# Round 3 – D2

## 2AC

### T

#### “Statutory restrictions” can mandate judicial review, but are *enacted* by congress

Mortenson 11 (Julian Davis Assistant Professor, University of Michigan Law School, “Review: Executive Power and the Discipline of History Crisis and Command: The History of Executive Power from George Washington to George W. Bush John Yoo. Kaplan, 2009. Pp vii, 524,” Winter 2011, University of Chicago Law Review 78 U. Chi. L. Rev. 377)

At least two of Yoo's main examples of presidential power are actually instances of presidential deference to statutory restrictions during times of great national peril. The earliest is Washington's military suppression of the Whiskey Rebellion (III, pp 66-72), a domestic disturbance that Americans viewed as implicating adventurism by European powers and threatening to dismember the new nation. n60 The Calling Forth Act of 1792 n61 allowed the President to mobilize state militias under federal control, but included a series of mandatory procedural checks--including judicial [\*399] approval--that restricted his ability to do so. n62 Far from defying these comprehensive restrictions at a moment of grave crisis, Washington satisfied their every requirement in scrupulous detail. He issued a proclamation ordering the Whiskey Rebels to disperse. n63 When they refused to do so, he submitted a statement to Justice James Wilson of the Supreme Court describing the situation in Pennsylvania and requesting statutory certification. n64 Only when Wilson issued a letter precisely reciting the requisite statutory language (after first requiring the President to come back with authentication of underlying reports and verification of their handwriting n65) did Washington muster the troops. n66 Washington's compliance with statutory restrictions on his use of force continued even after his forces were in the field. Because Congress was not in session when he issued the call-up order, Washington was authorized by statute to mobilize militias from other states besides Pennsylvania--but only "until the expiration of thirty days after the commencement of the ensuing [congressional] session." n67 When it became clear that the Pennsylvania campaign would take longer than that, Washington went back to Congress to petition for extension of the statutory time limit that would otherwise have required him to [\*400] disband his troops. n68 Far from serving as an archetypal example of presidential defiance, the Whiskey Rebellion demonstrates exactly the opposite. FDR's efforts to supply the United Kingdom's war effort before Pearl Harbor teach a similar lesson. During the run-up to America's entry into the war, Congress passed a series of Neutrality Acts that supplemented longstanding statutory restrictions on providing assistance to foreign belligerents. Despite these restrictions, FDR sent a range of military assistance to the future Allies. n69 Yoo makes two important claims about the administration's actions during this period. First, he claims the administration asserted that "[a]ny statutory effort by Congress to prevent the President from transferring military equipment to help American national security would be of 'questionable constitutionality'" (III, p 300). Second, he suggests that American military assistance in fact violated the neutrality statutes (III, pp 295-301, 310, 327-28).

#### In the area of means a certain scope

Elizabeth Miura 12, China Presentation, prezi.com/tccgenlw25so/chin165a-final-presentation/

"in the area of" refers to a certain scope

#### And, their interpretation is terrible and arbitrary Restrictions and regulations can both be prohibitions or limitations—no brightline to their interp

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.

### Norms

#### No link- application of rule of law is not derived from an “us v. them” dichotomy- western and non-western countries alike advocate for the rule of law

Rose 04

(Jonathan, Journal of Social Philosophy, “The Rule of Law in the Western World: An Overview,” 2004, Wiley Online Library) /wyo-mm

As these criticisms confirm, the Rule of Law has been closely identified with classic liberal theory and its focus on individual rights. But is it neces sarily associated with only this political view? It would seem useful to think about how the Rule of Law might apply in other political systems. In doing so, however, it is important to be sensitive to the possibility that the cultural and ideological aspects of other political systems might make the Rule of Law inapposite. Initially, consideration should be given to the propriety of adopt ing at least the narrow version in socialist or theocratic political systems. Recent scholars have discussed applying the Rule of Law more broadly. One recent work has pursued the relation between civil society and social net works in China to develop alternative models regarding the relation of the individual and the state.49 While one might think that this may only be an outsider’s perspective, such advocacy has come from within such countries. In a most interesting development, several Chinese legal scholars “have created a sensation in Chinese intellectual circles” with a proposal to enforce constitutionally guaranteed individual rights and to “steadily advance the rule of law” in place of the current mere governmental “homage” to it.5° Another scholar has noted that leaders and dissidents in both Western and non-Western countries have advocated the Rule of Law as a governmental aspiration.5’ He noted that they have exhibited “an extraordinary degree of agreement about one prescription that would benefit all, that is: the rule of law”52 and that “the touting of the rule of law is not just a mantra of lecturing Western liberal democracies,”53 as the “testimonials. . . have come from governing officials of various kinds of economic, cultural, and political and religious systems and sociefies.” Although he identifies several concerns about broadly embracing the Rule of Law, he answers the ques tion posed by his title, The Rule of Law for Everyone? “in the affirmative, at least conditionally” and that Rule of Law is a realizable “universal human good.”

#### Lack of rule of law causes mass human rights violations- aff key to check unbridled violence

Stromseth et al. 06

(Jane, David Wippman, and Rosa Brooks, Can Might Make Rights?: Building the Rule of Law After Military Interventions, Pg. 59) /wyo-mm

Human rights advocates, though not typically allies of multinational cor porations, business interests, or international financial institutions, are simi larly enthusiastic about the rule of law. As Yale Law School professor Owen Fiss has observed, the “rule of law revival we are experiencing today” can be partly “traced to the triumph of human rights.. . there has been an increas ing demand for or, more specifìcally, for the treatment of human rights as justiciable claims rather than mere aspirations, and for legal institutions that are able to enforce these claims.” The human rights-oriented concep tion of the rule of law involves, at a minimum, due process, equality before law, and judicial checks on executive power, for most human rights advo cates regard these as essential prerequisites to the protection of substantive human rights. To human rights advocates, where the rule of law is absent, human rights violations flourish: without the rule of law, arrests and deten tions arc arbitrary, there is no effective mechanism for preventing torture or extrajudicial execution; individuals or groups may be free to take the law into their own hands in abusive and violent ways, and abuses go unpunished in a climate of impunity. Other rights such as freedom of expression and free dom of conscience also cannot be realized without a protective network of laws to sustain them. Promoting the rule of law thus seems to most human rights advocates like a critical component of protecting fundamental human rights.

#### Their focus on the rule of law is misplaced, prevents discussion on the complexity of their criticism and prevents critical engagement with policy- kills alt solvency

Rajagopal 08

(Balakrishnan, William and Mary Law Review, “Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination Constitution Drafting in Post-Conflict States Symposium,” 2008, HeinOnline Library) /wyo-mm

This Article argues that this newfound fascination with the rule of law is misplaced. Underlying this “linkage” idea is a desire to escape from politics by imagining the rule of law as technical, legal, and apolitical. In other words, there is a tendency to think that failures of development, threats to security, and human rights violations could all be avoided or managed by a resort to law. This Article traces the characteristics of this idea and the different strands of policy and disciplinary discourses that have led to this conclusion, and argues that there is, in fact, a need to retain politics at the center of the discussions of development, human rights, and security. In addition, it argues that the invocation of the rule of law hides many contradictions among the different policy agendas § Marked 14:49 § themselves, such as between development and human rights or between security and human rights, that cannot be fully resolved by invoking the rule of law as a mantra. It is far more important to inquire into the real consequences of these agendas on ordinary people. Focusing attention on the rule of law as a broad, if not lofty, concept diverts attention from the coherence, effectiveness, and legitimacy of specific policies that are pursued to ensure security, promote development, or protect human rights. The rule of law agenda threatens to obfuscate the real tradeoffs that need to be made in order to achieve these worthy goals. These tradeoffs are real, partly due to the contradictions of socioeconomic development and political necessities in post-conflict settings and partly due to the contradictions between powerful third-party external actors with their own agendas and expert discourses who seek to intervene during “constitutional moments”4 of post-conflict reconstruction in the Third World.

