# 1nc\*\*\*

## T

1. “And/or” means one or the other or both – must choose

Collins English Dictionary 2009

(http://dictionary.reference.com/browse/and%2For)

and/or

— conj

( coordinating ) used to join terms when **either one or the other or both** is indicated: passports and/or other means of identification

2. Aff conditionality – violates “Resolved”

Random House Unabridged Dictionary, 1997

(http://www.infoplease.com/dictionary/resolved)

firm in purpose or intent; determined.

Violation: The plan does not choose statutory or judicial restrictions

Vote neg

a. Presumption—

CMS ‘3

(http://www.chicagomanualofstyle.org/CMS\_FAQ/CapitalizationTitles/CapitalizationTitles32.html, accessed 10/16/07, re-accessed at <http://www.chicagomanualofstyle.org/qanda/data/faq/topics/CapitalizationTitles/faq0015.html>, 8/19/2013)

Q. When I refer to the government of the United States in text, should it be US Federal Government or US federal government?

A. **The government of the** United States **is not a single official entity**. Nor is it when it is referred to as the federal government or the U.S. government or the U.S. federal government. It’s just a government, which, like those in all countries, has some official bodies that act and operate in the name of government: the Congress, the Senate, the Department of State, etc.

b. Ground - they can kick out of our disads, PIC and case turns – destroying strategic negative decision making

c. Pre round research –can’t prepare strategies before the tournament if the aff hypo-tests – that’s the most important education in debate

## 2

Obama singularly focused on the fiscal crisis—his political capital will resolve it before shutdown and default

Jonathan Allen, Politico, 9/19/13, GOP battles boost President Obama, dyn.politico.com/printstory.cfm?uuid=17961849-5BE5-43CA-B1BC-ED8A12A534EB

There’s a simple reason President Barack Obama is using his bully pulpit to focus the nation’s attention on the battle over the budget: In this fight, he’s watching Republicans take swings at each other.

And that GOP fight is a lifeline for an administration that had been scrambling to gain control its message after battling congressional Democrats on the potential use of military force in Syria and the possible nomination of Larry Summers to run the Federal Reserve.

If House Republicans and Obama can’t cut even a short-term deal for a continuing resolution, the government’s authority to spend money will run out on Oct. 1. Within weeks, the nation will default on its debt if an agreement isn’t reached to raise the federal debt limit.

For some Republicans, those deadlines represent a leverage point that can be used to force Obama to slash his health care law. For others, they’re a zero hour at which the party will implode if it doesn’t cut a deal.

**Meanwhile, “on the looming fiscal issues, Democrats** — both **liberal** and **conservative**, executive and congressional — **are virtually 100 percent united**,” said Sen. Charles Schumer (D-N.Y.).

Just a few days ago, all that Obama and his aides could talk about were Syria and Summers. Now, they’re bringing their party together and shining a white hot light on Republican disunity over whether to shut down the government and plunge the nation into default in a vain effort to stop Obamacare from going into effect.

The squabbling among Republicans has gotten so vicious that a Twitter hashtag — #GOPvsGOPugliness — has become a thick virtual data file for tracking the intraparty insults. Moderates, and even some conservatives, are slamming Texas Sen. Ted Cruz, a tea party favorite, for ramping up grassroots expectations that the GOP will shut down the government if it can’t win concessions from the president to “defund” his signature health care law.

“I didn’t go to Harvard or Princeton, but I can count,” Sen. Bob Corker (R-Tenn.) tweeted, subtly mocking Cruz’s Ivy League education. “The defunding box canyon is a tactic that will fail and weaken our position.”

While it is well-timed for the White House to interrupt a bad slide, Obama’s singular focus on the budget battle is hardly a last-minute shift. Instead, **it is a return to the narrative arc** that the White House was working to build before the Syria crisis intervened.

And it’s so important to the president’s strategy that White House officials didn’t consider postponing Monday’s rollout of the most partisan and high-stakes phase even when a shooter murdered a dozen people at Washington’s Navy Yard that morning.

The basic storyline, well under way over the summer, was to have the president point to parts of his agenda, including reducing the costs of college and housing, designed to strengthen the middle class; use them to make the case that he not only saved the country from economic disaster but is fighting to bolster the nation’s finances on both the macro and household level; and then argue that Republicans’ desire to lock in the sequester and leverage a debt-ceiling increase for Obamacare cuts would reverse progress made.

The president is on firm ground, White House officials say, because he stands with the public in believing that the government shouldn’t shut down and that the country should pay its bills.

The plan causes an inter-branch fight that derails Obama’s agenda

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that **costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms**. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."

While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. **Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives**. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6°

In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's **highest second-term domestic priorities**, such as Social Security and immigration reform, **failed** perhaps in large part **because the administration had to expend so much energy** and effort **waging a rear-guard action against congressional critics** of the war in Iraq.

When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If **congressional opposition in the military arena stands to** derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

That spills-over to government shutdown and US default—that kills the economy and US credibility

Norm Ornstein, resident scholar at the American Enterprise Institute, 9/1/13, Showdowns and Shutdowns, www.foreignpolicy.com/articles/2013/09/01/showdowns\_and\_shutdowns\_syria\_congress\_obama

Then there is the overload of business on the congressional agenda when the two houses return on Sept. 9 -with only nine legislative days scheduled for action in the month. We have serious confrontations ahead on spending bills and the debt limit, as the new fiscal year begins on Oct. 1 and the debt ceiling approaches just a week or two thereafter. Before the news that we would drop everything for an intense debate on whether to strike militarily in Syria, Congress-watchers were wondering how we could possibly deal with the intense bargaining required to avoid one or more government shutdowns and/or a real breach of the debt ceiling, **with** devastating consequences for American credibility **and the** international economy.

Beyond the deep policy and political divisions, Republican congressional leaders will likely use both a shutdown and the debt ceiling as hostages to force the president to cave on their demands for deeper spending cuts. **Avoiding this end-game bargaining will require** the unwavering attention of the same top leaders in the executive and legislative branches who will be deeply enmeshed in the Syria debate. The possibility -even probability -of disruptions caused by partial shutdowns could complicate any military actions. The possibility is also great that the rancor that will accompany the showdowns over fiscal policy will bleed over into the debate about America and Syria.

Causes disease spread

Percival, PhD in Medicine and Pathology, ‘4

(Steven L, *Microbiology of waterborne diseases*, p. 466)

Breakdown in public health systems:

Finally, one of the lessons that was associated with the collapse of the Soviet Union has been the risk to public health that comes with severe economic collapse. Such economic collapse can in turn threaten public health systems. This impacts on waterborne disease when such economic collapse impairs the effectiveness of water treatment and distribution systems. When water systems decay diseases once controlled, such as cholera and typhoid, can re-emerge (Semenza *et al.*, 1998). It is very sobering to consider what may be the impact of such economic collapse in some of the world’s largest urban centres.

Extinction - defense is wrong

Quammen, award-winning science writer, long-time columnist for *Outside* magazine for fifteen years, with work in National Geographic, Harper's, Rolling Stone, the New York Times Book Review and other periodicals, 9/29/2012

(David, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis)

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. **But** conditions aren't always ordinary.

Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. **Aberrations occur**. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis.

It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century.

Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals.

Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years.

**Zoonotic pathogens can hide**. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out.

Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda.

Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007.

They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast."

By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg.

Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats.

Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample.

The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive."

The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat.

The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats.

Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away.

"It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars?

In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - **it might have burned through a much larger segment of humanity**.

One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. **When the Next Big One comes**, **it will** likely **conform to the** same perverse pattern as the **1918 influenza**: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death.

The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes **airborne** from one host to another. If HIV-1 could, you and I might already be dead. If the **rabies** virus could, it **would be the most horrific pathogen on the planet**. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best.

Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918.

It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another.

Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people.

"As long as H5N1 is out there in the world," Webster told me, "**there is the possibility of disaster**. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us."

We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. **We are an outbreak**.

**And here's the thing about outbreaks**: **they end**. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

## 3

The affirmative re-inscribes the primacy of liberal legalism as a method of restraint—that paradoxically collapses resistance to Executive excesses.

**Margulies ‘11**

Joseph, Joseph Margulies is a Clinical Professor, Northwestern University School of Law. He was counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren. He now is counsel of record for Abu Zubaydah, for whose torture (termed harsh interrogation by some) Bush Administration officials John Yoo and Jay Bybee wrote authorizing legal opinions. Earlier versions of this paper were presented at workshops at the American Bar Foundation and the 2010 Law and Society Association Conference in Chicago., Hope Metcalf is a Lecturer, Yale Law School. Metcalf is co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. She has written numerous amicus briefs in support of petitioners in suits against the government arising out of counterterrorism policies, including in Munaf v. Geren and Boumediene v. Bush., “Terrorizing Academia,” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf

In an observation more often repeated than defended, we are told that the attacks of September 11 “changed everything.” Whatever merit there is in this notion, it is certainly true that 9/11—and in particular the legal response set in motion by the administration of President George W. Bush—left its mark on the academy. Nine years after 9/11, it is time to step back and assess these developments and to offer thoughts on their meaning. In Part II of this essay, we analyze the post-9/11 scholarship produced by this “emergency” framing. We argue that legal scholars writing in the aftermath of 9/11 generally fell into one of three groups: unilateralists, interventionists, and proceduralists. Unilateralists argued in favor of tilting the allocation of government power toward the executive because the state’s interest in survival is superior to any individual liberty interest, and because the executive is best able to understand and address threats to the state. Interventionists, by contrast, argued in favor of restraining the executive (principally through the judiciary) precisely to prevent the erosion of civil liberties. Proceduralists took a middle road, informed by what they perceived as a central lesson of American history.1 Because at least some overreaction by the state is an inevitable feature of a national crisis, the most one can reasonably hope for is to build in structural and procedural protections to preserve the essential U.S. constitutional framework, and, perhaps, to minimize the damage done to American legal and moral traditions. Despite profound differences between and within these groups, legal scholars in all three camps (as well as litigants and clinicians, including the authors) shared a common perspective—viz., that repressive legal policies adopted by wartime governments are temporary departures from hypothesized peacetime norms. In this narrative, metaphors of bewilderment, wandering, and confusion predominate. The country “loses its bearings” and “goes astray.” Bad things happen until at last the nation “finds itself” or “comes to its senses,” recovers its “values,” and fixes the problem. Internment ends, habeas is restored, prisoners are pardoned, repression passes. In a show of regret, we change direction, “get back on course,” and vow it will never happen again. Until the next time, when it does. This view, popularized in treatments like All the Laws but One, by the late Chief Justice Rehnquist,2 or the more thoughtful and thorough discussion in Perilous Times by Chicago’s Geoffrey Stone,3 quickly became the dominant narrative in American society and the legal academy. **This narrative also figured heavily in the many challenges to Bush-era policies,** including by the authors. The narrative permitted litigators and legal scholars to draw upon what elsewhere has been referred to as America’s “civic religion”4 and to cast the courts in the role of hero-judges5 **whom we hoped would restore legal order.**6 But by framing the Bush Administration’s response as the latest in a series of regrettable but temporary deviations from a hypothesized liberal norm, the legal academy ignored the more persistent, and decidedly illiberal, authoritarian tendency in American thought to demonize communal “others” during moments of perceived threat. Viewed in this light, what the dominant narrative identified as a brief departure caused by a military crisis is more accurately seen as part of a recurring process of intense stigmatization tied to periods of social upheaval, of which war and its accompanying repressions are simply representative (and particularly acute) illustrations. It is worth recalling, for instance, that the heyday of the Ku Klux Klan in this country, when the organization could claim upwards of 3 million members, was the early-1920s, and that the period of greatest Klan expansion began in the summer of 1920, almost immediately after the nation had “recovered” from the Red Scare of 1919–20.7 Klan activity during this period, unlike its earlier and later iterations, focused mainly on the scourge of the immigrant Jew and Catholic, and flowed effortlessly from the anti-alien, anti-radical hysteria of the Red Scare. Yet this period is almost entirely unaccounted for in the dominant post-9/11 narrative of deviation and redemption, which in most versions glides seamlessly from the madness of the Red Scare to the internment of the Japanese during World War II.8 And because we were studying the elephant with the wrong end of the telescope, we came to a flawed understanding of the beast. In Part IV, we argue that the interventionists and unilateralists came to an incomplete understanding by focusing almost exclusively on what Stuart Scheingold called “the myth of rights”—the belief that if we can identify, elaborate, and secure judicial recognition of the legal “right,” **political structures and policies will adapt their behavior to the requirements of the law** and change will follow more or less automatically.9 Scholars struggled to define the relationship between law and security primarily through exploration of structural10 and procedural questions, and, to a lesser extent, to substantive rights. And they examined the almost limitless number of subsidiary questions clustered within these issues. Questions about the right to habeas review, for instance, generated a great deal of scholarship about the handful of World War II-era cases that the Bush Administration relied upon, including most prominently Johnson v. Eisentrager and Ex Parte Quirin. 11 Regardless of political viewpoint, a common notion among most unilateralist and interventionist scholars was that when law legitimized or delegitimized a particular policy, **this would have a direct and observable effect on actual behavior**. The premise of this scholarship, in other words, was that policies “struck down” by the courts, or credibly condemned as lawless by the academy, would inevitably be changed—and that this should be the focus of reform efforts. Even when disagreement existed about the substance of rights or even which branch should decide their parameters, it reflected shared acceptance of the primacy of law, often to the exclusion of underlying social or political dynamics. Eric Posner and Adrian Vermeule, for instance, may have thought, unlike the great majority of their colleagues, that the torture memo was “standard fare.”12 But their position nonetheless accepted the notion that if the prisoners had a legal right to be treated otherwise, then the torture memo authorized illegal behavior and must be given no effect.13 Recent developments, however, cast doubt on two grounding ideas of interventionist and unilateralist scholarship—viz., that post-9/11 policies were best explained as responses to a national crisis (and therefore limited in time and scope), and that the problem was essentially legal (and therefore responsive to condemnation by the judiciary and legal academy). One might have reasonably predicted that in the wake of a string of Supreme Court decisions limiting executive power, apparently widespread and bipartisan support for the closure of Guantánamo during the 2008 presidential campaign, and the election of President Barack Obama, which itself heralded a series of executive orders that attempted to dismantle many Bush-era policies, the nation would be “returning” to a period of respect for individual rights and the rule of law. Yet the period following Obama’s election has been marked by an increasingly retributive and venomous narrative surrounding Islam and national security. **Precisely when the dominant narrative would have predicted change** and redemption, we have seen retreat and retrenchment. This conundrum is not adequately addressed by dominant strands of post-9/11 legal scholarship. In retrospect, it is surprising that much post-9/11 scholarship appears to have set aside critical lessons from previous decades as to the relationship among law, society and politics.14 Many scholars have long argued in other contexts that rights—or at least the experience of rights—are subject to political and social constraints, particularly for groups subject to historic marginalization. Rather than self-executing, rights are better viewed as contingent political resources, capable of mobilizing public sentiment and generating social expectations.15 From that view, a victory in Rasul or Boumediene no more guaranteed that prisoners at Guantánamo would enjoy the right to habeas corpus than a victory in Brown v. Board16 guaranteed that schools in the South would be desegregated.17 Rasul and Boumediene, therefore, should be seen as part (and probably only a small part) of a varied and complex collection of events, including the fiasco in Iraq, the scandal at the Abu Ghraib prison, and the use of warrantless wiretaps, as well as seemingly unrelated episodes like the official response to Hurricane Katrina. These and other events during the Bush years merged to give rise to a powerful social narrative critiquing an administration committed to lawlessness, content with incompetence, and engaged in behavior that was contrary to perceived “American values.”18 Yet the very success of this narrative, culminating in the election of Barack Obama in 2008, produced quiescence on the Left, even as it stimulated massive opposition on the Right. The result has been the emergence of a counter-narrative about national security that has produced a vigorous social backlash such that most of the Bush-era policies will continue largely unchanged, at least for the foreseeable future.19 Just as we see a widening gap between judicial recognition of rights in the abstract and the observation of those rights as a matter of fact, there appears to be an emerging dominance of proceduralist approaches, which take as a given that rights dissolve under political pressure, and, thus, are best protected by basic procedural measures. But that stance falls short in its seeming readiness to trade away rights in the face of political tension. First, it accepts the tropes du jour surrounding radical Islam—namely, that it is a unique, and uniquely apocalyptic, threat to U.S. security. In this, proceduralists do not pay adequate heed to the lessons of American history and sociology. And second, it endorses too easily the idea that procedural and structural protections will protect against substantive injustice in the face of popular and/or political demands for an outcome-determinative system that cannot tolerate acquittals. Procedures only provide protection, however, if there is sufficient political support for the underlying right. Since the premise of the proceduralist scholarship is that such support does not exist, it is folly to expect the political branches to create meaningful and robust protections. In short, a witch hunt does not become less a mockery of justice when the accused is given the right to confront witnesses. And a separate system (especially when designed for demonized “others,” such as Muslims) cannot, by definition, be equal. In the end, we urge a fuller embrace of what Scheingold called “the politics of rights,” which recognizes the contingent character of rights in American society. We agree with Mari Matsuda, who observed more than two decades ago that rights are a necessary but not sufficient resource for marginalized people with little political capital.20 To be effective, therefore, we must look beyond the courts and grapple with the hard work of long-term change with, through and, perhaps, in spite of law. These are by no means new dilemmas, but the post-9/11 context raises difficult and perplexing questions that deserve study and careful thought as our nation settles into what appears to be a permanent emergency.

