# 1AC

### Adv. 1 Terrorism

#### US is losing the War on Terrorism due to the proliferation of extra-AUMF Al Qaeda affiliates

Kagan, 13

[Frederick W., Christopher DeMuth Chair and Director, Critical Threats Project, American Enterprise Institute, “The Continued Expansion of Al Qaeda Affiliates and their Capabilities”, Statement before the House Committee on Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade On “Global al-Qaeda: Affiliates, Objectives, and Future Challenges”, 7/18/13, <http://www.criticalthreats.org/al-qaeda/kagan-continued-expansion-al-qaeda-affiliates-capabilities-july-18-2013>, BJM]

**The war against al Qaeda is not going well**. Afghanistan has seen the most success, since Coalition and Afghan National Security Forces (ANSF) have been able to prevent al Qaeda from re-establishing effective sanctuary in the places from which the 9/11 attacks were planned and launched. The killing of Osama bin Laden has not been followed-up in Pakistan with disruption to the leadership group there on the scale of operations that preceded the Abbottabad raid. Al Qaeda affiliates in Iraq, Syria, Yemen, and West Africa have dramatically expanded their operating areas and capabilities since 2009 and appear poised to continue that expansion. Progress against al Shabaab, the al Qaeda affiliate in Somalia, is **extremely fragile** **and shows signs of beginning to unravel**. New groups with al Qaeda leanings, although not affiliations, are emerging in Egypt, and old groups that had not previously been affiliated with al Qaeda, such as Boko Haram in Nigeria, appear to be moving closer to it. Current trends point to continued expansion of al Qaeda affiliates and their capabilities, and it is difficult to see how current or proposed American and international policies are likely to contain that expansion, let alone reduce it to 2009 levels or below. Americans must seriously consider the possibility that **we are**, in fact, **starting to lose the war against al Qaeda**. The policy debate about al Qaeda has been bedeviled by competing definitions of the group and, consequently, evaluations of the threat it poses to the United States, as Katherine Zimmerman shows in a major paper that will be forthcoming from the Critical Threats Project at the American Enterprise Institute (AEI) in September. Whereas the Bush Administration saw the group as a global network of cells, the Obama Administration has focused narrowly on the "core group" in Pakistan around bin Laden and, after his death, around his successor, Ayman al Zawahiri. The current administration has also labored to distinguish al Qaeda franchises that have the intent and capability to attack the United States homeland from those that do not, implying (or sometimes stating) that the U.S. should act only against the former while observing the latter to ensure that they do not change course.

**Current AUMF ambiguity undermines effective counter-terrorism efforts against affiliates**

**Chesney et al. ‘13**

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The September 2001 AUMF provides for the use of force against the entity ¶ responsible for the 9/11 attacks, as well as those harboring that entity. It ¶ has been clear from the beginning that **the AUMF encompasses al Qaeda and** ¶ **the Afghan Taliban,** respectively. This was the right focus in late 2001, and for a ¶ considerable period thereafter. But for three reasons, **this focus is increasingly** ¶ **mismatched to the threat environment facing the U**nited **S**tates.4¶ **First, the original al Qaeda network has been substantially degraded by** ¶ **the success of the United States and its allies in killing or capturing the network’s** ¶ **leaders and key personnel**. That is not to say that al Qaeda no longer poses a ¶ significant threat to the United States, of course. The information available in the ¶ public record suggests that it does, and thus nothing we say below should be ¶ read to suggest that force is no longer needed to address the threat al Qaeda ¶ poses. Our point is simply that **the original al Qaeda network is no longer the** ¶ **preeminent operational threat to the homeland** that it once was.¶ **Second, the Afghan Taliban are growing increasingly marginal to the AUMF**. As ¶ noted above, **the AUMF extended to the Taliban because of the safe harbor they** ¶ **provided to al Qaeda. That rationale makes far less sense a dozen years later,** ¶ **with the remnants of al Qaeda long-since relocated** to Pakistan’s FATA region. ¶ This issue has gone largely unremarked in the interim because U.S. and coalition ¶ forces all along have been locked in hostilities with the Afghan Taliban, and ¶ thus no **occasion to reassess the AUMF nexus** has ever arisen. Such an occasion ¶ **may** well **loom on the horizon,** however, **as the U**nited **S**tates **draws down** ¶ **in Afghanistan with increasing rapidity**. To be sure, the United States no doubt ¶ will continue to support the Afghan government in its efforts to tamp down ¶ insurgency, and it also will likely continue to mount counterterrorism operations ¶ within Afghanistan. It may even be the case that at some future point, the Taliban ¶ will again provide safe harbor to what remains of al Qaeda, thereby at least ¶ arguably reviving their AUMF nexus. But for the time being, **the days of direct** ¶ **combat engagement with the Afghan Taliban appear to be numbered.**¶ If the decline of the original al Qaeda network and the decline of U.S. interest in ¶ the Afghan Taliban were the only considerations, one might applaud rather ¶ than fret over the declining relevance of the AUMF. **There is**, however, a **third** ¶ **consideration: significant new threats are emerging, ones that are not easily** ¶ **shoehorned into the current AUMF framework.** ¶To a considerable extent, **the new threats stem from the fragmentation of** ¶ **al Qaeda** itself. In this sense, the problem with the original AUMF is not so much ¶ that its primary focus is on al Qaeda, but rather that **it is increasingly difficult to** ¶ **determine with clarity which groups and individuals in al Qaeda’s orbit are** ¶ **sufficiently tied to the core so as to fall within the AUMF**. And given the gravity ¶ of the threat that some of these groups and individuals may pose on an ¶ independent basis, **it also is increasingly odd to premise the legal framework** ¶ **for using force against them on a chain of reasoning that requires a detour** ¶ **through the original, core al Qaeda organization.**¶The fragmentation process has several elements. First, **entities that** at ¶ least arguably **originated as** mere regional cells **of the core network have** ¶ **established a substantial degree of organizational and operational** ¶ **independence,** even while maintaining some degree of correspondence ¶ with al Qaeda’s leaders. **A**l **Q**aeda in the **A**rabian **P**eninsula **is a good example**. ¶ Al Qaeda in Iraq arguably fits this description as well, though in that case ¶ one might point to a substantial degree of strategic independence as well. ¶ Second, **entities that originated as independent, indigenous organizations** ¶ **have** to varying degrees **established formal ties to al Qaeda**, often rebranding ¶ themselves in the process. **Al** **Q**aeda in the **I**slamic **M**aghreb, formerly known ¶ as the Salafist Group for Call and Combat, **illustrates this path**. **Al Shabaab** ¶ in Somalia arguably **does as well**. **And then there are circumstances (such** ¶ **as the ones currently unfolding in Mali, Libya, and Syria) in which it is** ¶ **not entirely clear where the organizational lines lie** among (i) armed ¶ groups that work in concert with or even at the direction of one of the ¶ aforementioned al Qaeda affiliates; (ii) armed groups that are sympathetic ¶ and in communication with al Qaeda; and (iii) armed groups that are ¶ wholly independent of al Qaeda yet also stem from the same larger milieu ¶ of Salafist extremists.¶ **This situation**—which one of us has described as the emergence of “extraAUMF” threats—**poses a significant problem insofar as counterterrorism policy** ¶ **rests on the AUMF for its legal justification**. In some circumstances it remains ¶ easy to make the case for a nexus to the original al Qaeda network and hence to ¶ the AUMF. But **in a growing number of circumstances, drawing the requisite** ¶ **connection to the AUMF requires an increasingly complex daisy chain of** ¶ **associations—a task that is likely to be very difficult** (and hence subject to ¶ debate) **in some cases, and downright impossible in others**. The emergence of this problem should come as no surprise. **It has been nearly** ¶ **a dozen years since the AUMF’s passage, and circumstances have evolved** ¶ **considerably since then. It was inevitable that threats would emerge that might** ¶ **not fit easily or at all within its scope.** The question is whether Congress should ¶ do anything about this situation, and if so precisely what.

#### We’re at a turning point- the US must pivot to address the threat from al Qaeda affiliates. Congressional action is key because it provides legitimacy that induces public support for counter terrorism and international cooperation against terrorism

Wainstein ‘13

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

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

#### Turning the tide is critical – al-Qaeda affiliates pose a high risk of nuclear and biological terrorism

Allison, IR Director @ Harvard, 12

[Graham, Director, Belfer Center for Science and International Affairs; Douglas Dillon Professor of Government, Harvard Kennedy School, "Living in the Era of Megaterror", Sept 7, <http://belfercenter.ksg.harvard.edu/publication/22302/living_in_the_era_of_megaterror.html>. BJM]

Forty years ago this week at the Munich Olympics of 1972, Palestinian terrorists conducted one of the most dramatic terrorist attacks of the 20th century. The kidnapping and massacre of 11 Israeli athletes attracted days of around-the-clock global news coverage of Black September’s anti-Israel message. Three decades later, on 9/11, Al Qaeda killed nearly 3,000 individuals at the World Trade Center and the Pentagon, announcing a new era of megaterror. In an act that killed more people than Japan’s attack on Pearl Harbor, a band of terrorists headquartered in ungoverned Afghanistan demonstrated that individuals and small groups can kill on a scale previously the exclusive preserve of states. Today, how many people can a small group of terrorists kill in a single blow? Had Bruce Ivins, the U.S. government microbiologist responsible for the 2001 anthrax attacks, distributed his deadly agent with sprayers he could have purchased off the shelf, tens of thousands of Americans would have died. Had the 2001 “Dragonfire” report that Al Qaeda had a small nuclear weapon (from the former Soviet arsenal) in New York City proved correct, and not a false alarm, detonation of that bomb in Times Square could have incinerated a half million Americans. In this electoral season, President Obama is claiming credit, rightly, for actions he and U.S. Special Forces took in killing Osama bin Laden. Similarly, at last week’s Republican convention in Tampa, Jeb Bush praised his brother for making the United States safer after 9/11. There can be no doubt that the thousands of actions taken at federal, state and local levels have made people safer from terrorist attacks. Many are therefore attracted to the chorus of officials and experts claiming that the “strategic defeat” of Al Qaeda means the end of this chapter of history. But we should remember a deeper and more profound truth. While applauding actions that have made us safer from future terrorist attacks, we must recognize that they **have not reversed an inescapable reality**: The relentless advance of science and technology is making it possible for smaller and **smaller groups to kill** **larger** and larger **numbers of people**. If a Qaeda affiliate, or some terrorist group in Pakistan whose name readers have never heard, acquires highly enriched uranium or plutonium made by a state, they can construct an elementary nuclear bomb capable of killing hundreds of thousands of people. At biotech labs across the United States and around the world, research scientists making medicines that advance human well-being are also capable of making pathogens, like anthrax, that can produce massive casualties. What to do? Sherlock Holmes examined crime scenes using a method he called M.M.O.: motive, means and opportunity. In a society where citizens gather in unprotected movie theaters, churches, shopping centers and stadiums, opportunities for attack abound. Free societies are inherently “target rich.” Motive to commit such atrocities poses a more difficult challenge. In all societies, a percentage of the population will be homicidal. No one can examine the mounting number of cases of mass murder in schools, movie theaters and elsewhere without worrying about a society’s mental health. Additionally, actions we take abroad unquestionably impact others’ motivation to attack us. As Faisal Shahzad, the 2010 would-be “Times Square bomber,” testified at his trial: “Until the hour the U.S. ... stops the occupation of Muslim lands, and stops killing the Muslims ... we will be attacking U.S., and I plead guilty to that.” Fortunately, it is more difficult for a terrorist to acquire the “means” to cause mass casualties. Producing highly enriched uranium or plutonium requires expensive industrial-scale investments that only states will make. If all fissile material can be secured to a gold standard beyond the reach of thieves or terrorists, aspirations to become the world’s first nuclear terrorist can be thwarted. Capabilities for producing bioterrorist agents are not so easily secured or policed. While more has been done, and much more could be done to further raise the technological barrier, as knowledge advances and technological capabilities to make pathogens become more accessible, the means for bioterrorism will come within the reach of terrorists. One of the hardest truths about modern life is that the same advances in science and technology that enrich our lives also empower potential killers to achieve their deadliest ambitions. To imagine that we can escape this reality and return to a world in which we are invulnerable to future 9/11s or worse is an illusion. For as far as the eye can see, we will live in an era of megaterror.

#### Nuclear terrorism causes nuclear escalation –retaliation goes global, it’s highly likely and rapid

Morgan 09

(Professor of Foreign Studies at Hankuk University, Dennis Ray, December, “World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race” Futures, Vol 41 Issue 10, p 683-693, ScienceDirect)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons.

#### High risk of nuke terror

Vladimir Z. Dvorkin ‘12 Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

**Bioattack causes extinction**

**Steinbrenner 97**

(John D. Steinbrenner, Brookings Senior Fellow, 1997, Foreign Policy, "Biological weapons: a plague upon all houses," Winter, InfoTrac)

Although human pathogens are often lumped with nuclear explosives and lethal chemicals as potential weapons of mass destruction, there is an obvious, fundamentally important difference: Pathogens are alive, weapons are not. Nuclear and chemical weapons do not reproduce themselves and do not independently engage in adaptive behavior; pathogens do both of these things. That deceptively simple observation has immense implications. The use of a manufactured weapon is a singular event. Most of the damage occurs immediately. The aftereffects, whatever they may be, decay rapidly over time and distance in a reasonably predictable manner. Even before a nuclear warhead is detonated, for instance, it is possible to estimate the extent of the subsequent damage and the likely level of radioactive fallout. Such predictability is an essential component for tactical military planning. The use of a pathogen, by contrast, is an extended process whose scope and timing cannot be precisely controlled. For most potential biological agents, the predominant drawback is that they would not act swiftly or decisively enough to be an effective weapon. But for a few pathogens - ones most likely to have a decisive effect and therefore the ones most likely to be contemplated for deliberately hostile use - the risk runs in the other direction. A lethal pathogen that could efficiently spread from one victim to another would be capable of initiating an intensifying cascade of disease that might ultimately threaten the entire world population. The 1918 influenza epidemic demonstrated the potential for a global contagion of this sort but not necessarily its outer limit. Nobody really knows how serious a possibility this might be, since there is no way to measure it reliably.

**New gene manipulation takes out their defense**

MSNBC 2011

(“Clinton warns of bioweapon threat from gene tech,” pg online @ http://www.msnbc.msn.com/id/45584359/ns/… “For an international verification system — akin to that for nuclear weapons — saying it is too complicated to monitor every lab's activities.”)

GENEVA — **New gene assembly technology** that offers great benefits for scientific research **could** also **be used by terrorists to create biological weapons,** U.S. Secretary of State Hillary Rodham Clinton warned Wednesday. **The threat from bioweapons has drawn little attention in recent years, as governments focused more on the risk of nuclear weapons proliferation to countries such as Iran and North Korea**. But **experts have warned that the increasing ease with which bioweapons can be created might be used by terror groups to develop and spread new diseases that could mimic the effects of** the fictional global epidemic portrayed in the Hollywood thriller **"Contagion."** Speaking at an international meeting in Geneva aimed at reviewing the 1972 Biological Weapons Convention, Clinton told diplomats that **the challenge was to maximize the benefits of scientific research and minimize the risks that it could be used for harm. "The emerging gene synthesis industry is making genetic material more widely available,"** she said. "**This** has many benefits for research, but it **could also potentially be used to assemble the components of a deadly organism." Gene synthesis allows genetic material — the building blocks of all organisms — to be artificially assembled in the lab, greatly speeding up the creation of artificial viruses and bacteria. The U.S. government has cited efforts by terrorist networks such as al-Qaeda to recruit scientists capable of making biological weapons** as a national security concern. "**A crude but effective terrorist weapon can be made using a small sample of any number of widely available pathogens, inexpensive equipment, and college-level chemistry and biology,"** Clinton told the meeting. "Less than a year ago**, al-Qaeda in the Arabian Peninsula made a call to arms for**, and I quote, **'brothers with degrees in microbiology or chemistry ... to develop a weapon of mass destruction,'"** she said. **Clinton also mentioned the Aum Shinrikyo cult's attempts in Japan to obtain anthrax in the 1990s, and the 2001 anthrax attacks** in the United States that killed five people. Washington has urged countries to be more transparent about their efforts to clamp down on the threat of bioweapons. But **U.S. officials have also resisted calls for an international verification system** — akin to that for nuclear weapons — saying it is too complicated to monitor every lab's activities around the world.