#### View the debate through a lens of specificity – rigid rejection of “China threat” gets warped into a new orthodoxy and fuels extremism

Callahan 5 (William A., Professor of Politics – University of Manchester, “How to Understand China: The Dangers and Opportunities of Being a Rising Power”, Review of International Studies, 31)

Although ‘China threat theory’ is ascribed to the Cold War thinking of foreigners who suffer from an enemy deprivation syndrome, the use of containment as a response to threats in Chinese texts suggests that Chinese strategists are also seeking to fill the symbolic gap left by the collapse of the Soviet Union, which was the key threat to the PRC after 1960. Refutations of ‘China threat theory’ do not seek to deconstruct the discourse of ‘threat’ as part of critical security studies. Rather they are expressions of a geopolitical identity politics because they refute ‘Chinese’ threats as a way of facilitating the production of an America threat, a Japan threat, an India threat, and so on. Uniting to fight these foreign threats affirms China’s national identity. Unfortunately, by refuting China threat in this bellicose way – that is by generating a new series of threats – the China threat theory texts end up confirming the threat that they seek to deny: Japan, India and Southeast Asia are increasingly threatened by China’s protests of peace.43 Moreover, the estrangement produced and circulated in China threat theory is not just among nation-states. The recent shift in the focus of the discourse from security issues to more economic and cultural issues suggests that China is estranged from the ‘international standards’ of the ‘international community’. After a long process of difficult negotiations, China entered the WTO in December 2001. Joining the WTO was not just an economic or a political event; it was an issue of Chinese identity.44 As Breslin, Shih and Zha describe in their articles in this Forum, this process was painful for China as WTO membership subjects the PRC to binding rules that are not the product of Chinese diplomacy or culture. Thus although China enters international organisations like the WTO based on shared values and rules, China also needs to distinguish itself from the undifferentiated mass of the globalised world. Since 2002, a large proportion of the China threat theory articles have been published in economics, trade, investment, and general business journals – rather than in international politics, area studies and ideological journals as in the 1990s. Hence China threat theory is one way to differentiate China from these international standards, which critics see as neo-colonial.45 Another way is for China to assert ownership over international standards to affirm its national identity through participation in globalisation.46 Lastly, some China threat theory articles go beyond criticising the ignorance and bad intentions of the offending texts to conclude that those who promote China threat must be crazy: ‘There is a consensus within mainland academic circles that there is hardly any reasonable logic to explain the views and practices of the United States toward China in the past few years. It can only be summed up in a word: ‘‘Madness’’ ’.47 Indians likewise are said to suffer from a ‘China threat theory syndrome’.48 This brings us back to Foucault’s logic of ‘rationality’ being constructed through the exclusion of a range of activities that are labelled as ‘madness’. The rationality of the rise of China depends upon distinguishing it from the madness of those who question it. Like Joseph Nye’s concern that warnings of a China threat could become a self-fulfilling prophesy, China threat theory texts vigorously reproduce the dangers of the very threat they seek to deny. Rather than adding to the debate, they end up policing what Chinese and foreigners can rationally say. Conclusion The argument of this essay is not that China is a threat. Rather, it has examined the productive linkages that knit together the image of China as a peacefully rising power and the discourse of China as a threat to the economic and military stability of East Asia. It would be easy to join the chorus of those who denounce ‘China threat theory’ as the misguided product of the Blue Team, as do many in China and the West. But that would be a mistake, because depending on circumstances anything – from rising powers to civilian aircraft – can be interpreted as a threat. The purpose is not to argue that interpretations are false in relation to some reality (such as that China is fundamentally peaceful rather than war-like), but that it is necessary to unpack the political and historical context of each perception of threat. Indeed, ‘China threat’ has never described a unified American understanding of the PRC: it has always been one position among many in debates among academics, public intellectuals and policymakers. Rather than inflate extremist positions (in both the West and China) into irrefutable truth, it is more interesting to examine the debates that produced the threat/opportunity dynamic.

### Terror

#### Second, Predictions of terrorism are true- their critique replicates the logic preceding the attacks on Britain

**Jones ‘6** (The commentariat and discourse failure: language and atrocity in Cool Britannia International Aff airs 82: 6 (2006) 1077–1100 © 2006 The Author(s). Journal Compilation © 2006 Blackwell Publishing Ltd/The Royal Institute of International Aff airs DAVID MARTIN JONES AND M. L. R. SMITH )

