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#### the AUMF war paradigm makes failed state interventions inevitable—undermines US foreign policy and causes overstretch

Cronin 13, Professor of Public Policy

[11/29/13, Professor Audrey Kurth Cronin has had a combination of academic positions and practical U.S. government service throughout her career. She joined George Mason University’s School of Public Policy in Arlington, Virginia (USA) as a tenured senior faculty member in September 2011. Prior to that, she was a faculty member and director of the core course on military strategy at the U.S. National War College (2007-2011). She came to the war college from Oxford University (Nuffield College), where she was Director of Studies for the Oxford/Leverhulme Programme on the Changing Character of War from 2005 to 2007, “The ‘War on Terrorism’: What Does it Mean to Win?”, Journal of Strategic Studies, http://www.tandfonline.com/doi/abs/10.1080/01402390.2013.850423#tabModule]

The war on al-Qaeda appears endless, but every war must end. The US and its allies have made dramatic progress against a once formidable terrorist organization known for its meticulous planning, coordinated attacks, and popular support. Popular support has dropped off, its leader is dead, and developments in the Arab world have shifted its focus back to fighting local enemies and hijacking local insurgencies. Compared to a decade ago, the threat to the United States, the United Kingdom, and Western allies is much reduced. Although it can still inspire small attacks, the organization that attacked the United States in 2001 is marginalized. Research about how terrorism ends has influenced counterterrorism policy decisions.1 But what about the other side of that coin – the war against al-Qaeda. Recently published books on war termination have ignored it.2 How exactly will it end? For Americans, the response to al-Qaeda’s 2001 attacks has always been a ‘war.’ Against the misgivings of experts and allies, Congress resolved the US debate over ‘war’ or ‘crime’ three days after the 9/11 attacks.3 With nearly 3000 dead Americans lying under hot debris, the situation seemed clear: another attack was imminent. Only preventive military force could protect the country from further carnage, delivered either conventionally or with weapons of mass destruction. The 2001 Authorization for the Use of Military Force (AUMF), as robust as any formal war declaration preceding it, bound the bureaucracy to frame the conflict as a ‘war’ rather than a law enforcement problem – and it was a war with no specified end.4 Even the 1941 war declarations upon Imperial Japan and Nazi Germany had directed the President ‘to bring the conflict(s) to a successful termination.’5 The boundless 2001 authorization was followed by a series of continuing resolutions providing open-ended funding, 94 per cent of which went to the Defense Department.6 For US policymakers, calling the struggle a ‘war on terrorism’ and then a ‘war against al-Qaeda and its affiliates’ was not just semantics. Winding down in Afghanistan and Iraq is straightforward compared to ending the war against al-Qaeda.7 For the United States both of those ‘overseas contingency operations’ conclude when US combat troops are withdrawn and a Status of Forces Agreement enacted to cover post-conflict arrangements. Yet planners often forget that both were launched as an integral part of the global response to deadly attacks against the World Trade Centre, the Pentagon, and ultimately a field in Pennsylvania. The end of combat operations in Iraq and Afghanistan is not the end of the war begun in 2001. With smaller ongoing US operations from the Philippines to the Horn of Africa, a sustainable strategy must also weigh means and ends in the ongoing war against al-Qaeda. The alternative is to jerk willy-nilly from overspending to underspending, paranoia to complacency, short-term reaction to long-term decline. The war on terrorism has remained open-ended in time, geography, and resources – including money, talent, and preemptive lethal force. Ill-defined ends and means are placing US actions outside of familiar strategic, legal, and moral frameworks for evaluating their pros and cons. Military operations and tactics have prevailed, from two massive counterinsurgencies to high-tempo special operations to drone attacks, with a sustainable longer-term approach neglected.8 Efforts to create a balanced grand strategy across all aspects of US power (military, diplomatic, law enforcement, aid) have failed, unsupported by either the legal or the financial scaffolding of the post-9/11 campaign. Without envisioning an end, policymakers do not calibrate day-to-day plans so that ends and means are aligned. Through its unmatched operational, intelligence, and special operations capabilities, the United States government has made enormous progress, killing bin Laden and crushing the leadership. Yet, even as al-Qaeda is losing, the United States does not seem to be winning. In this war, no one seems to know what ‘winning’ means. Crime is endless, but wars end. Contrary to popular myth, wars do not all reach closure with surrender ceremonies on battleships, treaty negotiations in French palaces, or even helicopter evacuations from embassy rooftops.9 Nor do they necessarily return the status quo ante bellum: Going to war irrevocably alters the strategic landscape. The American people will never recapture their pre-9/11 sense of safety, just as the intrusive security procedures and intelligence collection will never disappear. And this is not the first authorization for the use of force against a nonstate actor: Native Americans, pirates, and slave traders have all been named in earlier authorizations.10 But while terrorism itself never ends, wars by their nature demand a distinction between ‘war’ and ‘peace.’ So far, the United States government has no idea how to characterize ‘peace.’ This is a serious oversight. All the great strategists agree that war cannot be fought successfully without clear notions of an end state to guide, modulate, and focus operations. More than 2500 years ago in ancient China, Sun Zi wrote of the chaotic Warring States period that ‘there has never been a protracted war from which a country has benefited’ and ‘hence what is essential in war is victory, not prolonged operations.’11 Reflecting on the Peloponnesian War, Thucydides wrote in fifth-century BCE, ‘[i]t is a common mistake in going to war to begin at the wrong end, to act first, and wait for disaster to discuss the matter.’12 In the second book of On War, von Clausewitz observes, ‘[y]et insofar as that aim is not the one that will lead directly to peace, it remains subsidiary and is also to be thought of as means …. What remains in the way of ends, then, are only those objects that lead directly to peace.’13 Fresh out of World War I, Col. J.F.C. Fuller observed, ‘[p]reparation for war or against war, from the grand strategical aspect, is the main problem of peace, just as the accomplishment of peaceful prosperity is the main problem of war.’14 And, following World War II, British strategist Basil Liddell Hart argued, ‘while the horizon of strategy is bounded by the war, grand strategy looks beyond the war to the subsequent peace. It should not only combine the various instruments, but so regulate their use as to avoid damage to the future state of peace – for its security and prosperity.’15 In the twentieth century, the advent of nuclear weapons meant that American strategic thinking came to be dominated more by economics and engineering than history. But even there the imperative of war termination was brought home in books such as Fred Iklé’s 1971 classic, Every War Must End, published during the Vietnam War.16 No country has ever benefited from an endless war, and the United States is no exception. American policymakers must envision the end of this war or it will further exhaust US forces, distort their strategic planning, and blind them to other threats. Thinking about how this war will end is crucial to prosecuting it successfully. Yet, the more the United States fights, the longer the war’s trajectory seems to grow. Twelve years after 9/11, senior US Defense official Michael Sheehan told Congress that the war with al-Qaeda would continue ‘for 10 or 20 years’ more.17 How could that be? Clearly Al-Qaeda is not the same organization it was a decade ago. What does ‘success’ mean?18 The following first evaluates the ongoing US response in historical context, and then suggests how to bring the war against al-Qaeda to an end. Through the post-9/11 years, the United States evolved in its answer to al-Qaeda, from major combat operations, counterinsurgency and nation-building in Iraq and Afghanistan, toward juxtaposing the decline of al-Qaeda with the rise of aggressive US special operations and paramilitary intelligence activity globally. Lacking a strong framework for strategy and war termination, the United States replaced the actual threat of al-Qaeda with the possibility of al-Qaeda (or ‘associates’) in a widening range of places. An unforeseen legacy of defining al-Qaeda as a ‘global insurgency’ in 2005 was the impulse for US action against ‘transnational violent extremism’ universally in 2012.19 Muslim insurgencies around the world became core US concerns. This was a crucial shifting of American ends, from the protection of the American homeland and the prevention of another attack, to the defense of all parts of the world from the potential for an Islamist extremist entity to hold any piece of territory, anywhere. Former NSC official Mary Habeck put it this way: [W]inning against al Qaeda does not depend on body counts, but rather would look very much like victories against other insurgents: the spreading of security for populations in Somalia, Yemen, the Sahel, and elsewhere; the prevention of a return of al-Qaeda to those cleared areas; and the empowerment of legitimate governments that can control and police their own territories. By these standards, we have not yet defeated al Qaeda; in fact, beyond Iraq, Afghanistan, and Somalia, we have hardly engaged the enemy at all.20 This implies that the United States should engage in a war on violent extremism anywhere, and thus fight an open-ended global campaign everywhere – a classic recipe for imperial overstretch. A worldwide perspective also emerged from the unfortunate US tendency to equate failed states with an al-Qaeda threat (or potential al-Qaeda threat), thus pulling many ungoverned corners of the globe into the US sphere of interest.21 Along with the demand for zero risk at home, such narrow thinking yielded reactionary, expeditionary responses instead of prioritization according to enduring US interests in deciding where to deploy. A light military footprint was not so light when it lacked a strategic framework and global boundaries. In the absence of long-term strategic planning, the United States began to suffer four symptoms common to all prolonged wars: means became ends, tactics became strategy, boundaries were blurred, and the search for a perfect peace replaced reality.22

#### kills US global engagement—trades off with effective uses of US leadership—aff solves

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A fourth problem with the state-building obsession was that it distorted the United States’ sense of its central purpose and role in global politics. Ever since World War II, the United States has labored mightily to underwrite the stability of the international system. It has done this by assembling military alliances to protect its friends and deter its enemies, by helping construct a global architecture of trade and finance, and by policing the global commons. These actions have helped buttress an interdependent system of states that see their dominant interests in stability rather than conquest. Playing this role well demands sustained attention at all levels of government, in part to nurture the relationships essential to crisis management, diplomacy, and multilateral cooperation of all kinds. Indeed, the leading danger in the international system today is the peril that, assaulted by a dozen causes of rivalry and mistrust, the system will fragment into geopolitical chaos. The U.S. experience since the 1990s, and growing evidence from Northeast Asia, suggests that if the relatively stable post–Cold War era devolves into interstate rivalry, it will be not the result of weak states but that of the escalating regional ambitions, bitter historical memories, and flourishing nationalisms of increasingly competitive states. The U.S. role in counteracting the broader trends of systemic disintegration is therefore critical. The United States is the linchpin of a number of key alliances and networks; it provides the leadership and attractive force for many global diplomatic endeavors, and its dominant military position helps rule out thoughts of aggression in many quarters. The weak-state obsession has drawn attention away from such pursuits and made a resurgence of traditional threats more likely. Focusing on two seemingly endless wars and half a dozen other potential “stability operations” has eroded U.S. global engagement, diminished U.S. diplomatic creativity, and distracted U.S. officials from responding appropriately to changes in the global landscape. When one reads the memoirs of Bush administration officials, the dozen or more leading global issues beyond Afghanistan, Iraq, and the “war on terror” begin to sound like background noise. Top U.S. officials appear to have spent far more time between 2003 and 2011, for example, managing the fractious mess of Iraqi politics than tending to relationships with key global powers. As a consequence, senior U.S. officials have had less time to cultivate the leaders of rising regional powers, from Brazil to India to Turkey. Sometimes, U.S. actions or demands in state-building adventures have directly undermined other important relationships or diplomatic initiatives, as when Washington faced the global political reaction to the Iraq war. Such tradeoffs reflect a hallmark of the era of state building: secondary issues became dominant ones. To be fair, this was partly the fault of globalization; around-the-clock media coverage now constantly shoves problems a world away onto the daily agendas of national leaders. Combined with the United States’ self-image as the indispensable nation, this intrusive awareness created political pressure to act on issues of limited significance to core U.S. interests. Yet this is precisely the problem: U.S. perceptions of global threats and of the country’s responsibility to address them have become badly and perhaps permanently skewed. A great power’s reservoir of strategic attention is not infinite. And the United States has become geopolitically hobbled, seemingly uninterested in grand strategic initiatives or transformative diplomacy, as its attention constantly dances from one crisis to another. A fifth problem flowed directly from the fourth. To perform its global stabilizing role, the United States needs appropriately designed, trained, and equipped armed forces -- forces that can provide a global presence, prevail in high-end conflict contingencies, enable quick long-range strike and interdiction capabilities, and build and support local partners’ capacities. The state-building mission has skewed the operations, training, equipping, and self-conception of the U.S. military in ways that detract from these responsibilities. Much of the U.S. military has spent a decade focusing on state building and counterinsurgency (COIN), especially in its training and doctrine, to the partial neglect of more traditional tasks. Massive investments have gone into COIN-related equipment, such as the MRAP (mine-resistant, ambush-protected) vehicles built to protect U.S. troops from improvised explosive devices, draining billions of dollars from other national security resources. The result of these choices has been to weaken the U.S. military’s ability to play more geostrategic and, ultimately, more important roles. Between a demanding operational tempo, the requirements of refitting between deployments, and a shift in training to emphasize COIN, the U.S. military, especially its ground forces, lost much of its proficiency in full-spectrum combat operations. Simply put, the U.S. military would be far better positioned today -- better aligned with the most important roles for U.S. power, better trained for its traditional missions, better equipped for an emerging period of austerity -- had the state-building diversion never occurred. AN ALTERNATIVE MODEL None of this is meant to suggest that a concern for the problems posed by weak or failing states can or should disappear entirely from the U.S. foreign policy and national security agendas. Counterterrorism and its associated tasks will surely remain important, and across the greater Middle East -- including Afghanistan after 2014 -- internal turmoil may well have external consequences requiring some response from Washington. Effective local institutions do contribute to stability and growth, and the United States should do what it can to nurture them where possible. The difference is likely to be in the priority Washington accords such efforts. The January 2012 Defense Strategic Guidance, for example, reflected the judgment that “U.S. forces will no longer be sized to conduct large-scale, prolonged stability operations” and announced an intention to pursue “innovative, low-cost, and small-footprint approaches” to achieving objectives. Recently, the vice chairman of the Joint Chiefs of Staff, Admiral James “Sandy” Winnefeld, went even further: “I simply don’t know where the security interests of our nation are threatened enough to cause us to lead a future major, extended COIN campaign.” In the future, the United States is likely to rely less on power projection and more on domestic preparedness, replacing an urgent civilizing zeal with defensive self-protection. This makes sense, because the most appropriate answer to the dangers inherent in an era of interdependence and turbulence is domestic resilience: hardened and redundant networks of information and energy, an emphasis on local or regional self-sufficiency to reduce the cascading effects of systemic shocks, improved domestic emergency-response and cybersecurity capacities, sufficient investments in pandemic response, and so forth. Equally important is a resilient mindset, one that treats perturbations as inevitable rather than calamitous and resists the urge to overreact. In this sense, the global reaction to the recent surge in piracy -- partly a product of poor governance in African states -- should be taken as a model: no state-building missions, but arming and protecting the ships at risk. When it does reach out into the world to deal with weak states, the United States should rely on gradual progress through patient, long-term advisory and aid relationships, based on such activities as direct economic assistance tailored to local needs; training, exchanges, and other human-capacity-development programs; military-to-military ties; trade and investment policies; and more. The watchwords should be patience, gradualism, and tailored responses: enhancing effective governance through a variety of models attuned to local patterns and needs, in advisory and supportive ways. As weak states continue to generate specific threats, such as terrorism, the United States has a range of more limited tools available to mitigate them. It can, for example, return terrorism to its proper place as a law enforcement task and continue to work closely with foreign law enforcement agencies. It can help train and develop such agencies, as well as local militaries, to lead in the fight. When necessary, it can employ targeted coercive instruments -- classic intelligence work and clandestine operations, raids by special operations forces, and, with far greater selectivity than today, remote strikes -- to deal with particular threats, ideally in concert with the militaries of local allies. Some will contend that U.S. officials can never rule out expeditionary state building because events may force it back onto the agenda. If al Qaeda were to launch an attack that was planned in restored Taliban strongholds in a post-2014 Afghanistan, or if a fragmentation and radicalization of Pakistani society were to place nuclear control at risk, some would recommend a return to interventionist state building. Yet after the United States’ recent experiences, it is doubtful that such a call would resonate. The idea of a neo-imperial mission to strengthen weak states and stabilize chaotic societies always flew in the face of more important U.S. global roles and real mechanisms of social change. There is still work to be done in such contexts, but in more prudent and discriminate ways. Moving on from the civilizing mission will, in turn, make possible a more sustainable and effective national security strategy, allowing the United States to return its full attention to the roles and missions that mean far more to long-term peace and security. One of the benefits of this change, ironically, will be to allow local institutional development to proceed more organically and authentically, in its own ways and at its own pace. Most of all, the new mindset will reflect a simple facing up to reality after a decade of distraction.

