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#### Pariah weapons regulation backfires- normalizes militarism and leads to worse forms of violence

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[Neil, PhD from University of Kent at Canterbury, University of Bradford Associate Dean for Research for the School of Social and International Studies, "Humanitarian Arms Control and Processes of Securitization: Moving Weapons along the Security Continuum," Contemporary Security Policy, Vol 32, Issue 1, 2011, tandfonline, accessed 9-5-13, mss]

In this account of contemporary HAC, powerful actors who aim to uphold the status quo principally have a role as agents of resistance to control agendas, not as actors in the production of control regimes. This certainly reﬂects important aspects of contemporary campaigns to regulate pariah weapons but, as I suggest below, it offers a rather incomplete account. Moreover, if such accounts did indeed provide a complete understanding of the dynamics underpinning these control agendas it would certainly represent a novel development, not least because the long history of pariah weapons regulation illustrates the way that weapons taboos frequently reﬂect the interests of the powerful. For example, one factor in the virtual eradication of the gun in 17th and 18th century Japan was that it represented a threat to the warrior class when in the hands of the lower classes.48 The same was true of the rather less successful attempt of the Second Lateran Council to ban the crossbow – a ban partly motivated by the fact that crossbows could pierce the armour of the knight – and a ban that was notably not extended to use against non-Christians.49Similarly, whilst the restrictions on the slave, arms, and liquor trade to Africa embodied in the 1890 Brussels Act were certainly grounded in an ethical discourse, the restrictions imposed on the trade in ﬁrearms were primarily rooted in concerns about the impact of the trade on colonial order. As one British colonial ofﬁcial noted at the time, the restrictions on the small arms trade to Africa reﬂected imperial concern to ‘avoid the development and paciﬁcation of this great continent ... [being] carried out in the face of an enormous population, the majority of whom will probably be armed with ﬁrst-class breechloading riﬂes’.50 The history of pariah weapons regulation would therefore appear to demonstrate a persistent link between the material and political interests of states and / or powerful elites and the emergence of pariah weapons regulation. To be sure, the material and political interests of the same, or other, powerful actors also provide countervailing pressures – the immediate interests of nobles in winnings wars with crossbows mostly won out over their broader class interests,51 whilst colonial competition to secure arms proﬁts and local allies mitigated the impact of the various restrictions on the ﬁrearms trade in the late 19th century.52 But the point is that whilst the genesis of earlier attempts at pariah regulation may, in part, be explained by reference to particular securitizing moments of intervention, the impact of such interventions can only be understood by locating them in particular political economies of power. What is surprising therefore about accounts of post-Cold War humanitarian arms control is that this long history has largely failed to prompt consideration of the way in which contemporary regulation might also reﬂect the interests of powerful states and other actors, albeit in ways that are subject to similar countervailing pressures – an issue that will be taken up below. Pariah Weapons, Heroic Weapons, and Legitimized Military Technology A further recurring theme in the history of pariah regulation is the way in which restrictions on pariah weapons are often related in some way to the construction of a broad arena of legitimized military technology. A particularly extreme example of this is the way in which pariah weapons are sometimes constructed as the antithesis of the ‘heroic weapon’ – a weapon deemed to embody positive values such as honour and / or which is deemed central to national defence. Thus, the series of relatively successful Acts implemented in England between 1508 and 1542 banning crossbows were largely rooted in a concern to preserve the use of the heroic longbow, deemed central to a long line of English military successes.53 The Japanese ban on the gun was similarly connected to the romanticization of the heroic samurai sword as the visible form of one’s honour, as associated with grace of movement in battle and even its status as a work of art.54 In effect both the crossbow in 16th century England and the gun in 17th and 18th century Japan became the ‘other’ which deﬁned legitimized military technologies and militarism. Redford makes much the same point about English attitudes to the submarine, which was constructed as an ‘other’ partly because of the British romanticization of the battleship (‘the upper class or aristocracy of warships’)55 as central to British security and linked to British notions of valour and honour in the conduct of war. This highlights the ways in which the security meaning associated with particular sets of weapons technology are not just a function of the framings speciﬁc to that technology but are also relational, with the representation of one weapon playing an important role in constituting the meaning of another (albeit in sometimes unexpected ways), and vice versa. Not surprisingly perhaps, similar themes also help explain the contemporary taboos constructed around particular sets of military technology such as cluster munitions. Cluster Munitions What is particularly striking about the campaign against cluster munitions is not its success in banning an inhumane weapon but the fact that this success was achieved at a moment in history when, in absolute terms at least, cluster munitions use had fallen from the peak years of use during the Vietnam era (see Table 2). In the latter period cluster bombs such as the CBU-24 represented a ‘major increase in battleﬁeld lethality’ yet its development and deployment was ‘accomplished with no public debate and relatively little subsequent protest’.56 Indeed, for the American military, ‘CBUs were categorised as a standard weapon, to be taken off the shelf – “conventional ironmongery”.57 This is not to suggest that American use of cluster munitions in this period went unremarked. There were certainly some critics at the time who argued that such weapons were inhumane.58 There were also attempts, sponsored by the International Committee of the Red Cross (ICRC) and Sweden in particular, to promote restrictions on cluster munitions in negotiations in the 1970s on the Additional Protocols to the 1949 Geneva Conventions.59 The point is however, that these efforts never achieved traction either with diplomats or with a wider public in the way that the issue would 30 years later. The labels attached to cluster munitions and also landmines only changed dramatically as the move into the post-Cold War era occurred when they moved from being treated as unproblematic elements in global military arsenals to a form of ‘technology non grata’ – weaponry deemed immoral, inhumane, and indiscriminate. Crucially, such a successful process of stigmatization was only made feasible in the context of a post-Cold War widening of the security label to incorporate the notion of human security as a referent object; by the turn to casting security interventions in humanitarian terms; and the representation of modern weaponry as humane because of its perceived capacity to better discriminate between civilians and combatants. The widening and deepening of the security label created the permissive environment necessary for activists to reframe cluster munitions (and APMs) as threats to the human. At the same time, the discussion of intervention in humanitarian terms60 and of precision weapons as instruments of humane warfare61 created a legitimized discursive space into which campaigners could insert a re-representation of landmines and cluster munitions technology as inhumane. Indeed, such a re-representation only exerted a powerful appeal because it was consonant with both the predominant framing of security threats in a postCold War world and a new divide between good and odious military technology. This is not to suggest that such developments reﬂected some teleology in which security and arms control practice progressively evolved to be more humane. As Krause and Latham have noted, for example, whilst the post-Cold War era concern with the impact of ‘inhumane weapons’ represents a notable shift compared with the Cold War arms control agenda, it does have similarities with the late 19th century when a Western discourse of civilized warfare was also prominent. One corollary of this – then as now – was a concern to specify what constituted an ‘inhumane weapon’62 manifest, for example, in the negotiations in the Hague conferences over problem technologies such as the dum dum bullet. As Michael Howard has suggested though, whilst initiatives such as the Hague conferences achieved notable successes, they also reﬂected the fact that liberal internationalists had ‘abandoned their original objects of preventing war and building peace in favour of making war more humane for those actually ﬁghting it’.63 The prohibitions on cluster munitions and also APMs can be understood as similarly ambiguous developments. On the one hand, the legitimizing discourse of Western militaries and arms ﬁrms was turned against them in order to generate powerful taboos against particular categories of weapons – even in the face of opposition from these militaries. The language of state security was coopted to promote human security, to preserve life, and prevent threats to its existence. On the other hand, the same prohibitions can ultimately be understood less as progressive initiatives imposed on foot-dragging states by the bottom-up power of global civil society and more as performative acts that simultaneously function to codify aspects of a new set of criteria for judging international respectability in a post-Cold War era, to reinforce the security framings of the era and to legitimize those categories of weapons successfully constructed as precise, discriminate, and thus humane. Indeed, to the extent that states such as the United States have been able to circumscribe their commitments on landmines etc. they have been able to beneﬁt from the broader legitimizing effects of speciﬁc weapons taboos without being unduly constrained by the speciﬁc regulatory requirements they have given rise to. Moreover, as already noted, the presence of pariah weapons regulation is not necessarily a sign of a more general shift to the tighter regulation of the arms trade – quite the reverse in some cases. Thus, any evaluation of the overall impact of such regulation on global and local security also has to take into account the broader system of arms regulation in which it is located, and the relationship that exists between pariah regulation and this broader system.

#### Sanitization of US policy leads to endless violence and imperialism – turns case

Bacevich, 5 -- Boston University international relations professor

[A. J., retired career officer in the United States Army, former director of Boston University's Center for International Relations (from 1998 to 2005), The New American Militarism: How Americans Are Seduced by War, 2005 accessed 9-4-13, mss]

Today as never before in their history Americans are enthralled with military power. The global military supremacy that the United States presently enjoys--and is bent on perpetuating-has become central to our national identity. More than America's matchless material abundance or even the effusions of its pop culture, the nation's arsenal of high-tech weaponry and the soldiers who employ that arsenal have come to signify who we are and what we stand for. When it comes to war, Americans have persuaded themselves that the United States possesses a peculiar genius. Writing in the spring of 2003, the journalist Gregg Easterbrook observed that "the extent of American military superiority has become almost impossible to overstate." During Operation Iraqi Freedom, U.S. forces had shown beyond the shadow of a doubt that they were "the strongest the world has ever known, . . . stronger than the Wehrmacht in r94o, stronger than the legions at the height of Roman power." Other nations trailed "so far behind they have no chance of catching up. ""˜ The commentator Max Boot scoffed at comparisons with the German army of World War II, hitherto "the gold standard of operational excellence." In Iraq, American military performance had been such as to make "fabled generals such as Erwin Rommel and Heinz Guderian seem positively incompetent by comparison." Easterbrook and Booz concurred on the central point: on the modern battlefield Americans had located an arena of human endeavor in which their flair for organizing and deploying technology offered an apparently decisive edge. As a consequence, the United States had (as many Americans have come to believe) become masters of all things military. Further, American political leaders have demonstrated their intention of tapping that mastery to reshape the world in accordance with American interests and American values. That the two are so closely intertwined as to be indistinguishable is, of course, a proposition to which the vast majority of Americans subscribe. Uniquely among the great powers in all of world history, ours (we insist) is an inherently values-based approach to policy. Furthermore, we have it on good authority that the ideals we espouse represent universal truths, valid for all times. American statesmen past and present have regularly affirmed that judgment. In doing so, they validate it and render it all but impervious to doubt. Whatever momentary setbacks the United States might encounter, whether a generation ago in Vietnam or more recently in Iraq, this certainty that American values are destined to prevail imbues U.S. policy with a distinctive grandeur. The preferred language of American statecraft is bold, ambitious, and confident. Reflecting such convictions, policymakers in Washington nurse (and the majority of citizens tacitly endorse) ever more grandiose expectations for how armed might can facilitate the inevitable triumph of those values. In that regard, George W. Bush's vow that the United States will "rid the world of evil" both echoes and amplifies the large claims of his predecessors going at least as far back as Woodrow Wilson. Coming from Bush the war- rior-president, the promise to make an end to evil is a promise to destroy, to demolish, and to obliterate it. One result of this belief that the fulfillment of America's historic mission begins with America's destruction of the old order has been to revive a phenomenon that C. Wright Mills in the early days of the Cold War described as a "military metaphysics"-a tendency to see international problems as military problems and to discount the likelihood of finding a solution except through military means. To state the matter bluntly, Americans in our own time have fallen prey to militarism, manifesting itself in a romanticized view of soldiers, a tendency to see military power as the truest measure of national greatness, and outsized expectations regarding the efficacy of force. To a degree without precedent in U.S. history, Americans have come to define the nation's strength and well-being in terms of military preparedness, military action, and the fostering of (or nostalgia for) military ideals? Already in the 19905 America's marriage of a militaristic cast of mind with utopian ends had established itself as the distinguishing element of contemporary U.S. policy. The Bush administrations response to the hor- rors of 9/11 served to reaffirm that marriage, as it committed the United States to waging an open-ended war on a global scale. Events since, notably the alarms, excursions, and full-fledged campaigns comprising the Global War on Terror, have fortified and perhaps even sanctified this marriage. Regrettably, those events, in particular the successive invasions of Afghanistan and Iraq, advertised as important milestones along the road to ultimate victory have further dulled the average Americans ability to grasp the significance of this union, which does not serve our interests and may yet prove our undoing. The New American Militarism examines the origins and implications of this union and proposes its annulment. Although by no means the first book to undertake such an examination, The New American Militarism does so from a distinctive perspective. The bellicose character of U.S. policy after 9/11, culminating with the American-led invasion of Iraq in March 2003, has, in fact, evoked charges of militarism from across the political spectrum. Prominent among the accounts advancing that charge are books such as The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic, by Chalmers Johnson; Hegemony or Survival: Americas Quest for Global Dominance, by Noam Chomsky; Masters of War; Militarism and Blowback in the Era of American Empire, edited by Carl Boggs; Rogue Nation: American Unilateralism and the Failure of Good Intentions, by Clyde Prestowitz; and Incoherent Empire, by Michael Mann, with its concluding chapter called "The New Militarism." Each of these books appeared in 2003 or 2004. Each was not only writ- ten in the aftermath of 9/11 but responded specifically to the policies of the Bush administration, above all to its determined efforts to promote and justify a war to overthrow Saddam Hussein. As the titles alone suggest and the contents amply demonstrate, they are for the most part angry books. They indict more than explain, and what- ever explanations they offer tend to be ad hominem. The authors of these books unite in heaping abuse on the head of George W Bush, said to combine in a single individual intractable provincialism, religious zealotry, and the reckless temperament of a gunslinger. Or if not Bush himself, they fin- ger his lieutenants, the cabal of warmongers, led by Vice President Dick Cheney and senior Defense Department officials, who whispered persua- sively in the president's ear and used him to do their bidding. Thus, accord- ing to Chalmers Johnson, ever since the Persian Gulf War of 1990-1991, Cheney and other key figures from that war had "Wanted to go back and finish what they started." Having lobbied unsuccessfully throughout the Clinton era "for aggression against Iraq and the remaking of the Middle East," they had returned to power on Bush's coattails. After they had "bided their time for nine months," they had seized upon the crisis of 9/1 1 "to put their theories and plans into action," pressing Bush to make Saddam Hussein number one on his hit list." By implication, militarism becomes something of a conspiracy foisted on a malleable president and an unsuspecting people by a handful of wild-eyed ideologues. By further implication, the remedy for American militarism is self-evi- dent: "Throw the new militarists out of office," as Michael Mann urges, and a more balanced attitude toward military power will presumably reassert itself? As a contribution to the ongoing debate about U.S. policy, The New American Militarism rejects such notions as simplistic. It refuses to lay the responsibility for American militarism at the feet of a particular president or a particular set of advisers and argues that no particular presidential election holds the promise of radically changing it. Charging George W. Bush with responsibility for the militaristic tendencies of present-day U.S. for- eign policy makes as much sense as holding Herbert Hoover culpable for the Great Depression: Whatever its psychic satisfactions, it is an exercise in scapegoating that lets too many others off the hook and allows society at large to abdicate responsibility for what has come to pass. The point is not to deprive George W. Bush or his advisers of whatever credit or blame they may deserve for conjuring up the several large-scale campaigns and myriad lesser military actions comprising their war on ter- ror. They have certainly taken up the mantle of this militarism with a verve not seen in years. Rather it is to suggest that well before September 11, 2001 , and before the younger Bush's ascent to the presidency a militaristic predisposition was already in place both in official circles and among Americans more generally. In this regard, 9/11 deserves to be seen as an event that gave added impetus to already existing tendencies rather than as a turning point. For his part, President Bush himself ought to be seen as a player reciting his lines rather than as a playwright drafting an entirely new script. In short, the argument offered here asserts that present-day American militarism has deep roots in the American past. It represents a bipartisan project. As a result, it is unlikely to disappear anytime soon, a point obscured by the myopia and personal animus tainting most accounts of how we have arrived at this point. The New American Militarism was conceived not only as a corrective to what has become the conventional critique of U.S. policies since 9/11 but as a challenge to the orthodox historical context employed to justify those policies. In this regard, although by no means comparable in scope and in richness of detail, it continues the story begun in Michael Sherry's masterful 1995 hook, In the Shadow of War an interpretive history of the United States in our times. In a narrative that begins with the Great Depression and spans six decades, Sherry reveals a pervasive American sense of anxiety and vulnerability. In an age during which War, actual as well as metaphorical, was a constant, either as ongoing reality or frightening prospect, national security became the axis around which the American enterprise turned. As a consequence, a relentless process of militarization "reshaped every realm of American life-politics and foreign policy, economics and technology, culture and social relations-making America a profoundly different nation." Yet Sherry concludes his account on a hopeful note. Surveying conditions midway through the post-Cold War era's first decade, he suggests in a chapter entitled "A Farewell to Militarization?" that America's preoccupation with War and military matters might at long last be waning. In the mid- 1995, a return to something resembling pre-1930s military normalcy, involving at least a partial liquidation of the national security state, appeared to be at hand. Events since In the Shadow of War appear to have swept away these expectations. The New American Militarism tries to explain why and by extension offers a different interpretation of America's immediate past. The upshot of that interpretation is that far from bidding farewell to militariza- tion, the United States has nestled more deeply into its embrace. f ~ Briefly told, the story that follows goes like this. The new American militarism made its appearance in reaction to the I96os and especially to Vietnam. It evolved over a period of decades, rather than being sponta- neously induced by a particular event such as the terrorist attack of Septem- ber 11, 2001. Nor, as mentioned above, is present-day American militarism the product of a conspiracy hatched by a small group of fanatics when the American people were distracted or otherwise engaged. Rather, it devel- oped in full view and with considerable popular approval. The new American militarism is the handiwork of several disparate groups that shared little in common apart from being intent on undoing the purportedly nefarious effects of the I96OS. Military officers intent on reha- bilitating their profession; intellectuals fearing that the loss of confidence at home was paving the way for the triumph of totalitarianism abroad; reli- gious leaders dismayed by the collapse of traditional moral standards; strategists wrestling with the implications of a humiliating defeat that had undermined their credibility; politicians on the make; purveyors of pop cul- turc looking to make a buck: as early as 1980, each saw military power as the apparent answer to any number of problems. The process giving rise to the new American militarism was not a neat one. Where collaboration made sense, the forces of reaction found the means to cooperate. But on many occasions-for example, on questions relating to women or to grand strategy-nominally "pro-military" groups worked at cross purposes. Confronting the thicket of unexpected developments that marked the decades after Vietnam, each tended to chart its own course. In many respects, the forces of reaction failed to achieve the specific objectives that first roused them to act. To the extent that the 19603 upended long-standing conventions relating to race, gender, and sexuality, efforts to mount a cultural counterrevolution failed miserably. Where the forces of reaction did achieve a modicum of success, moreover, their achievements often proved empty or gave rise to unintended and unwelcome conse- quences. Thus, as we shall see, military professionals did regain something approximating the standing that they had enjoyed in American society prior to Vietnam. But their efforts to reassert the autonomy of that profession backfired and left the military in the present century bereft of meaningful influence on basic questions relating to the uses of U.S. military power. Yet the reaction against the 1960s did give rise to one important by-prod: uct, namely, the militaristic tendencies that have of late come into full flower. In short, the story that follows consists of several narrative threads. No single thread can account for our current outsized ambitions and infatua- tion with military power. Together, however, they created conditions per- mitting a peculiarly American variant of militarism to emerge. As an antidote, the story concludes by offering specific remedies aimed at restor- ing a sense of realism and a sense of proportion to U.S. policy. It proposes thereby to bring American purposes and American methods-especially with regard to the role of military power-into closer harmony with the nation's founding ideals. The marriage of military metaphysics with eschatological ambition is a misbegotten one, contrary to the long-term interests of either the American people or the world beyond our borders. It invites endless war and the ever-deepening militarization of U.S. policy. As it subordinates concern for the common good to the paramount value of military effectiveness, it promises not to perfect but to distort American ideals. As it concentrates ever more authority in the hands of a few more concerned with order abroad rather than with justice at home, it will accelerate the hollowing out of American democracy. As it alienates peoples and nations around the world, it will leave the United States increasingly isolated. If history is any guide, it will end in bankruptcy, moral as well as economic, and in abject failure. "Of all the enemies of public liberty," wrote James Madison in 1795, "war is perhaps the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies. From these proceed debts and taxes. And armies, debts and taxes are the known instruments for bringing the many under the domination of the few .... No nation could preserve its freedom in the midst of continual Warfare." The purpose of this book is to invite Americans to consider the continued relevance of Madison's warning to our own time and circumstances.