Rather than accept the existence of a clear and present Islamist threat to western secularism and democracy after the 9/11 attacks, such critical thinking moved the discursive goal posts. **Critical thinkers and opinionators argued instead that western governments deliberately exaggerated the threat** to curtail legitimate dissent and civil liberties.46 In his bestselling book Dude, Where’s My Country? Michael Moore popularized this view, maintaining: ‘There is no terrorist threat. Why has our government gone to such absurd lengths to convince us our lives are in danger? The answer is nothing short of their feverish desire to rule the world, fi rst by controlling us, and then, in turn, getting us to support their eff orts to dominate the rest of the planet.’47 More measured academic commentary termed the propensity of liberal democratic governments to exaggerate the terrorist threat the ‘politics of fear’. Governments, they maintained, conjured the spectre of Islam and catastrophic terror attacks for illiberal purposes. The politics of fear persuaded the gullible masses to accept an illegitimate extension of state power under the rubric of counterterror policy. These measures eroded personal freedoms and restricted civil liberty. The UK government proposals to introduce identity cards, extend detention of terrorist suspects without trial and curtail expression of views calculated to infl ame racial hatred crystallized the new authoritarianism. The politics of fear also facilitated a contentious foreign policy legitimating the 2003 invasion of Iraq, on the grounds of necessary pre-emptive military action against all potential sources of threat and instability.48 Critics thus maintained that ‘Islamist terror’ constituted an all-purpose political bogeyman. Media commentary reinforced the politics of fear hypothesis. ‘So, a climate of fear it is,’ declared Jackie Ashley in the Guardian in March 2004: ‘Everywhere you turn, there is another gray-faced public fi gure telling you that a major terrorist attack is coming … and there is nothing we can do except trust our leaders.’49 In a similar, but academic, vein, security analyst Bill Durodié declared that ‘Insecurity is the key driving concept of our times. Politicians have packaged themselves as risk managers’ in order to pacify ‘a demand from below for protection’.50 The BBC series The Power of Nightmares, screened in the United Kingdom in early 2005, encapsulated this critical understanding for a wider audience.51 Advertising the series, the BBC News website in April 2005 announced: ‘The Power of Nightmares explores how the idea that we are threatened by a hidden and organized network is an illusion. It is a myth that has spread unquestioned through politics, the security services and the international media.’ Pre-publicity presented the threat as a ‘fantasy’ which ‘politicians then found restored their power and authority in a disillusioned age’, and argued somewhat mysteriously: ‘Those with the darkest fears became the most powerful.’52 If before 7/7 the politics of fear increasingly influenced mainstream media commentary, it also dominated UK and US campuses. The Guardian, sampling informed opinion prior to the screening of The Power of Nightmares, confi rmed the orthodoxy that the security bureaucracy and politicians constructed terrorism in order to pursue the politics of fear and repression.53 Adam Roberts, Professor of International Relations at Oxford University, observed that for governments the terror threat is of ‘absolute cosmic signifi cance’, legitimating an ‘anything goes’ attitude towards its defeat. For the historian Linda Colley, ‘States and their rulers expect to monopolise violence, and that is why they react so violently to terrorism.’ Given that there had been only one attack in Europe since 9/11, in Madrid in March 2003, Bill Durodié contended that the ‘reality [of the Al-Qaeda threat to the west] has been essentially a one-off ’.54 Nor was the evolving consensus confi ned to academic and media comment. Such views found support both among members of parliament and from common lawyers. In January 2005 Charles Kennedy, the leader of the Liberal Democrats, Britain’s third largest political party, asserted in his ‘New Year message’: A clear division is emerging in British politics: the politics of fear versus the politics of hope. Labour is counting on the politics of fear, ratcheting up talk of threat, crime and insecurity, while the Conservatives are re-working their populist scares about asylum and the European ‘menace’. Look at how Labour, with the support of the Conservatives, has undermined trust in the political process by its spin and reliance on external threats.55 Suspicion of a government policy based on the politics of fear similarly infl uenced legal decisions with respect to deportation or extradition orders for suspects wanted in third countries for terror-related off ences.56 More particularly, the law lords questioned the government’s authority to detain without trial non-British terror suspects resident in the UK, like Abu Qatada. In December 2004, the highest appellate court found Qatada’s detention illegal. One of the law lords, Lord Bingham, maintained that the government’s powers of detention ‘discriminate on the ground of nationality or immigration status’,57 while Lord Hoff man found that ‘The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these.’58 Those who criticized the government for its political exploitation of the threat, however, failed to recognize that their rejection of the politics of fear was also politically motivated. For the politics of fear itself resulted in highly politicized threat assessments couched in the language of balance, neutrality and concern for an abstract standard of law that transcended short-term political contingencies. Thus, in his judgment on the detention of non-UK citizens, Lord Hoff man argued that ‘fanatical groups’ ‘do not threaten the life of the nation’. He continued: ‘Terrorist crime, serious as it is, does not threaten our institutions of government or our existence as a civil community.’59 Hoff man asserted as constitutional fact what could only be an expression of faith. In an analogous vein, the security analyst Bill Durodié discounted the pretensions of Islamism’s UK franchise. After the conviction of the Algerian Kamel Bourgass in 2005 for murder and conspiracy to commit a public nuisance using poisons and explosives, including ricin, Durodié dismissed Al-Qaeda as a ‘conspiracy of dunces’. Assessing the ‘sheer naivety and incompetence of all these so-called al- Qaeda operatives’ like Bourgass, Richard Reid, the ‘dim-witted shoe bomber who had trouble with matches’, and Sajid Badat, ‘the Gloucester loner who bottled out of emulating Reid’, Durodié asserted: ‘If that is the best of what the supposed massed ranks of al-Qaeda have to off er after three years [i.e. after 9/11] … we should have little to fear. But the media, politicians and the police have sought to portray the situation diff erently.’60 **The London bombs disproved the politics of fear hypothesis and exposed the evaluations of law lords like Hoff man and security analysts like Durodié. The facts, expressed in the toll of civilian lives, demonstrated that the government’s perception had been more acute than that of its critics.** But its detractors portrayed government attempts to counter the threat of terror and heighten the state of public vigilance as an insidious plot to undermine democratic values.**61 As Frank Furedi observed, those who believed in the politics of fear met one conspiratorial claim—that the government was using the threat of Islamic terror to weaken basic freedoms—with a counterconspiracy—that there wasn’t much of a threat to begin** **with**.62 **Hence, the politics of fear determined its own preferred policy response, namely, the practice of complacency. Rather than engaging in a debate about the proportionality of response to a home-grown threat of Islamist terror, those who detected the politics of fear lurking behind every government pronouncement instead presented the security predicament in the very reductionist terms of which they accused those who claimed to be exaggerating the threat**. **In other words, the proponents of the politics of fear played the politics of fear themselves.63** Indeed, the thesis required fear—in this case, fear of a creeping authoritarian dystopia—to sustain it. In this way, a reasonable public policy concern about counterterrorist measures eroding established legal rights rapidly degenerated into a one-dimensional caricature of government policy not far removed from paranoid post-9/11 movies like V for Vendetta (2006). Furthermore, the wider commentariat’s acceptance of the politics of fear had far from trivial consequences. Mainstream politicians, the liberal press, television, academics and the courts gave it wide currency as a more objective response to the post-9/11 environment. Its premise, fear, discounted the threat and denigrated any serious attempt to evaluate the actual character and extent of the problem, asserting, without empirical basis, its more insightful assessment of the situation. Lord Walker, the single dissenting law lord in the 8 to 1 judgment in favour of Qatada in December 2004, expressed the inherent danger contained in this politics of complacency, well before the 7/7 attacks. Walker found that It is certainly not the court’s function to substitute for the British Government’s assessment any other assessment of what might be the most prudent or most expedient policy to combat terrorism. When a state is struggling against a public emergency threatening the life of the nation, it would be rendered defenceless if it were required to accomplish everything at once, to furnish from the outset each of its chosen means of action with each of the safeguards.64 The politics of complacency, by contrast, denied the existence of a ‘public emergency’. To the extent that a threat existed, it was attributed largely to government exploitation and overreaction, which had constructed a Muslim out-group.65 Consequently, for the West, the Islamist threat was an ‘enemy of its own making’.66 The rhetoric in response to both the 7/7 attacks and the subsequent revelation of plots and conspiracies in London refl ects a strategic misunderstanding that confuses limited tactical ability with limited political goals. The semantic laxity that informed discussion of the terrorist threat reinforced this misconception. Terrorism is a tactic practised as part of a strategy in war, but it is not a material phenomenon in itself. **The lax terminology and distorted meanings attached to the phenomenon created the epistemological foundations of discourse failure.** This failure enabled Islamist extremists to exploit the fault-lines in liberal, multicultural societies like Britain, which tolerated or ignored their evolving global campaign to engineer an apocalyptic confrontation with secular modernity. Prior to July 2005, the British authorities recognized only one theatre of the ‘war against terrorism’, which required confronting the Islamist threat externally. Yet since 9/11 Al-Qaeda has rapidly mutated, evolving **via the Internet a largely home-grown jihadist strategy to infi ltrate and attack the cosmopolitan western cityscape. A coherent response therefore demands the pursuit of a far more vigorous strategy at home**. In particular, it requires abandoning the prevailing view that the domestic threat is best prosecuted as a criminal conspiracy. **It demands instead a total strategy to deal with a totalizing threat**. **This means recognizing that there is an existential threat,** unencumbered by the politics of fear, root causes and denial that for too long has impeded its eff ective prosecution. An adequate strategy requires, moreover, a multifaceted response that goes beyond law enforcement. This does not mean imposing arbitrary regimes of detention without trial. What it does require, however, is enhanced means of intelligence-gathering, both technical and human, together with a coherent set of government policies addressing education, welfare, asylum, immigration and culture in order to safeguard a sustainable civil association. The **evidence demonstrates the existence of a physical threat, not merely the political fear of a threat**. The implementation of a coherent set of social policies confronting the threat at home recognizes that securing state borders and maintaining internal stability is the fi rst task of responsible government, responsible media and a responsible public education sector, both secondary and tertiary. For **without the basis of security, necessarily premised upon the inculcation of a shared political culture, the conditions for political pluralism and liberal democracy gradually disappear**. This requires a return to the Hobbesian verities of sovereignty, which, despite the illusion of post-Cold War cosmopolitan multiculturalism and the elitist dream of a post-national constellation, represents the only secure basis for liberal democratic order.