Legalism underpins the violence of empire and creates the conditions of possibility for liberal violence.

Dossa ‘99

Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

No discipline in the rationalized arsenal of modernity is as rational, impartial, objective as the province of law and jurisprudence, in the eyes of its liberal enthusiasts. Law is the exemplary countenance of the conscious and calculated rationality of modern life, **it is the** emblematic face of liberal civilization. Law and legal rules symbolize the spirit of science, the march of human progress. As Max Weber, the reluctant liberal theorist of the ethic of rationalization, asserted: judicial formalism enables the legal system to operate like a technically **rational machine**. Thus it guarantees to individuals and groups within the system a relative of maximum of freedom, and greatly increases for them the possibility of predicting the legal consequences of their action. In this reading, law encapsulates the western capacity to bring order to nature and human beings, to turn the ebb and flow of life into a "rational machine" under the tutelage of "judicial formalism".19 Subjugation of the Other races in the colonial empires was motivated by power and rapacity, but it was justified and indeed rationalized, by an appeal to the civilizing influence of religion and law: western Christianity and liberal law. To the imperialist mind, "the civilizing mission of law" was fundamental, though Christianity had a part to play in this program.20 Liberal colonialists visualized law, civilization and progress as deeply connected and basic, they saw western law as neutral, universally relevant and desirable. The first claim was right in the liberal context, the second thoroughly false. In the liberal version, the mythic and irrational, emblems of thoughtlessness and fear, had ruled all life-forms in the past and still ruled the lives of the vast majority of humanity in the third world; in thrall to the majesty of the natural and the transcendent, primitive life flourished in the environment of traditionalism and lawlessness, hallmarks of the epoch of ignorance. By contrast, liberal ideology and modernity were abrasively unmythic, rational and controlled. Liberal order was informed by knowledge, science, a sense of historical progress, a continuously improving future. But this canonical, secular, bracing self-image, is tendentious and substantively illusory: it blithely scants the bloody genealogy and the extant historical record of liberal modernity, liberal politics, and particularly liberal law and its impact on the "lower races" (Hobson). In his Mythology of Modern Law, Fitzpatrick has shown that the enabling claims of liberalism, specifically of liberal law, are not only untenable but implicated in canvassing a racist justification of its colonial past and in eliding the racist basis of the structure of liberal jurisprudence.21 Liberal law is mythic in its presumption of its neutral, objective status. Specifically, the liberal legal story of its immaculate, analytically pure origin obscures and veils not just law's own ruthless, violent, even savage and disorderly trajectory, but also its constitutive association with imperialism and racism.22 In lieu of the transcendent, divine God of the "lower races", modern secular law postulated the gods of History, Science, Freedom. Liberal law was to be the instrument for realizing the promise of progress that the profane gods had decreed. Fitzpatrick's invasive surgical analysis lays bare the underlying logic of law's self-articulation in opposition to the values of cultural-racial Others, and its strategic, continuous reassertion of liberalism's superiority and the civilizational indispensability of liberal legalism. Liberal law's self-presentation presupposes a corrosive, debilitating, anarchic state of nature inhabited by the racial Others and lying in wait at the borders of the enlightened modern West. This mythological, savage Other, creature of raw, natural, unregulated fecundity and sexuality, justified the liberal conquest and control of the racially Other regions.23 Law's violence and resonant savagery on behalf of the West in its imperial razing of cultures and lands of the others, has been and still is, justified in terms of the necessary, beneficial spread of liberal civilization. Fitzpatrick's analysis parallels the impassioned deconstruction of this discourse of domination initiated by Edward Said's Orientalism, itself made possible by the pioneering analyses of writers like Aime Cesaire and Frantz Fanon. Fitzpatrick's argument is nevertheless instructive: his focus on law and its machinations unravels the one concrete province of imperial ideology that is centrally modern and critical in literally transforming and refashioning the human nature of racial Others. For liberal law carries on its back the payload of "progressive", pragmatic, **instrumental modernity**, its ideals of order and rule of law, its articulation of human rights and freedom, its ethic of procedural justice, its hostility to the sacred, to transcendence or spiritual complexity, its recasting of politics as the handmaiden of the nomos, its valorization of scientism and rationalization in all spheres of modern life. Liberal law is not synonymous with modernity tout court, but it is the exemplary voice of its rational spirit, **the custodian of its civilizational ambitions.** For the colonized Others, no non-liberal alternative is available: a non-western route to economic progress is inconceivable in liberal-legal discourse. For even the truly tenacious in the third world will never cease to be, in one sense or another, the outriders of modernity: their human condition condemns them to **playing perpetual catch-up**, eternally subservient to Western economic and technological superiority in a epoch of self-surpassing modernity.24 If the racially Other nations suffer exclusion globally, the racially other minorities inside the liberal loop enjoy the ambiguous benefits of inclusion. As legal immigrants or refugees, they are entitled to the full array of rights and privileges, as citizens (in Canada, France, U.K., U.S—Germany is the exception) they acquire civic and political rights as a matter of law. Formally, they are equal and equally deserving. In theory liberal law is inclusive, but concretely it is routinely **partial and invidious**. Inclusion is conditional: it depends on how robustly the new citizens wear and deploy their cultural difference. Two historical facts account for this phenomenon: liberal law's role in western imperialism and the Western claim of civilizational superiority that pervades the culture that sustains liberal legalism. Liberal law, as the other of the racially Other within its legal jurisdiction, differentiates and locates this other in the enemy camp of the culturally raw, irreducibly foreign, making him an unreliable ally or citizen. Law's suspicion of the others socialized in "lawless" cultures is instinctive and undeniable. Liberal law's constitutive bias is in a sense incidental: the real problem is racism or the racist basis of liberal ideology and culture.25 The internal racial other is not the juridical equal in the mind of liberal law but the juridically and humanly inferior Other, the perpetual foreigner.

The alternative is to vote negative to endorse political, rather than legal restrictions on Presidential war powers authority.

**Goldsmith ‘12**

Jack, Harvard Law School Professor, focus on national security law, presidential power, cybersecurity, and conflict of laws, Former Assistant Attorney General, Office of Legal Counsel, and Special Counsel to the Department of Defense, Hoover Institution Task Force on National Security and Law, March 2012, Power and Constraint, p. 205-209

DAVID BRIN is a science-fiction writer who in 1998 turned his imagination to a nonfiction book about privacy called The Transparent Society. Brin argued that individual privacy was on a path to extinction because government surveillance tools—tinier and tinier cameras and recorders, more robust electronic snooping, and bigger and bigger databases—were growing irreversibly more powerful. His solution to this attack on personal space was not to erect privacy walls, which he thought were futile, but rather to induce responsible government action by turning the surveillance devices on the government itself. A government that citizens can watch, Brin argued, is one subject to criticism and reprisals for its errors and abuses, and one that is more careful and responsible in the first place for fear of this backlash. A transparent government, in short, is an accountable one. "If neo-western civilization has one great trick in its repertoire, a technique more responsible than any other for its success, that trick is accountability," Brin argues, "[e]specially the knack—which no other culture ever mastered—of making accountability apply to the mighty."' Brin's notion of reciprocal transparency is in some ways the inverse of the penological design known as a "panopticon," made famous by the eighteenth-century English utilitarian philosopher Jeremy Bentham. Bentham's brother Samuel had designed a prison in Paris that allowed an "inspector" to monitor all of the inmates from a central location without the prisoners knowing whether or when they were being watched (and thus when they might be sanctioned for bad behavior). Bentham described the panopticon prison as a "new mode of obtaining power of mind over mind" because it allowed a single guard to control many prisoners merely by conveying that he might be watching.' The idea that a "watcher" could gain enormous social control over the "watched" through constant surveillance backed with threats of punishment has proved influential. Michel Foucault invoked Bentham's panopticon as a model for how modern societies and governments watch people in order to control them.' George Orwell invoked a similar idea three decades earlier with the panoptical telescreen in his novel 1984. More recently, Yale Law School professor Jack Balkin used the panopticon as a metaphor for what he calls the "National Surveillance State," in which governments "use surveillance, data collection, and data mining technologies not only to keep Americans safe from terrorist attacks but also to prevent ordinary crime and deliver social services." **The direction of the panopticon can be reversed, however, creating a "synopticon" in which many can watch one, including the government**.' The television is a synopticon that enables millions to watch the same governmental speech or hearing, though it is not a terribly robust one because the government can control the broadcast. Digital technology and the Internet combine to make a more powerful synopticon that allows many individuals to record and watch an official event or document in sometimes surprising ways. Video recorders placed in police stations and police cars, cell-phone video cameras, and similar tools increase citizens' ability to watch and record government activity. This new media content can be broadcast on the Internet and through other channels to give citizens synoptical power over the government—a power that some describe as "sousveillance" (watching from below)! These and related forms of watching can have a disciplining effect on government akin to Brin's reciprocal transparency. The various forms of watching and checking the presidency described in this book constitute a vibrant presidential synopticon. Empowered by legal reform and technological change, the "many"—in the form of courts, members of Congress and their staff, human rights activists, journalists and their collaborators, and lawyers and watchdogs inside and outside the executive branch—constantly gaze on the "one," the presidency. Acting alone and in mutually reinforcing networks that crossed organizational boundaries, these institutions extracted and revealed information about the executive branch's conduct in war—sometimes to adversarial actors inside the government, and sometimes to the public. The revelations, in turn, forced the executive branch to account for its actions and enabled many institutions to influence its operations. **The presidential synopticon** also **promoted responsible executive action merely through its broadening gaze.** One consequence of a panopticon, in Foucault's words, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."' The same thing has happened in reverse but to similar effect within the executive branch, where officials are much more careful merely by virtue of being watched. The presidential synopticon is in some respects not new. Victor Davis Hanson has argued that "war amid audit, scrutiny, and self-critique" has been a defining feature of the Western tradition for 2,500 years.' From the founding of the nation, American war presidents have been subject to intense scrutiny and criticism in the unusually open society that has characterized the United States. And many of the accountability mechanisms described in this book have been growing since the 1970s in step with the modern presidency. What is new, however, is the scope and depth of these modern mechanisms, their intense legalization, and their robust operation during wartime. In previous major wars the President determined when, how, and where to surveil, target, detain, transfer, and interrogate enemy soldiers, often without public knowledge, and almost entirely without unwanted legal interference from within the executive branch itself or from the other branches of government.' Today these **decisions are known inside and outside the government to an unprecedented degree** and are heavily regulated by laws and judicial decisions that are enforced daily by lawyers and critics inside and outside the presidency. Never before have Congress, the courts, and lawyers had such a say in day-to-day military activities; never before has the Commander in Chief been so influenced, and constrained, by law. This regime has many historical antecedents, but it came together and hit the Commander in Chief hard for the first time in the last decade. It did so because of extensive concerns about excessive presidential power in an indefinite and unusually secretive war fought among civilians, not just abroad but at home as well. These concerns were exacerbated and given credibility by the rhetoric and reality of the Bush administration's executive unilateralism—a strategy that was designed to free it from the web of military and intelligence laws but that instead galvanized forces of reaction to presidential power and deepened the laws' impact. Added to this mix were enormous changes in communication and collaboration technologies that grew to maturity in the decade after 9/11. These changes helped render executive branch secrets harder to keep, and had a flattening effect on the executive branch just as it had on other hierarchical institutions, making connections between (and thus accountability to) actors inside and outside the presidency **much more extensive**.