#### The Alternative is to reject the 1AC and imagine Whatever Being--Any point of rejection of the sovereign state creates a non-state world made up of whatever life – that involves imagining a political body that is outside the sphere of sovereignty in that it defies traditional attempts to maintain a social identity

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(Anne, “Bio-Sovereignty and the Emergence of Humanity,” Theory & Event, Volume 7, Issue 2, Project Muse)

Can we imagine another form of humanity, and another form of power? The bio-sovereignty described by Agamben is so fluid as to appear irresistible. Yet Agamben never suggests this order is necessary. Bio-sovereignty results from a particular and contingent history, and it requires certain conditions. Sovereign power, as Agamben describes it, finds its grounds in specific coordinates of life, which it then places in a relation of indeterminacy. What defies sovereign power is a life that cannot be reduced to those determinations: a life "that can never be separated from its form, a life in which it is never possible to isolate something such as naked life. " (2.3). In his earlier Coming Community, Agamben describes this alternative life as "whatever being." More recently he has used the term "forms-of-life." These concepts come from the figure Benjamin proposed as a counter to homo sacer: the "total condition that is 'man'." For Benjamin and Agamben, mere life is the life which unites law and life. That tie permits law, in its endless cycle of violence, to reduce life an instrument of its own power. The total condition that is man refers to an alternative life incapable of serving as the ground of law. Such a life would exist outside sovereignty. Agamben's own concept of whatever being is extraordinarily dense. It is made up of varied concepts, including language and potentiality; it is also shaped by several particular dense thinkers, including Benjamin and Heidegger. What follows is only a brief consideration of whatever being, in its relation to sovereign power. / "Whatever being," as described by Agamben, lacks the features permitting the sovereign capture and regulation of life in our tradition. Sovereignty's capture of life has been conditional upon the separation of natural and political life. That separation has permitted the emergence of a sovereign power grounded in this distinction, and empowered to decide on the value, and non-value of life (1998: 142). Since then, every further politicization of life, in turn, calls for "a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only 'sacred life,' and can as such be eliminated without punishment" (p. 139). / This expansion of the range of life meriting protection does not limit sovereignty, but provides sites for its expansion. In recent decades, factors that once might have been indifferent to sovereignty become a field for its exercise. Attributes such as national status, economic status, color, race, sex, religion, geo-political position have become the subjects of rights declarations. From a liberal or cosmopolitan perspective, such enumerations expand the range of life protected from and serving as a limit upon sovereignty. Agamben's analysis suggests the contrary. If indeed sovereignty is bio-political before it is juridical, then juridical rights come into being only where life is incorporated within the field of bio-sovereignty. The language of rights, in other words, calls up and depends upon the life caught within sovereignty: homo sacer. / Agamben's alternative is therefore radical. He does not contest particular aspects of the tradition. He does not suggest we expand the range of rights available to life. He does not call us to deconstruct a tradition whose power lies in its indeterminate status.21 Instead, he suggests we take leave of the tradition and all its terms. Whatever being is a life that defies the classifications of the tradition, and its reduction of all forms of life to homo sacer. Whatever being therefore has no common ground, no presuppositions, and no particular attributes. It cannot be broken into discrete parts; it has no essence to be separated from its attributes; and it has no common substrate of existence defining its relation to others. Whatever being cannot then be broken down into some common element of life to which additive series of rights would then be attached. Whatever being retains all its properties, without any of them constituting a different valuation of life (1993: 18.9). As a result, whatever being is "reclaimed from its having this or that property, which identifies it as belonging to this or that set, to this or that class (the reds, the French, the Muslims) -- and it is reclaimed not for another class nor for the simple generic absence of any belonging, but for its being-such, for belonging itself." (0.1-1.2). / Indifferent to any distinction between a ground and added determinations of its essence, whatever being cannot be grasped by a power built upon the separation of a common natural life, and its political specification. Whatever being dissolves the material ground of the sovereign exception and cancels its terms. This form of life is less post-metaphysical or anti-sovereign, than a-metaphysical and a-sovereign. Whatever is indifferent not because its status does not matter, but because it has no particular attribute which gives it more value than another whatever being. As Agamben suggests, whatever being is akin to Heidegger's Dasein. Dasein, as Heidegger describes it, is that life which always has its own being as its concern -- regardless of the way any other power might determine its status. Whatever being, in the manner of Dasein, takes the form of an "indissoluble cohesion in which it is impossible to isolate something like a bare life. In the state of exception become the rule, the life of homo sacer, which was the correlate of sovereign power, turns into existence over which power no longer seems to have any hold" (Agamben 1998: 153). / We should pay attention to this comparison. For what Agamben suggests is that whatever being is not any abstract, inaccessible life, perhaps promised to us in the future. Whatever being, should we care to see it, is all around us, wherever we reject the criteria sovereign power would use to classify and value life. "In the final instance the State can recognize any claim for identity -- even that of a State identity within the State . . . What the State cannot tolerate in any way, however, is that the singularities form a community without affirming an identity, that humans co-belong without a representable condition of belonging" (Agamben 1993:85.6). At every point where we refuse the distinctions sovereignty and the state would demand of us, the possibility of a non-state world, made up of whatever life, appears.

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#### Restriction on authority must limit presidential discretion

**Lobel, 8** - Professor of Law, University of Pittsburgh Law School (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War” 392 OHIO STATE LAW JOURNAL [Vol. 69:391, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel_.pdf>)

So  too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### They don’t – president still gets to decide, the plan’s an after-the-fact correction – judicial review doesn’t remove authority

**GILBERT 98** Lieutenant Colonel USAF Academy; MSBA, Boston University; J.D., McGeorge School of Law; LL.M., Harvard Law School [Michael H. Gilbert, The Military and the Federal Judiciary: an Unexplored Part of the Civil-Military Relations Triangle, USAFA Journal of Legal Studies, 8 USAFA J. Leg. Stud. 197]

Conclusion

The judiciary can perform the critical function of judicial review of cases involving the military without unconstitutionally impinging upon the authority of Congress and the President. In matters of policy [\*224] concerning the conduct or preparation of war, courts can cautiously examine the facts to determine the propriety of their review. The greater the nexus to national security and to the conduct of purely military affairs, the greater the hesitancy courts should exercise in their review. In today's military, which is increasingly used for actions other than military operations, the concern with harming good order and discipline is less material. By interpreting the framers' intent to grant virtually exclusive, plenary control of the military to the Congress, which regulates and maintains the armed forces, and to the President, who is the Commander-in-Chief of the armed forces, the Supreme Court removes the judiciary from the issue of civil-military relations. Entrusting the other two branches of the government to lawfully care for the military results in strengthening the authority of civilian control by two branches of Government but only at the cost of removing civilian control which should be exercised by the courts.

**Voting issue –**

**1) Ground – all DAs and CPs like ESR, flexibility, and politics compete based off restrictions on the presidential decision-making process – skews the topic in favor of the aff.**

**2) Limits – the plan amounts to deterrence of prez powers, not statutory limitations – that’s opens a floodgate of affs that just dissuade presidential expansion of power**

**McKelvey 11** - Executive Development Editor on the Editorial Board of the Vanderbilt Journal of Transnational Law  [Benjamin McKelvey (JD Candidate @ Vanderbilt University), “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 2011, 44 Vand. J. Transnat'l L. 1353

FISA as an Applicable Model - FISA is an existing legislative model that is applicable both in substance and structure.213 FISA was passed to resolve concerns over civil liberties in the context of executive counterintelligence.214 It is therefore a legislative response to a set of issues analogous to the constitutional problems of targeted killing.215 FISA also provides a structural model that could help solve the targeted killing¶ dilemma.216 The FISA court is an example of a congressionally created federal court with special jurisdiction over a sensitive national security issue.217 Most importantly, FISA works. Over the years, the FISA court has proven itself capable of handling a large volume of warrant requests in a way that provides judicial screening without diminishing executive authority.218 Contrary to the DOJ’s claims in Aulaqi , the FISA court proves that independent judicial oversight is institutionally capable of managing real-time executive decisions that affect national security.219

### 1NC CP

#### The Counsel to the President of the United States should request to the Office of Legal Counsel for legal counsel and coordination on the President’s war powers authority. The Office of Legal Counsel should advise the President that he should subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action against the government for damages arising directly out of the constitutional provision allegedly offended.

#### CP is competitive and solves the case ---- Coordination with OLC can ensure executive action

BORRELLI et al 2000 - Professor of Government Chair of the Government and International Relations Department, Connecticut College (Maryanne Borrelli, Karen Hult, Nancy Kassop, “The White House Counsel’s Office”, http://whitehousetransitionproject.org/files/counsel/Counsel-OD.PDF)

The White House Counsel’s Office is at the hub of all presidential activity. Its mandate is to be watchful for and attentive to legal issues that may arise in policy and political contexts in which the president plays a role. To fulfill this responsibility, it monitors and coordinates the presidency’s interactions with other players in and out of government. Often called “the president’s lawyer,” the Counsel’s Office serves, more accurately, as the “presidency’s lawyer,” with tasks that extend well beyond exclusively legal ones. These have developed over time, depending on the needs of different presidents, on the relationship between a president and a Counsel, and on contemporary political conditions. The Office carries out many routine tasks, such as vetting all presidential appointments and advising on the application of ethics regulations to White House staff and executive branch officials, but it also operates as a “command center” when crises or scandals erupt. Thus, the more sharply polarized political atmosphere in recent years has led to greater responsibility and demands, as well as heightened political pressure and visibility, on the traditionally low-profile Counsel’s Office. The high-stakes quality of its work has led to a common sentiment among Counsels and their staff that there is “zero tolerance” for error in this office.

In sum, the Counsel’s Office might be characterized as a monitor, a coordinator, a negotiator, a recommender, and a translator: it monitors ethics matters, it coordinates the president’s message and agenda with other executive branch units, it negotiates with a whole host of actors on the president’s behalf (not the least of which is Congress), it recommends myriad actions to the president, and it translates or interprets the law (whether it is the Constitution, federal rules and regulations, treaties or legislation) for all executive branch officials. Past Counsels have lamented that there is no job description for this office, while the opening quote from Peter Wallison makes clear that even if there was, it would be all-consuming and all-inclusive of everything that goes in and out of the president’s office.

In simple terms, the Counsel’s Office performs five basic categories of functions: (1) advising on the exercise of presidential powers and defending the president’s constitutional prerogatives; (2) overseeing presidential nominations and appointments to the executive and judicial branches; (3) advising on presidential actions relating to the legislative process; (4) educating White House staffers about ethics rules and records management and monitoring adherence; and (5) handling department, agency and White House staff contacts with the Department of Justice (see Functions section). In undertaking these responsibilities, the Counsel’s Office interacts regularly with, among others, the president, the Chief of Staff, the White House Office of Personnel, the Press Secretary, the White House Office of Legislative Affairs, the Attorney General, the Office of Management and Budget (on the legislative process), the General Counsels of the departments and agencies, and most especially, the Office of Legal Counsel in the Department of Justice (see Relationships section). In addition to the Counsel, the Office usually consists of one or two Deputy Counsels, a varying number of Associate and Assistant Counsels, a Special Counsel when scandals arise, a Senior Counsel in some administrations, and support staff. Tasks are apportioned to these positions in various ways, depending on the Counsel’s choices, though most Counsels expect all Office members to share the ongoing vetting for presidential appointments (see Organization and Operations section).

Certain responsibilities within the Office are central at the very start of an administration (e.g., vetting for initial nominations and shepherding the appointment process through the Senate), while others have a cyclical nature to them (e.g., the annual budget, the State of the Union message), and still others follow an electoral cycle (e.g., determining whether presidential travel and other activities are partisan/electoral/campaign or governmental ones) (see Organization and Operations). There is, of course, the always unpredictable (but almost inevitable) flurry of scandals and crises, in which all eyes turn to the Counsel’s Office for guidance and answers. Watergate, Iran-contra, Whitewater, the Clinton impeachment, and the FBI files and White House Travel Office matters were all managed from the Counsel’s Office, in settings that usually separated scandal management from the routine work of the Office, so as to permit ongoing operations to continue with minimal distraction. Among the more regular tasks that occur throughout an administration are such jobs as directing the judicial nomination process, reviewing legislative proposals (the president’s, those from departments and agencies, and bills Congress has passed that need the Counsel’s recommendation for presidential signature or veto), editing and clearing presidential statements and speeches, writing executive orders, and determining the application of executive privilege (see both Relationships and Organization and Operations sections).

Perhaps, the most challenging task for the Counsel is being the one who has the duty to tell the president “no,” especially when it comes to defending the constitutional powers and prerogatives of the presidency. Lloyd Cutler, Counsel for both Presidents Carter and Clinton, noted that, in return for being “on the cutting edge of problems,” the Counsel needs to be someone who has his own established reputation…someone who is willing to stand up t o the President, to say, “No, Mr. President, you shouldn’t do that for these reasons.” There is a great tendency among all presidential staffs to be very sycophantic, very sycophantic. It’s almost impossible to avoid, “This man is the President of the United States and you want to stay in his good graces,” even when he is about to do something dumb; you don’t tell him that. You find some way to put it in a very diplomatic manner. (Cutler interview, pp. 3-4)

LAW, POLITICS AND POLICY

A helpful way to understand the Counsel’s Office is to see it as sitting at the intersection of law, politics and policy. Consequently, it confronts the difficult and delicate task of trying to reconcile all three of these without sacrificing too much of any one. It is the distinctive challenge of the Counsel’s Office to advise the president to take actions that are both legally sound and politically astute. A 1994 article in Legal Times warned of the pitfalls: Because a sound legal decision can be a political disaster, the presidential counsel constantly sacrifices legal ground for political advantage. (Bendavid, 1994, p. 13) For example, A.B. Culvahouse recalled his experience upon arriving at the White House as counsel and having to implement President Reagan’s earlier decision to turn over his personal diaries to investigators during the Iran-contra scandal.

Ronald Reagan’s decision to turn over his diary - that sits at the core of the presidency. …You’re setting up precedents and ceding a little power. But politically, President Reagan wanted to get it behind him. (Bendavid, 1994, p. 13)

Nonetheless, Culvahouse added, the Counsel is “the last and in some cases the only protector of the President’s constitutional privileges. Almost everyone else is willing to give those away in part inch by inch and bit by bit in order to win the issue of the day, to achieve compromise on today’s thorny issue. So a lot of what I did was stand in the way of that process...” (Culvahouse interview, p. 28)

Because of this blend of legal, political and policy elements, the most essential function a Counsel can perform for a president is to act as an “early warning system” for potential legal trouble spots before **(**and, ultimately, after) they erupt. For this role, a Counsel must keep his or her “antennae” constantly attuned. Being at the right meetings at the right time and knowing which people have information and/or the necessary technical knowledge and expertise in specific policy or legal areas are the keys to insuring the best service in this part of the position. C. Boyden Gray, Counsel for President Bush, commented: “As Culvahouse said -- I used to say that the meetings I was invited to, I shouldn’t go to. …It’s the meetings I wasn’t invited to that I’d go to.” (Gray interview, p. 26) Lloyd Cutler noted that

….the White House Counsel will learn by going to the staff meetings, et cetera, that something is about to be done that has buried within it a legal issue which the people who are advocating it either haven’t recognized or push under the rug. He says, “Wait a minute. We’ve got to check this out,” and goes to the Office of Legal Counsel and alerts them and gets their opinion. But for the existence of the White House Counsel, the Office of Legal Counsel would never have learned about the problem until it was too late. (Cutler interview, p. 4)

One other crucial part of the job where the legal overlaps with the policy and the political -- and which can spell disaster for Counsels who disregard this -- is knowing when to go to the Office of Legal Counsel for guidance on prevailing legal interpretations and opinions on the scope of presidential authority. It is then up to the White House Counsel to sift through these legal opinions, and to bring into play the operative policy and political considerations in order to offer the president his or her best recommendation on a course of presidential action. Lloyd Cutler described how this process works:

They [OLC staffers] are where the President has to go or the President’s counsel has to go to get an opinion on whether something may properly be done or not. For example, if you wish to invoke an executive privilege not to produce documents or something, the routine now is you go to the Office of Legal Counsel and you get their opinion that there is a valid basis for asserting executive privilege in this case. ...You’re able to say [to the judge who is going to examine these documents] the Office of Legal Counsel says we have a valid basis historically for asserting executive privilege here. (Cutler interview, p. 4)

C. Boyden Gray underscored the critical importance of OLC’s relationship to the Counsel’s Office: They [OLC] were the memory…We paid attention to what they did. [Vincent] Foster never conferred with them. When they [the Clinton Counsel’s Office] filed briefs on executive privilege, they had the criminal division, the civil division and some other division signing on the brief; OLC wasn’t on the brief… In some ways they [OLC] told us not to do things but that was helpful. They said no to us… I can give you a million examples. They would have said to Vince Foster, “Don’t go in and argue without thinking about it.” They would have prevented the whole healthcare debacle [referring to the Clinton Counsel’s Office’s position that Hillary Rodham Clinton was a government official for FACA purposes] …[T]he ripple effect of that one decision is hard to exaggerate: it’s hard to calculate. (Gray interview, pp. 18-19)

### 1NC DA

#### Plan breaks the political question doctrine---triggers a slippery slope

Christopher Ehrfurth 11, 10/10/11, “The Extrajudicial Killing of Anwar al-Awlaki,” http://law.marquette.edu/facultyblog/2011/10/10/the-extrajudicial-killing-of-anwar-al-awlaki/

The legality of the extrajudicial assassination of al-Awlaki was the subject of a civil suit in 2010. After learning that his son had been placed on a CIA/Joint Special Operations Command “kill list”, al-Awlaki’s father brought suit in the U.S. District Court for the District of Columbia against President Obama, Secretary of Defense Robert Gates, and CIA Director Leon Panetta. In an attempt to enjoin the executive branch from killing his son, al-Awlaki introduced several claims based in both constitutional and tort law. The court’s lengthy opinion begins with a compelling recitation of the questions presented: How is it that judicial approval is required when the United States decides to target a U.S. citizen overseas for electronic surveillance, but that, according to defendants, judicial scrutiny is prohibited when the United States decides to target a U.S. citizen overseas for death? Can a U.S. citizen –himself or through another — use the U.S. judicial system to vindicate his constitutional rights while simultaneously evading U.S. law enforcement authorities, calling for “jihad against the West,” and engaging in operational planning for an organization that has already carried out numerous terrorist attacks against the United States? Can the Executive order the assassination of a U.S. citizen without first affording him any form of judicial process whatsoever, based on the mere assertion that he is a dangerous member of a terrorist organization? How can the courts, as plaintiff proposes, make real-time assessments of the nature and severity of alleged threats to national security, determine the imminence of those threats, weigh the benefits and costs of possible diplomatic and military responses, and ultimately decide whether, and under what circumstances, the use of military force against such threats is justified? When would it ever make sense for the United States to disclose in advance to the “target” of contemplated military action the precise standards under which it will take that military action? And how does the evolving AQAP relate to core al Qaeda for purposes of assessing the legality of targeting AQAP (or its principals) under the September 18, 2001 Authorization for the Use of Military Force? Al-Aulaqi v. Obama, 727 F.Supp.2d 1, 8-9 (D.D.C. 2010). Before contemplating the more compelling issues, the court first decided the issue of standing. Al-Awlaki’s father lacked “next-friend” standing because he failed to provide an adequate reason justifying why Anwar could not appear in court on his own behalf. His father claimed that if Anwar presented himself to authorities he would be exposed to attack. The court disagreed, citing public government statements indicating that if al-Awlaki surrendered peacefully he could not be executed without due process. The court also denied third party standing, holding that Anwar’s father could not show that a parent suffers an injury in fact if his adult child is threatened with a future extrajudicial killing. Anwar’s status as an adult was of particular importance because a parent does not have a constitutionally (or common law) protected liberty interest in maintaining a relationship with his adult child free from government influence. Prudential standing was denied because, among other reasons, the court refused to “unnecessarily adjudicate rights” that it believed al-Awlaki did not wish to assert himself. The court noted that al-Awlaki made numerous public statements professing his contempt for the U.S. legal system. Al-Awlaki did not believe that he was bound by U.S. laws because, in his view, they are contrary to the teachings of Allah. I personally find it difficult to believe that a person would not want to contest his own assassination, but it also seems unlikely that al-Awlaki would wish to assert legal rights in a court system that he did not recognize as authoritative, especially in a country that he openly despised. Ultimately, the most compelling issues were not addressed because the court found that judicial review was inappropriate. The court held that separation of powers and the political question doctrine prohibited interfering with the executive branch’s orders with respect to military action abroad. Meaningful review was deemed impossible, because it would require an unmanageable assessment of the quality of the President’s interpretation of military intelligence and his resulting decision (based upon that intelligence) to use military force against terrorist targets overseas: [T]his Court does not hold that the Executive possesses “unreviewable authority to order the assassination of any American whom he labels an enemy of the state.” (citation omitted), the Court only concludes that it lacks the capacity to determine whether a specific individual in hiding overseas, whom the Director of National Intelligence has stated is an “operational” member of AQAP, (citation omitted), presents such a threat to national security that the United States may authorize the use of lethal force against him. This Court readily acknowledges that it is a “drastic measure” for the United States to employ lethal force against one of its own citizens abroad, even if that citizen is currently playing an operational role in a “terrorist group that has claimed responsibility for numerous attacks against Saudi, Korean, Yemeni, and U.S. targets since January 2009,”(citation omitted) But as the D.C. Circuit explained in Schneider, a determination as to whether “drastic measures should be taken in matters of foreign policy and national security is not the stuff of adjudication, but of policymaking.” (citation omitted) Because decision-making in the realm of military and foreign affairs is textually committed to the political branches, and because courts are functionally ill-equipped to make the types of complex policy judgments that would be required to adjudicate the merits of plaintiff’s claims, the Court finds that the political question doctrine bars judicial resolution of this case. Al-Aulaqi, 727 F.Supp.2d at 52-53. It is unfortunate that the Aulaqi case never made it beyond the issue of standing, but perhaps that was the proper outcome. Although Awlaki was a U.S. citizen (and a citizen of Yemen), he was also clearly a member of al-Qaeda. Shortly after 9/11, Congress passed the Authorization for Use of Military Force (“AUMF”). The AUMF provides that: [T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001…in order to prevent any future acts of international terrorism against the United States… Everyone (except for the guy who leaves “9/11 was inside job” comments beneath every news article on the internet) knows that al-Qaeda is the organization that planned and committed the terrorist attacks that occurred on 9/11. Al-Awlaki was indisputably a member of al-Qaeda. The Executive’s killing of al-Awlaki was certainly aimed at preventing future acts of international terrorism against the United States. If the AUMF can be read as authorizing al-Awlaki’s killing, then it would appear that the President assassinated him with congressional approval. In that scenario, Justice Jackson’s concurrence in Youngstown would indicate that the President was acting at the highest ebb of his authority. Still, many columnists and politicians like Ron Paul believe that Obama’s decision was illegal on due process grounds. Might Ron Paul be engaging in political grandstanding? I do seem to remember hearing something about an upcoming election. On the other hand, the AUMF only authorizes necessary and appropriate force. In his suit against the Executive, al-Aulaqi suggested that imminence is the key factor in determining whether lethal force is justified. It would have been interesting to find out what legal standard the court would apply to the use of lethal force on foreign soil against a member of al-Qaeda holding U.S. citizenship, but that issue was never addressed. Was the force used against al-Awlaki necessary and appropriate? It seems difficult to determine without a meaningful presentation of evidence against al-Awlaki. Personally, I don’t think I’ll hold my breath waiting for the day that the general public is offered an explanation as to why al-Awlaki couldn’t be captured and tried in a U.S. courtroom. It is troubling to know that the President can order the extrajudicial execution of a U.S. citizen based upon secret evidence. On the other hand, it has been said that the Constitution is not a suicide pact, and it’s comforting to know that the President is tracking and killing those who are actively trying to kill Americans. After reading the al-Aulaqi opinion, I was left feeling unsatisfied with the court’s decision to defer to the other branches of government, but I understood why it did so. In many ways, the moral issue of al-Awlaki’s murder leaves me feeling the same way. I think it’s unfortunate that al-Awlaki was not indicted, captured, and tried in Federal court. I also understand that applying traditional due process to a terrorist abroad might create a logistical nightmare and place many innocent lives in danger. Is this a slippery slope? If so, wouldn’t requiring the judicial approval of military strategy abroad be just as slippery? Either way, I respect those who speak out in favor of due process. I also wonder how many of those people, if faced with the same choice as the President, would choose differently.