### 2AC – Executive Reform CP

#### And, Executive reform fails

Chebab, 2012

[Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review, 3-30-12, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572] /Wyo-MB

U.S. citizens, there must be a degree of inter-branch process when such individuals are targeted by the government to ensure that (1) these individuals truly pose a direct and imminent threat to the United States and (2) targeting is truly the last resort.¶ The preceding case law suggests that domestic legal protections for U.S. citizens necessitate a higher procedural threshold.102 Justice O’Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that the Executive is not a neutral decision-maker as the “even purportedly fair adjudicators are disqualified by their interest in the controversy.”103 In rejecting the government’s argument that a “separation of powers” analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O’Connor concluded that in times of conflict, the Constitution “most assuredly envisions a role¶ for all three branches when individual liberties are at stake.”104 Applying this reasoning to the entirely intra-executive process currently being afforded to American citizens like al-Awlaki would suggest that in the realm of targeted killing, where the deprivation is one’s life, the absence of any “neutral decision-maker” outside the executive branch is a clear violation of due process guaranteed by the Constitution. On a policy level, the danger of intra-executive process is similarly alarming. As Judge James Baker, in describing the nature of covert actions put it:¶ Because this process is internal to the executive branch, it is subject to executive-branch exception or amendment, with general or case-specific approval by the president. This is risky because in this area, as in other areas of national security practice, the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and accountable decision-making.105

#### Executive unilateralism on drones undermines public trust and fails—congressional restrictions are key

Goldsmith, 2013

[Jack, Henry L. Shattuck Professor at Harvard Law School, May 1 2013, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism] /Wyo-MB

These are unhappy developments for the president who in his first inaugural address pledged with supercilious confidence that, unlike his predecessor, he would not expend the "rule of law" for "expedience's sake." Obama reportedly bristles at the legal and political questions about his secret war, and the lack of presidential trust that they imply. "This is not Dick Cheney we're talking about here," he recently pleaded to Democratic senators who complained about his administration's excessive secrecy on drones, according to Politico. And yet the president has ended up in this position because he committed the same sins that led Cheney and the administration in which he served to a similar place.¶ The first sin is an extraordinary institutional secrecy that Obama has long promised to reduce but has failed to. In part this results from any White House's inevitable tendency to seek maximum protection for its institutional privileges and prerogatives. The administration's disappointing resistance to sharing secret legal opinions about the secret war with even a small subset of Congress falls into this category. ¶ But the point goes deeper, for secrecy is the essence of the type of war that Obama has chosen to fight. The intelligence-gathering in foreign countries needed for successful drone strikes there cannot be conducted openly. Nor can lethal operations in foreign countries easily be acknowledged. Foreign leaders usually insist on non-acknowledgment as a condition of allowing American operations in their territories. And in any event, an official American confirmation of the operations might spark controversies in those countries that would render the operations infeasible. The impossible-to-deny bin Laden raid was a necessary exception to these principles, and the United States is still living with the fallout in Pakistan.¶ For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. ¶ As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶

#### 2nd, Perm do both- Shields the Link to politics

[Neil Buchanan, Law Professor, February 21, 2013, Spending Priorities, the Separation of Powers, and the Rule of Law, http://www.dorfonlaw.org/2013/02/spending-priorities-separation-of.html, uwyo//amp]

The debt ceiling is keeping us busy, here at Dorf on Law. Later today, both Professor Dorf and I will be speaking at Columbia Law School, at the invitation of the Law Review editors who worked on our two articles in 2012. Over the weekend, we also finalized a new article, which Professor Dorf briefly described here yesterday. In it, we extend our ongoing analysis of the constitutional issues surrounding the debt ceiling. The short-hand versions of the two main sections of the article are: (1) Yes, there really is a trilemma, and (2) No, the debt ceiling is still not binding, even if everyone knows that they are creating a trilemma when they pass the spending and taxing laws. The latter point is important because already-existing trilemmas (such as the one that Congress and the President faced last month, before the Republicans capitulated by passing their "Debt Ceiling Amnesia Act") do not exist when there are no appropriated funds for the President to spend. (Strictly speaking, there would be a trilemma if even the minimal level of emergency spending required by law during a government shutdown could only be financed by borrowing in excess of the debt ceiling. But given that most of the tax code is enacted on a continuing basis -- that is, unlike spending, tax provisions generally do not expire on a particular date -- there will generally be enough money coming in to finance emergency operations without having to borrow.) Every spending/taxing agreement, therefore, potentially necessitates issuing enough net new debt to require an increase in the debt ceiling. When that happens, one could invoke something like the "last in time" rule, but we conclude that the problem should not be resolved by relying upon a legal canon that is generally used for rationalizing inconsistent laws. Rather, the more fundamental question is how to preserve the separation of powers. As we point out, Congress might actually want to give away its legislative powers, thus putting the political blame on the President for unpopular cuts (a point that Professor Scott Bauries at the University of Kentucky College of Law calls "learned legislative helplessness") -- but their desire to pass the buck is actually all the more reason not to let them do so. With great power comes great responsibility.

#### 3rd, counterplan links to politics

Schier 9

[Steven, Professor of Poliitcal Science at Carleton,"Understanding the Obama Presidency," The Forum: Vol. 7: Iss. 1, Berkely Electronic Press, http://www.bepress.com/forum/vol7/iss1/art10]

In additional to formal powers, a president’s informal power is situationally derived and highly variable. Informal power is a function of the “political capital” presidents amass and deplete as they operate in office. Paul Light defines several components of political capital: party support of the president in Congress, public approval of the presidential conduct of his job, the President’s electoral margin and patronage appointments (Light 1983, 15). Richard Neustadt’s concept of a president’s “professional reputation” likewise figures into his political capital. Neustadt defines this as the “impressions in the Washington community about the skill and will with which he puts [his formal powers] to use” (Neustadt 1990, 185). In the wake of 9/11, George W. Bush’s political capital surged, and both the public and Washington elites granted him a broad ability to prosecute the war on terror. By the later stages of Bush’s troubled second term, beset by a lengthy and unpopular occupation of Iraq and an aggressive Democratic Congress, he found that his political capital had shrunk. Obama’s informal powers will prove variable, not stable, as is always the case for presidents. Nevertheless, he entered office with a formidable store of political capital. His solid electoral victory means he initially will receive high public support and strong backing from fellow Congressional partisans, a combination that will allow him much leeway in his presidential appointments and with his policy agenda. Obama probably enjoys the prospect of a happier honeymoon during his first year than did George W. Bush, who entered office amidst continuing controversy over the 2000 election outcome. Presidents usually employ power to disrupt the political order they inherit in order to reshape it according to their own agendas. Stephen Skowronek argues that “presidents disrupt systems, reshape political landscapes, and pass to successors leadership challenges that are different from the ones just faced” (Skowronek 1997, 6). Given their limited time in office and the hostile political alignments often present in Washington policymaking networks and among the electorate, presidents must force political change if they are to enact their agendas. In recent decades, Washington power structures have become more entrenched and elaborate (Drucker 1995) while presidential powers – through increased use of executive orders and legislative delegation (Howell 2003) –have also grown. The presidency has more powers in the early 21st century but also faces more entrenched coalitions of interests, lawmakers, and bureaucrats whose agendas often differ from that of the president. This is an invitation for an energetic president – and that seems to describe Barack Obama – to engage in major ongoing battles to impose his preferences.

#### 5th, get’s rolled back-

#### Congressional involvement is key – internal executive review sets a precedent for future administrations to destroy due process that’s key to rule of law

Feldman 13 (Noah, Professor of Constitutional and International Law – Harvard University, “Obama’s Drone Attack on Your Due Process,” Bloomberg, 2-8, <http://www.bloomberg.com/news/2013-02-08/obama-s-drone-attack-on-your-due-process.html>)

The cases cited by the white paper provide no precedent for the idea that due process could be satisfied by some secret, internal process within the executive branch -- not that any such process is even mentioned. The reason they don’t is obvious: There is no such precedent. Never, to my knowledge, in the history of due process jurisprudence, has a court said that a neutral decision maker wasn’t necessary. And as Justice Felix Frankfurter wrote in language cited in the Mathews case, “the essence of due process is the requirement that a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.” Although the white paper doesn’t say so, Awlaki even tried to get a hearing before he was killed. His father asked a federal court to find that he wasn’t a terrorist. But the court never heard his claim, because the Obama administration persuaded it not to consider the case. When Paul Clement, solicitor general under George W. Bush, told the Supreme Court in the Hamdi oral argument that Hamdi had been given the opportunity to be heard during his interrogation, a notable gasp went through the courtroom. Justice Sandra Day O’Connor later singled out this outrageous claim for special criticism. The Obama administration’s apparent belief that due process can be satisfied in secret inside the executive branch is arguably a greater departure from precedent. It is a travesty of the very notion of due process. And to borrow a phrase from Justice Robert Jackson, it will now lie about like a loaded weapon ready for the hand of any administration that needs it. The white paper should have said that due process doesn’t apply on the battlefield. By instead making due process into a rubber stamp, the administration is ignoring precedent and subverting the idea of the rule of law. When is some law worse than none? When that law is so watered down that it loses the meaning it has had for 800 years.

