ill. Every day in America, people are denied bail and locked up because they are found to be a hazard to their communities, though they have yet to be convicted of anything. Still, the concept of preventive detention is at the very boundary of American law, and legal experts say any new plan for the imprisonment of terrorism suspects without trial would seem inevitably bound for the Supreme Court. Mr. Obama has so far provided few details of his proposed system beyond saying it would be subject to oversight by Congress and the courts. Whether it would be constitutional, several of the legal experts said in interviews, would most likely depend on the fairness of any such review procedures. Ultimately, they suggested, the question of constitutionality would involve a national look in the mirror: Is this what America does? “We have these limited exceptions to the principle that we only hold people after conviction,” said Michael C. Dorf, a constitutional law professor at Cornell. “But they are narrow exceptions, and we don’t want to expand them because they make us uncomfortable.” In his speech on antiterrorism policy Thursday, Mr. Obama, emphasizing that he wanted fair procedures, sought to distance himself from what critics of the Bush administration saw as its system of arbitrary detention. “In our constitutional system,” Mr. Obama said, “prolonged detention should not be the decision of any one man.” But Mr. Obama’s critics say his proposal is Bush redux. Closing the prison at Guantánamo Bay, Cuba, and holding detainees domestically under a new system of preventive detention would simply “move Guantánamo to a new location and give it a new name,” said Michael Ratner, president of the Center for Constitutional Rights. Defense Secretary Robert M. Gates suggested this month that as many as 100 detainees might be held in the United States under such a system.

#### This means the govt gets to claim they aren’t doing any “indefinite” detention

Hitchon 13

(3/14, Joe, US Claims No Indefinite Detention at Guantánamo, https://www.commondreams.org/headline/2013/03/14-0)

In unusual public testimony, the U.S. government has publicly stated that no “indefinite detention” is taking place among detainees at the military prison in Guantánamo “The United States only detains individuals when that detention is lawful and does not intend to hold any individual longer than is necessary,” Michael Williams, a senior legal advisor for the State Department, told a hearing at the Inter-American Commission on Human Rights. The hearing, at the Organisation of American States headquarters here in Washington, marked the first time since President Barack Obama’s re-election that the U.S. government has had to publicly answer questions concerning Guantánamo Bay. Legal representatives for the detainees also presented disturbing eyewitness accounts of prisoner despair at the facility, brought on by prolonged indefinite detention and harsh conditions that has led to a sustained hunger strike involving more than 100 prisoners at the U.S. base in Cuba. Established in 2002, the Guantánamo Bay military prison held, at its height, more than 700 suspects of terrorism. The facility currently holds 166 prisoners, of whom 90 – most of them Yemenis – have reportedly been cleared for repatriation, while another 36 are due to be prosecuted in federal courts, although those trials have yet to take place. The remaining are being held indefinitely without trial because evidence of their past ties to terrorist groups is unlikely to be admissible in court. In some cases, this is reportedly due to its acquisition by torture, while in other cases because the U.S. government believes that the suspects would return to extremist activities if they were to be released. The IACHR has repeatedly called for the closure of the Guantánamo Bay detention centre, and has requested permission to meet with the men detained there. The U.S. government has failed to allow the hemispheric rights body permission to make such a visit, however. The IACHR held Tuesday’s hearing to learn more about the unfolding humanitarian crisis at the Guantánamo prison. It also focused on new components to the National Defense Authorization Act (NDAA), signed earlier this year, which has been criticised for authorising indefinite detention and restricts the transfer of Guantánamo detainees. Tuesday’s hearing saw testimony from experts in law, health and international policy, covering the psychological impact of indefinite detention, deaths of some suspects at Guantánamo, the lack of access to fair trials, and U.S. policies that have restricted the prison’s closure. On taking office four years ago, President Obama famously promised to close the prison and ordered an end to certain interrogation tactics that rights groups called “torture”, including “extraordinary rendition” to third countries known to use torture. Yet he has since relied to a much greater extent on drone strikes against “high value” suspected terrorists from Afghanistan, Pakistan, Yemen and Somalia, while failing to close the prison. “In the 2008 campaign, both [presidential candidate John] McCain and Obama were squarely opposed to Guantánamo and agreed that this ugly hangover from the Bush/Cheney era had to be abandoned,” Omar Farah, staff attorney at the Center for Constitutional Rights (CCR), told IPS. “But four years later, the political whims have completely reversed and there is almost unanimity that Guantánamo needs to remain open aside from occasional platitudes from the president.” Yet Farah is clear in his view that reversing this trend is still well within President Obama’s power. “This is something that really calls for leadership from the president – he needs to decide if he wants Guantánamo to be part of his legacy,” Farah says. “If the U.S. isn’t willing to charge someone in a fair process and can’t produce proper evidence of their crimes, then those prisoners have to be released. There is just no other way to have a democratic system. We’ve never had this kind of an alternative system of justice, and yet that’s what we have in Guantánamo.”

## 1NR

### 1NR Welsh

#### They get lost in too-easy assurances that what we are doing here in the debate space is necessary and sufficient – reparative fantasy

Welsh 12 Scott Department of Communication Appalachian State University (“Coming to Terms with the Antagonism between Rhetorical Reflection and Political Agency”, *Philosophy and Rhetoric,* Vol. 45, No. 1, 2012, Jstor)

The challenge is to resist synthetically resolving these antagonisms, whether in confirming or disconfirming ways. Rather, as Žižek might suggest, the aim should be to “come to terms” with these antagonisms by articulating academic identities less invested in reparative fantasies that imagine a material resolution of them (1989, 3, 5, 133; 2005, 242–43). Accounts that fail to come to terms with the impossibility of closure and continue to invest in such fantasies yield either indignant calls for activism or too-easy assurance of the potential consequence of one’s work, neither of which is well suited to scholar-citizen engagement. Coming to terms with these antagonisms, I ultimately argue, is aided by a reconsideration of a number of Jürgen Habermas’s (1973, 1970) early works on the relationship between theory and practice and C. Wright Mills’s (2000) account of the relationship between scholarly reflection and political agency in The Sociological Imagination. Turning to Giambattista Vico, Habermas shows us how to keep the antagonisms clearly in view, even though he does not suggest a vision of scholarship that might allow academics to deliberately respond to the antagonism between scholarship and political agency. It is Mills, rather, through his concept of academics working in support of the sociological imagination, who suggests how academics might do just that. Directly and indirectly returning, in a sense, to classical rhetorical roots, each challenges rhetoric scholars to emphasize, as the aim of rhetoric scholarship, the exploration and production of inventional resources suitable for appropriation by citizen-actors. Such a construction of the relationship between academics and politics locates political agency and the situated pursuit of practical wisdom in democratic publics without absolving scholars of responsibility to them.