#### That spills over to climate change cases

Laurence H. Tribe 10, the Carl M. Loeb University Professor, Harvard Law School; Joshua D. Branson, J.D., Harvard Law School and NDT Champion, Northwestern University; and Tristan L. Duncan, Partner, Shook, Hardy & Bacon L.L.P., January 2010, “TOOHOTFORCOURTSTO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE,” <http://www.wlf.org/Upload/legalstudies/workingpaper/012910Tribe_WP.pdf>

Two sets of problems, one manifested at a microcosmic level and the other about as macrocosmic as imaginable, powerfully illustrate these propositions. Not coincidentally, both stem from concerns about temperature and its chemical and climactic effects, concerns playing an increasingly central role in the American policy process. As those concerns have come to the fore, courts have correspondingly warmed to the idea of judicial intervention, drawn by the siren song of making the world a better place and fueled by the incentives for lawyers to convert public concern into private profit. In both the fuel temperature and global warming cases, litigants, at times justifying their circumvention of representative democracy by pointing to the slow pace of policy reform, have turned to the courts. By donning the cloak of adjudication, they have found judges for whom the common law doctrines of unjust enrichment, consumer fraud, and nuisance appear to furnish constitutionally acceptable and pragmatically useful tools with which to manage temperature’s effects. Like the proverbial carpenter armed with a hammer to whom everything looks like a nail, those judges are wrong. For both retail gasoline and global climate, the judicial application of common law principles provides a constitutionally deficient—and structurally unsound—mechanism for remedying temperature’s unwanted effects.

It has been axiomatic throughout our constitutional history that there exist some questions beyond the proper reach of the judiciary. In fact, the political question doctrine originates in no less august a case than Marbury v. Madison, where Chief Justice Marshall stated that “[q]uestions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”1 Well over a century after that landmark ruling, the Supreme Court, in Baker v. Carr, famously announced six identifying characteristics of such nonjusticiable political questions, which, primarily as a “function of the separation of powers,” courts may not adjudicate.2 Of these six characteristics, the Court recently made clear that two are particularly important: (1) the presence of “a textually demonstrable constitutional commitment of the issue to a coordinate political department;” and (2) “a lack of judicially discoverable and manageable standards for resolving it.”3

The spectrum of nonjusticiable political questions in a sense spans the poles formed by these two principles. At one pole, the Constitution’s specific textual commitments shield issues expressly reserved to the political branches from judicial interference. At the other pole lie matters not necessarily reserved in so many words to one of the political branches but nonetheless institutionally incapable of coherent and principled resolution by courts acting in a truly judicial capacity; such matters are protected from judicial meddling by the requirement that “judicial action must be governed by standard, by rule” and by the correlative axiom that “law pronounced by the courts must be principled, rational, and based upon reasoned distinctions.”4

At a deeper level, however, the two poles collapse into one. The reason emerges if one considers issues that courts are asked to address involving novel problems the Constitution’s framers, farsighted though they were, could not have anticipated with sufficient specificity to entrust their resolution to Congress or to the Executive in haec verba. A perfect exemplar of such problems is the nest of puzzles posed by humaninduced climate change. When matters of that character are taken to court for resolution by judges, what marks them as “political” for purposes of the “political question doctrine” is not some problem-specific language but, rather, the demonstrable intractability of those matters to principled resolution through lawsuits. And one way to understand that intractability is to view it as itself marking the Constitution’s textual, albeit broadly couched, commitment of the questions presented to the processes we denominate “legislative” or “executive”—that is, to the pluralistic processes of legislation and treaty-making rather than to the principle-bound process of judicially resolving what Article III denominates “cases” and “controversies.” In other words, the judicial unmanageability of an issue serves as powerful evidence that the Constitution’s text reserves that issue, even if broadly and implicitly, to the political branches.5

It has become commonplace that confusion and controversy have long distinguished the doctrine that determines, as a basic matter of the Constitution’s separation of powers, which questions are “political” in the specific sense of falling outside the constitutional competence of courts and which are properly justiciable despite the “political” issues they may touch. But that the principles in play have yet to be reduced to any generally accepted and readily applied formula cannot mean that courts are simply free to toss the separation of powers to the winds and plunge ahead in blissful disregard of the profoundly important principles that the political question doctrine embodies. Unfortunately, that appears to be just what some courts have done in the two temperature-related cases—one involving hot fuels, the other a hot earth— that inspired this publication. In the first, a court allowed a claim about measuring fuels to proceed despite a constitutional provision specifically reserving the issue to Congress. In the second—a case in which the specific issue could not have been anticipated, much less expressly reserved, but in which the only imaginable solutions clearly lie beyond judicial competence—a court, rather than dismissing the case as it ought to have done, instead summarily dismissed the intractable obstacles to judicial management presented by climate change merely because it was familiar with the underlying cause of action. As this pair of bookend cases demonstrates, the political question doctrine is feeling heat from both directions.

#### That wrecks coordination necessary to solve warming

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But that being said, if the Second Circuit was implying that such claims are justiciable in part because they are relatively costless, it was wrong again. In the wake of the recent Copenhagen climate negotiations, America is at a crossroads regarding its energy policy. At Copenhagen, the world—for the first time including both the United States and China—took a tremulous first step towards a comprehensive and truly global solution to climate change.44 By securing a modicum of international consensus—albeit not yet with binding commitments—President Obama laid the foundation for what could eventually be a groundbreaking congressional overhaul of American energy policy, an effort that will undoubtedly be shaped by considerations as obviously political as our energy independence from hostile and unreliable foreign regimes and that will both influence and be influenced by the delicate state of international climate negotiations.45

Against this backdrop, courts would be wise to heed the conclusion of one report that what “makes climate change such a difficult policy problem is that decisions made today can have significant, uncertain, and difficult to reverse consequences extending many years into the future."46 This observation is even more salient given that America—and the world—stand at the precipice of major systemic climate reform, if not in the coming year then in the coming decade. It would be disastrous for climate policy if, as at least one commentator has predicted,47 courts were to “beat Congress to the punch” and begin to concoct common law “solutions” to climate change problems before the emergence of a legislative resolution. Not only does judicial action in this field require costly and irreversible technological change on the part of defendants, but the prior existence of an ad hoc mishmash of common law regimes will frustrate legislators’ attempts to design coherent and systematic marketbased solutions.48 Indeed, both emissions trading regimes and carbon taxes seek to harness the fungibility of GHG emissions by creating incentives for reductions to take place where they are most efficient. But if courts were to require reductions of randomly chosen defendants—with no regard for whether they are efficient reducers— they would inhibit the effective operation of legislatively-created, market-based regimes by prematurely and artificially constricting the size of the market. And as one analyst succinctly put it before Congress, “[a]n insufficient number of participants will doom an emissions trading market.”49

There is no doubt that the “Copenhagen Accord only begins the battle” against climate change, as diplomats, bureaucrats, and legislators all now begin the lengthy struggle to turn that Accord’s audacious vision into concrete reality.50 But whatever one’s position in the debate between emissions trading and carbon taxes, or even in the debate over the extent or indeed the reality of anthropogenic climate change, one thing is clear: legislators, armed with the best economic and scientific analysis, and with the capability of binding, or at least strongly incentivizing, all involved parties, are the only ones constitutionally entitled to fight that battle.

CONCLUSION

Some prognosticators opine that the political question doctrine has fallen into disrepute and that it no longer constitutes a viable basis upon which to combat unconstitutional judicial overreaching.51 No doubt the standing doctrine could theoretically suffice to prevent some of the most audacious judicial sallies into the political thicket, as it might in the climate change case, where plaintiffs assert only undifferentiated and generalized causal chains from their chosen defendants to their alleged injuries. But when courts lose sight of the important limitations that the political question doctrine independently imposes upon judicial power–even where standing problems are at low ebb, as with the Motor Fuel case–then constitutional governance, and in turn the protection of individual rights and preservation of legal boundaries, suffer. The specter of two leading circuit courts manifestly losing their way in the equally real thicket of political question doctrine underscores the urgency, perhaps through the intervention of the Supreme Court, of restoring the checks and balances of our constitutional system by reinforcing rather than eroding the doctrine’s bulwark against judicial meddling in disputes either expressly entrusted by the Constitution to the political branches or so plainly immune to coherent judicial management as to be implicitly entrusted to political processes. It is not only the climate of the globe that carries profound implications for our future; it is also the climate of the times and its implications for how we govern ourselves.

#### Extinction

Flournoy 12 -- Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center. Don Flournoy is a PhD and MA from the University of Texas, Former Dean of the University College @ Ohio University, Former Associate Dean @ State University of New York and Case Institute of Technology, Project Manager for University/Industry Experiments for the NASA ACTS Satellite, Currently Professor of Telecommunications @ Scripps College of Communications @ Ohio University (Don, "Solar Power Satellites," January, Springer Briefs in Space Development, Book, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 )

### 1NC Allies

#### Ex-Poste doesn’t solve accountability – zero chance the Courts enforce Bivens

**Vladeck 10/17**, Steve, Professor of Law and Associate Dean for Scholarship, American University, Washington College of Law, “Unlawfully Detained by the U.S. Government? Don't Bother Suing.” 10/17, http://www.newrepublic.com/article/115216/unlawful-detainment-lawsuits-against-us-government-keep-failing

Last Monday, on the same day as the opening of the new Supreme Court term, the federal appeals court in San Francisco threw out a damages suit by a former Guantánamo detainee who alleged that his detention and his treatment while detained had been unlawful. The decision by a unanimous three-judge panel in Hamad v. Gates did not hold that the plaintiff’s rights hadn’t been violated; rather, it held that it lacked the power to even address that question because of a 2006 statute that appears to take away the jurisdiction of the federal courts in such cases. Although there are reasons to quibble with the Ninth Circuit’s analysis, the result underscores a far broader point about which there can be no dispute: In case after case, on issues ranging from Guantánamo to surveillance to “extraordinary rendition” and torture, the federal courts have been categorically hostile to damages claims arising out of post-September 11 counterterrorism policies. And as in Hamad, this hostility has been reflected in the courts’ reliance upon a host of procedural doctrines to reject the plaintiffs’ claims without actually adjudicating—one way or the other—the underlying legality of the government’s conduct. Perhaps the most notorious of these cases was that of Maher Arar, the dual Canadian-Syrian citizen who U.S. authorities arrested at JFK Airport in 2002, detained for several weeks, and then sent to Syria, where he was tortured. Arar, who, as we now know, had no links to terrorism, brought suit to challenge his “extraordinary rendition.” But in 2009, the federal appeals court in New York ruled, 7-4, that U.S. law does not recognize a “cause of action” for claims like Arar’s—and the Supreme Court denied certiorari three months later. Whereas Arar’s was by far the most prominent, a number of other challenges to post-9/11 counterterrorism policies have been dismissed on similar grounds—that the Constitution doesn’t authorize damages suits in such cases unless Congress specifically provides for them. But even when Congress has provided a “cause of action,” the courts have bent over backwards to avoid allowing their use to challenge controversial government counterterrorism policies. Late last year, for example, the Ninth Circuit threw out a challenge by an Islamic charity to allegedly unlawful governmental surveillance under the Foreign Intelligence Surveillance Act (FISA), even though that statute includes an express provision authorizing suits by parties whose communications are wrongfully intercepted thereunder. As the Court of Appeals concluded, although Congress did provide a private remedy for violations of the statute, Congress wasn’t sufficiently clear that it intended for that remedy to also encompass damages—and so there was no waiver of the federal government’s sovereign immunity. (Of course, this reasoning misses the whole point of the FISA provision, which is to allow individuals to sue after their communications are intercepted—at which point damages would be the only viable remedy.) And speaking of FISA, perhaps the pinnacle of the judicial hostility to these kinds of suits came this February, when a 5-4 Supreme Court ruled in Clapper v. Amnesty International that a coalition of attorneys and human rights, labor, legal, and media organizations could not pursue their constitutional challenge to section 702—the basis for the subsequently disclosed PRISM program—because, owing to the secret nature of such surveillance (at least before Edward Snowden came along), they could not demonstrate that interception of their communications was “certainly impending.” These three sets of cases are hardly exhaustive. Even a cursory perusal of other challenges to U.S. counterterrorism policies reveals a host of other non-merits grounds on which these suits have been dismissed, including the state secrets privilege; official immunity doctrines; and failure to satisfy heightened pleading standards. (I’ve described these cases as “The New National Security Canon.”) Indeed, one is hard-pressed to find post-9/11 counterterrorism damages suits in which the government actually won on the merits—that is, where a court held that the plaintiff was not entitled to damages simply because his rights were not actually violated. To be sure, many of these decisions may simply reflect a larger pattern, not limited to national security cases, wherein it has become increasingly difficult for plaintiffs to obtain damages for unlawful government conduct writ large. But whatever the merits of that larger theme, it has three especially pernicious consequences for accountability in the national security arena specifically. First, from the plaintiffs’ perspectives, such decisions have the effect, if not the intent, of appearing to validate the government’s conduct—even in cases, like Arar, in which all now agree that the government acted wrongly. As a consequence, the inability to obtain damages relief may well give rise to a form of functional impunity—not just for the offending government officers, but for those who follow in their footsteps, for whom no precedent has been set specifically disclaiming the government’s ability to engage in the same controversial policies in the future. Whereas any number of other mechanisms exist outside the damages context to create forward-looking precedent in non-counterterrorism cases, it may well be damages or bust in these cases.

#### Allied terror coop high now

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

#### No terrorism impact – it’s alarmism

Mueller ’12 (John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, International Security, Vol. 37, No. 1, pp. 81–110, Summer 2012)

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. In 2005 an FBI report found that, despite years of well-funded sleuthing, the Bureau had yet to uncover a single true al-Qaida sleeper cell in the United States. The report was secret but managed to be leaked. Brian Ross, “Secret FBI Report Questions Al Qaeda Capabilities: No ‘True’ Al Qaeda Sleeper Agents Have Been Found in U.S.,” ABC News, March 9, 2005. Fox News reported that the FBI, however, observed that “just because there’s no concrete evidence of sleeper cells now, doesn’t mean they don’t exist.” “FBI Can’t Find Sleeper Cells,” Fox News, March 10, 2005. Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002. 47 By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” 48 Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000. 49 In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders. 50 If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs. Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones. 52

#### They’re shifting to localized operations – no desire

**Sofer ’11** (The Evolution of Terrorism Since 9/11 From Hierarchical Organizations to Small Groups and Individuals SOURCE: AP/TV2 Norway By Ken Sofer | September 9, 2011 Ken Sofer is the Special Assistant for National Security at American Progress.

When Osama bin Laden’s body was buried at sea, many observers believed an era in transnational terrorism was buried with him. In truth, the era of transnational terrorism reached its pinnacle in the atrocities of September 11 a full decade ago. **Over the last 10 years, the structure of terrorist groups has evolved**, in part because of American and allied policies, and in part because new technologies have opened up a new model of terrorism. Gone are the days of a centralized, hierarchical international terrorist movement with Al Qaeda clearly in the lead. That system has been replaced by a much more diffuse network of regional terrorist groups and individual actors connected to terrorist leaders only by the Internet. The breakdown of the hierarchical system of terror When bin Laden organized Al Qaeda in the late 1980s, he envisioned the group as an army of the faithful, which he could train and mobilize to fight kuffar, or nonbelievers, throughout Muslim lands. He financed training camps in tribal Pakistan, developed a system of recruitment for would-be suicide bombers, and planned complex operations, which required adherence to a strict chain of command. The attacks on the Twin Towers in New York represented the pinnacle of organized, hierarchical terrorism and would have been impossible to execute without Al Qaeda’s deep pockets and operational expertise. Since that day **the United States has eliminated Al Qaeda’s operational safe haven** in Afghanistan **and decimated its core leadership**. A combination of **raids, police stings, and the** increased use of **drone strikes under** President Barack Obama have **led to the capture or killing of** many of Al Qaeda’s **mid- to senior-level leaders**, most notably bin Laden, and most recently Atuyah Abd al Rahman, a key figure in the organization’s operations. The death of Al Qaeda’s core leadership and its loss of a safe haven in Afghanistan puts the organization close to strategic defeat, according to White House counterterrorism chief John Brennan. While Brennan’s comments on Al Qaeda’s imminent demise are likely overly optimistic, the organization is clearly weaker than it was a decade ago and has become increasingly reliant on a variety of ideologically sympathetic affiliates in Yemen, Algeria, and Iraq who have adopted the Al Qaeda name brand. While these affiliates, most notably the Yemen-based Al Qaeda in the Arabian Peninsula, or AQAP, maintain close ties to bin Laden’s Pakistan-based core and adhere to its central message, these organizations operate independently of Al Qaeda Central and do not generally coordinate with one another. Further, the new leadership of Ayman al Zawahiri, an extremely divisive figure in the jihadist community, likely means Al Qaeda Central will have a more difficult time controlling operatives and affiliates around the world. The increasingly confederate nature of Al Qaeda has broken down the hierarchical system bin Laden built in the late 1970s and 1980s. Lower barriers of access to terrorism Al Qaeda has adapted to the increasing difficulty of maintaining a physical organization in an identifiable safe haven such as Afghanistan by relying on the Internet and public media to spread its ideology and give individuals the tools to become terrorists. Just as Twitter and blogs made everyone a potential journalist, Al Qaeda and its affiliates launched a variety of media outlets and websites with the hope of making everyone a potential terrorist. Publications such as AQAP’s English-language magazine Inspire feature interviews with prominent leaders and how-to articles such as “Make a Bomb in the Kitchen of Your Mom.” Meanwhile, Al Qaeda’s media production house As Sahab produces “documentary-quality films, iPod files and cellphone video” for distribution across terrorist-sympathetic message boards and blogs. The effect of this propaganda boom and the proliferation of easily attainable bomb-making instructions has been a further decentralization of international terrorism. While members of terrorist cells still actively recruit radicals to carry out attacks, such as the failed Times Square bomb plot last year, terrorism has become increasingly reliant on volunteers who are inspired by Al Qaeda’s ideology. One example is Fort Hood shooter Nidal Malik Hasan, who killed 13 people in 2009 and was inspired by AQAP’s Anwar al Awlaki. Hasan regularly emailed Awlaki for spiritual guidance and justification in the lead-up to the attack. To an extent, the increasing decentralization of terrorism represents a loss in Al Qaeda’s operational capabilities. This means that they are less likely to pull off another expensive and complex attack like 9/11. But the decentralization of terrorism also poses a variety of new threats. For one, it makes it significantly harder for the intelligence community to track would-be terrorists and thwart their efforts, which is why the only successful attacks in the United States since 9/11 have been gunmen acting alone inspired by the Al Qaeda ideology. Al Qaeda’s ability to communicate and spread its ideology to a constituency of radicals is likely its most powerful remaining tool since 9/11, and now that a potential terrorist can Google an inspirational sermon and bomb-making instructions instead of needing to fly to a training camp in Kandahar, this tool has become even more potent. The near enemy vs. the far enemy One of the truly unique and dangerous elements of Al Qaeda’s brand of terrorism is its transnational nature. Bin Laden and many of his followers derided the governments of most Muslim-majority nations, in particular Saudi Arabia and Egypt, as apostates. Yet instead of targeting these governments, often referred to as the “near enemy,” Al Qaeda believed that destroying their U.S. and Western allies, the “far enemy,” would more effectively lead to the downfall of apostate Arab regimes. The group’s transnational aims and focus on the United States made it unique among terrorist organizations and brought jihadist terrorism to American soil. **Over the last decade, the United States has demonstrated the enormous costs associated with making it a target.** **When coupled with the death of bin Laden, the most effective advocate for this strategy,** **the near enemy/far enemy balance has shifted decidedly in favor of the near enemy.** Al Qaeda affiliates, with the possible exception of AQAP, seem much more concerned about **attacking domestic targets** **as opposed to spending their resources on a much more difficult attack on the other side of the planet.** Additionally, Al Qaeda’s membership now frequently loses recruits to organizations such as the Afghan Taliban, Hamas, Hezbollah, or Lashkar-e-Taiba who have purely national and not transnational aspirations. These organizations may be similar to Al Qaeda in that they use violence to kill civilians and seek to establish a conservative Islamist caliphate, but their goals only apply to the country they operate in. Of **the 48 groups designated** by the Department of State **as** Foreign **Terrorist** Organizations, Al Qaeda is the only group left with truly global operations and aspirations. The remaining groups, such as the Kurdish PKK, the Colombian FARC, the Sri Lankan Tamil Tigers, and the Japanese Aum Shinrikyo **have a distinctly national** or semiregional **focus**. Many of these groups frequently target American citizens, soldiers, and interests in their countries, but **they** either **do not possess the capabilities or desire to launch an attack on U.S. or European soil.** What do these changes mean for terrorism in America today? Since 9/11 we have braced for the possibility of another catastrophic attack on U.S. soil and pursued policies that have thankfully prevented such an attack from happening again. **But largely because of our success in decapitating and dismantling terrorist networks and organizations, the landscape of terrorism looks very different** than it did 10 years ago. Today we are less likely to face a large, complex attack from an enemy organization abroad such as Al Qaeda. But we remain vulnerable to a smaller, less traceable attack from an individual or small group of individuals here in the United States. Incidents such as the Oklahoma City bombing in 1995, the Fort Hood shooting in 2009, or the Oslo attacks earlier this year are likely to become the dominant strain of terrorism entering the next decade after 9/11. While many would-be terrorists are inspired by the ideology of Al Qaeda and Anwar al Awlaki, as we have seen, lone-wolf terrorists can draw their inspiration from antigovernment or xenophobic ideologies as well.

#### No risk of nuclear terror—means and motive

**Chapman 12** [Stephen, columnist and editorial writer for the Chicago Tribune “The Implausibility of Nuclear Terrorism” May 17 http://reason.com/archives/2012/05/17/the-implausibility-of-nuclear-terrorism]

Given their inability to do something simple — say, shoot up a shopping mall or set off a truck bomb — it’s reasonable to ask whether they have a chance at something much more ambitious. Far from being plausible, argued Ohio State University professor John Mueller in a presentation at the University of Chicago, “the likelihood that a terrorist group will come up with an atomic bomb **seems to be vanishingly small**.” The events required to make that happen comprise a **multitude of Herculean tasks**. First, a terrorist group has to get a bomb or fissile material, perhaps from Russia’s inventory of decommissioned warheads. If that were easy, **one would have already gone missing**. Besides, those devices are probably no longer a danger, since weapons that are not maintained quickly become what one expert calls “**radioactive scrap metal**.” If terrorists were able to steal a Pakistani bomb, they would still have to defeat the arming codes and other safeguards designed to prevent unauthorized use. As for Iran, no nuclear state has ever given a bomb to an ally — for reasons even the Iranians can grasp. Stealing some 100 pounds of bomb fuel would require help from rogue individuals inside some government who are prepared to jeopardize their own lives. Then comes the task of building a bomb. It’s not something you can gin up with spare parts and power tools in your garage. It requires millions of dollars, a safe haven and advanced equipment — plus people with specialized skills, lots of time and a willingness to die for the cause. Assuming the jihadists vault over those Himalayas, they would have to deliver the weapon onto American soil. Sure, drug smugglers bring in contraband all the time — but seeking their help would confront the plotters with possible **exposure or extortion**. This, like every other step in the entire process, means expanding the circle of people who know what’s going on, **multiplying the chance someone will blab, back out or screw up**. That has heartening implications. If al-Qaida embarks on the project, **it has only a minuscule chance** of seeing it bear fruit. **Given the** formidable **odds, it** probably **won’t bother.**

#### History proves there won’t be over reaction to an attack

**Mueller ‘5** John, Professor Political Science - Ohio State University (Conflict Studies Conference, psweb.sbs.ohio-state.edu/faculty/jmueller/NB.PDF)

However, history clearly demonstrates that overreaction is not necessarily inevitable. Sometimes, in fact, leaders have been able to restrain their instinct to overreact. Even more important, restrained reaction--or even capitulation to terrorist acts--has often proved to be entirely acceptable politically. That is, there are many instances where leaders did nothing after a terrorist attack (or at least refrained from overreacting) and did not suffer politically or otherwise.