#### Leadership solves extinction through cooperation on global threats – decline means nuclear war

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Of course, even if it is true that the costs of deep engagement fall far below what advocates of retrenchment claim, they would not be worth bearing unless they yielded greater benefits. In fact, they do. The most obvious benefit of the current strategy is that it reduces the risk of a dangerous conflict. The United States' security commitments deter states with aspirations to regional hegemony from contemplating expansion and dissuade U.S. partners from trying to solve security problems on their own in ways that would end up threatening other states. Skeptics discount this benefit by arguing that U.S. security guarantees aren't necessary to prevent dangerous rivalries from erupting. They maintain that the high costs of territorial conquest and the many tools countries can use to signal their benign intentions are enough to prevent conflict. In other words, major powers could peacefully manage regional multipolarity without the American pacifier. But that outlook is too sanguine. If Washington got out of East Asia, Japan and South Korea would likely expand their military capabilities and go nuclear, which could provoke a destabilizing reaction from China. It's worth noting that during the Cold War, both South Korea and Taiwan tried to obtain nuclear weapons; the only thing that stopped them was the United States, which used its security commitments to restrain their nuclear temptations. Similarly, were the United States to leave the Middle East, the countries currently backed by Washington -- notably, Israel, Egypt, and Saudi Arabia -- might act in ways that would intensify the region's security dilemmas. There would even be reason to worry about Europe. Although it's hard to imagine the return of great-power military competition in a post-American Europe, it's not difficult to foresee governments there refusing to pay the budgetary costs of higher military outlays and the political costs of increasing EU defense cooperation. The result might be a continent incapable of securing itself from threats on its periphery, unable to join foreign interventions on which U.S. leaders might want European help, and vulnerable to the influence of outside rising powers. Given how easily a U.S. withdrawal from key regions could lead to dangerous competition, advocates of retrenchment tend to put forth another argument: that such rivalries wouldn't actually hurt the United States. To be sure, few doubt that the United States could survive the return of conflict among powers in Asia or the Middle East -- but at what cost? Were states in one or both of these regions to start competing against one another, they would likely boost their military budgets, arm client states, and perhaps even start regional proxy wars, all of which should concern the United States, in part because its lead in military capabilities would narrow. Greater regional insecurity could also produce cascades of nuclear proliferation as powers such as Egypt, Saudi Arabia, Japan, South Korea, and Taiwan built nuclear forces of their own. Those countries' regional competitors might then also seek nuclear arsenals. Although nuclear deterrence can promote stability between two states with the kinds of nuclear forces that the Soviet Union and the United States possessed, things get shakier when there are multiple nuclear rivals with less robust arsenals. As the number of nuclear powers increases, the probability of illicit transfers, irrational decisions, accidents, and unforeseen crises goes up. The case for abandoning the United States' global role misses the underlying security logic of the current approach. By reassuring allies and actively managing regional relations, Washington dampens competition in the world's key areas, thereby preventing the emergence of a hothouse in which countries would grow new military capabilities. For proof that this strategy is working, one need look no further than the defense budgets of the current great powers: on average, since 1991 they have kept their military expenditures as a percentage of GDP to historic lows, and they have not attempted to match the United States' top-end military capabilities. Moreover, all of the world's most modern militaries are U.S. allies, and the United States' military lead over its potential rivals is by many measures growing. On top of all this, the current grand strategy acts as a hedge against the emergence regional hegemons. Some supporters of retrenchment argue that the U.S. military should keep its forces over the horizon and pass the buck to local powers to do the dangerous work of counterbalancing rising regional powers. Washington, they contend, should deploy forces abroad only when a truly credible contender for regional hegemony arises, as in the cases of Germany and Japan during World War II and the Soviet Union during the Cold War. Yet there is already a potential contender for regional hegemony -- China -- and to balance it, the United States will need to maintain its key alliances in Asia and the military capacity to intervene there. The implication is that the United States should get out of Afghanistan and Iraq, reduce its military presence in Europe, and pivot to Asia. Yet that is exactly what the Obama administration is doing. MILITARY DOMINANCE, ECONOMIC PREEMINENCE Preoccupied with security issues, critics of the current grand strategy miss one of its most important benefits: sustaining an open global economy and a favorable place for the United States within it. To be sure, the sheer size of its output would guarantee the United States a major role in the global economy whatever grand strategy it adopted. Yet the country's military dominance undergirds its economic leadership. In addition to protecting the world economy from instability, its military commitments and naval superiority help secure the sea-lanes and other shipping corridors that allow trade to flow freely and cheaply. Were the United States to pull back from the world, the task of securing the global commons would get much harder. Washington would have less leverage with which it could convince countries to cooperate on economic matters and less access to the military bases throughout the world needed to keep the seas open. A global role also lets the United States structure the world economy in ways that serve its particular economic interests. During the Cold War, Washington used its overseas security commitments to get allies to embrace the economic policies it preferred -- convincing West Germany in the 1960s, for example, to take costly steps to support the U.S. dollar as a reserve currency. U.S. defense agreements work the same way today. For example, when negotiating the 2011 free-trade agreement with South Korea, U.S. officials took advantage of Seoul's desire to use the agreement as a means of tightening its security relations with Washington. As one diplomat explained to us privately, "We asked for changes in labor and environment clauses, in auto clauses, and the Koreans took it all." Why? Because they feared a failed agreement would be "a setback to the political and security relationship." More broadly, the United States wields its security leverage to shape the overall structure of the global economy. Much of what the United States wants from the economic order is more of the same: for instance, it likes the current structure of the World Trade Organization and the International Monetary Fund and prefers that free trade continue. Washington wins when U.S. allies favor this status quo, and one reason they are inclined to support the existing system is because they value their military alliances. Japan, to name one example, has shown interest in the Trans- Pacific Partnership, the Obama administration's most important free-trade initiative in the region, less because its economic interests compel it to do so than because Prime Minister Yoshihiko Noda believes that his support will strengthen Japan's security ties with the United States. The United States' geopolitical dominance also helps keep the U.S. dollar in place as the world's reserve currency, which confers enormous benefits on the country, such as a greater ability to borrow money. This is perhaps clearest with Europe: the EU's dependence on the United States for its security precludes the EU from having the kind of political leverage to support the euro that the United States has with the dollar. As with other aspects of the global economy, the United States does not provide its leadership for free: it extracts disproportionate gains. Shirking that responsibility would place those benefits at risk. CREATING COOPERATION What goes for the global economy goes for other forms of international cooperation. Here, too, American leadership benefits many countries but disproportionately helps the United States. In order to counter transnational threats, such as terrorism, piracy, organized crime, climate change, and pandemics, states have to work together and take collective action. But cooperation does not come about effortlessly, especially when national interests diverge. The United States' military efforts to promote stability and its broader leadership make it easier for Washington to launch joint initiatives and shape them in ways that reflect U.S. interests. After all, cooperation is hard to come by in regions where chaos reigns, and it flourishes where leaders can anticipate lasting stability. U.S. alliances are about security first, but they also provide the political framework and channels of communication for cooperation on nonmilitary issues. NATO, for example, has spawned new institutions, such as the Atlantic Council, a think tank, that make it easier for Americans and Europeans to talk to one another and do business. Likewise, consultations with allies in East Asia spill over into other policy issues; for example, when American diplomats travel to Seoul to manage the military alliance, they also end up discussing the Trans-Pacific Partnership. Thanks to conduits such as this, the United States can use bargaining chips in one issue area to make progress in others. The benefits of these communication channels are especially pronounced when it comes to fighting the kinds of threats that require new forms of cooperation, such as terrorism and pandemics. With its alliance system in place, the United States is in a stronger position than it would otherwise be to advance cooperation and share burdens. For example, the intelligence-sharing network within NATO, which was originally designed to gather information on the Soviet Union, has been adapted to deal with terrorism. Similarly, after a tsunami in the Indian Ocean devastated surrounding countries in 2004, Washington had a much easier time orchestrating a fast humanitarian response with Australia, India, and Japan, since their militaries were already comfortable working with one another. The operation did wonders for the United States' image in the region. The United States' global role also has the more direct effect of facilitating the bargains among governments that get cooperation going in the first place. As the scholar Joseph Nye has written, "The American military role in deterring threats to allies, or of assuring access to a crucial resource such as oil in the Persian Gulf, means that the provision of protective force can be used in bargaining situations. Sometimes the linkage may be direct; more often it is a factor not mentioned openly but present in the back of statesmen's minds."

#### the plan ends the war paradigm, rebalancing US strategy to make it more sustainable

Cronin 13, Professor of Public Policy

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Third, as the United States ends this war, it must also rebalance US counterterrorism policy. Being at war, the United States has naturally overemphasized and overresourced the military response to al-Qaeda at the expense of the nonmilitary means. Decades of international experience with counterterrorism confirm that this emphasis on the use of military force has long-term disadvantages that will not serve American interests or security in the future. As part of its transition toward postwar normality, the United States must focus more energy on diplomacy and building the capacity of partner countries who are dealing with threats that also potentially threaten the US. In particular, enhancing the role of the Department of State in interagency efforts against counterterrorism is extremely important. The formal promotion of the State Department’s Office for Combating Terrorism to a full Bureau of Counterterrorism in January 2012 was a step in the right direction toward enhancing its role in building international cooperation against terrorism through diplomatic channels.64 The Pentagon has vastly overshadowed the State Department’s resources and leverage in developing US counterterrorism policy, and this is the time to readjust toward a more viable long-term national strategy. Modeling balanced counterterrorism policies is the best way forward, including not just direct action when required, but also lower profile, longer-term, more prosaic efforts such as prison monitoring, counter-recruitment, countering document fraud, airport security, Internet monitoring, and jihadist chat-room infiltration. Fourth, and related, the US government must do a better job of bringing its own costs and risks into sharper alignment, synching image and reality in the minds of Americans. Popular resilience is part of a winning strategy against al-Qaeda, and to build it the US government and its people must determine how to go from a state of war to a state of peace, meaning a realistic condition of normality. Ending the state of war against al-Qaeda will have an influence upon the US public psychologically and will shift the American narrative in ways that help the US government better adapt to ongoing global changes. That is not to say that ‘terrorism’ will end. Three weeks after leaving office, outgoing Head of the National Counterterrorism Center Michael Leiter put it this way: The American people do need to understand that at least the smaller-scale terrorist attacks are with us for the foreseeable future …. The way that we fundamentally defeat that threat, which is very difficult to stop in its entirety, is to maintain a culture of resilience. Although this threat of terrorism is real and there will be tragic events that lead to the deaths of innocent people, it is not, in my view, an existential threat to our society.65 The President must openly and repeatedly say the same thing. Continued cooperation on counterterrorism is vital. But lastly, the end of this war should bring with it a reassessment of US security commitments globally, with clear prioritization according to national interests. Why, for example, is the United States beefing up its military presence in Africa while simultaneously arguing that the future lies in a rebalancing to Asia? Such a strategic shift is impossible as long as it is willing to get sucked into local insurgencies by carrying out so-called ‘goodwill’ attacks on behalf of governments in Yemen, Somalia, and Pakistan. US forces are reacting to short-term threats against those governments, rather than building a viable global presence to protect the United States and its longstanding allies. Americans must stop living on adrenaline and build a sustainable future by ending this war and developing some concept of what normality means. The US goal for al-Qaeda must be to transition to where it is a manageable, albeit still dangerous, threat and American policymakers can focus more of their resources and attention on other priorities. Al-Qaeda has not ended. But its ability to launch a major attack against the United States has declined. Critics will argue that the enemy always has a vote. This is true; but does he have a veto? A major coordinated attack from abroad would be catastrophic; however, smaller terrorist attacks on US soil are inevitable and have been the reality for decades. The next time there is a small jihadist attack on American soil – inspired by the legacy of al-Qaeda or even orchestrated by one of its new ‘associates’ – will Americans automatically extend this costly global war for another decade? The United States is not the first great power to meet a serious terrorist threat. Being constantly on the defensive diminishes its global role and stature. While elements of the US government must continue to aggressively counter al-Qaeda, staying on an endless wartime footing is self-defeating.

### 2

#### US counterterror efforts are failing now—the war paradigm galvanizes jihadist movements and creates new terrorist hubs

Carpenter 13

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The term “shadow wars” aptly describes the U.S. approach to the war on terror. Policymakers perceive they are fighting an enemy composed of shadow and dust, one hidden in and facilitated by the dark underworld of global politics. But to prosecute this campaign, the U.S. has itself, to borrow a term from the writer J.R.R. Tolkien, “fallen into shadow”: Its moral high ground and once-principled politics have been replaced by a recourse to policies such as arbitrary detention, torture and extrajudicial killings that have tarnished its reputation and bolstered its enemies. The blowback from these policies demonstrates that a just war cannot be fought using unjust means—indeed their use erodes the moral authority to fight truly just wars when the need arises. Winding down this “war” both necessitates and provides a window for stepping out of the shadows and adhering to basic standards of international law and human rights. An Ineffective and Counterproductive Paradigm The perpetrators of 9/11 have been brought to a kind of justice: Osama bin Laden has been killed, along with many of his lieutenants; the extremist government that harbored him has been replaced with a more secular regime; and 9/11 mastermind Khalid Sheikh Mohammed is in custody and on trial for his role in the events of that day. Yet this took 12 years, nearly 7,000 U.S. service members dead, tens of thousands of Iraqi and Afghan civilians dead, displaced, injured or bereaved, as well as an unreasonably high cost in both treasure and U.S. credibility. Moreover, success in punishing the architects of 9/11 has not been matched by success in prosecuting the war’s wider aims. It is increasingly clear that the military occupations of Iraq and Afghanistan have achieved neither a reduction in overall global terror levels nor in the ideology of global jihadism. While attacks by al-Qaida-affiliated groups have always constituted only a tiny proportion of the global total of incidents of terrorism—which remains a low security threat relative to others—the Global Terrorism Database at the University of Maryland indicates such incidents have in fact been far more numerous since the onset of the “war on terror” in 2001 than they were in the preceding decade. Jihadism as an ideology also appears to be on the rise worldwide, with increasingly decentralized al-Qaida splinter groups proliferating (.pdf), fueled by images of civilian casualties at the hands of U.S. drones and Western-backed secular Arab regimes. The U.S. has been aware of these trends (.pdf) since at least 2006. But instead of reconsidering the war paradigm to address the risk of terrorism, it has simply changed tactics, replacing military occupations with the use of drones and covert operations. While this has reduced the visibility of the war against terror, it has done nothing to reduce the collateral damage from the war, as well as the blowback that damage causes. Not only has U.S. policy failed to solve the terror problem it set out to fix, the way in which it has been prosecuted has likely had the opposite effect. Reacting to terrorists as if they have the power to declare and prosecute war perversely legitimizes their behavior in the eyes of their constituencies. A common tactic of asymmetric warfare involves baiting a powerful actor into a disproportionate response that produces civilian casualties, providing moral cover for the terrorist’s acts. The U.S. war of high explosives in populated areas against groups that behave this way played precisely into these groups’ hands by creating a massive civilian death toll, now exploited in jihadist propaganda, that has caused fresh jihadist fronts to metastasize in Africa and Yemen. U.S. violations of international rules prohibiting torture, arbitrary detention, extrajudicial killing and disproportionate civilian harm have undermined U.S. claims to the moral high ground not only in the eyes of populations where it is fighting its shadow war but also in the eyes of its allies and constituents.

#### Independent of operations, maintaining the legal framework of war undermines effective counterterrorism efforts

Pillar and Preble 10

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It is in talking about terrorism that the terminology of counterterrorism becomes particularly relevant. Just as the use of the military tool often has counterproductive effects, so too does casting the fight against al Qaeda and other terrorist groups of global reach as a ‘‘war’’ often undermine long-term counterterrorism objectives. When policymakers refer to a ‘‘war on terror,’’ the term incorrectly implies that the military is the leading instrument of our counterterrorism efforts, and it further suggests that the challenge has a definite beginning and an equally definitive conclusion. 20 There is also the illogicality of declaring war on a tactic. It makes no more sense than the British and French declaring war on blitzkrieg in 1939, or the Americans declaring war on kamikazes in the Pacific in 1944. In both cases, strategy was appropriately directed toward an adversary— the Germans and Japanese, respectively— and not to the means they employed. Other interrelated problems flow from the imprecise evocation of a ‘‘war on terror.’’ The phrase has the effect of conflating many different entities into a supposedly monolithic threat; it complicates allied cooperation, and it gives legitimacy to terrorists as combatants. Accordingly, the Department of Homeland Security in 2008 advised policymakers to ‘‘accurately identify the nature of the challenges that face our generation.’’ ‘‘If senior government officials carefully select strategic terminology,’’ the paper published by the Office for Civil Rights and Civil Liberties averred, ‘‘the government’s public statements will encourage vigilance without unintentionally undermining security objectives.’’ 21 In general, referring to a ‘‘war on terror’’ tends to conflate the disparate threats posed by terrorist organizations, and it likewise has the effect of uniting different groups with very different aims. It also plays into the terrorists’ own rhetoric that the West is engaged in a war against Islam. The problem was certainly exacerbated by President George W. Bush’s ill-considered reference to an American crusade, 22 but the perception of an inevitable clash of civilizations would still be a problem even if senior government officials were more careful in their choice of words. The danger of declaring a ‘‘global war on terror’’ (GWOT), and in conflating many disparate entities into a single monolithic threat, warned Jeffrey Record in a paper for the Strategic Studies Institute at the U.S. Army War College, was that it subordinated strategic clarity to moral clarity. Record cautioned that, by declaring a GWOT, the United States had embarked ‘‘on a course of open-ended and gratuitous conflict with states and nonstate entities that pose no serious threat to the United States.’’ 23 Moral clarity can lead to sloppy policy by uniting our enemies; it can also complicate relations with allies who are instrumental to combating a prototypical transnational threat. A report published by the Pentagon’s Defense Science Board amplified these concerns. Evocative phrases such as ‘‘global war on terror,’’ and ‘‘fighting them there so we don’t fight them here,’’ the DSB conceded, ‘‘may have short-term benefits in motivating support at home.’’ However, this ‘‘polarizing rhetoric,’’ the board went on to say, ‘‘can have adverse long-term consequences that reduce the willingness of potential allies to collaborate, and give unwarranted legitimacy and unity of effort to dispersed adversaries.’’