### Politics

#### They have it backwards - representations of nuclear war aren't psychologically numbing, they're deeply terrifying - this fear prevents nuclear war from actually being started.

Futterman '94 Dr. J. A. H. Futterman, tech at Lawrence Livermore National Lab, "Meditations on the Morality of Nuclear Weapons Work, Obscenity and Peace, 1994, http://www.dogchurch.org/scriptorium/nuke.html

But the inhibitory effect of reliable nuclear weapons goes deeper than Shirer's deterrence of adventurer-conquerors. It changes the way we think individually and culturally, preparing us for a future we cannot now imagine. Jungian psychiatrist Anthony J. Stevens states, [15] "History would indicate that people cannot rise above their narrow sectarian concerns without some overwhelming paroxysm. It took the War of Independence and the Civil War to forge the United States, World War I to create the League of Nations, World War II to create the United Nations Organization and the European Economic Community. Only catastrophe, it seems, forces people to take the wider view. Or what about fear? Can the horror which we all experience when we contemplate the possibility of nuclear extinction mobilize in us sufficient libidinal energy to resist the archetypes of war? Certainly, the moment we become blasé about the possibility of holocaust we are lost. As long as horror of nuclear exchange remains uppermost we can recognize that nothing is worth it. War becomes the impossible option. Perhaps horror, the experience of horror, the consciousness of horror, is our only hope. Perhaps horror alone will enable us to overcome the otherwise invincible attraction of war." Thus I also continue engaging in nuclear weapons work to help fire that world-historical warning shot I mentioned above, namely, that as our beneficial technologies become more powerful, so will our weapons technologies, unless genuine peace precludes it. We must build a future more peaceful than our past, if we are to have a future at all, with or without nuclear weapons — a fact we had better learn before worse things than nuclear weapons are invented. If you're a philosopher, this means that I regard the nature of humankind as mutable rather than fixed, but that I think most people welcome change in their personalities and cultures with all the enthusiasm that they welcome death — thus, the fear of nuclear annihilation of ourselves and all our values may be what we require in order to become peaceful enough to survive our future technological breakthroughs.[16]

#### Symbolic criticism is not enough to effectively challenge nuclearism—synthesizing their critique with political action is key to solvency.

Chernus 86 (Ira, Religious Studies@U Colorado, Dr. Strangegod, p. 168)

A mythic journey of the imagination cannot replace awareness of the literal empirical facts. Nor can it replace political activity based on those facts. Empirical education, in which we learn to distin- guish between true and false, and political action, in which we choose between right and wrong and find practical ways to implement our choices, will always be necessary. But as long as our awareness is merely literal and our activity merely political, we are confined to the realm of limited meanings and goals. Literalism and politics cannot lead us to the unity underlying the fragments of our experience. Symbolism and myth are the key to unification. They teach us to see better and worse as two sides of a single reality, even as they help us to struggle implacably against the worse in the name of the better, They transform our political struggle itself into an experience of wholeness. The means must suit the end. Perhaps the means are ultimately the same as the end. Only a synthesis of dark and light, unconscious and conscious, symbolic and literal, mythic and political, can offer the power of true wholeness.

### Shift

#### None of your generic “insert before you answer every disad block” applies to the Shift Da -

#### 1. Extending Pugliese is a reason the disad turns the aff – if we win they increase drones than they increase a form of governmentality that deems some lives as more valuable than others

#### 2. Debrix and Barder would make sense if we had read a generic nuclear war impact alone – the Luban evidence says Drones cause psychological harm

#### 3. We don’t privilege life forms

#### Framing question – not answered the link evidence – conceded –

#### We win that they linearly increase drones, this turns the aff

#### Targeted killings are a form of extra-judicial risk management where enemy combatants are treated as unpredictable moral threats, as opposed criminally guilty. It uses international norms to legitimize state violence

Oliver Kessler and Wouter Werner 08’ (University of Bielefeld, Germany & VU University, Amsterdam, the Netherlands, “Extrajudicial Killing as Risk Management,” Security Dialogue 2008 39: 289

We argue that these recent policies of targeted killing fit the logic of precaution and risk management that dictates contemporary security policies (Aradau & van Munster, 2007).8 In particular, the stronger emphasis on the precautionary principle in security policy leads to a stronger emphasis on possible future events in comparison to past and present circumstances. We suggest that this emphasis on the future and the possible can be read as the introduction of a logic of radical uncertainty in legal reasoning. In this way, by making recourse to a semantic of risk, danger and, in particular, precau- tion, the ‘war on terror’ blurs crucial political and legal categories of public and private, of peace and war, and thereby redefines the relationship between political responsibility, time and security. It allows for an objectification of individuals as ‘mortal risks’, and an invocation of international legal categories to legitimize the targeting of those risky individuals. Targeted killings, then, are a specific form of ‘uncertainty absorption’, literally aimed at the elimination of danger. They are the ultimate consequence of the way in which the fight against terrorism is framed by some governments: as a ‘new kind of war’ against an enemy that is perceived of as an unpredictable, mortal threat rather than as a formally equal combatant or a criminal that can be dealt with via ordinary judicial procedures.

