# 1NC

## Topicality

#### Restrictions are prohibitions

**Schiedler-Brown ‘12**

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

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

Vote negative—

Limits–hundreds of policies raise the costs of Presidential authority – they allow all of them

Ground–the key question is overarching authority in future situations – not programmatic changes

## K

#### Legal restraints motivated by conflict narratives cause endless intervention and WMD warfare

John Morrissey, Lecturer in Political and Cultural Geography, National University of Ireland, Galway; has held visiting research fellowships at University College Cork, City University of New York, Virginia Tech and the University of Cambridge. 2011, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” Geopolitics, Volume 16, Issue 2, 2011

In the ‘biopolitical nomos’ of camps and prisons in the Middle East and elsewhere, managing detainees is an important element of the US military project. As CENTCOM Commander General John Abizaid made clear to the Senate Armed Services Committee in 2006, “an essential part of our combat operations in both Iraq and Afghanistan entails the need to detain enemy combatants and terrorists”.115 However, it is a mistake to characterize as ‘exceptional’ the US military’s broader biopolitical project in the war on terror. Both Minca’s and Agamben’s emphasis on the notion of ‘exception’ is most convincing when elucidating how the US military has dealt with the ‘threat’ of enemy combatants, rather than how it has planned for, legally securitized and enacted, its ‘own’ aggression against them. It does not account for the proactive juridical warfare of the US military in its forward deployment throughout the globe, which rigorously secures classified SOFAs with host nations and protects its armed personnel from transfer to the International Criminal Court. Far from designating a ‘space of exception’, the US does this to establish normative parameters in its exercise of legally sanctioned military violence and to maximize its ‘operational capacities of securitization’.

A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially ‘exceptional’ in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in ‘spaces of exceptions’ or are they, in fact, simply contemporary examples of Foucault’s ‘spaces of security’ that are neither exceptional nor indeed a departure from, or perversion of, liberal democracy? As Mark Neocleous so aptly puts it, has the “liberal project of ‘liberty’” not always been, in fact, a “project of security”?116 This ‘project of security’ has long invoked a powerful political dispositif of ‘executive powers’, typically registered as ‘emergency powers’, but, as Neocleous makes clear, of the permanent kind.117 For Neocleous, the pursuit of ‘security’ – and more specifically ‘capitalist security’ – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the ‘rule of law’, but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the ultimate safeguard of democracy is simply false – a key point affirmed by considering the US military’s extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who “carries the briefcase of rules and restrictions” has long been replaced by the lawyer who “participate[s] in discussions of strategy and tactics”.118

The US military’s liberal lawfare reveals how **the rule of law is simply another securitization tactic in liberalism’s ‘pursuit of security’;** a pursuit that paradoxically eliminates fundamental rights and freedoms in the ‘name of security’.119 This is a ‘liberalism’ defined by what Michael Dillon and Julian Reid see as a commitment to waging ‘biopolitical war’ for the securitization of life – ‘killing to make live’.120 And for Mark Neocleous, (neo)liberalism’s fetishization of ‘security’ **– as both a discourse and a technique of government** – has resulted in a world defined by anti-democratic technologies of power.121 In the case of the US military’s forward deployment on the frontiers of the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been **made possible by constant reference to a neoliberal ‘project of security’** registered in a language of ‘endless emergency’ to ‘secure’ the geopolitical and geoeconomic goals of US foreign policy.122 The US military’s continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a ‘permanent emergency’,123 the new ‘normal’ in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic ‘need’ to securitize volatility and threat.

Conclusion: enabling biopolitical power in the age of securitization

“Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force” – David Kennedy, Of War and Law 124

Can a focus on lawfare and biopolitics help us to **critique our contemporary moment’s proliferation of practices of securitization** – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of US military’s war on terror, I have argued above that it can. If, as David Kennedy points out, the “emergence of a global economic and commercial order has amplified the role of background legal regulations as the strategic terrain for transnational activities of all sorts”, this also includes, of course, ‘warfare’; and for some time, the US military has recognized the “opportunities for creative strategy” made possible by proactively waging lawfare beyond the battlefield.125 As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a “lawmaking character”.126 And it is this ‘lawmaking character’ that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. US lawfare **focuses “the attention of the world on this or that excess**” whilst simultaneously arming “the most heinous human suffering **in legal privilege”,** redefining horrific violence as “collateral damage, self-defense, proportionality, or necessity”.127 It involves a mobilization of the law that is precisely channelled towards “**evasion**”, securing 23 classified Status of Forces Agreements and “offering at once the experience of safe ethical distance and careful pragmatic assessment, while **parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war”.128**

Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its ‘operational capacities’ in its multiples ‘spaces of security’ across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American ‘leasehold empire’. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and **legally condition the ‘milieux’ of military commanders**; and in so doing they **render operational** **the pivotal spaces of overseas intervention of contemporary US national security conceived** in terms of ‘**global governmentality’**.129 In the US global war on terror, it is lawfare that facilitates what Foucault calls the “biopolitics of security” – when life itself becomes the “object of security”.130 For the US military, this involves the eliminating of threats to ‘life’, the creating of operational capabilities to ‘make live’ and the anticipating and management of life’s uncertain ‘future’.

Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of ‘security’, ‘precarity’ and ‘risk’ function centrally in the governing dispositifs of our contemporary world.131 In a society of (in)security, such discourses have a profound power to invoke danger as “requiring extraordinary action”.132 In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where ‘risk’, it seems, has become permanently binded to ‘securitization’. As Claudia Aradau and Rens Van Munster point out, the “perspective **of risk management”** seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.133 US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing 24 of international law, and the securing of SOFAs – are vital security dispositifs of a broader ‘risk- securitization’ strategy involving the deployment of liberal technologies of biopower to “manage dangerous irruptions in the future”.134 It may well be fought beyond the battlefield in “a war of the pentagon rather than a war of the spear”,135 but it is lawfare that ultimately enables the ‘toxic combination’ **of US geopolitics and biopolitics defining the current age of securitization.**

#### Legal restraints guarantee increasing public resistance and executive secrecy

Michael J. Glennon 14, I-law prof at Tufts, National Security and Double Government, <http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf>

If Bagehot’s theory is correct, the United States now confronts a precarious situation. **Maintaining the appearance that** Madisonian **institutions control the course of national security policy requires that those institutions play a large enough role in the decision-making process to maintain the illusion**. But the Madisonians’ role is too visibly shrinking, and the Trumanites’ too visibly expanding, to maintain the plausible impression of Madisonian governance.504 For this reason and others, public confidence in the Madisonians has sunk to new lows.505 **The Trumanites have resisted transparency** far more **successfully** than have the Madisonians, with unsurprising results. The success of the whole dual institutional model depends upon the maintenance of public enchantment with the dignified/ Madisonian institutions. This requires allowing no daylight to spoil their magic,506 as Bagehot put it. An element of mystery must be preserved to excite public imagination. But transparency—driven hugely by modern internet technology, multiple informational sources, and social media— leaves little to the imagination. “The cure for admiring the House of Lords,” Bagehot observed, “was to go and look at it.”507 **The public has gone and looked at Congress, the Supreme Court, and the President, and their standing in public opinion surveys is the result. Justices, senators, and presidents are not masters of the universe after all, the public has discovered. They are just like us**. Enquiring minds may not have read enough of Foreign Affairs508 to assess the Trumanites’ national security polices, but they have read enough of People Magazine509 to know that the Madisonians are not who they pretend to be. While the public’s unfamiliarity with national security matters has no doubt hastened the Trumanites’ rise, **too many people will soon be too savvy to be misled by the** Madisonian **veneer**,510 and those people often are opinion leaders whose influence on public opinion is disproportionate to their numbers. There is no point in telling ghost stories, Holmes said, if people do not believe in ghosts.511

It might be supposed at this point that the phenomenon of double government is nothing new. Anyone familiar with the management of the Vietnam War 512 or the un-killable ABM program 513 knows that double government has been around for a while. Other realms of law, policy, and business also have come to be dominated by specialists, made necessary and empowered by ever-increasing divisions of labor; is not national security duality merely a contemporary manifestation of the challenge long posed to democracy by the administrative state-cum-technocracy?515 Why is national security different?

There is validity to this intuition and no dearth of examples of the frustration confronted by Madisonians who are left to shrug their shoulders when presented with complex policy options, the desirability of which cannot be assessed without high levels of technical expertise. International trade issues, for example, turn frequently upon esoteric econometric analysis beyond the grasp of all but a few Madisonians. Climate change and global warming present questions that depend ultimately upon the validity of one intricate computer model versus another. The financial crisis of 2008 posed similar complexity when experts insisted to hastily-gathered executive officials and legislators that—absent massive and immediate intervention—the nation’s and perhaps the world’s entire financial infrastructure would face imminent collapse.516 In these and a growing number of similar situations, **the “choice” made by the Madisonians is increasingly hollow;** the real choices are made by technocrats **who present options** to Madisonians **that the Madisonians are in no position to assess**. Why is national security any different?

It is different for a reason that I described in 1981: the organizations in question “do not regulate truck widths or set train schedules. They have the capability of radically and permanently altering the political and legal contours of our society.”517 An unrestrained security apparatus has throughout history been one of the principal reasons that free governments have failed. **The Trumanite network** holds within its power something far greater than the ability to recommend higher import duties or more windmills or even gargantuan corporate bailouts: it has the power to kill and arrest and jail, the power to see and hear and read peoples’ every word and action, the power to instill fear and suspicion, the power to quash investigations and quell speech, the power to shape public debate or to curtail it, and the power to hide its deeds and evade its weak-kneed overseers. It **holds**, in short, **the power of irreversibility**. No democracy worthy of its name can permit that power to escape the control of the people.

It might also be supposed that existing, non-Madisonian, external restraints pose counterweights that compensate for the weakness of internal, Madisonian checks. The press, and the public sentiment it partially shapes, do constrain the abuse of power—but only up to a point. To the extent that **the “marketplace of ideas**” analogy ever was apt, that marketplace, like other marketplaces, **is given to distortion**. **Public outrage is** notoriously **fickle, manipulable, and selective**, **particularly when driven by anger, fear, and indolence**. **Sizeable segments of the public**—often egged on by public officials—**lash out unpredictably at imaginary transgressors, failing** even in the ability **to identify** sympathetic **allies**.518 "[P]ublic opinion," Sorensen wryly observed, "is not always identical with the public interest."519 **The influence of the media**, whether to rouse or dampen, **is** thus **limited**. The handful of investigative journalists active in the United States today are the truest contemporary example of Churchill's tribute to the Royal Air Force.520 In the end, though, access remains everything to the press. Explicit or implicit threats by the targets of its inquiries to curtail access often yield editorial acquiescence. Members of the public obviously are in no position to complain when a story does not appear. Further, **even the best** of investigative **journalists confront a high wall of secrecy. Finding** and communicating with (on deep background, of course) **a knowledgeable, candid source** within an opaque Trumanite network resistant to efforts to pinpoint decision-makers 521 **can take years**. Few publishers can afford the necessary financial investment; newspapers are, after all, businesses, and the bottom line of their financial statements ultimately governs investigatory expenditures. Often, **a second** corroborating **source is required**. Even after scaling the Trumanite wall of secrecy, **reporters** and their editors often **become victims of** the **deal-making** tactics they must adopt to live comfortably with the Trumanites. Finally, members of the mass media are subject to the same organizational pressures that shape the behavior of other groups. They eat together, travel together, and think together. A case in point was the Iraq War. The Washington Post ran twenty seven editorials in favor of the war along with dozens of op-ed pieces, with only a few from skeptics.522 The New York Times, Time, Newsweek, the Los Angeles Tunes, and the Wall Street Journal all marched along in lockstep.523 As Senator Eugene McCarthy aptly put it, reporters are like blackbirds; when one flies off the telephone wire, they all fly off.524

More importantly, the premise—that a vigilant electorate fueled by a skeptical press together will successfully fill the void created by the hollowed-out Madisonian institutions—is wrong.525 This premise supposes that those outside constraints operate independently, that their efficacy is not a function of the efficacy of internal, Madisonian checks.526 But the internal and external checks are woven together and depend upon one another.527 Non-disclosure agreements (Judicially-enforced gag orders, in truth) are prevalent among those best positioned to criticize/28 Heightened efforts have been undertaken to crush vigorous investigative journalism and to prosecute and humiliate whistleblowers and to equate them with spies under the espionage laws. National security documents have been breathtakingly over-classified. **The evasion of** Madisonian **constraints** by these sorts of policies **has the net effect of narrowing the marketplace of ideas, curtaining public debate, and gutting both the media and public opinion as effective restraints**.529 The vitality of external checks depends upon the vitality of internal Madisonian checks, and the internal Madisonian checks only minimally constrain the Trumanites.

Some suggest that the answer is to admit the failure of the Madisonian institutions, recognize that for all their faults the external checks are all that really exist, acknowledge that the Trumanite network cannot be unseated, and try to work within the current framework.530 But the idea that external checks alone do or can provide the needed safeguards is false**. If politics were** the **effective** restraint that some have argued it is,531 **politics**—intertwined as it is with law—**would have produced more effective legalist constraints**. It has not. The failure of law is and has been a failure of politics. If the press and public opinion were sufficient to safeguard what the Madisonian institutions were designed to protect, the story of democracy would consist of little more than a series of elected kings, with the rule of law having frozen with the signing of Magna Carta in 1215. Even with effective rules to protect free, informed, and robust expression—which is an enormous assumption—public opinion alone cannot be counted upon to protect what law is needed to protect. The hope that it can do so recalls earlier reactions to Bagehot’s insights—the faith that “the people” can simply “throw off” their “deferential attitude and reshape the political system,” insisting that the Madisonian, or dignified, institutions must “once again provide the popular check” that they were intended to provide.532

That, however, is exactly what many thought they were doing in electing Barack Obama as President. The results need not be rehearsed; little reason exists to expect that some future public effort to resuscitate withered Madisonian institutions would be any more successful. Indeed, the added power that the Trumanite network has taken on under the BushObama policies would make that all the more difficult. It is simply naive to believe that a sufficiently large segment of informed and intelligent voters can somehow come together to ensure that sufficiently vigilant Madisonian surrogates will somehow be included in the national security decisionmaking process to ensure that the Trumanite network is infused with the right values. Those who believe that do not understand why that network was formed, how it operates, or why it survives. They want it, in short, to become more Madisonian. The Trumanite network, of course, would not mind appearing more Madisonian, bul its enduring ambilion is lo become, in reality, less Madisonian.

It is not clear what precisely might occur should Bagehot's cone of government "fall to earth." United States history provides no precedent. One possibility is a prolongation of what are now long-standing trends, with the arc of power continuing to shift gradually from the Madisonian institutions to the Trumanite network. Under this scenario, those institutions continue to subcontract national security decisionmaking to the Trumanites; a majority of the public remains satisfied with tradeoffs between liberty and security; and members of a dissatisfied minority are at a loss to know what to do and are, in any event, chilled by widely-feared Trumanite surveillance capabilities. The Madisonian institutions, in this future, fade gradually into museum pieces, like the British House of Lords and monarchy; Madisonians kiss babies, cut ribbons, and read Trumanite talking points, while the Trumanite network, careful to retain historic forms and familiar symbols, takes on the substance of a silent directorate.

Another possibility, however, is that **the fall** to earth **could entail consequences** that are **profoundly disruptive**, both **for the government** and the people. This scenario would be more likely in the aftermath of a catastrophic terrorist attack that takes place in an environment lacking the safety-valve checks that the Madisonian institutions once provided. In this future, **an initial "rally round the flag" fervor and** associated **crack-down are followed**, later, **by an increasing spiral of recriminatory reactions and counter-reactions**. The government is seen increasingly by elements of the public as hiding what they ought to know, criminalizing what they ought to be able to do, and spying upon what ought to be private. The people are seen increasingly by the government as unable to comprehend the gravity of security threats, unappreciative of its security-protection efforts, and unworthy of its own trust. Recent public opinion surveys are portentous. A September 2013 Gallup Poll revealed that Americans' trust and confidence in the federal government's ability to handle international problems had reached an all-time low;533 a June 2013 Time magazine poll disclosed that 70% of those age eighteen to thirty-four believed that Edward Snowden "did a good thing" in leaking the news of the NSA's surveillance program.534 This yawning attitudinal gap between the people and the government could reflect itself in multiple ways. Most obviously, the Trumanite network must draw upon the U.S. population to fill the five million positions needed to staff its projects that require security clearances.535 That would be increasingly difficult, however, if the pool of available recruits comprises a growing and indeterminate number of Edward Snowdens—individuals with nothing in their records that indicates disqualifying unreliability but who, once hired, are willing nonetheless to act against perceived authoritarian tendencies by leaving open the vault of secrecy.

A smaller, less reliable pool of potential recruits would hardly be the worst of it, however. Lacking perceived legitimacy, **the government could expect a lesser level of cooperation, if not outright obstruction, from the general public**. Many national security programs presuppose public support for their efficient operation. This ranges from compliance with national security letters and library records disclosure under the PATRIOT Act to the design, manufacture, and sale of drones, and cooperation with counterintelligence activities and criminal investigations involving national security prosecutions. Moreover, distrust of government tends to become generalized; people who doubt governmental officials' assertions on national security threats are inclined to extend their skepticism.

**Governmental assurances concerning everything from vaccine and food safety to the fairness of stock-market regulation and IRS investigations** (not without evidence536) **become widely suspect**. **Inevitably**, therefore, **daily life would become more difficult**. Government, after all, exists for a reason. It carries out many helpful and indeed essential functions in a highly specialized society. When those functions cannot be fulfilled, **work-arounds emerge, and social dislocation results**. Most seriously, the protection of **legitimate national security interests would** itself **suffer** if the public were unable to distinguish between measures vital to its protection and those assumed to be undertaken merely through bureaucratic inertia or lack of imagination.

**The government** itself, meanwhile, **could not be counted upon to remain passive in the face of growing public obduracy** in response to its efforts to do what it thinks essential to safeguard national security. Here we do have historical precedents, and none is comfortably revisited. The Alien and Sedition Acts in the 1790s;537 the Palmer Raids of 1919 and 1920;538 the round-up of Japanese-American citizens in the 1940s;539 governmental spying on and disruption of civil rights, draft protesters, and anti-war activists in the 1960s and 1970s;540 and the incommunicado incarceration without charges, counsel, or trial of "unlawful combatants" only a few short years ago541—all are examples of what can happen when government sees limited options in confronting nerve-center security threats. No one can be certain, but **the ultimate danger** posed **if the system were to fall** to earth in the aftermath of a devastating terrorist attack **could be** intensely divisive and potentially **destabilizing**—not unlike what was envisioned by conservative Republicans in Congress who opposed Truman's national security programs when the managerial network was established.542 It is therefore appropriate to move beyond explanation and to turn to possibilities for reform—to consider steps that might be taken to prevent the entire structure from falling to earth.

#### Vote neg to debase the aff’s reliance securitized law in favor of democratic restraints on the President

Stephanie A. Levin 92, law prof at Hampshire College, Grassroots Voices: Local Action and National Military Policy, 40 Buff. L. Rev. 372

In this sense, what is important about federalism is not that it locates power "here" or "there" — not that some things are assigned irretrievably to the federal government or others to the states — but that it creates a tension about power, so that there are competing sources of authority rather than one unitary sovereign. Hannah Arendt has written that "perhaps the greatest American innovation in politics as such was the consistent abolition of sovereignty within the body politic of the republic, the insight that in the realm of human affairs sovereignty and tyranny are the same."194 Akhil Amar has expressed what is actually the same basic insight in a very different formulation, writing that the American innovation was to place sovereignty "in the People themselves. "I9S Whether one views unitary sovereignty as abolished or relocated to the people, the key point is that it is no longer considered to be in any unitary government. Governmental institutions are divided and kept in tension. At the federal level, this is the familiar doctrine of separation of powers. The same principle animates federalism. The tension is valued because it creates space for the expression of suppressed viewpoints and helps to prevent any one orthodoxy from achieving complete hegemony. Amar sums up the contribution that this governmental innovation makes to the liberty of the people by writing: "As with separation of powers, federalism enabled the American People to conquer government power by dividing it. Each government agency, state and national, would have incentives to win the principal's affections by monitoring and challenging the other's misdeeds."196 This is a compelling insight, but the way Professor Amar has framed it presents two difficulties for present purposes. First, by naming only the "state" and "national" governments, it ignores the field of local government action, a field particularly accessible to the direct involvement of the very citizens who constitute Amar's sovereign "People."197 Second, by making the subject of the verb the "government agency," the sentence makes it sound as if it were the "government agency" which acts, rather than recognizing that it is people who act though the agencies of government. Since the focus here is on federalism as a means of fostering civic participation, both of these qualifications are crucial. While state government will sometimes be an excellent locus for citizen action, often local government will provide the best forum for ordinary citizens to find their voices in civic conversation. And because the value of federalism for our purposes is in the enhanced opportunities it provides for citizen participation in policy development, the focus must be not on government institutions acting, but on people acting through them. In summary, three key attributes of participatory federalism must be highlighted. The first is that what is most important is not where government power is assigned — to the federal government, the states, or the localities — but the very fact that there are shared and overlapping powers. This dispersion of power means that the citizen is better protected from the dangers that are inherent in being subject to any one unitary sovereign.198 A second key attribute is that the value of this federalism lies not in the empowerment of government, but in the empowerment of people. Its animating purpose is not to add to or detract from the powers of any particular level of government, but to provide the most fruitful arrangements for enhancing the possibility of genuine citizen control over government. Third, the only meaningful measure of the success or failure of this type of federalism is the extent to which it contributes to increased opportunities for citizens to have a voice in government. This must be not at the level of deceptive abstraction — "the People speak" — but at the very concrete level of actual people with actual voices. The goal is for more people to be able to speak up in settings more empowering than their living rooms — and certainly state and local governments, while not the only possible settings, provide such an opportunity. In conclusion, these general principles of participatory federalism must be linked to the specific case of federalism in connection with military policy. The constitutional arrangements concerning military power which were described in Section II fit with these three attributes of participatory federalism quite well. The first attribute calls for dispersing power by sharing it. As has already been suggested, the military arrangements in the Constitution were designed to achieve exactly this sort of liberating tension between the national government's military powers and the decentralized state and locally-controlled institutions by which these powers were to be carried out. The second attribute calls for empowering people rather than governmental institutions. Here, too, the constitutional arrangements seem to fit. The purpose of the grants of power in the relevant constitutional clauses was not to endow any unit of government with the prerogatives of military power for its own sake. The reason for creating these powers was not to strengthen government but to protect the citizenry — to "provide for the common defense." Given this, it seems anomalous for the federal government — or any branch of the American government — to claim a right to control or use military violence as an inherent attribute of sovereignty.'99 The only justification for this power is in whether it contributes to the security of the citizens. Finally, the idea that federalism should serve the purpose of enhancing citizen voice can also be linked to decentralized arrangements for the control of military power. In the eighteenth century, as I have suggested earlier, the mechanism for expressing "voice" was physical: the militiamember showed up at muster, rifle on shoulder, to participate bodily in a "conversation" about military force.200 Today, it can be hoped that our civic conversation can be more verbal. However, we should translate the underlying meaning of the eighteenth century mechanism — a meaning of citizen participation and consent — into a modality more appropriate to contemporary life rather than relinquish it altogether. I would argue that such a translation leads to three central conclusions. The first is theoretical: we must challenge those mental preconceptions which favor totally centralized power in the military policy arena. We must stop seeing control over military power as belonging "naturally" to the federal government and even more narrowly to the executive branch within it. Instead, we must reconceptualize our understanding of the national arrangements to envision a dynamic and uncertain balance among different sources of power, not only among the three branches of the federal government, but between centralized and decentralized institutions of government as well.201 While the role of the federal government is, of course, crucial, the roles of the states and localities are more than interstitial and should not be allowed to atrophy. Only in this dynamic tension does the best protection for the citizenry lie.

## Operations DA

#### Drone court wrecks operations – turns the case

James Oliphant, deputy editor for National Journal, 13 [“Vetting the Kill List,” April 4, http://www.nationaljournal.com/magazine/vetting-the-kill-list-20130404]

To many following President Obama’s targeted-killing program, the idea of some formal oversight over the use of drones, some legal authority checking the administration’s conduct, seems prudent, even desirable. Americans are fundamentally suspicious people. Power unrestrained makes us edgy. It’s why we vote for divided government and gridlock, even though we like to complain about it. It’s why we don’t let police officers search our homes without a warrant.¶ To that mix, add some old-fashioned hysteria, courtesy of senators such as Rand Paul and Ted Cruz—who, in a matter of days last month, seemed to have convinced half the nation that Skynet was real, that malevolent drones were about to start cutting down U.S. citizens in line at Panera Bread—and it’s easy to see why some sort of outside monitor, a “drone court” if you will, might make sense.¶ The administration has inadvertently helped that argument by its **stubborn refusal to reveal even the smallest, most benign details of the counterterrorism program**. The stonewalling has fueled speculation that the process by which authorities select and kill targets is suspect, that the whole endeavor has an ad hoc quality about it. And even as administration officials have refuted this suspicion—reporters such as Newsweek’s Daniel Klaidman have pulled back the curtain on careful White House deliberations—a gnawing sense of unease lingers.¶ Civil libertarians and even hawks such as former Rep. Jane Harman of California, who served on the House Intelligence Committee, have suggested creating a court modeled on the one that signs off on federal wiretaps of suspected foreign agents. The Foreign Intelligence Surveillance Court in Washington operates in secret and requires the government to make a case before approving a tap. Harman and other proponents say such a body could review names on the “kill list” and weigh in on whether they merit inclusion based on the White House’s criteria for targeting potential threats. Robert Gates, the former Defense secretary, also favors such an approach.¶ But even among supporters, no consensus exists on what questions a drone court would actually review or even whether its scrutiny would come before or after a strike. The most problematic scenario involves any sort of preoperational clearance. Possible windows for action open and shut in a matter of hours. The kill lists are constantly being revised and updated. Even many of those who argue for some sort of oversight mechanism, such as University of Texas law professor Robert Chesney, **don’t believe a judge should be involved when it comes to “pulling the trigger**.”¶ Still, Chesney says such a court could still vet the names on the list in advance to ensure the administration is following its own guidelines for a strike: the target is connected to al-Qaida; he poses some threat of “imminent” harm; and the government is operating within its legal authority. “Whether and when to fire is a totally separate question,” Chesney says. (He notes that there’s a range of disagreement over how the administration classifies an “imminent” threat and whether a judge would be qualified to make that determination.)¶ But even that small degree of oversight, warns Gregory McNeal, a counterterrorism expert at Pepperdine University, risks throwing sand in the gears by extending the timeline of an op. And to McNeal, this point leads directly to the larger issue of accountability—or, to use the Washington synonym, blame. **Judges,** he says, **simply aren’t ever going to be equipped to identify and navigate the variables involved in a drone strike**.¶ Jeh Johnson, formerly the Obama administration’s top lawyer at the Pentagon, expressed his discomfort with court-based oversight in a speech last month at Fordham University. Questions of feasibility and imminence, he said, “are up-to-the-minute, real-time assessments.” More important, Johnson emphasized, “we want military and national security officials to continually assess and reassess these two questions up until the last minute of the operation.” Given that reality, shifting the responsibility of a sign-off to a set of federal judges, who are unelected and serve for life, would allow the White House to escape the consequences of its actions, or more crucially, perhaps its failure to act if a target slips out of harm’s way and then masterminds an attack. Military decisions are, at heart, political ones, McNeal says, and they are rightly made by the branch of government whose top official, the president, faces voters. (A case in point: Republicans suffered at the ballot box in 2006 and 2008 as a result of the public’s displeasure with the Iraq war.) “If you’re a politician,” McNeal says of a drone court, “this is great. Because you aren’t on the hook for anything.”¶ By and large, federal judges don’t want to be in this position. They worry about damaging the integrity of the bench. Retired Judge James Robertson, who served on the U.S. Appeals Court in Washington, argued in The Washington Post that the Constitution forbids the judiciary from issuing advisory opinions. “Federal courts rule on specific disputes between adversary parties,” he wrote. “They do not make or approve policy; that job is reserved to Congress and the executive.” The FISA court is a different animal, because approving surveillance is related to Fourth Amendment protections on search warrants.¶ Still, Americans don’t have to grant the White House complete latitude to operate its targeted-killing program. Another idea that has marshaled some support is an inspector general empowered to **review operations after the fact**. If administration officials know that someone else ultimately will be auditing their decisions, Chesney says, that may be enough of a check on their conduct. Or as Ronald Reagan once put it: “Trust, but verify.”

## NSA Reform DA

#### NSA reform is in a narrow Congressional sweet spot

David Hawkings, Roll Call, 3/25/14, Hill’s Bipartisan Deadlock on Phone Records May Be Easing, blogs.rollcall.com/hawkings/obama-nsa-reform-plan-could-ease-congressional-deadlock-on-spying/2/

Eight months ago, in one of its most important and fascinatingly nonpartisan votes of recent memory, the House came up just seven members short of eviscerating the government’s vast effort to keep tabs on American phone habits. The roll call revealed a profound divide in Congress on how assertively the intelligence community should be allowed to probe into the personal lives of private citizens in the cause of thwarting terrorism. It is a split that has stymied legislative efforts to revamp the National Security Agency’s bulk data collection programs. Until now, maybe. Senior members with jurisdiction over the surveillance efforts, in both parties and on both sides of the Hill, are signaling generalized and tentative but nonetheless clear support for the central elements of a proposed compromise that President Barack Obama previewed Tuesday and will formally unveil by week’s end. The president, in other words, may be close to finding the congressional sweet spot on one of the most vexing problems he’s faced — an issue that surged onto Washington’s agenda after the secret phone records collection efforts were disclosed by former NSA contractor Edward Snowden. If Obama can seal the deal, which he’s pledged to push for by the end of June, it would almost surely rank among his most important second-term victories at the Capitol. It also would create an exception that proves the rule about the improbability of bipartisan agreement on hot-button issues in an election season.

