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## Global Battlefield

#### Advantage one is the global battlefield

#### The AUMF provides the legal authority for a global battlefield. Others will seize on the AUMF’s expansive view of the battlefield to legitimize their own global wars

**Roth 13** – Executive Director @ Human Rights Watch [Kenneth Roth, “ (JD from Yale University) The Law of Armed Conflict, the Use of Military Force, and the 2001 Authorization for Use of Military Force” “ [Statement to the Senate Armed Services Committee](http://www.hrw.org/news/2013/05/16/us-statement-senate-armed-services-committee-aumf-targeted-killing-guantanamo) , May 16, 2013, pg. http://www.hrw.org/news/2013/05/16/us-statement-senate-armed-services-committee-aumf-targeted-killing-guantanamo

The Authorization for the Use of Military Force

When it comes to our most basic rights, there is probably no more important distinction than the line between peace and war.  In peacetime, the government can use lethal force only if necessary to stop an imminent threat to life, and it can detain only after according full due process.  But in wartime, the government can kill combatants on the battlefield, and it has greatly enhanced power to detain people without charge or trial.  So, safeguarding the right to life and liberty depends in important part on ensuring that the government is not operating by wartime rules when it should be abiding by peacetime rules.

Human Rights Watch does not ordinarily take positions on whether a party to a conflict is justified in taking up arms.  Rather, once armed conflict breaks out, we generally confine ourselves to monitoring how both sides to the conflict fight the war, with the aim of enforcing international standards protecting noncombatants.  In the Latin terms used among legal experts, we focus on jus in bello, not jus ad bellum.

However, the combination of a declared global war and the newly enhanced capacity to kill individual targets far from any traditional battlefield poses new dangers to basic rights—ones that will only grow as the US role in the Afghan armed conflict winds down. That leaves only al-Qaeda and similar armed groups but without the elements that traditionally limit use of the war power: the control of territory and a recognizable battlefield. To paint the problem most starkly, might a government that wants to kill a particular person simply declare “war” on him and shoot him, circumventing the basic due-process rights to which the target would ordinarily be entitled?  Or, might a government intent on wiping out a drug gang simply declare “war” on its members?  If a government wants to be less draconian but still avoid the burden of mounting a criminal prosecution, might it declare “war” on drug trafficking and detain without trial any participants it picks up?

These are not fanciful scenarios.  Drug traffickers pose a violent threat to many Americans and are almost certainly responsible for more American deaths than terrorism.  Already we talk of a metaphorical war on drugs.  Why not a real war?

I hope we cringe at that thought.  Detested as drug traffickers are, I hope we recoil at the thought of summarily killing or detaining them. But that is the risk if we allow the government unhindered discretion to decide when to apply war rules instead of peace rules. This threat of an end run around key constitutional rights highlights the need to articulate clear limits to any war related to terrorism.

Some have suggested that mere transparency around the war-peace distinction should be enough—that Congress might authorize ongoing war against terrorist groups present and future so long as the administration states clearly at any given moment the groups with which it is at war. But that open-ended authorization is dangerous, because governments will be tempted to take the easy path of war rules over the more difficult path of respecting the full panoply of rights that prevail in peacetime. We cannot trust that public scrutiny is enough to restrain abuse given how easy it is to vilify alleged terrorist groups.

If a particular group poses such a serious threat that it can be met only with war, focused war authorization can be sought. But an open invitation to live by war rules makes it too easy for the government to circumvent key rights.

Indeed, it is perilous enough when the government entrusted with the power to set aside certain peacetime rights is the United States. But once the US government takes this step, we can be certain that governments with far less sensitivity to rights will follow suit. The Chinas and Russias of the world will be all too eager to seize this precedent to pursue their enemies under war rules, be they “splittist” Tibetans or “subversive” dissidents.

Even without the AUMF, the United States is hardly defenseless against the scourge of terrorism. Since the September 11 attacks nearly a dozen years ago, the United States has vastly enhanced its intelligence, surveillance, and prosecutorial capacities. And, should these tools prove insufficient to meet a particular threat, the right of self-defense still allows resort to military force.  However, because of the fundamental rights at stake, war should be an option of necessity, not a blank check written in advance, as some are proposing for a revamped AUMF. Now that that Afghan war is winding down, it is time to retire the AUMF altogether.

Drone Attacks

The problem of excessive reliance on the rules of war for using deadly force is illustrated by the use of drones to kill suspects. Drone attacks do not necessarily violate international human rights or humanitarian law. Indeed, given their ability to survey targets for extended periods and to fire with pinpoint accuracy, drones may pose less of a threat to civilian life than many alternatives. Still, their use has become controversial because of profound doubts about whether the Obama administration is abiding by the proper legal standards to deploy them. For example, killing Taliban and al-Qaeda forces fighting US troops may be lawful in a traditional armed conflict like the one still underway in Afghanistan, but what is the justification for killing people who are not part of these groups in places like Yemen and Somalia? And where does northwestern Pakistan fit?

The Obama administration has offered several possible legal rationales for drone strikes, but with little clarity about the concrete, practical limits, if any, under which it purports to operate. Beyond the risk to people in these countries who face possible wrongful targeting, the lack of clarity denies Congress and the American public the ability to exercise effective oversight. It also makes it easier for other countries that are rapidly developing their own drone programs to interpret that ambiguity in a way that is likely to lead to serious violations of international law.

One possible rationale for drone strikes comes from international humanitarian law governing armed hostilities. The Obama administration has formally dropped the Bush administration’s use of the phrase “global war on terror,” but its interpretation of the AUMF as authorizing “war with al Qaeda, the Taliban, and associated forces” looks very similar. This expansive view of the “war” currently facing the United States cries out for a clear statement of its limits. Does the United States really have the right to attack anyone it might characterize as a combatant against the United States anywhere in the world? We would hardly accept summary killing if the target were walking the streets of London or Paris.

John Brennan has said that as a matter of policy the administration has an “unqualified preference” to capture rather than kill all targets. But what are the factors leading the administration to decide that this preference can be met? Will it kill simply because convincing another government to arrest a suspect may be difficult? If so, how much political difficulty will it put up with before launching a drone attack?  Will it kill simply because of the risk involved if US soldiers were to attempt to arrest the suspect? If so, how much risk is the administration willing to accept before pulling the kill switch? The truth is that we have no idea. We don’t know whether these decisions are being made with appropriate care or not. We do know that other governments are likely to interpret this ambiguity in ways that are less respectful than we would want of the fundamental rights involved.

Moreover, away from a traditional battlefield, international human rights law requires the capture of enemies if possible. As noted, failing to apply that law encourages other governments to circumvent it as well—to summarily kill suspects simply by announcing a “war” against their group without there being a traditional armed conflict anywhere in the vicinity. Imagine the mayhem that Russia could cause by killing alleged Chechen “combatants” throughout Europe, or China by killing Uighur “combatants” in the United States. In neither case is the government where the suspect is located likely to cooperate with arrest efforts. And these precedential fears are real: China recently considered using a drone to kill a drug trafficker in Burma. //AT: Executive CP: Lack legal clarity is the issue

#### Drone proliferation is inevitable. Only effective norms will prevent it from eroding firebreaks against nuclear conflict.

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The race for drones

An important, but overlooked, strategic consequence of the Obama administration’s embrace of drones is that it has generated a new and dangerous arms race for this technology. At present, the use of lethal drones is seen as acceptable to US policy-makers because no other state possesses the ability to make highly sophisticated drones with the range, surveillance capability and lethality of those currently manufactured by the United States. Yet the rest of the world is not far behind. At least 76 countries have acquired UAV technology, including Russia, China, Pakistan and India.120 China is reported to have at least 25 separate drone systems currently in development.121 At present, there are 680 drone programmes in the world, an increase of over 400 since 2005.122 Many states and non-state actors hostile to the United States have begun to dabble in drone technology. Iran has created its own drone, dubbed the ‘Ambassador of Death’, which has a range of up to 600 miles.123 Iran has also allegedly supplied the Assad regime in Syria with drone technology.124 Hezbollah launched an Iranian-made drone into Israeli territory, where it was shot down by the Israeli air force in October 2012.125

A global arms race for drone technology is already under way. According to one estimate, global spending on drones is likely to be more than US$94 billion by 2021.126 One factor that is facilitating the spread of drones (particularly non-lethal drones) is their cost relative to other military purchases. The top-of-the line Predator or Reaper model costs approximately US$10.5 million each, compared to the US$150 million price tag of a single F-22 fighter jet.127 At that price, drone technology is already within the reach of most developed militaries, many of which will seek to buy drones from the US or another supplier. With demand growing, a number of states, including China and Israel, have begun the aggressive selling of drones, including attack drones, and Russia may also be moving into this market.128 Because of concerns that export restrictions are harming US competitiveness in the drones market, the Pentagon has granted approval for drone exports to 66 governments and is currently being lobbied to authorize sales to even more.129 The Obama administration has already authorized the sale of drones to the UK and Italy, but Pakistan, the UAE and Saudi Arabia have been refused drone technology by congressional restrictions.130 It is only a matter of time before another supplier steps in to offer the drone technology to countries prohibited by export controls from buying US drones. According to a study by the Teal Group, the US will account for 62 per cent of research and development spending and 55 per cent of procurement spending on drones by 2022.131 As the market expands, with new buyers and sellers, America’s ability to control the sale of drone technology will be diminished. It is likely that the US will retain a substantial qualitative advantage in drone technology for some time, but even that will fade as more suppliers offer drones that can match US capabilities.

The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, such as Russia and China, are beginning rapidly to develop and deploy drones for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own.

A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them.

Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144

Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 Given this precedent, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government.

One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147

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

Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus tilting the balance of power in authoritarian regimes even more decisively towards those who wield the coercive instruments of power and against those who dare to challenge them.

Conclusion

Even though it has now been confronted with blowback from drones in the failed Times Square bombing, the United States has yet to engage in a serious analysis of the strategic costs and consequences of its use of drones, both for its own security and for the rest of the world. Much of the debate over drones to date has focused on measuring body counts and carries the unspoken assumption that if drone strikes are efficient—that is, low cost and low risk for US personnel relative to the terrorists killed—then they must also be effective. This article has argued that such analyses are operating with an attenuated notion of effectiveness that discounts some of the other key dynamics—such as the corrosion of the perceived competence and legitimacy of governments where drone strikes take place, growing anti-Americanism and fresh recruitment to militant networks—that reveal the costs of drone warfare. In other words, the analysis of the effectiveness of drones takes into account only the ‘loss’ side of the ledger for the ‘bad guys’, without asking what America’s enemies gain by being subjected to a policy of constant surveillance and attack.

In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States.

Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156

A final, and crucial, step towards mitigating the strategic consequences of drones would be to develop internationally recognized standards and norms for their use and sale. It is not realistic to suggest that the US stop using its drones altogether, or to assume that other countries will accept a moratorium on buying and using drones. The genie is out of the bottle: drones will be a fact of life for years to come. What remains to be done is to ensure that their use and sale are transparent, regulated and consistent with internationally recognized human rights standards. The Obama administration has already begun to show some awareness that drones are dangerous if placed in the wrong hands. A recent New York Times report revealed that the Obama administration began to develop a secret drones ‘rulebook’ to govern their use if Mitt Romney were to be elected president.157

The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.

#### Geographically limiting the AUMF dials back an open ended war

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If the Administration’s use of force outside traditional battlefields is increasingly hard to justify under the AUMF, what should Congress do in response?

Congress could, of course, choose to do in 2013 what it refused to do in 2001, and broaden the existing AUMF to expressly permit the executive branch to use force to deter or preempt any future attacks or aggression towards the United States or U.S. interests. But such an expansion of the AUMF would give this and all future Administrations virtual carte blanche to wage perpetual war against an undefined and infinitely malleablelist of enemies, without any time limits or geographical restrictions.

In my view, this would amount to an unprecedented abdication of Congress’s constitutional responsibilities. In effect, Congress would be delegating its war powers almost wholesale to the executive branch. And while such a broad authorization to use military force could in theory be narrowed or withdrawn by a subsequent Congress, history suggests that the expansion of executive power tends to be a one-way ratchet: power, once ceded, is rarely regained.

Mr. Chairman, my guess is that few members of this committee would wish to contemplate such a broadened AUMF. What is more, it is worth emphasizing once again that while the Bush administration requested such open-ended authority to use force immediately after 9/11, Congress refused to provide it – even at a moment when the terrorist threat to the United States was manifestly more severe than it is now.

Today, the Obama Administration has not requested or suggested that it sees any need for an expanded AUMF. It would be utterly unprecedented for Congress to give the executive branch a statutory authorization to use force when the president has not requested it. Similar flaws characterize proposals to revise the AUMF to permit the president to use force against any organizations he may, in the future, specifically identify as posing a threat to the United States, based on criteria established by Congress. This is the proposal made by the Hoover Institute White Paper co-authored by my colleague Jack Goldsmith. He and his coauthors argue that Congress could pass a revised AUMF containing “general statutory criteria for presidential uses of force against new terrorist threats but requir[ing] the executive branch, through a robust administrative process, to identify particular groups that are covered by that authorization of force.”

While it would surely be useful for Congress to provide greater clarity on what, in its view, constitutes a threat sufficient to justify the open-ended use of military force -- amounting to a declaration of armed conflict-- such a revised AUMF would still effectively delegate to the president constitutional powers properly entrusted to Congress. Once delegated, these powers would be difficult for Congress to meaningfully oversee or dial back—and, once again, it is notable that the president has not requested such a power.

Mr. Chairman, Senator Inhofe, if what we’re concerned about is protecting the nation, there is no need for an expanded AUMF. With or without the 2001 AUMF, no one disputes 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.

If Congress chooses to revise the AUMF, it would be far more appropriate to limit it than to expand it. The 2001 AUMF established – at least as a matter of domestic U.S. statutory law-- an indefinitely continuing state of armed conflict between the United States, on the one hand, and those responsible for the 9/11 attacks, on the other hand. This has enabled the executive branch to argue (both as a matter of U.S. law and international law) that it is the principles of the law of armed conflict (LOAC) that should govern the U.S. use of armed force for counterterrorism purposes. But if the law of armed conflict is the applicable legal framework through which to understand the AUMF and through which to evaluate U.S. drone strikes outside of traditional battlefields, there are very few constraints on the U.S. use of armed force, and no obvious means to end the conflict.

Compared to other legal regimes, including both domestic law enforcement rules and the international law on self defense, the law of armed conflict is extremely permissive with regard to the use of armed force. The law of armed conflict permits the targeting both of enemy combatants and their co-belligerents. It also allows enemy combatants to be targeted by virtue of their status, rather than their activities: it is permissible to target enemy combatants while they are sleeping, for instance, even though they pose no “imminent’ threat while asleep, and the lowest-ranking enemy soldier can be targeted just as lawfully as the enemy’s senior-most military leaders. Indeed, uniformed cooks and clerks with no combat responsibilities can be targeted along with combat troops.

It is this highly permissive law of armed conflict framework that has enabled the executive branch to assert that “associates” of al Qaeda and the Taliban may be targeted beyond traditional battlefields, even though this expansion of the use of force beyond those responsible for 9/11was not contemplated by Congress in the 2001 AUMF. Similarly, it is the law of armed conflict framework that has permitted the executive branch to assert the authority to target ever lower-level terrorists and suspected “militants,” rather than restricting drone strikes to those targeting the most dangerous “senior” operatives. It is also the law of armed conflict framework that permits the executive branch to assert that it may target even those individuals and organizations that pose no imminent threat to the United States, in the normal sense of the word “imminent.”

But as the threat posed by Al Qaeda dissipates and U.S. troops withdraw from Afghanistan, it is appropriate for the U.S. to transition to a domestic (and international) legal framework in which there are tighter constraints on the use of military force. Congress can help this transition along by clarifying that the existing AUMF is not an open-ended mandate to wage a “forever war,” and requiring the president to satisfy more exacting legal standards before military force is authorized or used.

In the event that the president becomes aware of a threat so imminent and grave he cannot wait for Congressional authorization prior to using military force, there is no dispute that he can rely on his inherent constitutional powers to take appropriate action until the threat has been eliminated or until Congress can act. However, by expressly granting the power to declare war and associated powers to Congress, our Constitution presumes that the president will only in rare circumstances rely solely on his inherent executive powers to use military force. Historically, non-congressionally authorized uses of force by the president have generally been

reserved for rare and unusual circumstances, and this is as it should be.

Beyond these rare situations of extreme urgency, if the president believes that there is a sustained and intense threat to the United States, he can and should provide Congress with detailed information about the threat, and request that Congress authorize the use of military force to address the specific threat posed by a specific state or organization.

Congress should authorize the use of military force in these circumstances only -- there is no need for Congress to preemptively authorize the president to use military force indefinitely against unspecified threats that the president has not yet identified. And if Congress does authorize the use of military force at the president’s request, the force authorized should be carefully tailored to the specific threat. Furthermore, Congress should be explicit about whether an AUMF is acknowledging or authorizing an ongoing armed conflict, on the one hand, or whether it is simply authorizing the limited use of force for self-defense, on the other hand.