### Adv. 2 Firebreaks

#### The AUMF will inevitably expire in the squo – updating the authorization is key to prevent a limitless War on Terror based on article 2 and self-defense justifications that undermine US legitimacy and erode the global firebreak against use of force

**Barnes ‘12**

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**The AUMF must inevitably expire because it is expressly linked to the September 11,** 2001, **attacks** against the United States. Moreover, **because of the impending downfall of Al Qaeda** as we know it, **the statute's demise will come more quickly than most assume.** Although the United States still faces myriad terrorist threats, **the threat from Al Qaeda itself**--the "core" group actually responsible for 9/11--**is dissipating. So long as a substantial terrorist threat continues, however, the United States will require a framework within which to combat terrorist organizations and activities.** Consequently, **Congress should enact a new statute that supersedes the AUMF and addresses the major legal and constitutional issues relating to the use of force by the President that have arisen since the September 11 attacks and will persist in the foreseeable future.**¶A. The AUMF's Inevitable Expiration¶ Although it is difficult to determine exactly when the AUMF will become obsolete, the mere fact that a precise date is unclear should not lead to the conclusion that the AUMF will be perpetually valid. Al Qaeda, the organization responsible for the September 11, 2001, attacks is considered by some to have been already rendered "operationally ineffective" n102 and "crumpled at its core." n103 Moreover, even if Al Qaeda continues to possess the ability to threaten the United States, n104 not all terrorist organizations currently possess a meaningful link to Al Qaeda, rendering the AUMF already insufficient in certain circumstances. Indeed, individuals from across the political spectrum have recognized that the AUMF's focus on those involved in "the terrorist attacks that occurred on September 11, 2001" is outdated and no longer addresses the breadth of threats facing the United States. n105 At a certain point, the [\*84] terrorist groups that threaten the United States targets will no longer have a plausible or sufficiently direct link to the September 11, 2001, attacks. n106¶ This shift has likely already occurred. Former Attorney General Michael Mukasey, writing recently in support of efforts to reaffirm the original AUMF, noted that currently "there are organizations, including the Pakistani Taliban, that are arguably not within its reach." n107 It is similarly unclear if the AUMF extends to organizations like Al Qaeda in the Arabian Penninsula, whose formation as a group--and connection to Al Qaeda's "core"--postdates 9/11 and is indirect at best. n108 Former State Department Legal Adviser John Bellinger has argued that the Obama Administration's reliance on the AUMF for its targeted killing and detention operations is "legally risky" because "[s]hould our military or intelligence agencies wish to target or detain a terrorist who is not part of al-Qaeda, they would lack the legal authority to do so, unless the [\*85] administration expands (and the federal courts uphold) its legal justification." n109 Indeed, "[c]ircumstances alone . . . will put enormous pressure on--and ultimately render obsolete--the legal framework we currently employ to justify these operations." n110¶ While the court of public opinion seems to have accepted the AUMF's inevitable expiration, courts of law appear poised to accept this argument as well. Justice O'Connor's plurality opinion in Hamdi admitted that the AUMF granted "the authority to detain for the duration of the relevant conflict." n111 She also suggested, however, that that authority would terminate at some point, based on "the practical circumstances of [this] conflict," which may be "entirely unlike those of the conflicts that informed the development of the law of war." n112 Justice Kennedy's opinion in Boumediene also hinted that the future contours of the war on terror might force the Court to revisit the extent of the conflict. n113 Lower federal courts have already started to ask some of the questions about the duration of the AUMF's authority, which the Supreme Court has left unaddressed to date. n114¶ [\*86] The Obama Administration has notably disagreed with these assessments, arguing that the AUMF "is still a viable authorization today." n115 The administration's position, however, appears contradictory, as it has simultaneously described the limited reach of the AUMF as "encompass[ing] only those groups or people with a link to the terrorist attacks on 9/11, or associated forces" n116 and celebrated the functional neutralization of Al Qaeda as a continuing threat to U.S. national security. n117 The administration's position, however, remains in the minority. Notwithstanding the administration's continuing fealty to the 2001 statute, as pressures build to address these issues, the "temporal vitality" n118 of the AUMF will continue to be challenged. The successful targeting of those responsible for the attacks of September 11, 2001, will ensure that the AUMF's vitality will not be indefinite.¶ Moreover, even if one rejects as overly optimistic the position that Al Qaeda is currently or will soon be incapable of threatening the United States, the AUMF is already insufficient to reach many terrorist organizations. Assuming a robust Al Qaeda for the indefinite future does not change the disconnected status of certain terrorist groups; as much as it might wish to the contrary, Al Qaeda does not control all Islamist terrorism. n119¶ B. The Consequences of Failing to Reauthorize¶ The AUMF's inevitable expiration, brought about by the increasingly tenuous link between current U.S. military and covert [\*87] operations and those who perpetrated the September 11 attacks, leaves few good options for the Obama Administration. Unless Congress soon reauthorizes military force in the struggle against international terrorists, the administration will face difficult policy decisions. Congress, however, shows no signs of recognizing the AUMF's limited lifespan or a willingness to meaningfully re-write the statute. In light of this reticence, one choice would be for the Obama Administration to acknowledge the AUMF's limited scope and, on that basis, forego detention operations and targeted killings against non-Al Qaeda-related terrorists. For both strategic and political reasons, this is extremely unlikely, especially with a president in office who has already shown a willingness to defy legal criticism and aggressively target terrorists around the globe. n120 Another option would be for the Executive Branch to acknowledge the absence of legal authority, but continue targeted killings nonetheless. For obvious reasons, this option is problematic and unlikely to occur.¶ Therefore, the more likely result is that the Executive Branch, grappling with the absence of explicit legal authority for a critical policy, would need to make increasingly strained legal arguments to support its actions. n121 Thus, the Obama Administration will soon be forced to rationalize ongoing operations under existing legal authorities, which, I argue below, will have significant harmful consequences for the United States. Indeed, the administration faces a Catch-22--its efforts to destroy Al Qaeda as a functioning organization will lead directly to the vitiation of the AUMF. The administration is "starting with a result and finding the legal and policy justifications for it," which often leads to poor policy formulation. n122 Potential legal rationales would perforce rest on exceedingly strained legal arguments based on the AUMF itself, the President's Commander in Chief powers, or the international law of self-defense. n123 [\*88] Besides the inherent damage to U.S. credibility attendant to unconvincing legal rationales, each alternative option would prove legally fragile, destabilizing to the international political order, or both.¶ 1. Effect on Domestic Law and Policy¶ Congress's failure to reauthorize military force would lead to bad domestic law and even worse national security policy. First, a legal rationale based on the AUMF itself will increasingly be difficult to sustain. Fewer and fewer terrorists will have any plausible connection to the September 11 attacks or Al Qaeda, and arguments for finding those connections are already logically attenuated. The definition of those individuals who may lawfully be targeted and detained could be expanded incrementally from the current definition, defining more and more groups as Al Qaeda's "co-belligerents" and "associated forces." n124 But this approach, apart from its obvious logical weakness, would likely be rejected by the courts at some point. n125 The policy of the United States should not be to continue to rely on the September 18, 2001, AUMF.¶ Second, basing U.S. counterterrorism efforts on the President's constitutional authority as Commander in Chief is legally unstable, and therefore unsound national security policy, because a combination of legal difficulties and political considerations make it unlikely that such a rationale could be sustained. This type of strategy would likely run afoul [\*89] of the courts and risk destabilizing judicial intervention, n126 because the Supreme Court has shown a willingness to step in and assert a more proactive role to strike down excessive claims of presidential authority. n127 Politically, using an overly robust theory of the Commander in Chief's powers to justify counterterrorism efforts would, ultimately, be difficult to sustain. President Obama, who ran for office in large part on the promise of repudiating the excesses of the Bush Administration, and indeed any president, would likely face political pressure to reject the claims of executive authority made "politically toxic" by the writings of John Yoo. n128 Because of the likely judicial resistance and political difficulties, claiming increased executive authority to prosecute the armed conflict against Al Qaeda would prove a specious and ultimately futile legal strategy. Simply put, forcing the Supreme Court to intervene and overrule the Executive's national security policy is anathema to good public policy. In such a world, U.S. national security policy would lack stability--confounding cooperation with allies and hindering negotiations with adversaries.¶ There are, of course, many situations where the president's position as Commander in Chief provides entirely uncontroversial authority for military actions against terrorists. In 1998, President Clinton ordered cruise missile strikes against Al Qaeda-related targets in Afghanistan and [\*90] Sudan in response to the embassy bombings in Kenya and Tanzania. In 1986, President Reagan ordered air strikes against Libyan targets after U.S. intelligence linked the bombing of a Berlin discotheque to Libyan operatives. n129 Executive authority to launch these operations without congressional approval was not seriously questioned, and no congressional approval was sought. n130 To be sure, many of the targeted killing operations carried out today fall squarely within the precedent of past practice supplied by these and other valid exercises of presidential authority. Notwithstanding disagreement about the scope of Congress's and the president's "war powers," few would disagree with the proposition that the president needs no authorization to act in self-defense on behalf of the country. However, it is equally clear that not all terrorists pose such a threat to the United States, and thus the [\*91] Commander in Chief cannot justify all counterterrorism operations as "self-defense."¶ A third option would be to conduct all counterterrorism operations as covert operations under the aegis of Title 50. n131 Although the CIA typically carries out such "Title 50 operations," the separate roles of the military and intelligence community have become blurred in recent years. n132 The president must make a "finding" to authorize such operations, n133 which are conducted in secret to provide deniability for the U.S. Government. n134¶ Relying entirely on covert counterterrorism operations, however, would suffer from several critical deficiencies. First, even invoking the cloak of "Title 50," it is "far from obvious" that covert operations are legal without supporting authority. n135 In other words, Title 50 operations, mostly carried out by the CIA, likely also require "sufficient domestic law foundation in terms of either an AUMF or a legitimate claim of inherent constitutional authority for the use of force under Article II." n136 Second, covert operations are by definition kept out of public view, making it difficult to subject them to typical democratic review. In light of "the democratic deficit that already plagues the nation in the legal war [\*92] on terror," n137 further distancing counterterrorism operations from democratic oversight would exacerbate this problem. n138 Indeed, congressional oversight of covert operations--which, presumably, operates with full information--is already considered insufficient by many. n139 By operating entirely on a covert basis, "the Executive can initiate more conflict than the public might otherwise [be] willing to support." n140¶ In a world without a valid AUMF, the United States could base its continued worldwide counterterrorism operations on various alternative domestic legal authorities. All of these alternative bases, however, carry with them significant costs--detrimental to U.S. security and democracy. The foreign and national security policy of the United States should rest on "a comprehensive legal regime to support its actions, one that [has] the blessings of Congress and to which a court would defer as the collective judgment of the American political system about a novel set of [\*93] problems." n141 Only then can the President's efforts be sustained and legitimate.¶ 2. Effect on the International Law of Self-Defense¶ A failure to reauthorize military force would lead to significant negative consequences on the international level as well. Denying the Executive Branch the authority to carry out military operations in the armed conflict against Al Qaeda would force the President to find authorization elsewhere, most likely in the international law of self-defense--the jus ad bellum. n142 Finding sufficient legal authority for the United States's ongoing counterterrorism operations in the international law of self-defense, however, is problematic for several reasons. As a preliminary matter, relying on this rationale usurps Congress's role in regulating the contours of U.S. foreign and national security policy. If the Executive Branch can assert "self-defense against a continuing threat" to target and detain terrorists worldwide, it will almost always be able to find such a threat. n143 Indeed, the Obama Administration's broad understanding of the concept of "imminence" illustrates the danger of allowing the executive to rely on a self-defense authorization alone. n144 [\*94] This approach also would inevitably lead to dangerous "slippery slopes." Once the President authorizes a targeted killing of an individual who does not pose an imminent threat in the strict law enforcement sense of "imminence," n145 there are few potential targets that would be off-limits to the Executive Branch. Overly malleable concepts are not the proper bases for the consistent use of military force in a democracy. Although the Obama Administration has disclaimed this manner of broad authority because the AUMF "does not authorize military force against anyone the Executive labels a 'terrorist,'" n146 relying solely on the international law of self defense would likely lead to precisely such a result.¶ The slippery slope problem, however, is not just limited to the United States's military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration's "expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . ." n147 Indeed, "[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos." n148¶ [\*95] Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration's national security policy, sapping U.S. credibility. The Administration's National Security Strategy emphasizes U.S. "moral leadership," basing its approach to U.S. security in large part on "pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests." n149 Defense Department General Counsel Jeh Johnson has argued that "[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge." n150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States "must not make [legal authority] up to suit the moment." n151 The Obama Administration's global counterterrorism strategy is to "adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy" of "turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation." n152¶ [\*96] Widely accepted legal arguments also facilitate cooperation from U.S. allies, especially from the United States' European allies, who have been wary of expansive U.S. legal interpretations. n153 Moreover, U.S. strategy vis-a-vis China focuses on binding that nation to international norms as it gains power in East Asia. n154 The United States is an international "standard-bearer" that "sets norms that are mimicked by others," n155 and the Obama Administration acknowledges that its drone strikes act in a quasi-precedential fashion. n156 Risking the obsolescence of the AUMF would force the United States into an "aggressive interpretation" of international legal authority, n157 not just discrediting its [\*97] own rationale, but facilitating that rationale's destabilizing adoption by nations around the world. n158¶ United States efforts to entrench stabilizing global norms and oppose destabilizing international legal interpretations--a core tenet of U.S. foreign and national security policy n159 --would undoubtedly be hampered by continued reliance on self defense under the jus ad bellum to authorize military operations against international terrorists. Given the presumption that the United States's armed conflict with these terrorists will continue in its current form for at least the near term, ongoing authorization at the congressional level is a far better choice than continued reliance on the jus ad bellum. Congress should reauthorize the use of force in a manner tailored to the global conflict the United States is fighting today. Otherwise, the United States will be forced to continue to rely on a statute anchored only to the continued presence of those responsible for 9/11, a group that was small in 2001 and, due to the continued successful targeting of Al Qaeda members, is rapidly approaching zero.

#### We control terminal impact uniqueness - war taboo strong and effective now. Norms prevents miscalc and escalation

Beehner, 12

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[Lionel, "Is There An Emerging ‘Taboo’ Against Retaliation?" The Smoke Filled Room, 7-13-12, thesmokefilledroomblog.com/2012/07/13/is-there-an-emerging-taboo-against-retaliation/, accessed 9-22-13, ]

The biggest international news in the quiet months before 9/11 was the collision of a U.S. Navy spy aircraft and a PLA fighter jet in China, during which 24 American crew members were detained. Even though the incident was lampooned on SNL, there was real concern that the incident would blow up, damaging already-tense relations between the two countries. But it quickly faded and both sides reached an agreement. Quiet diplomacy prevailed. Flash-forward a decade later and we have a similar border incident of a spy plane being shot down between Turkey and Syria. Cue the familiar drumbeats for war on both sides. To save face, each side has ratcheted up its hostile rhetoric (even though Syria’s president did offer something of an admission of guilt). But, as in the spring of 2001, I wouldn’t get too worried. One of the least noted global norms to emerge in recent decades has been the persistence of state restraint in international relations. Retaliation has almost become an unstated taboo. Of course, interstate war is obviously not a relic of previous centuries, but nor is it as commonplace anymore, despite persistent flare-ups that have the potential to escalate to full-blown war. Consider the distinct cases of India and South Korea. Both have sustained serious attacks with mass casualties in recent years: South Korea saw 46 of its sailors killed after the Cheonan, a naval vessel, was sunk by North Korea; India saw 200 citizens killed by the Mumbai attacks, orchestrated by Islamist groups with links to Pakistani intelligence. Yet neither retaliated with military force. Why? The short answer might be: Because a response may have triggered a nuclear war (both Pakistan and North Korea are nuclear-armed states). So nukes in this case may have acted as a deterrent and prevented an escalation of hostilities. But I would argue that it was not the presence of nuclear weapons that led to restraint but rather normative considerations. South Korea and India are also both rising democratic powers with fast-growing economies, enemies along their peripheries, and the military and financial backing of the United States. Their leaders, subject to the whims of an electorate, may have faced domestic pressures to respond with force or suffer reputational costs. And yet no escalation occurred and war was averted. Again, I argue that this is because there is an emerging and under-reported norm of restraint in international politics. Even Russia’s invasion of Georgia in August 2008, which may at first appear to disprove this theory, actually upholds it: The Russians barely entered into Georgia proper and could easily have marched onto the capital. But they didn’t. The war was over in 5 days and Russian troops retreated to disputed provinces. Similarly, Turkey will not declare war on Syria, no matter how angry it is that Damascus shot down one of its spy planes. Quiet diplomacy will prevail. In 1999, Nina Tannenwald made waves by proclaiming the emergence of what she called a “nuclear taboo” – that is, the non-use of dangerous nukes had emerged as an important global norm. Are we witnessing the emergence of a similar norm for interstate war? Even as violence rages on in the form of civil war and internal political violence all across the global map, interstate conflict is increasingly rare. My point is not to echo Steven Pinker, whose latest book, The Better Angles of Our Nature, painstakingly details a “civilizing process” and “humanitarian revolution” that has brought war casualties and murder rates down over the centuries. I’m not fully convinced by his argument, but certainly agree with the observation that at the state level, a norm of non-retaliation has emerged. The question is why. Partly, war no longer makes as much sense as in the past because capturing territory is no longer as advantageous as it once was. We no longer live in a world where marauding throngs of Dothraki-like bandits – or what Mancur Olson politely called “non-stationary bandits” – seek to expand their writ over large unconquered areas. This goes on, of course, at the intrastate level, but the rationale for interstate war for conquest is no longer as strong. Interstate wars of recent memory — the Eritrea-Ethiopia conflicts of 1999 and 2005, the Russia-Georgia War of 2008 — upon closer inspection, actually look more like intrastate wars. The latter was fought over two secessionist provinces; the former between two former rebel leaders-turned-presidents who had a falling out. But if we have reached a norm of non-retaliation to threats or attacks, does that mean that deterrence is no longer valid? After all, if states know there will be no response, why not step up the level of attacks? I would argue that the mere threat of retaliation is enough, as evidenced by Turkish leaders’ harsh words toward Syria (there is now a de facto no-fly zone near their shared border). Still, doesn’t restraint send a signal of weakness and lack of resolve? After all, didn’t Seoul’s non-response to the Cheonan sinking only invite Pyongyang to escalate hostilities? Robert Jervis dismisses the notion that a tough response signals resolve as being overly simplified. The observers’ interpretation of the actor and the risks involved also matter. When Schelling writes about the importance of “saving face,” he describes it as the “interdependence of a country’s commitments; it is a country’s reputation for action, the expectations other countries have about its behavior.” Others note that the presence of nuclear weapons forces states, when attacked, to respond with restraint to avoid the risk of nuclear escalation. Hence, we get “limited wars” rather than full-blown conflicts, or what some deterrent theorists describe as the “stability-instability paradox.” This is not a new concept, of course: Thucydides quoted King Archimadus of Sparta: “And perhaps then they see that our actual strength is keeping pace with the language that we use, they will be more inclined to give way, since their land will still be untouched and, in making up their minds, they will be thinking of advantages which they still possess and which have not yet been destroyed.” There will be future wars between states, of course. But **the days when an isolated incident, such as a spy plane being shot down or a cross-border incursion, can unleash a chain of events that lead to interstate wars** I believe are largely over **because of the emergence of restraint as a powerful norm**ative force in international politics, not unlike Tannenwald’s “nuclear taboo.” Turkey and Syria will only exchange a war of words, not actual hostilities. To do otherwise would be a violation of this existing norm.