“I recognize that people were concerned about what might happen in the future with that bulk data,” Obama said at a news conference in The Hague, where he’s been working to gain support for containing Russia from a group of European leaders who have their own complaints about U.S. spying on telephone calls. “This proposal that’s been presented to me would eliminate that concern.” The top two members of the House Intelligence Committee, GOP Chairman Mike Rogers of Michigan and ranking Democrat C.A. Dutch Ruppersberger of Maryland, introduced their own bill to revamp surveillance policy Tuesday — and declared they expect it would track very closely with the language coming from the administration. They said they had been negotiating with White House officials for several weeks and viewed the two proposals as compatible. At their core, both the Obama and House bills would end the NSA practice of sucking up and storing for five years the date and time, duration and destination of many millions of phone calls placed or received by Americans. Instead, the phone companies would be required to retain this so-called metadata (and comparable information about email and Internet use) for 18 months, their current practice. And the government would have to obtain something like a search warrant from the Foreign Intelligence Surveillance Court, meaning in each discreet case a judge would limit how deeply the telecom companies would have to query their databases in hopes of finding calling patterns that suggest national security threats. Since both Rogers and Ruppersberger have been prominent defenders of the bulk collection system, any agreement they reach that has Obama’s blessing can be expected to pass the House. It should garner support from a lopsided majority of the 217 House members (three-fifths of the Republicans and two-fifths of the Democrats) who voted to stick with the status quo last July. And it stands a chance to win over at least some on the other side — an unusual coalition of 94 mostly libertarian-leaning tea party Republicans and 111 liberal Democrats, who say NSA searches of the databases should be limited to information about existing targets of investigations. But one leader of that camp vowed to work for the defeat of any measure that looks like either the Obama or Intelligence panel plans. Republican Rep. Jim Sensenbrenner of Wisconsin, who as chairman of House Judiciary a decade ago was instrumental in writing the Patriot Act, believes that law has been grossly misapplied by the NSA to invade personal privacy much too easily. Sensenbrenner said he would continue to push his measure to almost entirely prevent the NSA from looking at telecommunications metadata. But the sponsor of the companion Senate bill, Judiciary Chairman Patrick J. Leahy, D-Vt., said he would remain open to finding the makings of a deal in the Obama plan. Leahy signaled the legislative negotiating would be much smoother if Obama suspended the bulk data collection during the talks. Much more enthusiastic was Calfornia’s Dianne Feinstein, the Democratic chairwoman of the Senate Intelligence Committee, who said she generally supports the House proposal and views Obama’s plan “a worthy effort.” Her committee’s top Republican, the retiring Saxby Chambliss of Georgia, was a bit more equivocal but gave a strong indication he was eager to cut a deal based on the ideas from the House and the White House.

#### The plan’s fight over authority crowds it out

John Grant, Minority Counsel for the Senate Committee on Homeland Security and Governmental Affairs, 8/13/2010, Will There Be Cybersecurity Legislation?, jnslp.com/2010/08/13/will-there-be-cybersecurity-legislation/

In the course of just a few decades, information technology has become an essential component of American life, playing a critical role in nearly every sector of the economy. Consequently, government policy affecting information technology currently emanates from multiple agencies under multiple authorities – often with little or no coordination. The White House’s Cyberspace Policy Review (the Review) wisely recognized that the first priority in improving cybersecurity is to establish a single point of leadership within the federal government and called for the support of Congress in pursuit of this agenda. Congressional involvement in some form is inevitable, but there is considerable uncertainty as to what Congress needs to do and whether it is capable of taking action once it decides to do so. With an agenda already strained to near the breaking point by legislation to address health care reform, climate change, energy, and financial regulatory reform – as well as the annual appropriations bills – the capacity of Congress to act will depend, in some part, on the necessity of action. For the last eight years, homeland security has dominated the congressional agenda. With the memory of the terrorist attacks of September 11 becoming ever more distant, there may be little appetite for taking on yet another major piece of complex and costly homeland security legislation.

#### That’s key to NSA authority—Congress would easily reject all NSA surveillance

Brendan Sasso, National Journal, 3/25/14, Why Obama and His NSA Defenders Changed Their Minds, www.nationaljournal.com/tech/why-obama-and-his-nsa-defenders-changed-their-minds-20140325

It was only months ago that President Obama, with bipartisan backing from the heads of Congress's Intelligence committees, was insisting that the National Security Agency's mass surveillance program was key to keeping Americans safe from the next major terrorist attack. They were also dismissing privacy concerns, saying the program was perfectly legal and insisting the necessary safeguards were already in place. But now, Obama's full-speed ahead has turned into a hasty retreat: The president and the NSA's top supporters in Congress are all pushing proposals to end the NSA's bulk collection of phone records. And civil-liberties groups—awash in their newly won clout—are declaring victory. The question is no longer whether to change the program, but how dramatically to overhaul it. So what changed? It's not that Obama and his Hill allies suddenly saw the error of their ways and became born-again privacy advocates. Instead, with a critical section of the Patriot Act set to expire next year, they realized they had no choice but to negotiate. If Congress fails to reauthorize that provision—Section 215—by June 1, 2015, then the NSA's collection of U.S. records would have to end entirely. And the growing outrage prompted by the Snowden leaks means that the NSA's supporters would almost certainly lose an up-or-down vote on the program. Rep. Adam Schiff, a Democratic member of the House Intelligence Committee, said that looming sunset is what forced lawmakers to the bargaining table. "I think what has changed is the growing realization that the votes are simply not there for reauthorization," he said in an interview. "I think that more than anything else, that is galvanizing us into action."

Obama and the House Intelligence Committee leaders believe their proposals are now the NSA's best bet to retain some power to mine U.S. phone records for possible terror plots. Senate Intelligence Committee Chairwoman Dianne Feinstein, another leading NSA defender, also indicated she is on board with the changes, saying the president's proposal is a "worthy effort." And though the Hill's NSA allies are now proposing reforms to the agency, they don't seem particularly excited about it. At a Capitol Hill press conference Tuesday, Rep. Mike Rogers, the Republican chairman of the House Intelligence Committee, and Rep. Dutch Ruppersberger, the panel's top Democrat, often sounded like they were arguing against their own bill that they were unveiling. "I passionately believe this program has saved American lives," Rogers said. Ruppersberger said if the program had been in place in 2001, it may have prevented the Sept. 11 attacks. But the lawmakers acknowledged there is broad "discomfort" with the program as it is currently structured. "We need to do something about bulk collection because of the perception of our constituents," Ruppersberger admitted. Under their legislation, the vast database of phone records would stay in the hands of the phone companies. The NSA could force the phone companies to turn over particular records, and the Foreign Intelligence Surveillance Court would review the NSA orders after the fact. But Rogers rejected a reporter's suggestion that the NSA should have never had control of the massive database of phone records in the first place. "There was no abuse, no illegality, no unconstitutionality," he said. For all their hesitance, however, Rogers and company much prefer their version to a competing proposal to change the way the government gathers information. That would be the USA Freedom Act, a proposal from Senate Judiciary Committee Chairman Patrick Leahy and Rep. Jim Sensenbrenner that Rogers and his ilk fear would go too far in hamstringing the NSA. The USA Freedom Act would require the NSA to meet a tougher standard for the data searches and would limit other NSA programs, such as Internet surveillance of people overseas. Additionally, President Obama is expected to unveil his own plan to reform the controversial phone data collection program this week. According to The New York Times, Obama's proposal would also keep the database in the hands of the phone companies. His plan would have tougher judicial oversight than the House bill by requiring pre-approval from the court for every targeted phone number, the newspaper reported. But though the momentum has shifted and officials seem to be coalescing around a framework for overhauling the NSA program, the question is far from settled. Leahy and Sensenbrenner are not backing off from their USA Freedom Act, and outside groups will continue their policy push as well.

#### European backlash over NSA devastates the alliance

Tuccille, 13

(Managing Editor-Reason, 11/1, “NSA Spying Torpedoes American Business Dealings in Europe”, http://reason.com/blog/2013/11/01/nsa-spying-torpedoes-american-business-d)

From the beginning of the NSA mass-surveillance scandal, revelations that the U.S. spy agency was not only scooping up international communications, but had conscripted American companies into the effort have opened doors for foreign firms. Tech companies in other countries are relatively shielded from pressure by U.S. spooks (whatever their relationships with spy agencies in their own countries) and some American entrepreneurs, like Ladar Levison of Lavabit, actively urge people to avoid U.S.-based services. Worse, though, the NSA's connection to some companies is giving European politicians cover to discriminate against American businesses. Never mind that Europeans do their own fair share of spying; they now have legitimate concerns to raise about the security of data in the hands of Apple, AT&T, Google, and other familiar names. BRUSSELS—The backlash in Europe over U.S. spying is threatening an agreement that generates tens of billions of dollars in trans-Atlantic business every year—and negotiations on another pact worth many times more. A growing number of European officials are calling for the suspension of the "Safe Harbor" agreement that lets U.S. companies process commercial and personal data—sales, emails, photos—from customers in Europe. This little-known but vital deal allows more than 4,200 American companies to do business in Europe, including Internet giants like Apple, Google, Facebook and Amazon. Revelations of the extent of U.S. spying on its European allies is also threatening to undermine one of President Barack Obama's top trans-Atlantic goals: a sweeping free-trade agreement that would add an estimated $138 billion (100 billion euros) a year to each economy's gross domestic product. The Safe Harbor agreement allows companies to move data around their networks as needed. In its absence, data from Europeans might have to be stored and processed only within the physical confines of Europe—a huge expense and possibly insurmountable hurdle for many companies. Many U.S. companies would effectively **be unable to operate in Europe** if they were reachable by European law. Some companies could explicitly be barred from expanding their presence in Europe out of fears that they operate as pipelines to the NSA. According to the Wall Street Journal's Anton Troianovski: AT&T Inc.'s ambitions to expand in Europe have run into unexpected hurdles amid the growing outcry across the region over surveillance by the National Security Agency. German and other European officials said any attempt by AT&T to acquire a major wireless operator would face intense scrutiny, given the company's work with the U.S. agency's data-collection programs. Resistance to such a deal, voiced by officials in interviews across Europe, suggests the impact of the NSA affair could extend beyond the diplomatic sphere and **damage U.S. economic interests in key markets**. AT&T Chief Executive Randall Stephenson has signaled repeatedly in recent months that he is interested in buying a mobile-network operator in Europe, highlighting the potential for growth on the continent at a time when the U.S. company faces headwinds at home. Some of this resistance to American companies is legitimate; Europeans are as outraged as Americans about the spying scandal—quite possibly more so, given that continent's long history with authoritarian regimes and secret police. And some of these moves are just opportunistic; the NSA has turned into a great excuse for European politicians to openly favor well-connected companie in their own countries at the expense of U.S. firms. In a recent report (PDF), the European Parliament called out Britain, France, Germany, and Sweden for tapping directly into communications networks—though it insisted "The capacities of Sweden, France and Germany (in terms of budget and human resources) are low compared to the magnitude of the operations launched by GCHQ and the NSA and cannot be considered on the same scale". Germany's BND worked closely with the NSA to facilitate spying, and France's DGSE needed no encouragement to hoover up communications data, though it apparently aided the NSA, as did a counterpart agency in Spain. Britain's GCHQ is reported to have burrowed its way into Begian telecommunications firms in the course of its extensive cooperation with the NSA. In other words, European government officials are shocked. Shocked! But, however cynical the response, by compromising the independence of American firms, U.S. officials created a hell of a justification for other countries to torpedo those companies and favor their own.

#### Stops Eurasian nuclear war

Brzezinski, 3

(PhD-Poli Sci & Former National Security Advisor to President Carter, “Hegemonic quicksand,” Winter, http://nationalinterest.org/article/hegemonic-quicksand-563)

FOR THE next several decades, the most volatile and dangerous region of the world--with the **explosive potential to plunge the world into chaos**--will be the crucial swathe of Eurasia between Europe and the Far East. Heavily inhabited by Muslims, we might term this crucial subregion of Eurasia the new "Global Balkans." (1) It is here that America could slide into a collision with the world of Islam while American-European policy differences could even cause the Atlantic Alliance to come unhinged. The two eventualities together could then put the prevailing American global hegemony at risk. At the outset, it is essential to recognize that the ferment within the Muslim world must be viewed primarily in a regional rather than a global perspective, and through a geopolitical rather than a theological prism. The world of Islam is disunited, both politically and religiously. It is politically unstable and militarily weak, and likely to remain so for some time. Hostility toward the United States, while pervasive in some Muslim countries, originates more from specific political grievances--such as Iranian nationalist resentment over the U.S. backing of the Shah, Arab animus stimulated by U.S. support for Israel or Pakistani feelings that the United States has been partial to India-than from a generalized religious bias. The complexity of the challenge America now confronts dwarfs what it faced half a century ago in Western Europe. At that time, Europe's dividing line on the Elbe River was the strategically critical frontline of maximum danger, with the daily possibility that a clash in Berlin could unleash a nuclear war with the Soviet Union. Nevertheless, the United States recognized the stakes involved and committed itself to the defense, pacification, reconstruction and revitalization of a viable European community. In doing so, America gained natural allies with shared values. Following the end of the Cold War, the United States led the transformation of NATO from a defense alliance into an enlarging security alliance--gaining an enthusiastic new ally, Poland--and it has supported the expansion of the European Union (EU). For at least a generation, the major task facing the United States in the effort to promote global security will be the pacification and then the cooperative organization of a region that contains the world's greatest concentration of political injustice, social deprivation, demographic congestion and potential for high-intensity violence. But the region also contains most of the world's oil and natural gas. In 2002, the area designated as the Global Balkans contained 68 percent of the world's proven oil reserves and 41 percent of the world's proven natural gas reserves; it accounted for 32 percent of world oil production and 15 percent of world natural gas production. In 2020, the area is projected to produce roughly 42 million barrels of oil per day--39 percent of the global production total (107.8 million barrels per day). Three key regions-Europe, the United States and the Far East--collectively are projected to consume 60 percent of that global production (16 percent, 25 percent and 19 percent, respectively). The combination of oil and volatility gives the United States no choice. America faces an awesome challenge in helping to sustain some degree of stability among precarious states inhabited by increasingly politically restless, socially aroused and religiously inflamed peoples. It must undertake an even more daunting enterprise than it did in Europe more than half a century ago, given a terrain that is culturally alien, politically turbulent and ethnically complex. In the past, this remote region could have been left to its own devices. Until the middle of the last century, most of it was dominated by imperial and colonial powers. Today, to ignore its problems and underestimate its potential for global disruption would be tantamount to declaring an open season for **intensifying regional violence**, region-wide contamination by terrorist groups and the **competitive proliferation of w**eaponry of **m**ass **d**estruction. The United States thus faces a task of monumental scope and complexity. There are no self-evident answers to such basic questions as how and with whom America should be engaged in helping to stabilize the area, pacify it and eventually cooperatively organize it. Past remedies tested in Europe--like the Marshall Plan or NATO, both of which exploited an underlying transatlantic political-cultural solidarity--do not quite fit a region still rent by historical hatreds and cultural diversity. Nationalism in the region is still at an earlier and more emotional stage than it was in war-weary Europe (exhausted by two massive European civil wars fought within just three decades), and it is fueled by religious passions reminiscent of Europe's Catholic-Protestant forty-year war of almost four centuries ago. Furthermore, the area contains no natural allies bonded to America by history and culture, such as existed in Europe with Great Britain, France, Germany and, lately, even Poland. In essence, America has to navigate in uncertain and badly charted waters, setting its own course, making differentiated accommodations while not letting any one regional power dictate its direction and priorities. To Whom Can America Turn? TO BE SURE, several states in the area are often mentioned as America's potential key partners in reshaping the Global Balkans: Turkey, Israel, India and--on the region's periphery--Russia. Unfortunately, every one of them suffers serious handicaps in its capability to contribute to regional stability or has goals of its own that collide with America's wider interests in the region. Turkey has been America's ally for half a century. It earned America's trust and gratitude by its direct participation in the Korean War. It has proven to be NATO's solid and reliable southern anchor. With the fall of the Soviet Union, it became active in helping both Georgia and Azerbaijan consolidate their new independence, and it energetically promoted itself as a relevant model of political development and social modernization for those Central Asian states whose people largely fall within the radius of the Turkic cultural and linguistic traditions. In that respect, Turkey's significant strategic role has been complementary to America's policy of reinforcing the new independence of the region's post-Soviet states. Turkey's regional role, however, is limited by two major offsetting considerations stemming from its internal problems. The first pertains to the still uncertain status of Ataturk's legacy: Will Turkey succeed in transforming itself into a secular European state even though its population is overwhelmingly Muslim? That has been its goal since Ataturk set his reforms in motion in the early 1920s. Turkey has made remarkable progress since then, but to this day its future membership in the European Union (which it actively seeks) remains in doubt. If the EU were to close its doors to Turkey, the potential for an Islamic political-religious revival and consequently for Turkey's dramatic (and probably turbulent) international reorientation should not be underestimated. The Europeans have reluctantly favored Turkey's inclusion in the European Union, largely in order to avoid a serious regression in the country's political development. European leaders recognize that the transformation of Turkey from a state guided by Ataturk's vision of a European-type society into an increasingly theocratic Islamic one would adversely affect Europe's security. That consideration, however, is contested by the view, shared by many Europeans, that the construction of Europe should be based on its common Christian heritage. It is likely, therefore, that the European Union will delay for as long as it can a clear-cut commitment to open its doors to Turkey--but that prospect in turn will breed Turkish resentments, increasing the risks that Turkey might evolve into a resentful Islamic state, with potentially dire consequences for southeastern Europe. (2) The other major liability limiting Turkey's role is the Kurdistan issue. A significant proportion of Turkey's population of 70 million is composed of Kurds. The actual number is contested, as is the nature of the Turkish Kurds' national identity. The official Turkish view is that the Kurds in Turkey number no more than 10 million, and that they are essentially Turks. Kurdish nationalists claim a population of 20 million, which they say aspires to live in an independent Kurdistan that would unite all the Kurds (claimed to number 25-35 million) currently living under Turkish, Syrian, Iraqi and Iranian domination. Whatever the actual facts, the Kurdish ethnic problem and the potential Islamic religious issue tend to make Turkey-- notwithstanding its constructive role as a regional model--also very much a part of the region's basic dilemmas. Israel is another seemingly obvious candidate for the status of a pre-eminent regional ally. As a democracy as well as a cultural kin, it enjoys America's automatic affinity, not to mention intense political and financial support from the Jewish community in America. Initially a haven for the victims of the Holocaust, it enjoys American sympathy. As the object of Arab hostility, it triggered American preference for the underdog. It has been America's favorite client state since approximately the mid-1960s and has been the recipient of unprecedented American financial assistance ($80 billion since 1974). It has benefited from almost solitary American protection against UN disapprobation or sanctions. As the dominant military power in the Middle East, Israel has the potential, in the event of a major regional crisis, not only to be America's military base but also to make a significant contribution to any required U.S. military engagement. Yet American and Israeli interests in the region are not entirely congruent. America has major strategic and economic interests in the Middle East that are dictated by the region's vast energy supplies. Not only does America benefit economically from the relatively low costs of Middle Eastern oil, but America's security role in the region gives it indirect but politically critical leverage on the European and Asian economies that are also dependent on energy exports from the region. Hence good relations with Saudi Arabia and the United Arab Emirates--and their continued security reliance on America--is in the U.S. national interest. From Israel's standpoint, however, the resulting American-Arab ties are disadvantageous: they not only limit the degree to which the United States is prepared to back Israel's territorial aspirations, they also stimulate American sensitivity to Arab grievances against Israel. Among those grievances, the Palestinian issue is foremost. That the final status of the Palestinian people remains unresolved more than 35 years after Israel occupied the Gaza Strip and the West Bank--irrespective of whose fault that actually may be--intensifies and, in Arab eyes, legitimates the widespread Muslim hostility toward Israel. (3) It also perpetuates in the Arab mind the notion that Israel is an alien and temporary colonial imposition on the region. To the extent that the Arabs perceive America as sponsoring Israeli repression of the Palestinians, America's ability to pacify anti-American passions in the region is constrained. That impedes any joint and constructive American-Israeli initiative to promote multilateral political or economic cooperation in the region, and it limits any significant U.S. regional reliance on Israel's military potential. Since September 11, the notion of India as America's strategic regional partner has come to the forefront. India's credentials seem at least as credible as Turkey's or Israel's. Its sheer size and power make it regionally influential, while its democratic credentials make it ideologically attractive. It has managed to preserve its democracy since its inception as an independent state more than half a century ago. It has done so despite widespread poverty and social inequality, and despite considerable ethnic and religious diversity in a predominantly Hindu but formally secular state. India's prolonged conflict with its Islamic neighbor, Pakistan, involving violent confrontations with guerrillas and terrorist actions in Kashmir by Muslim extremists benefiting from Pakistan's benevolence, made India particularly eager to declare itself after September 11 as co-engaged with the United States in the war on terrorism. Nonetheless, any U.S.-Indian alliance in the region is likely to be limited in scope. Two major obstacles stand in the way. The first pertains to India's religious, ethnic and linguistic mosaic. Although India has striven to make its 1 billion culturally diverse people into a unified nation, it remains basically a Hindu state semi-encircled by Muslim neighbors while containing within its borders a large and potentially alienated Muslim minority of somewhere between 120-140 million. Here, religion and nationalism could inflame each other on a grand scale. So far, India has been remarkably successful in maintaining a common state structure and a democratic system--but much of its population has been essentially politically passive and (especially in the rural areas) illiterate. The risk is that a progressive rise in political consciousness and activism could be expressed through intensified ethnic and religious collisions. The recent rise in the political consciousness of both India's Hindu majority and its Muslim minority could jeopardize India's communal coexistence. Internal strains and frictions could become particularly difficult to contain if the war on terrorism were defined as primarily a struggle against Islam, which is how the more radical of the Hindu politicians tend to present it. Secondly, India's external concerns are focused on its neighbors, Pakistan and China. The former is seen not only as the main source of the continued conflict in Kashmir but ultimately--with Pakistan's national identity rooted in religious affirmation--as the very negation of India's self-definition. Pakistan's close ties to China intensify this sense of threat, given that India and China are unavoidable rivals for geopolitical primacy in Asia. Indian sensitivities are still rankled by the military defeat inflicted upon it by China in 1962, in the short but intense border clash that left China in possession of the disputed Aksai Chin territory. The United States cannot back India against either Pakistan or China without paying a prohibitive strategic price elsewhere: in Afghanistan if it were to opt against Pakistan, and in the Far East if it allied itself against China. These internal as well as external factors constrain the degree to which the United States can rely on India as an ally in any longer-term effort to foster--let alone impose--greater stability in the Global Balkans. Finally, there is the question of the degree to which Russia can become America's major strategic partner in coping with Eurasian regional turmoil. Russia clearly has the means and experience to be of help in such an effort. Although Russia, unlike the other contenders, is no longer truly part of the region--Russian colonial domination of Central Asia being a thing of the past--Moscow nevertheless exercises considerable influence on all of the countries to its immediate south, has close ties to India and Iran and contains some 15-20 million Muslims within its own territory. At the same time, Russia has come to see its Muslim neighbors as the source of a potentially explosive political and demographic threat, and the Russian political elite are increasingly susceptible to anti-Islamic religious and racist appeals. In these circumstances, the Kremlin eagerly seized upon the events of September 11 as an opportunity to engage America against Islam in the name of the "war on terrorism." Yet, as a potential partner, Russia is also handicapped by its past, even its very recent past. Afghanistan was devastated by a decade-long war waged by Russia, Chechnya is on the brink of genocidal extinction, and the newly independent Central Asian states increasingly define their modern history as a struggle for emancipation from Russian colonialism. With such historical resentments still vibrant in the region, and with increasingly frequent signals that Russia's current priority is to link itself with the West, Russia is being perceived in the region more and more as a former European colonial power and less and less as a Eurasian kin. Russia's present inability to offer much in the way of a social example also limits its role in any American-led international partnership for the purpose of stabilizing, developing and eventually democratizing the region. Ultimately, America can look to only one genuine partner in coping with the Global Balkans: **Europe**. Although it will need the help of leading East Asian states like Japan and China--and Japan will provide some, though limited, material assistance and some peacekeeping forces--neither is likely at this stage to become heavily engaged. **Only Europe**, increasingly organized as the European Union and militarily integrated through NATO, has the potential capability in the political, military and economic realms to pursue jointly with America the task of engaging the various Eurasian peoples--on a differentiated and flexible basis--in the promotion of regional stability and of progressively widening trans-Eurasian cooperation. And a supranational European Union linked to America would be less suspect in the region as a returning colonialist bent on consolidating or regaining its special economic interests.

## XO CP

#### The executive branch of the United States federal government should issue and enforce an executive order to establish ex ante transparency of targeted killing standards and procedures.

#### The executive branch should clarify that those standards mean the administration will not carry out drone strikes that violate the right to life.

#### The United States Executive Branch should create a neutral executive decisionmaking body that provides due process to potential targets of targeted killing.

#### The CP is binding and solves the whole aff

Graham Dodds, Ph.D., Concordia professor of political science, 2013, Take Up Your Pen: Unilateral Presidential Directives in American Politics, p. 10

If executive orders, proclamations, memoranda, and other unilateral presidential directives merely expressed the president's view, then they would be important but not necessarily determinative. **However, these directives are not mere statements of presidential preferences; rather, they establish** binding policies and have the force of law**, ultimately** backed by the full coercive power of the state. In Armstrong v. United States, 80 U.S. (13 Wall.) 154 (1871), the Supreme Court considered the legal status of a proclamation and decided that such directives are public acts to which courts must “give effect.” In other words, in the eyes of the judiciary, unilateral presidential directives are just as binding as laws. In 1960, Senator Robert Byrd (D-WV) advised his colleagues, “Keep in mind that an executive order is not statutory law.” 46 Politically, that may be true, as unilateral presidential directives represent the will only of the chief executive and lack the direct endorsement of congressional majorities. But constitutionally and legally**, a unilateral presidential directive is** as authoritative and compulsory as a regular law, at least until such time as it is done away with by Congress, courts, or by a future unilateral presidential directive.

#### Executive order establishing transparency of targeting decisions resolves drone legitimacy and resentment

Jennifer Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165

4. Procedural Requirements

Currently, officials in the executive branch carry out all such ex ante review of out-of-battlefield targeting and detention decisions, reportedly with the involvement of the President, but without any binding and publicly articulated standards governing the exercise of these authorities. n163 All ex post review of targeting is also done internally within the executive branch. There is no public accounting, or even acknowledgment, of most strikes, their success and error rates, or the extent of any collateral damage. Whereas the Department of Defense provides solatia or condolence payments to Afghan civilians who are killed or injured as a result of military actions in Afghanistan (and formerly did so in Iraq), there is no equivalent effort in areas outside the active conflict zone. n164

Meanwhile, the degree of ex post review of detention decisions depends on the location of detention as opposed to the location of capture. Thus, [\*1219] Guantanamo detainees are entitled to habeas review, but detainees held in Afghanistan are not, even if they were captured far away and brought to Afghanistan to be detained. n165

Enhanced ex ante and ex post procedural protections for both detention and targeting, coupled with transparency as to the standards and processes employed, serve several important functions: they can minimize error and abuse by creating time for advance reflection, correct erroneous deprivations of liberty, create endogenous incentives to avoid mistake or abuse, and increase the legitimacy of state action.

a. Ex Ante Procedures

Three key considerations should guide the development of ex ante procedures. First, any procedural requirements must reasonably respond to the need for secrecy in certain operations. Secrecy concerns cannot, for example, justify the lack of transparency as to the substantive targeting standards being employed. There is, however, a legitimate need for the state to protect its sources and methods and to maintain an element of surprise in an attack or capture operation. Second, contrary to oft-repeated rhetoric about the ticking time bomb, few, if any, capture or kill operations outside a zone of active conflict occur in situations of true exigency. n166 Rather, there is often the time and need for advance planning. In fact, advance planning is often necessary to minimize damage to one's own troops and nearby civilians. n167 Third, the procedures and standards employed must be transparent and sufficiently credible to achieve the desired legitimacy gains.

These considerations suggest the value of an independent, formalized, ex ante review system. Possible models include the Foreign Intelligence [\*1220] Surveillance Court (FISC), n168 or a FISC-like entity composed of military and intelligence officials and military lawyers, in the mode of an executive branch review board. n169

Created by the Foreign Intelligence Surveillance Act (FISA) in 1978, n170 the FISC grants ex parte orders for electronic surveillance and physical searches, among other actions, based on a finding that a "significant purpose" of the surveillance is to collect "foreign intelligence information." n171 The Attorney General can grant emergency authorizations without court approval, subject to a requirement that he notify the court of the emergency authorization and seek subsequent judicial authorization within seven days. n172 The FISC also approves procedures related to the use and dissemination of collected information. By statute, heightened restrictions apply to the use and dissemination of information concerning U.S. persons. n173 Notably, the process has been extraordinarily successful in protecting extremely sensitive sources and methods. To date, there has never been an unauthorized disclosure of an application to or order from the FISC court.