International law imposes criteria for the use of force in national self-defense that are far more stringent than the criteria for using force in the course of an armed conflict that is ongoing. Unlike the international law of armed conflict, the international law of self-defense permits states to use force only to respond to an armed attack or to prevent an imminent armed attack, and the use of force in self defense is subject to the principles of necessity and proportionality. Under self defense rules (unlike law of armed conflict rules) individuals who pose no imminent threat cannot be targeted, and inquiries into imminence, necessity and proportionality tend to restrict the use of force in self defense to strikes against those who— by virtue of their operational seniority or hostile activities- pose threats that are urgent and grave, rather than speculative, distant or minor.

For this reason, I believe that if Congress wishes to refine or clarify the AUMF, it should consider limiting the AUMF’s geographic scope, limiting its temporal duration, and limiting the authorized use of force to that which would be considered permissible self defense under international law, or all three.

Expressly limiting the AUMF’s geographic scope to Afghanistan and/or other areas in which U.S. troops on the ground are actively engaged in combat, for instance, would clarify that the ongoing armed conflict (and the applicability of the law of armed conflict) is limited to these more traditional battlefield situations. As noted above, such a geographical limitation would by no means undermine the president’s ability to use force to protect the United States from threats emanating from outside of the specified region. Such a geographical limitation would merely make it clear that any presidential desire to use force elsewhere would require him either to request an additional narrowly drawn congressional authorization to use force, or would require that any non-congressionally authorized use of force be justified -- constitutionally and internationally – on self defense grounds, by virtue of the gravity and imminence of a specific threat.

Limiting the AUMF’s temporal scope could be accomplished by adding a “sunset” provision to the AUMF. The current AUMF could be set to expire when U.S. troops cease combat operations in Afghanistan, for instance, or in 2015, whichever date comes first. Here again, such a limitation would not preclude the president from requesting an extension or a new authorization to use force, if clearly justified by specific circumstances, nor would it preclude the president from relying on his inherent constitutional powers if force becomes necessary to prevent an imminent attack.

Finally, the AUMF could be revised to clarify Congress’ view of the applicable legal framework. Congress could state explicitly that it authorizes the president to engage in an ongoing armed conflict within the borders of Afghanistan between the U.S. and Al Qaeda, the Taliban and their co-belligerents, but that it does not currently authorize the initiation or continuation of an armed conflict in any other place, and expects therefore that any U.S. military action elsewhere or against other actors shall be governed by principles of self-defense rather than by the law of armed conflict.

There are many possible ways for Congress to signal its commitment to preventing the AUMF from being used to justify a “forever war.” Each of these approaches has both benefits and drawbacks, and each would require significant further discussion. But I believe that Congress’ focus should be on ensuring that war remains an exceptional state of affairs, not the norm. At a minimum, this should preclude any Congressional expansion of existing AUMF authorities. Pg. 10-14

#### The plan legitimizes currents US policy and moderates TKs internationally

Daskal, ’13 [Jennifer C. Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center. THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE “HOT” CONFLICT ZONE. University of Pennsylvania Law Review, Vol. 161, No. 5. April 2013. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2049532>]

Additional work is needed to flesh out the precise standards for concluding that a threat justifies action in self-defense. But by applying the general approach described in Part III both to lethal targeting that takes place outside a zone of active hostilities in the course of an armed conflict and to killings undertaken in self-defense outside an armed conflict, states can begin to develop a clear and consistent set of practices to regulate targeted killings outside the conflict zone.214 Such an approach furthers the important goal of creating and protecting a stable set of expectations as to the rules that apply to these killings. The approach serves to limit the state’s use of premeditated lethal force to instances in which the targets pose a profound and ongoing threat that cannot be dealt with through other means. Finally, the framework protects against the perverse situation in which self-defense justifications are used as end-runs around the more restrictive set of law-of-war rules proposed here.

C. Implementation and Security Benefit

One might be skeptical that a nation like the United States would ever accept such constraints on the exercise of its authority. There are, however, several reasons why doing so would be in the United States’ best interest.

First, as described in Section II.B, the general framework is largely consistent with current U.S. practice since 2006. The United States has, as a matter of policy, adopted important limits on its use of out-of-battlefield targeting and law-of-war detention—suggesting an implicit recognition of the value and benefits of restraint.

Second, while the proposed substantive and procedural safeguards are more stringent than those that are currently being employed, their implementation will lead to increased restraint and enhanced legitimacy, which in turn inure to the state. As the U.S. Counterinsurgency Manual explains, it is impossible and self-defeating to attempt to capture or kill every potential insurgent: “Dynamic insurgencies can replace losses quickly. Skillful counterinsurgents must thus cut off the sources of that recuperative power” by increasing their own legitimacy at the expense of the insurgent’s legitimacy. 215 The Counterinsurgency Manual further notes, “[E]xcessive use of force, unlawful detention . . . and punishment without trial” comprise “illegitimate actions” that are ultimately “self-defeating.”216 In this vein, the Manual advocates moving “from combat operations to law enforcement as quickly as feasible.”217 In other words, the high profile and controversial nature of killings outside conflict zones and detention without charge can work to the advantage of terrorist groups and to the detriment of the state. Self-imposed limits on the use of detention without charge and targeted killing can yield legitimacy and security benefits.218

Third, limiting the exercise of these authorities outside zones of active hostilities better accommodates the demands of European allies, upon whose support the United States relies. As Brennan has emphasized: “The convergence of our legal views with those of our international partners matters. The effectiveness of our counterterrorism activities depends on the assistance and cooperation of our allies—who, in ways public and private, take great risks to aid us in this fight.”219 By placing self-imposed limits on its actions outside the “hot” battlefield, the United States will be in a better position to participate in the development of an international consensus as to the rules that ought to apply.

Fourth, such self-imposed restrictions are more consistent with the United States’ long-standing role as a champion of human rights and the rule of law—a role that becomes difficult for the United States to play when viewed as supporting broad-based law-of-war authority that gives it wide latitude to employ force as a first resort and bypass otherwise applicable human rights and domestic law enforcement norms.

Fifth, and critically, while the United States might be confident that it will exercise its authorities responsibly, it cannot assure that other states will follow suit. What is to prevent Russia, for example, from asserting that it is engaged in an armed conflict with Chechen rebels, and can, consistent with the law of war, kill or detain any person anywhere in the world which it deems to be a “functional member” of that rebel group? Or Turkey from doing so with respect to alleged “functional members” of Kurdish rebel groups? If such a theory ultimately resulted in the targeted killing or detaining without charge of an American citizen, the United States would have few principled grounds for objecting.

#### US normative leadership is key

Zenko 13 – Fellow in the Center for Preventive Action @ Council on Foreign Relations [Dr. Micah Zenko (PhD in political science from Brandeis University), “Reforming U.S. Drone Strike Policies,” Council on Foreign Relations, Council Special Report No. 65, January 2013

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space.

In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies. Pg. 22-25

## Europe Advantage

#### Advantage two is Transatlantic Relations –

**Current expansive legal regime triggers end of allied intel cooperation and dooms the Atlantic alliance**

Tom **Parker 12**, Former Policy Dir. for Terrorism, Counterterrorism and H. Rts. at Amnesty International, U.S. Tactics Threaten NATO, September 17, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>

A growing chasm in operational practice is opening up between the **U**nited **S**tates and its allies in NATO. This rift is **putting the Atlantic alliance at risk**. Yet no one in Washington seems to be paying attention. The escalating use of **u**nmanned **a**erial **v**ehicle**s** to **strike terrorist suspects** in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, **coupled** with the continued use of military commissions and **indefinite** **detention**, is driving a wedge between the **U**nited **S**tates and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now **forced to pay attention by their own courts**, which will **restrict cooperation in the future**.As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a **very different set of constraints than their U.S. counterparts**. The **E**uropean **C**ourt of **H**uman **R**ights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that **intel**ligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now **raises serious criminal liability issues** for the Europeans. The **U**nited **S**tates conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But **not one other member of NATO shares this legal analysis**, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic **intel**ligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an **obstacle to intelligence sharing**. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place **more** and more **constraints on working with U.S. forces**. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and **it may just be the Atlantic alliance**.

#### T-TIP is unique vulnerable. EU concerns about US counterterror strategy will get drawn into the negotiations

**Levanti 13** – Masters in European Public Affairs @ Maastricht University [[Natasha Marie Levanti](http://www.europeanpublicaffairs.eu/author/natashamarielevanti/) , “The Transatlantic Journey – TTIP & Cautious Optimism,” Bursting the Bubble, 2 September 2013, pg. http://www.europeanpublicaffairs.eu/the-transatlantic-journey-ttip-cautious-optimism/

Transatlantic economic cooperation has been something on the minds of those on both sides of the Atlantic before the recent economic woes. For instance, the Transatlantic Economic Council (TEC) was formed in 2007 to deal with increasing regulatory cooperation, as well as aid in addressing non-tariff barriers to transatlantic trade. With the economic situations in both Europe and the United States, starting in 2008 with the housing market collapse, the two entities were more concerned about their individual recovery than cooperation between the two. Yet at the same time, the situation proved for many individuals that now is the time to pursue closer transatlantic trade and investment cooperation.

Data protection and surveillance was recently brought to light as a major issue between the U.S., and the EU. One which almost delayed the transatlantic trade talks due to, most notably, German and French objections after knowledge of possible U.S. surveillance tactics came to light. After some U.S. promises, the trade talks will continue as planned, but this is a glimpse of the extensive number of policy differences which will require discussion during this process. The intention and common belief is that the trade talks will go smoothly, creating a broad spectrum trade relationship between two of the world’s largest regional economies. Yet, with recent events one would think the talks are already off to a rocky start. Therefore, it is important to be aware of some of the issues or perspectives concerning E.U. / U.S. relations before they formally appear in the trade talks that are underway. While not all of these will specifically be discussed as part of the trade negotiations, as is seen with the recent occurrence about data protections, some of these issues may in fact be drawn into the talks surrounding the greater European Union relations with the United States.

After recent events, Data Protection is definitely an issue. Data protection issues have been recurrent between the two since the terror attacks of 9/11, though most recently brought to light again due to accusations of the U.S. tapping into various E.U. offices. In order to prevent this recent development from completely derailing the upcoming trade negotiations, the United States has offered to create ‘working groups’ on the subject.

A hot topic recently has been Cybersecurity. This is mainly due to the court cases surrounding U.S. based companies such as Google and Facebook. Yet despite the fact that there are, and probably will remain to be differences in the regulation of cybersecurity, both sides do appear willing to increase cooperation on this front in order to help counter cybercrime.

The European Union Trading System (ETS) is also a touchy subject, a system put in place to have airlines purchase carbon allowances in an effort to offset CO2 emissions by encouraging airlines to invest in more environmentally friendly aircraft. The E.U., under pressure from international relations has stopped, at least for the moment, the system’s international implementation. Part of this ‘international’ pressure was undoubtedly derived from a piece of legislation passed by U.S. Congress in 2012 that ‘prohibits’ U.S. aircraft operators from actively engaging in the European ETS. This matter has currently been taken up by the U.N.’s International Civil Aviation Organization, which promised in November of 2012 that this would be an issue addressed within the coming year.

Periodically, officials from the U.S. will bring up European energy security as an issue, or at least something that, with deeper trade relations, is considered to be a U.S. interest. Part of this issue is the diversification of European energy resources, since currently it is fairly reliant on Russian supplies. Also of concern in the energy sector is the increase of sustainable energy and the consolidation of the EU’s internal energy market.

The fight against terror and the future of NATO are not likely to be discussed at the trade talks; however these two issues need to be considered when looking at the current level of general cooperation between Europe and the United States**.** Both have been led by joint U.S. / European forces and since September 11, 2001, there has most assuredly been a deeper level of communication and cooperation. This is linked in part to other issues such as cybersecurity and data protection, and was, at least in part, some of the reasoning behind recent developments in those two sectors.

#### T-TIP reduces US dependence on China. They can’t win offense because more US-European trade is inevitable.

**Kelly 13** - PhD Candidate with the Centre for the Study of European Governance @ University of Nottingham [Katrina Kelly, “An American perspective on the EU: The United States should work to ensure European stability,” London School of Economics, February 23, 2013, pg. http://blogs.lse.ac.uk/europpblog/2013/02/23/an-american-perspective-on-the-eu-the-united-states-should-work-to-ensure-european-stability/

Eurosceptiscm is gaining attention and support in the UK, and perhaps throughout Europe. Although this appears to be a European problem, any wavering in the stability of the European Union will have widespread effects on the global political economy. In this post I examine eurosceptiscm from an American standpoint, and assesses how and why the United States must continue, if not increase, its support for unity within the European Union.

The cold war officially ended in 1991. Despite this, the United States has remained skeptical that there is not, nor will be, a future military threat from the Eastern hemisphere. If this statement was once considered debatable, such doubts were surely quelled in the spring of 2006 when the United States began negotiations with both the Czech Republic and Poland to determine the best site for the future installation of an anti-ballistic missile site.

The United States has been an aggressive military nation since, or perhaps because of, its initial creation. We are a nation that profits and rarely shirks from military interference and must be realistic about future military engagements. The rationale for defending the EU solely for its appropriateness as a missile defense system against nations like Iran and North Korea only begins to touch on the benefits that the European Union provides for the United States. By combining 27 nations in unity the European Union provides the strongest ally in defense for the United States. We no longer have to address, nor stress, individual diplomatic relations in Europe, but can instead be sure of support from 27 of the world’s strongest nations. The benefits of having strong diplomatic ties with so many nations versus individual nations surely need no further explanation.

In the United Kingdom there is often a tendency to address only the western European nations when discussing the effectiveness of the European Union. In the United States, we must not adopt the British tendency to dismiss the Union as individual nations and study only the effectiveness of the EU as a whole. The Union is a federal state made up 27 member-states, 17 of which use the euro, and must constantly be examined as such. The benefits of the European Union lie not only in the diplomatic solidarity provided by a unity of such a large number of nations, but also in the economic stability provided by such a vast joining of nations.

Growing from the position as a strong “supporter” of European integration; the US/EU now holds the largest economic relationship in the world. In 2010 $1,537.4 billion flowed between the European Union and the United States. Today, the EU counts for 18.7% of exports from the US. Including services, and not including $131.9 billion of direct investments, the EU makes up more than 31% of all US trade relations. When looking at the increasing trend towards globalization, this relationship will only continue to grow as trade relations continue to dissolve international barriers. At least, this is one scenario. On the opposing side the relationship could completely dissolve, not through choice, but through inevitability.

The economic climate today has forced nations to reconsider their spending habits. In Europe, where the recession has caused some nations, specifically southern nations, to hover on the brink of bankruptcy, spending has been scrutinized to the point that each spending measure has become politicized. Eurosceptiscm, or criticism of the EU, is an act of opposition to the process of European integration. The idea centers on the thought that integration weakens the nation-state and claims that it is undemocratic (on the most-extreme side) or argues that the EU is too bureaucratic and costly (the most common argument). Whereas at one time the EU was considered a highly popular institution, today only 31.9% of citizens polled in a Eurobarometer test believe that the EU views the EU positively.

In the UK this view is especially strong. What used to be a notion of the Conservative Party is now a policy initiative that David Cameron recently delivered a speech on. In an age of increased austerity, Cameron has addressed the concern that the EU’s recent demand of a 6.8% increase in UK spending in the EU is unwarranted. What once seemed to be a mere financial grumbling of the Conservatives has become a popular prediction for some economists.

While the British are considering decreased relations with Europe, it may be useful to consider what increasing our relations with Europe could do for both the American and global economy. For the past year, a free-trade agreement between the US and Europe has become more attainable than any discussions in the past decade have alluded to. Both leaders of the private and public sector seem to agree that a free-trade agreement between the two continents could result in the stimulus that economists have been searching for since the 2008 crisis. Although tariffs between the US and EU are already low, the companies that do the most transatlantic trade argue that a decrease in the 3% average would mean huge savings for the firms.  As an agreement like this would boost the earnings of firms without have repercussions on the taxpayer, increasing support for EU/US relations to mature in a NAFTA-like agreement seems to be a feasible idea.

A free-trade agreement would not only act as a stimulus, but would help to weaken the growing American dependence on the Chinese. China has dominated the political debate in the US, which may or may not be accurate, but in reality trade with Europe is much larger than trade with China. Increasing our support for the EU would help to set a positive curve for demand and help to decrease the rate of acceleration of dependence on the Chinese. At the same time, Europe is considering the same type of agreement with China, as they recognize and need, the stimulus benefits from such a trade agreement. If we do not act then surely, as the past decade has shown, the Chinese will be quick to make an agreement with the EU. The Chinese know that fluctuation in the Yuan is always a concern and they would be quick to seal a deal that would help to increase stability in export and imports.