#### Specifically, erosion of the use of force taboo triggers nuclear conflict between India and Pakistan and China and Taiwan

Obayemi, 6

East Bay Law School professor [Olumide, admitted to the Bars of Federal Republic of Nigeria and the State of California, Golden Gate University School of Law, "Article: Legal Standards Governing Pre-Emptive Strikes and Forcible Measures of Anticipatory Self-Defense Under the U.N. Charter and General International Law," 12 Ann. Surv. Int'l & Comp. L. 19, l/n, accessed 9-19-13, ]

The United States must abide by the rigorous standards set out above that are meant to govern the use of preemptive strikes, because today's international system is characterized by a relative infrequency of interstate war. It has been noted that developing doctrines that lower the threshold for preemptive action could put that accomplishment at risk, and exacerbate regional crises already on the brink of open conflict. n100 This is important as O'Hanlon, Rice, and Steinberg have rightly noted: ...countries already on the brink of war, and leaning strongly towards war, might use the doctrine to justify an action they already wished to take, and the effect of the U.S. posture may make it harder for the international community in general, and the U.S. in particular, to counsel delay and diplomacy. Potential **examples abound**, ranging from Ethiopia and Eritrea, to China and Taiwan, to the Middle East. But perhaps the clearest case is the India-Pakistan crisis. n101 The world must be a safe place to live in. We cannot be ruled by bandits and rogue states. There must be law and order not only in the books but in enforcement as well. No nation is better suited to enforce international law than the United States. The Bush Doctrine will stand the test [\*42] of time and survive. Again, we submit that nothing more would protect the world and its citizens from nuclear weapons, terrorists and rogue states than an able and willing nation like the United States, acting as a policeman of the world within all legal boundaries. This is the essence of the preamble to the United Nations Charter.

#### Indo-Pak nuclear war causes extinction

Starr ’11

(Consequences of a Single Failure of Nuclear Deterrence by Steven Starr February 07, 2011 \* Associate member of the Nuclear Age Peace Foundation \* Senior Scientist for PSR)

Only a single failure of nuclear deterrence is required to start a nuclear war, and the consequences of such a failure would be profound. **Peer-reviewed studies predict** that **less than 1% of** the **nuclear weapons** now deployed in the arsenals of the Nuclear Weapon States, if detonated in urban areas, would immediately kill tens of millions of people, and cause long-term, **catastrophic disruptions** of the global **climate and** massive destruction ofEarth’sprotective **ozone** layer. The result would be a global nuclear famine that could kill up to one billion people. A full-scale war, fought with the strategic nuclear arsenals of the United States and Russia, would so utterly devastate Earth’s environment that most humans and other complex forms of life would not survive. Yet no Nuclear Weapon State has ever evaluated the environmental, ecological or agricultural consequences of the detonation of its nuclear arsenals in conflict. Military and political leaders in these nations thus remain dangerously unaware of the existential danger which their weapons present to the entire human race. Consequently, nuclear weapons remain as the cornerstone of the military arsenals in the Nuclear Weapon States, where nuclear deterrence guides political and military strategy. Those who actively support nuclear deterrence are trained to believe that deterrence cannot fail, so long as their doctrines are observed, and their weapons systems are maintained and continuously modernized. They insist that their nuclear forces will remain forever under their complete control, immune from cyberwarfare, sabotage, terrorism, human or technical error. They deny that the short 12-to-30 minute flight times of nuclear missiles would not leave a President enough time to make rational decisions following a tactical, electronic warning of nuclear attack. The U.S. and Russia continue to keep a total of 2000 strategic nuclear weapons at launch-ready status – ready to launch with only a few minutes warning. Yet both nations are remarkably unable to acknowledge that this high-alert status in any way increases the probability that these weapons will someday be used in conflict. How can strategic nuclear arsenals truly be “safe” from accidental or unauthorized use, when they can be launched literally at a moment’s notice? A cocked and loaded weapon is infinitely easier to fire than one which is unloaded and stored in a locked safe. The mere existence of immense nuclear arsenals, in whatever status they are maintained, makes possible their eventual use in a nuclear war. Our **best scientists** now **tell us** that **such a war would mean the end of human history**. We need to ask our leaders: Exactly what political or national goals could possibly justify risking a nuclear war that would likely cause the extinction of the human race? However, in order to pose this question, we must first make the fact known that existing nuclear arsenals – through their capacity to utterly devastate the Earth’s environment and ecosystems – threaten continued **human existence**. Otherwise, military and political leaders will continue to cling to their nuclear arsenals and will remain both unwilling and unable to discuss the real consequences of failure of deterrence. We can and must end the silence, and awaken the peoples of all nations to the realization that “nuclear war” means “global nuclear suicide”. A Single Failure of Nuclear Deterrence could lead to: \* A nuclear war **between India and Pakistan**; \* 50 Hiroshima-size (15 kiloton) weapons detonated in the mega-cities of both India and Pakistan (there are now 130-190 operational nuclear weapons which exist in the combined arsenals of these nations); \* The deaths of 20 to 50 million people as a result of the prompt effects of these nuclear detonations (blast, fire and radioactive fallout); \* Massive firestorms covering many hundreds of square miles/kilometers (created by nuclear detonations that produce temperatures hotter than those believed to exist at the center of the sun), that would engulf these cities and produce 6 to 7 million tons of thick, black smoke; \* About 5 million tons of smoke that would quickly rise above cloud level into the stratosphere, where strong winds would carry it around the Earth in 10 days; \* A stratospheric smoke layer surrounding the Earth, which would remain in place for 10 years; \* The dense smoke would heat the upper atmosphere, destroy Earth’s protective ozone layer, and block 7-10% of warming sunlight from reaching Earth’s surface; \* 25% to 40% of the protective ozone layer would be destroyed at the mid-latitudes, and 50-70% would be destroyed at northern and southern high latitudes; \* Ozone destruction would cause the average UV Index to increase to 16-22 in the U.S, Europe, Eurasia and China, with even higher readings towards the poles (readings of 11 or higher are classified as “extreme” by the U.S. EPA). It would take 7-8 minutes for a fair skinned person to receive a painful sunburn at mid-day; \* Loss of warming sunlight would quickly produce average surface temperatures in the Northern Hemisphere colder than any experienced in the last 1000 years; \* Hemispheric drops in temperature would be about twice as large and last ten times longer then those which followed the largest volcanic eruption in the last 500 years, Mt. Tambora in 1816. The following year, 1817, was called “The Year Without Summer”, which saw famine in Europe from massive crop failures; \* Growing seasons in the Northern Hemisphere would be significantly shortened. It would be too cold to grow wheat in most of Canada for at least several years; \* World grain stocks, which already are at historically low levels, would be completely depleted; grain exporting nations would likely cease exports in order to meet their own food needs; \* The one billion already hungry people, who currently depend upon grain imports, would likely starve to death in the years following this nuclear war; \* The total explosive power in these 100 Hiroshima-size weapons is less than 1% of the total explosive power contained in the currently operational and deployed U.S. and Russian nuclear forces.

#### So does China-Taiwan

Straits Times 2k

(6-25, Lexis, No one gains in war over Taiwan)

THE DOOMSDAY SCENARIO THE high-intensity scenario postulates a cross-strait war escalating into a full-scale war between the US and China. If Washington were to conclude that splitting China would better serve its national interests, then a full-scale war becomes unavoidable. Conflict on such a scale would embroil other countries far and near and -- horror of horrors -- raise the possibility of a nuclear war. Beijing has already told the US and Japan privately that it considers any country providing bases and logistics support to any US forces attacking China as belligerent parties open to its retaliation. In the region, this means South Korea, Japan, the Philippines and, to a lesser extent, Singapore. If China were to retaliate, east Asia will be set on fire. And the conflagration may not end there as opportunistic powers elsewhere may try to overturn the existing world order. With the US distracted, Russia may seek to redefine Europe's political landscape. The balance of power in the Middle East may be similarly upset by the likes of Iraq. In south Asia, hostilities between India and Pakistan, each armed with its own nuclear arsenal, could enter a new and dangerous phase. Will a full-scale Sino-US war lead to a nuclear war? According to General Matthew Ridgeway, commander of the US Eighth Army which fought against the Chinese in the Korean War, the US had at the time thought of using nuclear weapons against China to save the US from military defeat. In his book The Korean War, a personal account of the military and political aspects of the conflict and its implications on future US foreign policy, Gen Ridgeway said that US was confronted with two choices in Korea -- truce or a broadened war, which could have led to the use of nuclear weapons. If the US had to resort to nuclear weaponry to defeat China long before the latter acquired a similar capability, there is little hope of winning a war against China 50 years later, short of using nuclear weapons. The US estimates that China possesses about 20 nuclear warheads that can destroy major American cities. Beijing also seems prepared to go for the nuclear option. A Chinese military officer disclosed recently that Beijing was considering a review of its "non first use" principle regarding nuclear weapons. Major-General Pan Zhangqiang, president of the military-funded Institute for Strategic Studies, told a gathering at the Woodrow Wilson International Centre for Scholars in Washington that although the government still abided by that principle, there were strong pressures from the military to drop it. He said military leaders considered the use of nuclear weapons mandatory if the country risked dismemberment as a result of foreign intervention. Gen Ridgeway said that should that come to pass, we would see the destruction of civilisation. There would be no victors in such a war. While the prospect of a nuclear Armaggedon over Taiwan might seem inconceivable, it cannot be ruled out entirely, for China puts sovereignty above everything else.

### Plan

**The United States federal government should increase restrictions on the targeted killing and indefinite detention war powers authorities granted to the President of the United States by Public Law 107-40 and modified by the 2012 National Defense Authorization Act by limiting the targets of those authorities to al-Qaeda, the Taliban, or those nations, organizations, or persons who enjoy close and well-established collaboration with al-Qaeda or the Taliban.**

### Solvency

#### Action to clearly define the enemy restricts the executive scope of the AUMF while preserving presidential flexibility and the joint decision-making capabilities

**Cronogue ‘12**

[Graham. Duke University School of Law, J.D. expected 2013; University of North Carolina B.A. 2010. 22 Duke J. Comp. & Int'l L. 377 2011-2012. ETB]

The AUMF must be updated. In 2001, the AUMF authorized force to ¶ fight against America’s most pressing threat, the architects of 9/11. However, much has changed since 2001. Bin Laden is dead, the Taliban ¶ has been deposed, and it is extremist organizations other than al-Qaeda and ¶ the Taliban who are launching many of the attacks against Americans and ¶ coalition partners.124 In many ways, the greatest threat is coming from ¶ groups not even around in 2001, groups such as AQAP and al Shabaab.125¶ Yet these groups do not fall under the AUMF’s authorization of force. ¶ These groups are not based in the same country that launched the attacks, ¶ have different leaders, and were not involved in planning or coordinating ¶ 9/11. Thus, under a strict interpretation of the AUMF, the President is not ¶ authorized to use force against these groups. ¶ Congress needs to specifically authorize force against groups outside of al-Qaeda and the Taliban. Our security concerns demand that the ¶ President can act quickly and decisively when facing threats. The current ¶ authorization does not cover many of these threats, yet it is much more ¶ difficult to achieve this decisiveness if the President is forced to rely solely ¶ on his inherent powers. A clear congressional authorization would clear up ¶ much of this problem. Under Justice Jackson’s framework, granting or ¶ denying congressional authorization ensures that President does not operate ¶ in the “zone of twilight.”126 Therefore, if Congress lays out the exact scope ¶ of the President’s power, naming or clearly defining the targeted actors, the ¶ constitutionality or unconstitutionality of presidential actions will become ¶ much clearer.127¶ Removing the 9/11 nexus to reflect the current reality of war without ¶ writing a carte blanche is the most important form of congressional ¶ guidance regarding target authorization. In order for the President to ¶ operate under the current AUMF, he must find a strong nexus between the ¶ target and the attacks on September 11. As I have shown in this paper, this ¶ nexus is simply non-existent for many groups fighting the United States ¶ today. Yet, the President should want to operate pursuant to congressional ¶ authorization, Justice Jackson’s strongest zone of presidential authority. In ¶ order to achieve this goal, the administration has begun to stretch the ¶ statutory language to include groups whose connection to the 9/11 attacks, ¶ if any, is extraordinarily limited. The current presidential practice only ¶ nominally follows the AUMF, a practice Congress has seemingly ¶ consented to by failing to amend the statute for over ten years. This “stretching” is dangerous as Congress is no longer truly behind the ¶ authorization and has simply acquiesced to the President’s exercise of ¶ broad authority. ¶ The overarching purpose of the new authorization should be to make it ¶ clear that the domestic legal foundation for using military force is not ¶ limited to al-Qaeda and the Taliban but also extends to the many other ¶ organizations fighting the United States. The language in Representative ¶ McKeon’s bill does a fairly good job of achieving this goal by specifically ¶ naming al-Qaeda and the Taliban along with the term “associated force.” ¶ This provision makes it clear the President is still authorized to use force ¶ against those responsible for 9/11 and those that harbored them by ¶ specifically mentioning al-Qaeda and the Taliban. However, the additional ¶ term “associated force” makes it clear that the authorization is not limited ¶ to these two groups and that the President can use force against the allies ¶ and separate branches of al-Qaeda and the Taliban. This creates a very ¶ flexible authorization. ¶ Despite the significant flexibility of the phrase “associated force ¶ engaged in hostilities”, I would propose defining the term or substituting a ¶ more easily understood and limited term. Associated force could mean ¶ many things and apply to groups with varying levels of involvement. ¶ Arguably any group that strongly identifies with or funds al-Qaeda or the ¶ Taliban could be an associated force. Thus, we could end up in the ¶ previously describe situation where group “I” who is in conflict with the ¶ United States or a coalition partner in Indonesia over a completely different ¶ issue becomes a target for its support of an associated force of al-Qaeda. ¶ Beyond that, the United States is authorized to use all necessary force ¶ against any groups that directly aid group “I” in its struggle. ¶ My proposal for the new AUMF would appear as follows: ¶ AFFIRMATION OF ARMED CONFLICT WITH AL-QAEDA, ¶ THE TALIBAN, AND ASSOCIATED FORCES ¶ Congress affirms that— ¶ (1) the United States is engaged in an armed conflict with al-Qaeda, the ¶ Taliban, and associated forces and that those entities continue to ¶ pose a threat to the United States and its citizens, both domestically ¶ and abroad; ¶ a. for the purposes of this statute, an associated force is a ¶ nation, organization, or person who enjoys close and wellestablished collaboration with al-Qaeda or the Taliban and ¶ as part of this relationship has either engaged in or has ¶ intentionally provided direct tactical or logistical support ¶ for armed conflict against the United States or coalition ¶ partners.¶ the President has the authority to use all necessary and appropriate ¶ force during the current armed conflict with al-Qaeda, the Taliban, ¶ and associated forces pursuant to the Authorization for Use of ¶ Military Force (Public Law 107-40; 50 U.S.C. 1541); ¶ (3) the current armed conflict includes nations, organization, and ¶ persons who— ¶ a. are part of al-Qaeda, the Taliban, or associated forces; or ¶ b. engaged in hostilities or have directly supported hostilities ¶ in aid of a nation, organization or person described in ¶ subparagraph (A); ¶ c. or harbored a nation, organization, or person described in ¶ subparagraph (A); and ¶ (4) the President’s authority pursuant to the Authorization for Use of ¶ Military Force includes the authority to detain belligerents, ¶ including persons described in paragraph (3), until the termination ¶ of hostilities. ¶ (5) Nothing in this authorization should be construed to limit the ¶ President’s ability to respond to new and emerging threats or engage ¶ in appropriate and calculated actions of self-defense. ¶ The definition of “associated forces” will add much needed clarity and ¶ provide congressional guidance in determining what groups actually fall ¶ under this provision. Rather than putting faith in the President not to abuse ¶ his discretion, Congress should simply clarify what it means and limit his ¶ discretion to acceptable amounts. The “close and well-established ¶ collaboration” ensures that only groups with very close and observable ties ¶ to al-Qaeda and the Taliban are designated as “associated forces.” While ¶ the requirement that part of their collaboration involve some kind of ¶ tactical or logistical support ensures that those classified as enemy ¶ combatants are actually engaged, or part of an organization that is engaged, ¶ in violence against the United States. Also, requiring that the associated ¶ force’s violence be directed at the United States or a coalition partner and ¶ that this violence is part of its relationship with al-Qaeda or the Taliban is ¶ another important limitation. ¶ First, requiring the associated force to engage in violence that is ¶ directed at these nations ensures that “associated force” does not include ¶ countries such as Iran that might have a relationship with al-Qaeda and ¶ give it financial support but are not actually in violent conflict with the ¶ United States. Second, requiring that this violence is made in furtherance of ¶ its relationship with al-Qaeda and the Taliban ensures that the violence that ¶ makes a group an “associated force” is actually related to its collaboration ¶ with al-Qaeda and the Taliban. Without this second provision, a group that supports al-Qaeda would be elevated to an “associated force” if it engaged ¶ in violence with, for instance, Australia over a completely unrelated issue. ¶ While some groups that work closely with and support al-Qaeda ¶ would not be considered associated forces, it is important to limit the scope ¶ of this term. This label effectively elevates the group to the same status as ¶ al-Qaeda and the Taliban and attaches authorization for force against any ¶ group that supports or harbors it. Furthermore, there is little real harm by ¶ narrowly defining associated forces because the groups that do support alQaeda will still be subject to the authorization under the “support” or ¶ “harbor” prongs. Narrowly defining “associated forces” simply prevents ¶ the problem of authorization spreading to supporters of those who are ¶ merely supporters of al-Qaeda. ¶ Compared to Representative McKeon’s proposal, these new ¶ provisions would narrow the scope of authorization. The President would ¶ not be able to use this authorization to attack new groups that both spring ¶ up outside our current theater and have no relation to al-Qaeda, the Taliban ¶ or the newly defined associated forces. However, part (5) of my ¶ authorization would ensure that the President is not unnecessarily restricted ¶ in responding to new and emergent threats from organizations that do not ¶ collaborate and support al-Qaeda. In this way, the proposal incorporates ¶ Robert Chesney’s suggestion, “[i]t may be that it [is] better to draw the ¶ statutory circle narrowly, with language making clear that the narrow ¶ framing does not signify an intent to try and restrict the President’s ¶ authority to act when necessary against other groups in the exercise of ¶ lawful self-defense.”128 The purpose of the new AUMF should not be to ¶ give the President a carte blanche to attack any terrorist or extremist group ¶ all over the world. The purpose of this authorization is to provide clear ¶ authorization for the use of force against al-Qaeda and its allies. Moreover, ¶ if a new group is created that has no relation to any of the relevant actors ¶ defined in this statute, Congress can pass another authorization that ¶ addresses this reality. The purpose of congressional authorization should ¶ not be to authorize the President to act against every conceivable threat to ¶ American interests. In fact, such an authorization would effectively strip ¶ Congress of its constitutional war making powers. Instead, the new ¶ proposal should provide clear domestic authorization for the use of force against those nations that present the greatest threat to the United States ¶ today.