An ex parte review system for targeting and detention outside zones of active hostility could operate in a similar way. Judges or the review board would approve selected targets and general procedures and standards, while still giving operators wide rein to implement the orders according to the approved standards. Specifically, the court or review board would determine whether the targets meet the substantive requirements and would [\*1221] evaluate the overarching procedures for making least harmful means-determinations, but would leave target identification and time-sensitive decisionmaking to the operators. n174

Moreover, there should be a mechanism for emergency authorizations at the behest of the Secretary of Defense or the Director of National Intelligence. Such a mechanism already exists for electronic surveillance conducted pursuant to FISA. n175 These authorizations would respond to situations in which there is reason to believe that the targeted individual poses an imminent, specific threat, and in which there is insufficient time to seek and obtain approval by a court or review panel as will likely be the case in instances of true imminence justifying the targeting of persons who do not meet the standards applicable to operational leaders. As required under FISA, the reviewing court or executive branch review board should be notified that such an emergency authorization has been issued; it should be time-limited; and the operational decisionmakers should have to seek court or review board approval (or review, if the strike has already taken place) as soon as practicable but at most within seven days. n176

Finally, and critically, given the stakes in any application namely, the deprivation of life someone should be appointed to represent the potential target's interests and put together the most compelling case that the individual is not who he is assumed to be or does not meet the targeting criteria.

The objections to such a proposal are many. In the context of proposed courts to review the targeting of U.S. citizens, for example, some have argued that such review would serve merely to institutionalize, legitimize, and expand the use of targeted drone strikes. n177 But this ignores the reality of their continued use and expansion and imagines a world in which targeted [\*1222] killings of operational leaders of an enemy organization outside a zone of active conflict is categorically prohibited (an approach I reject n178). If states are going to use this extraordinary power (and they will), there ought to be a clear and transparent set of applicable standards and mechanisms in place to ensure thorough and careful review of targeted-killing decisions. The formalization of review procedures along with clear, binding standards will help to avoid ad hoc decisionmaking and will ensure consistency across administrations and time.

Some also condemn the ex parte nature of such reviews. n179 But again, this critique fails to consider the likely alternative: an equally secret process in which targeting decisions are made without any formalized or institutionalized review process and no clarity as to the standards being employed. Institutionalizing a court or review board will not solve the secrecy issue, but it will lead to enhanced scrutiny of decisionmaking, particularly if a quasi-adversarial model is adopted, in which an official is obligated to act as advocate for the potential target.

That said, there is a reasonable fear that any such court or review board will simply defer. In this vein, FISC's high approval rate is cited as evidence that reviewing courts or review boards will do little more than rubber-stamp the Executive's targeting decisions. n180 But the high approval rates only tell part of the story. In many cases, the mere requirement of justifying an application before a court or other independent review board can serve as an internal check, creating endogenous incentives to comply with the statutory requirements and limit the breadth of executive action. n181 Even if this system does little more than increase the attention paid to the stated requirements and expand the circle of persons reviewing the factual basis for the application, those features in and of themselves can lead to increased reflection and restraint.

Additional accountability mechanisms, such as civil or criminal sanctions in the event of material misrepresentations or omissions, the granting of far-reaching authority to the relevant Inspectors General, and meaningful ex post review by Article III courts, n182 are also needed to help further minimize abuse.

Conversely, some object to the use of courts or court-like review as stymying executive power in wartime, and interfering with the President's Article II powers. n183 According to this view, it is dangerous and potentially unconstitutional to require the President's wartime targeting decisions to be subject to additional reviews. These concerns, however, can be dealt with through emergency authorization mechanisms, the possibility of a presidential override, and design details that protect against ex ante review of operational decisionmaking. The adoption of an Article II review board, rather than an Article III-FISC model, further addresses some of the constitutional concerns.

Some also have warned that there may be no "case or controversy" for an Article III, FISC-like court to review, further suggesting a preference for an Article II review board. n184 That said, similar concerns have been raised with respect to FISA and rejected. n185 Drawing heavily on an analogy to courts' roles in issuing ordinary warrants, the Justice Department's Office of Legal Counsel concluded at the time of enactment that a case and controversy existed, even though the FISA applications are made ex parte. n186 [\*1224] Here, the judges would be issuing a warrant to kill rather than surveil. While this is significant, it should not fundamentally alter the legal analysis. n187 As the Supreme Court has ruled, killing is a type of seizure. n188 The judges would be issuing a warrant for the most extreme type of seizure. n189

It is also important to emphasize that a reviewing court or review board would not be "selecting" targets, but determining whether the targets chosen by executive branch officials met substantive requirements much as courts do all the time when applying the law to the facts. Press accounts indicate that the United States maintains lists of persons subject to capture or kill operations lists created in advance of specific targeting operations and reportedly subject to significant internal deliberation, including by the President himself. n190 A court or review board could be incorporated into the existing ex ante decisionmaking process in a manner that would avoid interference with the conduct of specific operations reviewing the target lists but leaving the operational details to the operators. As suggested above, emergency approval mechanisms could and should be available to deal with exceptional cases where ex ante approval is not possible.

Additional details will need to be addressed, including the temporal limits of the court's or review board's authorizations. For some high-level operatives, inclusion on a target list would presumably be valid for some set period of [\*1225] time, subject to specific renewal requirements. Authorizations based on a specific, imminent threat, by comparison, would need to be strictly time-limited, and tailored to the specifics of the threat, consistent with what courts regularly do when they issue warrants.

In the absence of such a system, the President ought to, at a minimum, issue an executive order establishing a transparent set of standards and procedures for identifying targets of lethal killing and detention operations outside a zone of active hostilities. n192 To enhance legitimacy, the procedures should include target list reviews and disposition plans by the top official in each of the agencies with a stake in the outcome the Secretary of Defense, the Director of the CIA, the Secretary of State, the Director of Homeland Security, and the Director of National Intelligence, with either the Secretary of Defense, Director of National Intelligence, or President himself, responsible for final sign-off. n193 In all cases, decisions should be unanimous, or, in the absence of consensus, elevated to the President of the United States. n194 Additional details will need to be worked out, including critical questions about the standard of proof that applies. Given the stakes, a clear and convincing evidentiary standard is warranted. n195

While this proposal is obviously geared toward the United States, the same principles should apply for all states engaged in targeting operations. n196 States would ideally subject such determinations to independent review or, alternatively, clearly articulate the standards and procedures for their decisionmaking, thus enhancing accountability.

b. Ex Post Review

For targeted-killing operations, ex post reviews serve only limited purposes. They obviously cannot restore the target's life. But retrospective review either by a FISC-like court or review board can serve to identify errors or overreaching and thereby help avoid future mistakes. This can, and ideally would, be supplemented by the adoption of an additional Article III damages mechanism. n197 At a minimum, the relevant Inspectors General should engage in regular and extensive reviews of targeted-killing operations. Such post hoc analysis helps to set standards and controls that then get incorporated into ex ante decisionmaking. In fact, post hoc review can often serve as a more meaningful and often more searching inquiry into the legitimacy of targeting decisions. Even the mere knowledge that an ex post review will occur can help to protect against rash ex ante decisionmaking, thereby providing a self-correcting mechanism.

Ex post review should also be accompanied by the establishment of a solatia and condolence payment system for activities that occur outside the active zone of hostilities. Extension of such a system beyond Afghanistan and Iraq would help mitigate resentment caused by civilian deaths or injuries and would promote better accounting of the civilian costs of targeting operations. n198

## terror adv

#### Groupthink is wrong

Anthony Hempell 4 [User Experience Consulting Senior Information Architect, “Groupthink: An introduction to Janis' theory of concurrence-seeking tendencies in group work., http://www.anthonyhempell.com/papers/groupthink/, March 3]

In the thirty years since Janis first proposed the groupthink model, there is still little agreement as to the validity of the model in assessing decision-making behaviour (Park, 2000). Janis' theory is often criticized because it does not present a framework that is suitable for empirical testing; instead, the evidence for groupthink comes from largely qualitative, historical or archival methods (Sunstein, 2003). Some critics go so far as to say that Janis's work relies on "anecdote, casual observation, and intuitive appeal rather than rigorous research" (Esser, 1998, cited in Sunstein, 2003, p.142). While some studies have shown support for the groupthink model, the support tends to be mixed or conditional (Esser, 1998); some studies have revealed that a closed leadership style and external threats (in particular, time pressure) promote groupthink and defective decision making (Neck & Moorhead, 1995, cited by Choi & Kim, 1999); the effect of group cohesiveness is still inconclusive (Mullen, Anthony, Salas & Driskel, 1994, cited by Choi & Kim, 1999). Janis's model tends to be supported by studies that employ a qualitative case-study approach as opposed to experimental research, which tends to either partially support or not support Janis's thesis (Park, 2000). The lack of success in experimental validation of groupthink may be due to difficulties in operationalizing and conceptualizing it as a testable variable (Hogg & Hains, 1998; Park, 2000).

Some researchers have criticized Janis for categorically denouncing groupthink as a negative phenomenon (Longley & Pruitt, 1980, cited in Choi & Kim, 1999). Sniezek (1992) argues that there are instances where concurrence-seeking may promote group performance. When used to explain behaviour in a practical setting, groupthink has been frames as a detrimental group process; the result of this has been that many corporate training programs have created strategies for avoiding groupthink in the workplace (Quinn, Faerman, Thompson & McGrath, 1990, cited in Choi & Kim, 1999).

#### AQ dead—affiliates are hype and not a threat

Zachary Keck, associate editor of The Diplomat, 3/17/14, Al Qaeda's Brand is Dead, nationalinterest.org/print/commentary/al-qaedas-brand-dead-10059

As Al Qaeda’s operational capability has withered, [3]some observers have sought [3] to reframe the terrorism threat to the U.S. and the West in terms of Al Qaeda’s ideological appeal. According to this perspective, Al Qaeda continues to be a potent threat to the United States and the Western world because its ideology is spreading across the Arab world, and inspiring new groups that will attack the West.

Framing the threat in this way has the advantage of ensuring the Global War on Terror’s longevity. Indeed, by this measurement the U.S. is still embroiled in WWII given that neo-Nazi groups continue to exist, and sometimes carry out terrorist attacks in the West.

But the larger problem with the argument that Al Qaeda’s ideology is spreading is that it is completely inaccurate. The “Al Qaeda brand” was never as popular in the Arab world as it was portrayed in the West, and far from growing, its popularity has been rapidly declining in recent years. In fact, there are signs that **Al Qaeda itself no longer believes in it.**

Much of the confusion about Al Qaeda’s popularity is rooted in the Western tendency to conflate Al Qaeda with Islamic terrorism more generally. If one defines Al Qaeda’s brand as simply being any terrorist attack or insurgency carried out in the name of Islam, an argument could be made that the threat is growing. But, of course, this is not what Al Qaeda’s ideology is, nor is it what made Al Qaeda such a threat to the United States and its Western allies.

Islamic-inspired terrorism long predated the formation of Al Qaeda. It was, for instance, a constant reality in the Arab world during the Cold War thanks to the many groups that were inspired by the writings of Sayyid Qutb. These groups sought to be vanguard movements that used terrorism and leadership assassinations to overthrow Arab regimes [the “near enemy”] that they viewed as insufficiently Islamic.

Al Qaeda was an entirely different story, as a few astute individuals in the U.S. national security establishment realized during the 1990s. Al Qaeda had a very precise ideology, which was seen as a competitor to the ideology espoused by the domestic jihadists.

Like the domestic jihadists, Al Qaeda’s ultimate goal was to topple local regimes and replace them with ones based on Sharia Law (and ultimately a single Caliphate). However, Al Qaeda leaders claimed that the domestic jihadists were failing in this goal because of the support the local regimes received from the United States and its Western allies. According to Al Qaeda, the U.S. and its Western allies would never allow their allied governments in the Arab world to be toppled. Therefore, in order for jihadists to overthrow these hated regimes, and set up more Islamic governments in their place, they must first target the far enemy—the U.S. and the West. Only when the jihadists had forced the U.S. to stop supporting these local regimes could the latter be overthrown.

Ayman al-Zawahiri, the current leader of Al Qaeda, explained this ideological argument nicely in his [4]famous 2005 letter to [4]Al Qaeda [5] in Iraq’s leader [4], Abu Musab al-Zarqawi. In the letter, al-Zawahiri wrote:

“It is my humble opinion that the Jihad in Iraq requires several incremental goals:

The first stage: Expel the Americans from Iraq.

The second stage: Establish an Islamic authority or emirate [in Iraq]….

The third stage: Extend the jihad wave to the secular countries neighboring Iraq.”

Al Qaeda’s ideology was also evident in the way it operated before 9/11. Specifically, the group set up shop in countries like Sudan and Afghanistan, where sympathetic governments existed. Although Al Qaeda provided some limited support to these regimes to shore up support, and provided some funds to domestic jihad groups, living in friendly territory allowed bin Laden and Al Qaeda to concentrate the bulk of their energies and resources on attacking the United States. Even after 9/11, Al Qaeda Central has operated primarily from Pakistan, where the government at least supports its allies, the Afghan Taliban.

**None of the so-called Al Qaeda franchises have replicated this model**. Only Al Qaeda in the Arabian Peninsula (AQAP) in Yemen has shown any real commitment to attacking the U.S. or other Western homelands. Even so, **this commitment has been extremely limited**, particularly when compared with AQAP’s commitment to fighting the Yemeni government.

For the most part, the attacks in the U.S. that are often attributed to AQAP consisted of homegrown terrorists who contacted Anwar al-Awlaki, the Yemin-born American cleric killed by a U.S. drone strike in 2011, to get his approval for their attacks. Although al-Awlaki was happy to encourage these homegrown terrorists, AQAP didn’t devote any of its own resources to support them. Similarly, al-Awaki and some of his associates published an English-language publication, Inspire Magazine, which urged Muslims living in Western countries to orchestrate their own attacks.

One of the exceptions to this model is Umar Farouk Abdulmutallab, the Nigerian who unsuccessfully tried to down a commercial airplane flying to Detroit on Christmas Day 2009. Abdulmutallab had been in Yemen studying Arabic when he decided to join the international jihad. After making contact with AQAP, the group built him a specially designed underwear bomb that would not be detected by airport security. Thus, the group did devote some resources to the attack—namely, building the bomb and possibly financing Abdulmutallab’s airfare—but it wasn’t willing to sacrifice any of its own members to attacking the U.S. Furthermore, the original impetus for the attack came from Abdulmutallab, who contacted the group on his own initiative.

Another exception to AQAP’s usual model came in 2010, when the group attempted to ship two cargo bombs to Chicago. Tipped off by Saudi intelligence, the packages were discovered before the bombs exploded. Unlike the previous attacks, the initial impetus to launch this attack didn’t come from outside the group. Still, the amount of resources AQAP devoted to the attack were minimal, a fact that the group publicly bragged about.

While these events demonstrate that AQAP does pose some threat to the U.S. homeland, they hardly suggest the group is modeling itself off Al Qaeda’s ideology. In contrast to the limited resources it has devoted to attacking the United States, the group has spent the bulk of its energies on waging war against the Yemeni government. This has at times included launching conventional style attacks in south Yemen, and holding territory, which they have tried to govern. Clearly, then, AQAP is far more invested in attacking the near enemy, and only casually interested in attacks on the far enemy.

All the other Al Qaeda affiliates have focused exclusively on trying to overthrow local regimes and establishing Sharia governments in their place—which is **a direct refutation to Al Qaeda’s ideology**. This cannot be attributed entirely to a lack of viable options for attacking the West. For years now Somali Americans have traveled to Somalia to join al-Shabaab in its fight for control over that country. [6]According to U.S. intelligence estimates [6], the group counted at least fifty U.S.-passport holders as members in 2011, and as many as twenty today. Al-Shabaab leaders could have directed any one of these members to return to the United States to carry out attacks there given the ease with which they could gain entry into America.

Yet there is no evidence al-Shabaab has decided to use a single one of these members for the purpose of attacking the United States. Instead, it has felt they are of more use staying in Somalia to fight in the civil war there. The only external attacks it has precipitated have been against African countries that have troops in Somalia fighting al-Shabaab. The goal of these attacks is to force those African countries to withdraw their troops from Somalia, and therefore increase the chances that al-Shabaab will prevail in its effort to seize control of the country.

The actions of Al Qaeda in Iraq (AQI) are also telling. The group publicly claimed it was established to defend Iraq against the U.S.-led occupation, and for years it had easy access to U.S. and coalition troops in Iraq. True to its word, AQI did carry out brutal attacks against the U.S. and other international troops stationed in Iraq. Still, the bulk of AQI’s efforts went towards attacking the Iraqi government and the country’s Shi’a populations, despite al-Zawahiri’s plea that it focus instead on the infidels. Once again, in contrast to Al Qaeda’s ideology, AQI chose the near enemy over the far one. It has since expanded into Syria, where it once again is battling a near enemy rather than the West.

More recently, even Al Qaeda Central has seemingly abandoned its own ideology, as evidenced by al-Zawahiri calling on Muslims wage jihad everywhere from Syria to Russia. While it’s far too early to proclaim that the remnants of Al Qaeda Central are no longer interested in attacking the U.S. homeland, the fact that the group’s public statements now seem to be gravitating towards focusing on the near enemy or different far enemies suggest that even it is amending its ideology.

Symbolic of the [7] lack of support for Al Qaeda’s mission is the fact that newer Islamist groups with supposed Al Qaeda links haven’t adopted the Al Qaeda name. Even groups that formerly took the Al Qaeda name, such as AQAP and AQI (long before being disavowed by Al Qaeda Central), have dropped Al Qaeda from their names.

Instead of Al Qaeda’s ideology spreading, then, what we are seeing is Islamist groups revert back to the domestic-jihad model that was prevalent in the Cold War but had lost steam in the 1990s. Al Qaeda had always considered itself an ideological competitor to these domestic jihadists. Increasingly, it is becoming one of them.

None of this should be surprising for at least two reasons. First, the Arab Spring unequivocally refuted Al Qaeda’s central premise that the U.S. would never allow one of its local allies to be toppled by domestic uprisings. Al Qaeda leaders trying to make this argument today would sound absurd and gain few followers. The larger implication of this, however, is that **it makes little sense for terrorist groups** seeking to govern Muslim states **to attack the U.S**. Far from being necessary to achieve their ultimate objective, it is almost certainly counterproductive given that it attracts the attention of the formidable counterterrorism capabilities the U.S. has amassed since 9/11. This may explain why AQAP hasn’t attempted to attack the U.S. homeland **since the Arab Spring began**.

The other reason it is not surprising that Al Qaeda has increasingly adopted the domestic jihadist ideology is because al-Zawahiri is now the leader of Al Qaeda Central. [8]According to many accounts [8], even during the pre-9/11 years al-Zawahiri was always far more interested in trying to seize control of his native Egypt than attacking the United States, which was bin Laden’s main preoccupation. Reportedly, al-Zawahiri only joined bin Laden’s global jihad out of desperation after the group he was running at the time, Egyptian Islamic Jihad, had run out of resources to fight the Egyptian government. With bin Laden no longer in charge, al-Zawahiri can now use Al Qaeda’s resources to focus on what was always his true ambition in life, overthrowing local regimes.

#### No backlash and no impact

Watts 12 (Clinton Watts is a Senior Analyst with the Navanti Group and a Senior Fellow at The George Washington University Homeland Security Policy Institute (HSPI). He is also a former U.S. Army Officer and former Special Agent with the FBI. Frank J. Cilluffo is the Director of the Homeland Security Policy Institute at The George Washington University., 6/21/2012, "Drones in Yemen: Is the U.S. on Target?", www.gwumc.edu/hspi/policy/drones.pdf)

AQAP’s persistence arises not only from internal instability in Yemen but even more from exogenous forces leading this al Qaeda affiliate to be bolstered above all others. Critics of drone strikes myopically focus on this tactic as the singular cause for AQAP’s ascension. Drone strikes at most provide only a peripheral and recent motivation for the growth of a terrorist affiliate that has been aggressively attempting to expand over the past five years. Several phenomena occurring outside Yemen’s borders have been the primary catalyst for AQAP’s emergence. First, foreign fighter records captured by U.S. forces in Iraq in 2007 indicated that Yemeni foreign fighters were the second most likely to choose to be “fighters” rather than “martyrs” when they arrived in Iraq. This data point signaled the intent of some Yemeni al Qaeda members in Iraq to return home should they survive Iraqi battlefields. By 2008, the U.S. “Surge” strategy took effect and foreign fighter flows slowed and largely reversed from Iraq. In turn, terrorist attack data from 2008 showed Yemen as the second highest country for terrorist attacks outside of Iraq and Afghanistan suggesting seasoned Yemeni foreign fighters from Iraq may have returned to wage jihad in their homeland.7 Second, in 2005-2006, Saudi Arabia initiated a major counterterrorism clampdown on AQAP operatives pushing many veteran, Saudi al Qaeda members into Yemen where they helped form AQAP’s second incarnation in 2009.8 Young Saudi men have long filled the ranks of al Qaeda and its affiliates, and Saudi Arabia’s persistent tamping down of internal al Qaeda threats creates terrorist bleedover in nearby Yemen. Third, prior to his death, Bin Laden began searching for a new safe haven for relocating his battered operatives in Pakistan and Afghanistan. As noted by Gabriel Koehler Derrick in recent analysis of the Abbottabad documents declassified in May 2012, Bin Laden envisioned Yemen, “either as a “safe haven” for jihadists or a “reserve” force for al-Qa`ida in Afghanistan or Iraq.” Of all al Qaeda affiliates, Yemen provided the best venue for those al Qaeda operatives (particularly those from the Arabian Peninsula) seeking shelter from U.S. counterterrorism efforts.9 Fourth, Yemen provides Bin Laden and al Qaeda a safe haven more proximate to their essential base of financial support – wealthy Persian Gulf donors. Being bled by middlemen and the endless amount of protection money needed to sustain safe harbor in Pakistan, Bin Laden likely saw Yemen as a more efficient and effective location for securing resources. With his death, financial support for al Qaeda in Pakistan has decreased substantially and many believe that the remaining stream of al Qaeda donor support now flows to AQAP in Yemen, not al Qaeda’s senior leadership in Pakistan.10Even a slight increase in donor support in the wake of Bin Laden’s death would further empower AQAP. Finally, foreign fighters that once would have flocked to Iraq (2005-2007) or Afghanistan (2008-2010) now likely see more opportunity for jihad by migrating to Yemen. While the foreign fighter flow to Yemen represents merely a trickle of what al Qaeda’s recruitment was at its height, AQAP in Yemen likely provides the most appealing option for joining an official affiliate of the al Qaeda movement – especially for those potential recruits in the Arabian Peninsula. Keep in mind that military actions, including the use of drones, have made travel to Pakistan’s Federally Administered Tribal Areas (FATA) less appealing and less hospitable to foreign fighters. These successful U.S. military activities have had significant operational effects on al Qaeda and its affiliates by disrupting pipelines, and they serve as a strong deterrent to future al Qaeda activities in the FATA.11In parallel to the many exogenous factors strengthening AQAP over the past five years, Yemen’s instability and intermittent military commitment to fighting AQAP has provided ample opportunity for the terror groups to expand over the past year. The political struggles of the Saleh regime and its replacement have undermined the country’s military capacity allowing for AQAP and its insurgent arm Ansar al-Sharia to successfully advance and hold territory. The Yemeni government’s continuing inability to provide for portions of the Yemeni population allows AQAP and Ansar al-Sharia space to fill a void in needed social services and secure local popular support. Most importantly, Yemeni incompetence breathed life into a dormant AQAP franchise allowing known al Qaeda operatives on at least two occasions to escape detention providing much of the group’s current energy.12 While some narrowly point to drones for manufacturing AQAP, many exogenous and endogenous factors propel the group’s current external terrorism campaign and internal insurgency against the Yemeni state. What do critics of drones misunderstand about drone operations in Yemen? Critics of the U.S. drone campaign in Yemen confusingly lump together disparate issues related to terminology, intelligence processes, legal authorities and terrorist propaganda to justify stopping the use of the U.S.’s most effective counterterrorism technique – all while failing to offer a viable alternative for countering AQAP’s immediate threat to the U.S. Although an imperfect tool, drone strikes suppress terrorists in otherwise denied safe havens and limit jihadists’ ability to organize, plan and carry out attacks. These strikes help shield us from harm and serve our national interests. Doing nothing is simply not an option. Media accounts of attacks in Yemen often mistakenly credit U.S. drones for every explosion in Yemen. Drones represent one of several technology platforms executing airstrikes that include cruise missiles, potentially U.S. or Yemeni fighter aircraft or even helicopter assaults. Drone critics correctly cite instances where poor intelligence leads to the killing of civilians and/or those in opposition to the Saleh regime. However, one of the instances commonly used in calls to end drone use in Yemen is actually not the result of a drone strike. Critics point to the intelligence failures of a cruise missile attack in al Majalah on December 17, 2009.13 As an example, Gregory Johnsen at Princeton University and Yemen expert writing at Waq-al-Waq led his rebuttal of current drone policy, entitled “Drones, Drift and the (New) American Way of War,” with criticisms of drone warfare by citing this December 17, 2009 cruise missile attack.14Instead of pointing to this incident as justification for halting drone strikes in Yemen, the civilian casualties created by this intelligence failure and use of a cruise missile alternatively suggest the need for the use of drones as a more surgical platform for achieving our counterterrorism objectives while minimizing civilian casualties. Cruise missiles introduce several factors that may contribute to errant targeting. The limitations of cruise missiles, in many ways, provided the impetus for developing the drone platform.15 Cruise missiles 1) require intelligence far in advance of hitting their target, 2) take a considerable amount of time to travel to their target, 3) are difficult to divert from their target once launched and 4) employ large scale and more devastating munitions such as cluster bombs which can lead to increased civilian casualties. In contrast, drones can provide their own targeting intelligence devoid of Yemeni government influence, provide real-time visual surveillance of a target, minimize the time between target engagement and target impact, and use smaller munitions able to reduce civilian casualties. While neither technology platform is a perfect engagement tool, drones vis-à-vis cruise missiles have further improved the U.S. ability to engage terrorists and minimize civilian casualties. Drone critics this past year have also challenged the legality of targeting AQAP members, specifically those members that are American citizens.16 First, drone and legal critics have challenged the legality of the drone strike killing American AQAP cleric Anwar al-Awlaki. In response, the U.S. Department of Justice released a memo in February 2012 detailing its justifications for targeting al-Awlaki in response to his planning and directing the attempted Christmas Day 2009 attempt on an airliner over Detroit.17 Even when given this evidence, these same critics continue to advocate that Awlaki should have been pursued through the U.S. legal system, charged with a federal crime, arrested and then tried in a courtroom. In addition to the obvious limitations the U.S. encounters trying to capture a terrorist residing in a volatile foreign safe haven, these arguments ignore the fact that Awlaki knowingly traveled outside the U.S. and admittedly joined an officially designated Foreign Terrorist Organization (FTO). This action alone permits Awlaki’s targeting and undercuts the claims of illegality by drone critics. These authors believe the legal argument posed by drone critics in the case of Awlaki lacks legitimacy. It is worth emphasizing furthermore that drone strikes may not always be the preferred course. Attempts to capture high value targets are riskier but that downside may be outweighed by the potential intelligence value of key individuals. A case-by-case assessment will always be needed. The second contentious legal debate related to drone targeting comes from the inadvertent killing of Anwar al-Awlaki’s son Abdulrahman al-Awlaki on October 14, 2012. Reporting suggests the intended target of the strike was AQAP’s media chief, Ibrahim al Bana.18 The death of Abdulrahaman al-Awlaki is a tragedy and has become a rallying point for those believing U.S. drone strikes create excessive civilian casualties. However, these same critics cannot explain why Abdulrahman al-Awlaki was present in the home of a suspected AQAP target, nor do they place any responsibility on Anwar al-Awlaki’s family who knowingly placed Abdulrahman in the orbit of terrorists clearly being pursued by the U.S. Third and most recently, anti-drone advocates have rallied against the Obama administration’s recent authorization to implement signature strikes against AQAP in Yemen.19 This argument against drones, above all others, may prove the most credible. The term “signature strikes” suggests the notion that the U.S. fires missiles at unknown targets for simply looking suspicious. Journalists and human rights advocates are right to draw attention to the use of this tactic as it implies the killing of unknown people for unclear reasons. The signature strike tactic, if used injudiciously, will result in the killing of innocent civilians and is certainly more inclined to radicalize local populations and inspire further AQAP recruitment. Those opposing drone use in Yemen commonly cite civilian casualties as reason for stopping drone strikes. Civilian casualties should be avoided at all costs, however drones in comparison to all other kinetic counterterrorism options, likely produce the fewest civilian casualties per engagement. Statistics and ratios remain difficult to calculate, and research has only just begun on this new counterterrorism application. But, in comparison to other forms of warfare, drone strikes may be one of the least civilian casualty producing tools in the history of warfare (See endnote).20 Large scale military intervention (i.e. regime change), broad-based counterinsurgency, backing of the Yemeni military, arming of militias – all of these counterterrorism options are far more likely to produce civilian casualties. Drones supported by intelligence provide U.S. counterterrorism efforts the most surgical and the least casualty-producing tool for engaging AQAP. In conjunction with the debate over drones creating civilian casualties, media debates ignore how al Qaeda deliberately uses civilians as human shields against attack. In documents seized during the Abbottabad raid, Bin Laden instructs his operatives to avoid drone strikes by staying out of cars noting, “We could leave the cars because they are targeting cars now, but if we leave them, they will start focusing on houses and that would increase casualties among women and children.”21 Bin Laden instructed his operatives to use women and children as human shields against drones knowing 1) the U.S. would be more reluctant to target operatives when civilian casualties would be numerous and 2) the U.S. unknowingly killing civilians during drone attacks would undermine local popular support for U.S. counterterrorism efforts providing al Qaeda ample fuel for propaganda – a lesson learned by al Qaeda in past failed jihadi campaigns where their expansive violence against innocent civilians eroded local popular support for the terror group. The U.S. should continue to avoid civilian casualties from drone strikes, but drone critics must also realize how al Qaeda uses civilians as pawns for undermining drone strikes. Some thoughtful critics of U.S. counterterrorism operations in Yemen with whom we respectfully disagree, notably Gregory Johnsen of Princeton University22 and Jeremy Scahill of The Nation (although there are others)23, cite drone strikes as increasing the number of AQAP operatives in Yemen. The logic behind this assertion appears horribly backwards. The U.S. deploys drones where terrorist go – weak and failed states providing adequate safe haven for planning and executing terrorists attacks. However, the U.S. does not deploy drones to countries for the purpose of shooting at innocent people in hopes of creating terrorists. Johnsen24, Scahill, the recent Washington Post article by Sudarsan Raghavan, “In Yemen, U.S. airstrikes breed anger, and sympathy for al-Qaeda,”25 and others (see endnote for summary)26 point to AQAP propaganda citing drones as motivation for terrorist recruitment and in turn suggest this as justification for the U. S. ceasing the tactic – essentially determining that if our terrorist enemies don’t like a tactic we should stop pursuing it. If one wants to assess which counterterrorism techniques are most effective against al Qaeda and affiliated groups, then look no further than al Qaeda’s propaganda. Al Qaeda, the Taliban and now AQAP have all focused their propaganda campaigns on eliminating the U.S. ability to employ night raids and drones. Why do they focus on these two tactics? Because night raids and drones are the most effective means for deterring these groups; Bin Laden admits this in his own internal documents captured in Abbottabad. Unable to leverage effective counter drone operations, al Qaeda, the Taliban and now AQAP seek to use propaganda to enrage local populations in hopes of interrupting this highly effective counterterrorism tool. Letting our adversaries (AQAP) dictate our tactics should never be an option.