In order to benefit from such a trade agreement, a decision must be taken quickly on European and American trade relations. Without it the natural dissolution of trade barriers will allow this to happen inevitably, but in a slow process that would not act as a stimulus to growth on either side of the Atlantic.

#### Trade imbalance encourages China bashing that undermines US-China relations.

**Ramirez & Rong 12** – Professors of Economics @ George Mason University [Carlos D. Ramirez & Rong Rong “China Bashing: Does Trade Drive the “Bad” News about China in the USA?,” Review of International Economics, 20(2), 2012, pg. 350–363

Trade between the USA and China has been growing at a substantial rate over the last two decades (1990–2010). In 1990, total bilateral trade stood at US$20 billion. By 2008 this figure had risen to US$409 billion, implying an annual growth rate of over 4% in real terms—a rate faster than that of the US economy over the same period.1 It is very likely that Sino-American trade relations will continue to grow in the foreseeable future, although perhaps not at the same rate, given the gravity of the 2007–09 recession in the USA.

Despite the phenomenal rate of growth, trade relations between the two countries have been anything but smooth. Trade disputes have frequently surfaced, and over the years, as the size of the bilateral trade deficit has widened, economic relations have become tense: since 2005, the growing bilateral deficit has been linked to a variety of issues, including currency exchange manipulation, health and safety standards, and discriminatory regulation. Indeed, between 1990 and 2010, the tense trade relations¶ have lead to the introduction of numerous bills in Congress with explicit grievances against China.2

Intertwined with these trade-related complaints are other grievances that, though not necessarily directly related to trade issues, nonetheless form part of Sino-American relations. These other grievances relate to China’s political system, human rights, Tibet, repression, and so forth, and are frequently reported on in US media outlets, more often than not with a slant unfavorable to China.

The purpose of this paper is to investigate empirically the extent to which news reports of US grievances against China that are not necessarily directly related to trade (e.g. on the subject of human rights) are driven by cycles in the US–China trade deficit. Many scholars of Sino-American relations suspect that there is such a link. For example, these scholars see an ulterior motive behind the US preoccupation with China’s record on human rights (Wang, 2002).

To conduct this investigation, a China “bad news” index is constructed for the period January 1990–December 2008.3 To develop the index, a count is made of articles that talk about China in connection with one of the following grievance issues: “human rights,” “Tibet,” “child labor,” “democracy,” and “repression.”4 This paper then makes use of a parsimonious transfer model to examine the extent to which unexpected changes in the trade deficit explain movements in the bad news index. The results indicate that 3–4 months after an unexpected widening of the bilateral trade deficit, the frequency of bad news rises sharply, before subsiding in subsequent months. It is found that the likelihood of this relationship’s being purely coincidental is relatively low— about 1%. The relationship is robust to the choice of the model specification as well as to a variety of assumptions about the behavior of the lag structure.

Explaining the relationship between an unexpected widening of the bilateral trade deficit and an increased frequency of bad news is actually quite straightforward and does not rely on esoteric conspiracy theories. The timing of a decision to publish bad news about China can be explained by a publisher’s interest in readership and therefore in revenues. As the bilateral trade deficit unexpectedly widens, many US members of Congress respond to pressure groups by voicing their misgivings and trepidations on the subject. Indeed, this paper finds empirical support for this last argument. In particular, a positive and statistically significant correlation between the annual number of¶ Congressional hearings on China and the US–China bilateral trade deficit is detected. A regression analysis reveals that this relationship is robust to different functional forms.

The fact that Congress becomes more preoccupied about China, in combination with the fact that China is one of the largest US trading partners, makes China a more salient topic of discussion, so that the media find it more worthwhile to run stories about China with a negative slant. The old adage “there is no news like bad news” is illustrative in this regard. The notion that the US media, in deciding what is newsworthy, operate as profit-maximizing enterprises should not be controversial. Indeed, a substantial amount of research finds that this is the case.5

The results lend evidence to the proposition that the reporting of negative news about China may indeed be influenced by tensions arising from the widening bilateral trade deficit. This investigation gives empirical support to the suspicion of many Sino- American scholars that “China bashing” is, at least in part, a reaction to the widening US–China trade deficit. To the present authors’ knowledge, this is the first paper that empirically evaluates the linkage between US–China trade deficits and news— specifically bad news. Given that relations between the two countries are often at the¶ center of attention in US politics, it is believed that this is an important issue that needs to be elucidated. Pg. 350-351

#### Bashing risks nuclear war

**Gross 12** - Senior associate of Pacific Forum CSIS [Donald Gross (A former State Department official who developed diplomatic strategy toward East Asia. Counselor of the U.S. Arms Control and Disarmament Agency and director of legislative affairs at the National Security Council in the White House), “Quit bashing Beijing — China’s rise is good for America,” Salon, Monday, Oct 22, 2012 03:30 PM EDT, pg. http://www.salon.com/2012/10/22/quit\_bashing\_beijing\_chinas\_rise\_is\_good\_for\_america/

The routine scapegoating of China — which no less a figure than Henry Kissinger, the architect of U.S. rapprochement with Beijing in the 1970s, has called “[extremely deplorable](http://www.huffingtonpost.com/2012/10/03/henry-kissinger-2012-election_n_1937157.html)” — is targeted at vulnerable people who have suffered deeply from the effects of the economic recession.

It is easier for both campaigns to shift blame to foreigners than to remind voters that the global financial crisis began on Wall Street, not in Beijing.  Or to point out that trade with China – America’s third-largest export market – has helped pull the United States out of the global financial crisis.

Demagogic attacks by both campaigns on China are particularly dangerous since they play into often unspoken but prevalent anti-Asian racial prejudices in various parts of the United States.  American leaders should try to overcome the sad history of anti-Asian prejudice, not exploit it for political gain.

Perhaps the only consolation one can take in this season of China bashing is that it may finally force a badly needed national debate on U.S. policy toward China.

With respect to national security, the Obama administration benignly describes its large-scale military buildup in the Pacific as a “strategic pivot” to Asia or “rebalancing” U.S. forces.  Both terms are euphemisms that mask the reality of current policy.  We are now implementing an aggressive containment strategy that stimulates China’s military modernization and its own preparations for war.

Increased tensions with China could have a number of dire outcomes.  They could lead to serious military conflict over Taiwan’s political status, over whether Japan or China holds sovereignty to several uninhabitable islands in the East China Sea, or over the ownership of small islands and energy resources in the South China Sea.  In a worst case, those conflicts could escalate, by accident or design, to a nuclear exchange.

#### Security cooperation with Europe solves nuclear war and multiple transnational threats

**Stivachtis 10** – Director of International Studies Program @ Virginia Polytechnic Institute & State University [Dr. Yannis. A. Stivachtis (Professor of Poli Sci & Ph.D. in Politics & International Relations from Lancaster University), THE IMPERATIVE FOR TRANSATLANTIC COOPERATION,” The Research Institute for European and American Studies, 2010, pg. http://www.rieas.gr/research-areas/global-issues/transatlantic-studies/78.html]

There is no doubt that US-European relations are in a **period of transition**, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations.

The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, international terrorism, the nuclearization of **North Korea** and especially **Iran**, the proliferation of weapons of mass destruction (WMD), the transformation of **Russia** into a stable and cooperative member of the international community, the growing power of **China**, the political and economic transformation and integration of the **Caucasian** and **Central Asian** states, the integration and stabilization of the **Balkan** countries, the promotion of peace and stability in the **Mid**dle **East**, poverty, climate change, AIDS and other emergent problems and situations require further cooperation among countries at the regional, global and institutional levels.

Therefore, cooperation between the U.S. and Europe is more **imperative** than ever to deal effectively with these problems. It is fair to say that the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global.

The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense.

Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements.

There are two reasons for concern regarding the transatlantic rift. First, if European leaders conclude that Europe must become **counterweight** to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations.

If both sides would actively work to heal the breach, a new opportunity could be created. A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment.

There are strong reasons to believe that the security challenges facing the U.S. and Europe are more shared than divergent. The most dramatic case is terrorism. Closely related is the common interest in halting the spread of weapons of mass destruction and the nuclearization of Iran and North Korea. This commonality of threats is clearly perceived by publics on both sides of the Atlantic.

Actually, Americans and Europeans see eye to eye on more issues than one would expect from reading newspapers and magazines. But while elites on both sides of the Atlantic bemoan a largely illusory gap over the use of military force, biotechnology, and global warming, surveys of American and European public opinion highlight sharp differences over global leadership, defense spending, and the Middle East that threaten the future of the last century’s most successful alliance.

There are other important, shared interests as well. The transformation of Russia into a stable cooperative member of the international community is a priority both for the U.S. and Europe. They also have an interest in promoting a stable regime in Ukraine. It is necessary for the U.S. and EU to form a united front to meet these challenges because first, there is a risk that dangerous materials related to **WMD** will fall into the wrong hands; and second, the **spread of conflict** along those countries’ periphery could destabilize neighboring countries and provide **safe havens for terrorists** and other international criminal organizations. Likewise, in the Caucasus and Central Asia both sides share a stake in promoting political and economic transformation and integrating these states into larger communities such as the OSCE.

This would also minimize the risk of instability spreading and prevent those countries of becoming havens for international terrorists and criminals. Similarly, there is a common interest in integrating the Balkans politically and economically. Dealing with Iran, Iraq, Lebanon, and the Israeli-Palestinian conflict as well as other **political issues in the Mid**dle **East** are also of a great concern for both sides although the U.S. plays a dominant role in the region. Finally, US-European cooperation will be more effective in dealing with the **rising power of China** through engagement but also containment.

The post Iraq War realities have shown that it is no longer simply a question of adapting transatlantic institutions to new realities. The changing structure of relations between the U.S. and Europe implies that a new basis for the relationship must be found if transatlantic cooperation and partnership is to continue. The future course of relations will be **determined above all by U.S. policy towards Europe** and the Atlantic Alliance.

Wise policy can help forge a new, more enduring strategic partnership, through which the two sides of the Atlantic cooperate in meeting the many major challenges and opportunities of the evolving world together. But a policy that **takes Europe for granted** and routinely **ignores or** even **belittles Europe**an concerns, may force Europe to conclude that the costs of continued alliance outweigh its benefits.

#### AND, statutory codification of Obama’s policy solves. Failure allows the issue to quickly fester and undermine relations

**Dworkin 13** - Senior policy fellow @ European Council on Foreign Relations [Anthony Dworkin (Web editor of the Crimes of War Project which a site dedicated to raising public awareness of the laws of war), “Actually, drones worry Europe more than spying,” CNN’s Global Public Square, July 17th, 2013, 10:31 AM ET, pg. http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/

Relations between the United States and Europe hit a low point following [revelations](http://www.cnn.com/2013/06/30/world/europe/eu-nsa/index.html) that Washington was spying on European Union buildings and harvesting foreign email messages.

Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the [recent killing](http://www.reuters.com/article/2013/07/03/us-pakistan-drone-attack-idUSBRE96205820130703) of at least 17 people in Pakistan are therefore only likely to heighten European unease.

In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change.

Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level.

But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim.

However, the changes to American policy that President Obama [announced](http://www.theatlantic.com/politics/archive/2013/05/what-mattered-in-obamas-speech-today-ending-the-open-ended-war-on-terror/276208/) in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time.

European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks.

First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States.

Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes.

But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely.

#### The plan is key – creates legal convergence

**Daskal 12** – Professor and Fellow in the Center on National Security and the Law @ Georgetown University Law Center [Jennifer C. Daskal (Former counsel to the Assistant Attorney General for National Security @ Department of Justice (DOJ). Served on the joint Attorney General and Secretary of Defense-led Detention Policy Task Force and provided legal advice on detention, surveillance, and interrogation practice. Former senior counterterrorism counsel @ Human Rights Watch. JD from Harvard University), “The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone,” University of Pennsylvania Law Review, Vol. 161, May 2012

Second, limiting the exercise of these authorities outside zones of active hostilities better accommodates the demands of European allies, whose support the United States relies upon. As John Brennan has emphasized, “[t]he convergence of our legal views with those of our international partners matters. The effectiveness of our counterterrorism activities depends on the assistance and cooperation of our allies – who, in ways public and private, take great risks to aid us in this fight. But their participation must be consistent with their laws, including their interpretation of international law.” Key European partners have long viewed the conflict with al Qaeda as limited to the hot battlefield of Afghanistan and northwest Pakistan (and formerly Iraq). According to this view, use of force outside such areas is only permitted under a self-defense framework in response to those who pose an “imminent” threat, and law of war detentions are arguably prohibited altogether.98 By accepting self-imposed limits on its out-of-hot battlefield actions, the United States better positions itself to develop international consensus as to the rules that ought to apply.

## Plan

**The United States federal government should statutorily clarify that its authorization to use force is for zones of active hostilities**

#### The executive will comply. Obama is asking for the plan

**Brown 13** [Hayes Brown, "Obama Lays Out Plan To End The War Against Al Qaeda,” Think Progress, May 23, 2013 at 3:52 pm, pg . http://thinkprogress.org/security/2013/05/23/2055331/obama-aumf-repeal/

President Obama delivered a wide ranging speech on Thursday, laying out his vision for countering terrorism in his second term, including announcements on the use of drones, the future closure of the military prison at Guantanamo Bay, and the eventual end of the long war against al Qaeda.

Most importantly, Obama announced that he intends to work closely with Congress to “refine, and ultimately repeal” the 2001 Authorization for the Use of Military Force (AUMF). Passed in the aftermath of 9/11, the AUMF gave the president broad authority to carry out military action against “those nations, organizations, or persons” who “planned, authorized, committed, or aided” the 2001 attack.

“Groups like [Al Qaeda in Arabian Peninsula] must be dealt with, but in the years to come, not every collection of thugs that labels themselves al Qaeda will pose a credible threat to the United States,” Obama said. “Unless we discipline our thinking and our actions, we may be drawn into more wars we don’t need to fight, or continue to grant presidents unbound powers more suited for traditional armed conflicts between nation states.”

Congress recently began its first set of hearings into possible revisions of the AUMF, which is about to enter its twelfth year in force. Currently, there are competing proposals in the Senate and House to either repeal the authorization in its entirety or revise it to allow for the use of force beyond the perpetrators of 9/11. Obama, however, refused to go along with any broadening of the AUMF, saying he “will not sign laws designed to expand this mandate further.”

CAP expert Ken Gude hailed Obama’s commitment to repealing the AUMF as the “beginning of the end” of the war against al Qaeda. While remnants of al Qaeda and new groups remain threats, “the extraordinary military response that followed the attacks of 9/11 embodied in the 2001 Authorization to Use Military Force can now be wound down, the permanent war footing retired, and we can rebalance our efforts to fight terrorism to rely more on our effective and efficient law enforcement and intelligence agencies,” Gude told ThinkProgress.

In his speech today, Obama continued: “Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That’s what history advises. That’s what our democracy demands.” The clear declaration builds upon previous statements from former members of Obama’s administration that the battle against al Qaeda cannot go on indefinitely.

That desire to eventually repeal the AUMF makes up the cornerstone of the counterterrorism strategy Obama laid out today. The current Obama administration approach to conducting targeting killing and other portions that strategy were only just recently codified, as Obama acknowledged in his remarks. In it, the use of drone strikes and other applications of force will be streamlined to a more limited set of targets, with a higher level of scrutiny applied when determining those targets, while a renewed focus on the other elements of preventing terrorism will be implemented.

#### Congress cabins executive military discretion.

**Huq 12** - Professor of Law @ University of Chicago [Aziz Z. Huq, “Review: Binding the Executive (by Law or by Politics),” University of Chicago Law Review, 79 U. Chi. L. Rev. 777, Spring 2012

B. The Executive Unbound paints an image of executive discretion almost or completely unbridled by law or coequal branch. But PV also concede that "the president can exert control only in certain [policy] areas" (p 59). n51 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 authority to leverage ambiguities in statutory text into warrants for discretionary action. n52 Rather, my more limited aspiration here is to  [\*791]  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. n53 President Obama came into office, for example, promising health care reform, a cap-and-trade solution to climate change, and major immigration reform. n54 President George W. Bush came to the White House committed to educational reform, social security reform, and a new approach to energy issues. n55 One way of assessing presidential influence is by examining how such presidential agendas fare, and asking whether 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 others 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." n56 Even in the midst of economic crisis, Congress successfully resisted New Deal initiatives from the White House. This historical evidence suggests that the diminished success of presidential agendas cannot be  [\*792] ascribed solely to the narrowing scope of congressional attention in recent decades; it is an 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 first-term agenda in 1981-84, and a quarter smaller than his father's first-term agenda in 1989-92." n57 The White House not only cannot always get what it wants from Congress but has substantially downsized its policy ambitions.