#### This causes radicalization that outweighs any possible benefits—makes counterterrorism unstrategic in the long run—plan solves

Pillar and Preble 10

[Paul R. Pillar is an academic and 28-year veteran of the Central Intelligence Agency (CIA), serving from 1977 to 2005.[1] He is now a non-resident senior fellow at Georgetown University's Center for Security Studies,[2] as well as a nonresident senior fellow in the Brookings Institution's Center for 21st Century Security and Intelligence.[1] He was a visiting professor at Georgetown University from 2005 to 2012. and Christopher A. Preble is the vice president for defense and foreign policy studies at the Cato Institute, “Terrorizing Ourselves: Why U.S. Counterterrorism Policy Is Failing and How to Fix It. Chapter 4: Don’t You Know There’s a War On? Assessing the Military’s Role in Counterterrorism”, pages 61-82, found on ebrary]

One such consequence is to incur the wrath of civilian populations over the U.S. use of military force and the destruction resulting from it. This unfortunately has been in evidence in Afghanistan, which had been a rare oasis of goodwill toward the United States within a Muslim world in which anti-American sentiment is the norm. That goodwill has been significantly lessened by the collateral damage from U.S. military operations. Afghan President Hamid Karzai’s ‘‘first demand’’ of Barack Obama was for the president-elect ‘‘to put an end to civilian casualties.’’ 14 Similar resentment— amid a population that was already less friendly toward the United States— has been evident in Pakistan in reaction to the missile strikes in the northwest. 15 The pattern repeats that seen after similar strikes in 2005 and 2006 against forces of the Union of Islamic Courts in Somalia, which did kill some militants but also instigated public anger against the United States and a resulting increase in the popularity and extremism of the Islamists. 16 The tradeoff here is not between counterterrorism and popularity. It is between immediate tactical counterterrorist objectives and longer-term strategic ones. Anti-American sentiment impairs counterterrorism. It affects the willingness of a civilian population to cooperate with U.S. counterterrorist efforts, its willingness to support its own government’s efforts, and the inclination of individual civilians to condone, support, or even join the efforts of anti-American terrorist groups. That does not mean the broader and longer-term effects should always take precedence over the immediate tactical ones, but it does mean the former should always be considered even if they are less visible and measurable than the latter. It means taking into account that while the strikes using drones over Pakistan have killed some militants who were targeted, the same strikes have killed far more civilians— leaving that many more friends and family members of the deceased who might be willing to support anti-U.S. causes. And it means resisting the temptation to employ a technologically potent military capability because it is available and because alternative means for dealing with a problem are not. There is evidence that, at times, the United States has fallen to this temptation in its use of the drones; it has tended to see nails because the handiest tool available to it has been this very impressive hammer. Negative consequences extend even more broadly, beyond populations that feel the immediate physical damage of military operations to ones that are nevertheless angered by them. Here, the United States bears the burden of being the world’s sole superpower. Its use of military force is more likely than that of any other country to be resented as contemptible bullying by the big kid on the global block. Here too, the issue is not merely one of being liked or disliked; the potential effects on terrorism, counterterrorism, and the likelihood of future terrorist attacks on U.S. interests are substantial. The use of U.S. military force within the Muslim world has probably done more than anything else to sustain bin Laden’s bogus narrative of a United States that is out to kill and subjugate Muslims and to plunder their resources. Counterterrorism is a global enterprise, requiring the active cooperation and assistance of international actors— both state and nonstate. The most important cooperation is likely to come from the communities in which terrorist organizations attempt to recruit new followers and who are the intended audience for much of the organization’s propaganda. Terrorist attacks are newsworthy and therefore attract the most attention to the organization’s cause. By the same token, the effects of these operations often fall disproportionately on the very population that the organization is attempting to reach. The use of terrorism, therefore, is a double-edged sword. Terrorist organizations attempt to induce a targeted society to lash out, in the hopes that these reactions will cause harm to innocent civilians, engender hostility and hatred of the country carrying out the retaliatory acts, and drive more sympathy to the terrorists. We can prevent falling into the terrorists’ trap by carefully limiting our responses.

#### Formally ending the war solves terror by leveraging US credibility though it doesn’t take any options off the table

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Some might object that a shift in policy would constitute surrender, an admission of defeat, or some other formulation of American weakness—certainly political opponents would characterize it as such. Senator Saxby Chambliss wasted no time in arguing this after Obama’s NDU address, calling the limitations on targeted killing a “victory” for the “terrorists.”28 But **dropping the framework does not eliminate force as an available** option in addressing **Al Qaeda**. As one expert stated to the Senate Armed Services Committee in May 2013, “**With or without the AUMF, no one disputes** [emphasis added] that **the president has the constitutional authority** (and the international law authority) to use military force if necessary to defend the United States from an imminent attack, regardless of whether the threat emanates from al Qaeda or from some as yet unimagined terrorist organization.”29 **Dropping the framework would only return us to the pre-2001 status quo** (legally speaking), **which treated terrorism as an ongoing legal and** intelligence issue, rather than primarily a military one. Shifting away from war as the f**ramework also doesn’t preclude the possibility of moving back to a state of war should events require it**. A s**trategic shift** along these lines **is not a commitment to never use force again; it simply removes it as the presumed appropriate response and baseline for U.S. action**. Certainly it is possible that in the future that the threat could change in such a way that war is the appropriate and necessary response—much as it was in late 2001. Strategically speaking, **dropping the war framework offers a middle ground**. On the one hand, **it removes the blank check offered to the executive to engage U.S. forces abroad whenever the president sees fit**. Currently, **the way the AUMF is interpreted** **provides** little to **no restraint on the U**nited **S**tates’ **use of force abroad**. Dropping the framework is not merely a rhetorical move on the part of the U.S. government to end the war on terror—the legal status has been invoked continually by the past two administrations to silence any opposition to decisions they make in pursuit of al Qaeda. The issue is political and legal, not simply rhetorical. Simultaneously, shifting away from a state of war does not take the use of force off the table as an option; it simply removes it as the baseline or presumed appropriate response. The likely effect on the rate of strikes conducted abroad would certainly be one of restraint, but **it would not end strikes**, nor should it. **There has always been a presumption that the executive can use force to preemptively strike** those who attempt to attack the United States. Dropping the framework would not alter that—we saw this prior to 2001. **It would**, however, **alter the presumption introduced by** the **Bush** Administration’**s first N**ational **S**ecurity **S**trategy **that preventive war—using force against those who have the capacity, but do not pose a specific, credible threat—is acceptable. Shifting policy** away from war and armed conflict to legal enforcement also **opens up** other **alternative strategies for addressing the** AQ **threat**. In particular, **efforts to address the long-term trends that enable terrorism and terrorist campaigns are foreclosed by a strategy of war because the process of fighting is at odds with their mission**. Alternative frameworks and strategies for countering terrorism such as using a metaphor of social epidemic—seeking to eliminate the spread of radicalism utilizing lessons from public health approaches—or prejudice reduction, undermining the viewpoints that enable individuals to view terrorist campaigns as attractive options, offer different ways of framing the threat in a manner that is more comprehensive and long-term.30 **Regardless of the particular approach taken and its potential effectiveness, options attempting to deal with the underlying issues that enable the threat to continue such as ideology, factors enhancing individual susceptibility to radicalism and creating at-risk individuals are de-emphasized in a war. Addressing long-term factors is not particularly important during a conflict— converting the enemy and eliminating the reasons for the dispute in the first place aren’t typical concerns during wartime**. Most importantly, **history demonstrates** that these conflicts rarely end in a state of war. As Audrey Cronin reminds us, “terrorism is like war, it never ends; however, individual terrorist campaigns and the groups that wage them always do.”31 **Military repression alone is rarely the means by which these campaigns end. In most cases there is a shift to an alternate strategy such as law enforcement, political cooption, or even amnesty or there is a larger societal trend such as the loss of popular support**. While debate exists regarding the effectiveness of the particular measures chosen, **non-military measures have seen significant success in places as diverse as Ireland, the Philippines, and Sri Lanka**.32 **There is little reason to imagine that al Qaeda is sufficiently different that we should expect a different outcome relying solely on a military strategy throughout the entirety of this conflict**. The United States has relied upon leadership targeting and military strikes for over 12 years. **Given** the **history of terrorist campaigns—as well as** the **U.S. experience— these soft measures offer the potential of being a successful means of building upon these gains and achieving victory. Ending the strategy of war could have a direct effect on these softer measures by eliminating a crucial means of support for al Qaeda’s ideology. Ending the war**—and the continuing military strikes it requires—**removes a primary means of recruitment and propaganda. While military strikes have eliminated key members, the effect these strikes offer in generating support for terrorists is well- worn territory.** Regardless of whether the actual numbers of civilian casualties are closer to United States estimates, or in the thousands as independent organizations argue, U.S. **attacks inevitably risk** these **civilian casualties and make it incrementally easier for al Qaeda to justify their choice of terrorist tactics**. In addition, **psychological studies of terrorist attackers themselves cite a positive relationship** **between** the **suffering of direct trauma**—such as the loss of a family member at the hands of the perceived enemy—and those willing to engage **in** suicide **attacks**.33 **Al Qaeda** also **benefits from the increasing expansion of U.S. intervention abroad** in the form of drone strikes, bases, and troop deployments as **it provides tangible evidence for** their **claims of** U.S. **imperialism**. And **the longer the war on terrorism continues, the harder it will be in the court of international public opinion to credibly dispute AQ’s vision of the U**nited **S**tates **as a militaristic nation** with an imperialist bent. This is not to say that al Qaeda’s reading of U.S. foreign policy over the last half century is correct—it is not—but as 9/11 recedes further into the past and the length of time without a similar scale attack on the U.S. homeland begins to measure in the decades, the vision of America pushed by al Qaeda may have increasing credibility. **The U**nited **S**tates **could remain at war with al Qaeda for an indefinite period of time winning tactical battles and preventing major attacks, but all that may be seen publicly are continuing U.S. military interventions into foreign countries killing those they deem enemies. The longer this** goes on, the **less credibility the U**nited **S**tates **will enjoy** internationally, and that loss of credibility is directly at odds with some of the longer term, “soft**” measures necessary to end the conflict successfully. Without this credibility, it will be difficult to conduct the efforts to undermine the individual, public, and political support that historically has been crucial to ending terrorist campaigns**. Conclusion

#### A law enforcement approach solves terrorism better

Carpenter 13

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If the U.S. were to shift course away from the use of a war paradigm to fight terror networks, reserving its use of military force for situations where it is actually warranted, what might a different approach look like? And how might this process accompany a recovery of the moral authority to wage war as conventionally defined when critically necessary for self and collective defense? There are three more plausible ways to fight “terror”: treating terrorists as criminals to be apprehended; countering the ideology that legitimizes terrorist actions; and countering the psychological effects of terrorist tactics by increasing civilian resilience to occasional attacks. All of these approaches would leave the use of the military for situations where it is actually demanded. First, since militaries have shown themselves to be notoriously ill-suited to fighting networks, the U.S. should instead rely on a network approach to dealing with terrorists. Nonstate actors who engage in mass murder, whatever their political motivations, are little different from, and often overlap with, other forms of transnational organized criminal networks. Transnational law enforcement networks consistently and effectively push back against drug dealers, arms dealers and trafficking networks, and they can succeed against terrorists as well. Indeed the greatest counterterror successes of the past 10 years have occurred through concerted international coordination among intelligence and law enforcement agencies worldwide, not through torture or drone attacks. The capture in Libya of Abu Anas al-Libi, though occurring without the approval of Libyan law enforcement officials, demonstrates that apprehension—rather than aerial execution—of high-value terror suspects can be achieved effectively while minimizing risk to civilians. Stronger global rules could be put into place to strengthen coordination between sovereign countries for extradition and/or capture of terror suspects. Criminal trials of terrorist masterminds, when undertaken through the rule of law, can be a sound basis for delegitimizing violent behavior. Along these lines, rather than pouring dollars into the design of better weapons and interrogation techniques, the U.S. should consider how to identify and assist nonviolent social currents resistant to jihadist ideology, and particularly how to strengthen moderate religious authorities in areas vulnerable to jihadist influence. Such groups are often undermined by violent actions from the West, but can play an important and effective role in shaming and marginalizing violent actors within their own communities. For example, it was an alliance of moderate clerics and political authorities in Baghdad neighborhoods that helped reduce sectarian violence there in 2006. Similarly, the U.S. should consider investing in women’s organizations in zones vulnerable to jihadist influence. Such organizations receive disproportionately fewer funds from international donors, but are often well-situated to contribute to dialogue across sectarian lines. The promotion of women’s and girls’ well-being is often a key correlate of stability in war-torn societies, and mothers play a key role in promoting or opposing violent social norms. Additionally, individual low-level operatives should be captured and rehabilitated rather than summarily killed, tortured or punished. The U.S. could learn from Saudi Arabia’s approach, in which masterminds are punished but individuals roped into jihadism through brainwashing are instead “counter-indoctrinated” in proper Islamic thinking by moderate clerics and then offered a fresh start. Though imperfect, this strategy has seen a reduction in domestic terrorism and a very low recidivism rate, according to official sources, while contributing to a global movement of rehabilitated former jihadist voices challenging jihadist ideology with the gravitas and credibility that can only come from individuals who have once been on the other side. Of course, one of the key problems with terrorism is not the risk of casualties per se but the destabilizing psychological effect it has on civilian populations. De-emphasizing terrorism as a global security threat justifying a war response would probably do more than anything else to minimize that psychological response—partially neutralizing the terrorists’ advantage and potentially deterring the use of terrorist tactics in the future. The U.S. cannot effectively fight terrorism with bombs, but it can fight it quite effectively through propaganda and education. By reducing citizens’ fear of terrorism through the use of statistics and empowerment strategies, and especially by not contributing to a climate of fear, the U.S. can undermine the effects of any ongoing, though relatively minimal, risk of terror attacks. Such an approach would not only be appropriate and effective, but would also be consistent with rather than undermine democratic ideals and human rights norms. This could be done, as suggested by the Department of Defense (.pdf), through public awareness and readiness campaigns and by shifts in urban infrastructure to minimize the vulnerability and maximize the resilience of urban populations to such attacks. Indeed many of these strategies would also help protect populations against the much likelier fallout of natural disasters resulting from climate change, as the Department of Homeland Security’s “ready.gov” initiative already recognizes. Finally, the U.S. should support states that use legitimate means to fight jihadists within the rule of law. It should denounce and refuse support to states that violate human rights or dish out collective punishment under the pretext of fighting terrorism. In rare cases and as a last resort, the U.S. should be prepared to intervene militarily to protect human rights ideals. To do this effectively, however, the U.S. must first look to its own behavior. Only by aligning its practices with these rules, and openly atoning for the mistakes of the past, can the U.S. support or denounce others from a position of moral authority. All these strategies acknowledge that the “war on terror” is a three-pronged fight to, first, prevent and deter criminals from attacking civilians and civilian infrastructure; second, marginalize an ideology that sees these behaviors as justifiable rather than atrocious; and, third, to help domestic publics put the risk of terrorism in perspective as an antidote to its psychological impact. The first struggle must take place through law enforcement, within the bounds of the law. This will help promote, rather than undermine, the second and third fronts—the conflict between lawful and lawless behavior, between protecting rather than preying upon civilians, between promoting freedom and imposing an overprotective tyranny. These battles cannot be won if the means used continue to undermine the message.