#### No risk of nuclear terror

**Mueller 10** (John, professor of political science at Ohio State, Calming Our Nuclear Jitters, Issues in Science and Technology, Winter, <http://www.issues.org/26.2/mueller.html>)

Politicians of all stripes preach to an anxious, appreciative, and very numerous choir when they, like President Obama, proclaim atomic terrorism to be “the most immediate and extreme threat to global security.” It is the problem that, according to Defense Secretary Robert Gates, currently keeps every senior leader awake at night. This is hardly a new anxiety. In 1946, atomic bomb maker J. Robert Oppenheimer ominously warned that if three or four men could smuggle in units for an atomic bomb, they could blow up New York. This was an early expression of a pattern of dramatic risk inflation that has persisted throughout the nuclear age. In fact, although expanding fires and fallout might increase the effective destructive radius, the blast of a Hiroshima-size device would “blow up” about 1% of the city’s area—a tragedy, of course, but not the same as one 100 times greater. In the early 1970s, nuclear physicist Theodore Taylor proclaimed the atomic terrorist problem to be “immediate,” explaining at length “how comparatively easy it would be to steal nuclear material and step by step make it into a bomb.” At the time he thought it was already too late to “prevent the making of a few bombs, here and there, now and then,” or “in another ten or fifteen years, it will be too late.” Three decades after Taylor, we continue to wait for terrorists to carry out their “easy” task. In contrast to these predictions, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. This may be because, after brief exploration of the possible routes, they, unlike generations of alarmists, have discovered that the tremendous effort required is scarcely likely to be successful. The most plausible route for terrorists, according to most experts, would be to manufacture an atomic device themselves from purloined fissile material (plutonium or, more likely, highly enriched uranium). This task, however, remains a daunting one, requiring that a considerable series of difficult hurdles be conquered and in sequence. Outright armed theft of fissile material is exceedingly unlikely not only because of the resistance of guards, but because chase would be immediate. A more promising approach would be to corrupt insiders to smuggle out the required substances. However, this requires the terrorists to pay off a host of greedy confederates, including brokers and money-transmitters, any one of whom could turn on them or, either out of guile or incompetence, furnish them with stuff that is useless. Insiders might also consider the possibility that once the heist was accomplished, the terrorists would, as analyst Brian Jenkins none too delicately puts it, “have every incentive to cover their trail, beginning with eliminating their confederates.” If terrorists were somehow successful at obtaining a sufficient mass of relevant material, they would then probably have to transport it a long distance over unfamiliar terrain and probably while being pursued by security forces. Crossing international borders would be facilitated by following established smuggling routes, but these are not as chaotic as they appear and are often under the watch of suspicious and careful criminal regulators. If border personnel became suspicious of the commodity being smuggled, some of them might find it in their interest to disrupt passage, perhaps to collect the bounteous reward money that would probably be offered by alarmed governments once the uranium theft had been discovered. Once outside the country with their precious booty, terrorists would need to set up a large and well-equipped machine shop to manufacture a bomb and then to populate it with a very select team of highly skilled scientists, technicians, machinists, and administrators. The group would have to be assembled and retained for the monumental task while no consequential suspicions were generated among friends, family, and police about their curious and sudden absence from normal pursuits back home. Members of the bomb-building team would also have to be utterly devoted to the cause, of course, and they would have to be willing to put their lives and certainly their careers at high risk, because after their bomb was discovered or exploded they would probably become the targets of an intense worldwide dragnet operation. Some observers have insisted that it would be easy for terrorists to assemble a crude bomb if they could get enough fissile material. But Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland‘s Spiez Laboratory, bluntly conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint the terrorist group would most certainly be forced to redesign. They also stress that the work is difficult, dangerous, and extremely exacting, and that the technical requirements in several fields verge on the unfeasible. Stephen Younger, former director of nuclear weapons research at Los Alamos Laboratories, has made a similar argument, pointing out that uranium is “exceptionally difficult to machine” whereas “plutonium is one of the most complex metals ever discovered, a material whose basic properties are sensitive to exactly how it is processed.“ Stressing the “daunting problems associated with material purity, machining, and a host of other issues,” Younger concludes, “to think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is farfetched at best.” Under the best circumstances, the process of making a bomb could take months or even a year or more, which would, of course, have to be carried out in utter secrecy. In addition, people in the area, including criminals, may observe with increasing curiosity and puzzlement the constant coming and going of technicians unlikely to be locals. If the effort to build a bomb was successful, the finished product, weighing a ton or more, would then have to be transported to and smuggled into the relevant target country where it would have to be received by collaborators who are at once totally dedicated and technically proficient at handling, maintaining, detonating, and perhaps assembling the weapon after it arrives. The financial costs of this extensive and extended operation could easily become monumental. There would be expensive equipment to buy, smuggle, and set up and people to pay or pay off. Some operatives might work for free out of utter dedication to the cause, but the vast conspiracy also requires the subversion of a considerable array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals competent and capable enough to be effective allies are also likely to be both smart enough to see boundless opportunities for extortion and psychologically equipped by their profession to be willing to exploit them. Those who warn about the likelihood of a terrorist bomb contend that a terrorist group could, if with great difficulty, overcome each obstacle and that doing so in each case is “not impossible.” But although it may not be impossible to surmount each individual step, the likelihood that a group could surmount a series of them quickly becomes vanishingly small. Table 1 attempts to catalogue the barriers that must be overcome under the scenario considered most likely to be successful. In contemplating the task before them, would-be atomic terrorists would effectively be required to go though an exercise that looks much like this. If and when they do, they will undoubtedly conclude that their prospects are daunting and accordingly uninspiring or even terminally dispiriting. It is possible to calculate the chances for success. Adopting probability estimates that purposely and heavily bias the case in the terrorists’ favor—for example, assuming the terrorists have a 50% chance of overcoming each of the 20 obstacles—the chances that a concerted effort would be successful comes out to be less than one in a million. If one assumes, somewhat more realistically, that their chances at each barrier are one in three, the cumulative odds that they will be able to pull off the deed drop to one in well over three billion. Other routes would-be terrorists might take to acquire a bomb are even more problematic. They are unlikely to be given or sold a bomb by a generous like-minded nuclear state for delivery abroad because the risk would be high, even for a country led by extremists, that the bomb (and its source) would be discovered even before delivery or that it would be exploded in a manner and on a target the donor would not approve, including on the donor itself. Another concern would be that the terrorist group might be infiltrated by foreign intelligence. The terrorist group might also seek to steal or illicitly purchase a “loose nuke“ somewhere. However, it seems probable that none exist. All governments have an intense interest in controlling any weapons on their territory because of fears that they might become the primary target. Moreover, as technology has developed, finished bombs have been out-fitted with devices that trigger a non-nuclear explosion that destroys the bomb if it is tampered with. And there are other security techniques: Bombs can be kept disassembled with the component parts stored in separate high-security vaults, and a process can be set up in which two people and multiple codes are required not only to use the bomb but to store, maintain, and deploy it. As Younger points out, “only a few people in the world have the knowledge to cause an unauthorized detonation of a nuclear weapon.” There could be dangers in the chaos that would emerge if a nuclear state were to utterly collapse; Pakistan is frequently cited in this context and sometimes North Korea as well. However, even under such conditions, nuclear weapons would probably remain under heavy guard by people who know that a purloined bomb might be used in their own territory. They would still have locks and, in the case of Pakistan, the weapons would be disassembled. The al Qaeda factor The degree to which al Qaeda, the only terrorist group that seems to want to target the United States, has pursued or even has much interest in a nuclear weapon may have been exaggerated. The 9/11 Commission stated that “al Qaeda has tried to acquire or make nuclear weapons for at least ten years,” but the only substantial evidence it supplies comes from an episode that is supposed to have taken place about 1993 in Sudan, when al Qaeda members may have sought to purchase some uranium that turned out to be bogus. Information about this supposed venture apparently comes entirely from Jamal al Fadl, who defected from al Qaeda in 1996 after being caught stealing $110,000 from the organization. Others, including the man who allegedly purchased the uranium, assert that although there were various other scams taking place at the time that may have served as grist for Fadl, the uranium episode never happened. As a key indication of al Qaeda’s desire to obtain atomic weapons, many have focused on a set of conversations in Afghanistan in August 2001 that two Pakistani nuclear scientists reportedly had with Osama bin Laden and three other al Qaeda officials. Pakistani intelligence officers characterize the discussions as “academic” in nature. It seems that the discussion was wide-ranging and rudimentary and that the scientists provided no material or specific plans. Moreover, the scientists probably were incapable of providing truly helpful information because their expertise was not in bomb design but in the processing of fissile material, which is almost certainly beyond the capacities of a nonstate group. Kalid Sheikh Mohammed, the apparent planner of the 9/11 attacks, reportedly says that al Qaeda’s bomb efforts never went beyond searching the Internet. After the fall of the Taliban in 2001, technical experts from the CIA and the Department of Energy examined documents and other information that were uncovered by intelligence agencies and the media in Afghanistan. They uncovered no credible information that al Qaeda had obtained fissile material or acquired a nuclear weapon. Moreover, they found no evidence of any radioactive material suitable for weapons. They did uncover, however, a “nuclear-related” document discussing “openly available concepts about the nuclear fuel cycle and some weapons-related issues.” Just a day or two before al Qaeda was to flee from Afghanistan in 2001, bin Laden supposedly told a Pakistani journalist, “If the United States uses chemical or nuclear weapons against us, we might respond with chemical and nuclear weapons. We possess these weapons as a deterrent.” Given the military pressure that they were then under and taking into account the evidence of the primitive or more probably nonexistent nature of al Qaeda’s nuclear program, the reported assertions, although unsettling, appear at best to be a desperate bluff. Bin Laden has made statements about nuclear weapons a few other times. Some of these pronouncements can be seen to be threatening, but they are rather coy and indirect, indicating perhaps something of an interest, but not acknowledging a capability. And as terrorism specialist Louise Richardson observes, “Statements claiming a right to possess nuclear weapons have been misinterpreted as expressing a determination to use them. This in turn has fed the exaggeration of the threat we face.” Norwegian researcher Anne Stenersen concluded after an exhaustive study of available materials that, although “it is likely that al Qaeda central has considered the option of using non-conventional weapons,” there is “little evidence that such ideas ever developed into actual plans, or that they were given any kind of priority at the expense of more traditional types of terrorist attacks.” She also notes that information on an al Qaeda computer left behind in Afghanistan in 2001 indicates that only $2,000 to $4,000 was earmarked for weapons of mass destruction research and that the money was mainly for very crude work on chemical weapons. Today, the key portions of al Qaeda central may well total only a few hundred people, apparently assisting the Taliban’s distinctly separate, far larger, and very troublesome insurgency in Afghanistan. Beyond this tiny band, there are thousands of sympathizers and would-be jihadists spread around the globe. They mainly connect in Internet chat rooms, engage in radicalizing conversations, and variously dare each other to actually do something. Any “threat,” particularly to the West, appears, then, principally to derive from self-selected people, often isolated from each other, who fantasize about performing dire deeds. From time to time some of these people, or ones closer to al Qaeda central, actually manage to do some harm. And occasionally, they may even be able to pull off something large, such as 9/11. But in most cases, their capacities and schemes, or alleged schemes, seem to be far less dangerous than initial press reports vividly, even hysterically, suggest. Most important for present purposes, however, is that any notion that al Qaeda has the capacity to acquire nuclear weapons, even if it wanted to, looks farfetched in the extreme. It is also noteworthy that, although there have been plenty of terrorist attacks in the world since 2001, all have relied on conventional destructive methods. For the most part, terrorists seem to be heeding the advice found in a memo on an al Qaeda laptop seized in Pakistan in 2004: “Make use of that which is available … rather than waste valuable time becoming despondent over that which is not within your reach.” In fact, history consistently demonstrates that terrorists prefer weapons that they know and understand, not new, exotic ones. Glenn Carle, a 23-year CIA veteran and once its deputy intelligence officer for transnational threats, warns, “We must not take fright at the specter our leaders have exaggerated. In fact, we must see jihadists for the small, lethal, disjointed, and miserable opponents that they are.” al Qaeda, he says, has only a handful of individuals capable of planning, organizing, and leading a terrorist organization, and although the group has threatened attacks with nuclear weapons, “its capabilities are far inferior to its desires.” Policy alternatives The purpose here has not been to argue that policies designed to inconvenience the atomic terrorist are necessarily unneeded or unwise. Rather, in contrast with the many who insist that atomic terrorism under current conditions is rather likely— indeed, exceedingly likely—to come about, I have contended that it is hugely unlikely. However, it is important to consider not only the likelihood that an event will take place, but also its consequences. Therefore, one must be concerned about catastrophic events even if their probability is small, and efforts to reduce that likelihood even further may well be justified. At some point, however, probabilities become so low that, even for catastrophic events, it may make sense to ignore them or at least put them on the back burner; in short, the risk becomes acceptable. For example, the British could at any time attack the United States with their submarine-launched missiles and kill millions of Americans, far more than even the most monumentally gifted and lucky terrorist group. Yet the risk that this potential calamity might take place evokes little concern; essentially it is an acceptable risk. Meanwhile, Russia, with whom the United States has a rather strained relationship, could at any time do vastly more damage with its nuclear weapons, a fully imaginable calamity that is substantially ignored. In constructing what he calls “a case for fear,” Cass Sunstein, a scholar and current Obama administration official, has pointed out that if there is a yearly probability of 1 in 100,000 that terrorists could launch a nuclear or massive biological attack, the risk would cumulate to 1 in 10,000 over 10 years and to 1 in 5,000 over 20. These odds, he suggests, are “not the most comforting.” Comfort, of course, lies in the viscera of those to be comforted, and, as he suggests, many would probably have difficulty settling down with odds like that. But there must be some point at which the concerns even of these people would ease. Just perhaps it is at one of the levels suggested above: one in a million or one in three billion per attempt.

#### Terrorists won’t use WMD

Forest 12 (James, PhD and Director of Terrorism Studies and an associate professor at the United States Military Academy, “Framework for Analyzing the Future Threat of WMD Terrorism,” Journal of Strategic Security, Volume 5, Number 4, Article 9, Winter 2012, <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1193&context=jss>) \*\*NOTE---CBRN weapon = chemical, biological, radiological or nuclear weapon

The terrorist group would additionally need to consider whether a WMD attack would be counterproductive by generating, for example, condemnation among the group's potential supporters. This possible erosion in support, in turn, would degrade the group's political legitimacy among its constituencies, who are viewed as critical to the group's long-term survival. By crossing this WMD threshold, the group could feasibly undermine its popular support, encouraging a perception of the group as deranged mass murders, rather than righteous vanguards of a movement or warriors fighting for a legitimate cause.16 The importance of perception and popular support—or at least tolerance—gives a group reason to think twice before crossing the threshold of catastrophic terrorism. A negative perception can impact a broad range of critical necessities, including finances, safe haven, transportation logistics, and recruitment. Many terrorist groups throughout history have had to learn this lesson the hard way; the terrorist groups we worry about most today have learned from the failures and mistakes of the past, and take these into consideration in their strategic deliberations. Furthermore, a WMD attack could prove counterproductive by provoking a government (or possibly multiple governments) to significantly expand their efforts to destroy the terrorist group. Following a WMD attack in a democracy, there would surely be a great deal of domestic pressure on elected leaders to respond quickly and with a massive show of force. A recognition of his reality is surely a constraining factor on Hezbollah deliberations about attacking Israel, or the Chechen's deliberations about attacking Russia, with such a weapon.

#### Public won’t demand retaliation

Smith and Herron 5, \*Professor, University of Oklahoma, \* University of Oklahoma Norman Campus, (Hank C. Jenkins-Smith, Ph.D., and Kerry G., "United States Public Response to Terrorism: Fault Lines or Bedrock?" Review of Policy Research 22.5 (2005): 599-623, <http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=hjsmith>)

Our final contrasting set of expectations relates to the degree to which the public will support or demand retribution against terrorists and supporting states. Here our data show that support for using conventional United States military force to retaliate against terrorists initially averaged above midscale, but did not reach a high level of demand for military action. Initial support declined significantly across all demographic and belief categories by the time of our survey in 2002. Furthermore, panelists both in 2001 and 2002 preferred that high levels of certainty about culpability (above 8.5 on a scale from zero to ten) be established before taking military action. Again, we find the weight of evidence supporting revisionist expectations of public opinion.

Overall, these results are inconsistent with the contention that highly charged events will result in volatile and unstructured responses among mass publics that prove problematic for policy processes. The initial response to the terrorist strikes demonstrated a broad and consistent shift in public assessments toward a greater perceived threat from terrorism, and greater willingness to support policies to reduce that threat. But even in the highly charged context of such a serious attack on the American homeland, the overall public response was quite measured. On average, the public showed very little propensity to undermine speech protections, and initial willingness to engage in military retaliation moderated significantly over the following year.

Perhaps most interesting is that the greatest propensity to change beliefs between 2001 and 2002 was evident among the best-educated and wealthiest of our respondents— hardly the expected source of volatility, but in this case they may have represented the leading edge of belief constraints reasserting their influence in the first year following 9/11. This post-9/11 change also reflected an increasing delineation of policy preferences by ideological and partisan positions. Put differently, those whose beliefs changed the most in the year between surveys also were those with the greatest access to and facility with information (the richest, best educated), and the nature of the changes was entirely consistent with a structured and coherent pattern of public beliefs. Overall, we find these patterns to be quite reassuring, and consistent with the general findings of the revisionist theorists of public opinion. Our data suggest that while United States public opinion may exhibit some fault lines in times of crises, it remains securely anchored in bedrock beliefs.

## UN adv

#### An oversight court is a rubber stamp, their cards are about liability – in absentia fails

Bloomberg 13 [Editors, “Why a ‘Drone Court’ Won’t Work,” Feb 18, http://www.bloomberg.com/news/2013-02-18/why-a-drone-court-won-t-work.html]

Such a system would ostensibly have two benefits: increasing the legitimacy of the drone war and placing a check on the executive branch’s power to decide life and death. **On closer examination, both advantages prove illusory.¶** First, few outraged Pakistanis would be assuaged by the distinction of judicial scrutiny, and civil libertarians would point out that the target is never given a chance to make a case before the judge. This lack of an “adversarial setting” for the subject might be defensible in the case of FISA warrants, but the stakes here are far higher than a simple wiretap.¶ As for the balance of powers, that is where we dive into constitutional hot water. Constitutional scholars agree that the president is sworn to use his “defensive power” to protect the U.S. and its citizens from any serious threat, and nothing in the Constitution gives Congress or the judiciary a right to stay his hand. It also presents a slippery slope: If a judge can call off a drone strike, can he also nix a raid such as the one that killed Osama bin Laden? If the other branches want to scrutinize the president’s national security decisions in this way, they can only do so retrospectively.¶ There is also a human problem: Few judges would be eager to find themselves in this role. “That’s not the business of judges,” James Robinson, a former federal appeals judge, told the Washington Post, “to sign a death warrant for somebody who is on foreign soil.” Those who did would face such tremendous pressure to side with the government that the process would probably become a rubber stamp. And why exactly do we think a judge is any better suited to discerning terrorist threats than senior executive branch officials?¶ **There is an alternative**, albeit a somewhat unsatisfying one: **Congress could create a “cause of action**” that would give the families of those killed the ability to seek damages. Clearly, no amount of money is going to make up for a wrongful death. But, as Stephen I. Vladeck of American University’s law school points out, the threat of potential liability might make an administration that much more careful in deciding both the imminence of the threat and the feasibility of capture as an alternative. Although any suit would probably have to be heard in secret for national-security reasons, **it would afford a layer of judicial scrutiny to government actions, and would allow a lawyer to make an adversarial case on behalf of the target.¶** This sort of ex post facto accountability wouldn’t end the controversy over drone attacks. Nor would it substitute for greater transparency on the part of the administration toward the public and the relevant congressional committees. For an administration that’s slowly losing the hearts-and-minds battle, however, **such trials would provide a bit of much-needed legitimacy.**

#### IHRL norms are ignored

Posner 10

Eric Posner is a professor of Law at the University of Chicago, JOHN M. OLIN LAW & ECONOMICS WORKING PAPER NO. 537, September 2010, "Human Rights, the Laws of War, and Reciprocity", http://www.ericposner.com/Human%20Rights,%20the%20Laws%20of%20War,%20and%20Reciprocity.pdf

Neither approach quite captures the way that the idea of human rights plays out in political and legal discussion. The first approach draws on international morality, but international law rests on the consent of states and rejects appeals to morality. Because international morality is highly contested, states prefer to rely on agreement as a basis for international cooperation. The second approach, however, cannot account for the actual content of international human rights treaties, which include many norms that are not universal. It also assumes a puzzling scenario in which states commit only to comply norms that they already observe; what is the point of that? When states criticize each other for violating human rights treaties, their debates often touch on profound disagreements about the content of human rights norms.

The starting point for understanding international human rights law is the recognition that the norms contained in human rights treaties do not in fact reflect an overlapping consensus—at least if the human rights treaties are interpreted, as they normally are by western commentators, as requiring norms of liberal democracy plus possibly a number of positive rights to medical care, work, and the like.22 Developing states give priority, in varying degrees, to economic growth, traditional values, and political order. We need a different approach to understanding how human rights law might work.

Assume that states have preferences over a range of outcomes, which can include altruistic as well as conventionally self-interested outcomes.23 The preferences of states reflect the preferences of the general population, interest groups, or elites, as they emerge through political institutions. If these groups care about the well-being of people in other countries, then their preferences will be reflected in part in the state’s. States might also have instrumental reasons for pursuing what otherwise seem like other-regarding goals. For example, states may support human rights in other states because foreign states that respect human rights might be less belligerent and more stable places for trade and investment.

States’ other-regarding interests, as I will call them, can differ considerably. One state might care about the health of people living in foreign countries, while another state might care about salvation of their souls. One state might believe that people living in other countries should enjoy the benefits of a market economy, while another state might believe that those people should benefit from education, health care, and social security. A state might be indifferent to the well-being of people in other states as a general matter but draw the line at massacres or genocide. Finally, the intensity of states’ other-regarding interests will vary. Many states have highly intense preferences, and are willing to back them with substantial resources; other states have weaker preferences.

If, as seems likely, other-regarding preferences overlap, states’ efforts to help foreign nationals face a collective action problem. As an example, imagine two states, say, the United States and the European Union,24 which have an interest in improving the well-being of people who live in third state, say, Zimbabwe. When the well-being of people in Zimbabwe improves, the United States and the European Union are both made better off, in the sense that a “good” for which they have preferences (for which they are willing to pay) has been supplied.

#### NSE declarations key—they make it impossible for the US to back norms

Friedman, 5

(JD-University of Florida Law, “The Uneasy US Relationship with Human Rights Treaties: The Constitutional Treaty System and Non-Self-Execution Declarations,” 17 Fla. J. Int'l L. 187, March, Lexis)

E. Policy Arguments Against Nonself-Execution Declarations: The International Implications

Regardless of whether the constitutional arguments against nonself-execution declarations pass muster, the practice of attaching them to human rights treaties **is an integral part of the blatantly protectionist U.S. foreign policy on human rights**. n418 Routinely using nonself-execution declarations communicates to other nations that the United States does not take its international human rights obligations seriously enough to allow them to take effect as domestic law. n419 It also undermines the foreign policy justifications for ratifying human rights treaties in the first place - most fundamentally, the motivation to serve as an example to other nations. n420 Nonself-execution declarations render the human rights treaties to which they are attached **empty promises,** because the terms of those treaties do not effect any change in U.S. domestic law. n421 The United States thus [\*251] is seen by other nations as seeking the benefits of human rights treaties - most importantly, membership in the organizations that oversee them - without assuming any of the burdens. n422 The practice of using nonself-execution declarations reflects an attitude that human rights treaties are only for other nations, not for the United States. n423 The U.S. foreign policy on human rights **promotes a double standard**, whereby the United States seeks to enforce international human rights law against other nations but is unwilling to have its own practices subjected to international regulation and scrutiny. n424 On one hand, the United States [\*252] played a leading role in establishing the United Nations and drafting the UDHR and other human rights treaties. n425 It also frequently expresses concern about human rights violations around the world and sometimes uses economic or military pressure to induce nations to improve their human rights practices. n426 Moreover, U.S. domestic law reflects a fundamental commitment to domestic human rights protection. n427 On the other hand, the United States has an uneasy relationship with human rights treaties and institutions. n428 The United States only occasionally ratifies human rights treaties, n429 and when it does, it attaches nonself-execution declarations without fail. n430 Furthermore, after declaring the treaties nonself-executing, it enacts the necessary implementing legislation erratically, if at all. n431 The root of this double standard lies in U.S. unilateralism, exceptionalism, and isolationism. n432 At the heart of those beliefs are two [\*253] related ideas: first, that human rights in the United States are "alive and well" and do not need scrutiny from other nations whose human rights protections are much less so; n433 and second, that the U.S. government, especially U.S. courts, would take human rights obligations much more seriously than would other governments. There are four basic foundations of this "pervasive sense of cultural relativism, ethnocentrism, and nationalism" n434 in the United States: the U.S. superpower status in world affairs, n435 the exceptional stability of democratic governance inside its borders, n436 the "general conservatism" of its politics, n437 and the decentralized and divided nature of its political institutions. n438 Nonself-execution declarations reflect this **nationalistic sense of superiority** and communicate a "refusal to consider the possibility that change may potentially bring improvement rather than deterioration" to domestic human rights protections. n439 To a somewhat lesser extent, the foundation of the human rights double standard also lies in the differences between U.S. constitutional rights and international human rights. n440 First, American constitutional rights focus [\*254] on the democratic form of government more specifically than do international rights. n441 Second, American constitutional rights are natural rights, and refer back to ideas that are European - rather than universal - in nature. n442 Other nations are becoming increasingly frustrated with U.S. foreign policy on human rights and with U.S. domestic human rights practices. n443 This widespread criticism **damages the U.S. credibility in foreign human rights policy**. n444 It also undercuts the U.S. foreign policy motivations for ratifying human rights treaties in the first place, especially the desire to serve as an example to other nations. n445

#### Law doesn't check use of force - underlying interests outweigh

Posner 14

Eric Posner is a professor of Law at the University of Chicago, March 3, 2014, "UKRAINE AND THE LIMITS OF INTERNATIONAL LAW", http://ericposner.com/ukraine-and-the-limits-of-international-law/

Peter Spiro (and/or someone else operating the Opinio Juris twitter account) accuses me of “gloating” about the military intervention in Ukraine, being a “realist,” committing something called the “perfect compliance fallacy,” and believing that “international law is a chimera.” These accusations are false.

Julian Ku and Erik Voeten have already provided partial rebuttals. For the record, here are my views:

1. I am not a “realist” in the political science sense. I believe that countries cooperate when they can achieve mutual gains; that cooperation can benefit from sophisticated institutional arrangements; but that cooperation must be self-enforcing, meaning that it must be in the individual interest of the relevant countries not to defect from their arrangements (what economists sometimes call the “participation constraint”). Although few (albeit an increasing number) law professors take this approach to international law, many (although certainly not all or even most) political scientists do. Realism, as I understand that term, emphasizes security competition among countries; it has little value for understanding international law.