**Obama will adhere to the plan- wants to rely on congressional authority**

**WSJ ‘12**

[Julian Barnes and Evan Perez. December 6. <http://online.wsj.com/article/SB10001424127887323316804578163724113421726.html> ETB]

Obama **administration officials, concerned about the legal justifications behind counterterrorism operations, have preferred to rely on congressional authority for the use of force against al Qaeda, seeing such authority as more defensible** and acceptable **to allies.**

# 2AC

### 2ac- Restriction=Prohibition

#### W/M- plan prohibits use of force against individuals and groups that fall outside of the plan’s narrow definition of “associated force”- tht’s Cronogue

#### W/M- Ambiguity of “associated forces” gives Obama carte blanche to target and detain in the squo- plan restricts that authority.

#### Counter-interp: Statutory restrictions are legislative limits

Law dictionary No Date

http://thelawdictionary.org/statutory-restriction/

STATUTORY RESTRICTION?

Limits or controls that have been place on activities by its ruling legislation

#### W/M – We limit the president’s authority to determine those responsible for 9/11 in the AUMF.

Bradley & Goldsmith ‘5

[- Curtis & - Jack, Professors at University of Virginia and Harvard Law Schools Respectively, CONGRESSIONAL AUTHORIZATION AND THE

WAR ON TERRORISM, Harvard Law Review, Volume 118, May 2005]

The AUMF is arguably more restrictive in one respect, and argua-bly broader in another respect, than authorizations in declared wars. It is arguably more restrictive to the extent that it requires the Presi-dent to report to Congress on the status of hostilities. This difference from authorizations in declared wars, however, does not purport to af-fect the military authority that Congress has conferred on the Presi-dent. The AUMF is arguably broader than authorizations in declared wars in its description of the enemy against which force can be used. The AUMF authorizes the President to use force against those “na-tions, organizations, or persons he determines” have the requisite nexus with the September 11 attacks. This provision contrasts with authori-zations in declared wars in two related ways. First, it describes rather than names the enemies that are the objects of the use of force.144 Second, it expressly authorizes the President to determine which “nations, organizations, or persons” satisfy the statutory criteria for enemy status.145 One could argue that the effect of the “he determines” provision is to give the President broad, and possibly unreviewable, discretion to apply the nexus requirement to identify the covered enemy — at least to the extent that his determination does not implicate constitutional rights.146 Even if this argument is correct, this provision probably adds little to the President’s already-broad authority to de-termine the existence of facts related to the exercise of his authority under the AUMF.147

**In the area of refers to a certain scope**

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

"**in the area of" refers to a certain scope**

**Substantial means important. We Meet. The aff prevents unlimited presidential WOT authority—that’s an important restriction of war power authority**

**Merriam-Webster**’s Collegiate Dictionary **02**

Merriam-Webster’s Collegiate Dictionary Tenth Edition 2002 http://www.m-w.com/cgi-bin/dictionary

**Considerable in importance**, value, degree, amount, or extent

#### Prefer our interp:

#### Theirs overlimits to 8 cases- prevents innovation and leads to statle debates- and their means that every aff would lose to pics. Lack of solvency advocates limits the proliferations of smaller affs and there are no qualified advocates for banning topic areas

#### Topic Education- most literature discusses restriction as a limit on presidential authority- their interp corresponds to an unreasonably tiny portion of the lit base

#### Bidirectionality is inevitable because whether a “restriction” increases prez power is a solvency question, which also proves their interp mixes burdens

#### Default to reasonability to prevent a race to the most limiting interpretation

## Case

### 2ac- Nuke Terrorism Likely

#### Synthesis of peer-reviewed studies concludes nuclear terrorism is highly likely

-this evidence cites multiple peer-reviewed studies as well as terrorist group statements

-answers defense based on means – there’s lots of unsafe material around the world and a lot of providers

-answers defense based on motives – terrorists have an incentive to spur retaliation because it create chaos

Jaspal– Associate Professor at the School of Politics and International Relations, Quaid-i-Azam University, Islamabad, Pakistan 12 (Zafar Nawaz, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, Vol. 19, Issue - 1, 2012, 91:111)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dualuse nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does noteliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth. Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18). Numerous evidences confirm that terrorist groups had aspired to acquire fissile material for their terrorist acts. Late Osama bin Laden, the founder of al Qaeda stated that acquiring nuclear weapons was a“religious duty” (Yusufzai, 1999, January 11). The IAEA also reported that “al-Qaeda was actively seeking an atomic bomb.” Jamal Ahmad al-Fadl, a dissenter of Al Qaeda, in his trial testimony had “revealed his extensive but unsuccessful efforts to acquire enriched uranium for al-Qaeda” (Allison, 2010, January: 11). On November 9, 2001, Osama bin Laden claimed that “we have chemical and nuclear weapons as a deterrent and if America used them against us we reserve the right to use them (Mir, 2001, November 10).” On May 28, 2010, Sultan Bashiruddin Mahmood, a Pakistani nuclear scientist confessed that he met Osama bin Laden. He claimed that “I met Osama bin Laden before 9/11 not to give him nuclear know-how, but to seek funds for establishing a technical college in Kabul (Syed, 2010, May 29).” He was arrested in 2003 and after extensive interrogation by American and Pakistani intelligence agencies he was released (Syed, 2010, May 29). Agreed, Mr. Mahmood did not share nuclear know-how with Al Qaeda, but his meeting with Osama establishes the fact that the terrorist organization was in contact with nuclear scientists. Second, the terrorist group has sympathizers in the nuclear scientific bureaucracies. It also authenticates bin Laden’s Deputy Ayman Zawahiri’s claim which he made in December 2001: “If you have $30 million, go to the black market in the central Asia, contact any disgruntled Soviet scientist and a lot of dozens of smart briefcase bombs are available (Allison, 2010, January: 2).” The covert meetings between nuclear scientists and al Qaeda members could not be interpreted as idle threats and thereby the threat of nuclear/radiological terrorism is real. The 33Defense Secretary Robert Gates admitted in 2008 that “what keeps every senior government leader awake at night is the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear (Mueller, 2011, August 2).” Indeed, the nuclear deterrence strategy cannot deter the transnational terrorist syndicate from nuclear/radiological terrorist attacks. Daniel Whiteneck pointed out: “Evidence suggests, for example, that al Qaeda might not only use WMD simply to demonstrate the magnitude of its capability but that it might actually welcome the escalation of a strong U.S. response, especially if it included catalytic effects on governments and societies in the Muslim world. An adversary that prefers escalation regardless of the consequences cannot be deterred” (Whiteneck, 2005, Summer: 187) Since taking office, President Obama has been reiterating that “nuclear weapons represent the ‘gravest threat’ to United States and international security.” While realizing that the US could not prevent nuclear/radiological terrorist attacks singlehandedly, he launched 47an international campaign to convince the international community about the increasing threat of nuclear/ radiological terrorism. He stated on April 5, 2009: “Black market trade in nuclear secrets and nuclear materials abound. The technology to build a bomb has spread. Terrorists are determined to buy, build or steal one. Our efforts to contain these dangers are centered on a global non-proliferation regime, but as more people and nations break the rules, we could reach the point where the center cannot hold (Remarks by President Barack Obama, 2009, April 5).” He added: “One terrorist with one nuclear weapon could unleash massive destruction. Al Qaeda has said it seeks a bomb and that it would have no problem with using it. And we know that there is unsecured nuclear material across the globe” (Remarks by President Barack Obama, 2009, April 5). In July 2009, at the G-8 Summit, President Obama announced the convening of a Nuclear Security Summit in 2010 to deliberate on the mechanism to “secure nuclear materials, combat nuclear smuggling, and prevent nuclear terrorism” (Luongo, 2009, November 10). President Obama’s nuclear/radiological threat perceptions were also accentuated by the United Nations Security Council (UNSC) Resolution 1887 (2009). The UNSC expressed its grave concern regarding ‘the threat of nuclear terrorism.” It also recognized the need for all States “to take effective measures to prevent nuclear material or technical assistance becoming available to terrorists.” The UNSC Resolution called “for universal adherence to the Convention on Physical Protection of Nuclear Materials and its 2005 Amendment, and the Convention for the Suppression of Acts of Nuclear Terrorism.” (UNSC Resolution, 2009) The United States Nuclear Posture Review (NPR) document revealed on April 6, 2010 declared that “terrorism and proliferation are far greater threats to the United States and international stability.” (Security of Defence, 2010, April 6: i). The United States declared that it reserved the right to“hold fully accountable” any state or group “that supports or enables terrorist efforts to obtain or use weapons of mass destruction, whether by facilitating, financing, or providing expertise or safe haven for such efforts (Nuclear Posture Review Report, 2010, April: 12)”. This declaration underscores the possibility that terrorist groups could acquire fissile material from the rogue states**.**

**Magnitude outweighs probability**

**Levi and Zenko ‘12**

(Michael and Michah, fellows at the Council of Foreign Relations, October 12, “Column: Nuclear terror threat goes ‘POOF’”, <http://www.usatoday.com/story/opinion/2012/10/28/column-nuclear-terror-goes-poof/1664299/>)

This can partly be explained by excessive hype about the possibility that terrorists might acquire nuclear arms, particularly prominent in the years after 9/11. **With no attack in the years since, some might be tempted to recall the boy who cried wolf. That has made warnings about nuclear terrorism less powerful today**.¶ But **one needn't believe that a nuclear attack is probable to conclude that it should be a top-tier priority.** **Nuclear terrorism**, however unlikely, **is one of the few prospects that could truly devastate the USA.** **An atomic bomb** detonated in a crowded downtown area **could kill hundreds of thousands of Americans promptly**. **On this scale, no other threat — such as fears of a cyber Pearl Harbor or ongoing turmoil in the Middle East — compares**.¶ Act now¶ The good news is that **there are still steps that the U.S. and the world can take to reduce the odds of a catastrophic attack**. The United States should work with the thirty-four countries that still have weapons-useable nuclear materials to remove those whenever possible. It should help others reduce the risk that corrupt or extremist workers at nuclear facilities could divert any dangerous materials that remain. The next president should also broker a new agreement with Russia to build on the gains of the past 20 years in securing the former Soviet arsenal.¶ **The threat of nuclear terrorism** has diminished markedly over the past decade, but it **has not been eliminated. The next U.S. president will still face a vital challenge that he cannot ignore.**

### AT Mueller

#### Mueller’s wrong about everything

Allison, 9

Douglas Dillon Professor of Government and Director of the Belfer Center for Science and International Affairs at Harvard University's Kennedy School of Government ( Graham “A Response to Nuclear Terrorism Skeptics” Brown Journal of World Affairs, Hein Online)

What drives Mueller and other skeptics to arrive at such different conclusions?