## 4

The Office of Legal Counsel should write and disclose its legal opinion that increases restrictions on the war powers authority of the President of the United States to conduct targeted killing. The Attorney General should endorse this opinion. The President should sign an executive order implementing this opinion and requiring consultation with the Office of Legal Counsel on future related issues.

The CP is a binding constitutional decision

Dellinger, Assistant Attorney General ’93-’96, et al, 2004

(Walter E. & Dawn Johnsen, Acting Assistant Attorney General 1997-98; Deputy AAG 1993-97 & Randolph Moss, Assistant Attorney General 2000-01, Acting 1998-2000; Deputy AAG 1996-98 & Christopher Schroeder, Acting Assistant Attorney General 1997; Deputy AAG 1994-96 & Joseph R. Guerra, Deputy Assistant Attorney General 1999-2001 & [\*1611] Beth Nolan, Deputy Assistant Attorney General 1996-99; Attorney Advisor 1981-85 & Todd Peterson, Deputy Assistant Attorney General 1997-99; Attorney Advisor 1982-85 & Cornelia T.L. Pillard, Deputy Assistant Attorney General 1998-2000 & H. Jefferson Powell, Deputy Assistant Attorney General and Consultant 1993-2000 & Teresa Wynn Roseborough, Deputy Assistant Attorney General 1994-1996 & Richard Shiffrin, Deputy Assistant Attorney General 1993-97 & William Michael Treanor, Deputy Assistant Attorney General 1998-2001 & David Barron, Attorney Advisor 1996-99 & Stuart Benjamin, Attorney Advisor 1992-1995 & Lisa Brown, Attorney Advisor 1996-97 & Pamela Harris, Attorney Advisor 1993-96 & Neil Kinkopf, Attorney Advisor 1993-97 & Martin Lederman, Attorney Advisor 1994-2002 & Michael Small, Attorney Advisor 1993-96, Appendix to “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

The Office of Legal Counsel (OLC) is the Department of Justice component to which the Attorney General has delegated the function of providing legal advice to **guide the actions of the President and the agencies of the executive branch**. **OLC's legal determinations are** considered **binding on the executive branch**, subject to the supervision of the Attorney General and the ultimate authority of the President. From the outset of our constitutional system, Presidents have recognized that compliance with their constitutional obligation to act lawfully requires a reliable source of legal advice. In 1793, Secretary of State Thomas Jefferson, writing on behalf of President Washington, requested the Supreme Court's advice regarding the United States' treaty obligations with regard to the war between Great Britain and France. The Supreme Court declined the request, in important measure on the grounds that **the Constitution vests responsibility for** such **legal determinations within the executive branch itself**: "The three departments of government ... being in certain respects checks upon each other, and our being judges of a court in the last resort, are considerations which afford strong arguments against the propriety of our extrajudicially deciding the questions alluded to, especially as the power given by the Constitution to the President, of calling on the heads of departments for opinions seems to have been purposely as well as expressly united to the executive departments." Letter from John Jay to George Washington, August 8, 1793, quoted in 4 The Founders' Constitution 258 (Philip B. Kurland & Ralph Lerner, eds. 1987).

From the Washington Administration through the present, Attorneys General, and in recent decades the Office of Legal Counsel, have served as the source of legal determinations regarding the executive's legal obligations and authorities. The resulting body of law, much of which is published in volumes entitled Opinions of the Attorney General and Opinions of the Office of Legal Counsel, offers powerful testimony to the importance of the rule-of-law values that President Washington sought to secure and to the Department of Justice's profound tradition of respect for the rule of law. Administrations of both political parties [\*1604] have maintained this tradition, which reflects a dedication to the rule of law that is as significant and as important to the country as that shown by our courts. As a practical matter, the responsibility for preserving this tradition cannot rest with OLC alone. It is incumbent upon the Attorney General and the President to ensure that OLC's advice is sought on important and close legal questions and that the advice given reflects the best executive branch traditions. The principles set forth in this document are based in large part on the longstanding practices of the Attorney General and the Office of Legal Counsel, across time and administrations.

Solves perception and precedent

Johnsen, professor of law at Indiana University, August 2007

(Dawn, “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

Perhaps most essential to avoiding a culture in which OLC becomes merely an advocate of the administration's policy preferences is transparency [\*1597] in the specific legal advice that informs executive action, as well as in the general governing processes and standards. The Guidelines state that "**OLC should publicly disclose its written legal opinions** in a timely manner, absent strong reasons for delay or nondisclosure." n151 The Guidelines describe several values served by a presumption of public disclosure, beyond the general public accountability that accompanies openness in government. **The likelihood of public disclosure will encourage both the reality and the appearance of governmental adherence to the rule of law by deterring "excessive claims of executive authority" and promoting public confidence that executive branch action actually is taken with regard to legal constraints**. n152 The Guidelines note as well that public discourse and "the development of constitutional meaning" may benefit from the executive's important voice, valuable perspective, and expertise. n153

## Solvency

Util’s the only moral framework

**Murray 97** (Alastair, Professor of Politics at U. Of Wales-Swansea, *Reconstructing Realism*, p. 110)

Weber emphasised that, while the 'absolute ethic of the gospel' must be taken seriously, it is inadequate to the tasks of evaluation presented by politics. Against this 'ethic of ultimate ends' — Gesinnung — he therefore proposed the 'ethic of responsibility' — Verantwortung. First, whilst the former dictates only the purity of intentions and pays no attention to consequences, the ethic of responsibility commands acknowledgement of the divergence between intention and result. Its adherent 'does not feel in a position to burden others with the results of his [OR HER] own actions so far as he was able to foresee them; he [OR SHE] will say: these results are ascribed to my action'. Second, the 'ethic of ultimate ends' is incapable of dealing adequately with the moral dilemma presented by the necessity of using evil means to achieve moral ends: Everything that is striven for through political action operating with violent means and following an ethic of responsibility endangers the 'salvation of the soul.' If, however, one chases after the ultimate good in a war of beliefs, following a pure ethic of absolute ends, then the goals may be changed and discredited for generations, because responsibility for consequences is lacking. The 'ethic of responsibility', on the other hand, can accommodate this paradox and limit the employment of such means, because it accepts responsibility for the consequences which they imply. Thus, Weber maintains that only the ethic of responsibility can cope with the 'inner tension' between the 'demon of politics' and 'the god of love'. 9 The realists followed this conception closely in their formulation of a political ethic.10 This influence is particularly clear in Morgenthau.11 In terms of the first element of this conception, the rejection of a purely deontological ethic, Morgenthau echoed Weber's formulation, arguing tha/t:the political actor has, beyond the general moral duties, a special moral responsibility to act wisely ... The individual, acting on his own behalf, may act unwisely without moral reproach as long as the consequences of his inexpedient action concern only [HER OR] himself. What is done in the political sphere by its very nature concerns others who must suffer from unwise action. What is here done with good intentions but unwisely and hence with disastrous results is morally defective; for it violates the ethics of responsibility to which all action affecting others, and hence political action par excellence, is subject.12 This led Morgenthau to argue, in terms of the concern to reject doctrines which advocate that the end justifies the means, that the impossibility of the logic underlying this doctrine 'leads to the negation of absolute ethical judgements altogether'.13

Reject value to life impacts - it's inevitable and can't be universally asserted

Can't change the system

**Mearsheimer 1**, Poli. Sci. Prof. @ U. Chicago, (John J., *The Tragedy of Great Power Politics*)

Great powers cannot commit themselves to the pursuit of a peaceful world order for two reasons. First, states are unlikely to agree on a general formula for bolstering peace. Certainly, international relations scholars have never reached a consensus on what the blueprint should look like. In fact, it seems there are about as many theories on the causes of war and peace as there are scholars studying the subject. But more important, poli­cymakers are unable to agree on how to create a stable world. For exam­ple, at the Paris Peace Conference after World War I, important differences over how to create stability in Europe divided Georges Clemenceau, David Lloyd George, and Woodrow Wilson.49 In particular, Clemenceau was determined to impose harsher terms on Germany over the Rhineland than was either Lloyd George or Wilson, while Lloyd George stood out as the hard-liner on German reparations. The Treaty of Versailles, not sur­prisingly, did little to promote European stability.

Furthermore, consider American thinking on how to achieve stability in Europe in the early days of the Cold War.50 The key elements for a sta­ble and durable system were in place by the early 1950s. They included the division of Germany, the positioning of American ground forces in Western Europe to deter a Soviet attack, and ensuring that West Germany would not seek to develop nuclear weapons. Officials in the Truman administration, however, disagreed about whether a divided Germany would be a source of peace or war. For example, George Kennan and Paul Nitze, who held important positions in the State Department, believed that a divided Germany would be a source of instability, whereas Secretary of State Dean Acheson disagreed with them. In the 1950s, President Eisenhower sought to end the American commitment to defend Western Europe and to provide West Germany with its own nuclear deterrent. This policy, which was never fully adopted, nevertheless caused significant instability in Europe, as it led directly to the Berlin crises of 1958-59 and 1961."

Second, great powers cannot put aside power considerations and work to promote international peace because they cannot be sure that their efforts will succeed. If their attempt fails, they are likely to pay a steep price for having neglected the balance of power, because if an aggressor appears at the door there will be no answer when they dial 911. That is a risk few states are willing to run. Therefore, prudence dictates that they behave according to realist logic. This line of reasoning accounts for why collective security schemes, which call for states to put aside narrow con­cerns about the balance of power and instead act in accordance with the broader interests of the international community, invariably die at birth.

Squo is improving by all measures - disproves terminal impact claims

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

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

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

No genocide

**O’Kane, 97** (“Modernity, the Holocaust, and politics”, Economy and Society, February, ebsco)

Chosen policies cannot be relegated to the position of immediate condition (Nazis in power) in the explanation of the Holocaust. Modern bureaucracy is not ‘intrinsically capable of genocidal action’ (Bauman 1989: 106). Centralized state coercion has no natural move to terror. In the explanation of modern genocides it is chosen policies which play the greatest part, whether in effecting bureaucratic secrecy, organizing forced labour, implementing a system of terror, harnessing science and technology or introducing extermination policies, as means and as ends. As Nazi Germany and Stalin’s USSR have shown, furthermore, those chosen policies of genocidal government turned away from and not towards modernity. The choosing of policies, however, is not independent of circumstances. An analysis of the history of each case plays an important part in explaining where and how genocidal governments come to power and analysis of political institutions and structures also helps towards an understanding of the factors which act as obstacles to modern genocide. But it is not just political factors which stand in the way of another Holocaust in modern society. Modern societies have not only pluralist democratic political systems but also economic pluralism where workers are free to change jobs and bargain wages and where independent firms, each with their own independent bureaucracies, exist in competition with state-controlled enterprises. In modern societies this economic pluralism both promotes and is served by the open scientific method. By ignoring competition and the capacity for people to move between organizations whether economic, political, scientific or social, Bauman overlooks crucial but also very ‘ordinary and common’ attributes of truly modern societies. It is these very ordinary and common attributes of modernity which stand in the way of modern genocides.