### 1NC immence

#### Strikes are down because precision is up---solves the case but avoids the DA

WT 10-9 – Washington Times, 10/9/13, “Drone strikes plummet as U.S. seeks more human intelligence,” http://www.washingtontimes.com/news/2013/oct/9/drone-strikes-drop-as-us-craves-more-human-intelli/print/

The number of drone strikes approved by the Obama administration on suspected terrorists has fallen dramatically this year, as the war with al Qaeda increasingly shifts to Africa and U.S. intelligence craves more captures and interrogations of high-value targets.

U.S. officials told The Washington Times on Wednesday that the reasons for a shift in tactics are many — including that al Qaeda's senior ranks were thinned out so much in 2011 and 2012 by an intense flurry of drone strikes, and that the terrorist network has adapted to try to evade some of Washington's use of the strikes or to make them less politically palatable.

But the sources acknowledged that a growing desire to close a recent gap in actionable human intelligence on al Qaeda's evolving operations also has renewed the administration's interest in more clandestine commando raids like the one that netted a high-value terrorist suspect in Libya last weekend.

Capturing and interrogating suspects can provide valuable intelligence about a terrorist network that has been morphing from its roots with a central command in Pakistan and Afghanistan (known as intelligence circles as the FATA) to more diverse affiliates spread most notably across North Africa, officials and analysts said.

"Al Qaeda's senior leadership in Pakistan has been steadily degraded. What remains of the group's core is still dangerous but spends much of its time thinking about personal security," one senior counterterrorism official told The Times, speaking on the condition of anonymity because of the secret nature of the drone program. "As the nature of the threat emanating from the FATA changes, it follows that the U.S. government's counterterrorism approach is going to shift accordingly."

The decreased reliance on drones was in full view last weekend when one team of commandos from the Army's Delta Force captured long-sought al Qaeda operative Abu Anas al-Libi in Tripoli and a Navy SEAL team failed to take down an al Qaeda affiliate leader in Somalia.

The U.S. has carried out nearly 400 drone strikes over the past decade in Pakistan, Yemen and Somalia, a tactic that killed numerous senior operatives. But al Qaeda leaders have been increasing their own counterintelligence activities and moving to more populated areas in order to increase the risks of civilian casualties, two developments that have made the strikes less politically palatable and effective, analysts and intelligence sources say.

As a result, the number of drone strikes carried out against al Qaeda suspects in the Middle East and South Asia has dropped by half over the past year. There were 22 drone strikes on targets in Pakistan during the first 10 months of this year, compared with 47 carried out during 2012 and 74 in 2011, according to data compiled by the London-based Bureau of Investigative Journalism, the leading independent body examining the U.S. government's secretive drone program.

But intelligence officials and some national security analysts cautioned against reading too deeply into such data, saying the U.S. remains committed to using drones when it makes sense.

"Given the clandestine nature of the program, it's impossible to assess the reasons why the number of strikes has decreased over time," said Seth Jones, a political scientist who specializes in counterterrorism studies at the Rand Corp., a research institution with headquarters in California.

"We just don't have access to the information," he said.

Thirst for new intelligence

With U.S. counterterrorism officials eager to pin down fresh and actionable intelligence on what several sources described as a gradually metastasizing and complex network of al Qaeda affiliate groups concentrated in North Africa, most analysts say it would make sense for the Obama administration to begin favoring capture-and-interrogate missions.

"Raids allow you to both potentially capture a high-value target and exploit his knowledge through interrogations," said Daniel R. Green, an al Qaeda and Yemen analyst at the Washington Institute for Near East Policy. When U.S. soldiers are on the ground for a raid, Mr. Green said, it means they can "collect additional materials of intelligence value from the dwelling, further assisting in the planning of follow-on operations."

Others said heavy reliance on drones has only added to America's potentially dangerous deficit of human intelligence on al Qaeda. "If you're not capturing guys to get that intel, then, yeah, you're going to be missing a part of the picture — if not a large part of the picture," said Thomas Joscelyn, a senior fellow focusing on al Qaeda and North Africa at the Foundation for Defense of Democracies.

"You can rely extensively on electronic intelligence, but you still need that [human intelligence]to put the full picture together," said Mr. Joscelyn, who added that recent years have fostered a "fetish within some parts of the intelligence community for drone attacks because they've succeeded in taking out some very high-level targets.

"There are other parts of the American military and intelligence community that understand that drones are not going to win this war," he said. "Drones are a necessary tactic, but they are not a strategy."

Last weekend's raids in Libya and Somalia are "evidence that there's more emphasis now on capture than on kill," said Linda Robinson a senior international policy analyst at the Rand Corp.

"It is an indication of the shift that was alluded to by the president in May," said Mrs. Robinson, referring to a speech President Obama gave at the National Defense University in which he stressed that "as a matter of policy, the preference of the United States is to capture terrorist suspects."

Mrs. Robinson said there is "recognition that, frankly, you get something from raids, which you don't get from drones." Raids allow for capturing a suspect and can lead to an "incredible intelligence dump" from that individual, she said.

Drones still on the table

During the May speech on terrorism, Mr. Obama acknowledged the use of drones as a central tactic within his administration's war strategy and suggested it will continue.

At the time, Mr. Obama said it "not possible for America to simply deploy a team of Special Forces to capture every terrorist."

Citing instances in which doing so "would pose profound risks to our troops and local civilians" and where "putting U.S. boots on the ground may trigger a major international crisis," Mr. Obama said the secret May 2011 Navy SEAL operation that resulted in the killing of al Qaeda leader Osama bin Laden "cannot be the norm."

In the shadow of such remarks from the president, some analysts say, such raids likely would pose challenges in Yemen, where the Obama administration has relied heavily on the use of drones.

A raid such as the one that netted al-Libi in Tripoli would be "much more difficult" in Yemen "in part because potential targets are far more inland, thus complicating an attack from the sea," said Mr. Green, at the Washington Institute for Near East Policy.

"Also, the Yemeni government is much more capable and would likely detect such a raid, as compared to Libya's anarchic conditions, and al Qaeda is a much more developed force in Yemen, which will have already adapted to this new tactic by U.S. forces," he said.

Mrs. Robinson said that "with a raid, of course, you incur more risk for those U.S. forces usually, special operations forces that you're putting on the ground."

"I don't think there's a big appetite to go around launching raids unless there is a clear U.S. national security interest to do so," she said. "The political and diplomatic and atmospheric risks or counterproductive effects have to be very much weighed in the equation."

#### Imminence standard are fine

Benjamin Wittes, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and a member of the Hoover Institution's Task Force on National Security and Law, 2/27/13, In Defense of the Administration on Targeted Killing of Americans, www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/

A great deal of confusion and anxiety about the targeting of American citizens has flowed from the inelegant discussion in the White Paper of the word “imminent.” Neither the White Paper nor Holder’s speech makes clear what precise legal question the concept of imminence is addressing in its analysis. It is a bit of a mystery, in fact, whether the administration is using it to address resort-to-force matters under international law, domestic separation-of-powers questions, issues of the constitutional rights of the targets, as a possible defense against criminal prohibitions on killing Americans, or perhaps as a prudential invocation of the standards of international human rights law. What is clear is that the administration, for whatever reason, has limited itself in targeting Americans overseas to circumstances of an imminent threat. And its specific characterization of imminence has produced a barrage of criticism. The criticism, in my view, is unwarranted and rests on a misreading of the White Paper. Although it is true that the administration is using the term in a manner slightly relaxed from its common-sense meaning, many **commentators** and media figures **are dramatically overstating the degree of relaxation**. A word of explanation on this point is in order.

The term “imminent threat,” as the administration uses it, is something of a term of art—one that does not equate precisely to the common understanding of the word.Attorney General Holder has openly emphasized—consistent with the U.S. view of imminence in other national-security law circumstances—that this use does not mean imminence in some immediate temporal sense. It does not mean, for example, the last chance to act before disaster strikes. Rather, this definition of imminence incorporates a more flexible notion of an open window in time to address a threat which, left unaddressed, has independent momentum toward an unacceptable outcome. The Constitution, Holder explained,

does not require the president to delay action until some theoretical end-stage of planning—when the precise time, place, and manner of an attack become clear. Such a requirement would create an unacceptably high risk that our efforts would fail and that Americans would be killed.

Whether the capture of a U.S. citizen terrorist is feasible is a fact-specific, and potentially time-sensitive, question. It may depend on, among other things, whether capture can be accomplished in the window of time available to prevent an attack and without undue risk to civilians or to U.S. personnel. Given the nature of how terrorists act and where they tend to hide, it may not always be feasible to capture a United States citizen terrorist who presents an imminent threat of violent attack. In that case, our government has the clear authority to defend the United States with lethal force.

The White Paper’s wording on the subject of imminence is unfortunately imprecise, but it should not be over-read as authorizing—as one journalist put it—the killing of top Al Qaeda leaders “even if there is no intelligence indicating they are engaged in an active plot to attack the U.S.” In reality, the White Paper says something much more modest: that a finding of imminence does not require “clear evidence” that “a specific attack” will take place in the “immediate future.” It goes on to say that for those senior Al Qaeda leaders who are “continually planning attacks,” one has to consider the window of opportunity available in which to act against them and the probability that another window may not open before an attack comes to fruition. The result is that a finding of imminence for such a senior-level Al Qaeda operational leader can be based on a determination that such a figure is “personally and continually” planning attacks—not on a determination that any one planned attack is necessarily nearing ripeness.

The confusion arises largely out of a single, poorly-worded and easily misunderstood passage on page 8 of the White Paper:

a high-level official could conclude, for example, that an individual poses an “imminent threat” of violent attack against the United States where he is an operational leader of Al Qa’ida or an associated force and is personally continually involved in planning terrorist attacks against the United States. Moreover, where the al-Qa’ida member in question has recently been involved in activities posing an imminent threat of violent attack against the United States, and there is no evidence suggesting that he has renounced or abandoned such activities, that member’s involvement in al-Qa’ida’s continuing terrorist campaign against the United States would support the conclusion that the member poses an imminent threat.

The temptation is to read this passage broadly, as stating that targeting may be predicated on nothing more than an unrenounced history of plotting attacks—and without regard for the target’s present-day activities. In my view, however, such a reading places the White Paper at odds both with other public administration statements and with the history of U.S. interpretation of “imminence” in the international law context. The better way to understand the passage is that the first sentence of the paragraph states the general rule: that an Al Qaeda operational leader may be considered an imminent threat if he is “personally continually” planning attacks against the United States. The second sentence states the view that when evaluating whether a potential target is personally and continually planning such attacks, his recent activity is important to that evaluation, and a recent history of plotting major attacks will tend to support the inference that a person is currently plotting as well—at least to the extent it is not contradicted by some sort of renunciation of violence.

Read this way, the passage strikes me as both correct and unsurprising. If one is trying to assess whether Anwar Al Aulaqi is personally and continually planning major attacks against the U.S., after all, surely it is not irrelevant that he had only recently coaxed Umar Farouk Abdulmutallab onto a plane with a bomb, emailed with would-be terrorists in Britain about how to carry out attacks on aviation, and corresponded with Nidal Hassan in the run-up to the latter’s shooting at Fort Hood. To the contrary, surely this pattern of behavior supports an inference—at least to some extent—that this is a person who is continually plotting attacks of this nature. And surely it is also relevant that the possible target has not merely failed to renounce participation in such attacks but is also continuing to release videos calling for them.

Whether a pattern of this sort would adequately and on its own support a finding that an individual is continually involved in plotting major attacks would likely depend on how recent the pattern was, and how extensive. But there is nothing especially remarkable about the government’s position that for senior operational figures, recent past leadership conduct of an operational nature can serve as probative evidence of a figure’s current role.

While the precise contours of the administration’s thinking on the subject will remain unclear as long as it refuses to release the underlying legal memoranda, there is good reason to believe that this narrower reading of the White Paper’s “imminence” language—and not the more expansive readings—accurately reflects the administration’s thinking.

Unless and until the broader readings of the White Paper’s imminence language are confirmed to reflect administration thinking, **there is no reason to believe that the government has adopted a concept of imminence so expansive as to widen the narrow conception of the category** the administration has declared the lawful authority to target. Nor is there any evidence to suggest that the government is, in fact, targeting Americans based on nothing more than a distant pattern of past acts.

#### Casualties are way down and drones are far more precise than alternatives---our ev uses the best data

Michael Cohen 13, Fellow at the Century Foundation, 5/23/13, “Give President Obama a chance: there is a role for drones,” The Guardian, http://www.theguardian.com/commentisfree/2013/may/23/obama-drone-speech-use-justified

Drone critics have a much different take. They are passionate in their conviction that US drones are indiscriminately killing and terrorizing civilians. The Guardian's own Glenn Greenwald argued recently that no "minimally rational person" can defend "Obama's drone kills on the ground that they are killing The Terrorists or that civilian deaths are rare". Conor Friedersdorf, an editor at the Atlantic and a vocal drone critic, wrote last year that liberals should not vote for President Obama's re-election because of the drone campaign, which he claimed "kills hundreds of innocents, including children," "terrorizes innocent Pakistanis on an almost daily basis" and "makes their lives into a nightmare worthy of dystopian novels". ¶ I disagree. Increasingly it appears that arguments like Friedersdorf makes are no longer sustainable (and there's real question if they ever were). Not only have drone strikes decreased, but so too have the number of civilians killed – and dramatically so. ¶ This conclusion comes not from Obama administration apologists but rather, Chris Woods, whose research has served as the empirical basis for the harshest attacks on the Obama Administration's drone policy. ¶ Woods heads the covert war program for the Bureau of Investigative Journalism (TBIJ), which maintains one of three major databases tabulating civilian casualties from US drone strikes. The others are the Long War Journal and the New America Foundation (full disclosure: I used to be a fellow there). While LWJ and NAJ estimate that drone strikes in Pakistan have killed somewhere between 140 and 300 civilians, TBIJ utilizes a far broader classification for civilians killed, resulting in estimates of somewhere between 411-884 civilians killed by drones in Pakistan. The wide range of numbers here speaks to the extraordinary challenge in tabulating civilian death rates. ¶ There is little local reporting done on the ground in northwest Pakistan, which is the epicenter of the US drone program. As a result data collection is reliant on Pakistani news reporting, which is also dependent on Pakistani intelligence, which has a vested interest in playing up the negative consequences of US drones. ¶ When I spoke with Woods last month, he said that a fairly clear pattern has emerged over the past year – far fewer civilians are dying from drones. "For those who are opposed to drone strikes," says Woods there is historical merit to the charge of significant civilian deaths, "but from a contemporary standpoint the numbers just aren't there." ¶ While Woods makes clear that one has to be "cautious" on any estimates of casualties, it's not just a numeric decline that is being seen, but rather it's a "proportionate decline". In other words, the percentage of civilians dying in drone strikes is also falling, which suggests to Woods that US drone operators are showing far greater care in trying to limit collateral damage. ¶ Woods estimates are supported by the aforementioned databases. In Pakistan, New America Foundation claims there have been no civilian deaths this year and only five last year; Long War Journal reported four deaths in 2012 and 11 so far in 2013; and TBIJ reports a range of 7-42 in 2012 and 0-4 in 2013. In addition, the drop in casualty figures is occurring not just in Pakistan but also in Yemen. ¶ These numbers are broadly consistent with what has been an under-reported decline in drone use overall. According to TBIJ, the number of drone strikes went from 128 in 2010 to 48 in 2012 and only 12 have occurred this year. These statistics are broadly consistent with LWJ and NAF's reporting. In Yemen, while drone attacks picked up in 2012, they have slowed dramatically this year. And in Somalia there has been no strike reported for more than a year. ¶ Ironically, these numbers are in line with the public statements of CIA director Brennan, and even more so with Senator Dianne Feinstein of California, chairman of the Select Intelligence Committee, who claimed in February that the numbers she has received from the Obama administration suggest that the typical number of victims per year from drone attacks is in "the single digits".¶ Part of the reason for these low counts is that the Obama administration has sought to minimize the number of civilian casualties through what can best be described as "creative bookkeeping". The administration counts all military-age males as possible combatants unless they have information (posthumously provided) that proves them innocent. Few have taken the White House's side on this issue (and for good reason) though some outside researchers concur with the administration's estimates.¶ Christine Fair, a professor at Georgetown University has long maintained that civilian deaths from drones in Pakistan are dramatically overstated. She argues that considering the alternatives of sending in the Pakistani military or using manned aircraft to flush out jihadists, drone strikes are a far more humane method of war-fighting.

#### No Pakistani collapse – empirics are always on our side

**AP 10** (“Pakistan's stability, leadership under spotlight after floods and double dealing accusations,” August 6th, <http://www.foxnews.com/world/2010/08/06/pakistans-stability-leadership-spotlight-floods-double-dealing-accusations/>,

**Not for the first time, Pakistan appears to be teetering on the edge** with a government unable to cope. Floods are ravaging a country at war with al-Qaida and the Taliban. Riots, slayings and arson are gripping the largest city. Suggestions are flying that the intelligence agency is aiding Afghan insurgents. The crises raise questions about a nation crucial to U.S. hopes of success in Afghanistan and to the global campaign against Islamist militancy. **Despite the recent headlines, few** here **see Pakistan in danger of collapse or being overrun by militants** — a fear that had been expressed before the army fought back against insurgents advancing from their base in the Swat Valley early last year. **From its birth in 1947, Pakistan has been dogged by military coups**, corrupt and inefficient leaders, natural **disasters**, assassinations **and civil unrest. Through it all, Pakistan** has not prospered — but it **survives**. “There is plenty to be worried about, but also indications that **when push comes to shove the state is able to respond**," said Mosharraf Zaidi, an analyst and writer who has advised foreign governments on aid missions to Pakistan. "**The military** has many weaknesses, but it **has done a reasonable job** in relief efforts. There have been gaps in the response. But this is a developing a country, right?" The recent flooding came at a sensitive time for Pakistan, with Western doubts over its loyalty heightened by the leaking of U.S. military documents that strengthened suspicions the security establishment was supporting Afghan insurgents while receiving billions in Western aid. With few easy choices, the United States has made it clear it intends to stick with Pakistan. Indeed, it has used the floods to demonstrate its commitment to the country, rushing emergency assistance and dispatching helicopters to ferry the goods. The Pakistani government's response to the floods has been sharply criticized at home, especially since President Asif Ali Zardari departed for a European tour. With so many Pakistanis suffering, the trip has left the already weak and unpopular leader even more vulnerable politically. The flooding was triggered by what meteorologists said were "once-in-a-century" rains. The worst affected area is the northwest, a stronghold for Islamist militants. Parts of the northwest have seen army offensives over the last two years. Unless the people are helped quickly and the region is rebuilt, anger at the government could translate into support for the militants. At least one charity with suspected links to a militant outfit has established relief camps there. The extremism threat was highlighted by a suicide bombing in the main northwestern town of Peshawar on Wednesday. The bomber killed the head of the Frontier Constabulary, a paramilitary force in the northwest at the forefront of the terror fight. With authorities concentrating on flood relief, some officials have expressed concern that militants could regroup. The city of Karachi has seen militant violence and is rumored to be a hiding place for top Taliban and al-Qaida fighters. It has also been plagued by regular bouts of political and ethnic bloodletting since the 1980s, though it has been calmer in recent years. The latest violence erupted after the assassination of a leading member of the city's ruling party. More than 70 people have been killed in revenge attacks since then, paralyzing parts of the city of 16 million people. While serious, the **unrest does not** yet **pose an immediate threat to the stability of the country.** Although the U.S. is unpopular, **there is little public support for the hardline Islamist rule espoused by the Taliban and their allies**. Their small movement has been unable to control any Pakistani territory beyond the northwest, home to only about 20 million of the country's 175 million people.

#### Best study proves no conflict from econ decline

**Brandt and Ulfelder ‘11** (\*Patrick T. Brandt, Ph.D. in Political Science from Indiana University, is an Assistant Professor of Political Science in the School of Social Science at the University of Texas at Dallas. \*\*Jay Ulfelder, Ph.D. in political science from Stanford University, is an American political scientist whose research interests include democratization, civil unrest, and violent conflict, April, 2011, “Economic Growth and Political Instability,” Social Science Research Network)

These statements anticipating political fallout from the global economic crisis of 2008–2010 reflect a widely held view that economic growth has rapid and profound effects on countries’ political stability. When economies grow at a healthy clip, citizens are presumed to be too busy and too content to engage in protest or rebellion, and governments are thought to be flush with revenues they can use to enhance their own stability by producing public goods or rewarding cronies, depending on the type of regime they inhabit. When growth slows, however, citizens and cronies alike are presumed to grow frustrated with their governments, and the leaders at the receiving end of that frustration are thought to lack the financial resources to respond effectively. The expected result is an increase in the risks of social unrest, civil war, coup attempts, and regime breakdown. Although it is pervasive, the assumption that countries’ economic growth rates strongly affect their political stability **has not been subjected to** a great deal of careful **empirical analysis, and evidence from social science research** to date **does not** unambiguously **support it.** Theoretical models of civil wars, coups d’etat, and transitions to and from democracy often specify slow economic growth as an important cause or catalyst of those events, but empirical studies on the effects of economic growth on these phenomena have produced mixed results. Meanwhile, the effects of economic growth on the occurrence or incidence of social unrest seem to have **hardly** been **studied in recent years**, as empirical analysis of contentious collective action has concentrated on political opportunity structures and dynamics of protest and repression. This paper helps fill that gap by rigorously re-examining the effects of short-term variations in economic growth on the occurrence of several forms of political instability in countries worldwide over the past few decades. In this paper, we do not seek to develop and test new theories of political instability. Instead, we aim to subject a hypothesis common to many prior theories of political instability to more careful empirical scrutiny. The goal is to provide a detailed empirical characterization of the relationship between economic growth and political instability in a broad sense. In effect, we describe the conventional wisdom as seen in the data. We do so with statistical models that use smoothing splines and multiple lags to allow for nonlinear and dynamic effects from economic growth on political stability. We also do so with an instrumented measure of growth that explicitly accounts for endogeneity in the relationship between political instability and economic growth. To our knowledge, **ours is the first statistical study** of this relationship to simultaneously address the possibility of **nonlinearity and** problems of **endogeneity**. As such, we believe this paper offers what is probably the most rigorous general **evaluation** of this argument **to date**. As the results show, some of our findings are surprising. Consistent with conventional assumptions, we find that social unrest and civil violence are more likely to occur and democratic regimes are more susceptible to coup attempts around periods of slow economic growth. At the same time, our analysis shows no significant relationship between variation in growth and the risk of civil-war onset, and results from our analysis of regime changes contradict the widely accepted claim that economic crises cause transitions from autocracy to democracy. While we would hardly pretend to have the last word on any of these relationships, our findings do suggest that the relationship between economic growth and political stability is **neither as uniform nor as strong as** the **conventional wisdom**(s) **presume**(s). We think **these findings** also help **explain why the** global **recession** of 2008–2010 **has failed** thus far to **produce** the wave of coups and regime failures that some observers had anticipated, in spite of the expected and apparent uptick in social **unrest** associated with the crisis.