#### Strong rule of law key to solve extinction

Tehranian and Clements 05

(Majid and Kevin P., America & The World: The Double Bind, Pgs. 18-19) /wyo-mm

In this globalized world closed societies are in rapid decline. No country can act in isolation. The actions of the world’s most powerful country will have lasting consequences on people all over the world. At one time the foremost proponent of the rule of law and the leading creator of multilateral institutions the United States has now decided to assert US exceptionalism to the very institutions it helped create. By these actions it is working to undermine the international rule of law. The United States is setting a dangerous precedent for other states by retreating from commitments under treaties. These treaties and the regimes that implement them provide the legal and institutional basis for ensuring minimal compliance with international norms and standards. Furthermore, refusal to enter into treaties that are designed to build global security will ultimately work to the detriment of the United States. Current global challenges will require stronger, not weaker, frameworks for cooperation. If states assert a right to act pre-emptively and without legitimation from the United Nations the challenges to international institutions and the rule of law will be very great indeed. Instead of prudence governing decisions, strike thresholds will be lowered and the margins of error increased. For example, the perceived threat from Iraq’s production and use of weapons of mass destruction turned out to be erroneous. . Since nuclear weapons are now part of the national security strategy of the United States there would have been even more damage had the United States used nuclear weapons. The use of force of any kind, let alone the use of weapons of mass destruction that do not make any distinctions between combatant and civilian, cannot be decided unilaterally. The United States’ unique role as the world’s only country with unsurpassed military might makes it a particularly fearsome and feared country. When it begins to adopt policies that allow it to be the sole arbiter of how it will behave for the benefit of 280 million people in a world of over 6 billon people, its minority status will quickly make it not only a feared, but also a despised country. The United States is dependent upon other countries to detect and prevent acts of terrorism. It must move within a framework of agreed upon norms and standards. This ensures that the safeguards which the rule of law brings to protect human rights, secure justice, and seek peaceful solutions to conflict will lead to a stable and sustainable future for the whole human family

### 2AC – Politics

#### Durbin, Reid, and Pelosi all killed the bill

Chicago Tribune 2-18

(“Editorial: Durbin vs. Obama on trade” 2-18-14 http://articles.chicagotribune.com/2014-02-18/opinion/ct-durbin-obama-fast-track-trade-edit-0218-jm-20140218\_1\_trade-promotion-authority-new-trade-agreements-international-trade//wyoccd)

Illinois is known for its exports. Among our leading businesses are world-ranging companies like Caterpillar, Archer Daniels Midland and Boeing. Illinois farmers ship a lot of soybeans and corn overseas. Some 23,000 Illinois companies sell abroad.¶ So it shouldn't need mentioning that trade is a vital part of the state's economy. In recent years, it's also been one of the few bright spots, rising by 64 percent from 2009 to 2012. International trade is good for the state's economy, companies and workers.¶ But Sen. Dick Durbin is not impressed. The second-ranking senator in the Democratic leadership, he is standing in the way of new trade deals with the European Union and Asian nations.¶ In an interview with Tribune columnist Melissa Harris, he said he was "critical and skeptical" of a measure President Barack Obama has requested in order to negotiate those agreements. Durbin said it is "very unlikely" the White House will get the legislation passed this year.¶ Obama has yet to pull out all stops on behalf of trade liberalization, but he's begun trying to advance it. In his State of the Union address, he said that "when ninety-eight percent of our exporters are small businesses, new trade partnerships with Europe and the Asia-Pacific will help them create more jobs." He added, "China and Europe aren't standing on the sidelines. Neither should we."¶ To achieve new trade agreements that will expand foreign markets for U.S. goods, Obama called on Congress to give him what's called Trade Promotion Authority or TPA — something that has been granted in one form or another to every president since Franklin Roosevelt.¶ TPA upholds Congress' power to accept or reject any agreement ultimately negotiated with other nations and sent to Capitol Hill by the executive branch for approval. But it stipulates that Congress has to vote on the whole package, rather than amend it or filibuster.¶ Without that provision, foreign governments would have little incentive to negotiate with administration trade officials, knowing that every point would be subject to nitpicking and revision by Congress. Just as the United States can't afford 535 commanders in chief, it can't afford 535 trade negotiators.¶ In sum, TPA enables the executive branch to hammer out the many details of how to expand trade. But Congress retains the final say on whether to accept what's agreed on.¶ Senate Democratic leader Harry Reid had earlier delivered a brushback pitch to the president. "I'm against fast track," he said. "Everyone would be well advised just to not push this right now." Durbin apparently is inclined to side with his fellow Democratic senator rather than his president. "It is a take-it-or-leave-it approach to trade agreements which really deals members of Congress and their concerns out of the picture," he complained.¶ But that argument holds no water. In deciding what to demand in a trade deal, the administration will have to keep in mind what Congress wants — and what it won't tolerate. Members and their concerns figure prominently in decisions about how to shape a deal. The White House knows that if it ignores the concerns of Congress, any pact would be dead on arrival.¶ The real reason for blocking TPA is that doing so allows lawmakers to kill the talks without seeming to reject trade outright. A lot of Democrats in Congress are hostile to the idea of free trade, which organized labor has long resisted. A battle to get the bill through Congress would divide the party and present risks at the polls this November.

#### Obama not pushing now, his PC fails, and bill likely after election

McAuliff et al 2-14

(Michael, Huffington Post. Sam Stein, Huffington Post. Sabrina Saddiqui, Huffington Post. “Joe Biden Admits Vast Obama Trade Deals Are On Hold” 2-14-14 http://www.huffingtonpost.com/2014/02/14/white-house-trade-deal\_n\_4790338.html//wyoccd)