#### Nuclear terrorism is feasible, there are no barriers and there’s motivation for an attack now

Bunn et al. 14

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Unfortunately, nuclear and radiological terrorism remain real and dangerous threats.1 The conclusion the assembled leaders reached at the Washington Nuclear Security Summit and reaffirmed in Seoul remains correct: “Nuclear terrorism continues to be one of the most challenging threats to international security. Defeating this threat requires strong national measures and international cooperation given its potential global political, economic, social, and psychological consequences.”2 There are three types of nuclear or radiological terrorist attack: • Nuclear weapons. Terrorists might be able to get and detonate an assembled nuclear weapon made by a state, or make a crude nuclear bomb from stolen separated plutonium or HEU. This would be the most difficult type of nuclear terrorism for terrorists to accomplish— but the devastation could be absolutely horrifying, with political and economic aftershocks reverberating around the world. • “Dirty bombs.” A far simpler approach would be for terrorists to obtain radiological materials— available in hospitals, industrial sites, and more—and disperse them to contaminate an area with radioactivity, using explosives or any number of other means. In most scenarios of such attacks, few people would die from the radiation—but the attack could spread fear, force the evacuation of many blocks of a major city, and inflict billions of dollars in costs of cleanup and economic disruption. While a dirty bomb attack would be much easier for terrorists to carry out than an attack using a nuclear explosive, the consequences would be far less—an expensive and disruptive mess, but not the heart of a major city going up in smoke. • Nuclear sabotage. Terrorists could potentially cause a Fukushima-like meltdown at a nuclear reactor or sabotage a spent fuel pool or high-level waste store. An unsuccessful sabotage would have little effect, but a successful one could spread radioactive material over a huge area. Both the scale of the consequences and the difficulty of carrying out a successful attack would be intermediate between nuclear weapons and dirty bombs. Overall, while actual terrorist use of a nuclear weapon may be the least likely of these dangers, its consequences would be so overwhelming that we believe it poses the most significant risk. A similar judgment drove the decision to focus the four-year effort on securing nuclear weapons and the materials needed to make them. Most of this report will focus on the threat of terrorist use of nuclear explosives, but the overall global governance framework for nuclear security is relevant to all of these dangers. The danger of nuclear terrorism is driven by three key factors—terrorist intent to escalate to the nuclear level of violence; potential terrorist capability to do so; and the vulnerability of nuclear weapons and the materials needed to enable terrorists to carry out such an attack—the motive, means, and opportunity of a monstrous crime. Terrorist intent. While most terrorist groups are still focused on small-scale violence for local political purposes, we now live in an age that includes some groups intent on inflicting largescale destruction to achieve their objectives. Over the past quarter century, both al Qaeda and the Japanese terror cult Aum Shinrikyo seriously sought nuclear weapons and the nuclear materials and expertise needed to make them. Al Qaeda had a focused program reporting directly to Ayman al-Zawahiri (now head of the group), which progressed as far as carrying out crude but sensible conventional explosive tests for the nuclear program in the desert of Afghanistan. There is some evidence that North Caucusus terrorists also sought nuclear weapons—including incidents in which terrorist teams were caught carrying out reconnaissance on Russian nuclear weapon storage sites, whose locations are secret.3 Despite the death of Osama bin Laden and the severe disruption of the core of al Qaeda, there are no grounds for complacency. There is every reason to believe Zawahiri remains eager to inflict destruction on a nuclear scale. Indeed, despite the large number of al Qaeda leaders who have been killed or captured, nearly all of the key players in al Qaeda’s nuclear program remain alive and at large—including Abdel Aziz al-Masri, an Egyptian explosives expert who was al Qaeda’s “nuclear CEO.” In 2003, when al Qaeda operatives were negotiating to buy three of what they thought were nuclear weapons, senior al Qaeda officials told them to go ahead and make the purchase if a Pakistani expert with equipment confirmed the items were genuine. The US government has never managed to determine who the Pakistani nuclear weapons expert was in whom al Qaeda had such confidence—and what he may have been doing in the intervening decade. More fundamentally, with at least two, and probably three, groups having gone down this path in the past 25 years, there is no reason to expect they will be the last. The danger of nuclear terrorism will remain as long as nuclear weapons, the materials needed to make them, and terrorist groups bent on large-scale destruction co-exist. Potential terrorist capabilities. No one knows what capabilities a secret cell of al Qaeda may have managed to retain or build. Unfortunately, it does not take a Manhattan Project to make a nuclear bomb—indeed, over 90 percent of the Manhattan Project effort was focused on making the nuclear materials, not on designing and building the weapons. Numerous studies by the United States and other governments have concluded that it is plausible that a sophisticated terrorist group could make a crude nuclear bomb if it got enough separated plutonium or HEU.4 A “gun-type” bomb, such as the weapon that obliterated Hiroshima, fundamentally involves slamming two pieces of HEU together at high speed. An “implosion-type” bomb, which is needed to get a sub-stantial explosive yield from plutonium, requires crushing nuclear material to a higher density—a more complex task, but still plausible for terrorists, especially if they got knowledgeable help. Many analysts argue that, since states spend billions of dollars and assign hundreds or thousands of people to building nuclear weapons, it is totally implausible that terrorists could carry out this task. Unfortunately, this argument is wrong, for two reasons. First, as the Manhattan Project statistic suggests, the difficult part of making a nuclear bomb is making the nuclear material. That is what states spend billions seeking to accomplish. Terrorists are highly unlikely to ever be able to make their own bomb material—but if they could get stolen material, that step would be bypassed. Second, it is far easier to make a crude, unsafe, unreliable bomb of uncertain yield, which might be delivered in the back of a truck, than to make the kind of nuclear weapon a state would want in its arsenal—a safe, reliable weapon of known yield that can be delivered by missile or combat aircraft. It is highly unlikely terrorists will ever be able to build that kind of nuclear weapon. Remaining vulnerabilities. While many countries have done a great deal to strengthen nuclear security, serious vulnerabilities remain. Around the world, there are stocks of nuclear weapons or materials whose security systems are not sufficient to protect against the full range of plausible outsider and insider threats they may face. As incidents like the intrusion at Y-12 in the United States in 2012 make clear, many nuclear facilities and transporters still grapple with serious problems of security culture. It is fair to say that every country where nuclear weapons, weaponsusable nuclear materials, major nuclear facilities, or dangerous radiological sources exist has more to do to ensure that these items are sustainably secured and accounted for. At least three lines of evidence confirm that important nuclear security weaknesses continue to exist. First, seizures of stolen HEU and separated plutonium continue to occur, including, mostly recently HEU seizures in 2003, 2006, 2010, and 2011.5 These seizures may result from material stolen long ago, but, at a minimum, they make clear that stocks of HEU and plutonium remain outside of regulatory control. Second, in cases where countries do realistic tests to probe whether security systems can protect against teams of clever adversaries determined to find a weak point, the adversaries sometimes succeed—even when their capabilities are within the set of threats the security system is designed to protect against. This happens with some regularity in the United States (though less often than before the 9/11 attacks); if more countries carried out comparable performance tests, one would likely see similar results. Third, in real non-nuclear thefts and terrorist attacks around the world, adversaries sometimes demonstrate capabilities and tactics well beyond what many nuclear security systems would likely be able to handle (see the discussion of the recent Västberga incident in Sweden). Of course, the initial theft of nuclear material would be only the first step. Adversaries would have to smuggle the material to wherever they wanted to make their bomb, and ultimately to the target. A variety of measures have been put in place in recent years to try to stop nuclear smuggling, from radiation detectors to national teams trained and equipped to deal with nuclear smuggling cases—and more should certainly be done. But once nuclear material has left the facility where it is supposed to be, it could be anywhere, and finding and recovering it poses an enormous challenge. The immense length of national borders, the huge scale of legitimate traffic, the myriad potential pathways across these borders, and the small size and weak radiation signal of the materials needed to make a nuclear bomb make nuclear smuggling extraordinarily difficult to stop. There is also the danger that a state such as North Korea might consciously decide to provide nuclear weapons or the materials needed to make them to terrorists. This possibility cannot be ruled out, but there is strong reason to believe that such conscious state decisions to provide these capabilities are a small part of the overall risk of nuclear terrorism. Dictators determined to maintain their power are highly unlikely to hand over the greatest weapon they have to terrorist groups they cannot control, who might well use it in ways that would provoke retaliation that would remove the dictator from power forever. Although nuclear forensics is by no means perfect, it would be only one of many lines of evidence that could potentially point back to the state that provided the materials; no state could ever be confident they could make such a transfer without being caught.6 And terrorists are unlikely to have enough money to make a substantial difference in either the odds of regime survival or the wealth of a regime’s elites, even in North Korea, one of the poorest countries on earth. On the other hand, serious risks would arise in North Korea, or other nuclear-armed states, in the event of state collapse—and as North Korea’s stockpile grows, one could imagine a general managing some of that stockpile concluding he could sell a piece of it and provide a golden parachute for himself and his family without getting caught. No one knows the real likelihood of nuclear terrorism. But the consequences of a terrorist nuclear blast would be so catastrophic that even a small chance is enough to justify urgent action to reduce the risk. The heart of a major city could be reduced to a smoldering radioactive ruin, leaving tens to hundreds of thousands of people dead. The perpetrators or others might claim to have more weapons already hidden in other major cities and threaten to set them off if their demands were not met—potentially provoking uncontrolled evacuation of many urban centers. Devastating economic consequences would reverberate worldwide. Kofi Annan, while serving as Secretary-General of the United Nations, warned that the global economic effects of a nuclear terrorist attack in a major city would push “tens of millions of people into dire poverty,” creating a “second death toll throughout the developing world.”

#### Extinction---equivalent to full-scale nuclear war

Owen B. Toon 7, chair of the Department of Atmospheric and Oceanic Sciences at CU-Boulder, et al., April 19, 2007, “Atmospheric effects and societal consequences of regional scale nuclear conflicts and acts of individual nuclear terrorism,” online: http://climate.envsci.rutgers.edu/pdf/acp-7-1973-2007.pdf

To an increasing extent, people are congregating in the world’s great urban centers, creating megacities with populations exceeding 10 million individuals. At the same time, advanced technology has designed nuclear explosives of such small size they can be easily transported in a car, small plane or boat to the heart of a city. We demonstrate here that a single detonation in the 15 kiloton range can produce urban fatalities approaching one million in some cases, and casualties exceeding one million. Thousands of small weapons still exist in the arsenals of the U.S. and Russia, and there are at least six other countries with substantial nuclear weapons inventories. In all, thirty-three countries control sufficient amounts of highly enriched uranium or plutonium to assemble nuclear explosives. A conflict between any of these countries involving 50-100 weapons with yields of 15 kt has the potential to create fatalities rivaling those of the Second World War. Moreover, even a single surface nuclear explosion, or an air burst in rainy conditions, in a city center is likely to cause the entire metropolitan area to be abandoned at least for decades owing to infrastructure damage and radioactive contamination. As the aftermath of hurricane Katrina in Louisiana suggests, the economic consequences of even a localized nuclear catastrophe would most likely have severe national and international economic consequences. Striking effects result even from relatively small nuclear attacks because low yield detonations are most effective against city centers where business and social activity as well as population are concentrated. Rogue nations and terrorists would be most likely to strike there. Accordingly, an organized attack on the U.S. by a small nuclear state, or terrorists supported by such a state, could generate casualties comparable to those once predicted for a full-scale nuclear “counterforce” exchange in a superpower conflict. Remarkably, the estimated quantities of smoke generated by attacks totaling about one megaton of nuclear explosives could lead to significant global climate perturbations (Robock et al., 2007). While we did not extend our casualty and damage predictions to include potential medical, social or economic impacts following the initial explosions, such analyses have been performed in the past for large-scale nuclear war scenarios (Harwell and Hutchinson, 1985). Such a study should be carried out as well for the present scenarios and physical outcomes.

### plan

#### plan: The United States federal government should prohibit public law 107-40's authorization to use force, effective December 31st, 2014.

### solvency

#### Ending the armed conflict ensures soft constraints that causes the best middle ground of executive powers—ensures restraint without creating constraint

Chesney 13, Professor in Law and Associate Dean at UT Law

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Let us assume for the sake of argument that the foregoing analysis is correct, and that the legal consequences of abandoning the armed-conflict model will have little practical effect given the policy constraints already adopted and the native breadth of the continuous-threat model. Is it possible that the move to postwar might nonetheless produce a significant departure from status quo targeting practices thanks to the impact of such a switch on other, non-legal mechanisms of constraint? Possibly so. To be sure, moving to a postwar framework will not directly cause the technological constraints on the projection *of* force to resume their previous degree of constraining effect, nor will it necessarily inhibit the production of actionable intelligence (though the looming withdrawal of all or even most U.S. ground forces from Afghanistan—which might or might not precipitate a decision by the government to embrace a postwar framework—may well inhibit such collection). But there are other non-legal constraints to consider. Three stand out as both particularly important and likely to be impacted by a formal shift to a postwar model. First, consider the domestic political climate. I do not mean partisan politics as such, though this can matter too. Rather, by “domestic politics” I mean to refer simply to the influence of American public opinion on the calculations of legislators and executive branch officials. On that dimension, what impact might follow from a formal proclamation recognizing an end to the armed conflict with al Qaeda? Such a move would be widely publicized and endlessly discussed in the media, and for at least some members of the public it would likely alter baseline assumptions regarding the sorts of activities they might expect to see the government engaging in for counterterrorism purposes going forward. The continued use of military detention would surely seem incongruous to many, for example, or at least it would begin to seem increasingly so as time passed. Likewise, the further use of armed attacks—whether using drones, manned aircraft, or some other weapons platform—would also be surprising to some under the postwar rubric. Such incongruities would not necessarily spark a negative reaction in every quarter. Those who would prefer not to move to a postwar model, after all, might be pleasantly surprised by them. But there is little doubt that incongruous actions would generate a negative reaction in at least some quarters, and it is possible that the negative reaction would in fact be substantial—particularly if the surrounding circumstances contributed to a perception that the government must have been acting hypocritically all along in proclaiming an end to the armed conflict. Of course, insofar as incongruous actions are conducted in secret (a quite-likely state of affairs for a postwar model, given the extensive reliance on the CIA and Joint Special Operations Command to conduct lethal operations on a covert or clandestine basis even while still under the armed-conflict model)48 the constraining impact of public opinion would be substantially muted. Even then, though, the possibility of eventual public disclosure would remain (as the Snowden affair in the summer of 2013 reminds us). Government officials operating in the shadow of these considerations could be expected to take them into account, even if they would not be dispositive. In that sense, domestic political considerations would be more constraining in the postwar context than they are under the status-quo model of armed conflict. Something similar can be said about the constraining impact of diplomatic considerations. By “diplomatic considerations” I mean to refer broadly to the full spectrum of actions other governments might take in order to express displeasure with American policy (whether out of actual disagreement or in response to their own domestic political considerations). There are many possibilities in addition to the easily-belittled example in which a state merely expresses displeasure (privately or publicly). A given country may be in a position to decrease cooperation on security issues (decreased sharing of intelligence, for example, or withdrawal of personnel from a joint deployment), or it might reduce or refuse valuable cooperation on unrelated subjects. At any rate, two points follow from all this. First, proclaiming the end to the armed conflict with al Qaeda unquestionably will be very well-received in most foreign capitals and among most foreign populations. Second, if the U.S. government ended up persisting in the use of military detention or lethal force for counterterrorism purposes despite such a proclamation, it seems likely that the aforementioned diplomatic costs will be higher than is currently the case, for the same reasons of incongruity and surprise mentioned above in the context of domestic politics. This suggests that diplomatic pressure, too, will be more constraining postwar than currently. Finally, consider the constraint embodied in what we might call the “balance of equities” across departments and agencies within the executive branch. Many different agencies and departments (and different organizations within agencies and departments) have a stake in the development and implementation of counterterrorism policy—what insiders usually refer to as “equity”—and of course they do not always agree. As they contend with one another in the interagency process, it may matter a great deal whether the president continues to assert that a state of armed conflict exists or instead that it has ended. The former tends to empower the military around the interagency conference table by directly implicating its equities, while the latter would tend to weaken it for the same reason. In summary, a formal shift from war to postwar would tend to increase the bite of at least three distinct soft-constraint mechanisms, and the collective impact from these changes could be substantial. This in turn could tend to dissuade the executive branch from employing the full potential for using lethal force that follows from the combination of the continuing-threat legal model and the technological and intelligence advances described above. That said, it is unlikely that these soft-constraint mechanisms would dissuade the executive branch altogether from acting on the continuous-threat model. There are powerful offsetting domestic political costs to be born, after all, should a given administration forego an opportunity to use force against a target that later is linked to a successful terrorist attack. The government might resort to lethal force less often in a postwar setting than it would under the status quo model, then, but it nonetheless will likely use force much more often than both critics and supporters of the status quo assume would be the case in that circumstance. And that is the critical point that seems to be missing from the current debate, fixated as it is on the question of whether to persist with the armed-conflict framework.

#### Anything short of clean repeal causes future presidents to reinterpret it and ensures excessive interventions

Eoyang and Preble 13

[06/10/13, Mieke Eoyang is the director of the National Security Program at Third Way and Christopher Preble is the vice president for Defense and Foreign Policy Studies at the Cato Institute, “How to end the war on terrorism properly”, http://globalpublicsquare.blogs.cnn.com/2013/06/10/how-to-end-the-war-on-terrorism-properly/]

In his speech on counterterrorism last month, President Barack Obama said something both profound and overdue – the war underway since 2001 should end, not just factually but also legally. Outlining his views, the president said he wanted to “refine, and ultimately repeal,” the Authorization for Use of Military Force (AUMF), the main legislative vehicle governing U.S. counterterrorism operations around the world. He also pledged not to sign laws designed to expand this mandate further. But to make that goal a concrete reality, the president should have called for legislation repealing the administration’s authority for war – sunsetting the AUMF, which provides the legal authorization for our troops in Afghanistan, once combat operations there conclude at the end of 2014. Future counterterrorism operations can rely on the plentiful authorities the executive branch already has, including some that have been added since 9/11. And if this president – or any other in the future – needs greater war powers to deal with a threat, they can return to Congress and ask for specific, limited authorities tailored to address the future challenge. The fact is that while there are other ways the AUMF could be usefully altered, a clean repeal has significant advantages. From an operational perspective, the AUMF authorizes military force, but we’re winding down our operations in Afghanistan. Our military presence there helped decimate core al Qaeda, leaving them a shadow of their former selves. And this matters, for without the organizational support and training from core al Qaeda’s veteran operational commanders – most of whom are either dead or incarcerated – most self-radicalized terrorists are caught long before their plots are successful. Military operations should be the mechanism of last resort to deal with terrorist plots, especially outside war zones like Afghanistan. The most successful counterterrorism operations involve timely intelligence collection and analysis, and cooperation with local officials, not open-ended military operations involving large deployments of U.S. troops. Law enforcement or intelligence services identified and disrupted multiple other plans over the years. These mechanisms do not rely upon the AUMF, so an eventual clean repeal won’t affect our ability to disrupt plots.

Conservatives who revere the Constitution should be most reluctant to hand over unending powers to the president. As James Madison said, granting “such powers [to the President] would have struck, not only at the fabric of our Constitution, but at the foundation of all well organized and well checked governments.” Madison knew that war tended to enhance executive powers and erode liberties. And that has occurred. With Congressional acquiescence, the last two presidents have interpreted the AUMF as a warrant to attack or detain anyone that they say is a leader of al Qaeda or its associated forces, without geographic limit. The secretive and loose definition of those terms has given the president vast and excessive discretion to identify, target and kill suspected terrorists, or to detain indefinitely those who are captured. Sunsetting the law prevents that growth in executive power from becoming permanent. Liberals who might trust this president’s discretion in using these authorities have good reason to be concerned about what future presidents might do with broad and unlimited authority. We have already seen how the passage of time has stretched the AUMF well beyond its original purpose. The list of targets already includes individuals and groups that were not directly involved in the attacks of 9/11. Even President Obama recognizes the risk. “Unless we discipline our thinking and our actions,” the President explained, “we may be drawn into more wars we don’t need to fight.”

## 2AC

### 2AC Terror

[ ] The neg is just wrong – DoD regulation mandates Congressional consultation on the delegation of contractors – that checks executive power

Petersohn ‘08

Ulrich, Weatherhead Center for International Affairs @ Harvard, http://tinyurl.com/268qklp

DoD regulations offer another avenue for approaching the classification of core functions. According to the Subdelegation Act, the president has the authority to delegate power to other officials. While on the surface this act appears to empower the chief executive, it can also be seen as a limitation of executive power. In addition, the transfer of inherent governmental functions is allowed to official hands only, but not to private entities—at least not without consent of the Congress (Verkuil 2007, 123).