They make four major claims that merit serious examination and reflection. CLAIM 1: No ONE IS SERIOUSLY MOTIVATED TO CONDUCT A NUCLEAR TERRORIST ATTACK.¶ More than a decade ago, no one could have imagined that a Japanese doomsday cult would be sufficiently motivated to disseminate sarin gas on the Tokyo subway. Indeed, at the time of that attack, the consensus among terrorism experts was that terrorists wanted an audience and sympathy-not casualties. The leading American student of terrorism, Brian Jenkins, summarized the consensus judgment in 1975: "terrorists seem 34 to be more interested in having a lot of people watching, not a lot of people dead.""¶ As intelligence officials later testified, an inability to recognize the shifting modus operandi of some terrorist groups was part of the reason why members of Aum Shinrikyo "were simply not on anybody's radar screen."" This, despite the fact that the group owned a 12-acre chemical weapons factory in Tokyo, had $1 billion in its bank account, and had a history of serious nuclear ambitions.'9¶ Similarly, before the 9/11 attacks on the World Trade Center and Pentagon that extinguished 3,000 lives, few imagined that terrorists could mount an attack upon the American homeland that would kill more Americans than the Japanese attack at Pearl Harbor. As Secretary Rice testified to the 9/11 Commission, "No one could have imagined them taking a plane, slamming it into the Pentagon and into the World Trade Center, using planes as a missile." 20 For most Americans, the idea of international terrorists mounting an attack on our homeland and killing thousands of citizens was not just unlikely, but inconceivable. But assertions about what is "imaginable" or "conceivable" are propositions about individuals' mental capacities, not about what is objectively possible.¶ In fact, Al Qaeda's actions in the decade prior to the 9/11 attacks provided clear evidence both of intent and capability. While its 1993 attack on the World Trade Center succeeded in killing only six people, Ramzi Yousef, the key operative in this case, had planned to collapse one tower onto the second, killing 40,000. In the summer of 1996, Osama bin Laden issued a fatwa declaring war upon the United States. Two years later, Al Qaeda attacked the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, killing more than 200 people. In October 2000, Al Qaeda attacked the warship USS Cole. Throughout this period, Al Qaeda's leadership was running thousands of people through training camps, preparing them for mega-terrorist attacks.¶ Notwithstanding Aum Shinrikyo's brazen attack, Al Qaedas audacious 9/11 attack, and the recent attacks in Mumbai that killed 179 people, Mueller maintains that "terrorists groups seem to have exhibited only limited desire... they have discovered that the tremendous effort required is scarcely likely to be successful." He asserts that the evidence about Al Qaedas nuclear intentions ranges from the "ludicrous to the merely dubious," and that those who take Al Qaeda's nuclear aspiration seriously border on "full-on fantasyland."1¶ Even scholars who would have been inclined to agree with this point of view have revised their judgment as new facts have accumulated. In 2006, for example, Jenkins reversed the basic proposition that he had set forth three decades earlier. In his summary: "In the 1970s the bloodiest incidents caused fatalities in the tens. In the 1980s, fatalities from the worst incidents were in the hundreds; by the 1990s, attacks on this scale had become more frequent. On 9/11 there were thousands of fatalities, and there could have been far more. We now contemplate plausible scenarios in which tens of 35 thousands might die." Underlining the contrast with his own 1975 assessment, Jenkins now says: "Jihadists seem ready to murder millions, if necessary. Many of today's terrorists want a lot of people watching and a lot of people dead."22 (Emphasis added.)¶ Al Qaeda has been deadly clear about its ambitions. In 1998, Osama bin Laden declared that he considered obtaining weapons of mass destruction "a religious duty."" In December 2001, he urged his supporters to trump the 9/11 attacks: "America is in retreat by the grace of God Almighty..but it needs further blows."2 A few months later, Al Qaeda announced its goal to "kill four million Americans."5 It eVen managed to gain religious sanction from a radical Saudi cleric in 2003 to kill "ten million Americans" with a nuclear or biological weapon.26¶ We also now know that Al Qaeda has been seriously seeking a nuclear bomb. According to the Report of the 9/11 Commission, "Al Qaeda has tried to acquire or make nuclear weapons for at least ten years... and continues to pursue its strategic goal of obtaining a nuclear capability." It further reveals "bin Laden had reportedly been heard to speak of wanting a 'Hiroshima." The Commission provides evidence of Al Qaedas effort to recruit nuclear expertise-including evidence about the meeting between two Pakistani nuclear weapon scientists, bin Laden, and his deputy Ayman al-Zawahiri in Afghanistan to discuss nuclear weapons.2 These scientists were founding members of Ummah Tamer-e-Nau (UTN), a so-called charitable agency to support projects in Afghanistan. The foundation's board included a fellow nuclear scientist knowledgeable about weapons construction, two Pakistani Air Force generals, one Army general, and an industrialist who owned Pakistan's largest foundry.28¶ In his memoir, former CIA Director George Tenet offers his own conclusion that "the most senior leaders of Al Qaeda are still singularly focused on acquiring WMD" and that "the main threat is the nuclear one." In Tenet's view, Al Qaedas strategic goal is to obtain a nuclear capability. He concludes as follows: "I am convinced that this is where Osama bin Laden and his operatives desperately want to go."2 9¶ CLAIM 2: IT IS IMPOSSIBLE FOR TERRORISTS TO ACQUIRE FISSILE MATERIAL.¶ Assuming that terrorists have the intent-could they acquire the necessary materials for a Hiroshima-model bomb? Tenet reports that after 9/11, President Bush showed President Putin his briefing on UTN. In Tenet's account of the meeting, Bush "asked Putin point blank if Russia could account for all of its material." Putin responded that he could guarantee it was secure during his watch, underlying his inability to provide assurance about events under his predecessor, Boris Yeltsin.3o¶ When testifying to the Senate Intelligence Committee in February 2005, Commit- 36 tee Vice-Chairman John Rockefeller (D-WV) asked CIA Director Porter Goss whether the amount of nuclear material known to be missing from Russian nuclear facilities was sufficient to construct a nuclear weapon. Goss replied, "There is sufficient material unaccounted for that it would be possible for those with know-how to construct a weapon.. .I can't account for some of the material so I can't make the assurance about its whereabouts."¶ Mueller sidesteps these inconvenient facts to assert a contrary claim. According to his telling, over the last 10 years, there have been only 10 known thefts of highly enriched uranium (HEU), totaling less than 16 pounds, far less than required for an atomic explosion. He acknowledges, however, that "There may have been additional thefts that went undiscovered."32¶ Yet, as Matthew Bunn testified to the Senate in April 2008, "Theft of HEU and plutonium is not a hypothetical worry, it is an ongoing reality." He notes that "nearly all of the stolen HEU and plutonium that has been seized over the years had never been missed before it was seized." The IAEA Illicit Nuclear Trafficking Database notes 1,266 incidents reported by 99 countries over the last 12 years, including 18 incidents involving HEU or plutonium trafficking. 130 research reactors around the world in 40 developing and transitional countries still hold the essential ingredient for nuclear weapons. As Bunn explains, "The world stockpiles of HEU and separated plutonium are enough to make roughly 200,000 nuclear weapons; a tiny fraction of one percent of these stockpiles going missing could cause a global catastrophe."¶ Consider the story of Russian citizen Oleg Khinsagov. Arrested in February 2006 in Georgia, he was carrying 100 grams of 89-percent enriched HEU as a sample and attempting to find a buyer for what he claimed were many additional kilograms. Mueller asserts that "although there is a legitimate concern that some material, particularly in Russia, may be somewhat inadequately secured, it is under lock and key, and even sleepy, drunken guards, will react with hostility (and noise) to a raiding party.""¶ CLAIM 3: IT IS EXTREMELY DIFFICULT TO CONSTRUCT A NUCLEAR DEVICE THAT WORKS.¶ Rolf Mowatt-Larssen, former director of the Department of Energy's Office of Intelligence and Counterintelligence, testified that, "The 21s' century will be defined first by the desire and then by the ability of non-state actors to procure or develop crude nuclear weapons."6 In contrast, Mueller contends that, "Making a bomb is an extraordinarily difficult task... the odds, indeed, are stacked against the terrorists, perhaps massively so." 37¶ Mueller argues that his conclusion follows from an analysis of 20 steps an atomic terrorist would have to accomplish in what he judges to be the most likely nuclear terrorism scenario. On the basis of this list, he claims that there is "worse than one in a 37 million" chance of success. 38¶ His approach, however, misunderstands probabilistic risk assessment. ///For example, some of the steps on the list would have to be completed before an attempt to acquire material could begin (therefore, the success rate for any of those steps during the path would, by definition, be 100 percent). Other steps are unnecessary, such as having a technically sophisticated team pre-deployed in the target country. Although he assumes that stolen materials will be missed, in none of the 18 documented cases mentioned earlier had the seized material been reported missing."¶ At U.S. weapons labs and among the U.S. intelligence community, experts who have examined this issue largely agree. John Foster, a leading American bomb maker and former director of the Lawrence Livermore National Laboratories, wrote a quarter century ago, "If the essential nuclear materials are at hand, it is possible to make an atomic bomb using information that is available in the open literature." 4 Similarly, Theodore Taylor, the nuclear physicist who designed America's smallest and largest atomic bombs, has repeatedly stated that, given fissile material, building a bomb is "very easy. Double underline. Very Easy." 4¶ Inquiring into such claims, then-Senator Joe Biden (D-DE) asked the major nuclear weapons laboratories whether they could make such a device if they had nuclear materials. All three laboratories answered affirmatively. The laboratories built a gun-type device using only components that were commercially available and without breaking a single U.S. law.¶ The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, known as the Silberman-Robb Commission, reported in 2005 that the intelligence community believed Al Qaeda "probably had access to nuclear expertise and facilities and that there was a real possibility of the group developing a crude nuclear device." It went on to say that "fabrication of at least a 'crude' nuclear device was within Al Qaedas capabilities, if it could obtain fissile material."43¶ Skeptics argue that terrorists cannot replicate the effort of a multi-billion dollar nuclear program of a state. This claim does not distinguish between the difficulty of producing nuclear materials for a bomb (the most difficult threshold) and the difficulty of making a bomb once the material has been acquired. The latter is much easier. In the Iraq case, for example, the CIA noted that if Saddam Hussein had stolen or purchased nuclear materials from abroad, this would have cut the time Iraq needed to make a bomb from years to months.1 Moreover, terrorists do not require a state-of-the art weapon and delivery system, since for blowing up a single city a crude nuclear device would suffice.¶ The grim reality of globalization's dark underbelly is that non-state actors are 38 increasingly capable of enacting the kind of lethal destruction heretofore the sole reserve of states.¶ CLAIM 4: IT IS TOO DIFFICULT TO DELIVER A NUCLEAR DEVICE TO THE UNITED STATES.¶ In the spring of 1946, J. Robert Oppenheimer was asked whether units of the atom bomb could be smuggled into New York and then detonated. He answered, "Of course it could be done, and people could destroy New York." As for how such a weapon smuggled in a crate or a suitcase might be detected, Oppenheimer opined, "with a screwdriver." He went on to explain that because the HEU in a nuclear weapon emits so few radioactive signals, a bomb disguised with readily available shielding would not be detected when inspectors opened the crates and examined the cargo.41¶ The nuclear weapon that terrorists would use in the first attack on the United States is far more likely to arrive in a cargo container than on the tip of a missile. In his appearance before a Senate subcommittee in March 2001, six months before 9/11, National Intelligence Officer Robert Walpole testified that "non-missile delivery means are less costly, easier to acquire, and more reliable and accurate."' 6¶ Citing the 1999-2003 U.S. Congressional Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (the Gilmore Commission), Mueller states that transporting an improvised nuclear device would require overcoming "Herculean challenges.""¶ He does not explain, however, why bringing a crude nuclear weapon into an American city would be materially different than the challenge faced by drug smugglers or human traffickers. According to the Government Accountability Organization, an average of 275 metric tons of cocaine have arrived in Mexico each year for transshipment to the United States since 2000. Reported seizures averaged about 36 tons a year, a 13 percent success rate for the intelligence and law enforcement community. Three million illegal immigrants enter the country each year, and only one in three gets caught."

### 2ac- Circumvention

#### Obama won’t circumvent- he wants to rely statuatory authority- that’s WSJ. And even if he circumvents, the plan is still sufficient to solve legitimacy

**Fear of political costs generates complicance**

**Bradley and Morrison ‘13**

[Curtis A., William Van Alstyne Professor of Law, Duke Law School. Trevor W., Liviu Librescu Professor of Law, Columbia Law School. Columbia Law Review 113. <http://www.columbialawreview.org/wp-content/uploads/2013/05/Bradley-Morrison.pdf> ETB]

In addition to the constraining influence arising from the internalization of legal norms by executive branch lawyers and other officials, law ¶ could constrain the President if there are “external” sanctions for ¶ violating it. The core idea here is a familiar one, often associated with ¶ Holmes’s “bad man”139: One who obeys the law only because he ¶ concludes that the cost of noncompliance exceeds the benefits is still ¶ subject to legal constraint if the cost of noncompliance is affected by the ¶ legal status of the norm. This is true even though the law is likely to ¶ impose less of a constraint on such “bad men” than on those who have ¶ internalized legal norms, and even though it is likely to be difficult in ¶ practice to disentangle internal and external constraints. ¶ Importantly, external sanctions for noncompliance need not be ¶ formal. If the existence or intensity of an informal sanction is affected by ¶ the legal status of the norm in question, compliance with the norm in ¶ order to avoid the sanction should be understood as an instance of law ¶ having a constraining effect. In the context of presidential compliance ¶ with the law, one can plausibly posit a number of such informal ¶ sanctions. One operates on the level of professional reputation, and may ¶ be especially salient for lawyers in the executive branch. If a lawyer’s own ¶ internalization of the relevant set of legal norms is insufficient to prevent ¶ him from defending as lawful actions that he knows are obviously beyond ¶ the pale, he might respond differently if he believed his legal analysis ¶ would or could be disclosed to the broader legal community in a way that ¶ would threaten his reputation and professional prospects after he leaves ¶ government.140 (This concern might help further explain the OLC and other Justice Department officials’ resistance to the White House in the ¶ warrantless surveillance example discussed above.) ¶ Although **fear of harm to their professional reputations may indeed** ¶ **help constrain government lawyers**, if that were the only operative ¶ external sanction in this context it would be fair to ask whether it ¶ translated into a real constraint on the President in high-stakes contexts. ¶ But it is not the only potential sanction. **A** related and perhaps **more** ¶ **significant sanction may operate directly on political leaders within the** ¶ **government, including the President himself: partisan politics**. **If being** ¶ **perceived to act lawlessly is politically costly, a President’s political rivals** ¶ **will have an incentive to invoke the law to oppose him**. Put another way, ¶ **legal argumentation might have a salience with the media, the public at** ¶ **large, and influential elites that could provide presidential opponents in** ¶ **Congress and elsewhere with an incentive to criticize executive actions in** ¶ **legal terms. If such criticism gains traction in a given context, it could** ¶ **enable the President’s congressional opponents to impose even greater** ¶ **costs on him** through a variety of means, **ranging from oversight hearings** ¶ **to,** in the extreme case, threats of **impeachment**. Thus, **so long as the** ¶ **threat of such sanctions is credible, law will impose an external** ¶ **constraint**—whether or not the President himself or those responsible ¶ for carrying out his policies have internalized the law as a normative ¶ matter. **The prospect of political sanctions might help explain,** for ¶ example, **why modern Presidents do not seem to seriously contemplate** ¶ **disregarding Supreme Court decisions**.141 **And if Presidents are constrained to follow the practice-based norm of judicial supremacy, they** ¶ **may be constrained to follow other normative practices that do not** ¶ **involve the courts**. ¶ **Work by political scientists concerning the use of military force is at** ¶ **least suggestive of how a connection between public sanctions and law** ¶ **compliance might work**. As this work shows, **the opposition party in** ¶ **Congress, especially during times of divided government, will have both** ¶ **an incentive and the means to use the media to criticize unsuccessful** ¶ **presidential uses of force. The additional political costs that the** ¶ **opposition party is able to impose in this way will in turn make it less** ¶ **likely that Presidents will engage in large-scale military operations.1**42 It is ¶ at least conceivable, as the legal theorist Fred Schauer has suggested, that ¶ **the political cost of pursuing an ultimately unpopular policy initiative** ¶ (such as engaging in a war) **goes up with the perceived illegality of the initiative**.143 If that is correct, then **actors will require more assurance of** ¶ **policy success before potentially violating the law. This should count as a** ¶ **legal constraint on policymaking even if the relevant actors themselves** ¶ **do not see any normative significance in the legal rule in question.**

## OffCase

### \*2AC Generic\*

#### 1. Unique Link Turn - The executive is swamped by terrorism fatigue now, which creates sluggish response to crises- plan is key reinvigorate the executive- that’s Leiter

#### 2. Plan is critical to making flexibility effective- a clear congressional authorization is key to quick and decisive executive action during- and it’s crucial to allow the president to fight emerging threats by clearly defining targets- that’s Cronogue and Chesney

#### 3. More evidence

**Cronogue ‘12**

[Graham. Duke University School of Law, J.D. expected 2013; University of North Carolina B.A. 2010. 22 Duke J. Comp. & Int'l L. 377 2011-2012. ETB]

Though the President's inherent authority to act in times of emergency¶ and war can arguably make **congressional authorization of force**¶ unnecessary, it **is extremely important for the conflict against al-Qaeda and** **its allies**. First, as seen above, the existence of a state of war or national¶ emergency is not entirely clear and might not authorize offensive war¶ anyway. Next, assuming that a state of war did exist, specific **congressional authorization would** further **legitimate and guide the executive branch** in the prosecution of this conflict **by setting out exactly what Congress authorizes** and what it does not. Finally, **Congress should** specifically **set out what the President can and cannot do to limit his discretionary authority** **and prevent adding to the gloss on executive power**.¶ Even during a state of war, **a congressional** authorizationfor conflict¶ thatclearly sets out **the acceptable** targets **and means would** further legitimate **the President's** actionsand **help** guide **his** decision making¶ **during this new form of warfare.** Under Justice Jackson's framework from¶ Youngstown, presidential authority is at its height when the Executive is acting pursuant to an implicit or explicit congressional authorization. 74 In¶ this zone, the President can act quickly and decisively because he knows the full extent of his power.75 In contrast, the constitutionality of¶ presidential action merely supported by a president's inherent authority¶ exists in the "zone of twilight." 76 **Without a congressional grant of power,** **the President's war actions are often of questionable constitutionality because Congress has not specifically delegated any of its own war powers to the executive.77**¶ **This** problem **forces the President to make complex judgments** **regarding the extent and scope of his inherent authority. The resulting uncertainty creates unwelcome issues of constitutionality that might hinder** the P**resident's ability to prosecute this conflict effectively.** **In time sensitive**¶ and dangerous **situations**, where **the President** needs to make splitsecond¶ decisions that could fundamentally impact American lives and¶ safety, he **should not have to guess at the scope of his authority. Instead, Congress should provide a clear, unambiguous grant of power, which would mitigate many questions of authorization. Allowing the President to understand the extent of his authority will enable him to act quickly, decisively but also constitutionally.**¶Finally, a grant or denial of **congressional authorization will allow Congress to control the "gloss" on the executive power.** There is¶ considerable **tension between the President's constitutional powers** as¶ Commander in Chief **and Congress's war making powers**.7 8 This tension is **not readily resolved** simply **by looking at the Constitution**. Instead **courts look to past presidential actions and congressional responses when evaluating the constitutionality of executive actions**.80 Indeed Justice¶ **Frankfurter** **noted** in Youngstown that "**a systematic**, unbroken, **executive**¶ **practice**, long pursued to the knowledge of the Congress and never before¶ questioned ... **may be treated as a gloss on 'executive Power'** vested in the¶ President by § 1 of Art. II."8 Thus, **congressional inaction can be deemed as implicit delegation of war making power to the executive.**82 Whether the United States is in a state of war or not, **an authorization of force provides legitimacy and clarity to the war effort**. **If the President acts pursuant to such an authorization his authority is at its height**;¶ consequently, **he can operate with greater certainty that his actions are constitutional**.83 **Absent such a declaration, the President's power is much less clear.** **While the President has the authority to frame the conflict and he might still be able to act pursuant to his inherent powers, he is operating in**¶ **the zone of twilight.84 Congressional authorizations remove this uncertainty by stamping specific acts with congressional approval or disapproval. This process also allows Congress to exert control over what the President can do in the future and prevents the "gloss" that comes from congressional acquiescence.**¶

#### 4. Legitimacy key to flex and sustainable counter terrorism

Chesney et al. ‘13

[Robert Chesney is a ¶ professor at the University ¶ of Texas School of Law, a ¶ nonresident senior fellow ¶ of the Brookings Institution, ¶ and a distinguished scholar ¶ at the Robert S. Strauss ¶ Center for International ¶ Security and Law. He is a ¶ cofounder and contributor to ¶ the Lawfare Blog and writes ¶ frequently on topics relating ¶ to US counterterrorism ¶ policy and law. Jack Goldsmith is the Henry ¶ L. Shattuck Professor of ¶ Law at Harvard Law School ¶ and a member of the Hoover ¶ Institution’s Jean Perkins ¶ Task Force on National ¶ Security and Law. He served ¶ in the Bush administration as ¶ assistant attorney general, ¶ Office of Legal Counsel, from ¶ 2003 to 2004 and as special ¶ counsel to the general ¶ counsel from 2002 to 2003. Matthew C. Waxman ¶ is a professor of law at ¶ Columbia Law School, ¶ an adjunct senior fellow ¶ at the Council on Foreign ¶ Relations, and a member ¶ of the Hoover Institution’s ¶ Jean Perkins Task Force ¶ on National Security and ¶ Law. He previously served ¶ in senior positions at the ¶ State Department, Defense ¶ Department, and National ¶ Security Council. Benjamin Wittes is a senior ¶ fellow in governance ¶ studies at the Brookings ¶ Institution, a member of ¶ the Hoover Institution’s ¶ Jean Perkins Task Force ¶ on National Security and ¶ Law, and the editor in chief ¶ of the Lawfare Blog. Jean Perkins Task Force on National Security and Law. <http://media.hoover.org/sites/default/files/documents/Statutory-Framework-for-Next-Generation-Terrorist-Threats.pdf> ETB]

While we believe there will be a need for a new AUMF, and while we discuss ¶ options for such a new statute in Parts II and III, we first pause to note the general ¶ downsides of a new AUMF. As the discussion of inherent presidential power ¶ implies, a new statutory framework for presidential uses of force against newly ¶ developing terrorist threats might diminish presidential flexibility and discretion ¶ at the margins. At the same time, of course, it enhances the legitimacy of presidential action in domestic courts and with domestic public opinion. ¶ This constraint-legitimacy tradeoff is commonplace. And to the extent that the ¶ constraint achieves legitimacy it promotes sustainable counterterrorism policy, politically and legally, over the long term. A strong statutory basis makes it less likely that Congress or courts will intervene later with constraints that dangerously hamper the president’s agility to respond to threats.