## --Defense

Civilian casualties are low

Byman 13 (Daniel Byman, Brookings Institute Saban Center for Middle East Policy, Research Director, and Foreign Policy, Senior Fellow, July/Aug 2013, “Why Drones Work: The Case for the Washington's Weapon of Choice”, www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman)

The truth is that all the public numbers are unreliable. Who constitutes a civilian is often unclear; when trying to kill the Pakistani Taliban leader Baitullah Mehsud, for example, the United States also killed his doctor. The doctor was not targeting U.S. or allied forces, but he was aiding a known terrorist leader. In addition, most strikes are carried out in such remote locations that it is nearly impossible for independent sources to verify who was killed. In Pakistan, for example, the overwhelming majority of drone killings occur in tribal areas that lie outside the government’s control and are prohibitively dangerous for Westerners and independent local journalists to enter. Thus, although the New America Foundation has come under fire for relying heavily on unverifiable information provided by anonymous U.S. officials, reports from local Pakistani organizations, and the Western organizations that rely on them, are no better: their numbers are frequently doctored by the Pakistani government or by militant groups. After a strike in Pakistan, militants often cordon off the area, remove their dead, and admit only local reporters sympathetic to their cause or decide on a body count themselves. The U.S. media often then draw on such faulty reporting to give the illusion of having used multiple sources. As a result, statistics on civilians killed by drones are often inflated. One of the few truly independent on-the-ground reporting efforts, conducted by the Associated Press last year, concluded that the strikes “are killing far fewer civilians than many in [Pakistan] are led to believe.” But even the most unfavorable estimates of drone casualties reveal that the ratio of civilian to militant deaths—about one to three, according to the Bureau of Investigative Journalism—is lower than it would be for other forms of strikes. Bombings by F-16s or Tomahawk cruise missile salvos, for example, pack a much more deadly payload. In December 2009, the United States fired Tomahawks at a suspected terrorist training camp in Yemen, and over 30 people were killed in the blast, most of them women and children. At the time, the Yemeni regime refused to allow the use of drones, but had this not been the case, a drone’s real-time surveillance would probably have spotted the large number of women and children, and the attack would have been aborted. Even if the strike had gone forward for some reason, the drone’s far smaller warhead would have killed fewer innocents. Civilian deaths are tragic and pose political problems. But the data show that drones are more discriminate than other types of force.

We control trends

Bowden 13 (Mark Bowden is a national correspondent for The Atlantic, and a best-selling author. His book Black Hawk Down, a finalist for the National Book Award, was the basis of the film of the same name. His book Killing Pablo won the Overseas Press Club's 2001 Cornelius Ryan Award as the book of the year. Among his other books are Guests of the Ayatollah, an account of the 1979 Iran hostage crisis, which was listed by Newsweek as one of "The 50 Books for Our Times." His most recent books are The Best Game Ever, the story of the 1958 NFL championship game, and Worm, which tells the story of the Conficker computer worm, based on the article "The Enemy Within," published in this magazine., 8/14/2013, "The Killing Machines", www.theatlantic.com/magazine/archive/2013/09/the-killing-machines-how-to-think-about-drones/309434/?single\_page=true)

Everyone agrees that the amount of collateral damage has dropped steeply over the past two years. The Bureau of Investigative Journalism estimates that civilian deaths from drone strikes in Pakistan fell to 12 percent of total deaths in 2011 and to less than 3 percent in 2012.

No civilian death is acceptable, of course. Each one is tragic. But any assessment of civilian deaths from drone strikes needs to be compared with the potential damage from alternative tactics. Unless we are to forgo the pursuit of al-Qaeda terrorists entirely, U.S. forces must confront them either from the air or on the ground, in some of the remotest places on Earth. As aerial attacks go, drones are far more precise than manned bombers or missiles. That narrows the choice to drone strikes or ground assaults.

Sometimes ground assaults go smoothly. Take the one that killed Osama bin Laden. It was executed by the best-trained, most-experienced soldiers in the world. Killed were bin Laden; his adult son Khalid; his primary protectors, the brothers Abu Ahmed al-Kuwaiti and Abrar al-Kuwaiti; and Abrar’s wife Bushra. Assuming Bushra qualifies as a civilian, even though she was helping to shelter the world’s most notorious terrorist, civilian deaths in the raid amounted to 20 percent of the casualties. In other words, even a near-perfect special-ops raid produced only a slight improvement over the worst estimates of those counting drone casualties. Many assaults are not that clean.

In fact, ground combat almost always kills more civilians than drone strikes do. Avery Plaw, a political scientist at the University of Massachusetts, estimates that in Pakistani ground offensives against extremists in that country’s tribal areas, 46 percent of those killed are civilians. Plaw says that ratios of civilian deaths from conventional military conflicts over the past 20 years range from 33 percent to more than 80 percent. “A fair-minded evaluation of the best data we have available suggests that the drone program compares favorably with similar operations and contemporary armed conflict more generally,” he told The New York Times.

When you consider the alternatives—even, and perhaps especially, if you are deeply concerned with sparing civilians—you are led, as Obama was, to the logic of the drone.

Distancing arguments are wrong

Etzioni 13 (Amitai Etzioni is a professor of international relations at George Washington University and author of Hot Spots: American Foreign Policy in a Post-Human-Rigid World., March-April 2013, "The Great Drone Debate", aladinrc.wrlc.org/bitstream/handle/1961/14729/Etzioni\_DroneDebate.pdf?sequence=1,)

Mary Dudziak of the University of Southern California’s Gould School of Law opines that “[d]rones are a technological step that further isolates the American people from military action, undermining political checks on . . . endless war.” Similarly, Noel Sharkey, in The Guardian, worries that drones represent “the ﬁnal step in the industrial revolution of war—a clean factory of slaughter with no physical blood on our hands and none of our own side killed.” This kind of cocktail-party sociology does not stand up to even the most minimal critical examination. Would the people of the United States, Afghanistan, and Pakistan be better off if terrorists were killed in “hot” blood—say, knifed by Special Forces, blood and brain matter splashing in their faces? Would they be better off if our troops, in order to reach the terrorists, had to go through improvised explosive devices blowing up their legs and arms and gauntlets of machinegun ﬁre and rocket-propelled grenades—traumatic experiences that turn some of them into psychopath-like killers? Perhaps if all or most ﬁghting were done in a cold-blooded, push-button way, it might well have the effects suggested above. However, as long as what we are talking about are a few hundred drone drivers, what they do or do not feel has no discernible effects on the nation or the leaders who declare war. Indeed, there is no evidence that the introduction of drones (and before that, high-level bombing and cruise missiles that were criticized on the same grounds) made going to war more likely or its extension more acceptable. Anybody who followed the American disengagement in Vietnam after the introduction of high-level bombing, or the U.S. withdrawal from Afghanistan (and Iraq)—despite the considerable increases in drone strikes—knows better. In effect, the opposite argument may well hold: if the United States could not draw on drones in Yemen and the other new theaters of the counterterrorism campaign, the nation might well have been forced to rely more on conventional troops and prolong our involvement in those areas, a choice which would greatly increase our casualties and zones of warfare. This line of criticism also neglects a potential upside of drones. As philosopher Bradley Strawser notes, this ability to deploy force abroad with minimal United States casualties may allow America to intervene in emerging humanitarian crises across the world with a greater degree of ﬂexibility and effectiveness.61 Rather than reliving another “Blackhawk down” scenario, the United States can follow the model of the Libya intervention, where drones were used by NATO forces to eliminate enemy armor and air defenses, paving the way for the highly successful air campaign which followed, as reported by The Guardian’s Nick Hopkins. As I see it, however, the main point of moral judgment comes earlier in the chain of action, well before we come to the question of which means are to be used to kill the enemy. The main turning point concerns the question of whether we should go to war at all. This is the crucial decision because once we engage in war, we must assume that there are going to be a large number of casualties on all sides—casualties that may well include innocent civilians. Often, discussions of targeted killings strike me as being written by people who yearn for a nice clean war, one in which only bad people will be killed using surgical strikes that inﬂict no collateral damage. Very few armed confrontations unfold in this way. Hence, when we deliberate whether or not to ﬁght, we should assume that once we step on this train, it is very likely to carry us to places we would rather not go. Drones are merely a new stepping stone on this woeful journey. Thus, we should carefully deliberate before we join or initiate any new armed ﬁghts, but draw on drones extensively, if ﬁght we must. They are more easily scrutinized and reviewed, and are more morally justiﬁed, than any other means of warfare available.

"Simulation" is also wrong

Brooks 12 (Rosa Brooks is a law professor at Georgetown University and a Schwartz senior fellow at the New America Foundation. She served as a counselor to the U.S. defense undersecretary for policy from 2009 to 2011 and previously served as a senior advisor at the U.S. State Department. Her weekly column runs every Wednesday and is accompanied by a blog, By Other Means., 9/5/2012, "What's Not Wrong With Drones", www.foreignpolicy.com/articles/2012/09/05/whats\_not\_wrong\_with\_drones)

3. Drones Turn Killing into a Video Game.

Writing in the Guardian, Phillip Allston (the United Nations special rapporteur on extrajudicial, summary or arbitrary executions) and Hina Shamsi of the ACLU decry "the PlayStation mentality" created by drone technologies. "Young military personnel raised on a diet of video games now kill real people remotely using joysticks. Far removed from the human consequences of their actions, how will this generation of fighters value the right to life?"

But are drones more "video game-like" than, say, having cameras in the noses of cruise missiles? Those old enough to remember the first Gulf War will recall the shocking novelty of images taken by cameras inside U.S. Tomahawk missiles, the jolting, grainy images in the crosshairs before everything went ominously black.

Regardless, there's little evidence that drone technologies "reduce" their operators' awareness of human suffering. If anything, drone operators may be far more keenly aware of the suffering they help inflict than any distant sniper or bomber pilot could be.

Journalist Daniel Klaidman reports the words of one CIA drone operator, a former Air Force pilot: "I used to fly my own air missions.... I dropped bombs, hit my target load, but had no idea who I hit. [With drones], I can look at their faces... see these guys playing with their kids and wives.... After the strike, I see the bodies being carried out of the house. I see the women weeping and in positions of mourning. That's not PlayStation; that's real."

Increasingly, there's evidence that drone pilots, just like combat troops, can suffer from post-traumatic stress disorder: watching a man play with his children, then seeing his mangled body takes a psychological toll. A recent Air Force study found that 29 percent of drone pilots suffered from "burnout," with 17 percent "clinically distressed."

Data proves - drones are more moral than alternatives

Anderson 13 (Kenneth Anderson is a professor of international law at American University and a member of the Task Force on National Security and Law at the Hoover Institution, June 2013, "The Case for Drones", https://www.commentarymagazine.com/articles/the-case-for-drones/)

The most offensively foolish (though endlessly repeated) objection raised against drones was the one made by Jane Mayer in her influential 2009 New Yorker article, “The Predator War”: that drone pilots are so distant from their targets that they encourage a “push-button,” video-game mentality toward killing. The professional military find the claim bizarre, and it fails to take into account the other kinds of weapons and platforms in use. Note, the pilot of a manned craft is often thousands of feet away and a mile above a target looking at a tiny coordinates screen. And what of the sailor, deep in the below-decks of a ship, or a submarine, firing a cruise missile with no awareness of any kind about the target hundreds of miles away?

For that matter, the common perception of drones as a sci-fi combination of total surveillance and complete discretion in where and when to strike is simply wrong. The drone pilot might sit in Nevada, but the drone itself has a limited range, requires an airstrip, fuel, repairs, and 200 or so personnel to keep it in the air. All this physical infrastructure must be close to the theater of operations. Stress rates among drone pilots are at least as high as those of manned aircraft pilots; they are far from having a desensitized attitude toward killing. This appears to be partially because these are not mere combat operations but fundamentally and primarily intelligence operations. Drone pilots engaged in targeted killing operations watch their targets from a very personal distance via sensor technology, through which they track intimate, daily patterns of life to gather information and, perhaps, to determine precisely the best moment to strike, when collateral damage might be least.

As one drone operator told me, it is not as if one sees the terrible things the target is engaged in doing that made him a target in the first place; instead, it feels, after a few weeks of observation, as though you are killing your neighbor.

In any case, the mentality of drone pilots in targeted-killing ops is irrelevant to firing decisions; they do not make decisions to fire weapons. The very existence of a remote platform, one with long loiter times and maximum tactical surveillance, enables decisions to fire by committee. And deliberately so, notes Gregory McNeal, a professor of law at Pepperdine University, who has put together the most complete study of the still largely secret decision-making process—the so-called disposition lists and kill matrix the New York Times has described in front page stories. It starts from the assessment of intelligence through meetings in which determinations, including layers of legal review, are made about whether a potential target has sufficient value and, finally, whether and when to fire the weapon in real time. The drone pilot is just a pilot.