#### Butler cares about effective interventions in the dehumanizing effects of war prisons – targeted killing produces the opposite – the literal elimination of violence.

#### Butler recognizes that the international norms embodied in the law can be used to rationalize and legitimize state violence through a state of exception – drone strikes are exactly the type of action she is referring to

####

### Uniqueness

#### Dillow – WOT shifting towards capture over kill

#### Obama has unapologetically and publically restricted drone strikes to within zones of active hostilities and a more stable base of targets – this solves all their signal claims and moots any 1ac internal link from before March 30th –

Obama is committed to transitioning drones to the DOD now

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.

#### This is a unique turn to the aff –

#### Unrestrained drone use outside zones of active hostilities is UNIQUELY BAD – it collapses legal norms governing targeted killing

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

Mr. Chairman, I would like to turn now to the legal framework applicable to US drone strikes. Both the United States and the international community have long had rules governing armed conflicts and the use of force in national self-defense. These rules apply whether the lethal force at issue involves knives, handguns, grenades or weaponized drones. When drone technologies are used in traditional armed conflicts—on “hot battlefields” such as those in Afghanistan, Iraq or Libya, for instance – they pose no new legal issues. As Administration officials have stated, their use is subject to the same requirements as the use of other lawful means and methods of warfare.28

But if drones used in traditional armed conflicts or traditional self-defense situations present no “new” legal issues, some of the activities and policies enabled and facilitated by drone technologies pose significant challenges to existing legal frameworks.

As I have discussed above, the availability of perceived low cost of drone technologies makes it far easier for the US to “expand the battlefield,” striking targets in places where it would be too dangerous or too politically controversial to send troops. Specifically, drone technologies enable the United States to strike targets deep inside foreign states, and do so quickly, efficiently and deniably. As a result, drones have become the tool of choice for so-called “targeted killing” – the deliberate targeting of an individual or group of individuals, whether known by name or targeted based on patterns of activity, inside the borders of a foreign country. It is when drones are used in targeted killings outside of traditional or “hot” battlefields that their use challenges existing legal frameworks.

Law is almost always out of date: we make legal rules based on existing conditions and technologies, perhaps with a small nod in the direction of predicted future changes. As societies and technologies change, law increasingly becomes an exercise in jamming square pegs into round holes. Eventually, that process begins to do damage to existing law: it gets stretched out of shape, or broken. Right now, I would argue, US drone policy is on the verge of doing significant damage to the rule of law.

A. The Rule of Law

At root, the idea of “rule of law” is fairly simple, and well understood by Americans familiar with the foundational documents that established our nation, such as the Declaration of Independence, the Constitution and the Bill of Rights. The rule of law requires that governments follow transparent, clearly defined and universally applicable laws and procedures. The goal of the rule of law is to ensure predictability and stability, and to prevent the arbitrary exercise of power. In a society committed to the rule of law, the government cannot fine you, lock you up, or kill you on a whim -- it can restrict your liberty or take your property or life only in accordance with pre-established processes and rules that reflect basic notions of justice, humanity and fairness.

Precisely what constitutes a fair process is debatable, but most would agree that at a minimum, fairness requires that individuals have reasonable notice of what constitutes the applicable law, reasonable notice that they are suspected of violating the law, a reasonable opportunity to rebut any allegations against them, and a reasonable opportunity to have the outcome of any procedures or actions against them reviewed by some objective person or body. These core values are enshrined both in the US Constitution and in international human rights law instruments such as the International Covenant on Civil and Political Rights, to which the United States is a party.

In ordinary circumstances, this bundle of universally acknowledged rights (together with international law principles of sovereignty) means it is clearly unlawful for one state to target and kill an individual inside the borders of another state. Recall, for instance, the 1976 killing of Chilean dissident Orlando Letelier in Washington DC. When Chilean government intelligence operatives planted a car bomb in the car used by Letelier, killing him and a US citizen accompanying him, the United States government called this an act of murder—an unlawful political assassination.

B. Targeted Killing and the Law of Armed Conflict

Of course, sometimes the “ordinary” legal rules do not apply. In war, the willful killing of human beings is permitted, whether the means of killing is a gun, a bomb, or a long-distance drone strike. The law of armed conflict permits a wide range of behaviors that would be unlawful in the absence of an armed conflict. Generally speaking, the intentional destruction of private property and severe restrictions on individual liberties are impermissible in peacetime, but acceptable in wartime, for instance. Even actions that a combatant knows will cause civilian deaths are lawful when consistent with the principles of necessity, humanity, proportionality,29 and distinction.30

It is worth briefly explaining these principles. The principle of necessity requires parties to a conflict to limit their actions to those that are indispensible for securing the complete submission of the enemy as soon as possible (and that are otherwise permitted by international law). The principle of humanity forbids parties to a conflict to inflict gratuitous violence or employ methods calculated to cause unnecessary suffering. The principle of proportionality requires parties to ensure that the anticipated loss of life or property incidental to an attack is not excessive in relation to the concrete and direct military advantage expected to be gained.

Finally, the principle of discrimination or distinction requires that parties to a conflict direct their actions only against combatants and military objectives, and take appropriate steps to distinguish between combatants and non-combatants.31

This is a radical oversimplification of a very complex body of law.32 But as with the rule of law, the basic idea is pretty simple. When there is no war -- when ordinary, peacetime law applies -- agents of the state aren't supposed to lock people up, take their property or kill them, unless they have jumped through a whole lot of legal hoops first. When there is an armed conflict, however, everything changes. War is not a legal free-for-all33 -- torture, rape are always crimes under the law of war, as is killing that is willful, wanton and not justified by military necessity34 -- but there are far fewer constraints on state behavior.

Technically, the law of war is referred to using the Latin term “lex specialis” – special law. It is applicable in—and only in -- special circumstances (in this case, armed conflict), and in those special circumstances, it supersedes “ordinary law,” or “lex generalis,” the “general law” that prevails in peacetime. We have one set of laws for “normal” situations, and another, more flexible set of laws for “extraordinary” situations, such as armed conflicts.