WASHINGTON -- The White House's trade plans are on hold, at least for now, Vice President Joe Biden said Friday, in welcome news to many Democrats who oppose the sweeping deals.¶ President Barack Obama has been pushing for ambitious free-trade deals with Europe and 11 Pacific nations. But those deals depend first on Congress granting the president so-called fast-track trade authority. Senate Majority Leader Harry Reid (D-Nev.) has already said he opposes recently proposed legislation from former Sen. Max Baucus (D-Mont.) and Rep. Dave Camp (R-Mich.) that would grant that authority, and House Democratic Leader Nancy Pelosi rejected the Baucus-Camp proposal on Wednesday.¶ After speaking to lawmakers at a Democratic policy retreat in Cambridge, Md., Biden acknowledged that Obama would not get his trade authority any time soon, in spite of having pushed for it in his recent State of the Union address.¶ "Nancy, I know it's not coming up now,” Biden said to Pelosi, according to a Democratic aide in the room.¶ An aide to the vice president said later Friday that reports that Biden had indicated the administration's trade agenda was on hold were "inaccurate."¶ "While the Vice President said he understands where some members of the House and Senate are coming from, he made a clear case for the Administration’s trade priorities, including the Trans-Pacific Partnership negotiations, which he stated are very much in the economic and strategic interest of the U.S," the aide said in an email to The Huffington Post. "He explained our national trade priorities in detail."¶ Opposition to the trade deals -- especially the Trans-Pacific Partnership, which is a major part of Obama's pivot toward Asia -- runs across the political spectrum. Opponents fear the TPP will undermine labor and environmental standards in the United States, and cost American workers' jobs. Many Democrats are also worried that if the White House were to pursue huge trade treaties that remind people of NAFTA and its subsequent job losses, it would undercut their pro-middle class message in the 2014 election.¶ Democrats and many others are also angry that the talks crafting the deals have been shrouded in secrecy, with the details hidden from the public.¶ Biden also assured the lawmakers in the Friday address that the administration would be transparent about its plans.¶ "Look at me, I promise," Biden said, according to an aide. It was unclear if Biden meant transparent to the general public, or just lawmakers, who already have access to the sealed information about the deals. Obama's trade representative recently cut off a briefing to Vermont lawmakers when they insisted that the public be allowed to listen in.¶ While Biden seemed to be admitting the trade plans are on hold, neither he nor Pelosi has ruled out pushing for them in the future. Indeed, Pelosi told reporters Wednesday that while she opposes the fast-track bill from Baucus and Camp, she favors trade deals if they are done right.¶ "I have worked with many of our colleagues to try to find some common ground, but in its present form, it is unacceptable. That is not ... a rejection of the president's trade agenda. It's a rejection of the current form of the Camp-Baucus [bill]," Pelosi said. "But the trade issue is a very important one, because we're the party of John F. Kennedy, we're the party of free trade, fair trade, and we believe that the global economy is here to stay, and we're part of it."¶ Still, Biden's remarks show the White House understands neither chamber of Congress is likely to push ahead with a fast-track bill in the current climate. And that means the administration's best chance for success will not come until after the elections.

#### 3rd, no political battle means plan won’t derail Obama’s agenda- plan is popular in congress

Jakes 13

(Laura Jakes, writer for the Associate Press. “Congress Considers Putting Limits on Drone Strikes” 2-6-13 http://www.military.com/daily-news/2013/02/06/congress-considers-putting-limits-on-drone-strikes.html//wyoccd)

WASHINGTON -- Uncomfortable with the Obama administration's use of deadly drones, a growing number in Congress is looking to limit America's authority to kill suspected terrorists, even U.S. citizens. The Democratic-led outcry was emboldened by the revelation in a newly surfaced Justice Department memo that shows drones can strike against a wider range of threats, with less evidence, than previously believed.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists, is expected to be a top topic of debate when the Senate Intelligence Committee grills John Brennan, the White House's pick for CIA chief, at a hearing Thursday.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.¶ "It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons, D-Del., said in a recent interview.¶ Rep. Steny Hoyer of Maryland, the No. 2 Democrat in the House, said Tuesday that "it deserves a serious look at how we make the decisions in government to take out, kill, eliminate, whatever word you want to use, not just American citizens but other citizens as well."¶ Hoyer added: "We ought to carefully review our policies as a country."¶ The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said Tuesday, and Chairman Robert Menendez, D-N.J., and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations. And earlier this week, a group of 11 Democratic and Republican senators urged President Barack Obama to release a classified Justice Department legal opinion justifying when U.S. counterterror missions, including drone strikes, can be used to kill American citizens abroad.¶ Without those documents, it's impossible for Congress and the public to decide "whether this authority has been properly defined, and whether the president's power to deliberately kill Americans is subject to appropriate limitations and safeguards," the senators wrote.

#### 4th, Political capital theory not true—and if the plan causes a fight it means Obama will get to pass more legislation—winning wins

Hirsh, 2013

[Michael, national journal chief correspondent, There’s No Such Thing as Political Capital, 3-30-13, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207] /Wyo-MB

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

#### Trade doesn’t solve war

Martin 6—prof pol sci, U France. Chair in Economics at the Paris School of Economics. Former economist at the Federal Reserve Bank of New York. Former assistant professor at the Graduate Institute of International Studies. Visiting researcher at Princeton. PhD from Georgetown. (Phillipe, “Make Trade not War?,” 12 April 2006, http://www.ecore.be/Papers/1177063947.pdf)

Does globalization pacify international relations? The “liberal” view in political science argues that increasing trade flows, and the spread of free markets and democracy should limit the incentive to use military force in interstate relations. This vision, which can partly be traced back to Kant’s Essay on Perpetual Peace (1795), has been very influential: the main objective of the European trade integration process was to prevent the killing and destruction of the two World Wars from ever happening again1. Figure 1 suggests 2 however that on the 1870-2001 period, the correlation between trade openness and military conflicts is not a clear cut one. The first era of globalization, at the end of the XIXth century, was a period of rising trade openness and of multiple military conflicts, culminating with World War I. Then, the interwar period was characterized by a simultaneous collapse of world trade and conflicts. After World War II, world trade increased rapidly while the number of conflicts decreased (although the risk of a global conflict was obviously high). There is no clear evidence that the 1990s, during which trade flows increased dramatically, was a period of lower prevalence of military conflicts even taking into account the increase in the number of sovereign states.

### 2AC – K

#### War turns structural violence

Joshua S. Goldstein, Professor of International Relations at American University, 2001 (“Reflections: The Mutuality of Gender and War," *War and Gender*, Published by Cambridge University Press, ISBN 0521001803, p. 411-412)

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, "if you want peace, work for justice." Then, if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars' outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices. 9 So, "if you want peace, work for peace." Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to "reverse women's oppression." The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book's evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate. 10

#### Extinction outweighs ontology

**Jonas 96** [Hans, Former Alvin Johnson Prof. Phil. At the New School for Social Research & Former Eric Voegelin Visiting Prof. at U. Munich, \*do not agree with gendered language, Mortality and Morality: A Search for the Good after Auschwitz, pg 111-2

With this look ahead at an ethics for the future, we are touching at the same time upon the question of the future of freedom. The unavoidable discussion of this question seems to give rise to misunderstandings. My dire prognosis that not only our material standard of living but also our democratic freedoms would fall victim to the growing pressure of a worldwide ecological crisis, until finally there would remain only some form of tyranny that would try to save the situation, has led to the accusation that I am defending dictatorship as a solution to our problems. I shall ignore here what is a confusion between warning and recommendation. But I have indeed said that such a tyranny would still be better than total ruin; thus, I have ethically accepted it as an alternative. I must now defend this standpoint, which I continue to support, before the court that I myself have created with the main argument of this essay. For are we not contradicting ourselves in prizing physical survival at the price of freedom? Did we not say that freedom was the condition of our capacity for responsibility—and that this capacity was a reason for the survival of humankind? By tolerating tyranny as an alternative to physical annihilation are we not violating the principle we established: that the How of existence must not take precedence over its Why? Yet we can make a terrible concession to the primacy of physical survival in the conviction that the ontological capacity for freedom, inseparable as it is from man’s being, cannot really be extinguished, only temporarily banished from the public realm. This conviction can be supported by experience we are all familiar with. We have seen that even in the most totalitarian societies the urge for freedom on the part of some individuals cannot be extinguished, and this renews our faith in human beings. Given this faith, we have reason to hope that, as long as there are human beings who survive, the image of God will continue to exist along with them and will wait in concealment for its new hour. With that hope—which in this particular case takes precedence over fear—it is permissible, for the sake of physical survival, to accept if need be a temporary absence of freedom in the external affairs of humanity. This is, I want to emphasize, a worst-case scenario, and it is the foremost task of responsibility at this particular moment in world history to prevent it from happening. This is in fact one of the noblest of duties (and at the same time one concerning self-preservation), on the part of the imperative of responsibility to avert future coercion that would lead to lack of freedom by acting freely in the present, thus preserving as much as possible the ability of future generations to assume responsibility. But more than that is involved. At stake is the preservation of the Earth’s entire miracle of creation, of which our human existence is a part and before which man reverently bows, even without philosophical “grounding.” Here too faith may precede and reason follow; it is faith that longs for this preservation of the Earth (fides quaerens intellectum), and reason comes as best it can to faith’s aid with arguments, not knowing or even asking how much depends on its success or failure in determining what action to take. With this confession of faith we come to the end of our essay ontology.