Targeting is therefore a bureaucratized process that necessarily relies on judgment and estimations of many uncertainties. Its discretionary and bloodless nature alarms critics, as does its bureaucratic regularization. Yet it is essential to understand, as McNeal observes, that this is not fundamentally different from any other process of targeting that takes place in conventional war, save that it seeks to pinpoint the targets. Conventional war targeting, by contrast, seeks not individuals, but merely formations of hostile forces as groups. In either case, targeting is inherently intelligence-driven and a highly organized activity, whether in the military or across the broader national-security agencies.

Concerns about the nature of the warfare itself leads to a sharing and checking of that discretion among actors; in turn, this leads to committees’ making decisions; and by the time this process of bureaucratic rationalization is complete, it looks like military targeting processes in conventional war, with an extra dollop of intelligence assessments, not some mysterious Star Chamber assassination committee. After all, any group of generals deciding where to hit the enemy in war is, by definition, a “kill list” committee.

## --Offense

Drones key to solve terror attacks on the US

Johnston 12 (Patrick B. Johnston is an associate political scientist at the RAND Corporation, a nonprofit, nonpartisan research institution. He is the author of "Does Decapitation Work? Assessing the Effectiveness of Leadership Targeting in Counterinsurgency Campaigns," published in International Security (Spring 2012)., 8/22/2012, "Drone Strikes Keep Pressure on al-Qaida", www.rand.org/blog/2012/08/drone-strikes-keep-pressure-on-al-qaida.html)

Should the U.S. continue to strike at al-Qaida's leadership with drone attacks? A recent poll shows that while most Americans approve of drone strikes, in 17 out of 20 countries, more than half of those surveyed disapprove of them.

My study of leadership decapitation in 90 counter-insurgencies since the 1970s shows that when militant leaders are captured or killed militant attacks decrease, terrorist campaigns end sooner, and their outcomes tend to favor the government or third-party country, not the militants.

Those opposed to drone strikes often cite the June 2009 one that targeted Pakistani Taliban leader Baitullah Mehsud at a funeral in the Tribal Areas. That strike reportedly killed 60 civilians attending the funeral, but not Mehsud. He was killed later by another drone strike in August 2009. His successor, Hakimullah Mehsud, developed a relationship with the foiled Times Square bomber Faisal Shahzad, who cited drone strikes as a key motivation for his May 2010 attempted attack.

Compared to manned aircraft, drones have some advantages as counter-insurgency tools, such as lower costs, longer endurance and the lack of a pilot to place in harm's way and risk of capture. These characteristics can enable a more deliberative targeting process that serves to minimize unintentional casualties. But the weapons employed by drones are usually identical to those used via manned aircraft and can still kill civilians—creating enmity that breeds more terrorists.

Yet many insurgents and terrorists have been taken off the battlefield by U.S. drones and special-operations forces. Besides Mehsud, the list includes Anwar al-Awlaki of al-Qaida in the Arabian Peninsula; al-Qaida deputy leader Abu Yahya al-Li-bi; and, of course, al-Qaida leader Osama bin Laden. Given that list, it is possible that the drone program has prevented numerous attacks by their potential followers, like Shazad.

What does the removal of al-Qaida leadership mean for U.S. national security? Though many in al-Qaida's senior leadership cadre remain, the historical record suggests that "decapitation" will likely weaken the organization and could cripple its ability to conduct major attacks on the U.S. homeland.

Killing terrorist leaders is not necessarily a knockout blow, but can make it harder for terrorists to attack the U.S. Members of al-Qaida's central leadership, once safely amassed in northwestern Pakistan while America shifted its focus to Iraq, have been killed, captured, forced underground or scattered to various locations with little ability to communicate or move securely.

Recently declassified correspondence seized in the bin Laden raid shows that the relentless pressure from the drone campaign on al-Qaida in Pakistan led bin Laden to advise al-Qaida operatives to leave Pakistan's Tribal Areas as no longer safe. Bin Laden's letters show that U.S. counterterrorism actions, which had forced him into self-imposed exile, had made running the organization not only more risky, but also more difficult.

As al-Qaida members trickle out of Pakistan and seek sanctuary elsewhere, the U.S. military is ramping up its counterterrorism operations in Somalia and Yemen, while continuing its drone campaign in Pakistan. Despite its controversial nature, the U.S. counter-terrorism strategy has demonstrated a degree of effectiveness.

The Obama administration is committed to reducing the size of the U.S. military's footprint overseas by relying on drones, special operations forces, and other intelligence capabilities. These methods have made it more difficult for al-Qaida remnants to reconstitute a new safe haven, as Osama bin Laden did in Afghanistan in 1996, after his ouster from Sudan.

Extinction

Hellman 08 (Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, <http://www.nuclearrisk.org/paper.pdf>)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

Terrorism's a threat without drones

AFP 8/8/13

AFP, August 8, 2013, "UN Report: Al Qaeda Down, But Not Out", http://www.huffingtonpost.com/2013/08/07/un-report-al-qaeda\_n\_3722153.html

Osama Bin Laden's successor as the leader of Al-Qaeda has struggled to unite its various factions, a UN report said Wednesday, but the group remains an evolving threat.

The report, delivered to the UN Security Council by a group of experts, said Al-Qaeda's Egyptian leader Ayman Al-Zawahiri had failed to rebuild the group's core leadership in Pakistan.

But it said various groups affiliated with Al-Qaeda are still adapting their tactics and seeking new targets, while retaining the ability to conduct deadly strikes.

And, while the French-led military operation in Mali and an African Union campaign in Somalia have pushed back Al-Qaeda militants, the Syrian civil war has seen hundreds of foreign volunteers join the cause there.

"Al-Qaeda and its affiliates are more diverse and differentiated than before, united only by a loose ideology and a commitment to terrorist violence," the report said.

"A fragmented and weakened Al-Qaeda has not been extinguished," it said, adding: "the reality of Al-Qaeda's diminished capabilities and limited appeal does not mean that the threat of Al-Qaeda attacks has passed.

"Individuals and cells associated with Al-Qaeda and its affiliates continue to innovate with regard to targets, tactics and technology."

The UN report tallies with claims made by US officials, including President Barack Obama, that so-called "core Al-Qaeda" has been weakened since Bin Laden's death in May 2011, while its regional wings continue to fight.

Prevents Pakistan collapse

Curtis 7/15/13

Lisa Curtis is a senior research fellow at the Heritage Foundation, The National Interest, July 15, 2013, "Pakistan Makes Drones Necessary", http://nationalinterest.org/commentary/pakistan-makes-drones-necessary-8725?page=show

But until Islamabad cracks down more aggressively on groups attacking U.S. interests in the region and beyond, drones will remain an essential tool for fighting global terrorism. Numbering over three hundred and fifty since 2004, drone strikes in Pakistan have killed more than two dozen Al Qaeda operatives and hundreds of militants targeting U.S. and coalition forces.

President Obama made clear in his May 23 speech at the National Defense University that Washington would continue to use drones in Pakistan’s tribal border areas to support stabilization efforts in neighboring Afghanistan, even as it seeks to increase transparency and tighten targeting of the drone program in the future. Obama also defended the use of drones from a legal and moral standpoint, noting that by preemptively striking at terrorists, many innocent lives had been saved.

The most compelling evidence of the efficacy of the drone program came from Osama bin Laden himself, who shortly before his death contemplated moving Al Qaeda operatives from Pakistan into forested areas of Afghanistan in an attempt to escape the drones’ reach, according to Peter Bergen, renowned author of Manhunt: The Ten-Year Search for Bin Laden from 9/11 to Abbottabad.

How to Reduce the Need for Drones

The continuation of drone strikes signals U.S. frustration with Pakistan’s unwillingness to crack down consistently and comprehensively on groups that find sanctuary in Pakistan’s tribal areas. There continue to be close ties between the Pakistan military and the Taliban-allied Haqqani Network, which attacks U.S. forces in Afghanistan and undermines the overall U.S. and NATO strategy there.

The most recent U.S. drone attack inside Pakistani territory occurred last week against militants from the Haqqani Network located in North Waziristan, along the border with Afghanistan. In early June, drone missiles also targeted a group of fighters in Pakistan that were preparing to cross over into Afghanistan. On both occasions, the Pakistani Foreign Ministry condemned the attacks as counterproductive and said they raised serious questions about human rights.

No doubt a better alternative to the drones would be Pakistani action against terrorist sanctuaries. But Pakistan has stonewalled repeated U.S. requests for operations against the Haqqani network.

In addition to continuing drone strikes as necessary, the U.S. should further condition military aid to Pakistan based on its willingness to crack down on the Haqqani Network. In early June, the House of Representatives approved language in the FY 2014 National Defense Authorization Act that conditions reimbursement of Coalition Support Funds (CSF) pending Pakistani actions against the Haqqani network. Hopefully, the language will be retained in the final bill.

The United States provides CSF funds to reimburse Pakistan for the costs associated with stationing some one hundred thousand Pakistani troops along the border with Afghanistan. Pakistan has received over $10 billion in CSF funding over the last decade. One must question the worth of having troops stationed in this region if they refuse to go after one of the most dangerous terrorist groups.

Details of the relationship between the Pakistan military and the Haqqani Network are laid out in a recent book, Fountainhead of Jihad: The Haqqani Nexus, 1973–2012 by Vahid Brown and Don Rassler. The book highlights that Pakistan is actively assisting the Haqqani network the same way it has over the last twenty years, through training, tactical field advice, financing and material support. The assistance, the authors note, helps to sustain the Haqqani group and enhance its effectiveness on the battlefield.

Drones Help Pakistan

It is no secret that the drone strikes often benefit the Pakistani state. On May 29, for example, a drone missile strike killed the number two leader of the Pakistani Taliban (also referred to as the Tehrik-e-Taliban Pakistan or TTP), Waliur Rehman. The TTP has killed hundreds of Pakistani security forces and civilians in terrorist attacks throughout the country since its formation in 2007. Furthermore, the group conducted a string of suicide attacks and targeted assassinations against Pakistani election workers, candidates, and party activists in the run-up to the May elections, declaring a goal of killing democracy.

Complicating the picture even further is the fact that Pakistan’s support for the Haqqani network indirectly benefits the Pakistani Taliban. The Haqqanis play a pivotal role in the region by simultaneously maintaining ties with Al Qaeda, Pakistani intelligence and anti-Pakistan groups like the TTP. With such a confused and self-defeating Pakistani strategy, Washington has no choice but to rely on the judicious use of drone strikes.

Complicated Relationship

The U.S. will need to keep a close eye on the tribal border areas, where there is a nexus of terrorist groups that threaten not only U.S. interests but also the stability of the Pakistani state. Given that Pakistan is home to more international terrorists than almost any other country and, at the same time, has one of the fastest growing nuclear arsenals, the country will remain of vital strategic interest for Washington for many years to come.

Though the drone issue will continue to be a source of tension in the relationship, it is doubtful that it alone would derail ties. The extent to which the United States will continue to rely on drone strikes ultimately depends on Islamabad’s willingness to develop more decisive and comprehensive counterterrorism policies that include targeting groups like the Haqqani Network.

Collapse goes nuclear

William Pitt 9 is a New York Times and internationally bestselling author of two books: "War on Iraq: What Team Bush Doesn't Want You to Know" and "The Greatest Sedition Is Silence”, 5/8, “Unstable Pakistan Threatens the World,” <http://www.arabamericannews.com/news/index.php?mod=article&cat=commentary&article=2183>,