None of this poses any inherent problem for the rule of law. Having one body of rules that tightly restricts the use of force and another body of rules that is far more permissive does not fundamentally undermine the rule of law, as long as we have a reasonable degree of consensus on what circumstances trigger the “special” law, and as long as the “special law” doesn’t end up undermining the general law.

To put it a little differently, war, with its very different rules, does not challenge ordinary law as long as war is the exception, not the norm -- as long as we can all agree on what constitutes a war -- as long as we can tell when the war begins and ends -- and as long as we all know how to tell the difference between a combatant and a civilian, and between places where there's war and places where there's no war.

Let me return now to the question of drones and targeted killings. When all these distinctions I just mentioned are clear, the use of drones in targeted killings does not necessarily present any great or novel problem. In Libya, for instance, a state of armed conflict clearly existed inside the borders of Libya between Libyan government forces and NATO states. In that context, the use of drones to strike Libyan military targets is no more controversial than the use of manned aircraft.

That is because our core rule of law concerns have mostly been satisfied: we know there is an armed conflict, in part because all parties to it agree that there is an armed conflict, in part because observers (such as international journalists) can easily verify the presence of uniformed military personnel engaged in using force, and in part because the violence is, from an objective perspective, widespread and sustained: it is not a mere skirmish or riot or criminal law enforcement situation that got out of control. We know who the “enemy” is: Libyan government forces. We know where the conflict is and is not: the conflict was in Libya, but not in neighboring Algeria or Egypt. We know when the conflict began, we know who authorized the use of force (the UN Security Council) and, just as crucially, we know whom to hold accountable in the event of error or abuse (the various governments involved).35

Once you take targeted killings outside hot battlefields, it’s a different story. The Obama Administration is currently using drones to strike terror suspects in Pakistan, Somalia, Yemen, and –perhaps—Mali and the Philippines as well. Defenders of the administration's increasing reliance on drone strikes in such places assert that the US is in an armed conflict with “al Qaeda and its associates,” and on that basis, they assert that the law of war is applicable -- in any place and at any time -- with regard to any person the administration deems a combatant.

The trouble is, no one outside a very small group within the US executive branch has any ability to evaluate who is and who isn’t a combatant. The war against al Qaeda and its associates is not like World War II, or Libya, or even Afghanistan: it is an open-ended conflict with an inchoate, undefined adversary (who exactly are al Qaeda’s “associates”?). What is more, targeting decisions in this nebulous “war” are based largely on classified intelligence reporting. As a result, Administration assertions about who is a combatant and what constitutes a threat are entirely non-falsifiable, because they're based wholly on undisclosed evidence. Add to this still another problem: most of these strikes are considered covert action, so although the US sometimes takes public credit for the deaths of alleged terrorist leaders, most of the time, the US will not even officially acknowledge targeted killings.

This leaves all the key rule-of-law questions related to the ongoing war against al Qaeda and its "associates" unanswered.36 Based on what criteria might someone be considered a combatant or directly participating in hostilities? What constitutes “hostilities” in the context of an armed conflict against a non-state actor, and what does it mean to participate in them? And just where is the war? Does the war (and thus the law of war) somehow "travel" with combatants? Does the US have a “right” to target enemy combatants anywhere on earth, or does it depend on the consent of the state at issue? Who in the United States government is authorized to make such determinations, and what is the precise chain of command for such decisions?

I think the rule of law problem here is obvious: when “armed conflict” becomes a term flexible enough to be applied both to World War II and to the relations between the United States and “associates” of al Qaeda such as Somalia’s al Shabaab, the concept of armed conflict is not very useful anymore. And when we lack clarity and consensus on how to recognize “armed conflict,” we no longer have a clear or principled basis for deciding how to categorize US targeted killings. Are they, as the US government argues, legal under the laws of war? Or are they, as some human rights groups have argued, unlawful murder?

C. Targeted Killing and the International Law of Self-Defense

When faced with criticisms of the law of war framework as a justification for targeted killing, Obama Administration representatives often shift tack, arguing that international law rules on national self-defense provide an alternative or additional legal justification for US targeted killings. Here, the argument is that if a person located in a foreign state poses an "imminent threat of violent attack" against the United States, the US can lawfully use force in self-defense, provided that the defensive force used is otherwise consistent with law of war principles.

Like law of war-based arguments, this general principle is superficially uncontroversial: if someone overseas is about to launch a nuclear weapon at New York City, no one can doubt that the United States has a perfect right (and the president has a constitutional duty) to use force if needed to prevent that attack, regardless of the attacker's nationality.

But once again, the devil is in the details. To start with, what constitutes an "imminent" threat? Traditionally, both international law and domestic criminal law understand that term narrowly: 37 to be "imminent," a threat cannot be distant or speculative.38 But much like the Bush Administration before it, the Obama Administration has put forward an interpretation of the word “imminent” that bears little relation to traditional legal concepts.

According to a leaked 2011 Justice Department white paper39—the most detailed legal justification that has yet become public-- the requirement of imminence "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future." This seems, in itself, like a substantial departure from accepted international law definitions of imminence.

But the White Paper goes even further, stating that "certain members of al Qaeda are continually plotting attacks...and would engage in such attacks regularly [if] they were able to do so, [and] the US government may not be aware of all... plots as they are developing and thus cannot be confident that none is about to occur." For this reason, it concludes, anyone deemed to be an operational leader of al Qaeda or its "associated forces" presents, by definition, an imminent threat even in the absence of any evidence whatsoever relating to immediate or future attack plans. In effect, the concept of "imminent threat" (part of the international law relating to self-defense) becomes conflated with identity or status (a familiar part of the law of armed conflict).

That concept of imminence has been called Orwellian, and although that is an overused epithet, in this context it seems fairly appropriate. According to the Obama Administration, “imminent” no longer means “immediate,” and in fact the very absence of clear evidence indicating specific present or future attack plans becomes, paradoxically, the basis for assuming that attack may perpetually be “imminent.”