#### The prioritization of method, or other philosophical approaches over all else, trades off with real world change and creates a vicious cycle that prevents concrete solutions to problems

Owen 02, Reader in Political Theory at the University of Southampton (David, “Reorienting International Relations: On Pragmatism, Pluralism and Practical Reasoning”, Millennium: Journal of International Studies, Vol. 31, No. 3, <http://mil.sagepub.com/cgi/reprint/31/3/653>)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### Third, permutation do both- Legal reforms dampen emergency powers and prevent future injustices from our counter-terrorism policies

O’Cinneide ‘08

[Colm, University College London senior law lecturer, “‘Dampening’: How Legal Mechanisms Can Offer a Partial Respite from the Counter-Terrorism Cycle” http://epress.anu.edu.au/war\_terror/mobile\_devices/ch15s07.html>//wyo-hdm]

However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilization in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[[113](http://press.anu.edu.au//war_terror/mobile_devices/ch15s07.html" \l "ftn.d0e14276)] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### Fourth, physical distancing is good- doesn’t create moral detachment, decreases casualties, increases just responses by pilots-

Whetham 13

(David, Senior Lecturer in the Defence Studies Department of King’s College London, based at the Joint Services Command and Staff College at the UK Defence Academy, degree in Philosophy at the London School of Economics, Masters Degree in War Studies at King’s College, Chair of the King’s College research ethics committee that oversees the research conducted in the Schools of Social Science and Public Policy, Arts and Humanities and Law, The RUSI Journal, “Killer Drones The Moral Ups and Downs,” June 27, 2013, Taylor and Francis//wyo-mm)

Of course, ‘stand-off’ weapons themselves are nothing new and there is a spectrum in terms of such capabilities: a rock thrown a few yards might be at one end, while a Tomahawk cruise missile might be at the other. A soldier with a sniper rifle, able to watch a target through a scope from a distance of several kilometres before pulling the trigger, is also clearly on the stand-off spectrum, as is a fast-jet pilot delivering close air support to those on the ground. From this perspective, therefore, the drone's degree of remoteness is much greater when considering that the operator may sit many thousands of miles away from where the drone is actually flying its mission. However, while the degree of stand-off is obviously greater, this does not necessarily imply that there is any moral difference between the soldier looking down the rifle scope, the pilot using an aircraft's sensor display to target a laser-guided bomb and the drone operator looking at targets on a screen. One of the obvious physical differences is that however safe the sniper is, or however high above the front line the fast-jet pilot is, both are still in, over or at least near the theatre of operations, sharing certain risks with those on the ground, including the targets. These are risks that the drone operator is simply not concerned with. Yet the question remains as to why this should matter at all. If the effect of the combatant's action is going to be the same whether they are pulling the trigger, flying a plane or piloting a drone, it would appear perverse to insist on putting one's own personnel in harm's way, and to claim it as somehow ethically preferable, when the same effect could be achieved without doing so. Bradley J Strawser, an assistant professor in the defence analysis department at the US Naval Postgraduate School and a research associate with Oxford University's Institute for Ethics, Law and Armed Conflict, suggests there might actually be a moral imperative at work that compels the West to pursue and deploy this type of technological development to minimise unnecessary risk to personnel.12 Indeed, it is ‘wrong to command someone to take on unnecessary potentially lethal risks in an effort to carry out a just action for some good’.13 As a programme manager at Honeywell puts it: ‘every time a T-Hawk goes down it means a human didn't.’14 Surely, this should be a good thing, based on a clear common-sense, if not ethical, requirement to reduce risks to one's own personnel where it is possible to do so. This appears to be a strong argument in favour of using more drones rather than fewer. However, there are also other concerns related to this distance between the pilot and the target – primarily that of moral disconnection. Some military training is designed to allow individuals to achieve emotional distance from their enemies and thus enable them to overcome an innate reluctance to kill.15 One of the tools traditionally employed in this regard is dehumanisation – the promotion of a sense of ‘otherness’ in the group that is deemed to be a threat. Those who fall into such a group can then be perceived as ‘non-entities, expendable or undeserving’, making the act of killing them easier to carry out.16 Given Prince Harry's recent comparison of his work as a co-pilot gunner in an Apache gunship to a video game,17 it is easy to see how some people would wonder about the moral effect of killing when the targets are just pixels on a screen and there is no need to look anyone ‘in the eye’– a clear, perhaps even extreme, example of dehumanisation. It also raises the question as to how much easier this would be if the person ‘pulling the trigger’ were 8,000 km away to begin with. The English philosopher A C Grayling notes that an RAF bomber crew in the Second World War could unleash its bombs from 20,000 feet and knowingly kill hundreds or even thousands of women and children. If, however, one gave the same bomber crew a knife and told them to slit the throats of the family in the room next door, they would not be able to do it.18 Indeed, physical separation appears to ease the suspension of moral concerns, even to the extent of making terrible things possible. Interviews with contemporary military pilots with combat experience show that they tend to agree that ‘not only are decisions to kill [from the air] rarely perceived as emotionally charged, the death of friendly, yet physically distant combatants is emotionally dulled’.19 It would appear, then, that such a lack of physical contact associated with remote killing contributes greatly to the alienation of each side from the other. Whether this ‘remoteness’ is achieved through the planting of a roadside improvised explosive device (IED) – for which people bid money via the Internet to win the right to detonate the bomb and watch the results live on a website – or a drone operator ‘wasting’ tiny avatars on a computer screen, it is thus difficult to ensure the essential mutual respect that combatant equality – the bedrock of the law of armed conflict – requires. If a faceless enemy can be so debased, it is easy to see how lines can become blurred and civilians can come to be seen as just another target. However, physical distance does not always guarantee a corresponding emotional separation. An American Second World War veteran recalled the moment at which he opened his aircraft's bomb-bay doors on his first mission over Europe: ‘He felt terrible resistance, nausea, sickness, headaches, despair. He couldn't do it, but his crew chief screamed at him, “Now! Now!” If he didn't, the mission would be a failure and it would be his fault. He finally pushed the button. Then he vomited.’20 Of course, this refers to an act that was part of a total war in which large-scale, devastating attacks on civilian populations were commonplace, rather than the type of highly accurate, precision-targeting policies of wars of choice in the contemporary age, in which the ‘pilot’ can even be on a different continent. Nevertheless, the moral comfort that distance can provide might not extend as far as many would think. Just because the target is viewed through a screen rather than a rifle or bombsight does not mean that taking life has no effect on the person pulling the trigger. Perhaps surprisingly, just as fast-jet pilots can suffer from post-traumatic stress disorder (PTSD), there are also cases among drone pilots who have never personally even been in (or over) the theatre of military operations.21 One wonders if operating a drone for offensive missions in the contemporary operating environment might actually be closer to the experience of military snipers.22 Snipers, too, are separated by distance, but can also be intimately aware of their target, much like the drone operator who might be tracking a target for hours using real-time video feeds before the decision is taken to strike. A sniper deployed in Iraq recalls:23 Theoretically, sniping was supposed to be a matter of clinical, dispassionate killing. ‘Even when we were in Iraq, killing Iraqis, it was target one, target two. Target one's on the left; target two's on the right. OK, scan target one. Target one's down. Scan target two. Fire. Target two's down. That's it. They're just targets; you try to convince yourself of that.’ [However,] imagining a man purely as a target was not easy when you had to aim specifically at him and fire § Marked 14:56 § and then watch him fall over, screaming and arching his back in agony. Drone footage can be just as graphic. This raises questions about whether the geographic dislocation is actually providing moral dislocation at all, or at least any dislocation greater than that experienced by a sniper.24 An RAF RPAS operator noted that: 25 [A] day, two days, maybe a month can be spent watching and then when it happens, we don't leave once we've dropped the weapons, we stick around for battle damage assessment and because of the way of the Muslim faith – they like to bury their dead before the sun goes down – generally you will see the funeral procession, the women and children arrive, it can be very emotional and that's one of the things they're looking for to make sure that that doesn't turn into a problem in ten, fifteen years. Such considerations feed into a wider debate regarding the long-term emotional effects of combat on drone operators – and in particular whether the geographical and emotional distance entailed will prove a positive or negative factor. Dave Grossman, in his powerful book On Killing: The Psychological Cost of Learning to Kill in War and Society, notes that those who do not dehumanise their opponents are most likely to be able to deal with the aftermath of war and go on to lead happy and productive lives.26 If it is true that the innate (or at least the socially programmed) inhibitions against killing do not need to be overcome in the same way for drone operators as they do, for example, for infantry who need to be prepared to close with and then kill the enemy, then the psychological repercussions of war might be significantly reduced. It will be interesting to see if incidences of PTSD among drone operators in the longer term turn out to be significantly different – both quantitatively and qualitatively – to those among combatants who are physically present in (or over) the battle space. Putting aside this question of emotional and psychological consequences associated with remote combat, it remains the case that the absence from the physical situation has some obvious implications for the effectiveness of the drone operator. The fact that the operator is not directly at risk when on a ‘mission’ provides him or her with some advantages over a person physically in harm's way. Another drone operator refers to this as the ability to ‘step back and have a bit more of a Hamlet moment as it were … you can hopefully double-check what you're doing is correct’.27 This detachment provides time and space for decision-making that is, quite literally, a world away from the experiences of soldiers on the ground or even of pilots in hostile airspace. The ability to remain cool, calm and detached arguably allows better decisions to be taken in the heat of battle. There are undoubtedly issues of situational awareness linked to the physical limitations of the information feeds, such as the need to ensure sufficient bandwidth for receiving all of the required sensor data, and potential time delays (of about one to two seconds) caused by the distance the signals need to travel, but these are all technical issues that are constantly being minimised or ameliorated. This author has been told by current RPAS pilots who have also flown combat missions in fast jets that, in practice, problems surrounding situational awareness generally have more to do with the quality and chosen field of view of the sensors being employed rather than whether those sensors are on a manned jet or a drone. Just as manned aircraft can increase their situational awareness by calling on visual back-up from other aircraft or other assets in theatre, a drone operator can also refer to images provided by other drones and ISR assets to build up a more detailed and accurate picture of the situation. Of course, this must be balanced against the possible negative effects of drone pilots switching between different platforms or coming ‘on shift’ halfway through an operation, and therefore not having the continuity of focus required to build up an understanding of the ‘story’ playing out on the ground. However, such issues should be avoidable and one might expect that as technology continues to improve, the quality of the decisions being made should also therefore increase. There may be other advantages to being physically remote: a corresponding emotional distance between the operator and events on the ground may well have a positive influence on the behaviour of the former towards the target. As Strawser notes, ‘Once fear for their own safety is not a pressing concern, one would assume the operator would be more capable, not less, of behaving justly.’28 By contrast, a 2006 report by the US military's Mental Health Advisory Team (MHAT) avers a strong correlation between anger among armed forces personnel and the mistreatment of non-combatants. It also suggests that soldiers and marines who were members of units that had suffered casualties were more likely to treat civilians in negative ways.29 Furthermore, Paolo Tripodi argues that the ability to remain slightly detached from one's immediate situation is one of the attributes of a good commander.30 As such, the enforced detachment of the drone operator might well be a positive thing.