Supplementing this evidence of presidential weakness are studies of the determinants of White House success on Capitol Hill. These find that "presidency-centered explanations" do little work. n58 Presidents' legislative agendas succeed not because of the intrinsic institutional characteristics of the executive branch, but rather as a consequence of favorable political conditions within the momentarily dominant legislative coalition. n59 Again, correlational evidence suggests that institutions and the legal frameworks making up the statutory status quo ante play a role in delimiting executive discretion.

But attention to the White House's legislative agenda may be misleading. Perhaps the dwindling of legislative agendas is offset by newly minted technologies of direct "presidential administration." n60 The original advocate of this governance strategy has conceded, however, that presidential administration is available only when "Congress has left [] power in presidential hands." n61 Where there is no plausible statutory or constitutional foundation for a White House agenda-item, or where there is a perceived need for additional congressional action in the form of new appropriations or the like, Presidents cannot act alone.

The notion of a legislatively constrained presidential agenda is consistent with two canonical political science accounts of the contemporary presidency. Richard Neustadt, perhaps the most influential presidential scholar of the twentieth century,  [\*793] encapsulated the Constitution's system as one of "separated institutions sharing powers" in which "a President will often be unable to obtain congressional action on his terms or even ... halt action he opposes." n62 Writing in 1990, Neustadt concluded that the President "still shares most of his authority with others and is no more free than formerly to rule by command." n63 Neustadt's finding of a weak presidency rested in part on his discernment of political constraints. But he also stressed "Congress and its key committees" as necessary partners in the production of policy. n64 Neustadt thus identified institutions, as much as public opinion, as impediments to the White House.

In harmony with Neustadt's view, Stephen Skowronek's magisterial survey of presidential leadership suggests Presidents are not free to ignore or sideline Congress. Skowronek points out that "it is not just that the presidency has gradually become more powerful and independent over the course of American history, but that the institutions and interests surrounding it have as well." n65 His complex argument (much simplified) situates presidential authority within a cyclical pattern of political "regime" creation, maintenance, and disintegration. n66 In this cycle, the presidency is primarily a destructive force. Chief executives affiliated with past regimes have fewer tools at their disposal than oppositional leaders who "come[] to power with a measure of independence from established commitments and can more easily justify the disruptions that attend the exercise of power." n67 Executive discretion, in this account, is a function of a President's location in the cycle of historical change. It is not a necessary attribute of the institution.

Skowronek also argues that Congress maintains and enforces prior regimes' policy commitments against presidential innovation. He finds congressional abdication to be "virtually unknown to the modern presidency." n68 To the contrary, Skowronek contends, Congress has become more effective over time. Thomas Jefferson in the early 1800s, working with an "organizationally inchoate and politically malleable" legislature, had greater discretion than Ronald  [\*794]  Reagan in the 1980s. n69 By President Reagan's time in office, the "governmental norms and institutional modalities" used to resist presidential initiatives had secured sufficient political capital to become resilient to presidential efforts at change. n70 Until then, political movements proposing greater presidential authority also tended to advocate "some new mechanisms designed to hold [presidential] powers to account." n71 Skowronek provides a useful corrective to the assumption that historical change occurs only at one end of Pennsylvania Avenue. Echoing Neustadt's analysis, his bottom line is that the contemporary executive remains "constrained by Congress" n72 in ways that meaningfully hinder achievement of presidential goals. n73

Nevertheless, neither Neustadt nor Skowronek articulate the precise role of law in congressional obstruction of presidential goals. Perhaps observed executive reticence is merely a result of political calculations, consistent with PV's core hypothesis. But the evidence that the limits on executive authority tend to arise when Congress or existing law preclude a discretionary act suggests that institutions and statutes do play a meaningful role. Such correlations do not, however, establish the precise mechanisms whereby laws and institutions impose frictions on the employment of executive discretion.

Alternatively, perhaps the Neustadt and Skowronek accounts can be explained solely in terms of Congress's negative veto in bicameralism and presentment, which is anticipated by the White House and so delimits the scope of presidential agendas. This would suggest that Congress's power is asymmetrical: it can block some  [\*795] executive initiatives but do little midstream to regulate the use of discretion powers already possessed by the presidency. Consistent with this interpretation, The Executive Unbound stresses the failure of framework laws passed after the Nixon presidency to regulate war and emergency powers (pp 86-87). n74 If the executive can so easily find work-arounds, PV explain, it follows that Congress also has less incentive to pass such laws. In the long term, the incentives for Congress to enact statutory limits on presidential authorities will accordingly atrophy.

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. n75 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. n76 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. n77 Other recent landmark security reforms, such as a 2004  [\*796]  statute restructuring the intelligence community, n78 also had only lukewarm Oval Office support. n79 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. n80

The same point emerges more forcefully from a review of our "fiscal constitution." n81 Article I, § 8 of the Constitution vests Congress with power to "lay and collect Taxes" 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." n82 Congress has enacted several framework statutes to effectuate the "powerful limitations" implicit in these clauses. n83 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. n84

Three statutes merit attention here. First, the Miscellaneous Receipts Act of 1849 n85 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 treasury of the  [\*797] United States." n86 It ensures that the executive cannot establish off-balance-sheet revenue streams as a basis for independent policy making. Second, the Anti-Deficiency Act, n87 which was first enacted in 1870 and then amended in 1906, n88 had the effect of cementing the principle of congressional appropriations control. n89 With civil and criminal sanctions, it prohibits "unfunded monetary liabilities beyond the amounts Congress has appropriated," and bars "the borrowing of funds by federal agencies ... in anticipation of future appropriations." n90 Finally, the Congressional Budget and Impoundment Control Act of 1974 n91 (Impoundment Act) channels presidential authority to decline to expend appropriated funds. n92 It responded to President Nixon's expansive use of impoundment. n93 Congress had no trouble rejecting Nixon's claims despite a long history of such impoundments. n94 While the Miscellaneous Receipts Act and the Anti-Deficiency Act appear to have succeeded, the Impoundment Act has a more mixed record. While the Supreme Court endorsed legislative constraints on presidential impoundment, n95 President Gerald Ford increased impoundments through creative interpretations of the law. n96 But two decades later, Congress concluded the executive had too little discretionary spending authority and expanded it by statute. n97

 [\*798]  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 litigation 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. n98 Although the resulting 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. n99

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. n100

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  [\*799] 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 n101 and agencies jawbone their legislative masters into new funding. n102 If Congress and statutory frameworks seem to have such nontrivial effects on the executive's choice set, this at minimum implies 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.

## Global battlefield again

Unrestricted drone use causes nuclear war in the Caucuses

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Armenia and Azerbaijan could soon be at war if drone proliferation on both sides of the border continues. In a region where a fragile peace holds over three frozen conflicts, the nations of the South Caucasus are buzzing with drones they use to probe one another’s defenses and spy on disputed territories. The region is also host to strategic oil and gas pipelines and a tangled web of alliances and precious resources that observers say threaten to quickly escalate the border skirmishes and airspace violations to a wider regional conflict triggered by Armenia and Azerbaijan that could potentially pull in Israel, Russia and Iran. To some extent, these countries are already being pulled towards conflict. Last September, Armenia shot down an Israeli-made Azerbaijani drone over Nagorno-Karabakh and the government claims that drones have been spotted ahead of recent incursions by Azerbaijani troops into Armenian-held territory. Richard Giragosian, director of the Regional Studies Center in Yerevan, said in a briefing that attacks this summer showed that Azerbaijan is eager to “play with its new toys” and its forces showed “impressive tactical and operational improvement.” The International Crisis Group warned that as the tit-for-tat incidents become more deadly, “there is a growing risk that the increasing frontline tensions could lead to an accidental war.” “Everyone is now saying that the war is coming. We know that it could start at any moment.” ~Grush Agbaryan, mayor of Voskepar With this in mind, the UN and the Organization for Security and Co-operation in Europe (OSCE) have long imposed a non-binding arms embargo on both countries, and both are under a de facto arms ban from the United States. But, according to the Stockholm International Peace Research Institute (SIPRI), this has not stopped Israel and Russia from selling to them. After fighting a bloody war in the early 1990s over the disputed territory of Nagorno-Karabakh, Armenia and Azerbaijan have been locked in a stalemate with an oft-violated ceasefire holding a tenuous peace between them. And drones are the latest addition to the battlefield. In March, Azerbaijan signed a $1.6 billion arms deal with Israel, which consisted largely of advanced drones and an air defense system. Through this and other deals, Azerbaijan is currently amassing a squadron of over 100 drones from all three of Israel’s top defense manufacturers. Armenia, meanwhile, employs only a small number of domestically produced models. Intelligence gathering is just one use for drones, which are also used to spot targets for artillery, and, if armed, strike targets themselves. Armenian and Azerbaijani forces routinely snipe and engage one another along the front, each typically blaming the other for violating the ceasefire. At least 60 people have been killed in ceasefire violations in the last two years, and the Brussels-based International Crisis Group claimed in a report published in February 2011 that the sporadic violence has claimed hundreds of lives. “Each (Armenia and Azerbaijan) is apparently using the clashes and the threat of a new war to pressure its opponent at the negotiations table, while also preparing for the possibility of a full-scale conflict in the event of a complete breakdown in the peace talks,” the report said. Alexander Iskandaryan, director of the Caucasus Institute in the Armenian capital, Yerevan, said that the arms buildup on both sides makes the situation more dangerous but also said that the clashes are calculated actions, with higher death tolls becoming a negotiating tactic. “This isn’t Somalia or Afghanistan. These aren’t independent units. The Armenian, Azerbaijani and Karabakh armed forces have a rigid chain of command so it’s not a question of a sergeant or a lieutenant randomly giving the order to open fire. These are absolutely synchronized political attacks,” Iskandaryan said. The deadliest recent uptick in violence along the Armenian-Azerbaijani border and the line of contact around Karabakh came in early June as US Secretary of State Hillary Clinton was on a visit to the region. While death tolls varied, at least two dozen soldiers were killed or wounded in a series of shootouts along the front. The year before, at least four Armenian soldiers were killed in an alleged border incursion by Azerbaijani troops one day after a peace summit between the Armenian, Azerbaijani and Russian presidents in St. Petersburg, Russia. “No one slept for two or three days [during the June skirmishes],” said Grush Agbaryan, the mayor of the border village of Voskepar for a total of 27 years off and on over the past three decades. “Everyone is now saying that the war is coming. We know that it could start at any moment." Azerbaijan refused to issue accreditation to GlobalPost’s correspondent to enter the country to report on the shootings and Azerbaijan’s military modernization. Flush with cash from energy exports, Azerbaijan has increased its annual defense budget from an estimated $160 million in 2003 to $3.6 billion in 2012. SIPRI said in a report that largely as a result of its blockbuster drone deal with Israel, Azerbaijan’s defense budget jumped 88 percent this year — the biggest military spending increase in the world. Israel has long used arms deals to gain strategic leverage over its rivals in the region. Although difficult to confirm, many security analysts believe Israel’s deals with Russia have played heavily into Moscow’s suspension of a series of contracts with Iran and Syria that would have provided them with more advanced air defense systems and fighter jets. Stephen Blank, a research professor at the United States Army War College, said that preventing arms supplies to Syria and Iran — particularly Russian S-300 air defense systems — has been among Israel’s top goals with the deals. “There’s always a quid pro quo,” Blank said. “Nobody sells arms just for cash.” In Azerbaijan in particular, Israel has traded its highly demanded drone technology for intelligence arrangements and covert footholds against Iran. In a January 2009 US diplomatic cable released by WikiLeaks, a US diplomat reported that in a closed-door conversation, Azerbaijani President Ilham Aliyev compared his country’s relationship with Israel to an iceberg — nine-tenths of it is below the surface. Although the Jewish state and Azerbaijan, a conservative Muslim country, may seem like an odd couple, the cable asserts, “Each country finds it easy to identify with the other’s geopolitical difficulties, and both rank Iran as an existential security threat.” Quarrels between Azerbaijan and Iran run the gamut of territorial, religious and geo-political disputes and Tehran has repeatedly threatened to “destroy” the country over its support for secular governance and NATO integration. In the end, “Israel’s main goal is to preserve Azerbaijan as an ally against Iran, a platform for reconnaissance of that country and as a market for military hardware,” the diplomatic cable reads. But, while these ties had indeed remained below the surface for most of the past decade, a series of leaks this year exposed the extent of their cooperation as Israel ramped up its covert war with the Islamic Republic. In February, the Times of London quoted a source the publication said was an active Mossad agent in Azerbaijan as saying the country was “ground zero for intelligence work.” This came amid accusations from Tehran that Azerbaijan had aided Israeli agents in assassinating an Iranian nuclear scientist in January. Then, just as Baku had begun to cool tensions with the Islamic Republic, Foreign Policy magazine published an article citing Washington intelligence officials who claimed that Israel had signed agreements to use Azerbaijani airfields as a part of a potential bombing campaign against Iran’s nuclear sites. Baku strongly denied the claims, but in September, Azerbaijani officials and military sources told Reuters that the country would figure in Israel’s contingencies for a potential attack against Iran. "Israel has a problem in that if it is going to bomb Iran, its nuclear sites, it lacks refueling," Rasim Musabayov, a member of the Azerbiajani parliamentary foreign relations committee told Reuters. “I think their plan includes some use of Azerbaijan access. We have (bases) fully equipped with modern navigation, anti-aircraft defenses and personnel trained by Americans and if necessary they can be used without any preparations." He went on to say that the drones Israel sold to Azerbaijan allow it to “indirectly watch what's happening in Iran.” According to SIPRI, Azerbaijan had acquired about 30 drones from Israeli firms Aeronautics Ltd. and Elbit Systems by the end of 2011, including at least 25 medium-sized Hermes-450 and Aerostar drones. In October 2011, Azerbaijan signed a deal to license and domestically produce an additional 60 Aerostar and Orbiter 2M drones. Its most recent purchase from Israel Aeronautics Industries (IAI) in March reportedly included 10 high altitude Heron-TP drones — the most advanced Israeli drone in service — according to Oxford Analytica. Collectively, these purchases have netted Azerbaijan 50 or more drones that are similar in class, size and capabilities to American Predator and Reaper-type drones, which are the workhorses of the United States’ campaign of drone strikes in Pakistan and Yemen. Although Israel may have sold the drones to Azerbaijan with Iran in mind, Baku has said publicly that it intends to use its new hardware to retake territory it lost to Armenia. So far, Azerbaijan’s drone fleet is not armed, but industry experts say the models it employs could carry munitions and be programmed to strike targets. Drones are a tempting tool to use in frozen conflicts, because, while their presence raises tensions, international law remains vague at best on the legality of using them. In 2008, several Georgian drones were shot down over its rebel region of Abkhazia. A UN investigation found that at least one of the drones was downed by a fighter jet from Russia, which maintained a peacekeeping presence in the territory. While it was ruled that Russia violated the terms of the ceasefire by entering aircraft into the conflict zone, Georgia also violated the ceasefire for sending the drone on a “military operation” into the conflict zone. The incident spiked tensions between Russia and Georgia, both of which saw it as evidence the other was preparing to attack. Three months later, they fought a brief, but destructive war that killed hundreds. The legality of drones in Nagorno-Karabakh is even less clear because the conflict was stopped in 1994 by a simple ceasefire that halted hostilities but did not stipulate a withdrawal of military forces from the area. Furthermore, analysts believe that all-out war between Armenia and Azerbaijan would be longer and more difficult to contain than the five-day Russian-Georgian conflict. While Russia was able to quickly rout the Georgian army with a much superior force, analysts say that Armenia and Azerbaijan are much more evenly matched and therefore the conflict would be prolonged and costly in lives and resources. Blank said that renewed war would be “a very catastrophic event” with “a recipe for a very quick escalation to the international level.” Armenia is militarily allied with Russia and hosts a base of 5,000 Russian troops on its territory. After the summer’s border clashes, Russia announced it was stepping up its patrols of Armenian airspace by 20 percent. Iran also supports Armenia and has important business ties in the country, which analysts say Tehran uses as a “proxy” to circumvent international sanctions. Blank said Israel has made a risky move by supplying Azerbaijan with drones and other high tech equipment, given the tenuous balance of power between the heavily fortified Armenian positions and the more numerous and technologically superior Azerbaijani forces. If ignited, he said, “[an Armenian-Azerbaijani war] will not be small. That’s the one thing I’m sure of.”