PMCs are inevitable – enthusiasm for oursourcing and NGO’s

Chesterman 7 (Simon, NYU Law Theory Working Papers, <http://lsr.nellco.org/cgi/viewcontent.cgi?article=1054&context=nyu_plltwp)JFS>

The traditional response, driven in significant part by the post-colonial experience of mercenaries in Africa, has been abolitionist: prohibiting mercenarism or the use of mercenaries. That approach has failed, and in any case bears little relevance tothe more recent experience of PMCs playing an increasingly accepted role in armed conflicts. Executive Outcomes turned around an orphaned conflict in Sierra Leone in the mid-1990s; Military Professional Resources Incorporated (MPRI) was instrumental in shifting the balance of power in the Balkans, clearing the way for the Dayton negotiations; following the 2003 war in Iraq, PMC employees supporting coalition forces and reconstruction efforts made up the second largest grouping of personnel after the United States military. Whether or not this extensive use of PMCs is evolutionary or remains exceptional, the growth of the industry shows no signs of slowing down. The privatization of military functions reflects a general enthusiasm for the outsourcing of state capacities in the industrialized world, but is also a consequence of the growing reluctance on the part of key states to intervene in conflicts that are not of immediate strategic interest or where domestic support for intervention is lacking. In addition, non-state actors such as transnational corporations and humanitarian organizations operating in fragile states are increasingly targeted by non-state violence, prompting them to turn to the commercial sector for want of other security options.

### 2AC Solvency

#### Overwhelming evidence shows legal checks are effective—congress key

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

#### Law effectively constrains—overwhelming historical data proves

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

The Executive Unbound paints a n image of executive discretion almost or completely unbridled by law or coequal branch. But PV also concede that “ the pre sident can exert control only in certain [policy] areas ” (p 59). 51 They give no account, however, of what limits a President ’ s discretionary actions. To remedy that gap, this Section explores how the President has been and continues to be hemmed in by Congress and law. My aim here is not to present a comprehensive account of law as a constraining mechanism. Nor is my claim that law is always effective. Both as a practical matter and as a result of administrative law doctrine, the executive has considerable a uthority to leverage ambiguities in statutory text into warrants for discretionary action. 52 Rather, my more limited aspiration here is to show that Congress and law do play a meaningful role in cabining executive discretion than The Executive Unbound credits . I start with Congress and then turn to the effect of statutory restrictions on the presidency.¶ Consider first a simple measure of Presidents ’ ability to obtain policy change : Do they obtain the policy changes they desire? Every President enters office with an agenda they wish to accomplish. 53 President Obama came into office, for example, promising health care reform, a cap - and - trade solution to climate change, and major immigration reform. 54 President George W. Bush came to the White House committed to educational reform, social security reform, and a new approach to energy issues. 55 One way of assessing presidential influence is by examining how such presidential agendas fare , and asking whet her congressional obstruction or legal impediments — which could take the form of existing laws that preclude an executive policy change or an absence of statutory authority for desired executive action — is correlated with presidential failure. Such a correlation would be prima facie evidence that institutions and laws play some meaningful role in the production of constraints on executive discretion. ¶ Both recent experience and long - term historical data suggest presidential agenda items are rarely achieved , and that legal or institutional impediments to White House aspirations are part of the reason . In both the last two presidencies, the White House obtained at least one item on its agenda — education for Bush and health care for Obama — but failed to secure othe rs in Congress . Such limited success is not new. His famous first hundred days notwithstanding, Franklin Delano Roosevelt saw many of his “ proposals for reconstruction [of government] . . . rejected outright. ” 56 Even in the midst of economic crisis, Congres s successfully resisted New Deal initiatives from the White House . This historical evidence suggests that the diminished success of presidential agendas cannot be ascribed solely to the narrowing scope of congressional attention in recent decades; it is a n older phenomenon. Nevertheless, in more recent periods, presidential agendas have shrunk even more . President George W. Bush ’ s legislative agenda was “ half as large as Richard Nixon ’ s first - term agenda in 1969 – 72, a third smaller than Ronald Reagan ’ s firs t - term agenda in 1981 – 84, and a quarter smaller than his father ’ s first - term agenda in 1989 – 92. ” 57 The White House not only cannot always get what it wants from Congress but has substantially downsized its policy ambitions.¶ Supplementing this evidence of pr esidential weakness are studies of the determinants of White House success on Capitol Hill . These find that “ presidency - centered explanations ” do little work. 58 Presidents ’ legislative agendas succeed not because of the intrinsic institutional characteristi cs of the executive branch, but rather as a consequence of favorable political conditions within the momentarily dominant legislative coalition. 59 Again, correlational evidence suggests that institutions and the legal frameworks making up the statutory status quo ante play a role in delimiting executive discretion.

#### Best recent scholarship and examples prove

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

There is some merit to this story. But in my view it again understates the observed effect of positive legal constraints on executive discretion. Recent scholarship, for example, has documented congressional influence on the shape of military policy via framework statutes . This work suggests Congress influences executive actions during military engagements through hearings and legislative proposals. 75 Consistent with this account, two legal scholars have recently offered a revisionist history of constitutional war powers in which “ Congress has been an active participant in setting the terms of battle, ” in part because “ congressional willingness to enact [ ] laws has only increased ” over time. 76 In the last decade, Congress has often taken the initiative on national security, such as enacting new statutes on military commissions in 2006 and 2009. 77 Other recent landmark security reforms, such as a 2004 statute restr ucturing the intelligence community, 78 also had only lukewarm Oval Office support. 79 Measured against a baseline of threshold executive preferences then , Congress has achieved nontrivial successes in shaping national security policy and institutions through both legislated and nonlegislated actions even in the teeth of White House opposition. 80¶ The same point emerges more forcefully from a review of our “ fiscal constitution. ” 81 Article I, § 8 of the Constitution vests Congress with power to “ lay and collect Tax es ” and to “ borrow Money on the credit of the United States, ” while Article I, § 9 bars federal funds from being spent except “ in Consequence of Appropriations made by Law. ” 82 Congress has enacted several framework statutes to effectuate the “ powerful limitations ” implicit in these clauses. 83 The resulting law prevents the President from repudiating past policy commitments (as Skowronek suggests) as well as imposing barriers to novel executive initiatives that want for statutory authorization . 84¶ Three statutes merit attention here. First, the Miscellaneous Receipts Act of 1849 85 requires that all funds “ received from customs, from the sales of public lands, and from all miscellaneous sources, for the use of the United States, shall be paid . . . into the treasur y of the United States. ” 86 It ensures that the executive cannot establish off - balance - sheet revenue streams as a basis for independent policy making. Second, the Anti - Deficiency Act, 87 which was first enacted in 1870 and then amended in 190 6 , 88 had the effect of cementing the principle of congressional appropriations control. 89 With civil and criminal sanctions, it prohibits “ unfunded monetary liabilities beyond the amounts Congress has appropriated, ” and bars “ the borrowing of funds by federal a gencies . . . in anticipation of future appropriations. ” 90 Finally, the Congressional Budget and Impoundment Control Act of 1974 91 (Impoundment Act) channels presidential authority to decline to expend appropriated funds. 92 It responded to President Nixon ’ s e xpansive use of impoundment. 93 Congress had no trouble rejecting Nixon ’ s claims despite a long history of such impoundments. 94 While the Miscellaneous Receipts Act and the Anti - Deficiency Act appear to have succeeded, the Impoundment Act has a more mixed rec ord. While the Supreme Court endorsed legislative constraints on presidential impoundment, 95 President Gerald Ford increased impoundments through creative interpretations of the law. 96 But two decades later, Congress concluded the executive had too little di scretionary spending authority and expanded it by statute. 97 ¶ Moreover, statutory regulation of the purse furnishes a tool for judicial influence over the executive. Judicial action in turn magnifies congressional influence. A recent study of taxation litiga tion finds evidence that the federal courts interpret fiscal laws in a more pro - government fashion during military engagements supported by both Congress and the White House than in the course of unilateral executive military entanglements. 98 Although the r esulting effect is hard to quantify, the basic finding of the study suggests that fiscal statutes trench on executive discretion not only directly, but also indirectly via judicially created incentives to act only with legislative endorsement. 99¶ To be sure, a persistent difficulty in debates about congressional efficacy, and with some of the claims advanced in The Executive Unbound , is that it is unclear what baseline should be used to evaluate the outcomes of executive - congressional struggles. What counts, that is, as a “win” and for whom? What, for example, is an appropriate level of legislative control over expenditures? In the examples developed in this Part , I have underscored instances in which a law has been passed that a President disagrees with in substantial part, and where there are divergent legislative preferences reflected in the ultimate enactment. I do not mean to suggest, however, that there are not alternative ways of delineating a baseline for analysis. 100¶ In sum, there is strong evidence that law and lawmaking institutions have played a more robust role in delimiting the bounds of executive discretion over the federal sword and the federal purse than The Executive Unbound intimates. Congress in fact impedes presidential agendas. The White House in practice cannot use presidential administration as a perfect substitute. Legislation implementing congressional control of the purse is also a significant, if imperfect, tool of legislative influence on the ground. This is true even when Presidents influence the budgetary agenda 101 and agencies jawbone their legislative masters into new funding. 102 If Congress and statutory frameworks seem to have such nontrivial effects on the executive ’ s choice set , this at minimum i mplies that the conditions in which law matters are more extensive than The Executive Unbound suggests and that an account of executive discretion that omits law and legal institutions will be incomplete .

### 2AC CP

#### Counterplan is overwhelmed by other precedent driving continued presidential powers

Marshall, 8 --- Professor of Law at the University of North Carolina

(April 2008, William P., Boston University Law Review, “THE ROLE OF THE PRESIDENT IN THE TWENTY-FIRST CENTURY: ARTICLE: ELEVEN REASONS WHY PRESIDENTIAL POWER INEVITABLY EXPANDS AND WHY IT MATTERS,” 88 B.U.L. Rev. 505))

Presidential power also inevitably expands because of the way executive branch precedent is used to support later exercises of power. n34 Many of the [\*511] defenders of broad presidential power cite historical examples, such as President Lincoln's suspension of habeas corpus, as authority for the position that Presidents have considerable powers in times of war and national emergency. n35 Their position is straight-forward. The use of such powers by previous Presidents stands as authority for a current or future President to engage in similar actions. n36 Such arguments have considerable force, but they also create a one-way ratchet in favor of expanding the power of the presidency. The fact is that every President but Lincoln did not suspend habeas corpus. But it is a President's action in using power, rather than forsaking its use, that has the precedential significance. n37 In this manner, every extraordinary use of power by one President expands the availability of executive branch power for use by future Presidents.

#### The AUMF is the foundation of war efforts—as long as it exists, the US is in a state of war

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On September 14, 2001, Congress passed the authorization for the use of military force (AUMF), enabling the president to engage those “nations, organizations, and persons” responsible for the September 11th attacks.3 Intended both as a means of retaliation and interpreted broadly to allow preventive action, the Bush and Obama Administrations have relied upon it to justify the vast majority of actions taken to combat terrorism. In particular the AUMF justifies those actions that appear “exceptional” because, so long as it remains in effect, the United States remains in a state of war. While the two administrations have differed on the breadth of the war and the nature of enemy—Obama’s National Security Strategy notably narrowed the focus to al Qaeda and its affiliates—both have permitted broad latitude in terms of allowable conduct.4 Congress has left what constitutes “necessary” military action almost entirely to the discretion of the executive. Until the end of 2012, the Obama Administration had not even offered a detailed public justification for continuing to remain in a state of war—there was simply no need given the deafening silence from the public and the Congress.

#### Executive commitments aren’t viewed as credible—Obama needs to follow up by repealing the AUMF—otherwise others don’t see the war as over

Traub 2/24

[2/24/14, James Traub is a senior fellow of the Global Centre for the Responsibility to Protect, a fellow of the Center on International Cooperation and a member of the Council on Foreign Relations, “Repeal and Restore”, <http://www.foreignpolicy.com/articles/2014/02/28/repeal_and_restore_obama_end_war_on_terror>]

In every supremely lawyered syllable, Obama was saying: It's not a war anymore. If you look very closely at the guidance on the use of lethal force, Obama was agreeing to bind himself to the rules governing behavior in non-battlefield settings, including the requirement of an imminent threat and the high threshold for the avoidance of civilian casualties. The same holds true for Guantánamo, since international law prohibits indefinite detention save during hostilities. If the United States is no longer at war, the president doesn't need extraordinary war powers. Congress granted those powers on Sept. 14, 2001, in the form of the Authorization for Use of Military Force (AUMF), which permits the president to "use all necessary and appropriate force" against the organizations which carried out the attacks of 9/11. The AUMF is the heart of the legal structure of the war on terror. Repealing the statute, more than any single act, would mark the end of that war. In his speech, Obama called on Congress to "refine, and ultimately repeal" the act. Yet he has said virtually nothing on the subject since then. The president has also never identified the moment when he believes he could do without those powers. How about at the end of this year? That's when all combat troops will have withdrawn from Afghanistan, thus ending the actual "war" of the war on terror. What's more, in his most recent State of the Union speech, Obama said that Guantánamo should close by the end of this year (though that will prove much harder to do). Harold Koh, the former State Department legal counsel, told me that he favors a repeal of the AUMF in the near term, preferably by the end of 2014. Last summer, Rep. Adam Schiff offered a resolution to do just that. It lost, but garnered 180 votes. Schiff told me that he will re-introduce the measure this spring. The AUMF has a reciprocal relationship to the measures it authorizes. If you're not at war, you don't need it. And if you don't have it, you can't engage in war-like acts such as the indefinite detention of belligerents. One very good reason to repeal the AUMF is to make it absolutely clear that the United States does not wish to have that authority. There is, for example, no further justification for indefinite detention. No new inmate has arrived at Gitmo since 2008, and when the United States withdraws combats troops from Afghanistan, it will no longer be encountering adversaries to be detained. If Congress repealed the AUMF, the president would still be able to rely on the powers enumerated in Article II of the Constitution to defend America from attack. Both Harold Koh and Matthew Waxman, a former Bush administration legal official, agree that this would include the authority to use drones -- or special forces -- for targeted missions, so long as they abide by the more stringent terms of the president's 2013 guidance on the use of lethal force. (The president would probably still be able under certain circumstances to order the killing of an American citizen, as he is now reportedly considering.) Nevertheless, a president without war powers would probably shy away from the outer limits of his constitutional prerogatives, looking instead to the other instruments at his disposal to deal with terrorism. The AUMF is, in any case, very nearly obsolete. In Yemen, Somalia, and across North Africa, the United States is no longer fighting al Qaeda but its affiliates. The Supreme Court has ruled that the AUMF covers "associates" of al Qaeda, but demarcating this category has become an increasingly Jesuitical exercise. Especially after the war ends in Afghanistan, courts are going to be skeptical about the invocation of war powers against tenuously linked associates of al Qaeda. For this reason, Waxman and three colleagues have argued for updating the AUMF rather than repealing it, setting out clear criteria for the use of force and compiling a list of terrorist adversaries. That's a sensible response if you think the most important objective is to preserve the president's freedom of action against terrorist groups. But I would say the most important objective is to restore America to itself. That doesn't simply mean forswearing war powers Americans were quick to grant after 9/11. It also means ending the reign of fear that inevitably emerged after the terrorist attacks. Americans still live inside their fear -- or at least their elected representatives behave as if they do. Think of the insane overreaction to the prospect of holding the trials of major figures like Khalid Sheikh Mohammed in civilian courts in the United States, or of transferring such figures to American prisons; or of the convulsive police reaction to the Tsarnaev brothers' bombing, which paralyzed metropolitan Boston; or of the pervasive military presence in so many public spaces. This is a national pathology that must be overcome -- especially before some new terrorist slips through the net and launches a successful strike on U.S. territory. Obama will have excellent political reasons for putting off the repeal of the AUMF. The Republicans will rain down demagoguery from the skies -- especially should a new terror attack occur. And sure, Obama could "refine" the law rather than repeal it, even if a new statute would be very hard to design. He could also ask Congress to pass a new AUMF that must be annually renewed, which, as Koh suggests, would have the added virtue of forcing Congress to become a partner in the legal response to terrorism. But Obama can afford to take political risks -- he isn't running for re-election. And, as Schiff points out, thanks to the national war exhaustion, Republicans are far more receptive to dialing down the counter-terror volume than they were only a few years ago. Most fundamentally, however, no half-measure will convey the message that Obama plainly wants to transmit: We are no longer at war with terrorists. It is increasingly clear that this president is pursuing a subtractive foreign policy. He ended torture. He removed American troops from Iraq; he is removing them from Afghanistan. All this is necessary, but it is still not the legacy he imagined for himself, or that his supporters hoped for. It is now within his power to end the war on terror. And that is something the American people will thank him for.