#### Fifth, no impact- drones have no effect on the acceptability of war, don’t make war more likely, and are key to decreases detriments of war

Etzioni 13

(Amitai, professor of international relations at George

Washington University, Military Review, “Great Drone Debate,” 2013, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>) /wyo-mm

Mary Dudziak of the University of Southern California’s Gould School of Law opines that “[d]rones are a technological step that further isolates the American people from military action, undermining political checks on . . . endless war.” Similarly, Noel Sharkey, in The Guardian, worries that drones represent “the ﬁnal step in the industrial revolution of war—a clean factory of slaughter with no physical blood on our hands and none of our own side killed.” This kind of cocktail-party sociology does not stand up to even the most minimal critical examination. Would the people of the United States, Afghanistan, and Pakistan be better off if terrorists were killed in “hot” blood—say, knifed by Special Forces, blood and brain matter splashing in their faces? Would they be better off if our troops, in order to reach the terrorists, had to go through improvised explosive devices blowing up their legs and arms and gauntlets of machinegun ﬁre and rocket-propelled grenades—traumatic experiences that turn some of them into psychopath-like killers? Perhaps if all or most ﬁghting were done in a cold-blooded, push-button way, it might well have the effects suggested above. However, as long as what we are talking about are a few hundred drone drivers, what they do or do not feel has no discernible effects on the nation or the leaders who declare war. Indeed, there is no evidence that the introduction of drones (and before that, high-level bombing and cruise missiles that were criticized on the same grounds) made going to war more likely or its extension more acceptable. Anybody who followed the American disengagement in Vietnam after the introduction of high-level bombing, or the U.S. withdrawal from Afghanistan (and Iraq)—despite the considerable increases in drone strikes—knows better. In effect, the opposite argument may well hold: if the United States could not draw on drones in Yemen and the other new theaters of the counterterrorism campaign, the nation might well have been forced to rely more on conventional troops and prolong our involvement in those areas, a choice which would greatly increase our casualties and zones of warfare. This line of criticism also neglects a potential upside of drones. As philosopher Bradley Strawser notes, this ability to deploy force abroad with minimal United States casualties may allow America to intervene in emerging humanitarian crises across the world with a greater degree of ﬂexibility and effectiveness.61 Rather than reliving another “Blackhawk down” scenario, the United States can follow the model of the Libya intervention, where drones were used by NATO forces to eliminate enemy armor and air defenses, paving the way for the highly successful air campaign which followed, as reported by The Guardian’s Nick Hopkins.

#### Sixth, the alt makes authoritarianism and oppression inevitable

Boyle, La Salle University political science assistant professor, 2013

[Michael, “The costs and consequences of drone warfare” http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89\_1/89\_1Boyle.pdf, p.25-6, accessed 9-8-13]

Fourth, there is a distinct danger that the world will divide into two camps: ¶ developed states in possession of drone technology, and weak states and rebel¶ movements that lack them. States with recurring separatist or insurgent problems ¶ may begin to police their restive territories through drone strikes, essentially ¶ containing the problem in a fixed geographical region and engaging in a largely ¶ punitive policy against them. One could easily imagine that China, for example, ¶ might resort to drone strikes in Uighur provinces in order to keep potential threats ¶ from emerging, or that Russia could use drones to strike at separatist movements ¶ in Chechnya or elsewhere. Such behaviour would not necessarily be confined to ¶ authoritarian governments; it is equally possible that Israel might use drones to ¶ police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers ¶ to Palestinian attacks on the ground. The extent to which Israel might be willing ¶ to use drones in combat and surveillance was revealed in its November 2012 attack ¶ on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari ¶ and employed a number of armed drones for strikes in a way that was described ¶ as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel ¶ concluding that drones over Gaza were the best way to deal with the problem ¶ of Hamas, even if their use left the Palestinian population subject to constant, ¶ unnerving surveillance. All of the consequences of such a sharp division between ¶ the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to ¶ negotiate and grant concessions if drones allowed them to police their internal ¶ enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result ¶ might be a situation where such conflicts are contained but not resolved, while ¶ citizens in developed states grow increasingly indifferent to the suffering of those ¶ making secessionist or even national liberation claims, including just ones, upon ¶ them.