Largest and most likely impact

Blank 2k

(Stephen, Prof. Research at Strategic Studies Inst. @ US Army War College, “U.S. Military Engagement with Transcaucasia and Central Asia”, www.strategicstudiesinstitute.army.mil/pdffiles/pub113.pdf)

Washington’s burgeoning military-political-economic involvement seeks, inter alia, to demonstrate the U.S. ability to project military power even into this region or for that matter, into Ukraine where NATO recently held exercises that clearly originated as an anti-Russian scenario. Secretary of Defense William Cohen has discussed strengthening U.S.-Azerbaijani military cooperation and even training the Azerbaijani army, certainly alarming Armenia and Russia.69 And Washington is also training Georgia’s new Coast Guard. 70 However, Washington’s well-known ambivalence about committing force to Third World ethnopolitical conflicts suggests that U.S. military power will not be easily committed to saving its economic investment. But this ambivalence about committing forces and the dangerous situation,

 where Turkey is allied to Azerbaijan and Armenia is bound to Russia, create the potential for wider and more protracted regional conflicts among local forces. In that connection, Azerbaijan and Georgia’s growing efforts to secure NATO’s lasting involvement in the region, coupled with Russia’s determination to exclude other rivals, foster a polarization along very traditional lines.71 In 1993 Moscow even threatened World War III to deter Turkish intervention on behalf of Azerbaijan. Yet the new Russo-Armenian Treaty and Azeri-Turkish treaty suggest that Russia and Turkey **could be dragged into a confrontation to rescue their allies** from defeat. 72 Thus many of the conditions for conventional war or protracted ethnic conflict in which third parties intervene are present in the Transcaucasus. For example, many Third World conflicts generated by local structural factors have a great potential for unintended escalation. Big powers often feel obliged to rescue their lesser proteges and proxies. One or another big power may fail to grasp the other side’s stakes since interests here are not as clear as in Europe. Hence commitments involving the use of nuclear weapons to prevent a client’s defeat are not as well established or apparent. Clarity about the nature of the threat could prevent the kind of rapid and almost uncontrolled escalation we saw in 1993 when Turkish noises about intervening on behalf of Azerbaijan led Russian leaders to threaten a nuclear war in that case. 73 Precisely because Turkey is a NATO ally, Russian nuclear threats **could trigger a potential nuclear blow (**not a small possibility given the erratic nature of Russia’s declared nuclear strategies). The real threat of a Russian nuclear strike against Turkey to defend Moscow’s interests and forces in the Transcaucasus makes the danger of major war there higher than almost everywhere else. As Richard Betts has observed, The greatest danger lies in areas where (1) the potential for serious instability is high; (2) both superpowers perceive vital interests; (3) neither recognizes that the other’s perceived interest or commitment is as great as its own; (4) both have the capability to inject conventional forces; and, (5) neither has willing proxies capable of settling the situation.74 that preclude its easy attainment of regional hegemony. And even the perceptions of waning power are difficult to accept and translate into Russian policy. In many cases, Russia still has not truly or fully accepted how limited its capabilities for securing its vital interests are. 76 While this hardly means that Russia can succeed at will regionally, it does mean that for any regional balance, either on energy or other major security issues, to be realized, someone else must lend power to the smaller Caspian littoral states to anchor that balance. Whoever effects that balance must be willing to play a protracted and potentially even military role in the region for a long time and risk the kind of conflict which Betts described. There is little to suggest that the United States can or will play this role, yet that is what we are now attempting to do. This suggests that ultimately its bluff can be called. That is, Russia could sabotage many if not all of the forthcoming energy projects by relatively simple and tested means and there is not much we could do absent a strong and lasting regional commitment.

# 2AC

## T

### A2 restrict = eliminate

We meet – the plan eliminates authority outside hot battlefields. Daskal says policy exists, not statuatory restrictions.

Daskal 13 - Fellow and Adjunct Professor, Georgetown Center on National Security and the Law

University of Penn L. Rev., THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, April, 2013, 161 U. Pa. L. Rev. 1165, Lexis

Of course, there are a number of possible ways to define the threat. For lethal targeting, I suggest two such categories: (1) those involved in the active planning or operationalization of specific, imminent, and externally focused attacks, regardless of their relative hierarchical position in the organization; and (2) operational leaders who present a significant, ongoing, and externally focused threat, even if they are not implicated in the planning of a specific, imminent attack. n141 The first definition is a conduct-based test that prohibits [\*1211] the use of lethal force absent a specific, imminent, and significant threat. The second definition encompasses those who pose a continuous and significant threat given their leadership roles within an organization. n142 Whether an individual meets this threat requirement depends on the individual's role within the organization, his capacity to operationalize an attack, and the degree to which the threat is externally focused. For example, an al Shabaab operational leader, whose attacks are focused on the internal conflict between al Shabaab and Somalia's Transnational Federal Government, would not qualify as a legitimate target in the separate conflict between the United States and al Qaeda, even if he had demonstrated associations with al Qaeda. He might, however, be a legitimate target if he were involved in the planning of externally focused attacks and had demonstrated the capacity and will to operationalize the attacks. n143¶ Such restrictions serve the important purpose of limiting state authority to target and kill to instances in which the individual poses an active, ongoing, and significant threat. The low-level foot soldier who is found thousands of miles from the hot conflict zone could not be targeted unless involved in the planning or preparation of a specific, imminent attack. Even mid-level operatives, such as the prototypical terrorist recruiter, would be off-limits, unless they were plotting, or recruiting for, a specific, imminent attack. n144 Such recruiters could, however, be prosecuted for providing material support to a terrorist organization. n145

#### Statuatory restriction is five things including limiting authority – prefer contextual ev

KAISER 80 The Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

## Self restraint counterplan

### 2AC

#### CP links to politics

MILES 1 – 15 – 13 editor at PolicyMic. He has worked for media outlets including the Associated Press and the Stars and Stripes [Chris Miles, An Obama Gun Control Executive Order Could Sink the President's Favorability, <http://www.policymic.com/articles/23296/an-obama-gun-control-executive-order-could-sink-the-president-s-favorability>]

Could Obama be wasting valuable political capital by issuing an executive order on gun control?

If Obama acts unilaterally on gun control, the event will likely fire-up conservatives and pro-gun advocates, calling out the president for failing to use the legislative process.

The conservative Drudge Report compared executive action to dictators Hitler and Stalin.

The backlash could be immense and could cost Obama leverage in future political battles, most notably the coming debt ceiling fight next month.

#### Congressional restriction key to credibility and signal

Kenneth Anderson, Professor of Law, Washington College of Law, American University, and Research Fellow, The Hoover Institution, Stanford University and Member of its Task Force on National Security and the Law, 5/11/2009, Targeted Killing in U.S. Counterterrorism Strategy and Law, http://www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\_counterterrorism\_anderson.pdf

What Should Congress Do?

Does this analysis offer any practical policy prescriptions for Congress and the administration? The problem is not so much a need for new legislation to create new structures or new policies. The legislative category in which many instances of targeted killing might take place in the future already exists. The task for Congress and the administration, rather, is instead to preserve a category that is likely to be put under pressure in the future and, indeed, is already seen by many as a legal non-starter under international law.

Before addressing what Congress should do in this regard, we might ask from a strictly strategic political standpoint whether, given that the Obama Administration is committed to this policy anyway, whether it is politically prudent to draw public attention to the issue at all. Israeli officials might be threatened with legal action in Spain; but so far no important actor has shown an appetite for taking on the Obama Administration. Perhaps it is better to let sleeping political dogs lie.

The deeper issue here is not merely a strategic and political one about targeted killing and drones but goes to the very grave policy question of whether it is time to move beyond the careful ambiguity of the CIA’s authorizing statute in referring to covert uses of force under the doctrines of vital national interest and self-defense. Is it time to abandon strategic ambiguity with regards to the Fifth Function and assert the right to use force in self-defense and yet in “peacetime”—that is, outside of the specific context of an armed conflict within the meaning of international humanitarian law? Quite possibly, the strategic ambiguity, in a world in which secrecy is more and more difficult, and in the general fragmentation of voice and ownership of international law, has lost its raison d’etre. This is a larger question than the one undertaken here, but on a range of issues including covert action, interrogation techniques, detention policy, and others, a general approach of overt legislation that removes ambiguity is to be preferred.

The single most important role for Congress to play in addressing targeted killings, therefore, is the open, unapologetic, plain insistence that the American understanding of international law on this issue of self-defense is legitimate. The assertion, that is, that the United States sees its conduct as permissible for itself and for others. And it is the putting of congressional strength behind the official statements of the executive branch as the opinio juris of the United States, its authoritative view of what international law is on this subject. If this statement seems peculiar, that is because the task—as fundamental as it is—remains unfortunately poorly understood.

Yet if it is really a matter of political consensus between Left and Right that targeted killing is a tool of choice for the United States in confronting its non-state enemies, then this is an essential task for Congress to play in support of the Obama Administration as it seeks to speak with a single voice for the United States to the rest of the world. The Congress needs to backstop the administration in asserting to the rest of the world— including to its own judiciary—how the United States understands international law regarding targeted killing. And it needs to make an unapologetic assertion that its views, while not dispositive or binding on others, carry international authority to an extent that relatively few others do—even in our emerging multi-polar world. International law traditionally, after all, accepts that states with particular interests, power, and impact in the world, carry more weight in particular matters than other states. The American view of maritime law matters more than does landlocked Bolivia’s. American views on international security law, as the core global provider of security, matter more than do those of Argentina, Germany or, for that matter, NGOs or academic commentators. But it has to speak—and speak loudly—if it wishes to be heard. It is an enormously important instance of the need for the United States to re-take “ownership” of international law— not as its arbiter, nor as the superpower alone, but as a very powerful, very important, and very legitimate sovereign state.

Intellectually, continuing to squeeze all forms and instances of targeted killing by standoff platform under the law of IHL armed conflict is probably not the most analytically compelling way to proceed. It is certainly not a practical long-term approach. Not everyone who is an intuitively legitimate target from the standpoint of self-defense or vital national security, after all, will be already part of an armed conflict or combatant in the strict IHL sense. Requiring that we use such IHL concepts for a quite different category is likely to have the deleterious effect of deforming the laws of war, over the long term—starting, for example, with the idea of a “global war,” which is itself a certain deformation of the IHL concept of hostilities and armed conflict.

No one trusts the CP

Mark David Maxwell, Colonel, Judge Advocate with the U.S. Army, Winter 2012, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

The weakness of this theory is that it is not codified in U.S. law; it is merely the extrapolation of international theorists and organizations. The only entity under the Constitution that can frame and settle Presidential power regarding the enforcement of international norms is Congress. As the check on executive power, Congress must amend the AUMF to give the executive a statutory roadmap that articulates when force is appropriate and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, statutory clarification will give other states a roadmap for the contours of what constitutes anticipatory self-defense and the proper conduct of the military under the law of war.

Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74

The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order targeted killing without congressional limits means the President can manipulate force in the name of national security without tethering it to the law advanced by international norms. The potential consequence of such unilateral executive action is that it gives other states, such as North Korea and Iran, the customary precedent to do the same. Targeted killing might be required in certain circumstances, but if the guidelines are debated and understood, the decision can be executed with the full faith of the people’s representative, Congress. When the decision is made without Congress, the result might make the United States feel safer, but the process eschews what gives a state its greatest safety: the rule of law.

## politics

### Debt ceiling – 2AC

### 2AC econ

#### Empirics prove no war.

Miller 1—Morris Miller is an adjunct economics professor at the University of Ottawa [Jan.-Mar, 2001, “Poverty: A Cause of War?” *Peace Magazine*, http://peacemagazine.org/archive/v17n1p08.htm]

Economic Crises?

Some scholars have argued that it is not poverty, as such, that contributes to the support for armed conflict, but rather some catalyst, such as an economic crisis. However, a study by Minxin Pei and Ariel Adesnik shows that this hypothesis lacks merit. After studying 93 episodes of economic crisis in 22 countries in Latin American and Asia since World War II, they concluded that much of the conventional thinking about the political impact of economic crisis is wrong:

"The severity of economic crisis—as measured in terms of inflation and negative growth—bore no relationship to the collapse of regimes ... or (in democratic states, rarely) to an outbreak of violence... In the cases of dictatorships and semi-democracies, the ruling elites responded to crises by increasing repression (thereby using one form of violence to abort another)."

### 2ac – Obama not Key

#### Capital isn’t key

#### Boehner matters

PBS 10 – 4 – 13 Internal GOP divisions exposed, might lead to compromise, http://www.pbs.org/newshour/rundown/2013/10/internal-gop-divisions-exposed-might-lead-to-compromise.html

The stalemate over funding the government might appear at first glance to be a test of wills between two political parties.

But as we stretch into day four of the government shutdown, it's clear this also is a battle between Republicans.

President Barack Obama has continued to place the blame squarely on House Republicans. He has been calling out Speaker John Boehner by name, and the White House said in a statement it's the GOP that is at fault for the crisis, which forced the cancellation of the president's planned trip to Asia.

The Morning Line Those statements are stirring up a lot of the drama, sure. The even bigger story is at the other end of Pennsylvania Avenue, where there is a clash of epic proportion.

Consider the events from Thursday.

House Speaker John Boehner signaled in private meetings with his rank-and-file lawmakers that he will not allow the nation to default on its credit. Translation: a deal just might be in the works.

The Washington Post, the New York Times and others report that Boehner has been telling Republicans that given the current state of affairs within the party, any agreement needs to be able to win Democratic votes.

From Lori Montgomery and Ed O'Keefe's front-page story:

One lawmaker, speaking on the condition of anonymity, said Thursday that Boehner has even suggested that he may be willing to risk the fury of conservatives by relying on a majority of Democratic votes -- and less than a majority of Republicans -- to pass a debt-ceiling increase. Doing so would recall the vote tallies on the huge political defeats Boehner suffered earlier this year as he agreed to head off year-end tax increases and provide federal relief to victims of Hurricane Sandy.

And here's Ashley Parker and Annie Lowrey in the Times:

Lawmakers said that in recent days, Mr. Boehner, who is under fierce attack from Democrats over his handling of the shutdown, has made clear that he is willing to use a combination of Republican and Democratic votes on the debt limit if need be.

Representative Leonard Lance of New Jersey, one of the moderate Republicans who met privately with Mr. Boehner on Wednesday, would not provide details of the meeting, but said, "The speaker of the House does not want to default on the debt on the United States, and I believe he believes in Congress as an institution, and I certainly believe he is working for the best interests of the American people."

Putting forth such a bill, of course, would violate what has been dubbed the "Hastert Rule" after the last Republican Speaker J. Dennis Hastert of Illinois -- that you'd only put a measure with a majority of the majority's support up for a vote.

Incidentally, Hastert told the Daily Beast this week that the whole thing wasn't really a hard and fast rule, and said it morphed out of a throwaway comment he made to a reporter about an immigration bill.

#### Obama isn’t negotiating

McCLATCHY 10 – 1 – 13 [Obama to use the bully pulpit to pressure Republicans to re-open government, <http://www.mcclatchydc.com/2013/10/01/203850/obama-to-use-the-bully-pulpit.html>]

Presidents plans budget events in Washington this week

President Barack Obama will meet with business leaders on Wednesday and visit a small local construction company on Thursday as he hopes to push Congress to re-open the federal government.

White House spokesman Jay Carney said Obama has not canceled his trip to Asia this weekend for a series of summits and meetings, though some say it will be unlikely the president would travel overseas during a shutdown.

We certainly hope that, in the time between now and the president's scheduled departure, the Speaker does the right thing," Carney said.

Obama was briefed by his senior staff Tuesday morning about the shutdown, but had not spoken to congressional leaders since Monday evening before the closure. Carney said that Obama expects to speak them in the coming days.

Carney dismissed two of the latest House proposals -- holding a conference committee at this late date and passing a series of smaller bills -- as not serious.

It's a "piecemeal approach to funding the government is not a serious approach any more than it would be a serious way to try to deal with the consequences of default and the absolute necessity to maintain the full faith and credit of the United States," he said.

Carney said Obama is willing to negotiate with "serious-minded" Republicans, but that he will not negotiate over funding the government or raising the debt ceiling.

"We're not negotiating with anybody to reopen the government," he said. "We're not negotiating with anyone for the Congress to pass the bill that would reopen the government on any partisan condition."

### Won’t Pass – Despite shutdown

#### Won’t pass – extremist GOP

CILLIZZA 9 – 30 – 13 founder and editor of The Fix, a leading blog on state and national politics http://www.washingtonpost.com/blogs/the-fix/wp/2013/09/30/will-a-government-shutdown-make-a-debt-ceiling-deal-more-likely-maybe-not/

Conventional wisdom has cemented around the idea that a (brief) government shutdown beginning at midnight tonight will be a good thing — in the long run — for the nation’s fiscal future.

The argument goes something like this: The cast-iron conservatives were going to force House Speaker John Boehner into a showdown with the White House/Senate Democrats over either the budget or the debt ceiling. A government shutdown isn’t good, but it’s far less damaging to the global economy than defaulting on the nation’s debt. And so, if a government shutdown allows cast-iron conservatives to vent their spleen at President Obama, Harry Reid and, to some extent, Boehner, then it’s in the service of the greater good, which is the avoidance of a debt-ceiling showdown.

Here’s why that logic might be flawed. Let’s say the government shuts down for a week before the White House, Senate Democrats and House Republicans put their heads together to figure out some sort of compromise solution. Almost by default — see what we did there? — that deal will be: (1) small- to (at most) medium-bore and (2) some sort of compromise that leaves neither side fully satisfied.