## 2NC

### Overview

Kritik outweighs and turs the case –

#### this logic allows the government to view certain bodies as disposable - creates priming that psychologically structures escalation

Scheper-Hughes and Bourgois ‘4(Prof of Anthropology @ Cal-Berkely; Prof of Anthropology @ UPenn) (Nancy and Philippe, Introduction: Making Sense of Violence, in Violence in War and Peace, pg. 19-22)

This large and at first sight “messy” Part VII is central to this anthology’s thesis. It encompasses everything from the routinized, bureaucratized, and utterly banal violence of children dying of hunger and maternal despair in Northeast Brazil (Scheper-Hughes, Chapter 33) to elderly African Americans dying of heat stroke in Mayor Daly’s version of US apartheid in Chicago’s South Side (Klinenberg, Chapter 38) to the racialized class hatred expressed by British Victorians in their olfactory disgust of the “smelly” working classes (Orwell, Chapter 36). In these readings violence is located in the symbolic and social structures that overdetermine and allow the criminalized drug addictions, interpersonal bloodshed, and racially patterned incarcerations that characterize the US “inner city” to be normalized (Bourgois, Chapter 37 and Wacquant, Chapter 39). Violence also takes the form of class, racial, political self-hatred and adolescent self-destruction (Quesada, Chapter 35), as well as of useless (i.e. preventable), rawly embodied physical suffering, and death (Farmer, Chapter 34). Absolutely central to our approach is a blurring of categories and distinctions between wartime and peacetime violence. Close attention to the “little” violences produced in the structures, habituses, and mentalites of everyday life shifts our attention to pathologies of class, race, and gender inequalities. More important, it interrupts the voyeuristic tendencies of “violence studies” that risk publicly humiliating the powerless who are often forced into complicity with social and individual pathologies of power because suffering is often a solvent of human integrity and dignity. Thus, in this anthology we are positing a violence continuum comprised of a multitude of “small wars and invisible genocides” (see also Scheper- Hughes 1996; 1997; 2000b) conducted in the normative social spaces of public schools, clinics, emergency rooms, hospital wards, nursing homes, courtrooms, public registry offices, prisons, detention centers, and public morgues. The violence continuum also refers to the ease with which humans are capable of reducing the socially vulnerable into expendable nonpersons and assuming the license - even the duty - to kill, maim, or soul-murder. We realize that in referring to a violence and a genocide continuum we are flying in the face of a tradition of genocide studies that argues for the absolute uniqueness of the Jewish Holocaust and for vigilance with respect to restricted purist use of the term genocide itself (see Kuper 1985; Chaulk 1999; Fein 1990; Chorbajian 1999). But we hold an opposing and alternative view that, to the contrary, it is absolutely necessary to make just such existential leaps in purposefully linking violent acts in normal times to those of abnormal times. Hence the title of our volume: Violence in War and in Peace. If (as we concede) there is a moral risk in overextending the concept of “genocide” into spaces and corners of everyday life where we might not ordinarily think to find it (and there is), an even greater risk lies in failing to sensitize ourselves, in misrecognizing protogenocidal practices and sentiments daily enacted as normative behavior by “ordinary” good-enough citizens. Peacetime crimes, such as prison construction sold as economic development to impoverished communities in the mountains and deserts of California, or the evolution of the criminal industrial complex into the latest peculiar institution for managing race relations in the United States (Waquant, Chapter 39), constitute the “small wars and invisible genocides” to which we refer. This applies to African American and Latino youth mortality statistics in Oakland, California, Baltimore, Washington DC, and New York City. These are “invisible” genocides not because they are secreted away or hidden from view, but quite the opposite. As Wittgenstein observed, the things that are hardest to perceive are those which are right before our eyes and therefore taken for granted. In this regard, Bourdieu’s partial and unfinished theory of violence (see Chapters 32 and 42) as well as his concept of misrecognition is crucial to our task. By including the normative everyday forms of violence hidden in the minutiae of “normal” social practices - in the architecture of homes, in gender relations, in communal work, in the exchange of gifts, and so forth - Bourdieu forces us to reconsider the broader meanings and status of violence, especially the links between the violence of everyday life and explicit political terror and state repression, Similarly, Basaglia’s notion of “peacetime crimes” - crimini di pace - imagines a direct relationship between wartime and peacetime violence. Peacetime crimes suggests the possibility that war crimes are merely ordinary, everyday crimes of public consent applied systematic- ally and dramatically in the extreme context of war. Consider the parallel uses of rape during peacetime and wartime, or the family resemblances between the legalized violence of US immigration and naturalization border raids on “illegal aliens” versus the US government- engineered genocide in 1938, known as the Cherokee “Trail of Tears.” Peacetime crimes suggests that everyday forms of state violence make a certain kind of domestic peace possible. Internal “stability” is purchased with the currency of peacetime crimes, many of which take the form of professionally applied “strangle-holds.” Everyday forms of state violence during peacetime make a certain kind of domestic “peace” possible. It is an easy-to-identify peacetime crime that is usually maintained as a public secret by the government and by a scared or apathetic populace. Most subtly, but no less politically or structurally, the phenomenal growth in the United States of a new military, postindustrial prison industrial complex has taken place in the absence of broad-based opposition, let alone collective acts of civil disobedience. The public consensus is based primarily on a new mobilization of an old fear of the mob, the mugger, the rapist, the Black man, the undeserving poor. How many public executions of mentally deficient prisoners in the United States are needed to make life feel more secure for the affluent? What can it possibly mean when incarceration becomes the “normative” socializing experience for ethnic minority youth in a society, i.e., over 33 percent of young African American men (Prison Watch 2002). In the end it is essential that we recognize the existence of a genocidal capacity among otherwise good-enough humans and that we need to exercise a defensive hypervigilance to the less dramatic, permitted, and even rewarded everyday acts of violence that render participation in genocidal acts and policies possible (under adverse political or economic conditions), perhaps more easily than we would like to recognize. Under the violence continuum we include, therefore, all expressions of radical social exclusion, dehumanization, depersonal- ization, pseudospeciation, and reification which normalize atrocious behavior and violence toward others. A constant self-mobilization for alarm, a state of constant hyperarousal is, perhaps, a reasonable response to Benjamin’s view of late modern history as a chronic “state of emergency” (Taussig, Chapter 31). We are trying to recover here the classic anagogic thinking that enabled Erving Goffman, Jules Henry, C. Wright Mills, and Franco Basaglia among other mid-twentieth-century radically critical thinkers, to perceive the symbolic and structural relations, i.e., between inmates and patients, between concentration camps, prisons, mental hospitals, nursing homes, and other “total institutions.” Making that decisive move to recognize the continuum of violence allows us to see the capacity and the willingness - if not enthusiasm - of ordinary people, the practical technicians of the social consensus, to enforce genocidal-like crimes against categories of rubbish people. There is no primary impulse out of which mass violence and genocide are born, it is ingrained in the common sense of everyday social life. The mad, the differently abled, the mentally vulnerable have often fallen into this category of the unworthy living, as have the very old and infirm, the sick-poor, and, of course, the despised racial, religious, sexual, and ethnic groups of the moment. Erik Erikson referred to “pseudo- speciation” as the human tendency to classify some individuals or social groups as less than fully human - a prerequisite to genocide and one that is carefully honed during the unremark- able peacetimes that precede the sudden, “seemingly unintelligible” outbreaks of mass violence. Collective denial and misrecognition are prerequisites for mass violence and genocide. But so are formal bureaucratic structures and professional roles. The practical technicians of everyday violence in the backlands of Northeast Brazil (Scheper-Hughes, Chapter 33), for example, include the clinic doctors who prescribe powerful tranquilizers to fretful and frightfully hungry babies, the Catholic priests who celebrate the death of “angel-babies,” and the municipal bureaucrats who dispense free baby coffins but no food to hungry families. Everyday violence encompasses the implicit, legitimate, and routinized forms of violence inherent in particular social, economic, and political formations. It is close to what Bourdieu (1977, 1996) means by “symbolic violence,” the violence that is often “nus-recognized” for something else, usually something good. Everyday violence is similar to what Taussig (1989) calls “terror as usual.” All these terms are meant to reveal a public secret - the hidden links between violence in war and violence in peace, and between war crimes and “peace-time crimes.” Bourdieu (1977) finds domination and violence in the least likely places - in courtship and marriage, in the exchange of gifts, in systems of classification, in style, art, and culinary taste- the various uses of culture. Violence, Bourdieu insists, is everywhere in social practice. It is misrecognized because its very everydayness and its familiarity render it invisible. Lacan identifies “rneconnaissance” as the prerequisite of the social. The exploitation of bachelor sons, robbing them of autonomy, independence, and progeny, within the structures of family farming in the European countryside that Bourdieu escaped is a case in point (Bourdieu, Chapter 42; see also Scheper-Hughes, 2000b; Favret-Saada, 1989). Following Gramsci, Foucault, Sartre, Arendt, and other modern theorists of power-vio- lence, Bourdieu treats direct aggression and physical violence as a crude, uneconomical mode of domination; it is less efficient and, according to Arendt (1969), it is certainly less legitimate. While power and symbolic domination are not to be equated with violence - and Arendt argues persuasively that violence is to be understood as a failure of power - violence, as we are presenting it here, is more than simply the expression of illegitimate physical force against a person or group of persons. Rather, we need to understand violence as encompassing all forms of “controlling processes” (Nader 1997b) that assault basic human freedoms and individual or collective survival. Our task is to recognize these gray zones of violence which are, by definition, not obvious. Once again, the point of bringing into the discourses on genocide everyday, normative experiences of reification, depersonalization, institutional confinement, and acceptable death is to help answer the question: What makes mass violence and genocide possible? In this volume we are suggesting that mass violence is part of a continuum, and that it is socially incremental and often experienced by perpetrators, collaborators, bystanders - and even by victims themselves - as expected, routine, even justified. The preparations for mass killing can be found in social sentiments and institutions from the family, to schools, churches, hospitals, and the military. They harbor the early “warning signs” (Charney 1991), the “priming” (as Hinton, ed., 2002 calls it), or the “genocidal continuum” (as we call it) that push social consensus toward devaluing certain forms of human life and lifeways from the refusal of social support and humane care to vulnerable “social parasites” (the nursing home elderly, “welfare queens,” undocumented immigrants, drug addicts) to the militarization of everyday life (super-maximum-security prisons, capital punishment; the technologies of heightened personal security, including the house gun and gated communities; and reversed feelings of victimization).

#### Third, the executive will redefine the law to violate and ignore the plan

Pollack, 13 -- MSU Guggenheim Fellow and professor of history emeritus [Norman, "Drones, Israel, and the Eclipse of Democracy," Counterpunch, 2-5-13, www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/, accessed 9-1-13, mss]

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to **remake the laws** of war by consciously violating them and then **creating new legal concepts to provide juridical cover** for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (**Obama is hardly a novice at** this game of **stretching the law to suit the convenience of**, shall we say, the **national interest**? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama **redefined the meaning** of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

#### Fourth, representations of war as an event bypass ethics--only viewing war in the everyday can foster an ethical approach to subverting all systems of oppression

Cuomo 96 (CHRIS J. is assistant professor of philosophy and women's studies at the University of Cincinnati. She teachescourses in ethics, feminist philosophy, social and political philosophy, environmental ethics, and lesbian and gay studies, fall [“War is not just an event: reflections on the significance of everyday violence,” Hypatia, v11.n4, pp30(16)]

Peach rightly identifies the pessimism, sexism, essentialism, and universalism at work in just-war theorists' conceptions of human nature. Nonetheless, she fails to see that just-war theorists employ ossified concepts of both "human nature" and "war." **Any interrogation of the relationships between war and "human nature,"** or more benignly,understandings and enactments of what it means to be diverse human agents in various contexts**, will be terribly limited insofar as they consider wars to be isolated events. Questions concerning the relationships between war and "human nature" become far more complex if we reject a conception of war** **that focuses only on events,** and abandon any pretense of arriving at universalist conceptions of human or female "nature." Feminist **ethical questions about war are not reducible to wondering how to avoid large-scale military conflict despite human tendencies toward violence. Instead, the central questions concern the omnipresence of militarism, the possibilities of making its presence visible, and the potential for resistance to its physical and hegemonic force**. Like **"solutions"** to the preponderance of violence perpetrated by men against women **that fail to analyze and articulate relationships between everyday violence and institutionalized or invisible systems of patriarchal, racist, and economic oppression, analyses that characterize eruptions of military violence as isolated, persistent events, are practically and theoretically insufficient.**

#### Fifth, if we win the thesis of the kritik they have no offense – The system is destroying itself now, making the only appropriate question whether to reform it or let it die—all the system is capable of is the inflicting of death and doing nothing

Prozorov 10. Sergei Prozorov, professor of political and economic studies at the University of Helsinki, “Why Giorgio Agamben is an optimist,” Philosophy Social Criticism 2010 36: pg. 1065

In a later work, Agamben generalizes this logic and transforms it into a basic ethical imperative of his work: ‘[There] is often nothing reprehensible about the individual behavior in itself, and it can, indeed, express a liberatory intent. What is disgraceful – both politically and morally – are the apparatuses which have diverted it from their possible use. We must always wrest from the apparatuses – from all apparatuses – the possibility of use that they have captured.’32 As we shall discuss in the following section, this is to be achieved by a subtraction of ourselves from these apparatuses, which leaves them in a jammed, inoperative state. What is crucial at this point is that the apparatuses of nihilism themselves prepare their demise by emptying out all positive content of the forms-of-life they govern and increasingly running on ‘empty’, capable only of (inflict- ing) Death or (doing) Nothing.¶ On the other hand, this degradation of the apparatuses illuminates the ‘inoperosity’ (worklessness) of the human condition, whose originary status Agamben has affirmed from his earliest works onwards.33 By rendering void all historical forms-of-life, nihi- lism brings to light the absence of work that characterizes human existence, which, as irreducibly potential, logically presupposes the lack of any destiny, vocation, or task that it must be subjected to: ‘Politics is that which corresponds to the essential inoperability of humankind, to the radical being-without-work of human communities. There is pol- itics because human beings are argos-beings that cannot be defined by any proper oper- ation, that is, beings of pure potentiality that no identity or vocation can possibly exhaust.’34¶ Having been concealed for centuries by religion or ideology, this originary inoperos- ity is fully unveiled in the contemporary crisis, in which it is manifest in the inoperative character of the biopolitical apparatuses themselves, which succeed only in capturing the sheer existence of their subjects without being capable of transforming it into a positive form-of-life:¶ [T]oday, it is clear for anyone who is not in absolutely bad faith that there are no longer historical tasks that can be taken on by, or even simply assigned to, men. It was evident start- ing with the end of the First World War that the European nation-states were no longer capa- ble of taking on historical tasks and that peoples themselves were bound to disappear.35¶ Agamben’s metaphor for this condition is bankruptcy: ‘One of the few things that can be¶ declared with certainty is that all the peoples of Europe (and, perhaps, all the peoples of the Earth) have gone bankrupt’.36 Thus, the destructive nihilistic drive of the biopolitical machine and the capitalist spectacle has itself done all the work of emptying out positive forms-of-life, identities and vocations, leaving humanity in the state of destitution that Agamben famously terms ‘bare life’. Yet, this bare life, whose essence is entirely con- tained in its existence, is precisely what conditions the emergence of the subject of the coming politics: ‘this biopolitical body that is bare life must itself be transformed into the site for the constitution and installation of a form-of-life that is wholly exhausted in bare life and a bios that is only its own zoe.’37¶ The ‘happy’ form-of-life, a ‘life that cannot be segregated from its form’, is nothing but bare life that has reappropriated itself as its own form and for this reason is no longer separated between the (degraded) bios of the apparatuses and the (endangered) zoe that functions as their foundation.38 Thus, what the nihilistic self-destruction of the appara- tuses of biopolitics leaves as its residue turns out to be the entire content of a new form-of-life. Bare life, which is, as we recall, ‘nothing reprehensible’ aside from its con- finement within the apparatuses, is reappropriated as a ‘whatever singularity’, a being that is only its manner of being, its own ‘thus’.39 It is the dwelling of humanity in this irreducibly potential ‘whatever being’ that makes possible the emergence of a generic non-exclusive community without presuppositions, in which Agamben finds the possi- bility of a happy life.¶ [If] instead of continuing to search for a proper identity in the already improper and sense- less form of individuality, humans were to succeed in belonging to this impropriety as such, in making of the proper being-thus not an identity and individual property but a singularity without identity, a common and absolutely exposed singularity, then they would for the first time enter into a community without presuppositions and without subjects.40¶ Thus, rather than seek to reform the apparatuses, we should simply leave them to their self-destruction and only try to reclaim the bare life that they feed on. This is to be achieved by the practice of subtraction that we address in the following section.

### Framework

#### 3. Fiat is not real – the k is an academic discussion of the underpinnings of the affirmative – by definition comes before the outcomes of the aff because winning that their epistomolgy is wrong means the aff should have never happened – this is specifically true of war powers debates

Pugliese, 13 -- Macquarie University Cultural Studies professor

[Joseph, Macquarie University MMCCS (Media, Music, Communication and Cultural Studies) research director, State Violence and the Execution of Law: Biopolitcal Caesurae of Torture, Black Sites, Drones, 3-15-13, ebook accessed via EBL on 8-30-13, mss]

A constitutively incomplete scholarship: redactions, foreclosures, fragments

The work that unfolds in the chapters that follow is inscribed by a constitutively incomplete scholarship. This incompleteness is not due to the standard limitations imposed by time, word length and the other practical exigencies that impact on the process of scholarly research. Rather, this incompleteness is constitutive in quite another way. It is an incompleteness determined by the power of the state to impose fundamental omissions of information through the redaction of key documents, through the legal silencing of its agents and through the literal obliteration of evidence. These are all techniques of foreclosure that establish the impossibility of disclosure. In rhetorical terms, the redactions that score the legal texts that I examine operate as aposiopetic ﬁgures; ﬁgures that, in keeping with Greek etymology of the term, demand the keeping of silence. In their liquidation of linguistic meaning, they establish voids of signiﬁcation. Through the process of institutionalized censorship, they order into silence the voices of those subjects who might proceed to name the violence they perpetrated, while also nullifying the voices of the tortured. As rectilinear bars of blackness, the redactions that score the state’s declassiﬁed texts occlude the victims of state violence even as they neatly geometrize the disorder of torn flesh and violated bodies. The slabs of redaction encrypt the disappeared victims of torture in their textual black coffins. As such, they graphically exemplify the obliterative violence of law. These aposiopetic tracts are the textual and symbolic equivalent of the physical violence that is exercised by the state in order to silence its captives. Perhaps the most graphic incarnation of this transpired at Guantanamo, where a detainee, after an interrogation session, ‘began to yell (in Arabic): “Resist, Resist with all your might.”’102 The Interrogation Control Element Chief for Joint Task Force 170# GTMO ordered the detainee to be silenced with duct tape. In their Summarized Witness Statement, an unnamed agent recounts what they witnessed: "˜When I arrived at the interrogation room. I observed six or seven soldiers (or persons I believed were soldiers) laughing and pointing at something inside the room. When I looked inside I noticed a detainee with his entire head covered in duct tape . . . When I asked how he planned to take the tape off without hurting the detainee (the detainee had a beard and longer hair) [redacted] just laughed" The reduction of the detainee to a figure of bondage - short-shackled to the floor and manacled - is not adequate in confirming his status as captive. His face and voice, evidence of his human status, must be physically redacted. The taping of his entire head transmutes him into a faceless papier-machê mannequin. Even the most minimal sign of resistance, such as the exercise of the voice, IIILISI be subju- gated. The corporal economies of torture oscillate between the exercise of violence in order to extort confessions from broken bodies finally rendered docile and the exercise of violence to silence those insurgent bodies that refuse the order to be silent. The duct taping of the head of the detainee emblematizes the deployment of two violent modalities of torture: instrumental and gratuitous. Instrumental violence is produced by the direct application of tools and technologies - such as cables, pliers. electrodes and so on ~ onto the body of the victim in order to inflict pain. In this case the duct taping of the detainee's entire head directly produces a terrifying sense of asphyxiation. Gratuitous violence is a type of supplementary violence that results indirectly, after the fact of the application of instrumental violence. In this instance, the instrumentalized application of duct tape was principally driven by the desire to silence and subjugate the detainee. The ripping off of the duct tape and the tearing of his hair and beard will generate a violence that is wanton, augmenting the pain of having one's facial apertures sealed up. The end result is to confirm the detainee's status as subjugated object of violence. The US government’s power to withhold or destroy information runs the full gamut of censorial practices -- from the ludicrous to the indefensible. The CIA, for example, has exercised an impressive commitment to linguistic probity by insisting on the redaction of such disturbing terms as ‘rot,’ ‘shithole’ and ‘urinal’ from the testimony of one its former interrogators.104 It has also overseen the wholesale destruction of 92 videos that document the torture practices inflicted on their victims; torture practices that allegedly ‘went even beyond those approved by the expansive Yoo and Bybee Torture Memos.’105 These censorial practices have fundamentally determined the very material conditions of possibility of my research. They have produced a complex textual field inscribed by gaps, silences and the contingent fragments of knowledge that have managed to enter the public domain despite the censorial power of the state. And I refer here to the extraordinary work of individuals - such as Bradley Manning, who is himself now a victim of the state`s punitive regime of cruel and degrading punishment - or organizations, such as WikiLeaks, that have defied the censorial power of the state in order to make public texts that document the full extent of the state's violent practices and that compel its witnesses to call it to account. The work of these whistle- blowers and activists evidences the fact that the state is not an impervious monolith of repressive power but that, on the contrary, much as it strives to be unilateral in its actions and monologic in its enunciations, the state cannot completely master its heterogeneous agents or silence its heteroglossic voices. In the chapters that follow, I draw heavily on the texts that document the operations of the state in executing and exceeding its laws. I also, however, take the time to reflect critically on the materiality of the absences that mark my field of study by focusing specifically on the redactions that score a number of the key state documents to which I refer. These redactions, as I argue in Chapter 5, visibly signify both the sovereign power of the state and its insecurity. I read these redactions as techniques designed to manage, control and, where necessary, to obliterate knowledge altogether. In effect, these redactions function to constitute the opposite of epistemology: they generate official systems of unknowing, anti-epistemologies that consign the reading subject to ignorance and unknowledge. Faced with these lacunae, I attempt to unsettle the anti-epistemological practices of redaction by reading the very processes of redaction as symbolic instantiations of state violence: they reproduce, textually, their own figural black sites that effectively occlude the names of the agents responsible for the torture practices, even as they also become the black holes to which are dispatched the victims of such practices. Against the grain, then, I read these black sites of redaction as the textual and symbolic equivalent to the material black site prisons run by the state. The anti-epistemological violence of these sites of redaction works in tandem with the ontological violence that the state visits upon its embodied subjects.