2. Spiro is right that you can’t infer anything from a single data point if that’s what he means by the “perfect compliance fallacy.” However, I never said that because Russia violated international law in Ukraine, international law is a “chimera.” Nor did I say anything that could be construed in such a way.

My writings about international law have been devoted to explaining it, not denying that it exists like the mythical beast invoked by Spiro. However, I am more skeptical than most international law scholars, who are frequently advocates, cheerleaders, or aspiring diplomats. The arguments I have made in The Limits of International Law, Economic Foundations of International Law, and elsewhere implied that international law is most effective at solving coordination games and managing bilateral cooperation, and not so good at solving collective action problems. So I have expressed skepticism about some types of international law–including collective security and human rights–but not others (trade law, for example). I have also argued that some areas of international law work under certain conditions but fail under other conditions–claims that are resisted by legal scholars but are familiar in political science (for example, James Morrow’s examination of the laws of war).

3. The evidence for the weakness of the use of force rules has been gathered and analyzed by many people, including Michael Glennon. The debate is too complicated to reproduce here. All I will say is that it is sufficient neither to point out that countries sometimes violate the law nor to point out that countries sometimes comply with the law. One needs to imagine the counterfactual world in which the UN system does not exist and ask how states would act differently. In such a world, would Russia have also invaded Armenia? Would the United States have invaded Canada? Countries have reasons other than law not to attack each other.

#### Legal restrictions on force are meaningless - Ukraine proves

Ku 14

Julian Ku is a professor at Hofstra University School of Law, Opinio Juris, March 2, 2014, "Russia Reminds the World (and International Lawyers) of the Limits of International Law", http://opiniojuris.org/2014/03/02/ukraine-russia-international-law-governing-use-force/

I agree with Peter that the mere breach of the international law governing the use of force does not mean that all international law is useless and meaningless. But I don’t think Eric Posner’s pithy challenge to the international law academy on Ukraine can be so easily dismissed. International lawyers need, especially in this area, to provide a meaningful theory as to why international law affects state behavior, and why (as in this case) it seems to be having very little impact on Russia’s decision to use armed force in Ukraine. Contra Peter, the fact that sometimes constitutional or corporate law rules are ignored or violated doesn’t really answer the question here. When those norms are widely ignored (as with constitutional law rules in countries like China), then it is rational for actors in China to ignore those rules in most circumstances and most legal theorists would not call it “law” in any meaningful sense.

Which brings me to the Ukraine crisis. I agree with Erik Voeten that international law and institutions will be helpful in other ways. And I think Chris provides very helpful analysis of how international law can shape official state rhetoric. But the fact remains that the international law restraining the use of armed force has utterly and completely failed to constrain Russia’s actions in Ukraine. This is more than simply adhering to the legislative veto. This is a body blow to a foundational piece of the international legal system.

In academic terms, the failure of the Charter is evidence for both realists (who think international law never matters), but also for rational choice theorists like Posner, as to how international law really works. Rational choice folks think that international law works best (in fact, works at all only) when states have a rational self-interest to cooperate around certain legal norms and institutions. But where states no longer have such a rational self interest, states will depart from those legal norms. Compliance with international law for the sake of complying with international law is naive and unrealistic.

The Russia-Ukraine crisis also impacts real-world policymaking. If international law, or at least the Charter’s rule on the use of force, is very weak or non-existent as a tool for restraining state action, then policymakers should not rely on the Charter rule as meaningful protection against aggression.

A strong military or a network of alliances would probably have been a better idea. States must not overestimate the impact or force of this species of international law (as Ukraine’s new government seemed to do) when making decisions. And states like the United States should be careful incorporating this rule into its domestic legal processes, or over-privileging its role in its own domestic public debate.

I may be biased as an American, but the U.S. has about the right balance on this. It does not ignore the Charter, but it does not treat the Charter as having too much independent significance except to the extent it affects the actions of other states (especially its allies). The key thing to focus on in this crisis are the interests of the different states (and leading groups within states). State interests are driving actions here, and the Charter violation seems to be doing almost now work.

The fact that the Charter is plainly being violated will not necessarily mean that Charter proponents like France and Germany will get tough with Russia (in fact, both are going the other way by opposing sanctions or any NATO consultations). The fact that the Charter is plainly being violated will not mean China (another big Charter proponent) will do anything other than closely watch developments and urging “all sides to comply with international law” without naming any country.

#### UN fails

Anderson 12 (Kenneth Anderson is a professor of international law at Washington College of Law, American University, Washington, D.C., and a visiting fellow at the Hoover Institution. He specializes in international law, human rights and the laws of war, as well as international business law, international development, and not-for-profit law. Before joining the American University law faculty, he was founding director of the Human Rights Watch Arms Division and later general counsel to the Open Society Institute/Soros Foundations., 7/25/2012, "Why Does the UN Still Exist?", www.hoover.org/publications/defining-ideas/article/123451)

What exactly is the United Nations and, for that matter, why is there still a United Nations at all? How has it managed to survive over time, from 1945 down to the present—given its long record of underperformance, frequent outright failure, and even more frequent irrelevance? On the United Nations’ core issues—collective peace and security, development, and universal human values and rights—its record is mediocre, unless one counts sheer institutional persistence as enough. And that record is particularly poor concerning the issue from which the collective sprang in 1945: international peace and security through the collective itself. Why, then, has not the ruthless evolutionary logic of history pruned it as a failed institutional sapling in a relentlessly competitive forest, as the League was pruned? The textbooks in international law and organizations provide one set of answers to account for the persistence of the United Nations. They tell us the heroic story of the United Nations’ founding in 1945 and the first meetings in San Francisco; Eleanor Roosevelt et al. They tell us about the efforts of the Second World War Allies to create an organization that would be able to establish true collective security and avoid the fatal—and predictable—errors of international organizations that yielded, among other things, the failed League of Nations and the naïve Kellogg-Briand Pact. They describe the present-day organization as an attempt to provide global governance in a recalcitrant world. They tend, above all, to tell a progressive moral history—“Whig history”—of advances toward greater and better international order through international law and organizations. Accounts from the field of international relations tend to be more skeptical, but their skepticism comes typically from a realist perspective. The skepticism is descriptive rather than normative. These international-relations accounts do not necessarily challenge the normative goals of the United Nations and international order but instead note just how difficult the task is and the limited success the institution has had. But descriptive and normative accounts of the United Nations, successes and failures, seen from the outside are not the only accounts that matter. One would get a rather different perspective on the United Nations than either of these big-picture external accounts by perusing the institution’s finances. For those (few) willing to delve into its internal budget, management, fiscal control, accounting, managerial structures, and labor relations, a striking organizational beast emerges. The organization’s priorities are mirrored in its budgets and fiscal structures that allocate its resources. This is a picture of the United Nations characterized by rent-seeking and sometimes outright corruption, lack of fiscal discipline or control, and a chief executive officer, the secretary-general, who has no exact idea how many people work for his organization. These are not facts that many experts on UN diplomacy choose to pay much attention to. Rather, the diplomats often find them tiresome when forced on their attention, for they distract from the grand issues of diplomacy and international law that make the United Nations exciting. The international-relations specialists find that they distract from accounts of power relations among states at the United Nations. But they are surely relevant, too, in establishing the terms of US-UN relations. Yet none of these accounts of the United Nations, useful and interesting though each may be, provides much of a basis for guiding the United States in its dealings with the United Nations. That requires an account not merely of the United Nations’ heroic self-conception, its less-than stellar record, or its tawdry organizational reality—but also of its intellectual and ideological trajectory, in relation to the United States, from the past into the future, and those in relation to the ideals and interests of the United States. We need ways of explaining the United Nations so as to explain and predict how it will evolve and whether and when that evolution will support US ideals and interests or conflict with them. A Crisis of Identity at the UN So let us shift to another, quite different means of explaining the United Nations. The master issue, in this explanation, is the institution’s source of legitimacy. The key to relations between the United States and the United Nations is fundamentally to address their contrasting—sometimes supporting and sometimes competing—legitimacies. Doing that begins with a close look at the source and nature of the United Nations’ legitimacy and how the peculiar limits of that legitimacy contribute to the institution’s most persistent large-scale feature—paralysis, a very particular kind of paralysis, to be sure, because it consists of marching, constant marching, but marching in place. Call it immobilité perpétuelle. The United Nations consists of deep contradictions. More exactly, the United Nations consists of antinomies—profound, connected opposites that are “baked into” the institution’s structure, history, incentives, and motivations. The United Nations is an independent institution with independent global claims to govern; the United Nations is a mere instrumentality of the member states. The United Nations is an institution based around the sovereign equality of states participating in a universal institution; the United Nations is committed to certain values and yet, at least in principle, there are standards to be met by states as a condition of joining and participating. The United Nations is the talking shop of the nations; the United Nations is a genuinely shared society of the world and not just the meeting ground of states’ politics. The United Nations is merely the humble servant of its states-party; the United Nations is an independent governmental actor directly representing the “peoples” of the world. The secretary-general is merely the ministerial servant of the member states of the United Nations; the secretary-general is something approaching, albeit weakly, the “president” of the world. The United Nations is about global governance; yet it is said to be governance without a global government. The False Dream of Tomorrow But the most powerful of the United Nations’ many and varied antinomies is the one that ironically turns the institution’s very failures into its most potent source of legitimacy. The distinctive salience of the United Nations is that it is a failure today—and a hope for tomorrow. And this is so even though it is always a failure today, each and every day—and yet always a hope for tomorrow. Imagine the United Nations as a sickly sapling. Sickly as it is today, however, it still holds out the promise of growing to become a glorious overarching tree—the glorious sheltering tree of global governance—but tomorrow, and always tomorrow. The tree never seems to grow or overcome its pathologies; it always remains the same sickly sapling. But likewise the promise of tomorrow, too, always remains as glorious. This paradox points to one of the fundamental reasons for the persistence of the United Nations over time. The chronic promise of tomorrow provides a reason to put up with the chronic failures of today. Everything the organization does today, no matter how ineffective, ineffectual, corrupt, rent-seeking, or just plain wrong, has to be excused on the basis of what the organization will someday be. It does not finally matter what the scandal, the appallingly bad behavior, the failure of management or of execution or of fiscal control happens to be. It can be wholesale mismanagement and corruption through the Oil-for-Food program (does anyone still recall that multi-billion dollar scandal?) and the flight of a senior UN executive to his extradition-free home state. It might be rape and sexual predation against the young, not only by UN peacekeeping troops trading sex for food but also by UN civilian staff in African conflicts—followed by stern pronouncements of zero tolerance but no actual criminal prosecutions. Or it might be the unveiling of a $23 million mural on the ceiling of the UN Human Rights Council chambers—the main sponsor, Spain, having raided its international development aid budget to help pay for it. It might be the relentless orchestration of reports, statements, declarations, resolutions, and investigations by that same Human Rights Council, beneath its magnificent mural, and its members and various “independent” experts and NGO enablers against a single state: Israel. Or it could be the utter and disastrous inability of the United Nations to actually get aid in a timely fashion to victims of the 2004 tsunami, as its aid czar held press conferences and sent observers to reconnoiter and finally fell into the usual default activity of blaming the United States. Or—at the largest political levels, looking back across UN history—it might be UN inaction in genocide in Rwanda and Bosnia. This leaves aside the question of whether the United Nations’ general inability to create positive outcomes, even when not acting badly but merely inefficaciously, is a reason to wonder about whether it is an organization worth having around in the long run. It leaves aside the dangling question of whether the United Nations might be better replaced with some other structure of global political coordination. After all, such institutions of global coordination as do exist with some effectiveness—the World Trade Organization, for example—are formally reckoned part of the UN system through, as it were, branding but in fact are governed under their own mandates. Those successful global coordination exercises share a couple of defining features. First, they tend to be about economic matters in which a reasonably large group of states have reasonably overlapping interests, whatever their other conflicts. Second, they see their activities as fundamentally self-limiting to that particular activity, function, and justification—not leading beyond it into grand political projects, regardless of how much theorists of governance would like to see themselves gradually building into some grander political structure. The successful and reasonably effective institutions of global coordination have a deeply Burkean sense of limits: the length of time it takes to elaborate limited institutions of coordination and how quickly that coordination can be eroded or even toppled. These are not the qualities of the United Nations as such; its mandate is by its nature political and invites expansion on every metric save effectiveness. Indeed, rather than inviting grander political projects in global governance, the United Nations’ manifest failures ought rationally to invite the question of whether the United Nations’ existence has the unfortunate effect of impeding the very possibility of the emergence of an alternative structure—some evolution towards something else, something with fewer contradictions, antinomies, and ambiguities. The Platonic Ideal of Global Governance But the deepest of these is the way in which future promises lock in failure today. The rhetoric that surrounds the United Nations, the rhetoric that gives us the persistent ideal of “The Parliament of Man,” has this constant and peculiar trope. It is always looking beyond the dismal present day of the United Nations to the glorious transcendental future of global governance, always on offer, but always on offer tomorrow. Call it “UN platonism.” Or maybe call it—the non-falsifiable idea of the United Nations. It amounts to an infatuation with “global governance” as an ideal platonic form. There are apparently no circumstances in the real world in which the ideal of the platonic United Nations could be found definitively wanting. The persistence of global hunger? Inevitably it means we must commit ever more deeply to the United Nations and give more to its development program. An outbreak of epidemic disease sweeps the planet? Clearly, we need to invest more in UN agencies and should have done so earlier. Nuclear war breaks out between regional powers? The problem must surely have been that insufficient emphasis was placed on engagement through the United Nations’ multilateral disarmament and nuclear nonproliferation negotiations. The United Nations always remains the default answer, no matter what the question and no matter how badly its own failures contributed to the problem. If it is somehow not the answer for today, then certainly it is the answer for tomorrow. And even if it is not the answer right now, we should act as though it were in order that it may become the answer for tomorrow. For some people, this is a general proposition, directly an article of faith about global governance and the United Nations as its historical vessel. Others maintain that they have an open mind, and so the United Nations might not necessarily (as a matter of historical necessity) be the answer to global coordination. But somehow, there turns out to be nothing in fact that could alter their commitment to the institution, because of what it represents for the future or, at least minimally, because it always turns out to be the hypothesized least-bad alternative. The first is straight-up UN platonism; the second is a functional, constructive UN platonism. However one gets there, the final result is the same. Future possibilities hold the present hostage, and so every failure must finally be excused. No matter what the question, the answer is somehow always a greater and deeper commitment to the United Nations. It has to be reckoned a non-falsifiable faith, not a reasoned judgment.

# 2NC

## CP

### overview

CP is a major, clear reversal of administration policy – their evidence is describing executive efforts to maintain existing policy through minor reforms like white papers – fundamentally not the CP—that’s Dodds

CP is sufficient—key links to the aff involve restraining drone strikes and ensuring accountability for both strikes. Drone court does that by having judicial oversight, the CP does that by ensuring that EVERYONE can review means procedures and results—Daskal says that ensures continuous review, minimizes error, and legitimates the program

### Due process

#### Solves due process signal while avoiding the net benefits

Mike Dreyfuss, Ph.D. in Jurisprudence, Jan 2012, NOTE: My Fellow Americans, We Are Going to Kill You: The Legality of Targeting and Killing U.S. Citizens Abroad, 65 Vand. L. Rev. 249

The crux of the matter is what process is due to a U.S. citizen before he can be killed in military strikes by his own government in response to his role in planning and conducting military operations against the United States. First and foremost, the U.S. citizen is entitled to a neutral decisionmaking process. n237 This need not take the form of a trial in an Article III court. n238 Rather, **the executive can create a neutral decisionmaking body within an agency for purposes of determining whether a U.S. citizen will be killed**. n239 **This function could be served admirably** by the JAG Corps or a similar organization **within the executive branch**.

The first determination this neutral body will have to make in all instances is the proposed target's combatant status and his level of participation in the operations against the United States. The decisionmaker will have to determine whether the person targeted for killing is a lawful or unlawful combatant, a civilian (which automatically bars the targeting of that individual for killing), or one [\*290] of the many proposed hybrids. n240 If the decisionmaker finds that the proposed target is actively participating in military operations against the United States, then it can move on to the next stage of its decisionmaking. Otherwise, the target would not be lawful. n241

Once the decisionmaker determines that the target is lawful, U.S. citizen targets must be put on notice that their lives will be forfeited if they fail to turn themselves over to the authorities. n242 Once the government provides notice, the decisionmaker can decide the sufficiency of this notice, which should embrace the totality of the circumstances. If notice is sufficient, then the process can continue. If there has not been sufficient notice, then the government must provide additional notice. n243

Having determined that the U.S. citizen is a lawful target with sufficient notice, the decisionmaker then will evaluate the citizen's ability to choose to exercise his rights to avail himself of the court system. If the decisionmaker finds that the target has the ability to choose what he will do and has decided not to exercise his rights, then the process can continue.

Next, it falls on the decisionmaker to evaluate whether or not it is possible to capture the individual. n244 This part of the inquiry is necessary to satisfy the humanitarian law of proportionality. n245 If less [\*291] harmful means for depriving the enemy of the war-making capability provided by this U.S. citizen exist, then those means must be used. The decisionmaker need not find that the military has tried and failed to capture the individual, just that military leaders reasonably decided that capture was not feasible. n246

Finally, the decisionmaker must review the military objective that targeting and killing this U.S. citizen will serve. Only true military targets are subject to military action. If all of the above conditions are satisfied, then the targeted killing can proceed.

VI. Conclusion: The Balance of Life and Death

**The practice of targeted killing can be used in a manner that is consistent with U.S. and international laws.** Permissible targets will be of a military nature, and killing them will serve a military objective. No laws, international or domestic, prohibit the practice if it is carried out by a state against an enemy of that state actively engaged in an armed conflict against that state. When the target is a U.S. citizen, the U.S. Constitution demands certain additional procedures before the U.S. government may kill the target. The Fifth Amendment's Due Process Clause dictates these procedures. The procedures ensure a just determination of the target's permissibility as a military matter and the subjective intent of the target not to avail himself of the further protections to which he is entitled as an American citizen. A neutral decisionmaker should balance the targeted citizen's life against the risk he poses. If the decision comes out against him, then the military may launch a strike.

#### Executive review processes solve the aff

Afsheen John Radsan, William Mitchell College of Law, and Richard W. Murphy, Texas Tech University School of Law, 2009, Due Process and Targeted Killing of Terrorists, , papers.ssrn.com/sol3/papers.cfm?abstract\_id=1349357

Yet **as a practical matter, the judicial role** just identified **is vanishingly small**. Justice Thomas is surely correct that the executive must dominate decisions about who lives and dies in war. This makes executive self-control all the more important—and leads to our second claim. Due process is everywhere. For a century, debate has bubbled over the extra-territorial reach of the Constitution.30 The logic of Boumediene‘s five-justice majority opinion is that the Due Process Clause binds the executive worldwide—from Alaska to Zimbabwe.31 This duty exists even for matters that cannot or should not be subject to significant judicial control; the executive must obey the Constitution even if no court is in a position to say so. Honoring this obligation requires the executive to adopt procedures that maximize the accuracy and propriety of the CIA‘s targeted killing without unacceptably harming national security.32 Following the lead of cases from the European Court of Human Rights and the Supreme Court of Israel,33 we submit that as one integral element of these procedures, executive authorities should conduct independent, impartial, post-hoc review of the legality of any targeted killing by the CIA and that this review should be as public as national security permits.34

### Transparency

#### Transparency is just as effective as the aff

SCR 13 (Security Council Report (SCR) is an independent not-for-profit organisation. It was founded on the belief that consistent, balanced, high-quality information about the activities of the UN Security Council and its subordinate bodies is essential to the effective performance of the Council and that this information should also be available to a wider group of stakeholders and the general public., 11/27/2013, "December 2013 Mothly Forecast", www.securitycouncilreport.org/monthly-forecast/2013-12/counter-terrorism\_3.php)

On 25 October, the Third Committee of the General Assembly heard presentations about two separate reports on the issue of armed drones. The report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, focused on the use of armed drones in counter-terrorism operations and its civilian impact (A/68/389). The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, analysed the use of lethal force through armed drones from the perspective of the right to life and international norms (A/68/382 and Corr.1). Both Emmerson and Heyns underlined that there was no need for new laws but instead the imperative was to achieve clarity about the existing legal framework and to ensure its implementation. They both stressed the importance of greater transparency from the states using drones and the need to provide mechanisms for investigation, accountability and redress for potentially unlawful strikes. Heyns identified legal controversies in the use of drones, including the scope of self-defence and the issue of anticipatory self-defence. Emmerson identified three key challenges: the difficulty of defining “civilian casualties” when drones are used, the lack of transparency and the ambiguity about some of the key principles of international law and their relevance to modern forms of asymmetrical conflict. Emmerson will submit a final report to the Human Rights Council in 2014 examining the facts surrounding a sample of particular drone strikes. His inquiry is a response to requests made by several states at the 20th session of the HRC in June 2012 to carry out an investigation on the use of drones in counter-terrorism operations.

### at: links to politics

#### Only Congressional moves to reclaim war power authority triggers the war power and politics disad

William Howell, Sydney Stein professor in American politics at the University of Chicago, 9/3/13, All Syria Policy Is Local, www.foreignpolicy.com/articles/2013/09/03/all\_syria\_policy\_is\_local\_obama\_congress?page=full

From a political standpoint, seeking congressional approval for a limited military strike against the Syrian regime, as President Barack Obama on Saturday announced he would do, made lots of sense. And let's be clear, **this call has everything to do with political considerations**, and close to nothing to do with a newfound commitment to constitutional fidelity.

The first reason is eminently local. Obama has proved perfectly willing to exercise military force without an express authorization, as he did in Libya -just as he has expanded and drawn down military forces in Afghanistan, withdrawn from Iraq, significantly expanded the use of drone strikes, and waged a largely clandestine war on terrorism with little congressional involvement. The totality of Obama's record, which future presidents may selectively cite as precedent, hardly aligns with a plain reading of the war powers described in the first two articles of the constitution.

Obama isn't new in this regard. Not since World War II has Congress declared a formal war. And since at least the Korean War, which President Harry Truman conveniently called a "police action," commanders-in-chief have waged all sorts of wars -small and large -without Congress's prior approval.

Contemporary debates about Congress's constitutional obligations on matters involving war have lost a good deal of their luster. Constitutional law professors continue to rail against the gross imbalances of power that characterize our politics, and members of whichever party happens to be in opposition can be counted on to decry the abuses of war powers propagated by the president. **But these criticisms** -no matter their interpretative validity -**rarely gain serious political traction**. Too often they appear as arguments of convenience, duly cited in the lead-up to war, but serving primarily as footnotes rather than banner headlines in the larger case against military action.

**Obama's recent decision to seek congressional approval is not going to upend a half-century of practice that has shifted the grounds of military decision-making decisively in the president's favor**, any more than it is going to imbue the ample war powers outlined in Article I with newfound relevance and meaning. For that to happen, Congress itself must claim for itself its constitutional powers regarding war.

Obama did not seek Congress's approval because on that Friday stroll on the White House lawn he suddenly remembered his Con Law teaching notes from his University of Chicago days. He did so for political reasons. Or more exactly, he did so to force members of Congress to go on the record today in order to mute their criticisms tomorrow.

And let's be clear, **Congress** -for all its dysfunction and gridlock -**still has the capacity to kick up a good dust storm** over the human and financial costs of military operations. Constitutional musings from Capitol Hill -of the sort a handful of Democrats and Republicans engaged in this past week -rarely back the president into a political corner. The mere prospect of members of Congress casting a bright light on the human tolls of war, however, will catch any president's attention. Through hearings, public speeches, investigations, and floor debates, members of Congress can fix the media's attention -and with it, the public's -on the costs of war, which can have political repercussions both at home and abroad.

Think, then, about the stated reasons for some kind of military action in Syria. No one is under the illusion that a short, targeted strike is going to overturn the Assad regime and promptly restore some semblance of peace in the region. In the short term, the strike might actually exacerbate and prolong the conflict, making the eventual outcome even more uncertain. And even the best-planned, most-considered military action won't go exactly according to plan. Mishaps can occur, innocent lives may be lost, terrorists may be emboldened, and anti-American protests in the region will likely flare even hotter than they currently are.

The core argument for a military strike, however, centers on the importance of strengthening international norms and laws on chemical and biological weapons, with the hope of deterring their future deployment. The Assad regime must be punished for having used chemical weapons, the argument goes, lest the next autocrat in power considering a similar course of action think he can do so with impunity.

But herein lies the quandary. The most significant reasons for military action are abstract, largely hidden, and temporally distant. The potential downsides, though, are tangible, visible, and immediate. And in a domestic political world driven by visual imagery and the shortest of time horizons, it is reckless to pursue this sort of military action without some kind of political cover.

Were Obama to proceed without congressional authorization, he would invite House Republicans to make all sorts of hay about his misguided, reckless foreign policy. But by putting the issue before Congress, these same Republicans either must explain why the use of chemical weapons against one's people does not warrant some kind of military intervention; or they must concede that some form of exacting punishment is needed. Both options present many of the same risks for members of Congress as they do for the president. But crucially, if they come around to supporting some form of military action -and they just might -**members of Congress will have an awfully difficult time criticizing the president for the fallout**.

Will the decision on Saturday hamstring the president in the final few years of his term? **I doubt it.** Having gone to Congress on this crisis, must he do so on every future one? No. Consistency is hardly the hallmark of modern presidents in any policy domain, and certainly not military affairs. Sometimes presidents seek Congress's approval for military action, other times they request support for a military action that is already up and running, and occasionally they reject the need for any congressional consent at all. And for good or ill, it is virtually impossible to discern any clear principle that justifies their choices.

The particulars of every specific crisis -its urgency, perceived threat to national interests, connection to related foreign policy developments, and what not -can be expected to furnish the president with ample justification for pursuing whichever route he would like. Like jurists who find in the facts of a particular dispute all the reasons they need for ignoring inconvenient prior case law, presidents can characterize contemporary military challenges in ways that render past ones largely irrelevant. Partisans and political commentators will point out the inconsistencies, but their objections are likely to be drowned out in rush to war.

**Obama's decision does not usher in a new era of presidential power**, nor does it permanently remake the way we as a nation go to war. **It reflects a temporary political calculation** -and in my view, the right one -of a president in a particularly tough spot. Faced with a larger war he doesn't want, an immediate crisis with few good options, and yet a moral responsibility to act, he is justifiably expanding the circle of decision-makers. But don't count on it to remain open for especially long.

### at: ji addon

#### You’re not that type of court

Fidell 13

Eugene R. Fidell, Visiting Lecturer in Law at Yale Law School. He is a co-founder and former president of the National Institute of Military Justice and of counsel at Feldesman Tucker Leifer Fidell LLP, Washington, D.C. He is a Life Member of the American Law Institute and a member of the Defense Legal Policy Board of the Department of Defense and the board of directors of the International Society for Military Law and the Law of War. He has also taught at Harvard Law School and the American University Washington College of Law, NY Times, February 27, 2013, "A Drone Panel Within the Executive Branch?", http://www.nytimes.com/2013/02/28/opinion/a-drone-panel-within-the-executive-branch.html

“Who Will Mind the Drones?,” by Neal K. Katyal (Op-Ed, Feb. 21), proposed an internal “drone court” staffed by expert lawyers representing both sides to review proposed attacks. The members “would switch sides every few years, to develop both expertise as repeat players and the ability to understand the other point of view.” The president would be able to overrule this “court” and “take whatever action he thought appropriate, but would have to explain himself afterward to Congress.”

This is not a good idea. The new entity would be merely a board within the executive branch. To call it a court would incorrectly imply that its members are independent and have protected terms of office. Nor would its decisions have the finality that our legal system associates with exercises of judicial power. The decisions of this internal drone court could be thwarted simply because the president, owing it no deference, disagreed with them.

This is not to say that such a panel might not serve a useful purpose. It would probably help develop some overall principles as particular proposed drone operations came before it. But that is a far cry from pretending to be a court of law.

Finally, there is a serious ethical issue in the proposal. The lawyers who would constitute the “bar” of this “court” would switch sides by prearrangement. The rub is that attorneys have a duty to try to develop the law in a way that advances their clients’ long-term interests. This led the Office of Legal Counsel in 1977 to reject a plan for Justice Department lawyers and federal defenders to trade places for a while, correctly concluding that such an arrangement would put participating attorneys in an impossible ethical bind. The same is true of the in-house drone court idea.