Given that reality, assuming that a shutdown means Congress will vote to raise the debt ceiling may be a bit of a leap. The only way that equation adds up is if the deal Speaker Boeher eventually cuts is regarded as something close to a pure win for conservatives. Otherwise, the 40-45 cast-iron House conservatives could well regard the deal that averts or ends a shutdown as a capitulation. And that means — wait for it — they may well use the debt-ceiling deadline as a way to extract more concessions from the White House and their own GOP leaders.

What that means is that we could well be back to the same question in a month’s time that we are facing today: Is Boehner willing to buck cast-iron conservatives and bring legislation to the floor of the House that would require a dozen (or a few dozen) Democratic votes to pass? And, would Democrats go along with that plan or would they, as they are doing today, hold the line in opposition — refusing to throw Republicans a political life raft?

It’s of course possible that the deal that averts or ends a shutdown is enough to satisfy cast-iron conservatives. But given the relative political positions of the two parties — polls make clear Republicans would be blamed more for a shutdown — it seems unlikely that any deal that comes out will be the sort of compromise that satiates them fully.

Don’t assume then that a shutdown = avoiding the debt ceiling deadline. If Congress and the White House have proven anything over these last few years of debt and spending negotiations, it’s that assuming that normal political math works is a fool’s errand.

### XO Solves

#### XO solves the impact

POSNER 9 – 30 – 13 professor at the University of Chicago Law School [Eric Posner, On the Debt Ceiling, at Least, Congress Will Blink, <http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/09/obama_can_t_stop_a_government_shutdown_but_he_can_raise_the_debt_ceiling.html?wpisrc=burger_bar>]

By contrast, a government shutdown—actually only a partial government shutdown, since essential services will continue—would not cause great hardship in the short term (although the stopping and restarting of programs would waste money). Most major programs, like Social Security and Medicare, are paid out of permanent appropriations, and so would not be affected by the failure to pass a bill by Tuesday. Aside from the closing of national parks and museums, much of the impact would be invisible to the public. Only as time passed would people realize that programs that they support had been suspended, and that unpaid government workers were putting a drag on the economy.

Because the crackup from failing to raise the debt ceiling would be so huge, the president could afford to defy congressional Republicans. No one—not even a hard-core Tea Partier—wants the government to default on the debt, or even to stop cutting Medicare checks. President Obama can therefore calm financial markets by announcing that he will unilaterally raise the debt ceiling. Tea Partiers can, of course, condemn him for pushing past the limit on executive power, possibly thinking that they have maneuvered him into a damned-if-you-do-damned-if-you-don’t position. But they are wrong if they think that he’ll be damned if he does.

As I have argued before, the president has the constitutional authority to lift the debt ceiling on his own. If Congress won’t vote to do this, then it will have commanded him to spend vast sums on valued programs, but not given him enough money to do so. Where the president is given conflicting commands, he can use his discretion to resolve the conflict, bolstered here by his inherent administrative powers and his emergency powers to protect the nation, both sanctioned by constitutional tradition. Since a default on public debt would result in an economic catastrophe, he can borrow with or without Congress behind him.

And if this comes to pass, Congress will have little recourse. If lawmakers complain that the president failed to let the government default, they’ll get little sympathy from the public. Conceivably, the House could launch impeachment proceedings against the president, claiming that he has violated the law. But impeachment would be fruitless; a conviction requires a two-thirds majority in the Senate, which the Democrats control. And while an impeachment would further bog down the presidency, it would be politically risky for Republicans as well.

If Republicans in the House tried to stop the president by going to court, they would probably lose there, too. The courts would refuse to intervene under the political question doctrine, which directs courts to stay out of disputes between the legislature and the executive. Most private individuals would lack standing to bring a challenge because they would not be able to show how increased borrowing specifically injured them. Maybe people who own credit-default swaps that pay off in the case of default would claim that raising the debt ceiling harmed them, but courts would probably dodge such claims under the political question doctrine as well.

### 2ac – link turn / theory

#### ---Logical policy maker could do both – vote aff and pass the bill

#### --- Obama has no capital and winners win

THE HILL 3/20/13 [Amie Parnes and Justin Sink, Obama honeymoon may be over, http://thehill.com/homenews/administration/289179-obama-honeymoon-may-be-over]

The second-term honeymoon for President Obama is beginning to look like it is over.¶ Obama, who was riding high after his reelection win in November, has seen his poll numbers take a precipitous fall in recent weeks. ¶ A CNN poll released Tuesday showed Obama’s favorability rating underwater, with 47 percent approving and 50 percent disapproving of Obama’s handling of his job. ¶ Much of the president’s agenda is stuck, with climate change regulations delayed, immigration reform mired in committee negotiations and prospects for a grand bargain budget deal in limbo at best. ¶ On Tuesday, in a decision that underscored Obama’s depleting political capital, the White House watched as Senate Majority Leader Harry Reid (D-Nev.) announced only a watered-down version of Obama’s gun control proposals would be considered on the Senate floor. ¶ Republicans, sensing the sea change, are licking their chops. They point to the lack of movement on Obama’s signature issues, noting the contrast to the ambitious plans outlined in the early weeks of his second term.¶ “The president set very high goals for himself during his State of the Union, but the reality is very little of his agenda is actually moving,” Republican strategist Ron Bonjean said. “He allowed himself to get caught up in the legislative quicksand, [and] the cement is beginning to harden. “¶ History isn’t on Obama’s side. ¶ The last four presidents who won a second term all saw their poll numbers slide by mid-March with the exception of Bill Clinton, whose numbers improved in the four months following his reelection.¶ Clinton may have only been delaying the inevitable. His numbers dropped 5 points in April 1994. Even Ronald Reagan, buoyed by a dominant performance over Walter Mondale in the 1984 election, saw a double-digit erosion by this point in his second term.¶ Obama has yet to complete the first 100 days of his second term. But without a signature achievement since his reelection, he faces a crossroads that could define the remainder of his presidency. ¶ White House aides maintain that the 24-hour news cycle makes comparisons to previous presidents difficult.¶ “I think the nature of our politics now is different than Ronald Reagan’s honeymoon,” one senior administration official said. “The ebb and flow of politics doesn’t follow that model anymore.”¶ But observers say a drop in popularity is typical for second-termers.¶ “There may be some typical second-term honeymoon fade happening,” said Martin Sweet, an assistant visiting professor of political science at Northwestern University. “Honeymoon periods for incumbents are a bit more ephemeral.”¶ But like most other presidents, Sweet added, “Obama’s fate is tied to the economy.”¶ “Continuing economic progress would ultimately strengthen the president but if we are hit with a double-dip recession, then Obama’s numbers will crater,” he said.¶ The White House disputes any notion that Obama has lost any political capital in recent weeks.¶ “The president set out an ambitious agenda and he’s doing big things that are not easy, from immigration to gun control,” the senior administration official said. “Those are policies you can’t rack up easily, and no one here is naive about that.”¶ The White House is aware that the clock is ticking to push its hefty agenda, but the official added, “The clock is not ticking because of president’s political capital. The clock is ticking because there’s a timetable in achieving all of this. [Lawmakers] are not going to sign on because the president’s popular.” ¶ And administration officials believe they still have the leverage.¶ “There’s a decent amount of momentum behind all of this,” the official said. “It looks like immigration is closer [to passage] than ever before.”¶ Republican strategist Ken Lundberg argued that current budget fights “have cut short the president’s second-term honeymoon.” ¶ He said this could also hurt the president’s party, warning “the lower the president’s approval rating, the bigger the consequence for vulnerable Democrats.”¶ “Voters want solutions, and if they see the president headed down the wrong path, lockstep lawmakers will be punished in 2014,” he said.¶ Democratic strategist Chris Kofinis maintained that as long as he’s president, Obama still has the leverage.¶ “Immigration reform doesn’t get impacted by whether Obama’s poll numbers are 55 or 45,” Kofinis said. “Does it make certain things a little more difficult? Possibly. But while his numbers may have fallen, he’s still more likeable than the Republicans are on their best day.”¶ Kofinis said the real question for Obama is what kind of emphasis he’s going to place on his second term because the public will have less patience than they did during his first.¶ “The challenge in a second term is the American people look at certain things and have a higher tolerance in a second term,” he said. “When they know you’re not running for reelection again, they hold you to a higher standard.” ¶ Bonjean and other Republicans are aware that Obama could potentially bounce back from his latest slip in the polls and regain his footing.¶ “He has the opportunity to take minor legislative victories and blow them up into major accomplishments—meaning if he got something on gun control, he can tout that that was part of his agenda and the work isn’t over. If he were able to strike a grand bargain with Republicans, that’d be a legacy issue.”¶ Still, Bonjean added, “It’s not looking so good right now.”

#### Plan is not a loss – Obama is pushing and oit’s current policy

#### ---Plan increases Inter-branch talks – builds agenda success

ANDRES & GRIFFIN 09 \*Vice Chair of Research for Dutko Worldwide, PhD in public policy analysis from Illinois \*\* partner Griffin Williams LLC, consulting firm. [Gary Andres & Patrick Griffin, “Understanding Presidential Relations with Congress,” from Rivals for Power, ed. James A. Thurber] page 117-118

Active Consultation

Presidents who put a strong emphasis on consultation with Congress, communicating often ~ Clinton team got high marks early on with the Democratic leadership in Congress for consulting and working in concert on a variety of measures during 1993. Their initiatives included proposals on education and environment, the Family and Medical Leave Act, and "motor voter" legislation (two initiatives that President Clinton's predecessor, George H. W. Bush, consistently opposed that now could pass under conditions of unified party government), as well as modest institutional reform proposals regarding campaign finance and lobbying registration. Their agenda also included legislative objectives that began to reposition Democrats as supporting a balanced budget while reducing the size of government and expanding efforts to fight crime.

As is often the case in unified government, the Democrats worked to ensure that their proposals passed without Republican support. The cornerstone of this early agenda was a $500 billion tax increase and spending cut package to reduce the deficit. The measure passed the House \by a margin of one, with all Republicans opposing it.

President George W. Bush's legislative strategy in the House followed a similar path over his first five years. In the Senate, however, Mr. Bush was also able to secure some Democratic support for most of his major initiatives like tax cuts, Medicare prescription drug legislation, and the No Child Left Behind education bill.

Holding their respective parties in line took Presidents Clinton and Bush many hours of consultation by inviting members to the White House and sending administration personnel to the Hill. Active consultation results in members of Congress believing that someone at the White House is listening and considering their point of view. Often just "hearing people out" and being attentive to their views go a long way toward strengthening and creating positive relations with Congress.

Barack Obama followed an almost identical path in the House of Representatives. While he worked hard trying to win Republican support through phone calls, meetings, and social gatherings, he failed to win any House Republican votes on his first major legislative initiative-an economic stimulus package. Although these presidents failed to produce a lot of bipartisan votes, they received strong initial marks for trying. At a minimum, these consultations began a dialogue, keeping the door open for future negotiations and bipartisanship in policy areas that did not produce as much polarization. A cynical interpretation of these gestures might be that they were never expected to produce a bipartisan result. The hope in making these gestures was to reinforce a bipartisan image of the president that was carefully forged in the campaign. The president's advisers may have concluded early on that true bipartisanship was necessary or doable for the president to be successful in the long run. What he needed was to get the legislation through the Congress while minimizing a negative impact on his brand.

#### --- Capital theory is stupid

Hirsh 2/7/13 (Michael, Chief correspondent for National Journal, Previously served as the senior editor and national economics correspondent for Newsweek, Overseas Press Club award for best magazine reporting from abroad in 2001 and for Newsweek’s coverage of the war on terror which also won a National Magazine Award, There’s No Such Thing as Political Capital, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

But the abrupt emergence of the immigration and gun control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is **kindergarten simple**: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “**Winning wins**.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.

Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully **quantifies or even defines it**. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a **bandwagon effect**.”

#### ---Vote no – solves the link – the 1ac proposed the plan

#### ---No spillover claim – losing capital on one issue won’t hurt votes in others. They don’t have a vote count OR vote switch card

#### ---Plan divides the GOP

DICKERSON 13 Chief Political Correspondent at the Slate, Political Director of CBS News, Covered Politics for Time Magazine for 12 Years, Previous White House Correspondent [John, , Go for the Throat!, 1/18/13 http://tinyurl.com/b7zvv4d]

On Monday, President Obama will preside over the grand reopening of his administration. It would be altogether fitting if he stepped to the microphone, looked down the mall, and let out a sigh: so many people expecting so much from a government that appears capable of so little. A second inaugural suggests new beginnings, but this one is being bookended by dead-end debates. Gridlock over the fiscal cliff preceded it and gridlock over the debt limit, sequester, and budget will follow. After the election, the same people are in power in all the branches of government and they don't get along. There's no indication that the president's clashes with House Republicans will end soon.

Inaugural speeches are supposed to be huge and stirring. Presidents haul our heroes onstage, from George Washington to Martin Luther King Jr. George W. Bush brought the Liberty Bell. They use history to make greatness and achievements seem like something you can just take down from the shelf. Americans are not stuck in the rut of the day.

But this might be too much for Obama’s second inaugural address: After the last four years, how do you call the nation and its elected representatives to common action while standing on the steps of a building where collective action goes to die? That **bipartisan** bag of tricks has been tried and it didn’t work. People don’t believe it. Congress' approval rating is 14 percent, the lowest in history. In a December Gallup poll, 77 percent of those asked said the way Washington works is doing “serious harm” to the country.

The challenge for President Obama’s speech is the challenge of his second term: how to be great when the **environment stinks**. Enhancing the president’s legacy requires something more than simply the clever application of predictable stratagems. Washington’s **partisan rancor**, the size of the problems facing government, and the limited amount of **time** before Obama is a lame duck all point to a single conclusion: The president who came into office speaking in lofty terms about **bipartisanship** and cooperation can only cement his legacy if he **destroys the GOP**. If he wants to transform American politics, he must **go for the throat**.

President Obama could, of course, resign himself to tending to the achievements of his first term. He'd make sure health care reform is implemented, nurse the economy back to health, and put the military on a new footing after two wars. But he's more ambitious than that. He ran for president as a one-term senator with no executive experience. In his first term, he pushed for the biggest overhaul of health care possible because, as he told his aides, he wanted to make history. He may already have made it. There's no question that he is already a president of consequence. But there's no sign he's content to ride out the second half of the game in the Barcalounger. He is approaching gun control, climate change, and immigration with wide and excited eyes. He's not going for caretaker.

How should the president proceed then, if he wants to be bold? The Barack Obama of the first administration might have approached the task by finding some Republicans to deal with and then start agreeing to some of their demands in hope that he would win some of their votes. It's the traditional approach. Perhaps he could add a good deal more schmoozing with lawmakers, too.

That's the old way. **He has abandoned that**. He doesn't think it will work and he doesn't have the time. As Obama explained in his last press conference, he thinks the Republicans are dead set on opposing him. They cannot be unchained by schmoozing. Even if Obama were wrong about Republican intransigence, other constraints will limit the chance for cooperation. Republican lawmakers worried about primary challenges in 2014 are not going to be willing partners. He probably has at most 18 months before people start dropping the lame-duck label in close proximity to his name.

Obama’s **only remaining option is to pulverize**. Whether he succeeds in passing legislation or not, given his ambitions, his goal should be to delegitimize his opponents. Through a series of **clarifying fights over controversial issues**, he can force Republicans to either side with their coalition's most extreme elements or cause a rift in the party that will leave it, at least temporarily, in disarray.

This theory of political transformation rests on the weaponization (and slight bastardization) of the work by Yale political scientist Stephen Skowronek. Skowronek has written extensively about what distinguishes transformational presidents from caretaker presidents. In order for a president to be transformational, the old order has to fall as the orthodoxies that kept it in power exhaust themselves. Obama's gambit in 2009 was to build a new post-partisan consensus. That didn't work, but by exploiting the weaknesses of today’s Republican Party, Obama has an opportunity to hasten the demise of the old order by increasing the political cost of having the GOP coalition defined by Second Amendment absolutists, climate science deniers, supporters of “self-deportation” and the pure no-tax wing.

### 2ac – uniqueness generic

#### ---No Capital – Obama irrelevant

ROGERS 9 – 17 – 13 chair of the lobbying and communications firm BGR Group, Contributor to PostPartisan [Ed Rogers, Washington Post, The Insiders: Stubborn facts and bothersome polls, <http://www.washingtonpost.com/blogs/post-partisan/wp/2013/09/17/the-insiders-stubborn-facts-and-bothersome-polls/>]

It seems like it has been 10 years, but in reality it has been less than 10 months since the president’s second inauguration. And as President Obama tries to put Syria behind him, nothing on the domestic agenda looks promising. I don’t know what the opposite of the Midas Touch is, but that’s what Obama has.