### A2 Perm do both

#### b) The affirmative practice and discourse towards the middle east is a performance of racial power , even through a reduction pressure, their approach legitimizses colonialism and ensures constant intervention

Valbjørn ‘4 [Morten Valbjørn, PhD in the Department of Political Science at Aarhus, Middle East and Palestine: Global Politics and Regional Conflict, “Culture Blind and Culture Blinded: Images of Middle Eastern Conflicts in International Relations,” p. 63-4, 2004]

From this perspective, it is irrelevant to discuss whether the Middle East should be regarded as a region like all the others, as it is the case in the IR mainstream, or as a region like no other, as the essentialists would claim. Rather, regions should be seen as social constructions that are produced through specific discursive practices just like the international system and its various actors. Instead of discussing what the Middle East is, the relational conception of culture regards the Middle East as an imaginary region, where, first and foremost, it is important to focus on how the Middle East has been constructed through discursive practices and how this has extensive consequences on its international relations. This focus characterizes Edward Said's Orientalism (1995), one of the principal works dealing with the Middle East in applying a relational conception of culture. Despite his principle recognition of the mere existence of societies with a location southeast of the Mediterranean, Said almost completely refrains from dealing with what characterizes these societies (1995: 5). Instead, he focuses on how European and American contexts have described and imagined the Middle East and how a particular "orientalist" way of thinking has functioned as a filter through which the Middle East is constructed as a unique oriental cultural entity. Even though the orientalist representations of the Middle East should have less to do with the Middle East than with the orientalists' own context (1995: 12), this does not mean that these representations are innocent or ineffectual. The European and American identity and way of performing power are thus closely **interwoven** with the conception of the Middle East as oriental and alien. The orientalist conception of the Middle East functions as a constituting counterimage of European and American identity, of a so-called occidental culture whose supposedly democratic, rational, and enlightened character is contrasted by the depictions of a despotic, irrational, arid barbaric Orient. According to Said, "the Orient has helped to define Europe (or the West) as its contrasting image" (Said, 1995: 1-2). But orientalism also formed a central element of "a **western style for dominating**, restructuring, and having authority over the Orient" (Said, 1995: 3). The French and British colonial representation of Middle Eastern societies as passive, backward, and inferior justified and subsequently **legitimized their colonization**. This close connection between orientalist descriptions of the Middle East and different kinds of performance of power allegedly does not belong only to the past. According to Said, the situation of today bears a lot of resemblance to the time of British and French colonialism. He points to how U.S. military interventions, the Carter Doctrine, and the establishment of Rapid Deployment Forces often have been preceded by popular and academic discussions on the threat from "political Islam" and the like (Said, 1997: 28; see also Farmanfarrnaian, 1992; Sidaway, 1998; McAlister, 2001). As a consequence of this very different approach to international relations in the Middle East, subscribers to a relational conception of culture, instead of asking what makes the Middle Eastern international relations conflict-ridden, will ask how representations of the Middle East as an **unstable "Arc of Crises**"-to phrase Zbigniew Brezezinski, President Carter's National Security Advisor-have made "the West" appear **impressively peaceful**, and made Western **military engagement** in this part of the **world possible, necessary, and for the benefit of the people of the Middle East themselves.**

#### C) Indo-pak war is a constructed concept to maintain static political identity through threat discourse.

**Nizamani** 20**00** (Haider Nizamani, Lecturer in Political Science at the University of British Columbia, 2k [The roots of rhetoric: politics of nuclear weapons in India and Pakistan, p. 11-12)

I conceptualize **security discourses** as **a framework through which** the constant **articulation of external dangers is used to carve out and maintain a particular version of national identity** for a state. Neither the sources of the danger nor the identity it supposedly threatens is static. The goal of negotiating and striking a delicate balance between the imagined community and the reality of existing heterogeneity often propels security discourses in such a manner that externalizing the danger to the imagined community becomes one common feature of security policies. Analyzing the discourse of security policies one would ask, “How, from the welter of information and interaction among states and their representatives, **are threats constructed, and mobilised against?**”52 Once understood in terms of discourse, the language employed by security analysts and policy-makers becomes more than an objective analysis or representation of a state’s national interest. Discourse analysts see such statements by decision-makers and analyses by experts as expressions of particular interests and justifiers of a distinct regime of practices or truth. As this discourse is conducted within the context of the respective societies, we have to keep in mind Foucault’s following observation: Each society has its regime of truth, its “general politics” of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true.53 The nuclear discourse in the subcontinent also has its “general politics of truth” in which certain types of statements are made to function as true and thus serve as informal rules by which some statements are designated as accurate reflections of national interests and others as antinational view-points. This general politics of truth sanctifies certain means of inquiry and dismisses others. This in turn creates the Pundits and Dalits (Untouchables) in the nukespeak hierarchy of the subcontinent. The question of truth is not isolated from issues of power and right. In the triangle of truth, power, and right Foucault observed a close relationship where ‘‘there can be no possible exercise of power without a certain economy of discourses of truth which operates through and on the basis of association.”54 To put it simply, “we are subjected to the production of truth through power and we cannot exercise power except through the production of truth.”55 The discourse of truth is not a mere linguistic construction but an engine of power whose effects can be felt at different levels. As such it is through discourses of truth that we are judged, condemned, classified, determined in our undertakings, and destined to a certain mode of living or dying.56 **An analysis of a regime of discourse, in this case the nuclear discourse in Pakistan and India, questions the objectivity of so-called self-evident truths** regarding a subject matter by viewing them as products of specific historical circumstances and statements that are subject to manipulation. However, **these discourses** once in place **have the capacity to manipulate participants in that area**, as well as influence the shape of things to come there. Hence, it is a mutually constitutive process where both the agency and the structure shape and reshape each other. This mode of inquiry is suited to undertake projects aimed at writing histories of the present. It is the topical nature of nukespeak in the subcontinent that warrants accounting for its underlying rules, both formal and informal, that enable nukespeakers to prescribe the forms of thinking, writing, and policy-making possible on the issue. Such an effort is a history of the present because it tackles an issue that preoccupies the political agendas of contemporary Pakistan and India. **Viewed as a discourse, politics of nuclear weapons in Pakistan and India can** meaningfully **be considered as political practices central to the constitution,** production, **and maintenance of** their **national identities by invoking the themes of threats and dangers.**

#### d) Their policy analysis is terminally flawed- as long as we fail to reject the aff’s discourse of terrorism failed policies and violence replication is inevitable

**- Gunning ‘7** (The Case for a Critical Terrorism Critical Studies on Terrorism, Dr Jeroen Gunning, Lecturer in International Politics, Editor, Critical Studies on Terrorism, Deputy Director, Centre for the Study of Radicalisation and Contemporary Political Violence (CSRV), Department of International Politics, Aberystwyth University, September 2, 2007.

Since 9/11, studies on the phenomenon of 'terrorism' have mushroomed.2 On entering almost any bookshop, one is overwhelmed by the number of books discussing the war on terror, 'Islamic terrorism' or 'terrorism' more generally. Conference papers on 'terrorism' abound and interest in issues related to 'terrorism' has increased dramatically among scholars in cognate disciplines; degree programmes have been set up;3 funding opportunities have increased. And yet, as recent reviews of the field have shown,4 core epistemological, methodological and political-normative problems persist, ranging from lack of conceptual clarity and theoretical sterility to political bias and a continuing dearth of primary research data. A number of reasons have been cited for this state of affairs, which will shortly be detailed. But two reasons are often overlooked: the predominance of 'problem-solving' approaches in the study of 'terrorism', which accounts for many of the observed methodological and conceptual shortcomings of 'terrorism research'; and the dispersed nature of much of the more rigorous, critical and conceptually innovative research on 'terrorism' that is published outside the core journals of 'terrorism studies' and thus often fails either to reinvigorate, or to learn from, 'terrorism studies'. It is the argument of this article that a 'critical turn'5 in the field of 'terrorism studies'6 is necessary to reverse these two trends, and that this turn must be conceived in such a way as to maximize the field's inclusiveness and, importantly, its policy relevance.7 Reviews of 'terrorism studies'– or 'terrorism research' for those who dispute that such a field exists8– typically revolve around four sets of criticisms. One is the observed lack of primary research and the recycling of data. In their seminal review of the field, Schmid and Jongman observed in 1988 that **'there are probably few areas in the social science literature on which so much is written on the basis of so little research'**, concluding that 'as much as 80 per cent of the literature is not research-based in any rigorous sense; instead**, it is too often narrative, condemnatory, and prescriptive'**.9 In 2004, Silke noted, on the basis of an analysis of articles published between 1995 and 1999 in the two key journals –Terrorism and Political Violence and Studies in Conflict and Terrorism– that **'over 80 per cent of all research on "terrorism" is based either solely or primarily on data gathered from books, journals, the media or media-derived databases**, or other published documents'.10 In other words, it is predominantly based on 'secondary data analysis' and includes few primary sources or new data (for example, only 13 per cent of the articles drew substantially on personal interviews).11 Or, as Silke commented in 2006, much of **the research is little more than a glorified literature review**.12 Although Silke's conclusion is somewhat undermined by his not differentiating between secondary documents and primary documents produced by insurgent groups (which appear to be used more frequently than personal interviews),13 his overall observation that **'terrorism research' relies heavily on recycled data** remains valid. Another critique is that **research tends to focus on a 'short-term, immediate assessment' of 'current or imminent threats' as defined by state elites**, without placing them in their wider social and historical context or questioning to what extent the state or the status quo have contributed to these 'imminent threats'.14 **Local context and history are largely ignored and 'terrorism' is too often treated**, in Ranstorp's words, **'generically and with a "one-size-fits-all formula"** '.15 Very few articles focus on historical cases of 'terrorism'.16 Fieldwork, moreover, is rare. Or, quoting O'Leary and Silke, 'much of what is written about terrorism . . . is written by people who have never met a terrorist, or have never actually spent significant time on the ground in the areas most affected by conflict' (which is in part a reflection of the crisis in area and language studies).17 Conceptual discussions are similarly observed to be largely deficient. In the words of social movement theorist Sidney Tarrow,'terrorism studies' has been 'largely innocent of theoretical apparatus'.18 Silke observed in 2004 that less than 2 per cent of articles published during the 1990s in the two core 'terrorism' journals dealt with conceptual issues, and most of these concerned the definition of 'terrorism'.19 Compared to other fields, Silke considers 'terrorism studies' to be 'extremely applied', and insufficiently questioning of the theoretical or ideological assumptions informing its research (although – as Horgan observes – since conceptual discussions are more likely to occur in books than in articles, Silke's sample may not be wholly representative).20 Most articles do not explicitly draw on (cognate) theories to illuminate their data, although recent output has begun to be more theoretically developed.21 Few articles consider the political agenda behind the use of the word 'terrorism' or whether eradication through coercive means without political transformation is the most effective way forward (although here too, recent output has been more critical).22 A related critique is that **'terrorism studies' tends to accept uncritically the framing of the 'terrorism problem' by the state**. Herman and O'Sullivan observed this in their tirade against the 'terrorism industry', as did George, equally stridently, in his article 'The Discipline of Terrorology'.23 But even 'engaged' critics such as Silke, O'Leary, Crelinsten and Schmid and Jongman argue that 'terrorism studies' often suffers from state bias. Schmid and Jongman observed in exasperation that much of the field's output resembled 'counterinsurgency masquerading as political science'.24 Crelinsten, Silke and O'Leary were more forgiving, simply observing that, as a result of government-funding opportunities and affinities between state institutions and researchers, research often displayed an uncritical orientation towards state perspectives and concerns.25 The effect of this orientation can be seen in both methodology and in the types of questions that remain unasked. One of the reasons so few articles draw on personal interviews or attempt to understand those using terroristic methods subjectively, through empathy and placing oneself in their shoes,26 is arguably this predisposition towards the status quo. This same orientation makes it difficult to ask questions about the extent to which counter-terrorism policies perpetuate the 'terrorist threat' or whether political transformation may be more effective than mere coercive force aimed at eradication. Researchers may be too embedded socially and culturally in an entity under 'attack' from 'others' to engage these 'others' subjectively or contemplate radically different counter-terrorism tactics. Existing research foci and practices may also prevent researchers from doing so by acting as disciplining agents.27 Most of those who critique 'terrorism studies' trace the field's shortcomings back either to problems inherent in the study of clandestine violence, whether carried out by state actors or non-state actors, or to ideological predispositions and issues related to funding (the apparent lack thereof or too close an association with government bodies).28 A third cause, identified by, among others, Silke, O'Leary and Merari, is that few scholars stay in the field of 'terrorism studies'. Silke found that over 80 per cent of articles published in the two core 'terrorism' journals during the 1990s were written by 'one-timers'. It is this lack of commitment to the field, and the transitory nature of many of its contributors, that Silke identifies as one of the reasons that the field has struggled 'to establish a solid conceptual framework'.29 It is arguably also a reason for the relative lack of the kind of conceptual and critical debates that are necessary for a field to become more rigorous, and methodologically and conceptually innovative. Each of these critiques goes some way to explain the shortcomings in 'terrorism research', although the argument that funding is not available for projects critical of the status quo is perhaps overstated.30 It will always be difficult to obtain reliable data on clandestine violence, so that scholars will inevitably be tempted to draw heavily on secondary sources or build elaborate theories on very little, and often dubious, information.31 Equally, **given prevailing power structures, the embeddednes of researchers within them**, and the shock that terroristic tactics typically seek to induce, **it will arguably always be tempting to demonize the 'terrorist other'**. However, what most of the critiques overlook is the crucial fact that, beyond these inherent difficulties, many of the observed shortcomings can be traced back to the dominance in 'terrorism research' of what Robert Cox famously called **a 'problem-solving' approach:** one that 'takes the world as it finds it, with the prevailing social and power relationships and the institutions into which they are organised, **as the given framework for action'**.32 This is not to say that 'terrorism research' has been devoid of 'critical' voices, if 'critical' is defined, with Cox, as 'not tak[ing] institutions and social and power relations for granted but call[ing] them into question by concerning itself with their origins and how and whether they might be in the process of changing',33 and, significantly, exploring the extent to which the status quo contributes to the 'problem of terrorism'. Crelinsten, who takes an explicitly 'critical' approach,34 is a long-standing member of the editorial board of the journal Terrorism and Political Violence, as are Weinberg and Crenshaw, who are 'critical' in the (loose) sense of problematizing existing dichotomies, historicizing political violence and moving beyond a state-centric security approach.35 Silke, Horgan, Schmid and Jongman can also be considered 'critical' in that they are explicitly self-reflexive about assumptions, methodologies and the shortcomings of 'terrorism research'.36 However, if we consider the typical characteristics of a 'problem-solving' or 'traditional' approach,37 we find that many of these both dominate 'terrorism research' (including many of the contributions of Silke's 'one-timers')38 and can be directly linked to the shortcomings witnessed in this research. In its most 'uncritical' manifestation – and it must be emphasised that few scholars are wholly uncritical in a Coxian sense – a 'problem-solving' approach does not question its framework of reference, its categories, its origins or the power relations that enable the production of these categories.39 It is state-centric, takes security to mean the security of the state rather than that of human beings, on the assumption that the former implies the latter, and sees security in narrow military or law-and-order terms, as opposed to the wider conception of human security, as for instance developed by critical security studies.40 It is ahistorical and ignores social and historical contexts; if it did not, it would have to account for the historical trajectory of the state, which would undermine the state's claim to being uniquely legitimate. The problem-solving approach is positivist and objectivist, and seeks to explain the 'terrorist other' from within state-centric paradigms rather than to understand the 'other' inter-subjectively using interpretative or ethnographic methods. **It divides the world sharply into dichotomies** (for instance, between the legitimate and 'good' state, and the illegitimate and 'evil''terrorists'). It posits assumptions based on these dichotomies, often without adequately exploring whether these assumptions are borne out in practice. It sees interests as fixed, and it regards those opposed to the status quo as the problem, without considering whether the status quo is part of the problem and transformation of both sides is necessary for its solution. Not only can many of these characteristics be found in more or less diluted form in 'terrorism research'41– a legacy of the field's origins as a sub-field within 'traditional' security and strategic studies – but these 'problem-solving' characteristics can also be shown to contribute directly to its observed shortcomings. The reported lack of primary data, the dearth of interviews with 'terrorists' and the field's typical unwillingness to 'engage subjectively with [the terrorist's] motives',42 is in part fuelled by the field's over-identification with the state, and by the adoption of dichotomies that depict 'terrorism' as 'an unredeemable atrocity like no other', that can only be approached 'with a heavy dose of moral indignation', although other factors, such as security concerns, play a role too.43 Talking with 'terrorists' thus becomes taboo, unless it is done in the context of interrogation.44 **Such a framework also makes it difficult to enquire whether the state has used 'terroristic' methods**. If the state is the primary referent, securing its security the main focus and its hegemonic ideology the accepted framework of analysis, 'terrorism', particularly if defined in sharp dichotomies between legitimate and illegitimate, can only be logically perpetrated by insurgents against the state, **not by state actors themselves**. **State actors are engaged in counter-terrorism, which is logically depicted as legitimate, or at least, 'justifiable' given the 'terrorist threat'** **and the field's focus on short-term 'problem-solving'**. Where 'traditional terrorism studies' do focus on state terrorism, it is in the context of the 'other': the authoritarian or totalitarian state that is the nemesis if not the actual 'enemy' of the liberal democratic state.45 The observed disregard for historical context and wider socio-political dynamics46 can similarly be traced to the ahistorical propensity of 'problem-solving' approaches and their state-centric understanding of security. The typical focus is thus on violent acts against the state, and the immediate 'terrorist' campaign, not on how these acts relate to a wider constituency and its perception of human security, history and the state, or what role the evolution of the state has played in creating the conditions for oppositional violence.47 **The lack of critical and theoretical reflection** 48 **can be linked to the 'problem-solving' tendency to be short-termist and practical, and to deal in fixed categories and dichotomies that privilege the state and its dominant ideological values**. From such a standpoint, scholars would not readily explore how 'terrorism' discourse is produced and how it is used to marginalize alternative conceptions, discredit oppositional groups, and legitimize counter-terrorism policies that transgress international law.49 Nor would they be particularly likely to consider how the development of the modern state or the international system might have contributed to the evolution of 'terrorism', or how theories of the state and the international system can help illuminate the 'terrorism' phenomenon. **Drawing on cognate theories more broadly is similarly discouraged since 'terrorism' is framed as an exceptional threat, unique and in urgent need of a practical solution**.50 The state-centricity, inflexibility and dichotomous nature of such a framework also **makes it easier to recycle unproven assumptions**, such as the notion that 'religious terrorism' is not concerned with constituencies and knows no tactical constraints against killing 'infidels',51 without having to test these assumptions empirically across different samples. **It thus becomes possible to argue, for instance, that negotiating with 'terrorists' encourages further 'terrorism' without need for empirical proof** – a point already observed by Martha Crenshaw in 198352– or to insist that 'terrorists' inherently lack legitimacy without reflection on whether the state lacks legitimacy in the experience of those who support the 'terrorists'.53 **The combined result of these tendencies is often a** **less than critical support (whether tacit or explicit**) **for** coercive **counter-terrorism policy** **without adequate analysis of how this policy** **contributes to the reproduction of the very terrorist threat it seeks to eradicate.** An explicitly 'critical turn', therefore, is called for.

#### e) Plan’s attack on piracy depoliticizes the role of economic regimes that force individuals into a pirates’ life—it is hypocritical to use violence against a community who only exist because of the exploitation from hegemonic powers

**Anderson ’10** (Elliot Anderson, J.D. Candidate, 2010, Indiana University Maurer School of Law, “It’s a Pirate’s Life for Some: The Development of an Illegal Industryin Response to an Unjust Global Power Dynamic” Indiana Journal of Global Legal Studies, Volume 17, Issue 2, Summer. Pp 319-339. 2010.)