The 2011 Justice Department White Paper notes that the use of force in self-defense must comply with general law of war principles of necessity, proportionality, humanity, and distinction. The White Paper offers no guidance on the specific criteria for determining when an individual is a combatant (or a civilian participating directly in hostilities), however. It also offers no guidance on how to determine if a use of force is necessary or proportionate.

From a traditional international law perspective, this necessity and proportionality inquiry relates both to imminence and to the gravity of the threat itself, but so far there has been no public Administration statement as to how the administration interprets these requirements. Is any threat of "violent attack" sufficient to justify killing someone in a foreign country, including a U.S. citizen? Is every potential suicide bomber targetable, or does it depend on the gravity of the threat? Are we justified in drone strikes against targets who might, if they get a chance at some unspecified future point, place an IED that might, if successful, kill one person? Ten people? Twenty? 2,000? How grave a threat must there be to justify the use of lethal force against an American citizen abroad -- or against non-citizens, for that matter?

As I have noted, it is impossible for outsiders to fully evaluate US drone strikes, since so much vital information remains classified. In most cases, we know little about the identities; activities or future plans of those targeted. Nevertheless, given the increased frequency of US targeted killings in recent years, it seems reasonable to wonder whether the Administration conducts a rigorous necessity or proportionality analysis in all cases.

So far, the leaked 2011 Justice Department White Paper represents the most detailed legal analysis of targeted killings available to the public. It is worth noting, incidentally, that this White Paper addresses only the question of whether and when it is lawful for the US government to target US citizens abroad. We do not know what legal standards the Administration believes apply to the targeting of non-citizens. It seems reasonable to assume, however, that the standards applicable to non-citizens are less exacting than those the Administration views as applicable to citizens.

Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41

No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should not depend solely on the good faith and benevolence of government officials.

As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness.

The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable?

5. Setting Troubling International Precedents

Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice.

Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder.

Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack."

The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular.

It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem.

This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an ill- defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

### Rendition

#### Extend it -

#### The U.S. will still functionally detain through rendition – Takes out every advantage

OSJI 13 (Open Society Justice Initiative, “Globalizing Torture: CIA Secret Detention and Extraordinary Rendition”, February 2013, <http://www.opensocietyfoundations.org/reports/globalizing-torture-cia-secret-detention-and-extraordinary-rendition>)