To try and regain some momentum and credibility domestically, the president is attempting to pivot back to the economy (yet again.) But his remarks yesterday, on the five-year anniversary of the Lehman Brothers bankruptcy, seemed tone-deaf, as he lashed out at Republicans on economic issues while the tragic events of the Navy Yard shooting were still unfolding.

‎And while the president loves to surround himself onstage with middle class families while he waxes poetic about how much he’s helping them, the truth is that Obama’s economic policies are only helping the rich get richer. In fact, the Associated Press reported last week that, “in 2012, the incomes of the top 1 percent rose nearly 20 percent compared with a 1 percent increase for the remaining 99 percent.” ‎

This income equality gap — now the largest since the 1920s — shows that Obama’s policies are failing miserably, with the middle class bearing the brunt of his no-growth economy. No president has been better for the 1 percent than Obama.

Obama was also dealt an embarrassing blow this week as Larry Summers withdrew his name from consideration for Federal Reserve Chairman. I wasn’t even for Summers getting the job, but this was another telling sign that the president lacks any political capital on the Hill — among members of either party. If he wasn’t so weak, he might have gotten his pick for the Fed, but as it is, he must defer to the loud voices making demands. The president does not have any influence with members of Congress now, and he isn’t going to have any going forward. I think it’s safe to say he cannot take a leadership role in the looming debt ceiling and budget battles. ‎

#### Shutdown thumps – upends politics in unpredictable ways

NBC NEWS 10 – 1 – 13 <http://nbcpolitics.nbcnews.com/_news/2013/10/01/20763839-winners-and-losers-of-the-government-shutdown?lite>

The shutdown of the federal government is poised to reshuffle U.S. politics, as Americans observe one of the starkest examples of political dysfunction since the last shutdown in the mid-90s.

That crisis reinvigorated President Bill Clinton and badly set back a then-resurgent Republican Party that had designs of retaking the White House in the 1996 elections. The GOP fell well short of expectations in that election, though some conservatives now argue that the party's performance wasn't as bad as it seemed at the time.

Nonetheless, after two-and-a-half years of standoffs and gridlock, the fact that a shutdown has finally come to pass — 17 days before Congress must also raise the debt ceiling, no less — could upend politics with unforeseen consequences for many of this fight's key players.

## Cap k

Fwkk

Perm do both. No link. We don’t make the argument that democracy will be modeled.

#### Perm net-benefit – proposing alternative non-<capitalist> economics out of nowhere is of *zero value*. Environmental reform of <capitalism> is key.

John BARRY Reader in Politics @ Belfast ‘7 “Towards a model of green political economy: from ecological modernisation to economic security” Int. J. Green Economics, Vol. 1, Nos. 3/4, 2007 p. 447-448

Economic analysis has been one of the weakest and least developed areas of broadly green/sustainable development thinking. For example, whatever analysis there is within the green political canon is largely utopian – usually based on an argument for the complete transformation of modern society and economy as the only way to deal with ecological catastrophe, an often linked to a critique of the socioeconomic failings of capitalism that echoed a broadly radical Marxist/socialist or anarchist analysis; or underdeveloped – due, in part, to the need to outline and develop other aspects of green political theory. However, this gap within green thinking has recently been filled by a number of scholars, activists, think tanks, and environmental NGOs who have outlined various models of green political economy to underpin sustainable development political aims, principles and objectives. The aim of this article is to offer a draft of a realistic, but critical, version of green political economy to underpin the economic dimensions of radical views about sustainable development. It is written explicitly with a view to encouraging others to think through this aspect of sustainable development in a collaborative manner. Combined realism and radicalism marks this article, which starts with the point that we cannot build or seek to create a sustainable economy *ab nihlo*, but must begin from where we are, with the structures, institutions, modes of production, laws and regulations that we already have. Of course, this does not mean simply accepting these as immutable or set in stone; after all, some of the current institutions, principles and structures underpinning the dominant economic model are the very causes of unsustainable development. We do need to recognise, however, that we must work with (and ‘through’ – in the terms of the original German Green Party’s slogan of ‘marching through the institutions’) these existing structures, as well as change and reform and in some cases, abandon them as either unnecessary or positively harmful to the creation and maintenance of a sustainable economy and society. Equally, this article also recognises that an alternative economy and society must be based in the reality that most people (in the West) will not democratically vote for a completely different type of society and economy. That reality must also accept that a ‘green economy’ is one that is recognisable to most people and that indeed safeguards and guarantees not just their basic needs but also aspirations (within limits). The realistic character of the thinking behind this article accepts that consumption and materialistic lifestyles are here to stay (so long as they do not transgress any of the critical thresholds of the triple bottom line) and indeed there is little to be gained by proposing alternative economic systems, which start from a complete rejection of consumption and materialism. The appeal to realism is in part an attempt to correct the common misperception (and self-perception) of green politics and economics requiring an excessive degree of self-denial and a puritanical asceticism (Goodin, 1992, p.18; Allison, 1991, p.170–178). While rejecting the claim that green political theory calls for the complete disavowal of materialistic lifestyles, it is true that green politics does require the collective reassessment of such lifestyles, and does require a degree of shared sacrifice. It does not mean, however, that we necessarily require the complete and across-the-board rejection of materialistic lifestyles. There must be room and tolerance in a green economy for people to live ‘ungreen lives’ so long as they do not ‘harm’ others, threaten long-term ecological sustainability or create unjust levels of socioeconomic inequalities. Thus, realism in this context is in part another name for the acceptance of a broadly ‘liberal’ or ‘post-liberal’ (but certainly not anti-liberal) green perspective.1

#### Capitalism solves war and poverty – prefer empirical models

**Weede 08** [Erich, professor at the Institute for Political Science and Sociology, “Globalization and Inequality” Comparative Sociology 7, p. 415-433]

Globalization refers to an increasing international division of labor and more trade between economies, to cross-border investment and rapid transfers of technology between nations, to global capital ﬂows and, to a lesser degree, to increasing labor mobility. Th ere is as yet no global labor market. Globalization also implies better opportunities to learn from foreigners or strangers. Th e more similar you are to others, the less likely it is that you can learn from them.1 Unfortunately, many people prefer to rely on established routines and resent the challenge of having to learn from others. Globalization is another word for a worldwide expansion of capitalism. It results in international tax competition (Edwards and de Rugy 2002; Mitchell 2005). Globalization is based on some technological and political prerequisites. These include ever cheaper and faster means of communication and transportation as well as an adequate political environment. The global expansion of capitalism requires political fragmentation: markets should be larger than political units.2 This provides an exit option from oppressive government for capital and, to a lesser degree, for qualiﬁed labor. Such an exit option protects economic freedom from ever-increasing state interference and tax burdens. If one state should be much more powerful than all others, as the US currently is, then globalization requires a deeper commitment to capitalism and economic freedom by the hegemon than by other states. Th ese political requirements of globalization are fulﬁlled. Globalization maximizes the size of the market. Since Adam Smith (1776/1976) we know that the size of the market determines the degree of division of labor which promotes productivity. Thus, globalization is beneﬁcial because it increases productivity. This is not only a theoretical claim, but also an empirical statement. For instance, based on data from the US Bureau of Labor Statistics, yearly economic gains from globalization have been estimated to be somewhere between $1,650 for Americans (Scheve and Slaughter 2007:36–37). Real compensation per hour (including beneﬁts and wages) has also gone up in the past decade, by 22 percent (Griswold 2007:1).3 Since Deng Xiaoping opened China in the late 1970s by introducing reforms which imply creeping capitalism, Chinese agricultural production grew rapidly. Later, China attracted a lot of foreign direct investment. Today China is a major base for manufacturing. By 2005 it was already the third largest exporter, still behind Germany and the US but already ahead of Japan (Th e Economist 2005). By 2008 China is likely to become the biggest exporter in the world. In the early 1980s (but no longer thereafter) even the disparity between urban and rural incomes in China decreased (Lin, Cai, and Li 2003:145). Hundreds of millions of Chinese were taken out of abject poverty. In the ﬁrst two decades of reform, per capita incomes grew fourfold (Bhalla 2002:218). Later, less radical reforms in India led to nearly doubling per capita incomes in a similar period of time and pulled about two hundred million Indians out of abject poverty (Das 2002:360). Since China and India together account for nearly forty percent of mankind and about half of the population living in less developed countries, economic growth in China and India and other Asian countries contributes to the equalization of the global distributions of income between individuals and households. If we are interested in individuals rather than states, then the **empirical indicators are clear**. Globalization or **the global expansion of capitalism has contributed to**, or at least been compatible with, **an equalization of** the size distribution **of income between human beings**. Since cross-national differences between average incomes are still a more important component of inequality between human beings than intra-national differences in income, it is possible – and currently true – to have the following two trajectories at the same time: growing inequality within many or even most countries amidst some movement towards equality among individuals worldwide (Bhalla 2002; Firebaugh 1999; Goesling 2001; Sala-i-Martin 2007; World Bank 2005). Admittedly, many economies, including the US and China, suffered some deterioration in their domestic income distributions. This is why the legitimacy of capitalism and globalization comes under attack, even in the American citadel of capitalism. This is also why calls for protectionism become louder and louder (Scheve and Slaughter 2007). But critics of globalization tend to forget a basic truth about free trade (Griswold 2007:3): “If workers, capital, and resources can shift within the domestic economy, jobs eliminated by import competition will quickly be replaced by jobs created elsewhere.”4 One should not blame the consequences of institutional sclerosis, or of an unwillingness to adjust, on globalization. Globalization has led to a significant reduction in mass poverty. Although the Chinese distribution of income has become much less equal since the reform process began in the late 1970s, the strong growth performance of China has pulled hundreds of millions out of abject poverty. In India growth has been less spectacular than in China such that the distribution of income has changed less, and yet again hundreds of millions have been pulled out of abject poverty. Although Latin America and Africa have benefitted much less from globalization than Asia has, these continents also cannot match the demographic weight of Asia. Therefore, their comparative lack of success cannot neutralize Asian progress in global perspective. Moreover, one has to keep in mind that winning in the process of globalization presupposes participating in it, not abstaining from it. One may illustrate global change with data provided by Indian economist Surjit Bhalla (2002:187). He deﬁnes people with a daily income between $10–$40 USD as members of the global middle class. In 1960 this class consisted largely of whites; only six percent were Asians. By 2000, however, 52 percent was Asian. Th e era of globalization is one in which Asia is now recovering, after falling for about two centuries further behind the West. Except for Africa abject poverty worldwide is likely to become signiﬁcantly reduced within one or two decades. Th e African share of abject poverty in the world is expected to rise until 2015 from 36 percent to about 90 percent (Bhalla 2002:S. 172).5 Why did so many people in Asia beneﬁt from globalization, whereas Africans did not? A plausible explanation has been oﬀered by Collier (2007:79).6 He points out that about three quarters of the bottom billion7 live in countries which have suﬀered from civil war or long periods of bad governance and poor economic policies. According to Collier (2007:27), “civil war is development in reverse. It damages both the country itself and its neighbors.” Bad governance and poor economic policies distort incentives and misallocate the meager resources of poor countries. Africa has suﬀered from these development traps to a greater degree than other continents. Moreover, one may argue that a focus on income and income distributions is biased towards understating the beneﬁts of globalization. As Goklany (2007:chaps. 2–3) has pointed out, the same income per capita today (in terms of purchasing power) implies higher life expectancies, lower infant mortalities, less malnutrition, healthier lives, and less child labor than it did decades or centuries earlier. Less developed, still poor countries do benefit from the technological progress achieved by developed and rich countries. Thus, even if one disputes the widely held and well-supported view regarding some equalization of individual or house-hold incomes worldwide in recent decades, one should still accept Goklany’s contention (2007:72): “In the aspects of human well-being that are truly critical – life expectancy, infant mortality, hunger, literacy, and child labor – the world is far more equal today than it was a century ago, in large part because of globalization.”8 Another advantage of globalization is that it contributes to preventing war (Russett and Oneal 2001; Weede 2005). Quantitative research demonstrates that the risk of war between nations is reduced if they trade a lot with each other. There is something like a commercial peace or peace by trade. Moreover, economic freedom reduces involvement in military conﬂict and ﬁnancial market openness also reduces the risk of war (Gartzke 2005, 2007). In particular, I want to underline that economic cooperation paciﬁes the geopolitical relationship between rising China and the West.9 Moreover, there is also something like a democratic peace. The risk of war between democracies is extremely small. In my view, one should conceptualize this as a component of a capitalist peace because democracies prosper best in wealthy countries10 and because capitalism or economic freedom and thereby globalization contribute to prosperity (Weede 2005, 2006). Since rising powers tend to challenge the political status quo, it is fortunate that the two demographic giants of this world seem to prosper under global capitalism.

#### Military-industrial complex has no influence on foreign policy

**Ripsman, 9** – Norrin M., Associate Professor, Department of Political Science, Concordia University (Neoclassical Realism, the State, and Foreign policy, pp 183. Edited by Steven E Lobell, Norrin M Ripsman, Jeffery W Talliaferro (professors of poli sci). )

Aside from a direct electoral payoff, political leaders are also interested in those domestic actors who can provide resources that can be used either to retain power or, in cases of corrupt regimes, to line their pockets. In this regard, we might expect that wealthier groups would have more influence than those with only limited resources. Nonetheless, money and resources should be of only limited utility, since – unlike direct, coherent electoral clout – they tend to be spread across interest groups. Thus, while one group may offer a large material payoff for pursuing its preferred policy option, it is conceivable that one or more actors that oppose the policy will be able to provide a countervailing payoff that, even if smaller, would allow the executive to select its preferred policy without forgoing the bulk of the payoff. For this reason, I do not expect so-called “military-industrial complex” (MIC) or “iron triangle” interest groups to have any significant influence over foreign security policy.36 These groups, particularly firms that produce armaments or otherwise supply the military, and those engaged in defense-related research and development, are supposed to exert – together with the military and their allies in the government – a decisive influence over issues ranging from defense spending and weapons procurement to decisions of war and peace. Yet it is not clear why they must do so. To begin with, on individual procurement decisions, firms compete against each other and can raise countervailing rewards for the executive; therefore, the government should be able to choose its own preferred option independently of MIC interest groups at little cost. Furthermore, on those issues where the MIC interest groups are united (say in favoring higher overall defense spending or encouraging the use of force), firms and interest groups in other sectors of the economy that would lose out as a result can coalesce to offer a countervailing reward. So it seems unreasonable to privilege this one cluster of economic interests over other well-endowed interests.37

#### Orthodox Marxism? What could possibly go wrong?

Andrew SAYER Reader in Political Economy @ Lancaster ’95 *Radical Political Economy: A Critique* p. 13-14

Yet while the 'velvet' character of the revolutions was remarkable enough, there was little else that the Left could celebrate about them. As Habermas points out, they were also singularly depressing in that they were devoid of 'ideas that are either innovative or orientated to the future' (1991, p. 27). Whether Habermas meant it or not, I would add that it was Western Marxists as well as people in the former socialist states who lacked ideas about alternatives. In this context, market triumphalism could divert attention from the continued failings of capitalism, as if the 'victory' of capitalism meant that no one had any right to criticize it. Again, as Habermas put it, 'it is not as though the collapse of the Berlin Wall solved a single one of the problems specific to our system' (Habermas, 1991, p. xii). While the latter statement is surely correct it could be read as implying that it was 'business-as-usual' for the Left. It is my view that this kind of interpretation, together with those of Jameson and Callinicos, are complacent and hopelessly inad- equate. One can agree with Jameson that Marxism is primarily a theory of capitalism, but this position is nevertheless all too smug, for it begs the question of whether its account of capitalism is at all adequate.' Similarly, Callinicos implies that there are no lessons to be learned from the demise of state socialism, save that it wasn't real socialism, and there are certainly no lessons for the critique of capitalism. This book is motivated by the view that such complacency is entirely unwarranted. The totalitarian character of state socialism and its problems of economic motivation and coordination are not historical aber- rations but are presaged by Marxism's lack of a sufficiently materialist understanding of the social division of labour and its associated division and dispersion of knowledge in advanced economies. This failing not only explains the inadequacies of state socialism's attempt to plan such an economy centrally, but is the major unresolved flaw in Marxist theory of capitalism. The reluctance of the Left to think through alternatives (for fear of producing 'blueprints' which might pre-empt future struggles) meant not only that radical political movements had little idea of feasible and desirable objectives, but that the standpoints from which capitalism and its problems were explained and criticized were unexamined and often incoherent or undesirable. There is no way the Left can reply to market triumphalism and the lack of alternatives without giving some consideration to the old problems of political economy.

#### Radical economic kritiks *must* provide specific alternatives to existing economic methods. Failure to specifically explain an alternative crushes hope for transition.