#### No one models American courts – Canada is the model

Law, Professor of Law and Professor of Political Science, Washington University in St. Louis, and Versteeg, Associate Professor, University of Virginia School of Law, June 2012

(David S. and Mila, “THE DECLINING INFLUENCE OF THE UNITED STATES CONSTITUTION,” 87 N.Y.U.L. Rev. 762, Lexis)

In 1987, to mark the bicentennial of the U.S. Constitution, Time magazine released a special issue in which it called the Constitution "a gift to all nations" and proclaimed proudly that 160 of the 170 nations then in existence had modeled their constitutions upon our own. n2 As boastful as the claim may be, the editors of Time were not entirely without reason. Over its two centuries of history, the U.S. Constitution has had an immense impact on the development of constitutionalism around the world. n3 Constitutional law has been called [\*765] one of the "great exports" of the United States. n4 In a number of countries, constitutional drafters have copied extensively, and at times verbatim, from the text of the U.S. Constitution. n5 Countless more foreign constitutions have been characterized as this country's "constitutional offspring." n6

It is widely assumed among scholars and the general public alike that the United States remains "the hegemonic model" for constitutionalism in other countries. n7 The U.S. Constitution in particular continues to be described as "the essential prototype of a written, single-document constitution." n8 There can be no denying the popularity of [\*766] the Constitution's most important innovations, such as judicial review, entrenchment against legislative change, and the very idea of written constitutionalism. n9 Today, almost 90% of all countries possess written constitutional documents backed by some kind of judicial enforcement. n10 As a result, what Alexis de Tocqueville once described as an American peculiarity is now a basic feature of almost every state. n11

There are growing suspicions, however, that America's days as a constitutional hegemon are coming to an end. n12 It has been said that [\*767] the United States is losing constitutional influence because it is increasingly out of sync with an evolving global consensus on issues of human rights. n13 Indeed, to the extent that other countries still look to the United States as an example, their goal may be less to imitate American constitutionalism than to avoid its perceived flaws and mistakes. n14 Scholarly and popular attention has focused in particular upon the influence of American constitutional jurisprudence. The reluctance of the U.S. Supreme Court to pay "decent respect to the opinions of mankind" n15 by participating in an ongoing "global judicial dialogue" n16 is supposedly diminishing the global appeal and influence of American constitutional jurisprudence. n17 **Studies conducted by** [\*768] **scholars in other countries** have begun to **yield empirical evidence that citation to U.S. Supreme Court decisions by foreign courts is** in fact **on the decline**. n18 By contrast, however, the extent to which the U.S. Constitution itself continues to influence the adoption and revision of constitutions in other countries remains a matter of speculation and anecdotal impression.

**With** the help of **an extensive data set** of our own creation **that spans all national constitutions over the last six decades**, this Article explores the extent to which various prominent constitutions - including the U.S. Constitution - epitomize generic rights constitutionalism or are, instead, increasingly out of sync with evolving global practice. **A stark contrast can be drawn between the declining attraction of the U.S. Constitution as a model for other countries and the increasing attraction of the model provided by America's neighbor to the north**, **Canada**. We also address the possibility that today's constitution makers look for inspiration not only to other national constitutions, but also to regional and international human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Our findings do little to assuage American fears of diminished influence in the constitutional sphere.

Part I introduces the data and methods used in this Article to quantify constitutional content and measure constitutional similarity. Part II describes the global mainstream of rights constitutionalism, in the form of a set of rights that can be found in the vast majority of the [\*769] world's constitutions. From this core set of rights, we construct a hypothetical generic bill of rights that exemplifies current trends in rights constitutionalism. We then identify the most and least generic constitutions in the world, measured by their similarity to this generic bill of rights, and we pinpoint the ways in which the rights-related provisions of the U.S. Constitution depart from this generic model.

Part III documents the growing divergence of the U.S. Constitution from the global mainstream of written constitutionalism. Whether the analysis is global in scope or focuses more specifically upon countries that share historical, legal, political, or geographic ties to the United States, the conclusion remains the same: **The U.S. Constitution has become an increasingly unpopular model for constitutional framers elsewhere**. Possible explanations include the sheer brevity of the Constitution, its imperviousness to formal amendment, its omission of some of the world's generic constitutional rights, and its inclusion of certain rights that are increasingly rare by global standards.

Parts IV and V tackle the question of whether a prominent constitution from some other country has supplanted the U.S. Constitution as a model for global constitutionalism. Part IV contrasts the growing deviance of the U.S. Constitution from global constitutional practice with the increasing popularity of the Canadian approach to rights constitutionalism. Unlike its American counterpart, the Canadian Constitution has remained squarely within the constitutional mainstream. Indeed, **when Canada departed from the mainstream by adopting a new constitution**, **other countries followed its lead**. Closer examination reveals, however, that the popularity of the Canadian model is largely confined to countries with an Anglo-American legal tradition. In other words, our analysis suggests that Canada is in the vanguard of what might be called a Commonwealth model of rights constitutionalism, but not necessarily of global constitutionalism as a whole.

Part V considers whether the widely celebrated constitutions of Germany, South Africa, or India might instead be leading the way for global constitutionalism. **Although all** three are currently **more mainstream than the U.S. Constitution**, we find little evidence that global constitution-writing practices have been strongly shaped by any of the three.

Part VI explores the possibility that transnational human rights instruments have begun to shape the practice of formal constitutionalism at the national level. The evidence that international and regional human rights treaties may be serving as models for domestic constitutions varies significantly from treaty to treaty. In particular, [\*770] we find that the average constitution has increasingly grown to resemble the International Covenant on Civil and Political Rights and the European Convention on Human Rights, as well as the African Charter on Human and Peoples' Rights and the Charter of Civil Society for the Caribbean Community. There is little evidence, however, that any of these treaties is actually responsible for generating global consensus as to what rights demand formal constitutional protection. Although these treaties may express and reinforce preexisting global constitutional trends, they do not appear to define those trends in the first place.

Finally, the Conclusion discusses **possible explanations for the declining influence of American constitutionalism**. These **include a broad decline in American hegemony** across a range of spheres, **a judicial aversion to constitutional comparativism**, **a historical and normative commitment to American exceptionalism**, **and sheer constitutional obsolescence**.

### at: legitimacy

#### The aff doesn’t provide added credibility – drone court gets scrutinized for secrecy

Jeh Charles Johnson was a partner at Paul, Weiss, Rifkind, Wharton & Garrison, a member of the Council on Foreign Relations (think tank), and was a governor for the Roosevelt Institute (recently nominated as Secretary of Homeland Security), 13 [“A “Drone Court”: Some Pros and Cons,” Center on National Security at Fordham Law School, March 13]

But, **we must be realistic about the degree of added credibility such a**

**court can provide**. Its proceedings would necessarily be ex parte and in secret,

and, like a FISA court, I suspect almost all of the government’s applications

would be granted, because, like a FISA application, the government would be

sure to present a compelling case. So, at the same time The New York Times

editorial page promotes a FISA-like court for targeted lethal force, it derides the

FISA court as a “rubber stamp” because it almost never rejects an application.9

How long before a “drone court” operating in secret is criticized in the same

way?

Meanwhile, what about the views of the judiciary itself? I know a

number of federal judges who would accept this unpleasant job, if asked, out of a

sense of duty. But many, I suspect, want the judiciary to have nothing to do with

this. Former Judges Mukasey and Robertson have publicly articulated this view

in emphatic terms.10 I can hear many in the judicial branch saying that courts

exist to resolve cases and controversies between parties, not to issue death

warrants based on classified, ex parte submissions. Judges don’t like armslength

ex parte submissions, because they know they are not getting two sides of

the story. I’m sure they would like them even less if the decision they must make

is final and irreversible. Put in a more cynical way, I can imagine many federal judges thinking “we don’t exist to provide top cover to the executive branch for

difficult decisions; foist this responsibility on us and you diminish both our

branches of government.”

### CMR 2NC

#### The military ignores the aff—collapses CMR

Mackubin Thomas Owens, professor of national security affairs in the National Security Affairs Department of the Naval War College, Spring 2012, WHAT MILITARY OFFICERS NEED TO KNOW ABOUT CIVIL-MILITARY RELATIONS, http://www.usnwc.edu/getattachment/1ef74daf-ebff-4aa4-866e-e1dd201d780e/What-Military-Officers-Need-to-Know-about-Civil-Mi.aspx

CIVILIAN CONTROL INVOLVES NOT ONLY THE EXECUTIVE BRANCH

It involves Congress as well. As the constitutional scholar Edward Corwin once famously observed, the Constitution is an “invitation to struggle for the privilege of directing American foreign policy” between Congress and the president.13 But **there is a similar tension at work with** regard to **civil-military relations**. Those who neglect the congressional role in American civil-military relations are missing an important element.14

The military has two civilian masters, and this has implications for civil-military relations that officers must understand. For instance, while the president and secretary of defense control the military when it comes to the use of force, including strategy and rules of engagement, Congress controls the military directly with regard to force size, equipment, and organization, and indirectly regarding doctrine and personnel. Indeed, Congress is the “force planner” of last resort.

The U.S. military accepts civilian control by both Congress and the president but offers advice intended to maintain its own institutional and professional autonomy. **On use of force, the military is usually granted a good deal of leeway regarding the terms and conditions** for such use.

By not dissenting from executive-branch policy, American military officers implicitly agree to support presidential decisions on the budget and the use of force, but they also must recognize an obligation to provide their alternative personal views in response to Congress. However, officers must recognize that Congress exerts its control with less regard for military preferences than for the political considerations of its individual members and committees. Thus congressional control of the military is strongly influenced by political considerations, by what Samuel Huntington called “structural,” or domestic, imperatives as opposed to strategic ones.

When the president and Congress are in agreement, the military complies. **When the two branches are in disagreement, the military tends to side with the branch that** most **favors its own views**, but **never to** the point of direct **disobedience to** orders of **the commander in chief**. Military officers are obligated to share their views with Congress. Doing so should not be treated as an “end run” undermining civilian control of the military.15

THE ABSENCE OF A COUP

The absence of a coup does not indicate that civil-military relations are healthy or that civilian control has not eroded. All too often, officers seem to believe that if the United States does not face the prospect of a Latin American– or African-style military coup d’état, all is well in the realm of civil-military relations. But this is a straw man. A number of scholars, including Richard Kohn, Peter Feaver, the late Russell Weigley, Michael Desch, and Eliot Cohen, have argued that although there is no threat of a coup on the part of the military, American civil-military relations have nonetheless deteriorated over the past two decades.16

Their concern is that the American military “has grown in influence to the point of being able to impose its own perspective on many policies and decisions,” which manifests itself in “repeated efforts on the part of the armed forces to frustrate or evade civilian authority when that opposition seems likely to preclude outcomes the military dislikes.” **The result is an unhealthy civil-military pattern that “**could alter the character of American government and **undermine national defense**.”

#### The Mid East models US CMR

William Perry, Former Secretary of State, 5/23/1996, Fulfilling the Role of Preventive Defense, http://www.defense.gov/speeches/speech.aspx?speechid=974

America has long understood that the spread of democracy to more nations is good for America's national security. It has been heartening this past decade to see so many nations around the world come to agree with us that democracy is the best system of government. But as the nations of the world attempt to act on this consensus, we are seeing that there are important steps between a worldwide consensus and a worldwide reality. Democracy is learned behavior. Many nations today have democracies that exist on paper, but in fact are extremely fragile. Elections are a necessary but insufficient condition for a free society. It is also necessary to embed democratic values in the key institutions of nations.

The Defense Department has a key role to play in this effort. **It is a simple fact that virtually every country in the world has a military. In virtually every new democracy** -- in Russia, in the newly free nations of the former Soviet Union, in Central and Eastern Europe, in South America, in the "Asian Tigers" -- **the military represents a major force**. In many cases, it is the most cohesive institution. It often contains a large percentage of the educated elite and controls key resources. In short, it is an institution that can help support democracy or subvert it.

We must recognize that each society moving from totalitarianism to democracy will be tested at some point by a crisis. It could be an economic crisis, a backslide on human fights and freedoms, or a border or ethnic dispute with a neighboring country. When such a crisis occurs, we want the military to play a positive role in resolving the crisis, not a negative role by fanning the flames of the crisis -- or even using the crisis as a pretext for a military coup.

In these new democracies, we can choose to ignore this important institution or we can try to exert a positive influence. We do have the ability to influence; indeed, every military in the world looks to the U.S. armed forces as the model to be emulated. That is a valuable bit of leverage that we can put to use creatively in our preventive defense strategy.

#### Key to stability

Alan Richards, California University Santa Cruz Economics and Environmental Studies Professor, 2004, The Future Security Environment in the Middle East, http://www.rand.org/pubs/monograph\_reports/MR1640/MR1640.pdf

Military establishments are among the most—if not the most— important domestic constituencies in the states of the Middle East. Despite periodic experiments with political and economic liberaliza-tion, the region’s Arab states in particular remain solidly nondemocratic.1 Political leaders rely ultimately on coercive power to maintain their positions and depend upon their armed forces to defend against challengers and opponents. For this reason, military organi- zations are constituencies no authoritarian leader can afford to ignore. In fact, political leaders have proven quite successful in man- aging relations with their armed forces. Throughout the Middle East, leaders have attained and retained political control over their militaries, even as they continue to depend on their officers’ loyalty to maintain office. Analyzing the bases of this political control provides crucial insight into the internal logic of the region’s authoritarian regimes. Civil-military relations are essential for evaluating the past and future stability of the key U.S. adversaries and allies in the region.

Assessing civil-military relations is also significant for regional relations and broader U.S. security interests. Civil-military relations often compromise their military effectiveness and consequently the capacity of allies and adversaries in the region to project conventional military power. Military establishments play a dual role in the authoritarian regimes of the Middle East. They act as defenders of state and sovereignty against external adversaries. Yet they also defend the regime from internal opponents and challengers. This dual mandate creates particular pressures for leaders. They must ensure the support and quiescence of military leaders, which as final guar- antors of the regime are imbued with substantial political influence, while arming themselves against external threats in the region. In fact, the dual mandate of these militaries contains an inherent con- tradiction: Maintaining political control often compromises the po- tential effectiveness of military forces in conventional war. Rarely have authoritarian leaders proved capable of securing both their regimes and their states, a fact underscored by the pervasive ineffectiveness of their armed forces in the region’s many wars.

#### Nuclear war

James A. **Russell,** Senior Lecturer, National Security Affairs, Naval Postgraduate School, ‘9 (Spring) “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” IFRI, Proliferation Papers, #26, http://www.ifri.org/downloads/PP26\_Russell\_2009.pdf

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

## k

### Circumvention

Glennon---plan is circumvented—the military bureaucracy is too complex, controls information, and resists checks on accountability

This is logical—the CIA SHREDED torture memos and then almost a decade later STOLE DOCUMENTS from a secure committee in Congress—nobody can oversee them

#### Especially on TK

Alston, professor – NYU Law, ‘11

(Philip, 2 Harv. Nat'l Sec. J. 283)

Despite the existence of a multiplicity of techniques by which the CIA might be held to account at the domestic level, the foregoing survey demonstrates that there is no evidence to conclude that any of them has functioned effective-ly in relation to the expanding practices involving targeted killings. The CIA Inspector General's Office has been unable to exact accountability and proposals to expand or strengthen his role run counter to almost all official actions taken in relation to his work. The President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board are lauded by some for their potential, but there is no indication that they scrutinize activities such as targeted killings policy or practice, and many indications that they view their role as being to support rather than monitor the intelligence community. The Privacy and Civil Liberties Oversight Board remains dormant. Congressional oversight has been seriously deficient and far from manifesting an appetite to scrutinize the CIA's targeted killings policies, a range of senior members of congress are on record as favoring a hands-off policy. And a combination of the political question doctrine, the state secrets privilege, and a reluctance to prosecute, ensure that the courts have indeed allowed the CIA to fall into a convenient legal **grey hole**. Finally, civil society has been largely stymied by the executive and the courts in their efforts to make effective use of freedom of information laws. All that remains is the media, and most of what they obtain through leaks come from government sources that are deliberately "spinning" the story in their own favor. Simi-lar conclusions have been reached in closely related contexts. Thus, for example, Kitrosser's survey of official responses to the warrantless wiretapping initiated after 9/11 led her to conclude that it was a shell [\*406] game, involving "an indefinite bi-partisan, cross-administration, cross-institutional pattern of accountability-avoidance." n450 In brief, at least in relation to targeted killings, the CIA enjoys almost complete impunity and is not subject to any form of meaningful internal or external accountability. Whether from the perspective of democratic theory or of interna-tional accountability for violations of the right to life, this is deeply problematic. One solution to this that has been sug-gested by some commentators is to follow the precedent set by Israel in its efforts to ensure legal oversight of its target killings programs. We turn now to examine the feasibility and desirability of pursuing such an option.

#### True of a drone court

Greenwald 13 (Glenn, The Gaurdian, 3 May 2013, “The bad joke called 'the FISA court' shows how a 'drone court' would work”, <http://www.theguardian.com/commentisfree/2013/may/03/fisa-court-rubber-stamp-drones>, ZBurdette)

From the start, the Fisa court was a radical perversion of the judicial process. It convened in total secrecy and its rulings were classified. The standard the government had to meet was not the traditional "probable cause" burden imposed by the Fourth Amendment but a significantly diluted standard. There was nothing adversarial about the proceeding: only the Justice Department (DOJ) was permitted to be present, but not any lawyers for the targets of the eavesdropping request, who were not notified. Reflecting its utter lack of real independence, the court itself was housed in the DOJ.

And, and was totally predictable, the court barely ever rejected a government request for eavesdropping. From its inception, it was the ultimate rubber-stamp court, having rejected a total of zero government applications - zero - in its first 24 years of existence, while approving many thousands. In its total 34 year history - from 1978 through 2012 - the Fisa court has rejected a grand total of 11 government applications, while approving more than 20,000.

Despite how obedient and compliant this court always was, the Bush administration decided in late 2001 that it would have its National Security Agency (NSA) intercept the calls and emails of Americans without bothering to obtain the Fisa court approval required by the criminal law, claiming - with a straight face - that complying with the law was "too cumbersome" in the age of Terrorism. Once this lawbreaking was revealed by the New York Times in late 2005, the response from the DC political class was not to punish the responsible government officials for their lawbreaking, but rather to enact a new law (called the Fisa Amendments Act of 2008) that, in essence, simply legalized the warrantless eavesdropping scheme of the Bush administration.

That new Fisa law vested vast new surveillance powers in the US government to spy on the communications of Americans without the annoyance of obtaining permission from the Fisa court. It requires warrants from the Fisa court only in the narrowest of circumstances: the ones most susceptible to abuse. Although candidate Obama pretended to have serious concerns about the law (when he voted for it) and vowed to rein in its excesses, his administration last year demanded the renewal of this law with no reforms, and Congress, on a fully bipartisan basis, complied.

One of the provisions of the new Fisa law requires the DOJ annually to disclose to Congress the number of eavesdropping applications it files and the number approved and rejected by the Fisa court. Earlier this week, that disclosure was provided to Senate Majority Leader Harry Reid for the year 2012, and this is what it reported:

Let's repeat that: "of 1,789 applications, the FISA court did not deny any applications in whole or in part." What fantastic oversight (1789 is, ironically, the year the Constitution was ratified). The court did "modify" 40 of those applications - less than 3% - but it approved every single one. The same was true of 2011, when the DOJ submitted 1,676 applications and the Fisa court, while modifying 30, "did not deny any applications in whole, or in part".

What makes all of this worse is just how extreme the US government is "interpreting" - i.e. distorting - its eavesdropping powers under the law. Two Democratic Senators, Ron Wyden and Mark Udall, have been warning for years that the Obama administration is exploiting these laws in ways far beyond what the public knows or what a reasonable reading of the laws would permit. One of the nation's most knowledgeable surveillance experts, Julian Sanchez, has documented - citing the writing of a former Obama lawyer - documented that the law is used to target even "an American citizen located within the United States, and no court or judge is required to approve or review the choice of which individuals to tap": exactly the type of warrantless surveillance we were all told this law would prohibit. And yet, the Fisa court - even for those narrow set of cases where a warrant is required - continues as it always has: rubber-stamping virtually anything and everything the government wants to do.

There are many reasons that explain this judicial obeisance. Part of it is fear and abdication of duty: no federal judge wants to be the one who rejects a surveillance request from the government only to have the target perpetrate an attack, **even though federal judges are immunized with life tenure from such political pressures** so that they can apply the law and provide a real check on government conduct. Part of it is nationalistic delirium: federal courts in general have been disgracefully subservient to the Executive Branch every time they utter the word "Terrorism" since 9/11. And part of it is just the nature of persuasion: even the most mediocre lawyers can convince someone of almost anything if they have no opposition and can unilaterally select and depict all facts without challenge. The entire process, though depicted as some kind of check on Executive Branch behavior, is virtually designed to do the opposite: ensure the Government's surveillance desires are unimpeded. These shockingly lopsided statistics attest to the success of this design.

This is significant not only because it means there is no real check on the government's surveillance power, even as they exercise those powers in much broader ways than most people suspect. It's also significant in light of recent calls that a "drone court" be created that would provide for a similar process for the president's desire to target for execution people who have been charged with no crime. The New York Times Editorial Page has been advocating this for years.

The rationale offered is the same as what was used to justify the Fisa court: the President needs some check on who he targets, but requiring that he charge the person he wants to kill with a crime and convict them in a real court is too cumbersome. Therefore, this reasoning goes, a "drone court" modeled on the Fisa court is the happy medium: he'll have some constraints on his power to kill whomever he wants, but its secretive, one-sided process and lowered levels of required proof will ensure the necessary agility and flexibility he needs as Commander-in-Chief. As the NYT Editors put it: the drone court "would be an analogue" to the Fisa court whereby: "If the administration has evidence that a suspect is a terrorist threat to the United States, it would have to present that evidence in secret to a court before the suspect is placed on a kill list."

But does anyone believe that a "drone court" would be any less of a mindless rubber-stamp than the Fisa court already is? Except for a handful of brave judges who take seriously their constitutionally assigned role of independence, the vast majority of federal judges are far too craven to tell the president that he has not submitted sufficient proof that would allow him to kill someone he claims is a Terrorist. The fact that it would all take place in secret, with only the DOJ present, further ensures that the results would mirror the embarrassing subservience of the Fisa court. As former Pentagon chief counsel Jeh Johnson put it in a speech last month discussing this proposal:

"Its proceedings would necessarily be ex parte and in secret, and, like a FISA court, I suspect almost all of the government's applications would be granted, because, like a FISA application, the government would be sure to present a compelling case. So, at the same time the New York Times editorial page promotes a FISA-like court for targeted lethal force, it derides the FISA court as a 'rubber stamp' because it almost never rejects an application. How long before a 'drone court' operating

## UN adv

#### Due process doesn’t apply to targeting—plan undermines broader due process precedent

Jeff Powell, Duke Law School Professor, 6/21/13, Jeff Powell on Targeted Killing and Due Process, www.lawfareblog.com/2013/06/jeff-powell-on-targeted-killing-and-due-process/

There is much to admire in the speech President Barack Obama gave on May 23rd in which he gave us his views on “lethal, targeted action” against high ranking members of al-Qaeda and its allies, above all his acknowledgment that the “laws constrain the power of the President, even during wartime.” For all his speech’s virtues, however, Mr. Obama’s comments about one legal issue, due process, should disturb us deeply. In discussing his insistence “on strong oversight of all lethal action,” the President stated, “for the record,” that he “do[es] not believe it would be constitutional for the government to target and kill any U.S. citizen – with a drone, or a shotgun – without due process.” Mr. Obama had just referred to the killing of Anwar Awlaki, whose death was “the one instance when we targeted an American citizen,” and he plainly was not confessing constitutional error. There is no serious doubt, then, that the President thinks that the US government deprived Mr. Awlaki of his life with due process. **Unfortunately**, Mr. **Obama’s discussion of that issue is fundamentally flawed** in two ways: first, **in his assumption that due process applies at all,** and second, in his belief that the administration’s procedures satisfy due process.

The President’s blanket assertion that our government must always provide due process before killing a citizen may seem self-evident – after all, the Fifth Amendment demands that no person (not citizen!) shall be deprived of life, liberty or property without due process of law — but Mr. Obama was wrong nonetheless. Due process requires fairness in government’s dealings with those it governs; it simply does not apply to military decisions, in hostilities that Congress has authorized, about attacking members of enemy forces who are not under American control. Mr. Obama was not justifying the killing of Mr. Awlaki as an extrajudicial execution but as the elimination of a particular enemy officer in the field as an act of war. The Constitution imposes other constraints on presidential action in a time of war, but due process has no role in what the Supreme Court’s 2004 decision in Hamdi v. Rumsfeld termed “the Executive in its exchanges …with enemy organizations in times of conflict.”

If there is no constitutional due process requirement at all, why does it matter that Mr. Obama assumes that there is? Is there any real harm in putting forth a standard for meeting a burden that doesn’t exist? There is, because the President’s reasoning may undercut the meaning of due process in other circumstances where the constitutional requirement does apply.

## Yemen adv

### groupthink

Quals----Chehab’s a JD candidate—they just say he’s ‘Georgetown Law’---our ev is professors

#### Military avoids groupthink

**Sulmasy 6** - Professor of Law U.S. Coast Guard Academy(2006, Glenn, “Challenges to Civilian Control of the Military: A Rational Choice Approach to the War on Terror,” http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2188&context=facpubs)JCP

In principal-agent models of business activity, the interest of the agent is usually taken to be shirking. In other words, the employees of a company wish to be paid for working, but wish to work as little as possible. In the public administration context, shirking does not make as much sense. Instead of wanting to do less work, agents have a different interest than principals. Agents in the bureaucracy want to maximize their autonomy and follow their preferred policies, not necessarily the policies preferred by the principal. Exactly what counts as the principal or the agent prevailing can be difficult, at times, to determine. If the agent has succeeded, for example, by manipulating information and events such that the principal has its way, but only in a very limited sphere, shirking has probably still occurred. If the agent, who presumably has specialized experience and better information, provides advice to the principal that influences the latter's decision, shirking may not have occurred. 9

In the civilian-military context, the actors may well have different ideal points for issues of when and how to use force, force structure, strategy, tactics, and the rules governing the military. If civilian and military preferences are identical, there should be little conflict in their strategic interaction. Perhaps the most important variable in their interaction will be a difference in preferences. As we have seen, in the post-Cold War period, significant problems in the relationship arose when civilians and military leaders held sharply different views about the merits of using force in Bosnia, for example, or the role of gays in the military. Separate, but related to a difference in preferences, is a desire for autonomy. Military leaders, like the leaders of other agencies, would prefer to have independence in setting and implementing policy.

This is not to say that civilians and the military disagree on the ultimate goal of providing adequate security for the United States from external threat. Yet they may hold different views on the best policies to achieve that outcome. Military leaders, for example, may wish to use force with a higher probability of victory, which may mean attacking with a larger advantage in forces than civilians might prefer, or with less political restraint on the tactics and strategies available, or with more information about the abilities and the plans of the enemy. Military leaders would favor higher defense expenditures under this theory, and perhaps also be reluctant to adopt radical changes in force structure and rules of engagement. Civilians may be more sensitive to cost, or more favorable toward limited uses of military force so as to achieve other diplomatic or political goals.

Putting differences over substantive policy to one side, military leaders could also present principal-agent problems if they are drawing more decisionmaking authority for themselves, even if the substantive decisions are the same ones that the civilians would ultimately reach. If military leaders are the ones who make the actual policy calls, or define which decisions are civilian and which are military, or manage circumstances so as to severely limit the choices available to civilians, then military preferences are prevailing rather than civilian ones. An example, according to Feaver, is the military's change in its force structure after the Vietnam War to place greater reliance upon reserves.' This change made it difficult for civilian leaders to use force abroad without mobilizing the reserves, which, it was thought, would require presidents to build broad public support for a war before committing the military to hostilities.

Military resistance to civilian policies with which military leaders disagree could take several forms short of an outright refusal to obey orders. Military officers can leak information to derail civilian initiatives. They could "slow roll" civilian orders by delaying implementation. They could inflate the estimates of the resources needed, or the possible casualties and time needed to achieve a military objective. And perhaps a relatively unnoticed but effective measure is to divide the principal-if the number of institutions forming the principal increases, it will be more difficult to monitor the performance of the agent and to hold it accountable. Deborah Avant argues, for example, that civilians exercise greater control of the military in Great Britain than in the United States, because the parliamentary system merges the executive and legislative branches of the government." Greater agency slack may result from information asymmetries that may favor the military, such as information and expertise about warfare, adverse selection that may cause the promotion of officers resentful of civilian meddling, and moral hazard in which the inability of civilians to directly observe the performance of the military may allow the military to pursue its own preferences.

#### Obama avoids it

Pillar, 13 -- Brookings Foreign Policy Senior Fellow

[Paul, "The Danger of Groupthink," The National Interest, 2-26-13, webcache.googleusercontent.com/search?q=cache:6rnyjYlVKY0J:www.brookings.edu/research/opinions/2013/02/26-danger-groupthink-pillar+&cd=3&hl=en&ct=clnk&gl=us, accessed9-21-13, mss]

David Ignatius has an interesting take on national security decision-making in the Obama administration in the wake of the reshuffle of senior positions taking place during these early weeks of the president's second term. Ignatius perceives certain patterns that he believes reinforce each other in what could be a worrying way. One is that the new team does not have as much “independent power” as such first-term figures as Clinton, Gates, Panetta and Petraeus. Another is that the administration has “centralized national security policy to an unusual extent” in the White House. With a corps of Obama loyalists, the substantive thinking may, Ignatius fears, run too uniformly in the same direction. He concludes his column by stating that “by assembling a team where all the top players are going in the same direction, he [Obama] is perilously close to groupthink.” We are dealing here with tendencies to which the executive branch of the U.S. government is more vulnerable than many other advanced democracies, where leading political figures with a standing independent of the head of government are more likely to wind up in a cabinet. This is especially true of, but not limited to, coalition governments. Single-party governments in Britain have varied in the degree to which the prime minister exercises control, but generally room is made in the cabinet for those the British call “big beasts”: leading figures in different wings or tendencies in the governing party who are not beholden to the prime minister for the power and standing they have attained. Ignatius overstates his case in a couple of respects. Although he acknowledges that Obama is “better than most” in handling open debate, he could have gone farther and noted that there have been egregious examples in the past of administrations enforcing a national security orthodoxy, and that the Obama administration does not even come close to these examples. There was Lyndon Johnson in the time of the Vietnam War, when policy was made around the president's Tuesday lunch table and even someone with the stature of the indefatigable Robert McNamara was ejected when he strayed from orthodoxy. Then there was, as the most extreme case, the George W. Bush administration, in which there was no policy process and no internal debate at all in deciding to launch a war in Iraq and in which those who strayed from orthodoxy, ranging from Lawrence Lindsey to Eric Shinseki, were treated mercilessly. Obama's prolonged—to the point of inviting charges of dithering—internal debates on the Afghanistan War were the polar opposite of this. Ignatius also probably underestimates the contributions that will be made to internal debate by the two most important cabinet members in national security: the secretaries of state and defense. He says John Kerry “has the heft of a former presidential candidate, but he has been a loyal and discreet emissary for Obama and is likely to remain so.” The heft matters, and Kerry certainly qualifies as a big beast. Moreover, the discreet way in which a member of Congress would carry any of the administration's water, as Kerry sometimes did when still a senator, is not necessarily a good indication of the role he will assume in internal debates as secretary of state. As for Chuck Hagel, Ignatius states “he has been damaged by the confirmation process and will need White House cover.” But now that Hagel's nomination finally has been confirmed, what other “cover” will he need? It's not as if he ever will face another confirmation vote in the Senate. It was Hagel's very inclination to flout orthodoxy, to arrive at independent opinions and to voice those opinions freely that led to the fevered opposition to his nomination.