But a suicide bomber in Pakistan rammed a car packed with explosives into a jeep filled with troops today, killing five and wounding as many as 21, including several children who were waiting for a ride to school. Residents of the region where the attack took place are fleeing in terror as gunfire rings out around them, and government forces have been unable to quell the violence. Two regional government officials were beheaded by militants in retaliation for the killing of other militants by government forces. As familiar as this sounds, it did not take place where we have come to expect such terrible events. This, unfortunately, is a whole new ballgame. It is part of another conflict that is brewing, one which puts what is happening in Iraq and Afghanistan in deep shade, and which represents a grave and growing threat to us all. Pakistan is now trembling on the edge of violent chaos, and is doing so with nuclear weapons in its hip pocket, right in the middle of one of the most dangerous neighborhoods in the world. The situation in brief: Pakistan for years has been a nation in turmoil, run by a shaky government supported by a corrupted system, dominated by a blatantly criminal security service, and threatened by a large fundamentalist Islamic population with deep ties to the Taliban in Afghanistan. All this is piled atop an ongoing standoff with neighboring India that has been the center of political gravity in the region for more than half a century. The fact that Pakistan, and India, and Russia, and China all possess nuclear weapons and share the same space means any ongoing or escalating violence over there has the real potential to crack open the very gates of Hell itself. Recently, the Taliban made a military push into the northwest Pakistani region around the Swat Valley. According to a recent Reuters report: The (Pakistani) army deployed troops in Swat in October 2007 and used artillery and gunship helicopters to reassert control. But insecurity mounted after a civilian government came to power last year and tried to reach a negotiated settlement. A peace accord fell apart in May 2008. After that, hundreds — including soldiers, militants and civilians — died in battles. Militants unleashed a reign of terror, killing and beheading politicians, singers, soldiers and opponents. They banned female education and destroyed nearly 200 girls' schools. About 1,200 people were killed since late 2007 and 250,000 to 500,000 fled, leaving the militants in virtual control. Pakistan offered on February 16 to introduce Islamic law in the Swat valley and neighboring areas in a bid to take the steam out of the insurgency. The militants announced an indefinite cease-fire after the army said it was halting operations in the region. President Asif Ali Zardari signed a regulation imposing sharia in the area last month. But the Taliban refused to give up their guns and pushed into Buner and another district adjacent to Swat, intent on spreading their rule. The United States, already embroiled in a war against Taliban forces in Afghanistan, must now face the possibility that Pakistan could collapse under the mounting threat of Taliban forces there. Military and diplomatic advisers to President Obama, uncertain how best to proceed, now face one of the great nightmare scenarios of our time. "Recent militant gains in Pakistan," reported The New York Times on Monday, "have so alarmed the White House that the national security adviser, Gen. James L. Jones, described the situation as 'one of the very most serious problems we face.'" "Security was deteriorating rapidly," reported The Washington Post on Monday, "particularly in the mountains along the Afghan border that harbor al-Qaeda and the Taliban, intelligence chiefs reported, and there were signs that those groups were working with indigenous extremists in Pakistan's populous Punjabi heartland. The Pakistani government was mired in political bickering. The army, still fixated on its historical adversary India, remained ill-equipped and unwilling to throw its full weight into the counterinsurgency fight. But despite the threat the intelligence conveyed, Obama has only limited options for dealing with it. Anti-American feeling in Pakistan is high, and a U.S. combat presence is prohibited. The United States is fighting Pakistan-based extremists by proxy, through an army over which it has little control, in alliance with a government in which it has little confidence." It is believed Pakistan is currently in possession of between 60 and 100 nuclear weapons. Because Pakistan's stability is threatened by the wide swath of its population that shares ethnic, cultural and religious connections to the fundamentalist Islamic populace of Afghanistan, fears over what could happen to those nuclear weapons if the Pakistani government collapses are very real. "As the insurgency of the Taliban and Al Qaeda spreads in Pakistan," reported the Times last week, "senior American officials say they are increasingly concerned about new vulnerabilities for Pakistan's nuclear arsenal, including the potential for militants to snatch a weapon in transport or to insert sympathizers into laboratories or fuel-production facilities. In public, the administration has only hinted at those concerns, repeating the formulation that the Bush administration used: that it has faith in the Pakistani Army. But that cooperation, according to officials who would not speak for attribution because of the sensitivity surrounding the exchanges between Washington and Islamabad, has been sharply limited when the subject has turned to the vulnerabilities in the Pakistani nuclear infrastructure." "The prospect of turmoil in Pakistan sends shivers up the spines of those U.S. officials charged with keeping tabs on foreign nuclear weapons," reported Time Magazine last month. "Pakistan is thought to possess about 100 — the U.S. isn't sure of the total, and may not know where all of them are. Still, if Pakistan collapses, the U.S. military is primed to enter the country and secure as many of those weapons as it can, according to U.S. officials. Pakistani officials insist their personnel safeguards are stringent, but a sleeper cell could cause big trouble, U.S. officials say." In other words, a shaky Pakistan spells trouble for everyone, especially if America loses the footrace to secure those weapons in the event of the worst-case scenario. If Pakistani militants ever succeed in toppling the government, several very dangerous events could happen at once. Nuclear-armed India could be galvanized into military action of some kind, as could nuclear-armed China or nuclear-armed Russia. If the Pakistani government does fall, and all those Pakistani nukes are not immediately accounted for and secured, the specter (or reality) of loose nukes falling into the hands of terrorist organizations could place the entire world on a collision course with unimaginable disaster. We have all been paying a great deal of attention to Iraq and Afghanistan, and rightly so. The developing situation in Pakistan, however, needs to be placed immediately on the front burner.

Drones are effective and alternatives are worse—a clear policy solves criticism

Byman 13 (Daniel Byman, Brookings Institute Saban Center for Middle East Policy, Research Director, and Foreign Policy, Senior Fellow, July/Aug 2013, “Why Drones Work: The Case for the Washington's Weapon of Choice”, www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman)

Despite President Barack Obama’s recent call to reduce the United States’ reliance on drones, they will likely remain his administration’s weapon of choice. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, Obama has signed off on over 400 of them in the last four years, making the program the centerpiece of U.S. counterterrorism strategy. The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups. And they have done so at little financial cost, at no risk to U.S. forces, and with fewer civilian casualties than many alternative methods would have caused. Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, drone strikes remain a necessary instrument of counterterrorism. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage. So drone warfare is here to stay, and it is likely to expand in the years to come as other countries’ capabilities catch up with those of the United States. But Washington must continue to improve its drone policy, spelling out clearer rules for extrajudicial and extraterritorial killings so that tyrannical regimes will have a harder time pointing to the U.S. drone program to justify attacks against political opponents. At the same time, even as it solidifies the drone program, Washington must remain mindful of the built-in limits of low-cost, unmanned interventions, since the very convenience of drone warfare risks dragging the United States into conflicts it could otherwise avoid. NOBODY DOES IT BETTER The Obama administration relies on drones for one simple reason: they work. According to data compiled by the New America Foundation, since Obama has been in the White House, U.S. drones have killed an estimated 3,300 al Qaeda, Taliban, and other jihadist operatives in Pakistan and Yemen. That number includes over 50 senior leaders of al Qaeda and the Taliban—top figures who are not easily replaced. In 2010, Osama bin Laden warned his chief aide, Atiyah Abd al-Rahman, who was later killed by a drone strike in the Waziristan region of Pakistan in 2011, that when experienced leaders are eliminated, the result is “the rise of lower leaders who are not as experienced as the former leaders” and who are prone to errors and miscalculations. And drones also hurt terrorist organizations when they eliminate operatives who are lower down on the food chain but who boast special skills: passport forgers, bomb makers, recruiters, and fundraisers. Drones have also undercut terrorists’ ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to “maintain complete silence of all wireless contacts” and “avoid gathering in open areas.” Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda’s command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders. Critics of drone strikes often fail to take into account the fact that the alternatives are either too risky or unrealistic. To be sure, in an ideal world, militants would be captured alive, allowing authorities to question them and search their compounds for useful information. Raids, arrests, and interrogations can produce vital intelligence and can be less controversial than lethal operations. That is why they should be, and indeed already are, used in stable countries where the United States enjoys the support of the host government. But in war zones or unstable countries, such as Pakistan, Yemen, and Somalia, arresting militants is highly dangerous and, even if successful, often inefficient. In those three countries, the government exerts little or no control over remote areas, which means that it is highly dangerous to go after militants hiding out there. Worse yet, in Pakistan and Yemen, the governments have at times cooperated with militants. If the United States regularly sent in special operations forces to hunt down terrorists there, sympathetic officials could easily tip off the jihadists, likely leading to firefights, U.S. casualties, and possibly the deaths of the suspects and innocent civilians. Of course, it was a Navy SEAL team and not a drone strike that finally got bin Laden, but in many cases in which the United States needs to capture or eliminate an enemy, raids are too risky and costly. And even if a raid results in a successful capture, it begets another problem: what to do with the detainee. Prosecuting detainees in a federal or military court is difficult because often the intelligence against terrorists is inadmissible or using it risks jeopardizing sources and methods. And given the fact that the United States is trying to close, rather than expand, the detention facility at Guantánamo Bay, Cuba, it has become much harder to justify holding suspects indefinitely. It has become more politically palatable for the United States to kill rather than detain suspected terrorists. Furthermore, although a drone strike may violate the local state’s sovereignty, it does so to a lesser degree than would putting U.S. boots on the ground or conducting a large-scale air campaign. And compared with a 500-pound bomb dropped from an F-16, the grenade like warheads carried by most drones create smaller, more precise blast zones that decrease the risk of unexpected structural damage and casualties. Even more important, drones, unlike traditional airplanes, can loiter above a target for hours, waiting for the ideal moment to strike and thus reducing the odds that civilians will be caught in the kill zone. Finally, using drones is also far less bloody than asking allies to hunt down terrorists on the United States’ behalf. The Pakistani and Yemeni militaries, for example, are known to regularly torture and execute detainees, and they often indiscriminately bomb civilian areas or use scorched-earth tactics against militant groups.

# 2nc\*\*\*

## 2nc – overview

Particularly, the research is important in war powers—

Currie, professor of law at Chicago, May 2003

(David, 101 Mich. L. Rev. 1453, Lexis)

It is here, I believe, that Professor Powell's thesis will encounter the greatest resistance. For he acknowledges, as his treatment of Madison's position on the Neutrality Act suggests, that **the war powers present a special case** (pp. 51, 93, 139). It could hardly be otherwise. Powell agrees that the explicit and substantial powers granted to Congress in this field qualify the President's general authority over foreign affairs - as Justice Jackson, whose Steel Seizure opinion he especially admires, insisted they qualified the "clause-bound" authority of the Commander in Chief. **As usual**, **however**, **the devil is in the details**, and Professor Powell seems willing to concede the President greater competence to initiate or risk hostilities than some of us may think consistent with the constitutional plan.

## legalism

Questioning the legal institutions behind the affirmative as a prior question is necessary to asses the consequences of the plan

Pildes ‘3

Richard, An-Bryce Professor of Law, New York University School of Law, Conflicts Between American and European Views of Law: The Dark Side of Legalism, 44 Va. J. Int'l L. 145 2003-2004

Consider the question of what might be said against the view that law and courts must be the mechanisms by which political power is channeled or overseen. To explore that question, we need a more functionally-oriented and precise analysis of how law has worked as an actual social practice. Such an analysis seeks to penetrate beyond abstract discussion of "the rule of law" and its virtues, or the problems of "the counter-majoritarian" nature of law in democracies, and similarly vague abstractions. Instead, we should focus on the specific consequences of turning to law and courts in various contexts-especially the exceptional, singular contexts we are dealing with here-and the comparative advantages and disadvantages of law and courts versus other means of addressing the problems at issue. If the American stance toward courts has become more self-conscious of the limitations of law, one reason is that we have become more excruciatingly aware of the potential costs of turning to courts to resolve certain types of problems. If that is so, then **for Americans to engage more effectively** with European critics on these issues-or for internal, domestic debate as well-we need to articulate a fuller account of the vices of judicial institutions or formal legal texts, particularly in the kind of contexts at issue here. These vices are often the flip-sides of the virtues of legalism in the more routine contexts. The danger, however, is that the very qualities that make law an appealing tool in these routine contexts will obscure the ways in which those same qualities can make law more problematic in **exceptional and singular contexts.**

Specific applications analyzed in debates are key

Pildes ‘3

Richard, An-Bryce Professor of Law, New York University School of Law, Conflicts Between American and European Views of Law: The Dark Side of Legalism, 44 Va. J. Int'l L. 145 2003-2004

But articulating these potential limitations of law will require a more precise focus on the specific advantages and disadvantages of law itself in various, specific contexts. There is no general endorsement or critique of "legalism" as a solution to international issues that can be applied across the range of issues at stake. But many advocates for an increased role for judicial institutions and for formal legal codification in the international context do sometimes instinctively seem to believe-that is, **without examining or defending the premise**-that if law is absent in the regulation of international affairs, it must be that there are no meaningful checks on power at all. Instead, law should be understood as only one tool or mode of checking power in the international context, just as it is in the domestic context. There are a variety of ways states and other actors are constrained or can be constrained in the international context apart from formal legal rules and the resort to legal adjudicatory institutions. **What is needed is a comparative and pragmatic analysis of the advantages and disadvantages of** different modes and **tools of** **checking power**. Instead of framing the alternatives as law or "no law," these analyses and public debates ought to see law as one tool among a set of possible tools for dealing with various international issues. Law can be a useful tool in some contexts, to be sure, but one should never think the choice to turn to law is not potentially fraught with certain costs and disadvantages. Nor should the stakes be elevated to a choice between "law" or "anarchy," at least not without analysis of what alternatives to law might exist to check and regulate international affairs. The question, therefore, is not whether to turn to an idealized, "costless" regime of law. Nor should we posit any utopian vision of international harmony and consensus in the absence of law. But the sole alternative to formal law and legal institutions, both domestically and internationally, is not necessarily a regime of anarchy. The serious debate that we must have is one that understands law as one tool among many for addressing these issues, a tool that can have substantial costs-even for the very aims proponents of legalization themselves seek to realize-as well as potential advantages. The question is which tools, with what benefits and what downsides, are most appropriate for which aspects of international issues, particularly for the kind of singular, momentous, exceptional contexts which international debate is now addressing.