Andrew SAYER Reader in Political Economy @ Lancaster ’95 *Radical Political Economy: A Critique* p. 7-8

Radical political economy is of course a critical social science, both explaining and criticizing the practices it studies, with the explicit aim of reducing illusion and freeing people from domination and unwanted forces. But it can only hope to have an emancipatory effect if it considers its own critical standpoints and the alternative social arrangements they imply. Unfortunately it rarely does this, with the result that its stand- points and implicit alternatives are often contradictory, infeasible, or undesirable even if they are feasible. Marxist-influenced work still bears the traces of the tension between the standpoints of a socialist or communist society which has pre-industrial communitarian qualities and one in which the forces of production are developed beyond current levels of industrialization. More generally, there is a strong modernist tendency in which it is assumed that problems can be progressively unravelled without creating new ones at the same time, as if eventually all trade-offs or dilemmas could be overcome through a triumph of reason. We shall argue through substantive examples that such optimism is not only misplaced but likely to be counterproductive, limiting progress. There are always likely to be 'dilemmas of development' (Toye, 1987. The problem of critical standpoints has become more acute in recent years, indeed it is central to the crisis of the Left. There is no longer asingle standpoint or alternative (socialism/communism) counterposed to a single, overarching target (capitalism). Now there are many targets -patriarchy, racism, homophobia, militarism, industrialism - and corre- spondingly many critical standpoints with complex relations between them. That critical social science is no longer seen as synonymous with a socialist perspective is a sign of considerable progress, and cause for optimism too, as failure on the traditional front of class politics is compensated by progress on other, newer fronts such as the politics of gender. But it is also a source of heightened uncertainty. While there was always a problem of inconsistencies between critical standpoints, it has deepened and widened with the rise of 'green' concerns, for they bring into question the feasibility and desirability of non-capitalist as well as capitalist industrial societies. Is the problem capitalism, industrial society in general, or modernity?; and what are the alterna- tives? Equally, increasing awareness of problems of ethnocentrism and value pluralism throws doubt over the familiar, implicit critical stand- points of Western radical social science. How do we decide what is a problem? What if we cannot reach a consensus on this? Until recently, it seemed that the problems or targets of critical social science could be relied upon to emerge from the investigation of existing practices, where one would encounter the felt needs, frustrations and suffering of actors, and in discovering the sources of these problems, work out what changes would lead towards emancipation (e.g. Fay, 1975, 1987; Collier, 1994h(. This was coupled with an implicit view that emancipation was a form of escape from domination, illusion and unwanted constraints, with little or no acknowledgement that it depended on the construction of superior, alternative, progressive frameworks which could replace the old ones. But it is now increasingly apparent that normative questions of possible alternatives and what is good or bad about them cannot be evaded. How, without addressing such questions, could one decide what constitutes a superior alternative? Should there be a presumption in favour of community as a basis of social organiz- ation over other forms? Does liberalism provide the best framework for multicultural societies? What should be people's rights and responsibili- ties? What are our responsibilities to distant others, future generations, and to other species? There is little hope of achieving the goal of an emancipatory social science if it shuns normative discussions of issues such as these.

## Exec flex / terrorism DA

Syria outweighs the link

David Rothkoph, CEO and editor at large of Foreign Policy, 8/3/13, The Gamble, www.foreignpolicy.com/articles/2013/08/31/the\_gamble?page=full

Obama has reversed decades of precedent regarding the nature of presidential war powers -and whether you prefer this change in the balance of power or not, **as a matter of quantifiable fact** he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship.

The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider that John Boehner was instantly more clear about setting the timing for any potential action against Syria with his statement that Congress will not reconvene before its scheduled September 9 return to Washington than anyone in the administration has been thus far.

Perhaps more importantly, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors **lack the ability to act quickly** and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -for better or worse -to **dial back the imperial presidency** than anything his predecessors or Congress have done for decades.

5. America's international standing will likely suffer.

As a consequence of all of the above, even if the president "wins" and persuades Congress to support his extremely limited action in Syria, the perception of America as a nimble, forceful actor on the world stage and that its president is a man whose word carries great weight is **likely to be diminished**. Again, like the shift or hate it, **foreign leaders can do the math.**

Not only is post-Iraq, post-Afghanistan America less inclined to get involved anywhere, but when it comes to the use of U.S. military force (our one indisputable source of superpower strength) **we just became a whole lot less likely to act** or, in any event, act quickly. Again, good or bad, that is a stance that is likely to **figure into the calculus of those who once feared provoking the United States**.

A final consequence of this is that it seems ever more certain that Obama's foreign policy will be framed as so anti-interventionist and **focused on disengagement from world affairs** that **it will have major political consequences in 2016**. The dialectic has swung from the interventionism of Bush to the leaning away of Obama. Now, the question will be whether a centrist synthesis will emerge that restores the idea that the United States can have a muscular foreign policy that remains prudent, capable of action, and respects international laws and norms. Almost certainly, that is what President Obama would argue he seeks. But I suspect that others, including possibly his former secretary of state may well seek to define a different approach. Indeed, we may well see the divisions within the Democratic Party on national security emerge as key fault lines in the Clinton vs. Biden primary battles of 2016. And just imagine Clinton vs. Rand Paul in the general election.

Otherwise there’s no spillover

Jack Balkin, The Atlantic, 9/3/13, What Congressional Approval Won't Do: Trim Obama's Power or Make War Legal, www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/

Wouldn’t congressional refusal make the United States look weak, as critics including Senator John McCain warn loudly? Hardly. The next dictator who acts rashly will face a different situation and a different calculus. The UN Security Council or NATO may feel differently about the need to act. There may be a new threat to American interests that lets Obama or the next president offer a different justification for acting. It just won’t matter very much what Obama said about red lines in the past. World leaders say provocative things all the time and then ignore them. Their motto is: That was then, and this is now.

If Congress turns him down, won’t Obama be undermined at home, as other critics claim? In what sense? It is hard to see how the Republicans could be less cooperative than they already are. And it’s not in the interest of Democrats to fault a president of their own party for acceding to what Congress wants instead of acting unilaterally.

Some commentators argue (or hope) that whatever happens, Obama’s request for military authorization will be an important precedent that will begin to restore the constitutional balance between the president and Congress in the area of war powers. Don’t bet on it. By asking for congressional authorization in this case, Obama has not ceded any authority that he ­or any other president ­has previously asserted in war powers.

It is naive to think that the next time a president wants to send forces abroad without congressional approval, he or she will be deterred by the fact that Barack Obama once sought congressional permission to bomb Syria. If a president can plausibly assert that any of the previous justifications apply -­including those offered in the Libya intervention -the case of Syria is easily distinguishable.

Perhaps more to the point, Congress still cannot go to the courts to stop the president, given existing legal precedents. Congress may respond by refusing to appropriate funds, but that is a remedy that they have always had -and have rarely had the political will to exercise.

The most important limit on presidential adventurism is political, not legal. It will turn less on the precedent of Syria than on whether the last adventure turned out well or badly.

#### Only codification prevents Court evisceration of War Powers

Benjamin Wittes 8, Senior Fellow in Governance Studies at the Brookings Institution, co-founder and editor-in-chief of the Lawfare blog, member of the Hoover Institution’s Task Force on National Security Law, Law and the Long War: The Future of Justice in the Age of Terror, google books

What the Supreme Court has done is carve itself a seat at the table. It has intimated, without ever deciding, that a constitutional basis for its actions exists—in addition to the statutory bases on which it decided the cases—meaning that its authority over overseas detentions may be an inherent feature of judicial power, not a policy question on which the legislature and executive can work their will. Whether the votes exist on the court to go this extra step we will find out soon enough. But the specter of a vastly different judicial posture in this area now haunts the executive branch—one in which the justices assert an inherent authority to review executive detention and interrogation practices, divine rights to apply with that jurisdiction based on due process and vaguely worded international humanitarian law principles not clearly implemented in U.S. law, and allow their own power to follow the military’s anywhere in the world. Such a posture would constitute an earthquake in the relationships among all three branches of government, and the doctrinal seeds for it have all been planted. Whether they ultimately take root depends on factors extrinsic to the war on terror—particularly the future composition of a Supreme Court now closely divided on these questions. It will also pivot on the manner in which the political branches posture the legal foundations of the war in the future. Building a strong legislative architecture now may be the only way to avert a major expansion of judicial power over foreign policy and warfare.

#### Either Syria thumps or no spillover

Jack Balkin, The Atlantic, 9/3/13, What Congressional Approval Won't Do: Trim Obama's Power or Make War Legal, www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/

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### terror

#### Global Battlefield leaves terrorist attacks undeterred

**Blank 10** - Director of Emory Law's International Humanitarian Law Clinic. [Laurie R. Blank, Where is the Battlefield in the 'War on Terror'? The Need for a Workable Framework, JURIST - Forum, Dec. 1, 2010, pg.http://jurist.org/forum/2010/12/where-is-the-battlefield-in-the-war-on-terror-the-need-for-a-workable-framework.php.

Identifying where the battlefield is in this war against terrorist groups has been ignored or, at best, addressed in an ad hoc way so far. The U.S. is fighting al Qaeda and the Taliban with military force in Afghanistan and in Pakistan. It has launched drone attacks in Somalia and Yemen, areas now sometimes identified as potentially the newest battlefields in the "war on terror." Elsewhere, however - particularly in Europe and on its own territory - the U.S. uses a law enforcement approach of arrest, deportation or extradition, investigation, and trial.

We have heard talk of a "global war on terror," but actual practice suggests that there are in fact areas that fall within a "battlefield" in this war and areas that remain outside it. Just like we need clear criteria for detention and trial to ensure faithful protection of individual rights while protecting national security, so clear standards are essential in defining the battlefield as well.

Ad hoc decisions about where we can fight terrorists with force can lead to policy paralysis or even mistakes. Mistakes in this arena mean innocent civilian casualties or perhaps a terrorist attack undeterred. Standards, in contrast, create clear frameworks for the lawful use of force where appropriate in accordance with legal and policy obligations.

Some argue we can use force against terrorists only in Afghanistan, because that is where we are in an armed conflict with al Qaeda and the Taliban. Outside that, we need to rely on the law enforcement capabilities of other states to help arrest, detain and try alleged attackers. This seems perhaps too narrow - in effect, an al Qaeda terrorist who is a legitimate target of attack in Afghanistan suddenly becomes immune from attack simply by walking across the border, even though the danger he poses to innocent civilians and U.S. national security interests has not changed.

Others argue that this is a global war, meaning that terrorists can be attacked wherever in the world they are found. Enticing at first, perhaps, until we consider the possibilities of launching drone attacks in Des Moines, Paris or Oslo. Surely more than a few eyebrows will be raised at the notion that a single terrorist in a city far removed from any conflict, uninvolved in any terrorist activity and unconnected to any terrorist campaign or group is justification for a missile attack.

Defining the battlefield - or the zone of combat, to use a new term - is thus critical to understanding where the U.S. can use force as a first resort and alternatively where law enforcement options are the appropriate tool. At stake are not only the lives of the innocent victims of terrorist attacks that could have been prevented, but also the rights of alleged terrorists and the unintended victims of military attacks.

#### Global battlefield crushes legitimacy – spurs terrorism

Daskal, ’13 [Jennifer C. Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center. THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE “HOT” CONFLICT ZONE. University of Pennsylvania Law Review, Vol. 161, No. 5. April 2013. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2049532>]

Second, while the proposed substantive and procedural safeguards are more stringent than those that are currently being employed, their implementation will lead to increased restraint and enhanced legitimacy, which in turn inure to the state. As the U.S. Counterinsurgency Manual explains, it is impossible and self-defeating to attempt to capture or kill every potential insurgent: “Dynamic insurgencies can replace losses quickly. Skillful counterinsurgents must thus cut off the sources of that recuperative power” by increasing their own legitimacy at the expense of the insurgent’s legitimacy. 215 The Counterinsurgency Manual further notes, “[E]xcessive use of force, unlawful detention . . . and punishment without trial” comprise “illegitimate actions” that are ultimately “self-defeating.”216 In this vein, the Manual advocates moving “from combat operations to law enforcement as quickly as feasible.”217 In other words, the high profile and controversial nature of killings outside conflict zones and detention without charge can work to the advantage of terrorist groups and to the detriment of the state. Self-imposed limits on the use of detention without charge and targeted killing can yield legitimacy and security benefits.218

#### Limiting the AUMF is key to nonmilitary counterterror – that outweighs

**Daskal & Vladeck 13** - Fellow @ Georgetown’s Center on National Security and the Law & Professor of law @American University Washington [Jennifer Daskal (Professor of Law @ Georgetown University) & Stephen I. Vladeck (Associate Dean for Scholarship at American University Washington College of Law), “Don’t Expand the War on Terror,” New York Times, Published: May 15, 2013, pg. http://www.nytimes.com/2013/05/16/opinion/dont-expand-the-war-on-terror.html?ref=opinion&\_r=1&

Twelve years later, the Taliban have been removed from power; the core of Al Qaeda has been decimated; and most United States combat troops are set to withdraw from Afghanistan by the end of next year. Amid talk of an increasing mismatch between the law and the nature of the terrorist threat today, Congress appears poised to do exactly what it assiduously avoided in 2001: authorize a broad, open-ended war against groups unconnected to those responsible for Sept. 11. The Senate Armed Services Committee is holding hearings on the issue on Thursday.

One leading [proposal](http://www.hoover.org/publications/defining-ideas/article/141091), put forward by the Hoover Institution, would have Congress delegate to the executive branch broad-based authority to create a list of terrorist groups against which the United States is at war. This designation process would supposedly be transparent and subject to the constraints of international law.

But it would essentially concentrate within the executive branch the power to both declare and wage war — authorities that our founding fathers rightly separated. It would effectively allow the use of military force as a matter of first resort against members of any terrorist group that the president so designates. And it would eliminate the requirement that we could use force only against those who had some nexus to the groups that attacked us in 2001.

It’s clear that this list would get only longer and longer. Even if a group no longer posed a meaningful threat, there would be no incentive to de-list entities that might someday do us harm, and every incentive to keep them on. (The Hoover proposal recommends sunset provisions and a requirement that the executive review and renew the list every few years to prevent this mission creep, but based on past history we doubt this would be a sufficient fix.)

Congress should reject open-ended war and embrace a return to peace. Instead of expanding the Authorization for the Use of Military Force (AUMF) , Congress should consider repealing it once the withdrawal of our combat troops from Afghanistan has been completed. Law enforcement, intelligence gathering and other nonmilitary counterterrorism tools ought to be at the forefront of our fight against terrorism.

This is not to say that military force should never be employed. The president can — and should — use force in self-defense, if and when alternative means are unable to stop an impending attack. Such authority in no way depends upon advance approval from Congress.

For a more long-term threat, like Al Qaeda around 2001, Congress could enact a specific authorization to use force against that group, but only after public deliberation, rather than unilateral executive decision making. It might be justifiable, for example, to enact a targeted authorization focused on Al Qaeda in the Arabian Peninsula, the only group currently described by the director of national intelligence as having both the intent and capacity to strike the United States homeland.

But this approach should be pursued with caution, and only if we can be sure that such force will not create more enemies than it kills.

To be sure, a law enforcement approach is not foolproof, as the Boston bombings revealed all too painfully. But the problem in Boston was not insufficient law enforcement capacity but insufficient intelligence — a problem that hinders the military and law enforcement alike.

In fact, one of the most troubling consequences of an open-ended authorization to use force is that it might actually undercut intelligence gathering. Already, key allies are nervous about sharing intel

ligence with the United States because it might be used in drone strikes; Germany, in fact, [restricted information sharing](http://www.spiegel.de/international/germany/drone-killing-debate-germany-limits-information-exchange-with-us-intelligence-a-762873.html) as a result. These concerns would most likely grow if the list of potential targets was expanded. Meanwhile, numerous experts, like the former director of national intelligence, Dennis Blair, warn of the world’s increasing resentment of our use of force, especially targeted killings.

#### EU-US solves

**Archick 11** [Kristin, Specialist in European Affairs for the CRS, “U.S.-EU Cooperation Against Terrorism,” CRS, 7-18, <http://www.fas.org/sgp/crs/row/RS22030.pdf>]

Successive U.S. administrations and many Members of Congress have supported efforts to enhance U.S.-EU cooperation against terrorism since the 2001 terrorist attacks. Although some skeptics initially worried that such U.S.-EU collaboration could weaken strong U.S. bilateral law enforcement relationships with EU member states, the Bush Administration essentially determined that the political benefits of engaging the EU as an entity on police and judicial matters outweighed the potential risks. U.S. officials suggested that the Union’s renewed initiatives in the police and judicial field might be the first steps on a long road toward a common EU judicial identity. Thus, they asserted it was in U.S. interests to engage with the EU, given Europe’s role as a key U.S. law enforcement partner. They also hoped that improved U.S.-EU cooperation on border controls and transport security would help authorities on both sides keep better track of suspected terrorists and prevent them from entering the United States or finding sanctuary in Europe.

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