**5. President is hamstrung now**

**Rozell 12**

(Mark Rozell, Professor of Public Policy, George Mason University, “From Idealism to Power: The Presidency in the Age of Obama” 2012, <http://www.libertylawsite.org/book-review/from-idealism-to-power-the-presidency-in-the-age-of-obama/>, KB)

A substantial portion of Goldsmith’s book presents in detail his case that **various forces** outside of government, and some within, **are responsible for hamstringing the president** in unprecedented fashion: **Aggressive**, often intrusive, **journalism, that at times endangers national security; human rights and other advocacy groups**, some **domestic and** other **cross-national, teamed with big resources and talented, aggressive lawyers, using every legal category and technicality possible to complicate executive action**; **courts** thrust into the mix, **having to decide critical national security law controversies**, even when the judges themselves have little direct knowledge or expertise on the topics brought before them; **attorneys within the executive branch** itself **advising against actions** based on often narrow legal interpretations and with little understanding of the broader implications of tying down the president with legalisms.

**6. Strong congressional restrictions increase credibility- outweighs presidential flex**

**Waxman 11-7**

(Matthew C. Waxman, a Professor at Columbia Law School, an Adjunct Senior Fellow at the Council on Foreign Relations, and a Member of the Hoover Institution Task Force on National Security and Law, Syria, Threats of Force, and Constitutional War Powers, 123 YALE L.J. ONLINE 297 (2013), <http://yalelawjournal.org/2013/11/7/waxman.html>, KB)

II. Constitutional Checks and Credible Threats¶ Whereas legal scholars are usually consumed with the internal effects of war powers law on actors within the U.S. government, the Syria case highlights a question about their possible external effects: how, if at all, does the legal allocation of power between the President and Congress affect the credibility of U.S. threats among adversaries, allies, and other international actors? In prescriptive terms, **if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of the impact of war powers reform** on policy outcomes and long-term interests shoul**d include the important secondary effects on deterrent and coercive strategies—and** on **how U.S. legal doctrine is** observed and **understood** abroad.34 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and, if so, would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy, including deterrence of adversaries and reassurance of allies, by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the ability to signal abroad dissent within Congress, beyond that already resulting from open American political discourse?¶ Intuitively, **greater congressional veto power over the use of force would** seem generally to **undermine the credibility of threats.** For this reason, it has long been assumed that democracies are at a disadvantage relative to autocracies when it comes to threats of force and saber-rattling bargaining contests under the shadow of possible war. Quincy Wright speculated in 1942 that autocracies “can use war efficiently and threats of war even more efficiently” than democracies,35 especially democracies like the United States, in which vocal public and congressional opposition may undermine threats.36¶ Additional, **formal legal powers** **over war or force in the hands of Congress would**, it might seem, further **disable the President from wielding threats effectively, because opponents and other players in the international system might doubt** **not only his willingness but his ability to carry them out.** This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that serious restrictions on presidential use of force would mean that, in practice, “**no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations**.”37 This view holds that the merits of Madisonian “clogging” with regard to waging eighteenth century wars are liabilities with regard to deterring twentieth and twenty-first century wars.38¶ **The Syria case would seem to bear out these concerns. By giving Congress a vote, the President appears not only to have tied his own hands** in carrying out his threat, **but to have tipped off American rivals and partners that congressional support for new military actions** (for which the President might also seek congressional authorization) **is** generally **frail**.¶ On the other hand, some **recent strands of political science have called into question the value of presidential flexibility in wielding threats**. Some of this work concludes that **the institutionalization of political debate** in democracies **makes threats** to use force rare but especially **credible and effective in resolving international crises without resort to actual armed conflict.**¶ In other words, **recent arguments** turn some **old claims** **about** the **strategic disabilities** of democracies **on their heads**. **Whereas it used to be** generally **thought that democracies were ineffective in wielding threats because they are poor at keeping secrets and their decision-making is constrained by internal political pressures, a current wave of scholarship** in political science accepts this basic description but **argues that these democratic features are** really **strategic virtues**.39 If that view is correct, a question for constitutional scholars is how, specifically, legal doctrine and allocations of power strengthen or weaken these features.¶ Some political scientists argue that **democracies are less likely to bluff because transparency makes it harder to do so.**40 To the extent that adversaries and allies understand this, **threats will seem more serious than bluster**. **Informational asymmetries** also **increase the potential for misperception and thereby make some wars more likely**; war, consequentially, can be thought of in these cases as a “bargaining failure,” and **greater transparency about American policy preferences may help avoid unnecessary escalation of crises**.41 For the reasons discussed in the previous section, **legislative politics** may already **contribute to** this **credibility-enhancing and conflict-avoiding transparency**.42 Perhaps **stricter legal requirements for congressional approval of military action would push even more information about American political and policy inclinations to the surface and into the open.** For example, **turning more media attention to congressional opinion and elevating the significance of congressional hearings** or other maneuvers **might make it more difficult to conceal or misrepresent American preferences** about war and peace w**ith regard to specific** crises or **threats**. Moreover, especially if presidentialists are correct about the importance of flexibility to credibility, in a hypothetical world of very stringent congressional force-authorization requirements, Congress might be inclined to delegate or pre-authorize some discretion back to the President.¶ As mentioned above, political transparency stemming from congressional debate about Syria strikes likely weakened the President’s coercive leverage abroad rather than strengthening it. But, for those interested in whether stronger inter-branch checks are inherently disadvantageous to strategies of threatened force, an important question is whether, ex ante, a **legal requirement for congressional approval to launch strikes would have caused the President to be more cautious in drawing a red line to begin with** **and**, if he did so, **would have made any threat backing it especially credible in the eyes of intended audiences abroad.**

### 2AC Farm Bill DA

#### Farm Bill is third in line on Cantor’s agenda; health care and spending bills come first, the plan wouldn’t trade off with Farm Bill

American Banker 1-7-14

[Nexis, mg]

House leaders are unlikely to take up housing finance reform on the chamber floor this month, according to a new legislative schedule.¶ **Majority Leader Eric Cantor outlined his priorities for January in a memo to lawmakers** on Friday, **which include overseeing the health care law, finalizing a government spending bill and working with the Senate on the farm bill, among other issues**.¶ Still missing from the agenda is any mention of mortgage finance reform, even after the House Financial Services Committee passed a conservative bill to unwind Fannie Mae and Freddie Mac before the August recess.¶

#### No new legislation will pass, Farm Bill not on near-term agenda

**Washington Post 1-6-13**

[Paul Kane, Nexis, mg]

**Expectations are already being lowered for the new year.** When Sen. Max Baucus (D-Mont.) announced in April that he would retire in 2015, the Finance Committee chairman dedicated his final months in office to an ambitious plan to simplify the tax code. By mid-December, with tax reform on political life support, Baucus accepted Obama's nomination to be ambassador to China.¶ Boehner continues to suggest that he supports some type of immigration reform, but **a Friday memo from House Majority Leader Eric Cantor (R-Va.) outlining the agenda couldn't have been more vague. "Several outstanding issues may be brought to the floor over the next few months, including: the intelligence authorization, flood insurance, as well as legislation related to trade and immigration**," Cantor wrote.¶ For Murray and Blunt, both members of the Senate Appropriations Committee, the most basic step will be writing and approving the 2015 funding bills for federal agencies. With the large infusion of new lawmakers in recent elections, majorities of the House and the Senate have never seen that system work in the usual manner.¶ Murray and Blunt both suggested that if Congress could just complete those steps this year, it could pay dividends down the road.¶ "If this would work just one time, it would be a huge demonstration to a huge percentage of both the Senate and House that have never seen it work that there is a reason for the long, hard work," Blunt said. "In legislating, as in life, there is a normal order of things. You can occasionally violate it and get away with it and actually look brilliant, but if you violate it over and over again, eventually you're going to wind up with big problems."¶

#### Won’t pass---partisan divisions and earmark rule

Amy Mayer 12/30, "One thing that didn't happen in 2013: a Farm Bill", 2013, hppr.org/post/one-thing-didn-t-happen-2013-farm-bill

If it seems like Congress just can’t get the farm bill done, well… that’s because it can’t.¶ All year long, Washington lawmakers have been saying they want to pass a full five-year farm bill. But even though leaders of the House-Senate conference committee say they are close, they have acknowledged it just won’t get done this year. They’re pushing it off until January.¶ The inability to settle on a farm bill illustrates the deep divisions that have become the norm on Capitol Hill. The massive food and agriculture package used to be relatively easy thanks to bipartisan and urban-rural alliances. But this year, progress was a slow slog. ¶ A nine-month extension passed in January bought some time. This summer, the Senate passed its bill, but the House didn’t. Then the House sent two bills to the conference committee, one for agriculture and the other for food stamps. ¶ The conference committee charged with drafting a final bill met off and on for months. The main negotiators were the leaders from each party of the Agriculture Committees of each house – Sen. Debbie Stabenow and Sen. Thad Cochran from the Senate, and Rep. Colin Peterson and Rep. Frank Lucas from the House. Despite reporting progress, the four lawmakers were unable to finish the job before the House adjourned for the year on Friday.¶ There are three fundamental reasons today’s lawmakers have such a hard time getting the job done. Iowa State University political scientist David Peterson says one is the striking chasm separating today’s Washington politicians.¶ “We’ve seen an increasing polarization within Congress, in particular we’ve seen the modern Republican Party move further to the right,” Peterson said. “The Democrats have moved some to the left, but really what is driving it is the Republicans have moved further to the right.”¶ That leaves fewer players drawn toward the middle, where compromises are forged. And it takes a majority of both bodies, plus the president, to enact laws.¶ “The problem we’ve got right now is that the amount of things that a majority of the House, and in particular a majority of the Republicans—a majority of the majority party in the House—the Democratic Senate, and the Democratic president can agree on is vanishingly small,” Peterson said.¶ On top of polarization and gridlock, add the lack of earmarks. Peterson says in times past, Congressional leaders could use those small, very specific addendums to sway neutral lawmakers to their side of a bill. But in the last decade, he says, Congress got rid of earmarks. Now deadlines are a main driver pushing Congress to act, though they haven’t been very effective. To be sure, it’s not just the farm bill suffering from this. Everything in Congress is, but the farm bill’s history of wending its way through relatively easily makes the delay more striking. ¶ “This is a very, very visible policy that has really dramatic effects on a lot of people, particularly a lot of people in this area,” Peterson said. “And so it’s more visible. But it’s the same all around.”¶ The farm bill negotiations were full of stops and starts. Just before Thanksgiving, Iowa Republican Rep. Steve King, a conference committee member, remained optimistic a deal could be reached by Christmas.¶ “It’s more than 50/50 in my mind right now, the momentum of this,” King said at the time. “There really was a sincere effort to get it done by Thanksgiving, but we didn’t get there.”¶ Now Christmas and New Year’s Day are out, too.

#### Disad isn’t intrinsic to the aff – it’s within the agential ambit of the USFG to do the plan and pass the farm bill

#### Vote won’t be for weeks and negotiations don’t involve Obama

**Clayton, 1/2/14** (Chris, “New Year means New Farm Bill” <http://www.kxlo-klcm.com/site/index.php?option=com_content&view=article&id=2269:new-year-means-new-farm-bill&catid=8:ag-news-pod&Itemid=115>)

 USDA will continue holding back on any effort to implement permanent law with expectations that Congress will move over the next few weeks to complete work on a farm bill.¶ Agriculture Secretary Tom Vilsack told DTN earlier this week he has high hopes Congress will follow through on conference negotiations between the House and Senate. Such efforts allow USDA to avoid buying milk products at twice the market price because of provisions in permanent law, the secretary said.¶ "I honestly think right now what we are seeing are positive signs from the leadership of the conference committee on the House and the Senate side and some indication from the House and Senate leadership that there is a desire and interest to get this done," Vilsack said.¶ The Senate returns to session Monday while the House returns Tuesday. Though no meeting time has been set, the House and Senate conferees on the farm bill could schedule a meeting later next week to vote on some contentious issues the principal negotiators have not been able to resolve in private talks.¶ "So at this point in time, our focus is on providing technical assistance, ideas and creative thought so whatever differences exist between the House and Senate can be resolved quickly and when they get back in a week or so they can finish up the conference report, have the conference committee vote on whatever issues divide them and present a conference report and hopefully get it passed," Vilsack said.

#### Compromise legislation will face significant opposition and other issues thump the link

Pottorf, 1/3 --- Doane chief economist & Washington analyst (1/3/2014, Rich, “D.C. Watch: No holiday break for farm bill committee,” <http://www.porknetwork.com/pork-news/latest/DC-Watch-No-holiday-break-for-farm-bill-committee-238627861.html>))

Congress has been on holiday for the last couple of weeks but key members of the farm bill conference committee and their staffs have been working behind the scenes on a compromise farm bill proposal.¶ Cap Building Senate Agriculture Committee Chairperson Debbie Stabenow, D-Mich., has promised to unveil the framework for a new bill soon after Congress reconvenes.¶ The top four negotiators on the House-Senate Conference Committee have been working on a possible compromise, but there is grumbling from some of the other 37 members about being shut out of the process.¶ The comments suggest the compromise may face some significant opposition in full committee.¶Congress has other pressing issues to deal with besides the farm bill.¶ The continuing resolution funding the government expires on Jan. 15, and Congress must act before then or the government will shut down again.¶The staffs of the different appropriations committees have been working through the holidays trying to put together spending packages that fit into the overall budget approved by Congress in December. Congress will need to either pass this omnibus spending bill or approve another continuing resolution to avoid a government shutdown.¶ With elections looming this fall, no one wants that!¶ Some in Congress want to use savings from the farm bill to offset the cost of extending unemployment benefits that expired in December for some 1.3 million long-term unemployed. The big debate is over how to pay for another extension.¶ The Congressional Budget Office puts cost at $6.4 billion over 10 years.¶ We are also in the middle of the comment period for EPA’s proposed rule that would lower the biofuels mandate for 2014.¶ The comment period runs through Jan. 28, but EPA has already received more than 10,600 comments. To view or submit comments, visit www.regulations.gov and search under the docket number EPA-HQ-OAR-2013-0479.¶ Under the proposed rule, the amount of biofuels mandated would total 15.2 billion gallons - with slightly more than 13 billion gallons from corn-based ethanol. But if EPA drops its proposal under heavy opposition and takes no action, the mandate for biofuels use in 2014 would exceed 18 billion gallons.¶ There will likely be some important court rulings during 2014. Several rulings that were handed down in 2013 have been appealed. Here are the big ones for agriculture:¶EPA’s ruling about limiting runoff of fertilizers and sediment in the Chesapeake Bay was upheld in 2013, but has been appealed.¶ In contrast EPA denied a petition to develop numeric limits for fertilizer runoff in the Mississippi River Basin, but a federal court has required EPA to determine if nutrient limitations are appropriate.¶ EPA’s proposed rule for the renewable fuels mandate has not been finalized yet, but it looks like the final rule may be challenged in court, especially if the proposed rule is upheld.¶ The Country of Origin Labeling law is under attack on several fronts. Supporters of COOL won the first round in federal court and that ruling has been appealed. In addition the law is being challenged at the World Trade Organization.¶ It is possible that tax refunds will be delayed this year unless Congress raises the debt ceiling in a timely manner.¶ The limit will reset on Feb. 8, and the Treasury Department will need to meet government obligations without exceeding the current cap. However, keeping under the cap will be difficult since the government outlays are at their highest levels at that time of year because of income tax refunds.