The aff’s skillset turns us into technocrats with no way of altering status quo legal structures—only our method solves

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

This question must be central to any serious effort to foster widespread political participation of the kind envisioned by republican theory. While general discussion of this complex but crucial topic is beyond the scope of this paper, it is significant to note that the arena of military policy is one in which the general population is particularly silenced. Indeed, if we consider the process of "nuclear numbing" described earlier, or the sense of disempowerment most individuals feel in connection with complex decisions about national security and defense policy, we can see an intriguing parallel between the types of knowing described in Women's Ways of Knowing and people's feelings about the possibility of playing a more participatory role. Many will feel limited to the stances of "silence" ("voiceless and subject to the whims of external authority") or, at best, "received knowledge" ("capable of receiving, even reproducing, knowledge from the all-knowing external authorities but not capable of creating knowledge on their own"). Some, operating from the orientation of "subjective knowledge" ("truth and knowledge are conceived of as personal, private, and subjectively known or intuited") may feel opposed to official policy, but believe they have no sufficient basis on which to justify their position and no way to express their opposition except through private complaining and cynical withdrawal. Only those who are first able to develop "procedural knowledge" (learning "objective procedures for obtaining and communicating knowledge") and then to integrate this knowledge with their own values and concerns to shape a personal form of "constructed knowledge" (experiencing themselves as "creators of knowledge") will be able to envision playing a meaningful role as citizens in the shaping of public policy about the military. Carol Cohn, a feminist psychologist, has written about the particular difficulties involved in developing a voice with which citizens can engage in critical thinking about that core of our military policy known as "strategic doctrine" — the theory of nuclear weaponry. Driven by a compelling desire to learn how those who develop this theory could "think this way," Cohn spent a year at a special institute studying strategic theory. In her article "Sex and Death in the Rational World of Defense Intellectuals,"171 she describes her discovery that the very language used by strategic theorists prevents both certain questions from being raised and also excludes the uninitiated from participation. In the world of "technostrategic language," which is a pseudo-scientific jargon composed of abstractions, acronyms, and euphemisms, speakers of ordinary English — no matter how well-informed — are treated as "ignorant, simpleminded, or both."172 At the same time, if one speaks in the technostrategic language in order to demonstrate legitimacy and gain respect, it becomes impossible to express certain ideas. Cohn uses the example of the concept "peace," explaining that it is not a part of this discourse. As close as one can come is "strategic stability," a term that refers to a balance of numbers and types of weapon systems — not the political, social, economic, and psychological conditions implied by the word "peace." Not only is there no word signifying peace in this discourse, but the word "peace" itself cannot be used. To speak it is immediately to brand oneself as a soft-headed activist instead of an expert\_\_\_\_173 When such ingrown and exclusionary forms of discourse come to dominate policy making, this is fertile ground for a dangerous divorce between the concerns of experts and the concerns of ordinary citizens.174 Originally, the ferninist commitment to the importance of fostering voice was a response to the traditional silencing of female voices, but it has been extended to recognize the need to increase our capacity to hear from others who have been excluded.175 In the arena of military policy, women's voices historically have been almost entirely shut out, but this is in a process of transition.176 However, even if women and others now excluded from the domains of technostrategic policy formation were admitted, so that those domains became more fully representative of the population, this would not heal the split between expert and citizen. The political scientist Jean Bethke Elshtain points out that while more equal representation of women in the "nuclear priesthood"177 of strategic theorists means that "[w]omen, too, would speak in the voice of the knowing insiders" the language would remain "dissociated: that is, its linguistic use of euphemisms.. . removes it from what it claims to be talking about."178 Most important for present purposes, the language would also remain exclusionary, "not available to most citizens, whether male or female, for the ordinary tasks of everyday civic life."179 Some opponents of this kind of technostrategic talk have sought to counter it with a psychological or apocalyptic language for talking about modern warfare and military strategy, an approach which centers on acknowledging despair and doom.180 But while this approach may be valuable as a way of breaking through "nuclear numbing" or other forms of apathy and disempowerment, Elshtain urges that there be a search for another way which "promotes civic identity and connection."181 She warns, however, that talk of enhanced citizen voice and participation must go beyond the level of abstract platitude.182 It is here that a renewed decentralism — understood not as a panacea, nor as a substitute for either private action or national politics, but as another locus for meaningful citizen involvement — has its place. Dean Paul Brest, in a friendly critique of neo-republican theorists,183 shares Elshtain's view that the commitment to enhanced citizenship must go beyond the level of abstraction. He chides neo-republican legal scholars for their obsession with the courts, their unfortunate willingness to treat "the judiciary as the 'trace of the People's absent selfgovernment.\* "I84 Rejecting this court-centered approach, he urges **instead** a search for "programs of genuine **participatory democracy** in the multifold spheres of human activity.'"85 While his emphasis in that article is on workplace democracy, the underlying thesis applies equally well to local action.186 Following Brest's advice, the final section of this Article will sketch out an argument for "genuine participatory democracy" at the grassroots level in the national security sphere. This argument has a foundation in ideas of federalism, but it is a federalism which must be carefully distinguished both from the old "states' rights" version, and also from the "new federalism" which is rooted in the federal government's attempt to cast off responsibility for the welfare of the citizenry.187 It is what I will call a "participatory federalism" — a federalism that has the goal of creating more opportunities for citizen empowerment and meaningful participation in national political life.

Their impact is wrong – debate over even the most technical issues improves decision-making and advocacy

Orna Ben-Naftali, Head of the International Law Division and of the Law and Culture Division, The Law School, The College of Management Academic Studies, Spring 2003, ARTICLE: 'We Must Not Make a Scarecrow of the Law': A Legal Analysis of the Israeli Policy of Targeted Killings, 36 Cornell Int'l L.J. 233

Our analysis concludes that while a specific act of preemptive killing may be legal if it meets the above-specified requirements, the policy of state targeted preemptive killings is not. Furthermore, some specific acts of targeted killings may generate state responsibility, while others may constitute a war crime entailing criminal accountability. These conclusions, emanating from the reading of the three legal texts applicable to the context, and informed by a sensibility that coheres them, do not rest on a negation of the importance of the national interest in security. On the contrary, these conclusions incorporate and express the way it should be balanced with a minimum standard of humanity and against the relevant context.

This delicate, ever precarious balance is at the heart of the democratic discourse. A democratic state is not a meek state. True, it is fighting with "one hand tied behind its back,"n342 as soberly observed by Chief Justice Barak of the Israeli Supreme Court, but democratic sensibilities internalize this limitation on State power, not as a source of weakness but as a sign of strength. Democracies require a public discourse forever alert to the importance of human rights, suspicious of the way power is used, and committed to the rule of law. The legal culture, in turn, while not a substitute for this public discourse, is never absent from it and indeed serves as a catalyst for its development.

We therefore reject the notion that the policy of targeted killings, designed by Israel as a way to combat terrorist attacks, is beyond the purview of the rule of law.n343 We also deny the purist position suggesting that the legalistic nitty-gritty preoccupation with details entailed in the above discussion is likely to obscure and legitimize a harrowing policy; n344 one that, on principle, should be condemned. n345 This position in fact maintains that the legality or illegality of targeted state killings is not a legitimate issue of discussion; that while an emergency situation may exceptionally necessitate the deed, it should never be elevated to the sphere of the Word. n346 We appreciate the sensibility of this position, but, alas, do not find it sensible. Indeed, nor would the people who consider themselves victims of the policy of targeted killings, and appeal to the courts to intervene. n347 Purity belongs to the Platonic world of ideas; it is a necessary ideal to strive for, even if forever unachievable in this all too fallible City of Man. n348 In the best of all possible worlds law would be superfluous; in this world, it is a necessary, albeit insufficient means to achieve some possible betterment. This article hopes to contribute to this modest goal.

## consequentialism

Calculations are inevitable – attempts to refuse masks the most totalitarian calculations - ensure paralysis

Campbell, Professor of International Politics at the University of Newcastle, 1999

(David, “The Deterritorialization of Responsibility,” *Moral Spaces*, Eds. Michael J. Shapiro & David Campbell, p. 45-7)

That undecidability resides within the decision, Derrida argues, "that justice **exceeds law and calculation**, that the unpresentable exceeds the determinable *cannot* and *should not* serve as alibi for staying out of juridico-political battles, within an institution or a state, or between institutions or states and others."91 Indeed, "incalculable justice requires us to calculate." From where does this insistence come? What is behind, what is animating, these imperatives? It is both the character of infinite justice as a heteronomic relationship to the other, a relationship that because of its undecidability multiplies responsibility, and the fact that "left to itself, the incalculable and giving *(donatrice)* idea of justice is always very close to the bad, even to the worst, for it can always be reap-propriated by the most perverse calculation."92 The necessity of calcu­lating the incalculable thus responds to a duty, a duty that inhabits the **instant of madness** and compels the decision to **avoid "the bad**," the "**per­verse calculation**," even "the worst." This is the duty that also dwells with deconstruction and makes it the starting point, the "at least necessary condition," for the organization of **resistance to totalitarianism** in all its forms. And it is a duty that responds to practical political concerns when we recognize that Derrida names the bad, the perverse, and the worst as those violences "we recognize all too well without yet having thought them through, the crimes of xenophobia, racism, anti-Semitism, religious or nationalist fanaticism."93 Furthermore, the duty within the decision, the obligation that rec­ognizes the necessity of negotiating the possibilities provided by the impossibilities of justice, is not content with simply avoiding, contain­ing, combating, or negating the worst violence — though it could cer­tainly begin with those strategies. Instead, this responsibility, which is the responsibility of responsibility, commissions a "utopian" strategy. Not a strategy that is beyond all bounds of possibility so as to be con­sidered "unrealistic," but one which in respecting the necessity of cal­culation, takes the possibility summoned by the calculation as far as possible, *"must* take it as far as possible, beyond the place we find our­selves and beyond the already identifiable zones of morality or politics or law, beyond the distinction between national and international, pub­lic and private, and so on."94 As Derrida declares, "The condition of pos­sibility of this thing called responsibility is a certain *experience and ex­periment of the possibility of the impossible: the testing of the aporia* from which one may invent the only *possible invention, the impossible inven­tion."'1''* This leads Derrida to enunciate a proposition that many, not the least of whom are his Habermasian critics, could hardly have ex­pected: "Nothing seems to me *less* outdated than the classical emanci­patory ideal. We cannot attempt to disqualify it today, whether crudely or with sophistication, at least not without treating it too lightly and forming the worst complicities."96>

Despite every flaw in calculating risk, Survival is a prior question

Jason Matheny Department of Health Policy and Management, Bloomberg School of Public Health, Johns Hopkins University 2007 “Reducing the Risk of Human Extinction.” Risk Analysis. Vol 27, No 5, 2007, http://www.upmc-biosecurity.org/website/resources/publications/2007\_orig-articles/2007-10-15-reducingrisk.html

Conclusion We may be poorly equipped to recognize or plan for extinction risks (Yudkowsky, 2007). We may not be good at grasping the significance of very large numbers (catastrophic outcomes) or very small numbers (probabilities) over large timeframes. We struggle with estimating the probabilities of rare or unprecedented events (Kunreuther *et al*., 2001). Policymakers may not plan far beyond current political administrations and rarely do risk assessments value the existence of future generations.18 We may unjustifiably discount the value of future lives. Finally, extinction risks are market failures where an individual enjoys no perceptible benefit from his or her investment in risk reduction. Human survival may thus be a good requiring deliberate policies to protect. It might be feared that consideration of extinction risks would lead to a reductio ad absurdum: we ought to invest all our resources in asteroid defense or nuclear disarmament, instead of AIDS, pollution, world hunger, or other problems we face today. On the contrary, programs that create a healthy and content global population are likely to reduce the probability of global war or catastrophic terrorism. They should thus be seen as an essential part of a portfolio of risk-reducing projects.

Consequentialism demands cacluation – this is the best way to make decisions

Tyler Cowen , Department of Economics George Mason University , November 2, 2004 , “The Epistemic Problem Does Not Refute Consequentialism”

As the above arguments suggest, the epistemic critique increases the plausibility of what I call “big event consequentialism.” In this view, we should pursue good consequences, but with special attention to consequences that are very important and very good, or correspondingly, very bad. Consequences of these kinds include stopping the use of nuclear weapons, saving children from smallpox, making progress against global poverty, and maintaining or spreading liberal democracy. Big events, as I define them, typically **are of significant practical importance**, involve obvious moral issues, and their value is not controversial to benevolent onlookers. In contrast consider “small events.” Preventing a broken leg for a single dog, however meritorious an act, is a small event as I define the concept. Making American families wealthier by another $20 also would count as a small event. We should not count small events for nothing, but epistemic issues may well lower their importance in reflective equilibrium. Of course we do not need a strict dividing line between big and small events, but rather we can think in terms of a continuum. In some cases a large number of small benefits will sum up to a big benefit, or equal the big benefit in importance. It then can be argued that we should treat the large benefits and the small benefits on a par. If we lift a different person out of poverty one billion times, this is no less valuable than lifting one billion people out of poverty all at once. Here two points are of relevance. First, sometimes we are facing a single choice in isolation from other choices, rather than examining a rule or general principle of behavior. In this case it does not matter whether or not the small benefits would, if combined in larger numbers, sum up to a greater benefit. The small benefits will not be combined in greater numbers, and we should still upgrade the relative importance of larger benefits in our decision calculus. Second, not all small benefits sum into equivalence with larger benefits. Sometimes one value has a lexical relationship to (all or some) other values. For instance arguably a large number of canine broken legs, even a very very large number, do not sum in value to make a civilization. It does not matter how many dogs and how many broken legs enter the comparison. In other words, civilization may be a lexical value with respect to canine broken legs. And when lexical elements are present, the mere cumulation of numbers of broken legs does not trump the more significant value. Numerous value relationships have been cited as lexical. A large number of slight headaches, no matter how numerous, may not sum up in value to equal a smaller number of intensely painful deaths or personal tortures (Norcross 1997). A very large number of “muzak and potato” lives (Parfit 1986, 1987) do not sum to overtake the value of a sophisticated civilization. Rawls (1987) put forward liberty and the difference principle as his lexical values for all political comparisons. For our purposes, we do not require a very strict notion of lexicality for these designations to have relevance to our endeavor. A big value need not be lexical against a (multiplied) smaller value at all possible margins. Instead the big value need only be lexical across the comparisons that arise under relevant policy comparisons. Furthermore a big value need not be lexical in absolute terms against all other smaller values. We therefore receive further guidance as to which big events are upgraded in the most robust fashion. The big values that receive the most robust upgrading would be those values with some lexical importance, relative to possible comparisons against other smaller values.9 To sum up these points, critics of consequentialism would like to establish something like the following: “We find it hard to predict consequences. Therefore consequences do not matter very much, relative to other factors, such as deontology or virtue ethics. We should abandon consequentialist morality.” But so far epistemic considerations have yet to produce a strong argument for this view. The arguments support a different conclusion, namely downgrading the importance of minor consequences, and upgrading the importance of major consequences. The most robust major consequences are those that carry values with some lexical properties, and cannot be replicated by a mere accumulation of many small benefits.