The combination of a failed internal economy and lack of an adequate governance structure has had a unique effect on one particular sector of the nation’s coastal economy. The domestic fishing industry has declined over much of the last two decades, and this may have directly contributed to the rise in piracy off the coast of Somalia. 48 In 1994, only three years after the collapse of the Somali government, UNCLOS entered into force, thereby creating a zone for coastal nations to possess the exclusive rights to the natural resources found therein. 49 This adoption established a limited territory for fishermen and confined them to their national waters. 50 Confinement created an increase in competition within these newly defined national boundaries, resulting in stock depletion throughout Somalia’s tuna-rich waters. 51 Yet stock depletion was not merely the direct result of domestic over-fishing off coastal Somalia. 52 After the collapse of the domestic government, foreign ships moved into the region and began to illegally fish in Somali territory. 53 The absence of a functional method for enforcement of maritime fishing law, due to a non-functioning government and complete lack of naval force, meant that fishing vessels from Europe and Asia were able to deplete the nation’s fisheries, which some Somalis believe to be the reason for poverty and social decay in their coastal towns. 54 The U.N. substantiated this claim in 2005 when it estimated that approximately 700 unlicensed foreign vessels were fishing in Somali waters. 55 As a result, Somali fishermen were reportedly forced to take matters into their own hands. 56 They armed themselves and began to act as vigilantes, confronting illegal commercial fleets, demanding they pay taxes, and attempting to drive the vessels from their territory. 57 If tuna stock depletion in Somalia is the result of negative foreign influence, then it is necessary to point out the circular pattern into which this power dynamic has now evolved. Some pirates claim that they turned to hijacking as a method to impede foreign vessels trying to destroy their fishing boats and equipment and to inhibit illegal fishing. 58 Now, according to recent statistics, it appears that the Indian Ocean tuna industry has been hurt by the piracy it may have helped cause. 59 Tuna catches in the southwestern Indian Ocean fell as much as thirty percent over 2008, and this suggests a real threat to an industry that is worth over $6 billion. 60 This sharp decline has not been attributed entirely to piracy on the Horn of Africa, but the head of the Indian Ocean Tuna Commission believes that countries such as France and Spain were forced to move their fleets farther east and therefore caught only half of their total from August to November 2007. 61 Illegal international commercial fishing along the coast of Somalia has resulted in stock depletion, which in turn forced local fishermen to adapt to the economic crisis by utilizing other methods to either drive out the competition or capitalize on their participation. In turn, this has caused pressure on a healthy international industry that, in this case, was the product of stronger nations capitalizing on the incapacity of another. As previously noted, this international dysfunction is **a reflection of the danger of globalization and the exploitation of an unfair international power dynamic.** Rather than protect industry and domestic resources, the reality of UNCLOS is that its functionality is dependent on the strength of the state it purports to protect. The international community is failing to self-regulate by ignoring evidence suggesting that its members are taking advantage of a collapsed state that has no ability to enforce international law. Illegal commercial fishing fleets are able to exploit the domestic natural resources of a country without legal ramifications, forcing the local communities to take matters into their own hands. Furthermore, the legal irresponsibility of the international community has encouraged a domestic population to resort to illicit means to satisfy basic needs, and now the international community is essentially drowning in the very waters it attempted to protect. This does not mean that UNCLOS fails to account for illegal activities of signatory states in a coastal state’s exclusive economic zones. Article 58 asserts that “states shall have due regard to the rights and duties of the coastal state and shall comply with the laws and regulations adopted by the coastal State.” 62 However, Article 220 then discusses the enforcement of UNCLOS by coastal States, enabling these States to exercise enforcement within their exclusive economic zone or territorial waters. 63 Yet this assumes that a coastal State has the ability to police its own territory with a functional navy or coast guard. In other words, in a situation where this is not a reality, as in Somalia, the State is left to hope that the commercial industries of other States choose not to illegally exploit available resources, although there are no legal or political repercussions if they do. Thus far, the only repercussions are the piracy attacks carried out by armed groups. As a result of the conflict, the U.N. adopted Security Council Resolution 1851 to create potential solutions to this problem and right the wreck, so to speak. 64 Yet, from the outside looking in, it is hard to reconcile this push for the use of potentially violent force as an appropriate method to discourage any further exacerbation of an already rather uncontrollable situation. Instead this may in fact force the theoretical “balloon effect” that seems to be in play when applying pressure to an illegal industry that results from unalterable poverty, simply causing the same illegal industry to emerge elsewhere. In fact, this may already be happening on the other side of the continent—an idea that will be further explored in Part Four. III. Can’t Get No (Needs) Satisfaction: Can We Right This Wrong? The facts and patterns identified thus far lead to a conversation regarding a struggle for power resulting from alleged international transgressions. Therefore, this conversation must also focus on the question of whether a consequence of this struggle—piracy—is a justifiable result. While the purpose of this Note is not to justify piracy, viewing it from this alternate perspective identifies a difficult moral conundrum, and evaluating it may actually assist in finding solutions to diplomatically combat the recent plague of piracy. Although determining whether piracy is justifiable may be an easy question to answer from a legal—and in most cases moral—perspective because it pits law-breaking pirates against those diligently defending the industry and travel of the developed world, there is a different way of viewing the issue that makes identifying an answer more complex. An analysis of **the conflict between the effort to satisfy basic needs in underdeveloped nations and the pursuit of secondary interests by developed nations, which maintain stronger positions of power** on the international stage, blurs the line between right and wrong for those involved in piracy. In simpler terms, this conflict can be identified as one of primary concerns, such as obtaining food, shelter, and clothing, versus secondary concerns, such as promoting industrial development, transportation, and international trade. The reality of increasing globalization is that these two very different interests exist alongside one another and in a much more consistently intimate way than ever before. Developed and underdeveloped nations are constantly in contact for a wide variety of reasons. Some are legal, such as enforcement of human rights laws, and [End Page 329] others are non-legal, ranging from humanitarian aid to border warfare. Applying the analysis to the case of maritime piracy around the Horn of Africa portrays the polarization between developed and underdeveloped nations that engenders the justification conversation. On one side, an identifiable concern could be whether an individual will be able to eat on any given day, and on the other, a concern may be the destabilization of the global economy, exemplified in part by the disruption of major oil shipments through the Gulf of Aden. Further exploration of these issues requires a return to Somalia.

#### F) Commitment to economic security is the prime justification for global violence and authoritarianism ----- turns the case

**Neocleous 8** - Professor of Critique of Political Economy at Brunel University (Mark, “Critique of Security.” Pg. 95-102)

In other words, the new international order moved very quickly to reassert the connection between economic and national security: the commitment to the former was simultaneously a commitment to the latter, and vice versa. As the doctrine of national security was being born, the major player on the international stage would aim to use perhaps its most important power of all – its economic strength – in order to re-order the world. And this re-ordering was conducted through the idea of ‘economic security’.99 Despite the fact that ‘economic security’ would never be formally deﬁned beyond ‘economic order’ or ‘economic well-being’,100 the signiﬁcant conceptual consistency between economic security and liberal order-building also had a strategic ideological role. By playing on notions of ‘economic well-being’, economic security seemed to emphasise economic and thus ‘human’ needs over military ones. The reshaping of global capital, international order and the exercise of state power could thus look decidedly liberal and ‘humanitarian’. This appearance helped co-opt the liberal Left into the process and, of course, played on individual desire for personal security by using notions such as ‘personal freedom’ and ‘social equality’.101 Marx and Engels once highlighted the historical role of the bour geoisie in shaping the world according to its own interests. The need of a constantly expanding market for its products chases the bourgeoisie over the whole surface of the globe. It must nestle everywhere, settle everywhere, establish connections everywhere . . . It compels all nations, on pain of extinction, to adopt the bourgeois mode of production; it compels them . . . to become bourgeois in themselves. In one word, it creates a world after its own image.102 In the second half of the twentieth century this ability to ‘batter down all Chinese walls’ would still rest heavily on the logic of capital, but would also come about in part under the guise of security. The whole world became a garden to be cultivated – to be recast according to the logic of security. In the space of ﬁfteen years the concept ‘economic security’ had moved from connoting insurance policies for working people to the desire to shape the world in a capitalist fashion – and back again. In fact, it has constantly shifted between these registers ever since, being used for the constant reshaping of world order and resulting in a comprehensive level of intervention and policing all over the globe. Global order has come to be fabricated and administered according to a security doctrine underpinned by the logic of capital accumulation and a bourgeois conception of order. By incorporating within it a particular vision of economic order, the concept of national security implies the interrelatedness of so many different social, econ omic, political and military factors that more or less any development anywhere can be said to impact on liberal order in general and America’s core interests in particular. Not only could bourgeois Europe be recast around the regime of capital, but so too could the whole international order as capital not only nestled, settled and established connections, but also ‘secured’ everywhere. Security politics thereby became the basis of **a distinctly liberal philosophy of** global ‘intervention’, fusing **global issues of** economic management with domestic policy formations in an ambitious and frequently violent strategy. Here lies the Janus-faced character of American foreign policy.103 One face is the ‘good liberal cop’: friendly, prosperous and democratic, sending money and help around the globe when problems emerge, so that the world’s nations are shown how they can alleviate their misery and perhaps even enjoy some prosperity. The other face is the ‘bad liberal cop’: should one of these nations decide, either through parliamentary procedure, demands for self-determination or violent revolution to address its own social problems in ways that conﬂict with the interests of capital and the bourgeois concept of liberty, then the authoritarian dimension of liberalism shows its face; the ‘liberal moment’ becomes the moment of violence. This Janus-faced character has meant that through the mandate of security the US, as the national security state par excellence, has seen ﬁt to either overtly or covertly re-order the affairs of myriads of nations – those ‘rogue’ or ‘outlaw’ states on the ‘wrong side of history’.104 ‘Extrapolating the ﬁgures as best we can’, one CIA agent commented in 1991,‘there have been about 3,000 major covert operations and over 10,000 minor operations – all illegal, and all designed to disrupt, destabilize, or modify the activities of other countries’, adding that ‘every covert operation has been rationalized in terms of U.S. national security’.105 These would include ‘interventions’ in Greece, Italy, France, Turkey, Macedonia, the Ukraine, Cambodia, Indonesia, China, Korea, Burma, Vietnam, Thailand, Ecuador, Chile, Argentina, Brazil, Guatemala, Costa Rica, Cuba, the Dominican Republic, Uruguay, Bolivia, Grenada, Paraguay, Nicaragua, El Salvador, the Philippines, Honduras, Haiti, Venezuela, Panama, Angola, Ghana, Congo, South Africa, Albania, Lebanon, Grenada, Libya, Somalia, Ethiopia, Afghanistan, Iran, Iraq, and many more, and many of these more than once. Next up are the ‘60 or more’ countries identiﬁed as the bases of ‘terror cells’ by Bush in a speech on 1 June 2002.106 The methods used have varied: most popular has been the favoured technique of liberal security – ‘making the economy scream’ via controls, interventions and the imposition of neo-liberal regulations. But a wide range of other techniques have been used: terror bombing; subversion; rigging elections; the use of the CIA’s ‘Health Alteration Committee’ whose mandate was to ‘incapacitate’ foreign ofﬁcials; drug-trafﬁcking;107 and the sponsorship of terror groups, counterinsurgency agencies, death squads. Unsurprisingly, some plain old fascist groups and parties have been co-opted into the project, from the attempt at reviving the remnants of the Nazi collaborationist Vlasov Army for use against the USSR to the use of fascist forces to undermine democratically elected governments, such as in Chile; indeed, one of the reasons fascism ﬂowed into Latin America was because of the ideology of national security.108 Concomitantly, ‘national security’ has meant a policy of non-intervention where satisfactory ‘security partnerships’ could be established with certain authoritarian and military regimes: Spain under Franco, the Greek junta, Chile, Iraq, Iran, Korea, Indonesia, Cambodia, Taiwan, South Vietnam, the Philippines, Turkey, the ﬁve Central Asian republics that emerged with the break-up of the USSR, and China. Either way, the whole world was to be included in the new‘secure’ global liberal order. The result has been the slaughter of untold numbers. John Stock well, who was part of a CIA project in Angola which led to the deaths of over 20,000 people, puts it like this: Coming to grips with these U.S./CIA activities in broad numbers and ﬁguring out how many people have been killed in the jungles of Laos or the hills of Nicaragua is very difﬁcult. But, adding them up as best we can, we come up with a ﬁgure of six million people killed – and this is a minimum ﬁgure. Included are: one million killed in the Korean War, two million killed in the Vietnam War, 800,000 killed in Indonesia, one million in Cambodia, 20,000 killed in Angola – the operation I was part of – and 22,000 killed in Nicaragua.109 Note that the six million is a minimum ﬁgure, that he omits to mention rather a lot of other interventions, and that he was writing in 1991. This is security as the slaughter bench of history. All of this has been more than conﬁrmed by events in the twenty ﬁrst century: in a speech on 1 June 2002, which became the basis of the ofﬁcial National Security Strategy of the United States in September of that year, President Bush reiterated that the US has a unilateral right to overthrow any government in the world, and launched a new round of slaughtering to prove it. While much has been made about the supposedly ‘new’ doctrine of preemption in the early twenty-ﬁrst century, the policy of preemption has a long history as part of national security doctrine. The United States has long maintained the option of pre-emptive actions to counter a sufﬁcient threat to our national security. The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves . . . To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre emptively.110 In other words, the security policy of the world’s only superpower in its current ‘war on terror’ is still underpinned by a notion of liberal order-building based on a certain vision of ‘economic order’. The National Security Strategy concerns itself with a ‘single sustainable model for national success’ based on ‘political and economic liberty’, with whole sections devoted to the security beneﬁts of ‘economic liberty’, and the beneﬁts to liberty of the security strategy proposed.111 Economic security (that is, ‘capitalist accumulation’) in the guise of ‘national security’ is now used as the justiﬁcation for all kinds of ‘intervention’, still conducted where necessary in alliance with fascists, gangsters and drug cartels, and the proliferation of ‘national security’ type regimes has been the result. So while the national security state was in one sense a structural bi-product of the US’s place in global capitalism, it was also vital to the fabrication of an international order founded on the power of capital. National security, in effect, became the perfect strategic tool for landscaping the human garden.112 This was to also have huge domestic consequences, as the idea of containment would also come to reshape the American social order, helping fabricate a security apparatus intimately bound up with national identity and thus the politics of loyalty.

#### 4.) Masking disad –

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[Devon, "Beyond Drones: Combating the System of Militarism and Imperialism," Foreign Policy Journal, 8-7-13, www.foreignpolicyjournal.com/2013/08/07/beyond-drones-combating-the-system-of-militarism-and-imperialism/, accessed 8-30-13, mss]

On September 11th, I will be attending an anti-drone demonstration in Union Square, NYC. This will be my first protest and I am quite excited. Obviously, the main goal of this demonstration is to protest against the use of drones around the world which kill innocents under the guise of attacking terrorists. While I welcome this protest, we must realize that this demonstration is not enough; that focusing on drones is not enough. We must battle the ‘War On Terror’ overall, as drones are only a small part of that. The global drone attacks started under Bush and have continued and massively expanded under Obama, with Obama going so far as to assassinate four US citizens (officially speaking). Yet, while this is extremely problematic, it is a symptom of America’s global militarism. Contrary to popular thinking, this global militarism didn’t start in the Bush era, but rather in the time of FDR, with World War II, and has continued and intensified since then. The US has, overtly, either already been involved in or started new wars/conflicts every single decade since the 1940s. This has created destruction all over the world, not just physically in terms of destroyed infrastructure, but mentally[1], historically[2], economically[3], and socially[4]. However, the problems go beyond just the military sphere. It has leaked into American society, and specifically into the social realm and how the American people relate to our government. Socially, this militarism has gone and allowed Islamophobia and anti-Arab racism to flourish in American society. It can be seen in everything, from attacks on mosques[5] to anti-Muslim ads[6]. This hatred and racism has heavily infected every part of our society to the point where it is seen as “OK” for TV pundits to spew anti-Muslim hatred. Americans’ relationship with their government has greatly changed ever since the ‘War on Terror’ was launched. While the government had previously spied on American citizens[7] (and even assassinated some[8]), it was mainly on those whom the government deemed a threat to the status quo. Now, the situation has become much more drastic, with the government spying on all US citizens[9], and has given itself the legal authority to not only indefinitely detain them without trial[10], but also to assassinate them (Assassination on US soil is still possible, given the fact that there are problems with Attorney General Holder’s letter to Rand Paul.[11]). At every level, the very people who are supposed to represent Americans have been complicit in allowing Americans to be spied upon and their civil liberties to be destroyed.[12] There has been such a breakdown in the rule of law that there are even secret interpretations of law[13] that the American people can be subjected to, but not know of. This growing authoritarianism must be confronted as well. Economically, corporations have profited quite handsomely[14] from the continuous wars of aggression around the world, as well as from the business of spying on Americans[15]. They are only able to do this because there is an economic incentive to create weapons of war and espionage, and to use those to great effect. In order to fight against militarism more broadly, such companies should be targeted for boycotts, and information campaigns should reveal to the public exactly who these companies are and how they are profiting off exploiting their customers’ information. There is a psychological battle to be held as well. The American people have become accustomed to their country being in a perpetual state of war. In many ways, some have become complacent at best, and, at worst, will actually support the ‘humanitarian interventions’ launched by the Obama administration. Just like with the drone debate, we should also work to have people realize that, while the names and terminology may have changed, the death and destruction have remained the same. This is especially important for those on the left, as there are many liberals whose hypocrisy has been revealed by condemning Bush’s wars of aggression, but support interfering in the affairs of sovereign nations now that Obama is at the helm. We must combat these hypocritical and uninvolved minds, lest we allow these problems to perpetuate. We must combat what Martin Luther King Jr. called “the giant triplets of racism, militarism, and economic exploitation” if we are to mount a truly successful attack on the drone war. The drone wars are a byproduct of the ‘War on Terror’ and its associated effects at home and abroad. **If we do not look at this interconnected system, we will**, in a way, **be wasting our time as we will only be cutting off a branch of a tree rather than getting to the roots**. We must go beyond drones.

#### 6.) Only confronting issues of sovereignty allows us to break free of the circular political practies that entrench militarism

Wadiwel 02 (Dinesh Joesph, completing a doctorate at the University of Western Sydney, 2K2, “Cows and Sovereignty: Biopower and Animal Life” Borderlands E-Journal Vol. 1 # 2 <http://www.borderlandsejournal.adelaide.edu.au/vol1no2_2002/wadiwel_cows.html>)

Such a political program has far reaching consequences, both for Western sovereignty, and the way that the business of politics is conducted. The living population of the earth has inherited a vision of sovereign power, which has spread cancerously into even the most seemingly inaccessible aspects of everyday life. This vision commands all, claims legitimacy for all, and determines the conduct of living for all within its domain. Politics ‘as we know it’ is caught inextricably in the web of sovereign power, in such a way that it seems that modern political debate cannot help but circulate around the same, routine issues: *"What is the appropriate legislative response?"; "Is it within the State’s powers to intervene in this particular conflict?";* "How can we ensure the citizen’s rights are maintained in the face of the state?"*.* To challenge such an encompassing and peremptory political discourse — where every question implies the sovereign absolutely, and every decision made refers to life itself — would require the most intensive rethinking of the way in which territory, governance and economy are imagined. In this sense, whilst Agamben’s analysis of bare life, and Foucault’s theory of bio-power, provide a means by which to assess the condition of non-human life with respect to sovereign power, the political project must reach beyond these terms, and embrace an intertwining of the human and the non-human: an intersection which may be found in the animal life shared by both entities.

### A2: Legalism Good

#### The affirmatives faith in the legal system is misplaced. They posit a static form of legality that violently aims to order and control socio-economicly identified populations without accepting inherent difference.

Gordon 87, Robert Gordon, Professor of Law at Stanford, “Unfreezing Legal Reality: Critical Approaches to Law,” Florida State University Law Review, Vol 15 No 3. 1987, lexis

Now a central tenet of CLS work has been that the ordinary discourses of law -- debates over legislation, legal arguments, administrative and court decisions, lawyers' discussions with clients, legal commentary and scholarship, etc. -- all contribute to cementing this feeling, at once despairing and complacent, that things must be the way they are and that major changes could only make them worse. Legal discourse accomplishes this in many ways. First by endlessly repeating the claim that law and the other policy sciences have perfected a set of rational techniques and institutions that have come about as close as we are ever likely to get to solving the problem of domination in civil society. Put another way, legal discourse paints an idealized fantasy of order according to which legal rules and procedures have so structured relations among people that such relations may primarily be understood as instituted by their consent, their free and rational choices. Such coercion as apparently remains may be explained as the result of necessity -- either natural necessities (such as scarcity or the limited human capacity for altruism) or social necessities. For example, in a number of the prevailing discourses, the ordinary hierarchies of workplace domination and subordination are explained: (1) by reference to the contractual agreement of the parties and to their relative preferences for responsibility versus leisure, or risk taking versus security; (2) by the natural distribution of differential talents and skills (Larry Bird earns more as a basketball player because he is better); and (3) by the demands of efficiency in production, which are said to require extensive hierarchy for the purposes of supervision and monitoring, centralization of investment decisions, and so forth. There are always some residues of clearly unhappy [\*199] conditions -- undeserved deprivation, exploitation, suffering -- that cannot be explained in any of these ways. The discourses of law are perhaps most resourceful in dealing with these residues, treating them as, on the whole, readily reformable within the prevailing political options for adjusting the structures of ordinary practices -- one need merely fine tune the scheme of regulation, or deregulation, to correct them. But the prevailing discourse has its cynical and worldly side, and its tragic moments, to offset the general mood of complacency. In this mood it resignedly acknowledges that beyond the necessary minimum and the reformable residues of coercion and misery there is an irreducible, intractable remainder -- due to inherent limits on our capacity for achieving social knowledge, or for changing society through deliberate intervention, or for taking collective action against evil without suffering the greater evil of despotic power. These discourses of legal and technical rationality, of rights, consent, necessity, efficiency, and tragic limitation, are of course discourses of power -- not only for the obvious reasons that law's commands are backed by force and its operations can inflict enormous pain, but because to have access to these discourses, to be able to use them or pay others to use them on your behalf, is a large part of what it means to possess power. Further, they are discourses that -- although often partially constructed, or extracted as concessions, through the pressure of relatively less powerful groups struggling from below -- in habitual practice tend to express the interests and the perspectives of the powerful people who use them. The discourses have some of the power they do because some of their claims sound very plausible, though many do not. The claim, for example, that workers in health-destroying factories voluntarily "choose," in any practical sense of the term, the risks of the workplace in return for a wage premium, is probably not believed by anyone save those few expensively trained out of the capacity to recognize what is going on around them. In addition, both the plausible and implausible claims are backed up in the cases of law and of economics and the policy sciences by a quite formidable-seeming technocratic apparatus of rational justification -- suggesting that the miscellany of social practices we happen to have been born into in this historical moment is much more than a contingent miscellany. It has an order, even if sometimes an invisible one; it makes sense. The array of legal norms, institutions, procedures, and doctrines in force, can be rationally derived from the principles of regard for individual autonomy, utilitarian [\*200] efficiency or wealth creation, the functional needs of social order or economic prosperity, or the moral consensus and historical traditions of the community. There are several general points CLS people have wanted to assert against these discourses of power. First, the discourses have helped to structure our ordinary perceptions of reality so as to systematically exclude or repress alternative visions of social life, both as it is and as it might be. One of the aims of CLS methods is to try to dredge up and give content to these suppressed alternative visions. Second, the discourses fail even on their own terms to sustain the case for their relentlessly apologetic conclusions. Carefully understood, they could all just as well be invoked to support a politics of social transformation instead. n3 Generally speaking, the CLS claims under this heading are that the rationalizing criteria appealed to (of autonomy, functional utility, efficiency, history, etc.) are far too indeterminate to justify any conclusions about the inevitability or desirability of particular current practices; such claims, when unpacked, again and again turn out to rest on some illegitimate rhetorical move or dubious intermediate premise or empirical assumption. Further, the categories, abstractions, conventional rhetorics, reasoning modes and empirical statements of our ordinary discourses in any case so often misdescribe social experience as not to present any defensible pictures of the practices that they attempt to justify. Not to say of course that there could be such a thing as a single correct way of truthfully rendering social life as people live it, or that CLS writers could claim to have discovered it. But the commonplace legal discourses often produce such seriously distorted representations of social life that their categories regularly filter out complexity, variety, irrationality, unpredictability, disorder, cruelty, coercion, violence, suffering, solidarity and self-sacrifice. n4 [\*201] Summing up: The purpose of CLS as an intellectual enterprise is to try to thaw out, or at least to hammer some tiny dents on, the frozen mind sets induced by habitual exposure to legal practices -- by trying to show how normal legal discourses contribute to freezing, and to demonstrate how problematic these discourses are.