Following the terrorist attacks of September 11, 2001, the U.S. Central Intelligence Agency (CIA) commenced a secret detention program under which suspected terrorists were held in CIA prisons, also known as “black sites,” outside the United States, where they were subjected to “enhanced interrogation techniques” that involved torture and other abuse. At about the same time, the CIA gained expansive authority to engage in “extraordinary rendition,” defined here as the transfer— without legal process—of a detainee to the custody of a foreign government for purposes of detention and interrogation. 2 Both the secret detention program and the extraordinary rendition program were highly classified, conducted outside the United States, and designed to place detainee interrogations beyond the reach of the law. Torture was a hallmark of both. The two programs entailed the abduction and disappearance of detainees and their extra-legal transfer on secret flights to undisclosed locations around the world, followed by their incommunicado detention, interrogation, torture, and abuse. The administration of President George W. Bush embraced the “dark side,” a new paradigm for countering terrorism with little regard for the constraints of domestic and international law. Today, more than a decade after September 11, there is no doubt that highranking Bush administration officials bear responsibility for authorizing human rights violations associated with secret detention and extraordinary rendition, and the impunity that they have enjoyed to date remains a matter of significant concern. But responsibility for these violations does not end with the United States. Secret detention and extraordinary rendition operations, designed to be conducted outside the United States under cover of secrecy, could not have been implemented without the active participation of foreign governments. These governments too must be held accountable. However, to date, the full scale and scope of foreign government participation—as well as the number of victims—remains unknown, largely because of the extreme secrecy maintained by the United States and its partner governments. The U.S. government has refused to publicly and meaningfully acknowledge its involvement in any particular case of extraordinary rendition or disclose the locations of secret overseas CIA detention facilities. While President Bush acknowledged that the CIA had secretly detained about 100 prisoners, the U.S. government has only identified 16 “high value detainees” as individuals who were secretly held in CIA detention prior to being transferred to U.S. Defense Department custody in Guantánamo Bay. The United States also has refused to disclose the identities of the foreign governments that participated in secret detention or extraordinary rendition, and few of these governments have admitted to their roles. This report provides for the first time the number of known victims of secret detention and extraordinary rendition operations and the number of governments that were complicit. Based on credible public sources and information provided by reputable human rights organizations, this report is the most comprehensive catalogue of the treatment of 136 individuals reportedly subjected to these operations. There may be many more such individuals, but the total number will remain unknown until the United States and its partners make this information publicly available. The report also shows that as many as 54 foreign governments reportedly participated in these operations in various ways, including by hosting CIA prisons on their territories; detaining, interrogating, torturing, and abusing individuals; assisting in the capture and transport of detainees; permitting the use of domestic airspace and airports for secret flights transporting detainees; providing intelligence leading to the secret detention and extraordinary rendition of individuals; and interrogating individuals who were secretly being held in the custody of other governments. Foreign governments also failed to protect detainees from secret detention and extraordinary rendition on their territories and to conduct effective investigations into agencies and officials who participated in these operations. The 54 governments identified in this report span the continents of Africa, Asia, Australia, Europe, and North America, and include: Afghanistan 3 , Albania, Algeria, Australia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Djibouti, Egypt, Ethiopia, Finland, Gambia, Georgia, Germany, Greece, Hong Kong, 4 Iceland, Indonesia, Iran, Ireland, Italy, Jordan, Kenya, Libya, Lithuania, Macedonia, Malawi, Malaysia, Mauritania, Morocco, Pakistan, Poland, Portugal, Romania, Saudi Arabia, Somalia, South Africa, Spain, Sri Lanka, Sweden, Syria, Thailand, Turkey, United Arab Emirates, United Kingdom, Uzbekistan, Yemen, and Zimbabwe. 5 By engaging in torture and other abuses associated with secret detention and extraordinary rendition, the U.S. government violated domestic and international law, thereby diminishing its moral standing and eroding support for its counterterrorism efforts worldwide as these abuses came to light. By enlisting the participation of dozens of foreign governments in these violations, the United States further undermined longstanding human rights protections enshrined in international law—including, in particular, the norm against torture. As this report shows, responsibility for this damage does not lie solely with the United States, but also with the numerous foreign governments without whose participation secret detention and extraordinary rendition operations could not have been carried out. By participating in these operations, these governments too violated domestic and international laws and further undermined the norm against torture. Torture is not only illegal and immoral, but also ineffective for producing reliable intelligence. Indeed, numerous professional U.S. interrogators have confirmed that torture does not produce reliable intelligence, and that rapport-building techniques are far more effective at eliciting such intelligence. A telling example of the disastrous consequences of extraordinary rendition operations can be seen in the case of Ibn al-Sheikh al-Libi, documented in this report. After being extraordinarily rendered by the United States to Egypt in 2002, al-Libi, under threat of torture at the hands of Egyptian officials, fabricated information relating to Iraq’s provision of chemical and biological weapons training to Al Qaeda. In 2003, then Secretary of State Colin Powell relied on this fabricated information in his speech to the United Nations that made the case for war against Iraq. In December 2012, the U.S. Senate Select Committee on Intelligence voted to approve a comprehensive report on CIA detention and interrogation. Although the report is classified, and was not publicly available at the time of this writing, the committee chairman, Senator Dianne Feinstein, stated that she and a majority of the committee believed that the creation of long-term, clandestine black sites and the use of so-called enhanced interrogation techniques were “terrible mistakes.” She added that the report would “settle the debate once and for all over whether our nation should ever employ coercive interrogation techniques such as those detailed in the report.” Despite the scale of torture and other human rights violations associated with secret detention and extraordinary rendition operations, the United States and most of its partner governments have failed to conduct effective investigations into secret detention and extraordinary rendition. The U.S. Justice Department’s investigation into detainee abuse was limited to ill-treatment that went beyond what its Office of Legal Counsel had previously authorized, and concluded without bringing any criminal charges, despite ample evidence of CIA torture and abuse. Italy is the only country where a court has criminally convicted officials for their involvement in extraordinary rendition operations. Canada is the only country to issue an apology to an extraordinary rendition victim, Maher Arar, who was extraordinarily rendered to, and tortured in, Syria. Only three countries in addition to Canada—Sweden, Australia, and the United Kingdom—have issued compensation to extraordinary rendition victims, the latter two in the context of confidential settlements that sought to avoid litigation relating to the associated human rights violations. Moreover, it appears that the Obama administration did not end extraordinary rendition, choosing to rely on anti-torture diplomatic assurances from recipient countries and post-transfer monitoring of detainee treatment. As demonstrated in the cases of Maher Arar, who was tortured in Syria, and Ahmed Agiza and Muhammed al-Zery, who were tortured in Egypt, diplomatic assurances and posttransfer monitoring are not effective safeguards against torture. Soon after taking office in 2009, President Obama did issue an executive order that disavowed torture, ordered the closure of secret CIA detention facilities, and established an interagency task force to review interrogation and transfer policies and issue recommendations on “the practices of transferring individuals to other nations.” But the executive order did not repudiate extraordinary rendition, and was crafted to preserve the CIA’s authority to detain terrorist suspects on a shortterm transitory basis prior to rendering them to another country for interrogation or trial. Moreover, the interagency task force report, which was issued in 2009, continues to be withheld from the public. The administration also continues to withhold documents relating to CIA Office of Inspector General investigations into extraordinary rendition and secret detention. In addition, recent reports of secret detention by or with the involvement of the CIA or other U.S. agencies remain a source of significant concern. These include reports of a secret prison in Somalia run with CIA involvement, secret Defense Department detention facilities in Afghanistan where detainees were abused, and the twomonth long secret detention of a terrorist suspect aboard a U.S. Navy ship. Despite the efforts of the United States and its partner governments to withhold the truth about past and ongoing abuses, information relating to these abuses will continue to find its way into the public domain. At the same time, while U.S. courts have closed their doors to victims of secret detention and extraordinary rendition operations, legal challenges to foreign government participation in these operations are being heard in courts around the world. Maher Arar’s U.S. lawsuit was dismissed on grounds that judicial intervention was inappropriate in a case that raised sensitive national security and foreign policy questions. Similarly, U.S. courts dismissed on state secrets grounds Khaled El-Masri’s lawsuit challenging his abduction, torture, and secret detention by the CIA. In contrast, the European Court of Human Rights recently held that Macedonia’s participation in that operation violated El-Masri’s rights under the European Convention on Human Rights, and that his ill-treatment by the CIA amounted to torture. In addition, Italy’s highest court recently upheld the convictions of U.S. and Italian officials for their role in the extraordinary rendition of Abu Omar to Egypt. Moreover, at the time of this writing, other legal challenges to secret detention and extraordinary rendition are pending before the European Court of Human Rights against Poland, Lithuania, Romania, and Italy; against Djibouti before the African Commission on Human and Peoples’ Rights; and against domestic authorities or officials in Egypt, Hong Kong, Italy, and the United Kingdom. In the face of this trend, the time has come for the United States and its partner governments to own up to their responsibility for secret detention and extraordinary rendition operations. If they do not seize this opportunity, chances are that the truth will emerge by other means to embarrass them. The taint of torture associated with secret detention and extraordinary rendition operations will continue to cling to the United States and its partner governments as long as they fail to air the truth and hold their officials accountable. The impunity currently enjoyed by responsible parties also paves the way for future abuses in counterterrorism operations. There can be no doubt that in today’s world, intergovernmental cooperation is necessary for combating terrorism. But such cooperation must be effected in a manner that is consistent with the rule of law. As recognized in the Global CounterTerrorism Strategy adopted by the United Nations General Assembly in 2006, “effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.” Consistent with this principle, it is incumbent on the United States and its partner governments to repudiate secret detention and extraordinary rendition, secure accountability for human rights violations associated with these operations, and ensure that future counterterrorism operations do not violate human rights standards.