**2AC Corker Link Turn**

#### Corker loves the plan

Zengerle 5-2

Patricia Zengerle, Washington Post, “Amid new security threats, some in Congress look to update 9/11 law,” 5/2/13, <http://www.reuters.com/article/2013/05/02/us-usa-congress-counterterrorism-idUSBRE94105V20130502> SJE

**"If you look back at the 60-word authorization that was put in place on September 18, 2001, and look at where we are today, there's a very, very thin thread, if any, between that authorization and what is occurring today," said** Senator Bob **Corker, a leader of the effort to examine the** 2001 resolution. Its formal title is the Authorization to Use Military Force, or **AUMF**. **The top Republican on the Senate Foreign Relations Committee, Corker said he wanted to spell out the kind of counterterrorism activities that could be authorized, and to bring Congress back into the equation. "Congress has totally outsourced its foreign policy oversight," he said** in an interview. "And a lot of people like it that way. Congress can take credit if things go well, criticize if things don't go well, but in **essence Congress has no ownership over what we are carrying out right now. That's not an appropriate place for Congress to be**."

#### Corker key to bipart and swaying GOP

Cassata 12

Donna Cassata, Associated Press, “Bob Corker Eager To Act On Economics, Foreign Policy,” 12/07/12, <http://www.huffingtonpost.com/2012/12/07/bob-corker_n_2258950.html> SJE

Republican Sen. Bob **Corker is spending a lot of time lately talking to Democrats**. The freshman lawmaker from Tennessee unveiled his own 10-year, $4.5 trillion solution for averting the end-of-year, double economic hit of automatic tax hikes and spending cuts and then spoke briefly last week with Treasury Secretary Timothy Geithner. Deficit-cutting maven Erskine Bowles had forwarded Corker's proposal to White House Chief of Staff Jack Lew. Corker also was on the phone with Secretary of State Hillary Rodham Clinton for a 15-minute conversation about Libya and other issues. **Not only is Corker a senior member of the Foreign Relations Committee, he is poised to become the panel's top Republican next year**, with a major say on President Barack Obama's choice to succeed Clinton – possibly the divisive pick of U.N. Ambassador Susan Rice – and other diplomatic nominees. **Pragmatic and peripatetic, the conservative Corker has been deeply involved in negotiations on the auto bailout and financial regulations during his six years in the Senate, bringing the perspective of a multimillionaire businessman and a former mayor of Chattanooga to talks with Democrats and the White House. "I don't see him as a partisan," said Democratic** Sen. Mark **Warner** of Virginia, another multimillionaire businessman who has worked closely with Corker on banking and housing issues. "I think **he's somebody who's willing to work with anybody who he thinks has a good idea**." Next year, **in the Senate's new world order of a smaller Republican minority**, the 60-year-old **Corker is certain to play an outsized role, not only because of his high-profile standing on the Foreign Relations panel but because he is willing to work across the aisle in his eagerness to get something done**. It is something of a rare trait in the bitterly divided Congress and one that often draws an angry response from the conservative base of the GOP. It didn't affect Corker politically. He scored a resounding win last month, cruising to re-election with 65 percent of the vote.

### Legalism

#### FRAMEWORK—The aff is a normative statement. Vote aff if plan is a good idea, neg if it isn’t.

#### A. Solves their offense –the impact of the K is a reason the aff is bad.

#### B. Aff choice – they arbitrarily steal 9 minutes of offense, destroys the aff’s only advantage.

VA

UT

**Their evidence is descriptive of the status quo which only the affirmative can solve. The AUMF allows the executive to identify any group as a potential terrorist group and strike them. Only the affirmative defines a specific, concrete enemy. This is the key internal link to constructing them as legitimate enemies rather than absolute, evil, others.**

**Critical legal philosophy is non-empirical, cherry-picked garbage**

John **Stick 86**, Assistant Professor of Law at Tulane University School of Law, “Can Nihilism Be Pragmatic?”, Harvard Law Review, Vol. 100, No. 2 (Dec., 1986), pp. 332-401, JSTOR

**This Article examines the relationship between** the **critical legal nihilists and the philosophers they rely upon** for support. **The** nihilists' **use of philosophy is important, because their critique is** at bottom conceptual and **not empirical. Legal nihilists do not study the work of large numbers of practicing** attorneys or **judges to discover the extent of agreement about whether particular legal arguments are valid. Instead, they parse the words of theorists and** appellate **judges to discover contradictions and opposed values. This selective parsing of the language of a few theorists and judges (neglecting the hundreds of thousands** of practicing **attorneys**) **is** itself **far from adequate empirical technique**. More important, **the nihilists' leap from the general inconsistencies they discover to a claim that law does not follow** standards of **rationality is unconvincing** without philosophical argument. Nihilists rarely attempt to supply that argument themselves; if they feel any need of further discussion they usually rely upon theorists outside the discipline of law.9 ¶ This Article demonstrates that the **nihilists misuse much of the philosophy they attempt to appropriate**. In order to focus the discussion, this Article concentrates on one comprehensive statement of nihilism and the major intellectual influences upon it. The best and most complete exposition of the nihilist critique of law was written by Joseph Singer in a recent article in the Yale Law Journal.10 His article is the most philosophically sophisticated and judicious work to date. Singer states that he relies heavily on the analysis of the philosophers Richard Bernstein, Michael Sandel, and Roberto Unger,11 but he acknowledges that he owes his greatest intellectual debt to Richard Rorty, 12 a scholar who identifies his own position with pragmatism. 13 I focus on the relationship between Singer and Rorty not only because Singer claims that Rorty has had the greatest influence on his thought, but also because Rorty is the closest in spirit to Singer.14 For example, Bernstein,15 Sandel,16 and Unger17 all allow rationality and shared values larger roles in political and moral argument than does Rorty. **If Singer is too much of an irrationalist for Rorty, then a fortiori Singer is too much of an irrationalist for the others.**

**Risk framing motivates new social movements and re-democratizes politics**

**Borraz, ‘7** [Olivier Borraz, Centre de Sociologie des Organisations, Sciences Po-CNRS, Paris, Risk and Public Problems, Journal of Risk Research Vol. 10, No. 7, 941–957, October 2007, p. 951]

**These studies** seem to **suggest** that **risk is a way of framing a public problem in such a way as to politicize the search for solutions. This politicization entails**, in particular, **a widening of** the range of **stakeholders, a reference to broader political issues** and debates, **the search for new decision- making processes** (either **in terms of democratization**, or renewed scientific expertise), and the explicit mobilization of non-scientific arguments in these processes. But if this is the case, then it could also be true that risk is simply one way of framing public problems. Studies in the 1990s, in particular, showed that a whole range of social problems (e.g., poverty, housing, unemployment) had been reframed as health issues, with the result that their management was transferred from social workers to health professionals, and in the process was described in neutral, depoliticized terms (Fassin, 1998). **Studies of risk**, on the contrary, seem to **suggest that similar social problems could well be re-politicized**, i.e., **taken up by new social movements**, producing and using alternative scientific data, calling for more deliberative decision-making procedures, and clearly intended to promote change in the manner in which the state protects the population against various risks (health and environment, but also social and economic). In other words, **framing public problems as risks could afford an opportunity for a transformation in the political debate**, from more traditional cleavages around social and economic issues, to rifts stemming from antagonistic views of science, democracy and the world order.

**The success of anti-state and anti-imperialism efforts relies on working with the state and legal institutions, the alternative is war and genocide.**

**Shaw**, Professor of International Relations and Politics at the University of Sussex, **’99** (Martin, November 9, “The unfinished global revolution: Intellectuals and the new politics of international relations”

**The new politics of international relations require us**, therefore, **to go beyond** the **antiimperialism of the intellectual left as well as of the semi-anarchist traditions of the academic discipline**. We need to recognise three **fundamental** truths: First, in the twenty-first century **people struggling for democratic liberties across the non-Western world are likely to make constant demands on our solidarity**. Courageous academics, **students and** other **intellectuals will be in the forefront of these movements**. They deserve the unstinting support of intellectuals **in the West**. Second, the old international thinking in which democratic movements are seen as purely internal to states no longer carries conviction – despite the lingering nostalgia for it on both the American right and the anti-American left. **The idea that global principles can and should be enforced worldwide is firmly established in the minds of hundreds of millions of people**. This consciousness will a powerful force in the coming decades. Third, **global state-formation is a fact. International institutions are being extended, and they have a symbiotic relation with the major centre of state power**, the increasingly internationalised Western conglomerate. **The success of the global-democratic revolutionary wave depends** first on how well it is consolidated in each national context – but second, **on how thoroughly it is embedded in international networks of power, at the centre of which, inescapably, is the West**. From these political fundamentals, strategic propositions can be derived. First, **democratic movements cannot regard** non-governmental organisations and **civil society as ends in themselves. They must aim to civilise** local **states, rendering them open, accountable and pluralistic, and curtail the arbitrary and violent exercise of power**. Second, **democratising local states is not a separate task from integrating them into global** and often Western-centred **networks**. **Reproducing isolated local centres of power carries with it classic dangers of states as centres of war.** **Embedding global norms and integrating new state centres with global institutional frameworks are essential to the control of violence**. (To put this another way, the proliferation of purely national democracies is not a recipe for peace.) Third, while the global revolution cannot do without the West and the UN, neither can it rely on them unconditionally. **We need** these **power networks, but we need to tame them**, too, **to make their** messy **bureaucracies** enormously **more accountable and sensitive to** the needs of **society** worldwide. **This will involve** the kind of ‘**cosmopolitan democracy’** argued for by David Held80 and campaigned for by the new Charter 9981. **It will** also **require us to advance a global social-democratic agenda, to address** the literally catastrophic scale of **world social inequalities**. Fourth, **if we need the global-Western state, if we want to democratise it and make its institutions friendlier to global peace and justice, we cannot be indifferent to its strategic debates///. It matters to develop robust peacekeeping as a strategic alternative to bombing our way through zones of crisis. It matters that international intervention supports pluralist structures, rather than ratifying Bosnia-style apartheid**. Likewise, **the internal politics of Western elites matter. It makes a difference to halt the regression to isolationist nationalism in American politics**. It matters that the European Union should develop into a democratic polity with a globally responsible direction. It matters that the British state, still a pivot of the Western system of power, stays in the hands of outward-looking new social democrats rather than inward-looking old conservatives. **As political intellectuals in the West**, we need to have our eyes on the ball at our feet, but we also need to raise them to the horizon. **We need to grasp the historic drama that is transforming worldwide relationships between people and state**, as well as between state and state. **We need to think about how the turbulence of the global revolution can be consolidated in democratic, pluralist, international networks of both social relations and state authority**. We cannot be simply optimistic about this prospect. Sadly, it will require repeated violent political crises to push Western governments towards the required restructuring of world institutions.82 What I have outlined tonight is a huge challenge; but **the alternative is to see the global revolution splutter into defeat, degenerate into new genocidal wars, perhaps even nuclear conflicts. The practical challenge for all concerned citizens**, and the theoretical and analytical challenges for **students of international relations and politics, are intertwined**.

**Perm – do both. Social movements must work with and along-side legal institutions. Rejection of the law kills solvency.**

Peter **Gabel**, former President and Professor of Law at New College of California, 200**9** (“LAW AND ECONOMICS, CRITICAL LEGAL STUDIES, AND THE HIGHER LAW: CRITICAL LEGAL STUDIES AS A SPIRITUAL PRACTICE.” 36 Pepp. L. Rev. 515. Lexis )

This calls not for a rejection of past CLS work, but for a reclaiming of the spiritual dimension of that work. And this in turn **requires** a **reunderstanding** of the indeterminacy critique as being merely an analytical moment within the synthesis of a moral critique, as a kind of analytical insight that indicates that the world is open-textured but not going nowhere, and **that legal reasoning's claims that would fix the world in idealized,** reified **abstractions** legitimizing injustice and alienation **are** actually **a passivizing defense against the freedom** and creative challenge **of social vulnerability** and uncharted possibility. [\*530] **But** this also requires a new agenda for our movement that cooperates with the world-wide spiritual-political initiatives that have sprung up since the post-'60s era from which CLS first emerged, and that would be tremendously supportive of our efforts. These spiritual-political initiatives include the religious renewal movements that are linking the spiritual ideal of the beloved community to social action and social change; spiritually informed secular movements like the Network of Spiritual Progressives that are trying to invent new forms of spiritual activism while rethinking foreign and domestic social policy reforms to emphasize spiritual transformation rather than merely liberal redistribution of resources and rights; 31 and the efforts of the environmental and ecology movements to link the redemption of the planet with social healing and sustainable, cooperative economies. All of **these efforts require a** new **legal culture that links justice with** explicitly **spiritual outcomes** - outcomes **that foster empathy, compassion, and social connection** rather than the vindication of liberal rights in a legal order founded upon the fear-based separation of self and other. One lesson that CLS scholarship itself has taught is **that it is impossible for a social transformation movement to be successful without an ability to express its own ideals** as also ideals of justice that can achieve legitimate political expression **through legal culture.// Without that**, as Karl Klare, Alan Freeman, and many others have shown, 32 **the movement's** radical **ideals will be recast and stolen away by the** liberal interpretations **those movements will suffer through the prism of legal assumptions that actually contradict them**. Thus while the movement must create the "parallel universe" that can affirm the ontological/epistemological validity of the possibility of a society based on love and mutual recognition, the movement also requires a legal expression of itself that declares this same realization of love and mutual recognition to be indispensable to just outcomes of social conflicts. Such a parallel justice system has already begun to sprout up across the legal landscape, alongside the antagonism of self and other, presupposed and reinforced by the mainstream's adversary system. Among its manifestations are the truly remarkable restorative justice movement, which understands crime and social violence as expressive of a breakdown in community and aspires to apology and forgiveness through direct encounters between victims and offenders as a means of restoration of the communal fabric; 33 the transformative and understanding-based mediation movements that make compassion a central objective to the resolution of civil conflicts; 34 the new [\*531] forms of spiritually-informed law practice that are redefining the lawyer-client relationship as a non-technical, holistic relationship in which lawyers bring a substantive moral and healing vision to bear on the client's perception of his or her "interests," and the relation of those interests to the well-being of the larger community; 35 and the transformation of legal education away from a focus on the mere manipulation of existing rules and doctrine, toward a more humane and spiritually integrated conception of law and justice. What these new efforts need from **a revitalized critical legal studies** movement is a scholarship and pedagogy that provides in every field a critique of existing law and legal culture that **reveals the limitations of the liberal world-view** out of which the existing order was constructed in the centuries since the Enlightenment, and that points toward the socially connected community that ought to be its successor. It is this intellectual piece of the puzzle that is lacking from **all of the recent efforts** to transform legal practice in the ways I have just described; all of these efforts without exception, as far as I know, **challenge the** individualized, antagonistic, and despiritualized **character of the** adversary **system without challenging the substantive content of existing law** or the analytical thought process of legal reasoning. Both of these elements of legal culture - **the critique of the substance of legal rules and doctrine**, and the critique of detached, analytical rule-application through abstract, logical technique resting on a normative foundation - **require** a cadre of **intellectuals to** help disassemble what is and **point to what ought to be**, as a "moment" in the transformation from the individualistic, liberal world we inhabit to **a post-liberal socially connected**, loving, **and compassionate world to which we aspire**. So, for example, a CLS course in Contracts should subordinate its use of the indeterminacy critique to a meaning-centered critique emphasizing how the rules presupposing the legitimacy and desirability of individualistic, self-interested bargains (adjusted by a touch of concern for "the reliance interest") among an infinite number of socially disconnected strangers bound by no common moral purpose or spiritually bonded social community outside their respective blood relatives are rapidly destroying the planet, in part, by making use of liberal abstractions like freedom of choice that make it appear that this lonely destiny is what people really want. Or a course in [\*532] Torts should make it clear to students that there is more to the obligations born of our essential connection to each other as social beings than the duty to not pull chairs out from under each other as we are about to sit down to dinner, or not to smash into each others' cars, or injure each other with exploding Coke bottles - that the bond of recognition itself, and what Emmanuel Levinas calls the ethical demand of the face of the Other, 36 means we have a duty to "rescue" each other, that we must take care of each other, including the poor, the homeless, and those who lack health care. CLS scholars and teachers should extend - and in many instances already have extended - this kind of critical analysis to every area of law, including developing a critical reflection on the Constitution as a liberal and individualistic document that was a great advance in its time but now must be transformed to embrace a newly evolving vision of spiritual community that was not even conceived of as a universal necessity in the late eighteenth century when it was drafted. Concomitant with the transformation of doctrine must come a transformation of remedy, beyond money damages passed between socially separated litigants conceived as interested only in material outcomes, and beyond a due process model of civil and criminal procedure that links justice to merely the vindication of rights through the dutiful monitoring of a fact-based public hearing that leaves the parties as disconnected or more disconnected than when their legal process began. And finally, supporting such a re-visioning of doctrine, remedy, and process must be a rethinking of legal reasoning itself that goes beyond the normative circularity of the application of indeterminate rules presupposing the legitimacy of the secular liberal order toward a morally grounded reflection anchored in the common effort to realize the values of love, compassion, and mutual concern and well-being that are being carried forward by the movement itself as it tries to link the transformative element of its own social being with a new legal knowledge that would be expressive of it. **If CLS would embrace the** moral and **spiritual agenda** that I'm proposing here, **it would instantly revitalize itself**. Everywhere today there are law students and young legal scholars trying to figure out how to devote their lives and work to addressing the problems of global warming and the destruction of the environment, to overcoming the social violence and irrationality of religious fundamentalism and pathological, secular nationalism, and to challenging the human indifference of corporate globalization and its blind and reeling world markets. But Marxist materialism can no longer speak to these new generations of potential activists who have become aware that these problems require a spiritually grounded solution, and after a thirty-year assault by the New Right, **no one** [\*533] **believes** any longer **in the model of regulatory government as morally capable of containing and altering a civil society founded upon Fear of the Other and private self-interest. A new** spiritual **activism** actually **connecting Self and Other is** clearly **what is needed**, and it is already coming into being in hundreds of hopeful incarnations. If CLS were to rediscover itself as the legal-intellectual expression of that world-wide effort, it could once again challenge legal education and legal scholarship to become vehicles of the creation of a better world, connecting the worthwhile body of work already produced by its older generations with new, more spiritually confident work yet to be written by the young.