### 2AC Trumanites Conspiracy Theory

#### Framework—legalism is good and the 1AC is key—even if the law is imperfect, public discourse about legal checks makes them effective by deterring the executive—the alternative’s focus on political consciousness fails

Cole 2011 - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

D. The Role of Politics The force of ordinary electoral politics also cannot account for the shift in U.S. counterterrorism policy. None of the Bush administration's initial initiatives sparked majoritarian opposition. To the contrary, [\*1244] President Bush, who had very low approval ratings shortly before 9/11, shot up in popularity when he declared the "war on terror," and was reelected in 2004, in large measure on his promise to deliver security. n235 Apart from opposition to the war in Iraq, there was little widespread popular pressure on President Bush to rein in his security initiatives. Despite this evidence, Eric Posner and Adrian Vermeule have argued that in the modern era, political checks are all there are when it comes to restraining executive power. n236 They maintain that Congress, the courts, and the law itself cannot effectively constrain the executive, especially in emergencies, but that this need not concern us because the executive is adequately limited by political forces. At first blush, the past decade might appear to vindicate Posner and Vermeule's views, as political forces, broadly speaking, seem to have been at least as effective at checking the President as were Congress or the judiciary. n237 But there is in fact little evidence that electoral politics or majoritarian sentiment played much, if any, role in persuading President Bush to ratchet back his security initiatives. While formal judicial and legislative checks cannot tell the whole story, the alternative account is not "politics" as Posner and Vermeule define and describe it, but a much more complex interplay of civil society, law, politics, and culture: what I have called "civil society constitutionalism." [\*1245] In my view, Posner and Vermeule simultaneously underestimate the constraining force of law and overestimate the influence of political limits on executive overreaching. Sounding like Critical Legal Studies adherents, they sweepingly claim that law is so indeterminate and manipulable as to constitute only a "façade of lawfulness." n242 But in assessing law's effect, they look almost exclusively to formal indicia--statutes and court decisions. n243 That approach disregards the role that law plays without coming to a head in a judicial decision or legislative act. As the post-9/11 period illustrates, when law is reinforced and defended by civil society institutions, it can have a disciplining function long before cases reach final judgment, and even when no case is ever filed, a reality to which anyone who has worked in the executive branch will attest. n244 Executive officials generally cannot know in advance whether their actions will attract the attention of civil society watchdogs, or lead to court review. They often cannot know whether such oversight--whether by a court, a legislative committee, or a nongovernmental organization--will be strict or deferential. As long as there is some risk of such oversight, the resultant uncertainty itself is likely to have a disciplining effect on the choices they make. There are, in short, plenty of reasons why executive lawyers generally take legal limits seriously. They take an oath and are acculturated to do so. They know that claims of illegality can undermine their objectives. And they cannot predict when a legal claim will be advanced against them. Similarly, in focusing exclusively on statutes and their enforcement by courts, Posner and Vermeule disregard the considerable checking function that Congress's legal oversight role plays through means short of formal statutes, such as by holding hearings, launching investigations, requesting information about doubtful executive practices, or restricting federal expenditures. The effectiveness of these checks, moreover, will often turn on the strength of civil society. If there are significant watchdogs in the nongovernmental sector and/or the media focused on executive actions, ready to bring allegedly illegal conduct to public attention, the law will have substantial deterrent effect, with or without actual court decisions. While they are overly skeptical about law, Posner and Vermeule are unrealistically romantic about the constraining force of majoritarian politics. The political checks they identify consist solely of the fact that Presidents must worry about election returns, and must cultivate [\*1246] credibility and trust among the electorate. n245 There are several reasons to doubt that these political realities are sufficient to guard against executive overreaching. First, and most fundamentally, while the democratic process is well designed to protect the majority's rights and interests, it is poorly designed to protect the rights of minorities, and not designed at all to protect the rights of foreign nationals, who have no say in the political process. n246 In times of crisis, the executive nearly always selectively sacrifices the rights of foreign nationals, often defending its actions by claiming that "they" do not deserve the same rights that "we" do. n247 To say the law is superfluous because we have elections is to relegate foreign nationals, and minorities generally, to largely unchecked abuse. Second, the ability of the political process to police the executive is hampered by secrecy. Much of what the executive does, especially in times of crisis, is secret, and even when some aspects of executive action are public, its justifications often rest on grounds that are assertedly secret. n248 Courts and Congress have at least some ability to pierce that veil and to insist on accountability. Absent legal rights, such as those created by the Freedom of Information Act, the general public has virtually no ability to do so. n249 Third, the electoral process is a blunt-edged sword. Presidential elections occur only once every four years, and congressional elections every two years. Congressional elections will often involve an unpredictable mix of local and national matters, and there is little reason to believe they will concentrate on executive overreaching. Presidential elections also inevitably encompass a broad range of issues, most of which will have nothing to do with security and liberty. Elections are therefore unlikely to be effective at addressing specific abuses of power. Voters' concerns about abstract institutional issues such as executive power may clash with their interests on the substantive merits of particular issues, such as whether to use military force in support of Libyan rebels. There is no guarantee that citizens will separate these issues in their minds, and no reason to believe that if they do so, they will favor abstract institutional concerns over specific policy preferences at the ballot box. [\*1247] Fourth, the political process is notoriously focused on the short term, while constitutional rights and separation of powers generally serve long-term values. n250 It was precisely because ordinary politics tend to be shortsighted that the framers adopted a constitutional democracy. The Constitution identifies those values that society understands as important to preserve for the long term, but knows it will be tempted to sacrifice in the short term. n251 If ordinary politics were sufficient to protect such values, we would not need a constitution in the first place. Thus, there is little evidence in fact that majoritarian politics played a significant checking role in the aftermath of 9/11, or that such politics would generally be a sufficient checking force in times of crisis. And more generally, there is little reason to believe that political checks will be sufficient to restrain presidential abuse. The story is infinitely more complicated. As I have sought to illustrate here, in the aftermath of 9/11, the interplay of law, politics, and culture, framed and prompted by civil society organizations, was critical to rendering effective constitutional and international legal checks.

#### The aff solves anyway think Congress has enforcement power —- they’ll self-restrain

Cole 11

(David Cole is aProfessor at the Georgetown University Law Center, "Where Liberty Lies: Civil Society and Individual Rights After 9/11", The Wayne Law Review, Winter, 57 Wayne L. Rev. 1203, Accessed via GMU Libraries, LexisNexis, Last Accessed 1/23/14)

[\*1245] In my view, Posner and Vermeule simultaneously underestimate the constraining force of law and overestimate the influence of political limits on executive overreaching. Sounding like Critical Legal Studies adherents, they sweepingly claim that law is so indeterminate and manipulable as to constitute only a "façade of lawfulness." [n242](http://www.lexisnexis.com.mutex.gmu.edu/lnacui2api/frame.do?tokenKey=rsh-20.80277.09626519641&target=results_DocumentContent&returnToKey=20_T19062737163&parent=docview&rand=1390514386770&reloadEntirePage=true" \l "n242) But in assessing law's effect, they look almost exclusively to formal indicia--statutes and court decisions. [n243](http://www.lexisnexis.com.mutex.gmu.edu/lnacui2api/frame.do?tokenKey=rsh-20.80277.09626519641&target=results_DocumentContent&returnToKey=20_T19062737163&parent=docview&rand=1390514386770&reloadEntirePage=true" \l "n243) That approach disregards the role that law plays without coming to a head in a judicial decision or legislative act. As the post-9/11 period illustrates, when law is reinforced and defended by civil society institutions, it can have a disciplining function long before cases reach final judgment, and even when no case is ever filed, a reality to which anyone who has worked in the executive branch will attest. [n244](http://www.lexisnexis.com.mutex.gmu.edu/lnacui2api/frame.do?tokenKey=rsh-20.80277.09626519641&target=results_DocumentContent&returnToKey=20_T19062737163&parent=docview&rand=1390514386770&reloadEntirePage=true" \l "n244) Executive officials generally cannot know in advance whether their actions will attract the attention of civil society watchdogs, or lead to court review. They often cannot know whether such oversight--whether by a court, a legislative committee, or a nongovernmental organization--will be strict or deferential. As long as there is some risk of such oversight, the resultant uncertainty itself is likely to have a disciplining effect on the choices they make. There are, in short, plenty of reasons why executive lawyers generally take legal limits seriously. They take an oath and are acculturated to do so. They know that claims of illegality can undermine their objectives. And they cannot predict when a legal claim will be advanced against them. Similarly, in focusing exclusively on statutes and their enforcement by courts, Posner and Vermeule disregard the considerable checking function that Congress's legal oversight role plays through means short of formal statutes, such as by holding hearings, launching investigations, requesting information about doubtful executive practices, or restricting federal expenditures. The effectiveness of these checks, moreover, will often turn on the strength of civil society. If there are significant watchdogs in the nongovernmental sector and/or the media focused on executive actions, ready to bring allegedly illegal conduct to public attention, the law will have substantial deterrent effect, with or without actual court decisions.

#### No impact—legal restraints solve oppression and authoritarianism

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### National security constructions have objective basis—reliance on experts is inevitable and the alternative fails—only subjecting policy to judicial review can check national security discourse

Cole 12, Professor of Law

[July 2012, David Cole is a Professor, Georgetown University Law Center; “Confronting the Wizard of Oz: National Security, Expertise, and Secrecy”, 44 Conn. L. Rev. 1617-1625 (2012)]

When I need to use the remote control for our television, I call my fifteen-year old son. It’s not exactly that I am incapable of understanding the remote (or at least I don’t think so). It’s just that he’s so much better at it, has so much more experience with it, and I use it so infrequently that I defer to his expertise. Aziz Rana’s account of the American public’s relationship to national security tells a similar story. The public, he argues, has deferred to the executive branch, and in particular to the national security agencies therein, on questions of security.1 In his view, this deference reflects an epistemological shift, from a period when we viewed knowledge about security matters to be equally accessible by everyone, to the modern period in which we have delegated responsibility to a relatively small and insulated coterie of “experts” in the executive branch.2 No constitutional concerns are implicated by my delegation of the remote to my son. But the public’s delegation of national security matters to the socalled experts, Rana maintains, has profound implications for constitutional democracy.3 Until we learn to use the remote, we will never be masters of our own destiny. Rana’s account of the epistemological underpinnings of the national security state offers an astute and novel perspective on a familiar story. Few would dispute that the national security agenda is today dominated by agencies in the executive branch.4 Other scholars have identified different causes for this development. Many have pointed to such factors as the growth of the administrative state; the increasingly interventionist role the United States plays in the world; the rise of technological threats such as nuclear, chemical, and biological weapons; the spread of international terrorism; and the risks posed by the increasing interconnectedness of the globalized world.5 But Rana adds a further dimension, attributing the evolution to a shift in how the American public thinks about national security. In his view, the modern era has erroneously accepted the view that security matters should be left to “the experts.”6 Until we successfully challenge that assumption, he contends, legal reforms addressed to the problem are doomed to fail.7 Rana is right to focus our attention on the assumptions that frame modern Americans’ conceptions about national security, but his assessment raises three initial questions. First, it seems far from clear that there ever was a “golden” era in which national security decisions were made by the common man, or “the people themselves,” as Larry Kramer might put it.8 Rana argues that neither Hobbes nor Locke would support a worldview in which certain individuals are vested with superior access to the truth, and that faith in the superior abilities of so-called “experts” is a phenomenon of the New Deal era.9 While an increased faith in scientific solutions to social problems may be a contributing factor in our current overreliance on experts,10 I doubt that national security matters were ever truly a matter of widespread democratic deliberation. Rana notes that in the early days of the republic, every able-bodied man had to serve in the militia, whereas today only a small (and largely disadvantaged) portion of society serves in the military.11 But serving in the militia and making decisions about national security are two different matters. The early days of the Republic were at least as dominated by “elites” as today. Rana points to no evidence that decisions about foreign affairs were any more democratic then than now. And, of course, the nation as a whole was far less democratic, as the majority of its inhabitants could not vote at all.12 Rather than moving away from a golden age of democratic decision-making, it seems more likely that we have simply replaced one group of elites (the aristocracy) with another (the experts). Second, to the extent that there has been an epistemological shift with respect to national security, it seems likely that it is at least in some measure a response to objective conditions, not just an ideological development. If so, it’s not clear that we can solve the problem merely by “thinking differently” about national security. The world has, in fact, become more interconnected and dangerous than it was when the Constitution was drafted. At our founding, the oceans were a significant buffer against attacks, weapons were primitive, and travel over long distances was extremely arduous and costly. The attacks of September 11, 2001, or anything like them, would have been inconceivable in the eighteenth or nineteenth centuries. Small groups of non-state actors can now inflict the kinds of attacks that once were the exclusive province of states. But because such actors do not have the governance responsibilities that states have, they are less susceptible to deterrence. The Internet makes information about dangerous weapons and civil vulnerabilities far more readily available, airplane travel dramatically increases the potential range of a hostile actor, and it is not impossible that terrorists could obtain and use nuclear, biological, or chemical weapons.13 The knowledge necessary to monitor nuclear weapons, respond to cyber warfare, develop technological defenses to technological threats, and gather intelligence is increasingly specialized. The problem is not just how we think about security threats; it is also at least in part objectively based. Third, deference to expertise is not always an error; sometimes it is a rational response to complexity. Expertise is generally developed by devoting substantial time and attention to a particular set of problems. We cannot possibly be experts in everything that concerns us. So I defer to my son on the remote control, to my wife on directions (and so much else), to the plumber on my leaky faucet, to the electrician when the wiring starts to fail, to my doctor on my back problems, and to my mutual fund manager on investments. I could develop more expertise in some of these areas, but that would mean less time teaching, raising a family, writing, swimming, and listening to music. The same is true, in greater or lesser degrees, for all of us. And it is true at the level of the national community, not only for national security, but for all sorts of matters. We defer to the Environmental Protection Agency on environmental matters, to the Federal Reserve Board on monetary policy, to the Department of Agriculture on how best to support farming, and to the Federal Aviation Administration and the Transportation Security Administration on how best to make air travel safe. Specialization is not something unique to national security. It is a rational response to an increasingly complex world in which we cannot possibly spend the time necessary to gain mastery over all that affects our daily lives. If our increasing deference to experts on national security issues is in part the result of objective circumstances, in part a rational response to complexity, and not necessarily less “elitist” than earlier times, then it is not enough to “think differently” about the issue. We may indeed need to question the extent to which we rely on experts, but surely there is a role for expertise when it comes to assessing threats to critical infrastructure, devising ways to counter those threats, and deploying technology to secure us from technology’s threats. As challenging as it may be to adjust our epistemological framework, it seems likely that even if we were able to sheer away all the unjustified deference to “expertise,” we would still need to rely in substantial measure on experts. The issue, in other words, is not whether to rely on experts, but how to do so in a way that nonetheless retains some measure of self-government. The need for specialists need not preclude democratic decision-making. Consider, for example, the model of adjudication. Trials involving products liability, antitrust, patents, and a wide range of other issues typically rely heavily on experts.14 But critically, the decision is not left to the experts. The decision rests with the jury or judge, neither of whom purports to be an expert. Experts testify, but do so in a way that allows for adversarial testing and requires them to explain their conclusions to laypersons, who render judgment informed, but not determined, by the expert testimony. Similarly, Congress routinely acts on matters over which its members are not experts. Congress enacts laws governing a wide range of very complex issues, yet expertise is not a qualification for office. Members of Congress, like many political appointees in the executive branch, listen to and consider the views of experts to inform their decisions. Congress delegates initial consideration of most problems to committees, and by serving on those committees and devoting time and attention to the problems within their ambit, members develop a certain amount of expertise themselves. They may hire staff who have still greater expertise, and they hold hearings in which they invite testimony from still other experts. But at the end of the day, the decisions about what laws should be passed are made by the Congress as a whole, not by the experts.

#### Permutation do both: the law is indeterminate and is no means perfect, but the alternative is worse—we should recognize the constraints of the law and use that to construct better legal strategies—their author votes for the perm

Margulies and Metcalf 11, Clinical Professor of Law

(“Terrorizing Academia” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf, Joseph Margulies is a Clinical Professor, Northwestern University School of Law. He was counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren. He now is counsel of record for Abu Zubaydah, for whose torture (termed harsh interrogation by some) Bush Administration officials John Yoo and Jay Bybee wrote authorizing legal opinions. Earlier versions of this paper were presented at workshops at the American Bar Foundation and the 2010 Law and Society Association Conference in Chicago. Margulies expresses his thanks in particular to Sid Tarrow, AzizHuq, BaherAzmy, Hadi Nicholas Deeb, Beth Mertz, Bonnie Honig, and Vicki Jackson.Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. She has written numerous amicus briefs in support of petitioners in suits against the government arising out of counterterrorism policies, including in Munaf v. Geren and Boumediene v. Bush. Metcalf expresses her thanks to Muneer Ahmad, Stella Burch Elias, Margot Mendelson, Jean Koh Peters, and Judith Resnik for their feedback, as well as to co-teachers Jonathan Freiman, RamziKassem, Harold HongjuKoh and Michael Wishnie, whose dedication to clients, students and justice continues to inspire., Journal of Legal Education, Volume 60, Number 3 (February 2011))

V. Conclusions and Implications

From the vantage of 2010, it appears the interventionist position—our position—has failed. As we see it, it failed because it was premised upon a legalistic view of rights that simply cannot be squared with the reality of the American political experience. Yet the interventionist stance holds an undeniable attraction. Of all the positions advanced since 9/11, it holds out the best promise of preserving the pluralist ideals of a liberal democracy. The challenge going forward, therefore, is to re-imagine the interventionist intellectual endeavor. To retain relevance, we must translate the lessons of the social sciences into the language of the law, which likely requires that we knock law from its lofty perch. As a beginning, scholarship should be more attuned to the limitations of the judiciary, and mindful of the complicated tendency of narratives to generate backlash and counter-narratives. But there is another tendency we must resist, and that is the impulse to nihilism—to throw up our hands in despair, with the lament that nothing works and repression is inevitable. Just how to integrate the political and the ideal is, of course, a problem that is at least as old as legal realism itself and one we do not purport to solve in this essay.154 Still, we are heartened by the creative work undertaken in other arenas, ranging from poverty law to gay rights, that explores how, done properly, lawyering (and even litigation) can make real differences in the lives of marginalized people.155 We hope that the next decade of reflections on the policies undertaken in the name of national security will follow their lead in probing not just what the law should be, but how it functions and whom it serves. We close this essay on a personal note. Margulies was counsel of record in Rasul v. Bush. He and his colleagues at the Center for Constitutional Rights began work on that litigation in November, 2001, not long after Alan Dershowitz first started to press his proposal for “torture warrants.” By the time this essay appears, Margulies’ uninterrupted involvement in these issues will have lasted more than nine years, with no sign of ending anytime soon. He vividly recalls the state of play when Rasul was filed in February, 2002, and when one of his co-counsel received a death threat at his home in New Orleans. With considerable regret, Margulies now looks back on Rasul as a failure. But in 2002, there was no other choice. The Bush Administration had created a prison beyond the law, Congress was a stony monolith, and the parents and family of lost prisoners pleaded that their loved ones not be abandoned. At that moment, there was no choice but to litigate. He would do it again tomorrow, were the circumstances the same. His mistake, for which he takes sole responsibility, was to believe that law, in an intensely legalistic society, was enough.