### 2nc: no public pressure

No demand for lashout – Smith and Herron did a study of public reactions to 9/11 and played out more severe scenarios – the public didn’t demand military response.

#### Multiple options besides nuclear retal—they’re more likely

Neely 13 (Meghan, research intern for the Project on Nuclear Issues, 21 March 2013, “Doubting Deterrence of Nuclear Terrorism,” CSIS, http://csis.org/blog/doubting-deterrence-nuclear-terrorism)

Yet, let’s think about the series of events that would play out if a terrorist organization detonated a weapon in the United States. Let’s assume forensics confirmed the weapon’s origin, and let’s assume, for argument’s sake, that country was Pakistan. Would the United States then retaliate with a nuclear strike? If a nuclear attack occurs within the next four years (a reasonable length of time for such predictions concerning current international and domestic politics), it seems unlikely. Why? First, there’s the problem of time. Though nuclear forensics is useful, it takes time to analyze the data and determine the country of origin. Any justified response upon a state sponsor would not be swift. Second, even if the United States proved the country of origin, it would then be difficult to determine that Pakistan willingly and intentionally sponsored nuclear terrorism. If Pakistan did, then nuclear retaliation might be justified. However, if Pakistan did not, nuclear retaliation over unsecured nuclear materials would be a disproportionate response and potentially further detrimental. Should the United States launch a nuclear strike at Pakistan, Islamabad could see this as an initial hostility by the United States, and respond adversely. An obvious choice, given current tensions in South Asia, is for Pakistan to retaliate against a U.S. nuclear launch on its territory by initiating conflict with India, which could turn nuclear and increase the exchanges of nuclear weapons. Hence, it seems more likely that, after the international outrage at a terrorist group’s nuclear detonation, the United States would attempt to stop the bleeding without a nuclear strike. Instead, some choices might include deploying forces to track down those that supported the suicide terrorists that detonated the weapon, pressuring Pakistan to exert its sovereignty over fringe regions such as the Federally Administered Tribal Areas, and increasing the number of drone strikes in Waziristan. Given the initial attack, such measures might understandably seem more of a concession than the retaliation called for by deterrence models, even more so by the American public.

### 2nc blowback

#### Their author thinks blowback is inevitable—thinks the drone campaign is imperialist

Hudson et al 13

Dr. Leila Hudson, Colin Owens, and Matt Callen, is associate director of the School of Middle Eastern 26 North African Studies at the University of Arizona and director of SISMEC, graduate of the School of Middle Eastern 26 North African Studies and the School of Government and Public Policy, and PhD candidate at the School of Middle Eastern 26 North African Studies. "Drone Warfare in Yemen: Fostering Emirates through Counterterrorism?," Middle East Policy Council, 2013. http://mepc.org/journal/middle-east-policy-archives/drone-warfare-yemen-fostering-emirates-through-counterterrorism

In the case of drone use in FATA, we identified five distinct forms of blowback, all of which are directly applicable to the use of drones in Yemen. The first, purposeful retaliation is typified by the events of the 2009 Khost bombing of CIA Camp Chapman and, more recently, an al-Qaeda attack earlier in 2012 on a liquid-natural-gas pipeline running through Yemen's Shabwa province.2 The motivation behind both of these attacks has been cited as the unremitting presence of, and specific attacks from, U.S.-operated drones. The second form of blowback deals with the increased ability of AQAP to recruit new members, especially those who have had friends or family killed in the attacks. Third, an overreliance on drones creates strategic confusion. While the United States is not waging a counterinsurgency (COIN) campaign next to Yemen — as it is in Afghanistan, Pakistan's western neighbor — the control of the drone program has oscillated between the CIA and JSOC, reducing U.S. accountability and blurring the lines between military and intelligence operations. Taken together, these three factors foster two additional forms of blowback: the continued destabilization of Yemen and an increasingly precarious alliance between the American and Yemeni governments. All told, these distinct forms of blowback combine to heighten Yemen's ungovernability.

**[WYOMING’S CARD ENDS]**

Yemen provides the opportunity to discern new patterns of blowback from a drone campaign based on instability and privileged relationships between host countries and the United States. As the Pakistani case has demonstrated, drone programs flourish and grow best in secret and in environments of limited state capacity. This allows the United States to track, target and kill those it deems threats to national security with relative impunity and limited interference. However, as the U.S. counterterror drone campaign needs instability, if not actual terrorism, to remain effective, it must "cultivate ungovernability" to ensure its future success. Even as drone projects target terror, they may be cultivating the more broad-based condition called "insurgency" in military parlance. The perpetuation of instability in areas beyond the reach of traditional state governance seems to lead to alternative forms, such as the grandiosely named Islamic emirates.

### at: backlash – aqap

#### Most qualified evidence

David Axe 12, military correspondent citing research by Chris Swift, a fellow at the University of Virginia’s Center for National Sec urity Law, “Expert: No Drone Backlash in Yemen”, July 18, http://www.offiziere.ch/?p=8742

Lethal strikes by armed drones are America’s best and less obtrusive method of killing Islamic militants and dismantling their terror networks while minimizing civilian casualties. Or they’re a misguided and counter-productive attempt at sterilizing the dirty work of counter-terrorism — one that serves as a rallying cry for terrorist recruiters and ends up creating more militants than it eliminates. Those are the opposing views in one of the most urgent debates in military, policy and humanitarian circles today. Now a new, ground-level investigation by a daring American researcher adds a fresh wrinkle to the controversy. Chris Swift, a fellow at the University of Virginia’s Center for National Security Law, spent a week in late May interviewing around 40 tribal leaders in southern Yemen, one of the major drone battlegrounds. What he found might disappoint activists and embolden counter-terrorism officials. “Nobody in my cohort [of interview subjects] drew a causal link between drones on one hand and [militant] recruiting on other,” Swift says. Tweets, blog posts and news reporting from Yemen seem to contradict Swift’s conclusion. Drone strikes in Yemen have gone up, way up, from around 10 in 2011 to some two dozen so far this year. No fewer than 329 people have died in the Yemen drone campaign, at least 58 of whom were innocent civilians, according to a count by the British Bureau of Investigative Journalism. But some Yemenis believe the civilian body count is much higher. “For every headline you read regarding ‘militants’ killed by drones in #Yemen, think of the civilians killed that are not reported,” NGO consultant Atiaf Al Wazir Tweeted. Another Yemeni Twitter user drew the link between the drone war’s innocent victims in a Tweet directed at top U.S. counterterrorism adviser John Brennan. “Brennan do you hear us?!!! We say #NoDrones #NoDrones #NoDrones. You are killing innocent people and creating more enemies in #Yemen.” Reporters have run with the claim that drone strikes breed terrorists. “Drones have replaced Guantánamo as the recruiting tool of choice for militants,” Jo Becker and Scott Shane wrote in The New York Times. “Across the vast, rugged terrain of southern Yemen, an escalating campaign of U.S. drone strikes is stirring increasing sympathy for Al Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States,” The Washington Post‘s Sudarsan Raghavan reported. But the narrative embraced by Yemeni Tweeters the Times and the Post originated in, and is sustained by, a comparatively wealthy, educated and English-speaking community based in Yemen’s capital city Sana’a, Swift explains. He calls them the “Gucci jean-wearing crowd.” But cosmopolitan Sana’a isn’t breeding many terrorists, and popular opinions in the city don’t necessarily reflect the reality in Yemen’s embattled south. To get to the sources that really mattered, Swift sensed he had to “get out of the Sana’a political elite,” he says. He teamed up with an experienced fixer — a combined guide, translator and protector — and slipped into heavily-armed Aden in Yemen’s south in the back of pickup trucks. “I always expected that my next checkpoint was going to be my last,” Swift says. Swift survived some close calls and brought back what is arguably the freshest and most relevant data on militant recruiting in southern Yemen. He has since written articles for Foreign Affairs and the Sentinel counterterrorism journal. In southern Yemen “nobody really gets excited about drones,” he explains. He says his sources were “overwhelming saying that Al Qaeda is recruiting through economic inducement.” In other words, for the most part the terror group pays people to join. Which isn’t to say Yemen’s militants don’t fear the American killer robots. In fact, they’re “terrified of drones,” Swift says. “They make a big deal of surviving drones in their propaganda videos.” The militants’ fear of drones perhaps underscores the robots’ effectiveness. It does not argue for widespread resentment among everyday people in southern Yemen that compels them to join the terrorists’ ranks. At least, that’s what Swift believes.

# 1NR

## ops

#### turns case

Savage 13 (Charlie, The New York Times, MA from Yale, national security expert, “In Syrian crisis, US President Barack Obama tests limits of power”, September 09, 2013, http://www.ndtv.com/article/world/in-syrian-crisis-us-president-barack-obama-tests-limits-of-power-416490)

In asking Congress to authorize an attack on Syria over claims it used chemical weapons, President Barack Obama has chosen to involve lawmakers in deciding whether to undertake a military intervention that in some respects resembles the limited types that many presidents - Ronald Reagan in Grenada, Bill Clinton in Kosovo and even Obama in Libya - have launched on their own.

But on another level, the proposed strike is unlike anything that has come before - an attack inside the territory of a sovereign country, without its consent, without a self-defense rationale and without the authorization of the UN Security Council or even the participation of a multilateral treaty alliance like NATO, and for the purpose of punishing an alleged war crime that is already over rather than preventing an imminent disaster.

The contrasting moves, ceding more of a political role to Congress domestically while expanding national war powers on the international stage, underscore the complexity of Obama's approach to the Syrian crisis. His administration pressed its case Sunday, saying it had won Saudi backing for a strike, even as the Syrian president warned he would retaliate.

Obama's strategy ensures that no matter what happens, the crisis is likely to create an important precedent in the often murky legal question of when presidents or nations may lawfully use military force.

Kathryn Ruemmler, the White House counsel, said the president believed a strike would be lawful, both in international law and domestic law, even if neither the Security Council nor Congress approves it. But the novel circumstances, she said, led Obama to seek congressional concurrence to bolster its legitimacy.

The move is right, said Walter Dellinger, who led the Justice Department's Office of Legal Counsel in the Clinton administration, because the proposed attack is not "covered by any of the previous precedents for the unilateral use of executive power."

"That doesn't mean it couldn't become another precedent," Dellinger added. "But when the president is going beyond where any previous president has gone, it seems appropriate to determine whether Congress concurs."

Disputes about whether and when a president or nation may launch an act of war can be hazy because courts generally do not issue definitive answers about such matters. Instead presidents, and countries, create precedents that over time can become generally accepted as a gloss on what written domestic laws and international treaties permit.

Against that backdrop, many legal scholars say Obama is proposing to violate international law. But others contend that the question is ambiguous, without any clear answer, and some suggest that the United States could establish a precedent creating new international law if it strikes.

The United States has intervened without a self-defense rationale or Security Council approval before, most notably in Kosovo. But in that case, it did so as part of NATO and in response to a time-urgent problem: stopping a massacre of civilians. In 1983, Reagan invaded Grenada without congressional approval, citing the "formal request" of five neighboring Caribbean states and the need to protect Americans on the island.

By contrast, the United States would carry out strikes on Syria largely alone, and to punish an offense that has already occurred. That crime, moreover, is defined by two treaties banning chemical weapons, only one of which Syria signed, that contain no enforcement provisions. Such a strike has never happened before.

Attempts to deal with the novelty of the crisis in international law have become entangled in the separate domestic law question of whether the president could order strikes on Syria without congressional permission.

Seeking the 2008 Democratic presidential nomination, Obama embraced a limited view of a president's power to initiate war without Congress, telling The Boston Globe that "the president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation."

But by the 2011 conflict in Libya he abandoned his campaign view of presidential war powers as too limited. While the NATO intervention was authorized for international law purposes by the Security Council, in domestic law Congress did not authorize Obama to participate. But Obama's Office of Legal Counsel argued that it was lawful for him to unilaterally order American forces to bomb Libya because of national interests in preserving regional stability and in supporting the "credibility and effectiveness" of the Security Council.

In recent weeks, administration lawyers decided that it was within Obama's constitutional authority to carry out a strike on Syria as well, even without permission from Congress or the Security Council, because of the "important national interests" of limiting regional instability and of enforcing the norm against using chemical weapons, Ruemmler said.

But even if he could act alone, that left the question of whether he should. The lack of a historical analogue and traditional factors that have justified such operations, she said, contributed to his decision to go to Congress.

"The president believed that it was important to enhance the legitimacy of any action that would be taken by the executive," Ruemmler said, "to seek congressional approval of that action and have it be seen, again as a matter of legitimacy both domestically and internationally, that there was a unified American response to the horrendous violation of the international norm against chemical weapons use."

At a news conference last week, Obama argued that the United States should "get out of the habit" of having the president "stretch the boundaries of his authority as far as he can" while lawmakers "snipe" from the sidelines. But he also explained his decision in terms of very special circumstances: humanitarian interventions where there is no immediate pressure to act and the United Nations is blocked.

Jack Goldsmith, a head of the Office of Legal Counsel in the Bush administration, said the limited criteria cited by Obama mean his move might not apply to more traditional future interventions similar to Grenada or even Libya. **The more important precedent**, he said, **may concern international law** and what he portrayed as **Obama's** dismissive attitude **toward whether not having permission from the Security Council should stop humanitarian interventions.**

Obama has in recent days **repeatedly portrayed the Security Council system as incapable of performing its function of "enforcing international norms and international law,"** and as so paralyzed by the veto power wielded by Russia that it is instead acting as a "barrier" to that goal.

## NSA reform da

### overview

Relations solve Eurasian conflict – oil and gas make it the biggest geopolitical risk

#### Solves aggression and turns the UN

O'Sullivan, 4

(IR Fellow-Nixon Center, "Europe and the Establishment," 7/31, nationalinterest.org/article/europe-and-the-establishment-2608)

The report's starting point -- that U.S.-European relations are extremely important -- is undeniable. A united Western alliance would shape world institutions in line with values and practices rooted in liberty and democracy and coax rising powers such as India and China into going along with this international status quo for the foreseeable future. Indeed, this is already happening as China accepts liberal economic rules at home in order to enter institutions such as the G7 and the World Trade Organization. By contrast, a disunited West would tempt such powers to play off Europe and America against each other and foster a global jockeying for power not unlike the maneuvering between a half-dozen great powers that led to 1914.

#### Absent NSA phone collection authority, terrorists can easily evade the US—ensures major attacks

Stewart Baker, Foreign Policy, June 2013, Why the NSA Needs Your Phone Calls..., www.foreignpolicy.com/articles/2013/06/06/why\_the\_nsa\_needs\_your\_phone\_calls

But why, you ask, would the government collect all these records, even subject to minimization, especially when Wyden was kicking up such a fuss about it? And, really, what's the justification for turning the data over to the government, no matter how strong the post-collection rules are?

To understand why that might seem necessary, consider this entirely hypothetical example. Imagine that the United States is intercepting al Qaeda communications in Yemen. Its leader there calls his weapons expert and says, "Our agent in the U.S. needs technical assistance constructing a weapon for an imminent operation. I've told him to use a throwaway cell phone to call you tomorrow at 11 a.m. on your throwaway phone. When you answer, he'll give you nothing other than the number of a second phone. You will buy another phone in the bazaar and call him back on the second number at 2 p.m."

Now, this is pretty good improvised tradecraft, and it would leave the government with no idea where or who the U.S.-based operative was or what phone numbers to monitor. It doesn't have probable cause to investigate any particular American. But it surely does have probable cause to investigate any American who makes a call to Yemen at 11 a.m., Sanaa time, hangs up after a few seconds, and then gets a call from a different Yemeni number three hours later. Finding that person, however, wouldn't be easy, because the government could only identify the suspect by his calling patterns, not by name.

So how would the NSA go about finding the one person in the United States whose calling pattern matched the terrorists' plan? Well, it could ask every carrier to develop the capability to store all calls and search them for patterns like this one. But that would be very expensive, and its effectiveness would really only be as good as the weakest, least cooperative carrier. And even then it wouldn't work without massive, real-time information sharing -- any reasonably intelligent U.S.-based terrorist would just buy his first throwaway phone from one carrier and his second phone from a different carrier.

The only way to make the system work, and the only way to identify and monitor the one American who was plotting with al Qaeda's operatives in Yemen, would be to pool all the carriers' data on U.S. calls to and from Yemen and to search it all together -- and for the costs to be borne by all of us, not by the carriers.

In short, the government would have to do it.

To repeat, this really is hypothetical; while I've had clearances both as the NSA's top lawyer and in the top policy job at the Department of Homeland Security, I have not been briefed on this program. (If I had, I wouldn't be writing about it.) But the example shows that it's not that hard to imagine circumstances in which the government needs to obtain massive amounts of information about Americans yet also needs to remain bound by the general rule that it may only monitors those whom it legitimately suspects of being terrorists or spies.

The technique that squares that circle is minimization. As long as the minimization rules require that all searches of the collected data must be justified in advance by probable cause, Americans are protected from arbitrary searches. In the standard law enforcement model that we're all familiar with, privacy is protected because the government doesn't get access to the information until it presents evidence to the court sufficient to identify the suspects. In the alternative model, the government gets possession of the data but is prohibited by the court and the minimization rules from searching it until it has enough evidence to identify terror suspects based on their patterns of behavior.

That's a real difference. Plenty of people will say that they don't trust the government with such a large amount of data -- that there's too much risk that it will break the rules -- even rules enforced by a two-party, three-branch system of checks and balances. When I first read the order, even I had a moment of chagrin and disbelief at its sweep.

But for those who don't like the alternative model, the real question is "compared to what"? Those who want to push the government back into the standard law enforcement approach of identifying terrorists only by name and not by conduct will have to explain how it will allow us to catch terrorists who use halfway decent tradecraft -- or why sticking with that model is so fundamentally important that we should do so even if it means more acts of terrorism at home.

#### NSA program rollback means no adv solvency

John Yoo, 8/16/13, Ending NSA Surveillance is not the answer, www.nationalreview.com/corner/356027/ending-nsa-surveillance-not-answer-john-yoo

We should be careful not to put the NSA in an impossible position. Of course, we should be vigilant against the administrative state in all of its tangled tendrils, especially its collection of taxes (the IRS scandal) and enforcement of the laws (Obama’s refusal to enforce Obamacare and immigration law). The problem here, however, is that we are placing these kinds of domestic law-enforcement standards on a foreign intelligence function. With domestic law enforcement, we want the Justice Department to monitor one identified target (identified because other evidence gives probable cause that he or she has already committed a crime) and to carefully minimize any surveillance so as not to intrude on privacy interests. Once we impose those standards on the military and intelligence agencies, however, we are either guaranteeing failure or we must accept a certain level of error. If the military and intelligence agencies had to follow law-enforcement standards, their mission would fail because they would not give us any improvement over what the FBI could achieve anyway. If the intelligence community is to detect future terrorist attacks through analyzing electronic communications, we are asking them to search through a vast sea of e-mails and phone-call patterns to find those few which, on the surface, look innocent but are actually covert terrorist messages. If we give them broader authority, we would have to accept a level of error that is inherent in any human activity. No intelligence agency could perform its mission of protecting the nation’s security without making a few of these kinds of mistakes. The question is whether there are too many, not whether there will be any at all. Domestic law enforcement makes these errors too. Police seek warrants for the wrong guy, execute a search in the wrong house, arrest the wrong suspect, and even shoot unarmed suspects. We accept these mistakes because we understand that no law-enforcement system can successfully protect our communities from crime with perfection. The question is the error rate, how much it would cost to reduce it, the impact on the effectiveness of the program, and the remedies we have for mistakes. Consider those questions in the context of the NSA surveillance program. The more important question is not the top of the fraction but the bottom — not just how many mistakes occurred, but how many records were searched overall. If there were 2,000 or so mistakes, as the Washington Post suggests, but involving billions of communications, the error rate is well less than 1 percent. Without looking at the latest figures, I suspect that is a far lower error rate than those turned in by domestic police on searches and arrests. **To end the NSA’s efforts to intercept terrorist communications would be to willfully blind ourselves to the most valuable intelligence sources on al-Qaeda (**now that the president won’t allow the capture and interrogation of al-Qaeda leaders). The more useful question is whether there is a cost-effective way to reduce the error rate without detracting from the effectiveness of the program, which, by General Keith Alexander’s accounting, has been high. Increasing judicial oversight might reduce errors — though I am dubious — but in a way that would seriously slow down the speed of the program, which is all-important if the mission is to stop terrorists. And perhaps Congress should think about ways to remedy any privacy violations in the future. But to end the program because it does not have an error rate of zero is to impose a demand on the NSA that no other government program, foreign or domestic, military or civilian, could survive.

#### EU coop key

Somaiya 13

RAVI SOMAIYA, staff writer, NY Times, January 30, 2013, "Drone Strike Prompts Suit, Raising Fears for U.S. Allies", http://www.nytimes.com/2013/01/31/world/drone-strike-lawsuit-raises-concerns-on-intelligence-sharing.html?\_r=0&pagewanted=all

The drone strike, which killed Mr. Khan and dozens of others at a tribal council meeting in North Waziristan in 2011, spawned a lawsuit that accuses British officials of becoming “secondary parties to murder” by passing intelligence to American officials that was later used in drone strikes.

The case has put a spotlight on international intelligence-sharing agreements that have long been praised by officials as vital links in the global fight against terrorist groups, but that rights advocates criticize as a way for Britain and other European countries to reap the benefits of the contentious drone program without its political costs.

Judges in Britain have yet to decide whether to hear the case, brought forward by Mr. Khan’s son, Noor Khan, a British citizen. (They initially declined, but are considering an appeal that was lodged in January.) It has caused a particular sensation, though, because it raises the prospect of legal liability for European officials by linking them to an American drone campaign that is widely seen as publicly unpalatable, or simply illegal, in their home countries.

In interviews, current and former British government and intelligence officials, some of whom worked closely with the United States after the drone campaign’s inception in 2004, said Britain does provide intelligence to the United States that is almost certainly used to target strikes. Many in Britain’s intelligence community, said one person with detailed knowledge of internal discussions, are now distinctly worried they may face prosecution.

“The policy on drones and torture is clear: We don’t do any of it,” one former British counterterrorism official said. “But if we pick up on some hostile phone chatter, and we pass the number on to the Americans, who then pinpoint the phone and target the person, did we provide intelligence for the killing?” The official, like others interviewed on the issue, spoke on the condition of anonymity because of the legal delicacy of the case.

The Central Intelligence Agency declined to comment. But Bruce O. Riedel, a former C.I.A. officer and the author of “Deadly Embrace: Pakistan, America, and the Future of the Global Jihad,” said, “The British are our most important partner in the war against Al Qaeda in all respects.”

The British government, according to the response it filed in Mr. Khan’s case, now refuses to discuss the matter and “neither confirms nor denies” what it carefully characterizes as “any such alleged activities.”

“The inference that can be drawn,” said Rehman Chishti, a lawmaker with the governing Conservatives who has campaigned for more information on Britain’s role in American drone strikes, “is that intelligence sharing is taking place, because if it wasn’t then it could easily say so.”

The issue is more complex than drone-strike foes suggest, the current and former officials said, and is based on decades of cooperation rather than a shadowy pact for the United States to do the world’s dirty work.

The arrangements for intensive intelligence sharing by Western allies go back to World War II, said Richard Aldrich, professor of international security at the University of Warwick, when the United States, Canada, Britain, Australia and New Zealand agreed to continue to collaborate.

“There’s a very high volume of intelligence shared, some of which is collected automatically, so it’s impossible to track what every piece is potentially used for,” said Mr. Aldrich, who is also the author of a history of the Government Communications Headquarters, the British signal-intelligence agency.

Britain’s history and expertise in South Asia means that the intelligence it gathers in Pakistan, Afghanistan and the tribal areas in between is in high demand, Mr. Aldrich said. The arrangement has been focused recently by a chill in relations between the United States and Pakistan, and by the shared war in Afghanistan.

Other nations, too, intercept communications in the region that are shared broadly with the United States, he said. In Afghanistan, for example, German and Dutch forces run aggressive electronic interception operations, he said, because their rules on collaborating with local interpreters are less stringent than those of the United States.

### link

#### Jakes says there was an outcry last February over the DoJ memo about TK, but not that anyone agree on what to do about it – the card concludes that Brennan’s speech about DoD shift solved pressure for reform

Jakes 13

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

Without those documents, it's impossible for Congress and the public to decide "whether this authority has been properly defined, and whether the president's power to deliberately kill Americans is subject to appropriate limitations and safeguards," the senators wrote.

Their ev ends

It was a repeated request after receiving last June an unclassified Justice Department memo, which fell short of giving the senators all the information they requested.

First detailed publicly by NBC News late Monday, the memo for the first time outlines the Obama administration's decision to kill al-Qaida terror suspects without any evidence that specific and imminent plots are being planned against the United States.

"The threat posed by al-Qaida and its associated forces demands a broader concept of imminence in judging when a person continually planning terror attacks presents an imminent threat," concluded the document.

**The memo was immediately decried by civil liberties groups as "flawed" and "profoundly disturbing**" - especially in light of 2011 U.S. drone strikes in Yemen that killed three American citizens: Anwar al-Awlaki, his 16-year-old-son and Samir Khan. Al-Awlaki was linked to the planning and execution of several attacks targeting U.S. and Western interests, including the attempt to down a Detroit-bound airliner in 2009 and the plot to bomb cargo planes in 2010. His son was killed in a separate strike on a suspected al-Qaida den. Khan was an al-Qaida propagandist.

White House spokesman Jay Carney, echoing comments Brennan made in a speech last April, called the strikes legal, ethical and wise and said they are covered by a law that Congress approved allowing the use of military force against al-Qaida.

"And certainly, under that authority, the president acts in the United States' interest to protect the United States and its citizens from al-Qaida," Carney said Tuesday.

"It is a matter of fact that Congress authorized the use of military force against al-Qaida," Carney said. "It is a matter of fact that al-Qaida is in a state of war against us and that senior leaders, operational leaders of al-Qaida are continually plotting to attack the United States, plotting to kill American citizens as they did most horrifically on September 11th of 2001."

Three days after 9/11, Congress approved a law authorizing the military to use "all necessary and appropriate force" against al-Qaida and other groups believed to be helping or harboring the global terror network, including the use of drone strikes. In the decade since the attacks, U.S. intelligence officials say, al-Qaida has splintered into a number of affiliates and allied sympathizers. That means the current laws could allow military force against thousands of extremists across the Mideast and North Africa who have limited or no ability to strike the United States.

Currently, both the CIA and the U.S. military are authorized to remotely pilot unmanned, missile-carrying drones against terror suspects. It's unknown exactly how many strikes have been carried out, but experts say that drone attacks in Pakistan are conducted by the CIA, while those in Yemen and Somalia, for example, are by military forces.

The drones have strained diplomacy between the U.S. and the nations where the strikes are carried out, as civilians have been killed alongside the targeted terrorists, even though most nations have given Washington at least tacit agreement to carry out the attacks.

A Middle Eastern diplomat said that in Yemen, for example, an uptick of U.S. drone strikes last month have killed dozens of people and upset the local public, leading some leaders in Sanaa to reconsider how often they should be used. The diplomat spoke Tuesday on condition of anonymity to avoid political retribution from the Obama administration.

The Pentagon is also considering basing surveillance drones in Niger to monitor on burgeoning extremist violence in North Africa, but it's not clear if they will be armed. Scaling back the use of drones also would hamper war plans in Afghanistan after combat troops are scheduled to withdraw in 2014. Drones represent a major thrust of the post-troops campaign to help the limited number of special forces units that remain there keep the Taliban from regrouping.

**Brennan**, who currently serves as the White House counterterrorism czar, **has signaled he is prepared to turn the CIA from carrying out lethal drone strikes and hand over those missions to the U.S. military**. Sen. Ron **Wyden**, a senior Democratic member of the Senate Intelligence panel, declared himself unsatisfied Tuesday with the Justice memo and said he **will press Brennan at the confirmation hearing about the administration's current policy**.

The drone debate puts Obama -- himself a former civil rights lawyer -- in the awkward position of carrying out lethal attacks in secret and bucking his political allies in the Democratic Party. Democratic lawmakers were incensed by the refusal of the Republican administration of President George W. Bush to hand over classified Justice Department opinions justifying the use of waterboarding, the harsh interrogation tactic that critics call a form of torture. Obama repudiated those methods -- and released those opinions -- when he took office in 2009. **The use of drones proved to have no political cost to Obama in his re-election campaign**.