### 2NC Link

#### AL-Maqaleh proves that they can just put them in bagram and cant be given a trial why do you think obama started swelling detainees in bagram when he became president?

**Wedel, 11** – (“War Courts: Terror's Distorting Effects on Federal Courtss,” JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit, Legislation and Policy Brief: Vol. 3: Iss. 1, Article 1.)

After Al-Bihani announced a restrictive view of the procedural protections afforded if habeas is available, the issue of when habeas is available was ripe for review. In Al Maqaleh, the D.C. Circuit was pre- sented with three petitioners, citizens of Yemen and Tunisia, captured in Pakistan and Thailand and later transported to the Bagram deten- tion facility in Afghanistan.54 The D.C. Circuit unanimously agreed that the Suspension Clause’s protections did not extend to these petition- ers.55 The government again argued for a strict reading of Eisentrager and Boumediene, insisting that habeas corpus rights should extend only to regions that “may be considered effectively part of the United States.”56 Although the court explicitly rejected such a categorical rule,57 its application of Boumediene’s three-factor test makes uncertain pre- cisely where else beyond Guantánamo the Suspension Clause could possibly extend

#### Its an attempt to shift them overseas and circumvents the judiciary

**Wedel, 11** – (“War Courts: Terror's Distorting Effects on Federal Courtss,” JD Candidate @ Stanford Law School [Collin P. Wedel (Prospective Law Clerk to the Honorable Ruggero J. Aldisert, United States Court of Appeals for the Third Circuit, Legislation and Policy Brief: Vol. 3: Iss. 1, Article 1.)

Such distinctions based on formal “hostility” underscore how much the war on terror has eroded federal court habeas jurisprudence since 9/11. Since the Guantánamo inmate population is expected to dwindle,75 the import of a decision limiting extraterritorial habeas review to just Guantánamo Bay cannot be overstated. For example, the D.C. Circuit relies heavily upon the Eisentrager Court’s fear that “calling command- ers to account” for habeas review would disturb the war effort.76 Yet, the majority opinion never explains how granting habeas review for prisoners in Afghanistan differs in any meaningful way from doing so for prisoners at Guantánamo Bay: in both circumstances, the same offi- cer would need to appear at the same type of proceeding in the same venue, with the only difference being the location of the prisoner at issue. Finally, the petitioners’ argument that the Executive may now capture prisoners anywhere and then detain them beyond reach of the Constitution is highly salient.77 However, the court gives it superficial treatment, noting only that a showing in some future case of govern- mental intent to circumvent habeas review might change its analysis. It is far from certain, however, what showing would be needed to trigger this exception. For neither Congress’s attempts to strip federal habeas jurisdiction nor a White House official’s admission that the prison at Bagram is being expanded, in part, because the United States “has few other places to hold and interrogate foreign prisoners without giving them access to the U.S. court system,”78 demonstrate the requisite gov- ernmental intent to circumvent the judiciary.

#### Detention will shift overseas-takes out the case

**Ross, 12 –** FDD Center for the Study of Terrorist Radicalization director, David Garnstein, “Gitmo’s Troubling Afterlife: The Global Consequences of U.S. Detention Policy”, 12-4, <http://www.defenddemocracy.org/media-hit/gitmos-troubling-afterlife-the-global-consequences-of-us-detention-policy/>)

Moreover, if the U.S. tries to wash its hands of preventive detention, detainees will almost certainly end up in worse conditions as a result. The idea has seemingly taken hold that because detention of violent non-state actors by Western governments is unjustifiable and immoral, "local" detention is preferable. So, for example, the United States supported recent military efforts by African Union, Somali, and Kenyan forces to push back the al Qaeda-aligned Shabaab militant group in southern Somalia. The U.S. did not take the lead in detaining enemy fighters, and instead its Somali allies did so. But when one compares, say, detention conditions in Somalia to those in Gitmo, the latter is far more humane. If the U.S. and other Western countries eschew detention when fighting violent non-state actors, somebody is going to have to do it, and that alternative is almost certainly going to be worse for the detainees themselves.

#### We just outsource

**Willstein, 13 –**  (Matt, Mediaite, The Nation’s Jeremy Scahill To CNN: Obama Terrorism Speech A ‘Rebranding Of Bush Era Policies’ 5-23, http://www.mediaite.com/tv/the-nations-jeremy-scahill-to-cnn-obama-terrorism-speech-a-rebranding-of-bush-era-policies/)

“My reaction to the president’s speech,” Scahill began, “is that it really is sort of just a rebranding of the Bush era policies with some legalese that is very articulately delivered from our constitutional law professor, Nobel Peace Prize-winning president. But effectively, Obama has declared the world a battlefield and reserves the right to drone bomb countries in pursuit of people against whom we have no direct evidence or who we’re not seeking any indictment against.” Scahill said the he sees no scenario in which drone strikes against Americans could be reasonably justified. He pointed out that with the exception of Jude Mohammed, who was killed by a strike in Pakistan, the other three Americans Attorney General Eric Holder admitted the U.S. has killed had no indictments against them. He singled out the killing of Anwar Al-Awlaki‘s 16-year-old son by a drone strike in Yemen as particularly “shameful” and was troubled by the use of the “Orwellian phrase that he was ‘not specifically targeted.’” He added, “That family and the American people have a right to know why this kid was killed.” Asked by Tapper what the “most interesting” thing he found while investigating for his book and movie, Scahill pointed to the alleged use of war lords in Somalia to do the torturing and rendition that the Obama administration claims to have ended. “Obama can say we’re not running the show,” he said, “but instead they’re outsourcing and directing foreign nationals to do it. And I think that is really a metaphor for how little things have changed on this particular front.”