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#### Adopting a legal framework doesn’t entail a commitment to legalism. But it provides a framework which is necessary to solve.

**Altman**, Professor of Philosophy; Georgia State University, **90** (Andrew, Critical Legal Studies: A Liberal Critique, page 8)

In addition, it would be a distortion of liberal theory to suggest that it has no place for nonlegal modes of social regulation, such as mediation. Liberals can and do acknowledge the value of such nonlegal mechanisms in certain social contexts and can consis that the liberal view requires us to recognize that such procedures and rules have a central role to play in resolving fairly and effectively the conflicts that arise in a society characterized by moral, religious, and political pluralism. Thus, **the liberal endorsement of legalism does not necessarily involve a commitment to legalism in the sense that Judith Shldar defines the term: “the ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules.**” Shldar, Legalism (Cambridge: Harvard University Press, 1986), p. 1. Shlclar understands full weli that a commitment to **the liberal rule of law does not entail an acceptance of legalism** in her sense of the term. See Legalism, pp. xi-xli. And **those who reject the rule of law can argue in the political arena for extending the role of such informal mechanisms**. Of course, a liberal state could not allow the antinomians to eradicate legal institutions; in that sense, one might say that **the liberal rule of law** is not neutral. But the kind of political neutrality which the liberal defends does not aim to guarantee that any normative view has an opportunity to remake society wholly in its vision. It **does guarantee an opportunity to negotiate and compromise within a framework of individual rights, and there is no reason//// why those who defend non- legal modes of social regulation cannot seize the opportunity under a liberal regime to carve out a significant role for nonlegal modes of social regulation within the liberal state.** The liberal ver sion of political neutrality demands that antinomians have such an opportunity, but there is nothing remotely inconsistent in liberal thought in making that demand or prohibiting antilegalism from going so far as to destroy all legal institution

#### Radical social movements alienate the public. Only reformist legal appeals can solve.

**Kazin**, Professor of History at Georgetown University, **‘11**

[Michael, Has the US Left Made a Difference, Dissent Spring p. 52-54]

But **when political radicals made a big difference**, **they** generally **did so as** decidedly **junior partners** **in a coalition driven by establishment reformers.** **Abolitionists did not achieve their goal until midway through the Civil War**, **when** Abraham **Lincoln and his fellow Republicans realized that the promise of emancipation could speed victory** for the North. **Militant unionists were not able to gain a measure of power** in mines, factories, and on the waterfront **until** Franklin **Roosevelt needed labor votes** during the New Deal. **Only when Lyndon Johnson and other liberal Democrats conquered their fears of disorder and gave up on the white South could the black freedom movement celebrate passage of the civil rights and voting rights acts**. **For a political movement to gain any major goal, it needs to win over a section of the governing elite** (it doesn’t hurt to gain support from some wealthy philanthropists as well). Only on a handful of occasions has the Left achieved such a victory, and never under its own name. The divergence between political marginality and cultural influence stems, in part, from the kinds of people who have been the mainstays of the American Left. **During just one period of about four decades**—from the late 1870s to the end of the First World War— **could radicals authentically claim to represent more than a tiny number of Americans who belonged to what was, and remains, the majority of the population: white Christians from the working and lower-middle class.** At the time, this group included Americans from various trades and regions who condemned growing corporations for controlling the marketplace, corrupting politicians, and degrading civic morality. But this period ended after the First World War—due partly to the epochal split in the international socialist movement. Radicals lost most of the constituency they had gained among ordinary white Christians and have never been able to regain it. Thus, **the wageearning masses who voted for Socialist**, Communist, and Labor **parties elsewhere in the industrial world were almost entirely lost to the American Left**—and deeply skeptical about the vision of solidarity that inspired the great welfare states of Europe. Both before and after this period, **the public face and voice of the Left emanated from an uneasy alliance: between men and women from elite backgrounds and those from such groups as Jewish immigrant workers and plebeian blacks whom most Americans viewed as dangerous outsiders**. **This was true in the abolitionist movement—**when such New England brahmins as **Wendell Phillips** and Maria Weston Chapman **fought alongside Frederick Douglass** and Sojourner Truth. And **it was also the case in the New Left of the 1960s, an unsustainable alliance of white students from elite colleges and black people like Fannie Lou Hamer and Huey Newton** from the ranks of the working poor. It has always been difficult for these top and- bottom insurgencies to present themselves as plausible alternatives to the major parties, to convince more than a small minority of voters to embrace their program for sweeping change. Radicals did help to catalyze mass movements. But furious internal conflicts, **a penchant for dogmatism, and hostility toward both nationalism and organized religion helped make the political Left a taste few Americans cared to acquire**. However, some of the same qualities that alienated leftists from the electorate made them pioneers in generating an alluringly rebellious culture. Talented orators, writers, artists, and academics associated with the Left put forth new ideas and lifestyles that stirred the imagination of many Americans, particularly young ones, who felt stifled by orthodox values and social hierarchies. These ideological pioneers also influenced forces around the world that adapted the culture of the U.S. Left to their own purposes—from the early sprouts of socialism and feminism in the1830s to the subcultures of black power, radical feminism, and gay liberation in the 1960s and 1970s. Radical ideas about race, gender, sexuality, and social justice did not need to win votes to become popular. They just required an audience. And leftists who were able to articulate or represent their views in creative ways often found one. Arts created to serve political ends are always vulnerable to criticism. Indeed, some radicals deliberately gave up their search for the sublime to concentrate on the merely persuasive. But as George Orwell, no aesthetic slouch, observed, “the opinion that art should have nothing to do with politics is itself a political attitude.” In a sense, **the radicals who made the most difference in U.S. history were not that radical at all.** **What most demanded, in essence, was the fulfillment of two ideals their fellow Americans already cherished: individual freedom and communal responsibility**. In 1875, Robert Schilling, a German immigrant who was an official in the coopers, or caskmakers, union, reflected on why socialists were making so little headway among the hard-working citizenry: ….everything that smacks in the least of a curtailment of personal or individual liberty is most obnoxious to [Americans]. They believe that every individual should be permitted to do what and how it pleases, as long as the rights and liberties of others are not injured or infringed upon. [But] this personal liberty must be surrendered and placed under the control of the State, under a government such as proposed by the social Democracy. **Most American radicals grasped this simple truth. They demanded that the promise of individual rights be realized in everyday life and encouraged suspicion of the words and power of all manner of authorities—political, economic, and religious**. **Abolitionists, feminists, savvy Marxists all quoted the words of the Declaration of Independence,** the most popular document in the national canon. Of course, leftists did not champion self-reliance, the notion that an individual is entirely responsible for his or her own fortunes. But they did uphold the modernist vision that Americans should be free to pursue happiness unfettered by inherited hierarchies and identities. At the same time, the U.S. Left—like its counterparts around the world—struggled to establish a new order animated by a desire for social fraternity. The labor motto “An injury to one is an injury to all” rippled far beyond picket lines and marches of the unemployed. But **American leftists who articulated this credo successfully did so in a patriotic and often religious key, rather than by preaching the grim inevitability of class struggle. Such radical social gospelers as Harriet Beecher Stowe, Edward Bellamy, and Martin Luther King, Jr., gained more influence than did those organizers who espoused secular, Marxian views**. Particularly during times of economic hardship and war, radicals promoted collectivist ends by appealing to the wisdom of “the people” at large. **To gain a sympathetic hearing, the Left always had to demand that the national faith apply equally to everyone and oppose those who wanted to reserve its use for privileged groups and undemocratic causes**. But it was not always possible to wrap a movement’s destiny in the flag. “America is a trap,” writes the critic Greil Marcus, “its promises and dreams…are too much to live up to and too much to escape.”

#### Alt can’t solve – only legal codification can check the executive.

**Kleinerman**, Ph.D. in Political Science from Michigan State University, **2009** [Benjamin, The Discretionary President: The Promise and Peril of Executive Power, p. 12-13]

In fact, many of the disputes of the past administration revolve around the rightful place of a wide variety of powers. For instance, to some, the president's authorization of the NSA wiretaps was an egregious violation because he seemed to be literally making new law without any input from the branch whose responsibility it is to make the law. Benjamin Wittes, in a much-lauded book called Law and the Long War, argues that much of the problem in the post-9/11 world is that the Bush administration relied all too much on its inherent executive power and failed to place the U.S. response to terrorism on a proper legal footing. Wittes seeks to begin the steps toward a "viable permanent legal architecture for the struggle."46 **The goal**, he suggests, **should be a "legal architecture that grants the president the powers he needs yet also generates the sort of accountability for the use of those powers that might sustain them with long-term public confidence.**"47 Wittes's argument is both timely and important. To ground the confrontation with terrorism, a president needs more than merely discretionary executive power. Given the permanent and thus nonextraordinary character of a meaningful "war on terror," U.S. citizens cannot and should not simply call on the powers of a discretionary executive. Wittes writes, "Broad presidential war powers are only defensible insofar as they represent a temporary aggrandizement of executive power to handle a crisis." But this "crisis" seems as though it will be a permanent feature of the modern world. **To rely on the description of this war as a crisis "is really to describe a permanent state of emergency with a corresponding growth of executive power and a diminution of checks upon it**."48¶ But to remain constitutional in this new ordinary, where vast and unthinkable destruction remains a constant possibility, one should not simply seek to place all foreseeable powers that might be necessary on the kind of legal footing Wittes envisions. Again, although one can imagine scenarios in which torture might be necessary, this does not mean that the United States should legalize torture. Instead, **its citizens must think through both what powers they should legalize, and by doing so routinize, and what powers they should leave either outside the laws or simply make illegal, thus forcing the executive power, if it wants to so act, to justify the necessity of its action to Congress and the public**. **But the public can only do this when it has a proper understanding of discretionary executive power and its relation to the legislature**.¶ **Much of our problem**, as I will suggest in later chapters, **is that we no longer have an understanding of the separation of powers** model that would be so helpful to us in thinking through the proper governmental arrangements in this confrontation with terrorism. For this reason, Wittes's suggestions, depending as they do on an understanding of the difference between the legislative, executive, and judicial functions, end up falling on deaf ears. Wittes suggests, for instance, "If the goal is a long-term, stable set of legal structures for a conflict of indefinite duration against a novel adversary, neither the judiciary nor the executive can ultimately deliver." He continues, "Only Congress can remove the conflict from the paralyzing war-versus-law-enforcement divide and craft for terrorism new legal rules tailored to terrorism's own peculiarities."44 The problem is that **public reception** of this argument **depends on an understanding of the important functional differences in the separation of powers model between the executive, the legislature, and the judiciary**.¶ **But this notion** of the separation of powers, as the founders understood it, **tends to elude us**. Describing the founders' understanding, Jeffrey Tulis writes, "The term separation of owers has perhaps obstructed understanding of the extent to which afferent structures were designed to give each branch the special quality needed to secure its governmental objectives."5° Each branch has different objectives. The executive aims, first and foremost, at security, or, as Tulis puts it, "self-preservation." Congress aims, first and foremost, at representing the popular will. The courts aim, first and foremost, at protecting rights. Because of each branch's objective, it is structured so as to achieve the virtue most conducive to achieving this function. The legislature requires deliberation. The executive requires energy, And the judiciary requires judgment. **Having lost this perspective is a problem not simply or even primarily because we have lost the founders' original intent**. As Tulis shows so well in his book The Rhetorical Presidency, the Constitution remains structured so as to achieve, for each branch, its main objective. And, at the same time, the Constitution stands in the way of each branch achieving functions beyond that to which it is assigned. So, in the case of the presidency, the Constitution is structured so that the president can achieve the energy required to preserve security, but it is also structured to prevent what the founders would have viewed as the type of demagogic leadership envisioned by Woodrow Wilson's transformation of the presidency into a rhetorical mouthpiece for the people. Thus, the new expectations for the presidency constantly grind against its constitutional places. Or, as Wittes unwittingly shows, **we have not looked to Congress to provide a legal structure for this confrontation with terrorism because we no longer conceive of Congress as the home of deliberation in the regime**.52

**Institutional checks on biopower can be effective**

Nasser **Hussain and** Melissa **Ptacek. 2000**. Department of History, University of California, Berkeley, Law And Society Review, v34 n2.

Here once again we are forced to question Agamben's teleological mode of thought. Is this sovereign power represented in the concentration camps really a constitutive feature of sovereignty tout court? Even limiting ourselves to the remarks above, we can imagine a liberal critique of this position that asks from where come the limitations that Agamben concedes previous Weimar governments had observed. Surely, **one does not have to accept in its entirety a normative liberal conception of sovereign power in order to appreciate that the demand for a factual accounting for the decision on the exception, and institutional checks upon the totalization of the space of exception, can nonetheless** - at least in certain instances - **be effective**. Indeed, one could go further and suggest that **a liberal theory of sovereign power understands full well the paradoxical relation between law and fact, norm and exception; and**, precisely in light of such an understanding **constructs an institutional system that cannot resolve the paradox but nonetheless attempts to prevent it from reaching an intensified and catastrophic conclusion**. Given that Agamben is a nuanced and fair-minded thinker, one must wonder about why he largely ignores such a system. We think that one possible answer is that, just as for Agamben the source of the problem is not the institutional operation of sovereign power, but its object - bare life - so too the solution is not a proliferation of institutional safeguards but a rethinking of that mode of being. In this regard, we find his concluding musings on Heidigger to be suggestive.

**Agamben collapses the distinction between democracies and totalitarianism and overexaggerates the extent of bare life**

Thomas **Lemke. 2011**. Former assistant professor of sociology at Wuppertal U and research fellow at the Institute for Social Research in Frankfurt. Biopolitics: an advanced introduction. P 55-6.

**Agambens reconstruction of the interrelationships between sovereign rule and biopolitical exception results in an unsettling outcome.** The thesis of the concentration camp as "the hidden matrix of the politics in which we still live" (Agamben 2000, 44) makes claims for an inner link between the emergence of human rights and the development of concentration camps. In this sense, **there is no sharp division between parliamentary democracies and totalitarian dictatorships, liberal constitutional states and authoritarian regimes**. Agambens claim of an "inner solidarity between democracy and totalitarianism" (1998,10) has provoked much resistance. Although his thesis of the camp as "biopolitical paradigm of the modern" (ibid., 117) in no way makes relative or trivializes Nazi extermination policies, it remains the case that Agamben ignores important and essential differences. **The criticism that Agamben "levels" differences is a less relevant argument than his lack of concretization and the excessive dramatization that may lead, ultimately, to the impression that homo sacer is "forever and everywhere"** (Werber 2002, 622).

# 1AR

#### Plan is a limit on statutory authority

Goldsmith ‘13

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Other points on which we think Steve and Jennifer misinterpret or mischaracterize or misunderstand our argument: (1) they say that we propose, “in effect, a paradigm shift: from defensive uses of force in response to an imminent terrorist threat to offensive uses of force to preempt such threats from even arising” – but actually, quite the opposite, our proposed definitions of targetable groups are expressly limited to those who have committed a belligerent act against the United States or who present an “imminent threat”; (2) they describe our proposal as “an expansion of statutory authorities to use military force” – but given the possibility of extending the AUMF to “associates of associates,” and the likelihood that such expansion, if limited to targeting, would never be subject to judicial review, and that it would lack any of the limiting or accountability mechanisms we propose, we think that our proposal is more cabined, and certainly more legitimate, than the trajectory of current law that Jennifer and Steve embrace; (3) they say that we advocate “open-ended and permanent declaration of armed conflict,” but in fact we argued for authorities that contain express and stricter substantive and temporal limits than the the unilateral executive branch expansions of the AUMF combined with unilateral Article II authorities that they prefer; and (4) they criticize our accountability proposals (sunsets, limiting targeting categories, enhanced reporting and review, etc.) as ineffective, but they do not explain why they think the current methods for expanding the AUMF via interpretation, and of unilateral executive decisions deciding who can be targeted, are better.