### 2AC Self Defense

**Not a license for endless war**

**Anderson 11**, Law Prof at American

(Kenneth, TARGETED KILLING AND DRONE WARFARE: HOW WE CAME TO

DEBATE WHETHER THERE IS A ‘LEGAL GEOGRAPHY OF WAR’, [http://ssrn.com/abstract=1824783](http://ssrn.com/abstract%3D1824783))

Legal Adviser Koh noted in his March 2010 statement that **self-defense** in this context (what has been called here naked self-defense) **is not free of** regulation or **standards for** its **conduct. It is not a license to employ force with lower standards than those applicable in armed conflict,** even if technically an armed conflict is not under way. On the contrary, **it must meet** the **standards of necessity, distinction, and proportionality. This could be** seen as **an advance in i**nternational **law by articulating** for the United States and also for others that **even covert action has standards regulating its use. This appears** to be **more important** than it was even a year or two ago as it appears that the “operational” arm of the CIA and military “special ops” are becoming deeply intertwined, to the point that some suggest that they are in the process of merging. It must be said, however, that many do not see it that way: not those in the binary camp or, ironically, some in the intelligence community. Perhaps those in the intelligence community prefer to have no articulation of conduct standards for their uses of force because that might imply having to be accountable under customary international law, even under standards as basic as necessity, distinction, and proportionality. Yet as targeted killing using drones went from more-or-less covert to merely “plausibly deniable” to “implausibly deniable,” the notion that one need not articulate standards for uses of force under these customary standards has become untenable. This remains an important contribution to the articulation of legal standards for the conduct of “intelligence-driven, covert uses of force,” such as targeted killing employing drone technologies and holding them to more explicit standards. It **is not a license to lower standards below what the laws of war permit in armed conflict, nor** is it a mere appeal to legalisms to justify such practices as detention or interrogation through the laws of war in the absence of actual hostilities. Naked self-defense remains an important category by which intelligence agents might engage in uses of force where the threshold of NIAC has not (yet) been met—and, indeed, if such special operations are successful, might never need to be met. But **self-defense operations are subject to the customary rules of necessity, distinction, and proportionality**.

**Nobody cares**

**Reinold 11**, Theresa Reinold is a researcher in the "Normative Order" Cluster of Excellence at Goethe-Universitit, Frank- furt am Main, State Weakness, Irregular Warfare, and the Right to Self-Defense Post-9/11, http://www.heinonline.org/HOL/Print?collection=journals&handle=hein.journals/ajil105&id=248

**Other actors remained silent**. When assessing the consequences of a particular act for the development of customary international law, one must look not only at what states say, but also at what they do not say. **In the area of self-defense, many incidents fail to elicit much of an inter- national response, which could be interpreted as an indicator of legal uncertainty or as tacit acquiescence**. Overall, the Pankisi Gorge crisis suggests no clear trend on matters of self-de- fense. If anything, the conflict indicates that other actors (for example, Russia) besides the usual suspects have begun to appropriate the United States' "unable or unwilling" standard to justify the use of force against states harboring terrorists. Even though I noted at the outset that infer- ences about the real intentions and capabilities of states are difficult to draw, the case of Georgia seems to be representative of the inability scenario rather than the unwillingness scenario since Georgia did step up its efforts to eradicate terrorism inside its borders when threatened with outside intervention. When it became clear that its efforts did not produce the desired results, it even invited a friendly third party (the United States) to assist, all while rejecting Russian interference. Despite Georgia's efforts to live up to its sovereign responsibilities, Russia decided to use force and, in so doing, escaped condemnation of the international community at large. It was uncertain during the Pankisi Gorge crisis itself whether this lack of condemnation implied a lowering or even an abandonment of the attribution standard, but it is reasonable to infer that states that fail to exercise effective territorial control in such situations cannot expect to escape military interventions.

#### Obama already utilizes an expansive interpretation of self defense for extra-AUMF threats

Anderson 13, Professor of Law

[02/07/13, Kenneth Anderson is professor of law at Washington College of Law, American University; a visiting fellow of the Hoover Institution and member of its Task Force on National Security and Law; and a non-resident senior fellow of the Brookings Institution, “The US Government Position on Imminence and Active Self-Defense”, <http://www.lawfareblog.com/2013/02/the-us-government-position-on-imminence-and-active-self-defense/>]

Imminence is about the assessment of a threat that one might conclude should be addressed with force. It’s before passing the point of “game-on.” “Active self-defense,” however, is nothing novel, and simply means that the estimation of imminence is able to take the past history of a group into account as well as what is known about it as a group, and not merely what is known about any particular plot or threat. It permits a threatened state to pick its own moments for striking, when and where, against not just a particular plot or threat (or a series of them, treated as separate individual “transactions,” as it were) but against the actor itself. It treats particular threats from an actor as linked and on-going, regards lawful responses in that way, and so does not force the state into a purely, impossibly reactive position. It is not the governing doctrine in the case of an armed conflict underway, because if one is in an armed conflict, the defeat of the enemy as such – as the enemy and not merely as a series of individual threat transactions – is lawful and legitimate; war aimed at the defeat of the enemy as such embodies “active self-defense.” But, as I’ve pointed out in other contexts, there will be future threats to national security in which the President might determine to act in the absence of an already on-going armed conflict (what I have sometimes called “naked” self-defense, though not the aspect of self-defense that “naked” self-defense has attracted some criticism on different grounds than these; I’ll post about that another day), against some wholly new terrorist group, for example, entirely uncovered by the AUMF or any existing state of armed conflict. The President’s legal authority to respond and to address the threat and, on some judgments of the nature of certain threats, address the threat by addressing the actor – at least so far as the US government is concerned – embraces this notion of holistic, active self-defense in the framing of the meaning of “imminence.”

#### Barnes says squo makes the impact inevitable

Barnes, 12 --- J.D. at Boston University and M.A. in Law and Diplomacy at The Fletcher School of Law and Diplomacy at Tufts University (Spring 2012, Beau D., Military Law Review, “REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE,” 211 Mil. L. Rev. 57)

Because of the proliferation of new terrorist groups with no ties to September 11, as well as the successful targeting of Al Qaeda’s “core group,” Part IV will argue that the AUMF’s legal demise is close at hand or, with regard to certain groups, already here. As this authority wanes, Congress must reauthorize the AUMF to avoid significant consequences in both domestic and international law and policy. Simply put, should current events further vitiate the AUMF, the demands of the international system will likely force the United States to rely on legal interpretations that sap American democracy and diminish U.S. national security.

#### Self defense authority used now in conjunction with the armed conflict justification—that’s worse for LOAC

Blank 12, Director of IHL Clinic

[2012, Laurie R. Blank is the Director, International Humanitarian Law Clinic, Emory Law School, “TARGETED STRIKES: THE CONSEQUENCES OF BLURRING THE ARMED CONFLICT AND SELF-DEFENSE JUSTIFICATIONS”, WILLIAM MITCHELL LAW REVIEW, Vol. 38: 5 <http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf>]

For the past several years, the United States has relied on both armed conflict and self-defense as legal justifications for targeted strikes outside of the zone of active combat in Afghanistan. A host of interesting questions arise from both the use of targeted strikes and the expansive U.S. justifications for such strikes, including the use of force in self-defense against non-state actors, the use of force across state boundaries, the nature and content of state consent to such operations, the use of targeted killing as a lawful and effective counterterrorism measure, and others.7 Furthermore, each of the justifications—armed conflict and self-defense—raises its own challenging questions regarding the appropriate application of the law and the parameters of the legal paradigm at issue. For example, if the existence of an armed conflict is the justification for certain targeted strikes, the immediate follow-on questions include the determination of a legitimate target within an armed conflict with a terrorist group and the geography of the battlefield. Within the self-defense paradigm, key questions include the very contours of the right to use force in self-defense against individuals and the implementation of the concepts of necessity and imminence, among many others. However, equally fundamental questions arise from the use of both justifications at the same time, without careful distinction delimiting the boundaries between when one applies and when the other applies. From the perspective of the policymaker, the use of both justifications without further distinction surely offers greater flexibility and potential for action in a range of circumstances.8 To the extent such flexibility does not impact the implementation of the relevant law or hinder the development and enforcement of that law in the future, it may well be an acceptable goal. In the case of targeted strikes in the current international environment of armed conflict and counterterrorism operations occurring at the same time, however, the mixing of legal justifications raises significant concerns about both current implementation and future development of the law. One overarching concern is the conflation in general of jus ad bellum and jus in bello. The former is the law governing the resort to force—sometimes called the law of self-defense—and the latter is the law regulating the conduct of hostilities and the protection of persons in conflict—generally called the law of war, the law of armed conflict, or international humanitarian law. International law reinforces a strict separation between the two bodies of law, ensuring that all parties have the same obligations and rights during armed conflict to ensure that all persons and property benefit from the protection of the laws of war. For example, the Nuremberg Tribunal repeatedly held that Germany’s crime of aggression neither rendered all German acts unlawful nor prevented German soldiers from benefitting from the protections of the jus in bello. 9 More recently, the Special Court for Sierra Leone refused to reduce the sentences of Civil Defense Forces fighters on the grounds that they fought in a “legitimate war” to protect the government against the rebels.10 The basic principle that the rights and obligations of jus in bello apply regardless of the justness or unjustness of the overall military operation thus remains firmly entrenched. Indeed, if the cause at arms influenced a state’s obligation to abide by the laws regulating the means and methods of warfare and requiring protection of civilians and persons hors de combat, states would justify all departures from jus in bello with reference to the purported justness of their cause. The result: an invitation to unregulated warfare.11 This article will focus on the consequences of the United States consistently blurring the lines between the armed conflict paradigm and the self-defense paradigm as justifications for the use of force against designated individuals. The first Part sets forth the basic legal paradigms of armed conflict and self-defense and the targeting of individuals within each paradigm. In the second Part, I analyze four primary categories in which the use of both paradigms without differentiation blurs critical legal rules and principles: geographical issues surrounding the use of force; the obligation to capture rather than kill; proportionality; and the identification of individual targets, namely the conflation of direct participation in hostilities and imminence. The final Part highlights three areas in which this blurring of legal justifications and paradigms has significant contemporary and future consequences for the application of international law in situations involving the use of force. In particular, this blurring undermines efforts to fulfill the core purposes of the law, whether the law of armed conflict or the law governing the resort to force, hinders the development and implementation of the law going forward, and risks complicating or even weakening enforcement of the law.

### 2AC Politics DA

**Controversy over the aff will expand but Obama won’t fight**

**Panda 3/12**, Ankit Panda is Associate Editor of The Diplomat. He was previously a Research Specialist at Princeton University where he worked on international crisis diplomacy, international security, technology policy, and geopolitics , Time to Review the AUMF, http://thediplomat.com/2014/03/time-to-review-the-aumf/

**The AUMF became a point of controversy among libertarians, non-interventionists, and civil rights groups once it became apparent that it offered a legal smokescreen to pursue extra-judicial assassinations** of American citizens affiliated with al-Qaeda, denying them the right to due process. The United States’ widely condemned practice of indefinite detention of “enemy combatants” is also a result of the AUMF. Overall, there seems to be no political consensus about what the AUMF should become. I reckon that Lumpkin’s right that the AUMF needs to be “re-looked” at. The timing is rather impeccable considering that the United States is formally ending its war in Afghanistan this year. President **Obama** himself **noted** in a speech at the National Defense University last year that **he looks forward “to engaging Congress and the** American **people in efforts to** refine, and ultimately **repeal, the AUMF**’s mandate.” Those who disagree with repealing the AUMF note that it would regress the United States’ counter-terrorism readiness to “a law-enforcement model of counterterrorism.” There is some truth in that assertion. However, the United States’ national security apparatus has matured significantly since 9/11 and the failures in intelligence and lack of inter-agency communication that allowed that attack to happen have had time to be patched up. The future of the AUMF will have important ramifications for the manner in which the United States pursues non-state national security threats in the future. **Expect this debate to expand as President Obama’s second term carries forward**.

#### CIA fight makes link inevitable

Bolton, 3/11 (Alexander, 3/11/2014, “CIA fallout reaches Obama,” <http://thehill.com/homenews/senate/200524-obama-will-have-to-deal-with-the-fallout>))

President Obama is caught in the middle of an increasingly bitter feud between the Central Intelligence Agency and Democratic allies on Capitol Hill. Sen. Dianne Feinstein’s (D-Calif.) stunning accusation that the CIA spied on her panel plunged the president into a controversy over the separation of powers that threatens to become a major headache for his administration. The White House did its best to steer clear of the storm on Tuesday, but Obama could soon be forced to take sides. Democrats are pushing to release their investigation into interrogation techniques used during the George W. Bush administration and have been fighting for months with the CIA over declassifying its contents. Obama backs releasing the interrogation report but has made clear he wants to move past the controversy over the Bush-era interrogations. Now Senate Democrats are demanding that Brennan apologize for what Feinstein alleges is the obstruction and intimidation of her committee’s work. Brennan on Tuesday rejected Feinstein’s allegations as false. Senate Majority Leader Harry Reid (D-Nev.) and Senate Judiciary Committee Chairman Patrick Leahy (Vt.), the Senate’s most senior Democrat, both backed Feinstein on Tuesday. Asked if Brennan should apologize, Reid said, “I support Dianne Feinstein, and the answer is yes.” Attorney General Eric Holder must decide how to handle conflicting complaints from Feinstein and the CIA. Feinstein on Tuesday charged the agency may have violated the Fourth Amendment, the Computer Fraud and Abuse Act and an executive order prohibiting domestic searches and surveillance by searching computers that contained records of the committee’s internal deliberations. The CIA’s acting general counsel has filed a countervailing report with the Justice Department accusing Intelligence Committee staff of removing a classified document from the agency without permission. Feinstein cited the general counsel’s complaint in her floor speech. If Obama sides with Feinstein, Republicans could accuse him of undermining the intelligence community.Republican senators, with the notable exception of Sen. John McCain (R-Ariz.) and his ally, Sen. Lindsey Graham (R-S.C.), declined to support Feinstein in her battle with the CIA. Adding to the tension, only one Republican on the Intelligence Committee — former Sen. Olympia Snowe (Maine) — endorsed the findings of the interrogation report, which Democrats say will reveal that the CIA’s techniques were ineffective and far harsher than previously known. “We have some disagreements as to what the actual facts are,” said Sen. Saxby Chambliss (Ga.), the ranking Republican on the Select Committee on Intelligence. Chambliss said “improving the relationship” between his committee and the CIA “is not going to happen if we throw rocks at each other.” Sen. Richard Burr (N.C.), the second-most senior Republican on the panel, said, “I personally don’t believe anything that goes on in the Intelligence Committee should ever be discussed publicly.” But there is growing sentiment among Democrats that Obama needs to rein in his intelligence agencies.“To me this goes precisely to the question of whether Congress can effectively oversee the modern intelligence apparatus,” said Sen. Ron Wyden (D-Ore.), a senior member of the Intelligence panel. Wyden noted that a CIA official acknowledged at a recent public hearing that the agency was subject to the Computer Fraud Act. “We’ve got to be able to independently do oversight and find the facts and, as Sen. Feinstein laid out this morning, this raises a very troubling set of questions with respect to separation of powers,” he said. Adding to the pressure, groups on the left are demanding Obama step in and ensure that the interrogation report is released.“After so many years of Congress being unable or unwilling to assert its authority over the CIA, Sen. Feinstein today began to reclaim the authority of Congress as a check on the executive branch,” said Christopher Anders, senior legislative counsel with the American Civil Liberties Union.