#### Squo is a test case for the link turn from last February – no restrictions now because of disagreement

Auner, Trend Lines writer @ WPR, former Policy Analyst – Nuclear Security @ American Security Project, 1/21/’14

(Eric, “Congress Resists Pentagon Drone Oversight as U.S. and Partners Continue Targeted Killings,” World Politics Review)

Micah Zenko of the Council on Foreign Relations, who has argued that lead authority for drone strikes should be consolidated under the Defense Department, explains that placing the program under Pentagon control “would allow the program to be defended publicly,” which is not the case for the covert drone program controlled by the CIA. He adds that the move would not necessarily have operational implications for how the program is carried out.

But in general, he suggests, there is little appetite among lawmakers on either side of the aisle to enact major reforms to U.S. targeted killing programs or to significantly increase oversight.

Although the Senate Intelligence Committee approved a plan to improve government oversight of U.S. drone strikes in November, the current partisan configuration may make it less likely that Congress will oppose drone strikes and other methods of targeted killing. Democrats hesitate to oppose their own party’s president, and many conservatives cheer a vigorous prosecution of the fight against terrorism.

#### Obama will fight

Epps 13 (Garrett, law prof at the University of Baltimore, The Atlantic, “Why a Secret Court Won't Solve the Drone-Strike Problem”, Feb 16, http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/, ZBurdette)

The real problem with Vladeck's court might be political. I expect that any president would resist such a statute as a dilution of his commander in chief power, and enactment seems unlikely. Without such a statute, then, systematic review of secret drone killings must come inside the executive branch.

That doesn't mean it will be a lawless whitewash. Congress can prescribe rules for these reviews, decide who will carry them out, and require periodic reports to its committees and to the public. In a recent conversation, David Ignatius of the Washington Post, an old friend and my go-to guy for national-security thinking, suggested the role be assigned to the president's Intelligence Advisory Board, a non-partisan panel of independent experts from outside the executive branch, who serve independently for fixed terms.

That is the kind of body we need. Bringing in the courts themselves would be at best tricky, and at worst as dangerous, in its way, as allowing the drone war to continue without supervision.

### Pc theory

Hirsch – we’ll concede political capital theory is wrong, that means they can’t increase Obama’s leverage

We’ll also concede the theory of winners win

**Doesn’t answer crowdout thesis, but momentum is now a neg uq arg**

#### Ukraine aid solves

Stacy Kaper, National Journal, 3/27/14, Congress Approves Ukraine Aid, Expects Obama Signature This Week, www.nationaljournal.com/defense/congress-approves-ukraine-aid-expects-obama-signature-this-week-20140327

The House and Senate almost simultaneously passed different but spiritually similar Ukraine bills Thursday that would codify sanctions punishing Russia for its recent annexation of Crimea and promote democracy in Ukraine. Both chambers approved their bills by overwhelming margins, and a path forward on how to send legislation to the White House this week began to slowly emerge. Lawmakers were initially unsure if they could reconcile the different bills and send one to President Obama to sign by the end of the week. The House measure passed 399-19 and supplements another bill the House passed earlier this month that would provide $1 billion in loan guarantees to Ukraine. The Senate, meanwhile, agreed on a 98-2 vote to strip its bill of controversial reforms to the International Monetary Fund that House Republicans were expected to oppose. Republican Sens. Dean Heller and Rand Paul voted against adopting the revised measure. The Senate bill passed by voice vote and combines $1 billion in loan guarantees to Ukraine with sanctions meant to punish Russian President Vladimir Putin. The White House has lobbied for the IMF reforms, which it says could help the IMF boost its assistance to Ukraine. But the administration has also argued that sending assistance to Ukraine is essential and must happen as soon as possible–ideally before the end of the month–with or without the IMF piece. The House and Senate agree on the policy points, but they still need to pass the same bill in order to get one to President's Obama desk and signed into law. To do this, the House could pass the Senate bill as soon as Thursday, but the issue could roll into next week. A senior House GOP aide, however, said that the House and Senate are expected to send the Ukraine package to President Obama this week. The House plans to pass by voice vote the Senate bill and the Senate is expected to voice vote a piece of the House bill that was not included in the Senate package. The House measure would provide money for a surge in broadcasting of Voice of America and similar European broadcasts in eastern Ukraine, including Crimea, as a way to send messages to ethnic Russian communities. A senior Democratic aide in the Senate said final legislation could be sent to President Obama as soon as Thursday.

#### This week proves logrolling is a thing, but only for uncontroversial stuff

Michael Catalini, 3/13/14, Bipartisan Bills in the Senate? Sure. But Partisanship Lingers, Too., www.nationaljournal.com/daily/bipartisan-bills-in-the-senate-sure-but-partisanship-lingers-too-20140313

A common truism about the upper chamber is that senators can pass legislation as quickly as they want to, when they want to. Senators seemed to prove it again before leaving for a weeklong recess, having passed or struck deals on four bills plus a set of sanctions against Russia. With bipartisan votes, the Senate this week passed: a bill aimed at preventing sexual assaults in the military; a reauthorization of child-care block grants; and a House-passed measure aimed at preventing a spike in flood-insurance premiums. Senators also reached a deal to extend long-term unemployment-insurance benefits after multiple false starts this year. "We're ending on a good note," said Republican Sen. Roger Wicker of Mississippi. But wait, there's more. When senators return, they will also take up—and likely pass—legislation that would provide a $1 billion loan guarantee to Ukraine along with sanctions—including asset freezes and visa revocations—against certain Russian officials. The spate of bipartisan bills comes after weeks of behind-the-scenes wrangling, especially over the unemployment-insurance benefits, which lawmakers expect will come up for a vote when they return from the break. That deal, which crucially won the backing of five Republicans, would extend benefits for five months and includes retroactive payments until Dec. 28, when the program expired. Democratic Sen. Jack Reed of Rhode Island, who led efforts to find a compromise with Republican Sen. Dean Heller of Nevada, said the deal was reached because senators—despite disagreements—approached the negotiation with "seriousness and thoughtfulness." Senators on both sides of the aisle call the recent productivity a good sign for the prospects of working together. Republican Sen. Rob Portman of Ohio, whose pending energy-efficiency bill stalled last year, said he now expects the bill to come to the floor again during the next work period.

#### Targeted killing restrictions cause crowdout

Steve Vladeck, professor of law and the associate dean for scholarship at American University Washington College of Law, 3/14/13, Drones, Domestic Detention, and the Costs of Libertarian Hijacking, http://www.lawfareblog.com/2013/03/drones-domestic-detention-and-the-costs-of-libertarian-hijacking/

The same thing appears to be happening with targeted killings. Whether or not Attorney General Holder’s second letter to Senator Paul actually answered the relevant question, it certainly appeared to mollify the junior Senator from Kentucky, who declared victory and withdrew his opposition to the Brennan nomination immediately upon receiving it. Thus, as with the Feinstein Amendment 15 months ago, the second Holder letter appears to have taken wind out of most of the libertarian critics’ sails, many of whom (including the Twitterverse) have now returned to their regularly scheduled programming. It seems to me that both of these episodes represent examples of what might be called “libertarian hijacking”–wherein libertarians form a short-term coalition with progressive Democrats on national security issues, only to pack up and basically go home once they have extracted concessions that don’t actually resolve the real issues. Even worse, in both cases, such efforts appeared to consume most (if not all) of the available oxygen and political capital, obfuscating, if not downright suppressing, the far more problematic elements of the relevant national security policy. Thus, even where progressives sought to continue the debate and/or pursue further legislation on the relevant questions (for an example from the detention context, consider Senator Feinstein’s Due Process Guarantee Act), the putative satisfaction of the libertarian objections necessarily arrested any remaining political inertia (as Wells cogently explained in this post on Senator Paul and the DPGA from November).

Directly undermines the agenda

Brian Hughes, The Washington Examiner White House Correspondent, 2/6/13, Obama's base increasingly wary of drone program, http://washingtonexaminer.com/obamas-base-increasingly-wary-of-drone-program/article/2520787

The heightened focus on President Obama's targeted killings of American terror suspects overseas has rattled members of his progressive base who have stayed mostly silent during an unprecedented use of secret drone strikes in recent years.¶ During the presidency of George W. Bush, Democrats, including then-Sen. Obama, hammered the administration for employing enhanced interrogation techniques, which critics labeled torture.¶ Liberals have hardly championed the president's drone campaign but have done little to force changes in the practice, even as the White House touts the growing number al Qaeda casualties in the covert war.¶ The issue grates on some Democrats who backed Obama over Hillary Clinton because of her vote in favor of the war in Iraq, only to see the president ignore a campaign promise to close the detainee holding camp in Guantanamo, Cuba, and mount a troop surge in Afghanistan.¶ With the confirmation hearing Thursday for John Brennan, Obama's nominee for CIA director -- and the architect of the drone program -- Democrats will have a high-profile opportunity to air their concerns over the controversial killings.¶ "You watch and see -- the left wing of the party will start targeting Obama over this," said Larry Sabato, a political scientist at the University of Virginia. "It's inevitable. The drumbeat will increase as time goes on, especially with each passing drone strike."¶ Obama late Wednesday decided to share with Congress' intelligence committees the government's legal reasoning for conducting drones strikes against suspected American terrorists abroad, the Associated Press reported. Lawmakers have long demanded to see the full document, accusing the Obama administration of stonewalling oversight efforts.¶ Earlier in the day, one Democrat even hinted at a possible filibuster of Brennan if given unsatisfactory answers about the drone program.¶ "I am going to pull out all the stops to get the actual legal analysis, because with out it, in effect, the administration is practicing secret law," said Sen. Ron Wyden, D-Ore., a member of the Senate Select Intelligence Committee. "This position is no different [than] that the Bush administration adhered to in this area, which is largely 'Trust us, we'll make the right judgments.' "¶ In a Justice Department memo released this week, the administration argued it could order the killing of a suspected American terrorist even with no imminent threat to the homeland.¶ White House press secretary Jay Carney insisted on Wednesday that the administration had provided an "unprecedented level of information to the public" about the drone operations. Yet, questions remain about who exactly orders the killings, or even how many operations have been conducted.¶ "There's been more noise from senators expressing increased discomfort [with the drone program]," said Joshua Foust, a fellow at the American Security Project. "For Brennan, there's going to be more opposition from Democrats than Republicans. It's not just drones but the issue of torture."¶ Facing concerns from liberals, Brennan had to withdraw his name from the running for the top CIA post in 2008 over his connections to waterboarding during the Bush administration.¶ Since becoming president, Obama has championed and expanded most of the Bush-era terror practices that he decried while running for the White House in 2008.¶ It's estimated that roughly 2,500 people have died in drone strikes conducted by the Obama administration.¶ However, most voters have embraced the president's expanded use of drone strikes. A recent Pew survey found 62 percent of Americans approved of the U.S. government's drone campaign against extremist leaders. And some analysts doubted whether Democratic lawmakers would challenged Obama and risk undermining his second-term agenda.¶ "Democrats, they're going to want the president to succeed on domestic priorities and don't want to do anything to erode his political capital," said Christopher Preble, vice president for defense and foreign policy studies at the Cato Institute. "It's just so partisan right now. An awful lot of [lawmakers] think the president should be able to do whatever he wants."

### bill key

They are right that there a lot of bills, 3 to be exact, but our brink arg is about working out the differences between them

Now key—window narrow

#### Nothing gets passed post-midterms

Norm Ornstein, 3/26/14, The Mixed Bag of GOP Control, www.nationaljournal.com/washington-inside-out/the-mixed-bag-of-gop-control-20140326

First, the real downside. Start by imagining what the GOP zeitgeist will be if the party picks off six, seven, or eight seats. My guess, the same as after the 2010 midterms: “Man, did that politics of obstruction work like a charm! Let’s double down on it and take the whole enchilada in 2016!” If there is no public backlash against an utterly dysfunctional Congress and a near-complete lack of productivity, why rock the boat? That attitude would combine with a common reaction of lawmakers outside the president’s party in the final two years of a two-term president: Why do anything now that involves compromise when we have a chance to do what we want after the next election? And there would be another factor moving toward a radical-right dominance: an explosion of interest from Republican candidates for the presidency, and a jolt of confidence on the right that things are going their way and there is no need to compromise on a nominee. More candidates would emerge from the Right, joining the Ted Cruz/Marco Rubio/Rand Paul/Mike Huckabee contingent. Watching the putative presidential candidates all vote against the budget compromise pulled together by Paul Ryan and Patty Murray—and then watching Ryan join them and vote against the debt-ceiling bill that basically ratified his spending deal—made it clear to me that the energy on the presidential nominating side is all on the bedrock right edge. But it is more complicated than that. While Americans tend to look at the president as the symbol of government in Washington—giving him and his party more blame if things are not going well in Washington—the perception would be altered if Republicans took full control of Congress. It would be much harder to diffuse blame for a “Do-Nothing Congress.” The pressure to act, to pass legislation to deal with major problems in the country, would be enhanced, and the conspicuous failure to act could, in the memorable words of Mitch McConnell, “damage the Republican brand.” The president would undoubtedly use his platform to push hard for immigration reform, maybe tax reform, a serious jobs program, and an infrastructure plan, among others. Spurning action on all of those would have its costs. Second, there would be a strong impetus for Republicans to pass legislation that had some political appeal **but would draw presidential vetoes**—something Democrats would have done regularly in the final two years of the George W. Bush administration but for GOP filibusters in the Senate. So we might get a passel of bills that provide money for popular programs by cutting the heart out of things Democrats love—such as the recent bill that added funds for pediatric health research by cutting the public financing of party conventions. The problem is that House-Senate tensions often supersede or at least rival partisan ones—remember that in the Clinton era, Speaker Newt Gingrich had worse relations with Senate Majority Leader Bob Dole than he did with the president. And even if the filibuster were not a potent tool for Democrats, getting all the Republicans—including the problem-solving-oriented contingent of Susan Collins, Lisa Murkow­ski, Bob Corker, et al—to go along with hard-edged bills would be a major challenge for the leadership. There is one last set of elements that is less complicated. A Republican Senate would undoubtedly stop confirmation on virtually all Obama-nominated judges, and probably on most of his executive nominees. And we would see a sharp ramp-up of investigations of alleged wrongdoing, with Benghazi and IRS redux. If you like Darrell Issa, you will love having his reinforcements and doppelgangers in the other chamber. If you are Barack Obama, not so much.

#### Reforms solves surveillance credibility

David Weigel, Slate, 3/25/14, Turning Off the Vacuum Cleaner, www.slate.com/articles/news\_and\_politics/politics/2014/03/nsa\_bulk\_metadata\_collection\_rand\_paul\_ron\_wyden\_support\_obama\_s\_plan\_to.html

If it was a “turning point,” as Snowden suggested, it was one that the administration and its critics both needed. The congressional and civic outcry against the NSA started and basically ended with the revelations of domestic snooping. That wasn’t where the Snowden revelations ended. Day after week after month, newspapers were using the Snowden documents to detail American spying in foreign countries. This was costing the American tech industry billions of dollars, maybe as much as $180 billion. Rogers and Ruppersberger, and the administration, wanted to restore American credibility. Domestic surveillance reform was the only attainable idea, even if it barely addressed most of Snowden’s leaks. The reform, said Ruppersberger, would “set an example,” while “at least a year’s” worth of Snowden revelations continued to trickle out. The world outside would see that America was doing something about surveillance, and their own governments weren’t. Hey, it could work. “The French, just recently, passed a measure so that you don’t even need a court order to get personal data stored on their systems in France,” said Rogers. “Espionage is a French word, after all.” That line got a couple of laughs, but Rogers meant it. “We should get over the shock and awe of all of this and have an honest dialogue about what is exactly happening,” he said. “Europeans spy on the United States of America, sorry, every single day.” Multiple times, when reporters asked Rogers why Congress wasn’t reforming any of the programs that worried foreigners, the congressman accused the press of overhyping stories and possibly being suckered by bad intelligence. Snowden, who Rogers only referred to as “the former NSA contractor,” had created “confusion on legal programs he had no understanding of,” and then fallen into Russia’s grip. “There’s a lot of intelligence officials today who have to go back and, [with] every new revelation, knowing he’s under the influence of Russian intelligence, scrutinize it 10 times more than they did,” said Rogers. “A lot of people take it as gospel. I assure you, it’s not.” “I would love to have Russia’s Snowden come over here and give us all the data he found,” said Ruppersberger. These were the congressmen who were now backing the end of bulk metadata collection. The civil libertarians could accept that, because they knew what to go after next. Paul, who had just returned from a well-received and widely-covered anti-spying speech in Berkeley, Calif., openly derided the arguments he expected to hear next. “They will say, we have these privacy controls that da-da-da-da,” said Paul, replacing the intelligence community’s jargon with nonsense syllables. “We’re going to do da-da-da-da. But the records are not protected by the Fourth Amendment. This is still a big question. I think it will still have to be decided by the Supreme Court.” But that sets up a sort of détente. The civil libertarian campaign would continue. The campaigners would give their blessing to incremental reform. The skeptics would go along with the reform, because they know how quickly the conversation can shift.

### at: mccain

Their McCain arg says he’ll bring it up during defense authorizations, not that there will be a bill

It’s not an authority fight so it doesn’t trigger grant ev

Bennett concedes it won’t happen before the midterm

Many analysts say that other than possibly taking up a new immigration reform measure, Congress likely is finished with major legislation this year. The mid-term election cycle is in full swing, and both parties seem content to battle it out back home after five years of bitter partisan fights here.

#### DoD-CIA shift is over – the bill left Obama significant flexibility to avoid controversy

By [Eric Schmitt](http://topics.nytimes.com/top/reference/timestopics/people/s/eric_schmitt/index.html) 1-16, Congress Restricts Drones Program Shift, New York Times, JAN. 16, 2014, <http://www.nytimes.com/2014/01/17/us/politics/congress-restricts-drones-program-shift.html>

WASHINGTON — In an unusual move, Congress is placing restrictions on the Obama administration’s plan to shift responsibility for armed [drones](http://topics.nytimes.com/top/reference/timestopics/subjects/u/unmanned_aerial_vehicles/index.html?inline=nyt-classifier) more toward the military and away from the [C.I.A.](http://topics.nytimes.com/top/reference/timestopics/organizations/c/central_intelligence_agency/index.html?inline=nyt-org), congressional and administration officials said Thursday.

Lawmakers inserted wording into a classified annex to the $1.1 trillion [federal budget](http://topics.nytimes.com/top/reference/timestopics/subjects/f/federal_budget_us/index.html?inline=nyt-classifier) approved by Congress this week that would make it more difficult to transfer control over the drone campaign or the authority to carry out strikes.

The scope of the restrictions remained unclear because of their classification. But the provision does not appear to entirely block a shift described last May by administration officials as a ramification of [President Obama](http://topics.nytimes.com/top/reference/timestopics/people/o/barack_obama/index.html?inline=nyt-per)’s intention to move the country off a decade-long war footing.

Lawmakers allowed the president to waive the constraints under certain circumstances or to permit the transfer if the administration certifies that the military meets certain standards in drone operations, congressional aides said Thursday.

Senator John McCain supports the Obama administration’s plans to shift responsibility for drone strikes to the military. Yuri Gripas/Reuters

Even before the new provision in the budget bill, administration and congressional officials said the schedule for shifting control to the military was being revised — if not shelved.

“D.O.D. has some work to do,” a senior House Intelligence Committee staff aide said Thursday, referring to the Department of Defense. “It’s a lot more challenging than they thought.”

But the measure, [first reported on The Washington Post’s website](http://www.washingtonpost.com/world/national-security/lawmakers-seek-to-stymie-plan-to-shift-control-of-drone-campaign-from-cia-to-pentagon/2014/01/15/c0096b18-7e0e-11e3-9556-4a4bf7bcbd84_story.html) on Wednesday night, is a rare move by Congress to dictate how covert operations like the drone program are carried out. It also reflects the simmering suspicion among many lawmakers on the Intelligence Committees that the military’s Joint Special Operations Command is not up to the task of killing terrorism suspects with Predator or Reaper drones, a notion the Pentagon rejects.

That skepticism was underscored on Dec. 12, when a strike by the United States military, launched from a base in Djibouti, killed at least a half-dozen innocent people in Yemen, according to a number of tribal leaders and witnesses, and provoked a storm of outrage in the country.

The murky details surrounding the strike have raised questions about how rigorously American officials are applying the standards for lethal strikes that Mr. Obama outlined in a speech on May 23 at the National Defense University — and whether such standards are even possible in such a remote and opaque environment.

At the time, administration officials said that authority over most of the drone strikes would gradually shift to the Pentagon from the C.I.A., a move officials said was intended partly to lift the shroud of secrecy from the targeted killing program.

But nearly eight months later, the C.I.A. still carries out a majority of drone strikes in Yemen, with the remotely piloted aircraft taking off from a base in the southern desert of Saudi Arabia.

Spokesmen for the White House, the C.I.A. and the congressional committees responsible for the language declined to comment on Thursday.

“The president when he spoke at N.D.U. was very clear about his desire to be as transparent as possible with respect to those operations,” Rear Adm. John Kirby, the Defense Department press secretary, told reporters on Thursday, declining to discuss the specific congressional provision. “That’s a message that we got loud and clear here in the Pentagon.”

That is a sentiment shared by many on Capitol Hill. Senator Patrick J. Leahy, a Vermont Democrat on the Appropriations Committee, told MSNBC on Thursday, “There should be far better control of what we do with our drones.”

### at: un defense

Doesn’t assume collapse of the alliance

Not qualed

#### We access everything in their laundry list cards

Stokes, international columnist – National Journal, 3/17/’10

(Bruce, “Greek Tragedy Haunts Global Markets, Policies,” <http://www.koreatimes.co.kr/www/news/opinon/2010/03/137_62527.html>)

To paraphrase the noted economist Woody Allen, Europe is at a crossroads as it confronts the Greek economic crisis. One path leads to utter hopelessness and despair, the other to total extinction. One can only hope that the Europeans have the wisdom to choose correctly. Since American financial institutions aided and abetted Greek budgetary profligacy and because the choices Europeans make and will make in the months ahead will directly affect American economic and foreign policy interests, Washington can ill afford to stand on the sidelines. The Greek crisis is a textbook example of the interconnectedness of the global economy and the foreign policy environment. For most of the last decade, the Greek economy grew faster than others in the euro area. Yet, the country's balance sheets worsened. By 2009 the annual government deficit equaled 13 percent of the economy and public debt was 107 percent of GDP. So, when the global recession hit, and the Greek economy contracted by 2 percent in 2009, international bond markets panicked, fearing that Athens was going to have trouble meeting its obligations. By mid-February the Greek government was paying three percentage points more to borrow money than the interest rate charged Germany, worsening the mismatch between Greek revenues and expenditures. Wall Street bears some of the blame for this mess. Goldman Sachs and possibly other American financial institutions reportedly helped Athens understate its true indebtedness through the creation of innovative financial instruments. "We are looking into a number of questions relating to Goldman Sachs and other companies and their arrangements with Greece," said U.S. Federal Reserve chairman Ben Bernanke in recent Congressional testimony. But Washington has more self-interested concerns. Europe is America's largest export market. But, in part thanks to the Greek crisis, the euro has fallen in value by 8 percent against the dollar since November, 2009, making American products more expensive for Europeans. An extended period of weakness for the euro would undermine the Obama administration's ambitions to double U.S. exports. But it is the foreign policy implications of the Greek crisis that are keeping people awake at night in the White House. Washington needs Europe's help in Afghanistan and in dealing with Iran, China and Russia. But the growing preoccupation of governments in Berlin, London and Paris with staving off a financial meltdown and their populations' isolationist response to the crisis leave Europe with little time, political capital or cash to be spent on America's foreign policy priorities. The most immediate cost may be the lost opportunity to further defuse Greek-Turkish tensions, long an American goal for the region. The new Greek Prime Minister George Papandreou is the most pro-Western leader Greece has elected in decades. And he had hoped to improve relations with Turkey. But now his government will, at best, be consumed with the crisis and, at worst, could fall thanks to populist frustration with the belt-tightening that lies ahead. Europe's spreading financial troubles also leave it dangerously vulnerable to Russian meddling. Former U.S. Treasury secretary Henry Paulson alleged in his recent book ``On the Brink'' that Moscow dumped its Fannie Mae and Freddie Mac bonds in 2008 in a bid to force a costly Washington bailout of those mortgage-finance firms. A similar attack on the European bond market, to demonstrate Russian influence in Europe's moment of vulnerability, can not be ruled out. A united Europe has also long been an American foreign policy priority. So any threat to the future of the euro and the cohesiveness of the European Union sets off alarm bells in Washington. The first casualty of the Greek crisis may be European Union enlargement, which America has backed as a means of spurring economic growth and democracy in Central and Eastern Europe. The Greek crisis is likely to raise concerns among existing EU members that bringing more countries into the EU will imperil the core economies. Washington also has to worry that the intra-European antipathy that the Greek crisis may engender will make it even harder to get unified European positions on issues of interest to the United States, such as climate change and global financial regulation.

### link uniqueness ov

Issue specific uniqueness prices in

Not about Obama’s political capital—plan upsets Congressional bandwidth to get it done

Top of docket

Plan specific links

#### Obama introduced his bill yesterday—Congress has shifted—prices in link uniqueness but time is limited

Ellen Nakashima, WaPo, 3/27/14, White House pushes Congress to quickly pass changes to NSA surveillance program, www.washingtonpost.com/world/national-security/white-house-pushes-congress-to-quickly-pass-changes-to-nsa-surveillance-program/2014/03/27/1a2c4052-b5b9-11e3-8cb6-284052554d74\_story.html?wprss=rss\_politics

The Obama administration has **called on Congress to move quickly to pass legislation** that would achieve the president’s goal of ending government mass collection of Americans’ phone records. “Having carefully considered the available options, I have decided that the best path forward is that the government should not collect or hold this data in bulk,” President Obama said in a statement Thursday, adding that “legislation will be needed.” “We really hope that the Congress can act swiftly,” said a senior administration official, who spoke in a conference call with reporters on the condition of anonymity. The official did not specify a timeline but noted that the administration was reauthorizing on Friday the current system of data collection by the National Security Agency for another 90 days, suggesting that that would be an appropriate window of time for lawmakers to act. Obama said in a speech in January that he wanted to end the government’s gathering and storage of what officials say are hundreds of billions of records about Americans’ phone calls. Since the program was disclosed in June, it has prompted concern about the potential for abuse. At the same time, Obama has said he believes the government needs to preserve a capability to seek clues to terrorist plots that officials say can be hidden in the records. That is why, the senior official suggested, the administration is not simply ending the mass collection now. Instead, the official said, it is seeking legislation to establish a “new program.” Attention now shifts to Congress, which has before it several competing bills that seek varying degrees of change — some more ambitious than the White House’s. **But Obama’s proposal has become the baseline**, analysts said.

### at cia fight

Their ev says CIA and FAA flight restrictions, but it doesn’t impact FAA in controversy

Not war powers, not legislation, not a restriction. CIA fight is over whether to release a CIA torture report on the Bush admin—that’s not about whether to restrict Obama’s war power authority, and whether to declassify a report is irrelevant to legislative battle spill-over.

But it does prove the link! That a speech by Feinstein over a CIA report is getting this much coverage proves inserting the plan’s fight into the legislative arena would knock-off NSA’s Congressional sweet-spot

#### No Congressional backlash to Obama

Eli Lake, Daily Beast, 3/14/14, Republicans ‘Not Involved’ in Investigation of CIA’s Black Sites, www.thedailybeast.com/articles/2014/03/12/republicans-not-involved-in-investigation-of-cia-s-alleged-spying.html

Dianne Feinstein, the Democratic chairwoman of the Senate Intelligence Committee on a warpath against the CIA over the agency’s alleged spying on her staffers. Her Republican counterpart? Not so much. In a short speech Wednesday on the Senate floor, Sen. Saxby Chambliss, the vice chairman and highest ranking Republican on the Senate Select Committee on Intelligence, said committee investigators had yet to do forensics on the computers the CIA searched. He said he did not yet know the facts of what had happened in the now public dispute the CIA has had with Feinstein. “I cannot make a statement to reflect on what actually occurred,” he said. “Right now our committee members are conducting an internal assessment. This is an ongoing process that should not be discussed in the public domain.” That is a far more mild assessment of the matter than the one offered Tuesday by Feinstein herself, who said the CIA likely violated the Constitution when CIA director John Brennan ordered information technology specialists to search special computers used by her staff to read millions of pages of documents made available to the committee. The statement is also mild considering that Chambliss and his Republican colleagues have long suspected Brennan to be responsible for high level national security leaks from Obama’s first term. The computers the CIA allegedly monitored were set up at a CIA facility so the oversight committee’s staffers could pore over documents the agency provided to the committee in 2009. The documents comprised the raw material that informed a still classified Senate report on the Bush era program to capture and harshly interrogate suspected al Qaeda terrorists in secret CIA prisons all over the planet. Chambliss and most Republicans on the committee, according to one Senate staff member who read into the investigation, have opposed declassifying the report for a few years now. A draft of that report was completed in December 2012 but it has been the subject of an intense dispute with the CIA, whose analysts disagree with its conclusions. On Wednesday, Chambliss said his committee’s Republicans and their staff have not even really participated in the investigation at all. “Republican staff were not involved in the underlying investigation of the detainee and interrogation report,” he said. While Democrats have criticized the CIA for abusing its power by ordering a leak investigation into staffers, Republicans on the committee have at times suggested that Brennan himself should be investigated.