### Butler

#### According to Butler, the ONLY WAY to grieve a life is through the obituary, literally reading names to re-humanize. Otherwise, you commit the same violence. Your author:

**Butler,** Maxine Elliot Professor in Rhetoric and Comparative Literature at UC-Berkeley, **2004**

(Judith, Precarious Life: The Powers of Mourning and Violence, page 34)

**discourse** itself **effects violence through omission**. If **200,000 Iraqi children were killed** during the Gulf War and its aftermath,1 do we have an image, a frame for any of those lives, Singly or collectively? Is there a story we might find about those deaths in the media? **Are there names attached to those children?** There are no obituaries for the war casualties that the United States inflicts, and there cannot be. If there were to be an obituary, there would have had to have been a life, a life worth noting, a life worth valuing and preserving, a life that qualifies for recognition. Although we might argue that it would be impractical to write obituaries for all those people, or for all people, I think we have to ask, again and again, **the obituary functions as the** instrument by which grievability is publicly distributed. It is the **means by which a life becomes**, or fails to become, a **publicly grievable** life, an icon for national self-recogn ition, the means by which a life becomes noteworthy. As a result, we have to consider [he obituary as an act of nation-building. The matter is not a simple one, for, **if a life is not grievable, it is not quite a life**; it does not qualify as a life and is not worth a note. It is already the unburied, if not the unburiable.

#### Your aff is a ruse of solvency, but worse, you prevent the public from being able to grieve. Butler says that the face of the Other must be admitted into public view. If this round is sufficient, no one else will grieve the lives of those detained. Butler talks all about media portrayals, but you have no access to media change. This turns the aff since violence against the Other can only be solved via public critique.

### Violence DA

#### Extend Schneider and Butler - Their aff mandates grief, which will only be used to justify more war. Two examples Butler concedes: post-Holocaust and post-9/11. Neocons will re-appropriate grief to say that “oh those poor detainees, if only we could win the War on Terror, then we wouldn’t have to torture suspects or kill innocents.” Also we’ll extend grief to those oppressed in the Middle East, making it the U.S.’s job to intervene.

#### This means zero solvency since the aff ignores the larger context in which grief occurs and turns case – they only perpetuate violence against the other through war.

Gutterman and Rushing 08

David S. (pf Willamette Univ) and Sara L. (pf Montana St) Judith Butler’s Precarious Politics. “Sovereignty and suffering: towards an ethics of grief in a post-9/11 world” 2008

And yet as President George W. **Bush** **made perfectly clear**, in declaring the time for grieving to be over a mere ten days after 9/11, **grief can figure within American political discourse as nothing but weakness and inaction.** The sign of our strength, in Bush’s opinion, is that ‘Our grief has turned to anger and anger to resolution’ (Bush 2001: para. 6). It is this rapid conversion – **this quick hardening and turning away from grief** – that **Butler laments**. For grieving humanises us, it humanises others. Furthermore, insofar as none of us is above the reality that all human life can be instantaneously annulled, regardless of class, race, ideology, or nationality, ‘grief equalizes us’ (Butler 2003a: 7). Or at least, **grief has the potential to equalise us, if we can recognise both the inequality of our vulnerability and the equality of our grievability**. Here, then, is the political and ethical test Butler places before us. **The actions of the US in the past years – the waging of pre-emptive war, the authorisation of torture, extraordinary rendition, and indeﬁnite detention – can be read as a resounding rejection of the hand of solidarity extended by the world after 9/11. If there was an opportunity to heed the precariousness of life** and to break the cycle of revenge – by identifying with others and with suffering itself, **by grieving our losses**, becoming undone by them – **it was rapidly and decisively shut down. This opportunity was not merely a casualty of war. Bush Administration policies after 9/11 can be read precisely as an attempt to effect that foreclosure, and as a rejection** and/or failure **of Butler’s test**.

#### Butler argues for a mourning backed by rage. That rage can only lead to violence toward the Other

McIvor 12, David W. (PhD from Duke University, research associate @ The Kettering Foundation) “Bringing Ourselves to Grief: Judith Butler and the Politics of Mourning” *Political Theory.* 2 May 2012. <http://ptx.sagepub.com/content/40/4/409>

Butler turns to Levinas and Adorno for the cultivation of ethical dispositions in which mourning is refigured as a site of dispossession. Yet this move repeats the melancholic refrain. **Under the thrall of the unforgiving superego figure derived from Levinas and Adorno, the political expression of mourning becomes a curious (if not paradoxical) enraged nonviolence, which Butler calls the “carefully crafted ‘fuck you.’**”80 **Butler presumes that** acts of ek-static **acknowledgement** beneath the gaze of a revised superego **will allow enraged claims to take on a nonviolent character, but it is difficult to accept this idea** at face value. **On the contrary, the deep anger of the political “fuck you”—no matter how carefully crafted—seems to inevitably drift towards violence that,** far from remaining in touch with the ek-static nature of subjectivity, **obliterates the ambivalence of both the targeted other and the social-political world composed of a plurality of multi-faceted others**.81

#### Turns the aff - The notion of detainees as vulnerable is disproportionately applied to women, implying that they need protection and affirming patriarchy,

Butler and Gambetti 13

Judith and Zeynep (pf Bogazici University, PhD) “RETHINKING VULNERABILITY AND RESISTANCE: FEMINISM & SOCIAL CHANGE” Intro to Istanbul Workshop, September 16-19, 2013

There is always something both risky and true in claiming **that women are especially vulnerable**. The claim **can be taken to mean that women have an unchanging and defining vulnerability, and that kind of argument makes the case for paternalistic protection. If women are especially vulnerable, then they seek protection, and it becomes the responsibility of the state or other paternal powers to provide that protection.** On the model, **feminist activism not only petitions paternal authority for special dispensations and protections, but affirms that inequality of power situates women in a powerless position and, by implication, men in a more powerful one, or it invests state structures with the responsibility for facilitating the achievement of feminist goals**.