**The plan saves the agenda**

**Epps, 12/20** --- teaches courses in constitutional law and creative writing for law students at the University of Baltimore (12/20/2013, Garrett, “How Obama Can Save His Legacy by Reining In the Security State; The president can restore some flagging faith in the American project and shore up his own political fortunes,” <http://www.theatlantic.com/politics/archive/2013/12/how-obama-can-save-his-legacy-by-reining-in-the-security-state/282568/>))

This is something for President Obama to ponder as he comes to the end of an unexpectedly difficult year. Despite a smashing reelection and a victory in the government shutdown, **Obama’s poll numbers have moved significantly lower, with the greatest loss in the percentage of respondents who consider him trustworthy**. At this year’s end, however, **Obama has a powerful opportunity to change how he operates, and how he is viewed**. All it will take is what so few politicians have—the ability to listen to the universe when it says, “You were wrong.” Consider the events of the last two weeks. Judge Richard Leon of the District Court for the District of Columbia, a Republican appointee, held that the National Security Agency’s massive metadata-collection program “likely” violates the Fourth Amendment. (To my students: In the procedural posture of this case, “likely violates” is a lawyer’s code word for “@#$%ing-A right it violates!”) A few days later, the president’s advisory board recommended significant reforms to the extent and structure of the same programs. The tech sector, civil libertarians, a Republican judge, America’s foreign allies, and, I suspect, the vast majority of the American people, now agree that government surveillance has overreached. The White House has said nothing about Leon's decision. (A Justice Department spokesman said, “We believe the program is constitutional as previous judges have found,” though it's not clear what judges he's referring to.) After the advisory report, the White House would say only that the president “will work with his national security team to study the Review Group’s report, and to determine which recommendations we should implement.” In the months since Edward Snowden’s revelations began emerging, Obama has insisted that, as he said in June, that "Congress is continually briefed on how [NSA surveillance is] conducted. There are a whole range of safeguards involved. And federal judges are overseeing the entire program throughout." Top intelligence officials and Senators like Senator Dianne Feinstein and Representative Mike Rogers repeat the soothing mantra daily. It’s all legal. The courts know all about it. Don’t worry your pretty little heads about it. Let us take care of you. The administration’s stance has by now become a kind of fetal crouch, distasteful even to witness. I’m not sure that anyone anywhere outside Washington believes a word of this—or ever has. Even the members of Congress know that we know they’re lying, and know that we know they haven’t been doing their jobs. Obama can may still have a chance to get ahead of the moment by changing his own approach. **Obama**, a former constitutional-law professor, **was elected as a civil libertarian who would tame the post-9/11 security state. In the first year, he tried gamely to close Guantanamo.** Over the past year, **he took a tentative stand in favor of an eventual repeal the 2001 Authorization for the Use of Military Force, putting an end at some point to our state of endless war against nameless enemies**. But **he seems also to have learned that** more surveillance, more secrecy, and **broader unreviewable power are the ways to please official Washington**. His administration has embraced over-classification of information, wholesale attacks on press freedom, and use of the criminal law to intimidate whistleblowers. He sounds more and more like Leonid Brezhnev defending the invasion of Afghanistan. And now this gifted communicator has now lost the initiative to the likes of Larry Klayman. To paraphrase Talleyrand, this unseemly spectacle is worse than a crime—it is a mistake. **This is Obama’s second term. He is in a position to switch from soothing nonsense to serious discussion of security, freedom, and danger.** It is not enough to say that these questions involved unseen tradeoffs that cannot be discussed; a free people can be trusted to make public choices. **Many Americans apparently believe that Obama is a Hitler-style tyrant**. Viewed objectively, **this administration has been remarkably timid overall**—hesitant to try strong economic or social medicine. But the idea of tyranny is powerful, I think, because of the hangover of 9/11 and the Bush years. American conservatives, against their better judgment, embraced detention camps, secret prisons, torture, classified courts, mass eavesdropping, suspension of habeas corpus, and the Patriot Act when their leader was in control. They lost faith in Bush, and then they lost control of government. Progressives criticized Bush, but held their fire when Obama did not renounce the security state. Now everyone feels afraid, and well we might. I think Obama is a man of humane instincts, and one who does respect the law. But **if his legacy is a secret, lawless complex of aggressive spies and secretive jailers, who is to say that they will not be misused by a successor?** Whether headed by friend or foe, government is, to steal a phrase from Robinson Jeffers, a clever servant but an insufferable master. When we are told that we may not know what it is doing to us in our name, we are right to fear. This is no legacy for a man of Obama’s values. **He is uniquely qualified to lead a national debate about security and privacy—and by so doing, he would show that the people are still part of the process of government in this country**, even in dangerous times. **He still has time to turn the debate around—and perhaps salvage what remains of his second term in the process.**

#### Will be a lengthy process --- at least 3 months

Dilanian, 3/25 (Ken, 3/25/2014, “Obama's NSA compromise plan wins initial praise; President Obama's plan to end the sweeping collection of phone records while giving the NSA access to cellphone numbers faces a long legislative process. But many in Congress cheer the idea,” [http://www.latimes.com/nation/la-na-nsa-phone-records-20140326,0,6343193.story](http://www.latimes.com/nation/la-na-nsa-phone-records-20140326%2C0%2C6343193.story)))

WASHINGTON — President Obama's new plan for the National Security Agency would significantly curb its authority, ending its vast collection of Americans' telephone records, but at the same time give the spy agency access to millions of cellphone records it currently does not reach. The compromise, which would require Congress' approval, won praise Tuesday from prominent lawmakers, including leading defenders and critics of the agency. But it faces a lengthy legislative process during which the agency will continue to collect and store the records of millions of U.S. telephone calls. At a news conference in The Hague, where he took part in a world meeting on nuclear security, Obama said the Justice Department and intelligence agencies had given him "an option that I think is workable" and that "addresses the two core concerns that people have" about the most controversial surveillance program revealed by former NSA contractor Edward Snowden. Photos: Hacking victims The first concern, Obama said, was that the government not control a vast archive of U.S. telephone call data. Currently, the NSA collects records of virtually all land-line telephone calls in the U.S. and stores them for five years. Under the administration proposal, the government would no longer keep that archive. Instead, all telephone companies, including cellphone providers, would be required to keep call records for 18 months, the current industry standard. The second concern, Obama said, was that the NSA be allowed to search only those phone records under a specific court order. Previously, a blanket court order required telephone companies to turn call records over to the NSA, but no judge scrutinized analysts' decisions about which numbers to look at. In February, the Foreign Intelligence Surveillance Court approved Obama's request to require judicial approval for each search. The new proposal would write that requirement into law, with an exception for emergencies. U.S. intelligence agencies have to "win back the trust, not just of governments but more importantly of ordinary citizens" around the world, Obama said. Doing so is "not going to happen overnight because I think that there's a tendency to be skeptical of government and to be skeptical, in particular, of U.S. intelligence services," he added. The new plan should help make Americans more comfortable with the surveillance program, he said. Obama repeated his belief that "some of the reporting here in Europe, as well as the United States, frankly, has been pretty sensationalized," and he said that U.S. intelligence analysts had exercised their authority judiciously. But such power could be abused in the future, he said. "The fears about our privacy in this age of the Internet and big data are justified," he said. The NSA does not obtain the contents of communications under the telephone program. But the ability to map a person's communications with times, dates and the numbers called can provide a window into someone's activities and connections. Snowden's disclosures to journalists made the existence of the program public in June. It was the first of a stream of stories that have revealed some of the government's most sensitive electronic intelligence efforts. In a statement through his lawyers at the American Civil Liberties Union, Snowden, who has taken refuge in Russia, called Obama's proposal a "turning point." "It marks the beginning of a new effort to reclaim our rights from the NSA and restore the public's seat at the table of government," his statement said. The NSA director, Gen. Keith Alexander, also embraced the proposal. "I think it's the right thing to do, and I think it addresses our counter-terrorism operational mission requirements," he said in an interview. Alexander, who is retiring Friday, has been lobbying members of Congress to adopt the plan. NSA officials consider the compromise the best outcome the agency could hope for, particularly since its authority to collect phone records will expire in 18 months unless Congress reauthorizes it. Congressional critics of the spy agency praised some aspects of the proposal, but urged the NSA to immediately halt further collection of telephone records until Congress acts. "This is the start of the end of dragnet surveillance in America," said Sen. Ron Wyden (D-Ore.), chairman of the Senate Finance Committee. Joined by Sens. Mark Udall (D-Colo.) and Rand Paul (R-Ky.) in an unusual bipartisan alliance, Wyden has pressured the White House over the NSA's activities. "They can stop immediately," Paul said. "There's nothing forcing them to keep collecting the data." Administration officials, however, say they plan to continue the collection for at least three more months while Congress debates. They have not ruled out continuing longer if Congress does not act. Two leading NSA supporters, House Intelligence Committee Chairman Mike Rogers (R-Mich.) and the committee's ranking Democrat, Rep. C.A. Dutch Ruppersberger of Maryland, unveiled their own proposal Tuesday that tracks the White House plan in most respects, with a major exception: It would not require court approval each time phone records are searched.

#### Everyone likes it --- no reason PC is key

Hattem, 3/27 (Julian, 3/27/2014, “Obama backs ending NSA collection,” <http://thehill.com/blogs/hillicon-valley/technology/201909-obama-offers-bill-to-end-nsa-collection>))

Obama had called for a new path forward to the program by this Friday, when the existing court authority for the phone program was set to expire.

Reports had emerged about details of the White House proposal in recent days. Based on those reports, lawmakers and critics of the NSA’s snooping have been cautiously supportive of the president’s plan. Speaking to reporters this week, Sens. Rand Paul (R-Ky.), Ron Wyden (D-Ore.) and Mark Udall (D-Colo.), who have been among the most vocal critics of the agency, said that the proposal showed the White House had come around to their way of thinking. “For years and years the executive branch denied that this was a problem. And the three of us, and millions of Americas, said not so fast,” Wyden said on Tuesday, after reports of the plan emerged. The White House’s new attitude, he added, shows “they now agree with us and the American people.” Senate Intelligence Committee Chairwoman Dianne Feinstein (D-Calif.), who has been reluctant to make drastic changes to the spy agency, called the president’s plan “a worthy effort.” Speaker John Boehner (R-Ohio) has also supported the president’s plan to end the bulk records collection.

#### No political capital

Galen, 3/17 --- press secretary to Dan Quayle and Newt Gingrich (Rich, 3/17/2014, “Obama Is Poisonous,” http://www.realclearpolitics.com/articles/2014/03/17/obama\_is\_poisonous\_121954.html))

President Obama has used up his political capital. The cupboard is bare. His disdain for the Article I branch is exceeded only by his dislike of the Article III branch. While people thought he was at least trying to do the right thing they gave him the benefit of the doubt. But that benefit - like many health care benefits - have disappeared. The business in Ukraine is, if only because of newness and rawness of the vote in Crimea yesterday, an excellent example of why the country has lost faith in the Obama Presidency.

## 1AR

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War turns structural violence

Goldstein 1—Prof PoliSci @ American University, Joshua, War and Gender , P. 412

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

Quality of life is skyrocketing worldwide by all measures

Ridley, visiting professor at Cold Spring Harbor Laboratory, former science editor of *The Economist*, and award-winning science writer, 2010

(Matt, *The Rational Optimist*, pg. 13-15)

If my fictional family is not to your taste, perhaps you prefer statistics. Since 1800, the population of the world has multiplied six times, yet **average life expectancy has more than doubled and real income has risen more than nine times**. Taking a shorter perspective, in 2005, compared with 1955, the average human being on Planet Earth earned nearly three times as much money (corrected for inflation), ate one-third more calories of food, buried one-third as many of her children and could expect to live one-third longer. She was less likely to die as a result of war, murder, childbirth, accidents, tornadoes, flooding, famine, whooping cough, tuberculosis, malaria, diphtheria, typhus, typhoid, measles, smallpox, scurvy or polio. She was less likely, at any given age, to get cancer, heart disease or stroke. She was more likely to be literate and to have finished school. She was more likely to own a telephone, a flush toilet, a refrigerator and a bicycle. All this during a half-century when the world population has more than doubled, so that far from being rationed by population pressure, the goods and services available to the people of the world have expanded. It is, by any standard, an astonishing human achievement. Averages conceal a lot. **But even if you break down the world into bits**, **it is hard to find any region that was worse off in 2005 than it was in 1955**. Over that half-century, real income per head ended a little lower in only six countries (Afghanistan, Haiti, Congo, Liberia, Sierra Leone and Somalia), life expectancy in three (Russia, Swaziland and Zimbabwe), and infant survival in none. In the rest they have rocketed upward. Africa’s rate of improvement has been distressingly slow and patchy compared with the rest of the world, and many southern African countries saw life expectancy plunge in the 1990s as the AIDS epidemic took hold (before recovering in recent years). There were also moments in the half-century when you could have caught countries in episodes of dreadful deterioration of living standards or life chances – China in the 1960s, Cambodia in the 1970s, Ethiopia in the 1980s, Rwanda in the 1990s, Congo in the 2000s, North Korea throughout. Argentina had a disappointingly stagnant twentieth century. But overall, after fifty years, **the outcome for the world is** remarkably, astonishingly, **dramatically positive**. The average South Korean lives twenty-six more years and earns fifteen times as much income each year as he did in 1955 (and earns fifteen times as much as his North Korean counter part). The average Mexican lives longer now than the average Briton did in 1955. The average Botswanan earns more than the average Finn did in 1955. **Infant mortality is lower today in Nepal than it was in Italy in 1951**. The proportion of Vietnamese living on less than $2 a day has dropped from 90 per cent to 30 per cent in twenty years. The rich have got richer, but the poor have done even better. **The poor in the developing world grew their consumption twice as fast as the world as a whole between 1980 and 2000**. The Chinese are ten times as rich, one-third as fecund and twenty-eight years longer-lived than they were fifty years ago. Even Nigerians are twice as rich, 25 per cent less fecund and nine years longer-lived than they were in 1955. **Despite a doubling of the world population**, even **the raw number of people living in absolute poverty** (defined as less than a 1985 dollar a day) **has fallen since the 1950s**. The percentage living in such absolute poverty has dropped by more than half – to less than 18 per cent. That number is, of course, still all too horribly high, but the trend is hardly a cause for despair: at the current rate of decline, it would hit zero around 2035 – though it probably won’t. The United Nations estimates that poverty was reduced more in the last fifty years than in the previous 500.

#### They cut the strawperson part of Lobel..awk

Lobel 7, Assistant Professor of Law

[February, 2007; Orly Lobel is an Assistant Professor of Law, University of San Diego. LL.M. 2000 (waived), Harvard Law School; LL.B. 1998, Tel-Aviv University, “THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS”, 120 Harv. L. Rev. 937]

A critique of cooptation often takes an uneasy path. Critique has always been and remains not simply an intellectual exercise but a political and moral act. The question we must constantly pose is how critical accounts of social reform models contribute to our ability to produce scholarship and action that will be constructive. To critique the ability of law to produce social change is inevitably to raise the question of alternatives. In and of itself, the exploration of the limits of law and the search for new possibilities is an insightful field of inquiry. However, the contemporary message that emerges from critical legal consciousness analysis has often resulted in the distortion of the critical arguments themselves. This distortion denies the potential of legal change in order to illuminate what has yet to be achieved or even imagined. Most importantly, cooptation analysis is not unique to legal reform but can be extended to any process of social action and engagement. When claims of legal cooptation are compared to possible alternative forms of activism, the false necessity embedded in the contemporary [\*988] story emerges - a story that privileges informal extralegal forms as transformative while assuming that a conservative tilt exists in formal legal paths. In the triangular conundrum of "law and social change," law is regularly the first to be questioned, deconstructed, and then critically dismissed. The other two components of the equation - social and change - are often presumed to be immutable and unambiguous. Understanding the limits of legal change reveals the dangers of absolute reliance on one system and the need, in any effort for social reform, to contextualize the discourse, to avoid evasive, open-ended slogans, and to develop greater sensitivity to indirect effects and multiple courses of action. Despite its weaknesses, however, law is an optimistic discipline. It operates both in the present and in the future. Order without law is often the privilege of the strong. Marginalized groups have used legal reform precisely because they lacked power. Despite limitations, these groups have often successfully secured their interests through legislative and judicial victories. Rather than experiencing a disabling disenchantment with the legal system, we can learn from both the successes and failures of past models, with the aim of constantly redefining the boundaries of legal reform and making visible law's broad reach.

### 1AR DA

#### THEIR FOCUS LINK PROVES IT THUMPED

Samuelsohn, 3/23 (Darren, 3/23/2014, “Dianne Feinstein-CIA feud enters uncharted territory,” <http://www.politico.com/story/2014/03/dianne-feinstein-cia-feud-104927.html?hp=l1>))

**\*\*\*Note --- former Rep. Pete Hoekstra, a Michigan Republican who chaired the House Intelligence Committee**

In the absence of answers of what happened, several intelligence veterans said the Feinstein-CIA dispute is taking up lawmakers’ limited oxygen supply on complex issues ranging from Snowden’s revelations about government surveillance overreach to cybersecurity threats and tensions flaring in Ukraine, Syria, Egypt and other global hotspots. “Having a broken relationship between the intelligence community and Congress is not a good place for us to be right now,” Hoekstra said. “When you’re spending your time fighting each other, you’re taking your eye off the ball.”

#### Obama is in the middle

Dyer 3/12, Geoff Dyer is a staff writer at the Financial Times, CIA row reopens ‘war on terror’ wounds, http://www.ft.com/intl/cms/s/0/1f982dfe-aa05-11e3-8497-00144feab7de.html#axzz2x1YAldGn

With the global economy teetering on the edge, it made political sense at the time to avoid a bruising partisan battle over the dark recesses of the ‘war on terror’. But five years later, Mr Obama has found himself right back in the middle of the same political knife-fight as a result of an extraordinary public dispute between Senate Democrats and the CIA. In a speech on Tuesday, Dianne Feinstein, chair of the Senate intelligence committee and a California Democrat, accused the CIA of a blatant attempt to “intimidate” the Senate from publishing details about Bush-era interrogations conducted by the CIA. Suggesting that the agency might have violated the constitution by monitoring the computers of staff on her committee, she warned that the episode was “a defining moment for the oversight” of US intelligence agencies. Ms Feinstein said that if a Senate report into the CIA was made public, “we will be able to ensure that an un-American, brutal programme of detention and interrogation will never again be considered or permitted”. The allegations have raised questions about the tenure at the agency of its director John Brennan, who took over last year having been one of Mr Obama’s closest aides at the White House during his first term. Following the explosive revelations about the National Security Agency last year, the dispute with the CIA creates another constitutional stand-off about the way the intelligence services operate and are overseen by Congress. Most of all, it puts pressure on the White House to ensure that the Senate report on interrogation is made public, despite the determined resistance of the same CIA that Mr Obama did not want to alienate when he took office.