### 2NC ALT

#### It is the process of stripping identies to engage in guerilla warfare against the state – it spillos over Transformational change is possible- bottom-up anti-drone movements challenge US militarism

Zeeze, 13 -- JD, Occupy Washington DC organizer

[Kevin, and Margaret Flowers, It’s Our Economy co-director, "Building Mass Resistance against New World Order Economic Austerity," 5-24-13, www.globalresearch.ca/building-mass-resistance-against-new-world-order-economic-austerity/5336278, accessed 9-1-13, mss]

“We are in the midst of the pre-history of historic transformational change that will end the rule of money.” This was a week that exemplified the historic moment in which we live. We will look back at these times and see the seeds of a national revolt against concentrated wealth that puts profits ahead of people and the planet. Not only were there a wide array of resistance actions, but activists against the Guantanamo prison and drone strikes scored partial victories on which we much continue to build challenges to US empire and militarism. Mike Lux, who authored a history of the movements of the 1960s, wrote this week that when he researched his book he “was struck by the fact that so many big things happened so close together.” Comparing that moment to today he writes, “We are living in such a moment in history right now, that organizers and activists are sparking off each other and inspiring each other, that there is something building out there that will bring bigger change down the road.” That is how we felt as we watched and participated in this week’s unfolding. We began the week prepared to focus our attention on the amazing teacher, student and community actions that were occurring in defense of schools. In Philadelphia, there was a giant walk-out of schools last Friday as students demanded their schools remain open and be adequately funded. The photos of young people fighting for the basic necessity of education were an inspiration. That was followed by three days of protests in Chicago that were equally inspiring, students organized and communities came together to fight for education. Though corporate-mayor Rahm Emanuel’s carefully selected board voted to close 50 elementary schools and one high school (while the city funds the building of a new basketball stadium), the Chicago activists say they are not done. They are just getting started. It is that kind of persistence that wins transformation. These school battles are part of a national plan to replace community schools with corporatized charter schools. The battles of Chicago, Philadelphia and other cities are all of our battles. Then there were the college students, who inspired us with their bravery especially because they were not fighting for themselves but for the students who come after them. At Cooper Union, students are in their second week of occupying the school president’s office. As the sit-in grew to more than 100, they garnered increasing community support. The school is about to begin to charge tuition, ending the nearly two century mission of its founder for free higher education. The students protesting will get free tuition; they are protesting for the students who follow. While they are sitting in, they are painting the president’s offices black and will continue to do so until he resigns his $750,000 a year job. Thousands have signed a “no confidence” petition against the president and board chairman. We believe that a country that really believed in its youth and was building for its future would provide free post-high school education, college or vocational school, to young adults rather than leaving them crippled by massive debt. As the week went on, more Americans stood up and showed their power. On Monday, people who have lost their homes to foreclosure or are threatened with foreclosure, along with their allies, began an occupation of the Department of Justice. Some of them joined us first as guests on our radio show on We Act Radio. Afterwards, we went to Freedom Plaza where they rallied. The coalition was a great mix of people of different ages, races and regions who were angry, organized and prepared. They marched down Pennsylvania Ave. to the Department of Justice to demand that Attorney General Eric Holder prosecute the bankers who collapsed the economy and stole their homes. They blocked the doors at the Department of Justice and put up tents emblazoned with “Foreclose on Banks Not on People,” put up a home with “Bank Foreclosed” over it and blocked the streets with orange mesh saying “Foreclosure and Eviction Free Zone.” As evening came, they moved their tents onto DOJ property, brought in a big couch and prepared to stay the night – and some did. By the third day of protests, they moved to Covington and Burling, the corporate law firm that spawned Eric Holder and where the DOJ official in charge of prosecuting the banks, Lenny Breuer, who did not prosecute a single big bank now gets a $4 million annual salary. In Congress the DOJ could not justify their claim that prosecuting the big banks would hurt the economy. The Home Defenders League/Occupy Our Homes actions broke through in the media as you can see at the end of this photo essay. We particularly enjoyed the coverage in Forbes – someone claiming to be Jamie Dimon was arrested in DC – reporting on protesters who gave the name of banksters when they were arrested. The police responded aggressively, which often attracts media coverage, including the tasering non-violent protesters. And, we were pleased to see local groups, like Occupy Colorado, highlighting the efforts of their colleagues who came to DC. But, action in the nation’s capital did not end there. There was also a massive walkout of food service workers across the city. The strike began at the building named for the famed union-destroying president, the Ronald Reagan Building, and then moved on, with a particular focus on Obama – the largest employer of low-wage workers. Obama could end poverty federal wages with a stroke of the pen. Will he? DC is the sixth city to see low-wage workers striking, New York, Chicago, Detroit, St. Louis, and Milwaukee, came before the Capital. Communities have stood with the workers when employers threatened their jobs and people now need to do the same for the DC workers who are being threatened with job loss, please take action to support them. And, coming up is the Wal-Mart workers’ “Ride for Respect” to the annual shareholders meeting on June 7 which emulates the Freedom Riders. Actions are happening throughout the country. In Illinois, so far two people have been arrested at a sit-in in the capitol building to support a ban hydro-fracking. And, the reaction to the call for a fearless summer by front-line environmental groups has been very strong. They are working together to plan major actions throughout the summer escalating resistance against extreme energy extraction. Pressure is building in the environmental movement which now recognizes Obama is part of the problem, not part of the solution. Groups like 350.org that avoided protesting Obama, are now protesting his “grass roots” group, Organizing for America. And, more is coming. At the end of the week people who have been marching to Washington, DC from Philadelphia as part of “Operation Green Jobs” will arrive to protest at the corporate bully of the capital – the US Chamber of Commerce – uniting the masses in opposition to the corporate lobbyists. Their long walk to DC echoes a walk last week by people from Baltimore seeking jobs and justice. This Saturday will be the worldwide March Against Monsanto in 41 countries and nearly 300 cities. We published an article in Truthout that explains why we should all protest Monsanto on May 25. This is a great example of non-hierarchical organizing as this protest was called by young grass roots activists and supported by Occupy Monsanto. One of the things that let us know the popular revolt is more powerful than we realize is the reaction of the power structure. The Center for Media and Democracy issued a report this week that examined thousands of pages of documents which showed how the national security apparatus against terrorism combined with corporate America to attack the occupy movement. And, in Chicago one of the undercover police involved in the NATO 5 case, is still spying, now on students and teachers protesting school closures. If they did not fear the people, would the power structure be behaving this way? But, when you read reports about police acting in this undemocratic way, don’t forget that many of them do not like doing what they are ordered to do and that pulling them to join the popular revolt is part of our job. A mass movement needs people from the power structure to join it in order to achieve success. We highlight one this week, Officer Pedro Serrano of New York who took the great personal risk of taping his superiors as part of an effort to end the racist ‘stop and frisk’ program of the NYPD. And, it is great to see people planning ahead. We got notice this week from activists in Maine planning for an October Drone Walk. The anti-drone movement and Guantanamo protests have had very positive effects. This week, President Obama had to admit that he killed four Americans with drones, mostly by accident – even though the DoD claims drones are accurate. Also this week, activists filed a war crimes complaint against Obama, Brennan and other officials seeking their prosecution. And Thursday, Obama was forced to make a public speech at the National Defense University about both the drone program and Guantanamo Bay Prison. Medea Benjamin of CODEPINK, interrupted the speech several times such that the President had to acknowledge her and she asked powerful questions as she was escorted out by security. [See video and transcript.] As she was escorted from the room Obama acknowledged: “The voice of that women is worth paying attention to.” Guantanamo activists responded to the president saying “no more excuses” and vowed to keep the pressure on! So, just as author Mike Lux saw in the 60s, there is a lot going on, lots of issues coming to a head at the same time and people taking action to confront them. How do we get to the next phase of popular resistance? Long time writer on movements and transformational change, Sam Smith, the editor of Progressive Review wrote “The Great American Repair Manual in 1997,” we reprinted a portion of it this week: A Movement Manual. The essence: movements are “propelled by large numbers of highly autonomous small groups linked not by a bureaucracy or a master organization but by the mutuality of their thought, their faith and their determination.” He recommends: organize from the bottom up, create a subculture, create symbols, develop an agenda and make the movement’s values clear. He also recommends becoming what you want to be – become an existentialist – writing “existence precedes essence. We are what we do.” As far as building community power, we recommend this video from “The Democracy School” on how to use local governance to challenge corporate power.” Do not despair when the media says there is no popular resistance. We have been covering the actions of the movement with weekly reports since 2011 and even before the occupy movement began, we saw Americans beginning to stand up. We knew it was the right time for occupy and we now see it is the right time for a mass popular resistance. We will be announcing a new project in mid-June to help bring the movement to a new level. Sign up here to hear about it and how you can help. To create the transformative change we want to see, we need people to get involved. We agree with Mike Lux who writes: “just as it took several years for the seeds planted in those 18 months in the early ’60s to take root and begin to bring about the changes of the years to come in terms of civil rights, women’s rights, and the environment, it will take several years for the seeds being planted now to fully take root. But I believe more and more that it will happen.” The government responds with police force and ignores the demands of the people. Super majorities of Americans agree with the views of the popular resistance, even if they are not yet acting. This is a recipe for a mass eruption of movement activity. We are in the midst of the pre-history of historic transformational change: a transformation, which will end the power of money to ensure that the people and planet come before profits.

#### The alternative is the only effective means of breaking down militarism – even the military acknowledges that it cannot continue its violence without public support.

Taylor, 9 (Diana, Professor of Performance Studies and Spanish @ NYU, “Afterword: War Play,” *PMLA*, October, p. 1886-1895)

And war seeps back into aesthetic frameworks.¶ Avant-garde¶ is originally a military¶ term, meaning the advanced guard of an¶ army. Rendition referred to surrender before¶ it meant performance. Now rendition¶ is synonymous with dark sites and criminal¶ warfare. The blurring of boundaries between¶ militarism and play, and between scenarios¶ and the real, allows the performance of¶ power to reach very different audiences. The¶ media ensure that militarism reaches their¶ own theater of operations—public opinion.¶ Counterinsurgency, the 2006 field manual¶ (FM3‑24) put out by the United States Army and Marine Corps, makes it clear in the first¶ paragraph of the introduction: enemies of the United States cannot confront its military with conventional weapons; the military is too powerful. So “they try to exhaust U.S. national will, aiming to win by undermining and outlasting public support. Defeating such¶ enemies presents a huge challenge” (ix). The “decisive battle,” as one commentator put it,¶ “may take place, not in the streets of Baghdad, but in the living rooms of America.”11 We, the imagined audience, are the target; our resolve is the weak link.12

## 1NR

### T

#### Solvency

Taylor, Senior Fellow-Center for Policy & Research, 13 (Paul, Senior Fellow at the Center for Policy & Research and an alumnus of Seton Hall Law School and the Whitehead School of Diplomacy and International Relations, and is veteran of the Army’s 82nd Airborne Division, with deployments to both Afghanistan and to Iraq, “Former DOD Lawyer Frowns on Drone Court,” March, http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/)

Lastly, there is the concern of creating perverse incentives: whether a person’s name or identity is known has never been a factor in determining the legality of targeting an otherwise-lawful military target. But by creating a separate legal regime for known targets, we could create a disincentive to collect information about a target. We do not want a military or intelligence agency that keeps itself intentionally uninformed. Nor do we want to halt a military operation in progress simply because one of the targets is recognized late. Conducting the review ex post would not eliminate these issues, but it would substantially mitigate them. The military (or CIA, if it keeps its program), would not fear an interruption of its operations, and could even have an incentive to collect more information in order to later please a court that has plenty of time to look back at the past operations and question whether an individual was in fact targeted.

#### Ex Post review of drone strikes would effectively constrain executive action

Jaffer, Director-ACLU Center for Democracy, 13 **(**Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), <http://www.harvardlawreview.org/issues/126/april13/forum_1002.php>)

**Since 9/11,** **the CIA and Joint Special Operations Command** (JSOC) **have used armed drones** to kill thousands of people **in places far removed from conventional battlefields**. Legislators, legal scholars, and human rights advocates have raised concerns about civilian casualties, the legal basis for the strikes, the process by which the executive selects its targets, and the actual or contemplated deployment of armed drones into additional countries. **Some have proposed that Congress establish a court to approve (or disapprove) strikes before the government carries them out. While judicial engagement with the targeted killing program is long overdue**, **those aiming to bring the program in line with our legal traditions** and moral intuitions **should think carefully before embracing this proposal. Creating a new court to issue death warrants is more likely to normalize the targeted killing program than to restrain it. The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use** lethal **force**. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear,**the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats.**These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) **Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also** encourage executive officials to observe these limits**.** **Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal judges.** **Even** Jeh **Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged** in a recent **speech that** judicial review could add “rigor” **to the executive’s decisionmaking process**. **In explaining the function of** the Foreign Intelligence Surveillance **Court,**which oversees government surveillance in certain national security investigations, **executive officials have often said that** even the mere prospect of judicial review deters error and abuse.

### CX

#### The plan would result in a balanced definition of imminence. The court would apply a standard that still allows decapitation of high value targets and out-of-battlefield operations– Hamdi proves

Kwoka 11 (Lindsay, J.D. UPenn, “TRIAL BY SNIPER: THE LEGALITY OF TARGETED KILLING IN THE WAR ON TERROR” Accessed at HeinOnline)

But this is not the end of the inquiry. Even if a targeted individual is not located on a field of battle, he may still be a threat, and tar- geted killing may potentially be necessary and appropriate in some circumstances. Applying the reasoning of" Hamdi here, a court would likely find that the use of targeted killing is only "necessary and ap- propriate" if it is the only way to prevent someone like Al-Awlaki from engaging in terrorist activity or otherwise harming the United States. The Hamdi Court was concerned with assuring that the executive used the least intrusive means in achieving its objective of preventing the enemy combatant from returning to battle. The Court made clear that the means used to achieve this objective should be no more intrusive than necessary.7\* It is consistent with the Court's concern to allow targeted killing only when it is the only means available to pre- vent harm to the United States. If the executive can demonstrate that an individual outside of a warzone will harm the United States unless he is killed, targeted kill- ing may be authorized. This is consistent with Hamdi, in which the main concern was preventing future harm to the United States while using the least intrusive means available. This is also consistent with U.S. criminal law, in which the executive branch is permitted to kill an individual if there is no peaceful means left to apprehend him. Such an approach is also consistent with the approach of the Su- preme Court. Even the most stalwart protectors of constitutional rights of alleged terrorists recognize that immediate action by the executive is at times necessary to prevent attacks.7'' An approach that al- lows the executive to use deadly force when it is the only available means of preventing harm effectively balances the need to protect citizen's constitutional rights while affording sufficient deference to the executive.

### WM

**Gilbert and McKelvey make an important distinction – after the fact review doesn’t limit authority – requiring due process may be a restriction but the aff doesn’t do that – Obama can still violate due process rights he just pays fines later**

**“war powers authority” is the president’s discretion to launch an attack – ex post doesn’t do that because the president maintains the decision power – only ex ante is topical**

Vladeck 13 (Steve, Professor of Law and the Associate Dean for Scholarship – American University Washington College of Law, JD – Yale Law School, Senior Editor – Journal of National Security Law & Policy, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…,” Lawfare Blog, 2-10, http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/)

II. Drone Courts and the Separation of Powers

In my view, the adversity issue is the deepest legal flaw in “drone court” proposals. But the idea of an ex ante judicial process for signing off on targeted killing operations may also raise some serious separation of powers concerns insofar as such review could directly interfere with the Executive’s ability to carry out ongoing military operations… First, and most significantly, even though I am not a particularly strong defender of unilateral (and indefeasible) presidential war powers, I do think that, if the Constitution protects any such authority on the part of the President (another big “if”), it includes at least some discretion when it comes to the “defensive” war power, i.e., the President’s power to use military force to defend U.S. persons and territory, whether as part of an ongoing international or non-international armed conflict or not. And although the Constitution certainly constrains how the President may use that power, it’s a different issue altogether to suggest that the Constitution might forbid him for acting at all without prior judicial approval–especially in cases where the President otherwise would have the power to use lethal force. This ties together with the related point of just how difficult it would be to actually have meaningful ex ante review in a context in which time is so often of the essence. If, as I have to think is true, many of the opportunities for these kinds of operations are fleeting–and often open and close within a short window–then a requirement of judicial review in all cases might actually prevent the government from otherwise carrying out authority that most would agree it has (at least in the appropriate circumstances). This possibility is exactly why FISA itself was enacted with a pair of emergency provisions (one for specific emergencies; one for the beginning of a declared war), and comparable emergency exceptions in this context would almost necessarily swallow the rule. Indeed, the narrower a definition of imminence that we accept, the more this becomes a problem, since the time frame in which the government could simultaneously demonstrate that a target (1) poses such a threat to the United States; and (2) cannot be captured through less lethal measures will necessarily be a vanishing one. Even if judicial review were possible in that context, it’s hard to imagine that it would produce wise, just, or remotely reliable decisions.

**This distinction is important – “targeted killing authority” is the decision to determine what is imminent – ex post doesn’t challenge that authority, but is just after-the-fact supervision on if the president used the right definition – only ex ante is topical**

McKelvey 11 (Benjamin, JD Candidate, Senior Editorial Board – Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>)

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the “imminence” standard.109 However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants of authority.110 In the context of targeted killing, a federal court could evaluate the targeted killing program to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. Targeted killing, by its very name, suggests an entirely premeditated and offensive form of military force.111 Moreover, the overview of the CIA’s targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval.112 While the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat to the nation, the judiciary has the authority to define “imminence” as a legal standard.113 These are general concepts of law, not political questions, and they are subject to judicial review.114

[Continues to Footnote]

114. Al-Aulaqi Response, supra note 2, at 24–25 (acknowledging its authority to define “imminence” yet declining to do so because it would require the court to determine “ex ante the permissible scope of particular tactical decisions”); Dehn & Heller, supra note 16, at 179 (referring to the government’s motion to dismiss on the basis that it “involv[es] an executive-branch decision to target an individual in the context of a congressionally authorized, armed conflict”); id. at 187 (noting Aulaqi’s request for the court to make a legal determination of the correct standard for the targeted killing of a U.S. citizen).

### ci

#### **the affirmative does not prohibit the ability of the President to make a military decision in one of the following areas mentioned in the topic – it merely requires a process or disclosure for the President to go through before exercising his commander and chief power**

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

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

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

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

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

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

### Prohib

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Increase means from a baseline

Rogers 5 Judge, STATE OF NEW YORK, ET AL., PETITIONERS v. U.S. ENVIRONMENTAL PROTECTION AGENCY, RESPONDENT, NSR MANUFACTURERS ROUNDTABLE, ET AL., INTERVENORS, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, 6/24, lexis

 [\*\*48]  Statutory Interpretation. [HN16](http://www.lexis.com/research/retrieve?_m=1fe428155fdfc9074f3623f0dae9d78a&docnum=14&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=0ebd338d6a7793de8561db53b915effd&focBudTerms=term%20increase&focBudSel=all#clscc16)While the CAA defines a "modification" as any physical or operational change that "increases" emissions, it is silent on how to calculate such "increases" in emissions. [42 U.S.C. § 7411(a)(4)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=103&_butInline=1&_butinfo=42%20U.S.C.%207411&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=1f89a0e47b1996a5400e8d865d8da08a). According to government petitioners, the lack of a statutory definition does not render the term "increases" ambiguous, but merely compels the court to give the term its "ordinary meaning." See [Engine Mfrs.Ass'nv.S.Coast AirQualityMgmt.Dist., 541 U.S. 246, 124 S. Ct. 1756, 1761, 158 L. Ed. 2d 529(2004)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=104&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b541%20U.S.%20246%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=48f016ea3eabfdb898b67b348b11662c); [Bluewater Network, 370 F.3d at 13](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=105&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b370%20F.3d%201%2cat%2013%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=78fdfe9d48c7b91d7659b90c0198707e); [Am. Fed'n of Gov't Employees v. Glickman, 342 U.S. App. D.C. 7, 215 F.3d 7, 10 [\*23]  (D.C. Cir. 2000)](http://www.lexis.com/research/buttonTFLink?_m=8541fbf7a7f5554ca588059b132acd17&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b367%20U.S.%20App.%20D.C.%203%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=106&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b342%20U.S.%20App.%20D.C.%207%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=14&_startdoc=1&wchp=dGLbVlz-zSkAW&_md5=fb18ff0b92931ac00621d88dae997e67). Relying on two "real world" analogies, government petitioners contend that the ordinary meaning of "increases" requires the baseline to be calculated from a period immediately preceding the change. They maintain, for example, that in determining whether a high-pressure weather system "increases" the local temperature, the relevant baseline is the temperature immediately preceding the arrival of the weather system, not the temperature five or ten years ago. Similarly,  [\*\*49]  in determining whether a new engine "increases" the value of a car, the relevant baseline is the value of the car immediately preceding the replacement of the engine, not the value of the car five or ten years ago when the engine was in perfect condition.

#### Restriction is a prohibition

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the **term "restriction**" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be **authorized by any permit or license**.

#### **Restrictions can mean BAN**

Supreme Court of Delaware 83 (THE MAYOR AND COUNCIL OF NEW CASTLE, a municipal corporation of the State of Delaware, Plaintiff Below, Appellant, v. ROLLINS OUTDOOR ADVERTISING, INC., Defendant Below, Appellee, No. 155, 1983, 475 A.2d 355; 1984 Del. LEXIS 324, November 21, 1983, Submitted, April 2, 1984, Decided)

The term "restrict" is defined as: To restrain within bounds; to limit; [\*\*9] to confine. Id. at 1182. The Supreme Court of the United States has recognized that HN5the term "regulate" necessarily entails a possible prohibition of some kind. That Court has stated: "It is an oft-repeated truism that every regulation necessarily speaks as a prohibition." Goldblatt v. Hempstead, 369 U.S. 590, 592, 8 L. Ed. 2d 130, 82 S. Ct. 987 (1962). The Supreme Court of Massachusetts in reviewing a statute containing language similar to that found in 22 Del.C. § 301 (which empowered municipalities to "regulate and restrict" outdoor advertising on public ways, in public places, and on private property within public view) held that the statute in question authorized a town to provide, through amortization, for the elimination of nonconforming off-site signs five years from the time the ordinance was enacted. The court held that the Massachusetts enabling act: Conferred on the Legislature plenary power to regulate and restrict outdoor advertising . . . . Although the word "prohibit" was omitted from [the enabling act], it was recognized that the unlimited and unqualified power to regulate and restrict can be, for practical purposes, the power to prohibit [\*\*10] "because under such power the thing may be so far restricted that there is nothing left of of it." (Citations omitted.) The court continued its discussions of the two terms by stating: The distinction between regulation and outright prohibition is often considered to be a narrow one: "that regulation may take the character of prohibition, in proper cases, is well established by the decisions of this court" . . . quoting from United States v. Hill, 248 U.S. 420, 425, 63 L. Ed. 337, 39 S. Ct. 143 (1919). John Donnelly and Sons, Inc. v. Outdoor Advertising Board, Mass. Supr., 369 Mass. 206, 339 N.E.2d 709 (1975). We hold that, through Article II, Section 25 of the Delaware Constitution and 22 Del.C. § 301, the General Assembly has authorized New Castle to terminate nonconforming off-site signs upon reasonable notice, that is, by what has come to be known as amortization. We hold that the power to "regulate and restrict" as such term applies to zoning matters includes the power, upon reasonable notice, to prohibit some of those uses already in existence.