All lives are infinitely valuable, the only ethical option is to maximize the number saved

**Cummisky, 96** (David, professor of philosophy at Bates, Kantian Consequentialism, p. 131)

Finally, even if one grants that saving two persons with dignity cannot outweigh and compensate for killing one—because dignity cannot be added and summed in this way—this point still does not justify deontologieal constraints. On the extreme interpretation, why would not killing one person be a stronger obligation than saving two persons? If I am concerned with the priceless dignity of each, it would seem that 1 may still saw two; it is just that my reason cannot be that the two compensate for the loss of the one. Consider Hills example of a priceless object: If I can save two of three priceless statutes only by destroying one. Then 1 cannot claim that saving two makes up for the loss of the one**. But** Similarly, **the loss of the two is not outweighed by** the **one** that was **not destroyed**. Indeed, even if dignity cannot be simply summed up. How is the extreme interpretation inconsistent with the idea that I should save as many priceless objects as possible? Even if two do not simply outweigh and thus compensate for the lass of the one, each is priceless: thus, I have good reason to save as many as I can. In short, it is not clear how the extreme interpretation justifies the ordinary killing'letting-die distinction or even how it conflicts with the conclusion that the more persons with dignity who are saved, the better.\*

## realism

Realism is true - grounded in human nature

Thayer, Fellow at the Belfer Center for Science and International Affairs at the Kennedy School of Government at Harvard University and a consultant to the Rand Corporation, 4 [Thayer Bradley, Ph.D, Fellow at the Belfer Center for Science and International Affairs at the Kennedy School of Government at Harvard University and a consultant to the Rand Corporation, "Darwin and International Relations: On the Evolutionary Origins of War and Ethnic Conflict"]

In chapter 2, I explain how evolutionary theory contributes to the realist theory of international relations and to rational choice analysis.  First, realism, like the Darwinian view of the natural world, submits that international relations is a competitive and dangerous realm, where statesmen must strive to protect the interests of their state before the interests of others or international society.  Traditional realist arguments rest principally on one of two discrete ultimate causes, or intellectual foundations of the theory.  The first is Reinhold Niebuhr's argument that humans are evil.  The second, anchored in the thought of Thomas Hobbes and Hans Morgenthau, is that humans possess an innate animus dominandi - a drive to dominate.  From these foundations, Niebuhr and Morgenthau argue that what is true for the individual is also true of the state: because individuals are evil or possess a drive to dominate so too do states because their leaders are individuals who have these motivations.   argue that realists have a much stronger foundation for the realist argument than that used by either Morgenthau or Niebuhr.  My intent is to present an alternative ultimate cause of classical realism: evolutionary theory.  The use of evolutionary theory allows realism to be scientifically grounded for the first time, because evolution explains egoism.  Thus a scientific explanation provides a better foundation for their arguments than either theology or metaphysics.  Moreover, evolutionary theory can anchor the branch of realism termed offensive realism and advanced most forcefully by John Mearsheimer.  He argues that the anarchy of the international system, the fact that there is no world government, forces leaders of states to strive to maximize their relative power in order to be secure.  I argue that theorists of international relations must recognize that human evolution occurred in an anarchic environment and that this explains why leaders act as offensive realism predicts.  Humans evolved in anarchic conditions, and the implications of this are profound for theories of human behavior.  It is also important to note at this point that my argument does not depend upon "anarchy" as it is traditionally used in the discipline - as the ordering principle of the post-1648 Westphalian state system.  When human evolution is used to ground offensive realism, it immediately becomes a more powerful theory than is currently recognized.  It explains more than just state behavior; it begins to explain human behavior.  It applies equally to non-state actors, be they individuals, tribes, or organizations.  Moreover, it explains this behavior before the creation of the modern state system.  Offensive realists do not need an anarchic state system to advance their argument.  They only need humans.  Thus, their argument applies equally well before or after 1648, whenever humans form groups, be they tribes in Papua New Guinea, conflicting city-states in ancient Greece, organizations like the Catholic Church, or contemporary states in international relations.

## 1ar shit is good

We control uniqueness – violence declining – quantitative studies show civilization is getting more peaceful and deaths have gone down – that’s Ridley.

Disproves root cause – their harms are high, their impacts are low.

Health, education, political liberties – everything is improving

Kenny, fellow at the New America Foundation and Center for Global Development, 2011

(Charles, also a senior economist at the World Bank, Prologue of *Getting Better*, searchable Kindle edition)

Despite counterclaims and hand wringing, **things are getting better**, **everywhere**. Rich countries may be getting richer faster than poor countries, and we may be unsure how to improve that situation, **but poor countries and poor people aren’t stuck in the nightmare of an ever-growing and unsupportable population**, **living on bare subsistence**. Instead, those countries with the lowest quality of life are making the fastest progress in improving it—across a range of measures including **health**, **education**, **and civil and political liberties**. The progress is the result of the global spread of technologies and ideas—technologies like vaccinations, and ideas like “you should send your daughter to school.” And Third World governments, alongside aid agencies and nonprofits, have played a vital role in extending the reach of these technologies and ideas.

It’s a massive trend

Steven **Pinker 11**, professor of psychology at Harvard, The Better Angels of our Nature, October, googlebooks

This book is about what may be the most important thing that has ever happened in human history. Believe it or not—and I know that most people do not—**violence has declined over long stretches of time, and today we may be living in the most peaceable era in our species’ existence**. **The decline**, to be sure, **has not been smooth; it has not brought violence down to zero; and it is not guaranteed to continue. But it is an unmistakable development**, **visible on scales from millennia to years**, from the waging of wars to the spanking of children. **No aspect of life is untouched by the retreat from violence**. Daily existence is very different if you always have to worry about being abducted, raped, or killed, and it’s hard to develop sophisticated arts, learning, or commerce if the institutions that support them are looted and burned as quickly as they are built. The historical trajectory of violence affects not only how life is lived but how it is understood. What could be more fundamental to our sense of meaning and purpose than a conception of whether the strivings of the human race over long stretches of time have left us better or worse off? **How**, in particular, **are we to make sense of modernity**—of the erosion of family, tribe, tradition, and religion by the forces of individualism, cosmopolitanism, reason, and science? So **much depends on how we understand the legacy of this transition: whether we see our world as a nightmare** of crime, terrorism, genocide, and war, **or as a period that, by the standards of history, is blessed by unprecedented levels of peaceful coexistence**. **The question of whether the arithmetic sign of trends in violence is positive or negative also bears on our conception of human nature**. Though theories of human nature rooted in biology are often associated with fatalism about violence, and the theory that the mind is a blank slate is associated with progress, in my view it is the other way around. How are we to understand the natural state of life when our species first emerged and the processes of history began? The belief that violence has increased suggests that the world we made has contaminated us, perhaps irretrievably. The belief that it has decreased suggests that we started off nasty and that the artifices of civilization have moved us in a noble direction, one in which we can hope to continue. This is a big book, but it has to be. First I have to convince you that **violence really has gone down over the course of history**, knowing that **the very idea invites skepticism, incredulity, and** sometimes **anger**. **Our cognitive faculties predispose us to believe that we live in violent times**, **especially when they are stoked by media** that follow the watchword “If it bleeds, it leads.” **The human mind tends to estimate the probability of an event from the ease with which it can recall examples, and scenes of carnage are more likely to be beamed into our homes and burned into our memories than footage of people dying of old age**.1 **No matter how small the percentage of violent deaths may be, in absolute numbers there will always be enough of them to fill the evening news, so people’s impressions of violence will be disconnected from the actual proportions**. Also distorting our sense of danger is our moral psychology. **No one has ever recruited activists to a cause by announcing that things are getting better, and bearers of good news are often advised to keep their mouths shut lest they lull people into complacency**. Also, **a large swath of our intellectual culture is loath to admit that there could be anything good about civilization, modernity, and Western society**. But perhaps the main cause of the illusion of ever-present violence springs from one of the forces that drove violence down in the first place. **The decline of violent behavior has been paralleled by a decline in attitudes that tolerate or glorify violence, and often the attitudes are in the lead**. By the standards of the mass atrocities of human history, the lethal injection of a murderer in Texas, or an occasional hate crime in which a member of an ethnic minority is intimidated by hooligans, is pretty mild stuff. But from a contemporary vantage point, we see them as signs of how low our behavior can sink, not of how high our standards have risen. In the teeth of these preconceptions, I will have to persuade you with numbers, which I will glean from datasets and depict in graphs. In each case I’ll explain where the numbers came from and do my best to interpret the ways they fall into place. The problem I have set out to understand is the reduction in violence at many scales—in the family, in the neighborhood, between tribes and other armed factions, and among major nations and states. If the history of violence at each level of granularity had an idiosyncratic trajectory, each would belong in a separate book. But to my repeated astonishment, **the global trends** in almost all of them, **viewed from the vantage point of the present, point downward**. That calls for documenting the various trends between a single pair of covers, and seeking commonalities in when, how, and why they have occurred. **Too many kinds of violence**, I hope to convince you, **have moved in the same direction for it all to be a coincidence**, and that calls for an explanation. It is natural to recount the history of violence as a moral saga—a heroic struggle of justice against evil—but that is not my starting point. My approach is scientific in the broad sense of seeking explanations for why things happen. We may discover that a particular advance in peacefulness was brought about by moral entrepreneurs and their movements. But we may also discover that the explanation is more prosaic, like a change in technology, governance, commerce, or knowledge. **Nor can we understand the decline of violence as an unstoppable force for progress that is carrying us toward an omega point of perfect peace. It is a collection of statistical trends** in the behavior of groups of humans in various epochs, and as such it calls for an explanation in terms of psychology and history: how human minds deal with changing circumstances.

## drones d

Data proves - drones are more moral than alternatives

Anderson 13 (Kenneth Anderson is a professor of international law at American University and a member of the Task Force on National Security and Law at the Hoover Institution, June 2013, "The Case for Drones", https://www.commentarymagazine.com/articles/the-case-for-drones/)

The most offensively foolish (though endlessly repeated) objection raised against drones was the one made by Jane Mayer in her influential 2009 New Yorker article, “The Predator War”: that drone pilots are so distant from their targets that they encourage a “push-button,” video-game mentality toward killing. The professional military find the claim bizarre, and it fails to take into account the other kinds of weapons and platforms in use. Note, the pilot of a manned craft is often thousands of feet away and a mile above a target looking at a tiny coordinates screen. And what of the sailor, deep in the below-decks of a ship, or a submarine, firing a cruise missile with no awareness of any kind about the target hundreds of miles away?

For that matter, the common perception of drones as a sci-fi combination of total surveillance and complete discretion in where and when to strike is simply wrong. The drone pilot might sit in Nevada, but the drone itself has a limited range, requires an airstrip, fuel, repairs, and 200 or so personnel to keep it in the air. All this physical infrastructure must be close to the theater of operations. Stress rates among drone pilots are at least as high as those of manned aircraft pilots; they are far from having a desensitized attitude toward killing. This appears to be partially because these are not mere combat operations but fundamentally and primarily intelligence operations. Drone pilots engaged in targeted killing operations watch their targets from a very personal distance via sensor technology, through which they track intimate, daily patterns of life to gather information and, perhaps, to determine precisely the best moment to strike, when collateral damage might be least.

As one drone operator told me, it is not as if one sees the terrible things the target is engaged in doing that made him a target in the first place; instead, it feels, after a few weeks of observation, as though you are killing your neighbor.

In any case, the mentality of drone pilots in targeted-killing ops is irrelevant to firing decisions; they do not make decisions to fire weapons. The very existence of a remote platform, one with long loiter times and maximum tactical surveillance, enables decisions to fire by committee. And deliberately so, notes Gregory McNeal, a professor of law at Pepperdine University, who has put together the most complete study of the still largely secret decision-making process—the so-called disposition lists and kill matrix the New York Times has described in front page stories. It starts from the assessment of intelligence through meetings in which determinations, including layers of legal review, are made about whether a potential target has sufficient value and, finally, whether and when to fire the weapon in real time. The drone pilot is just a pilot.

Targeting is therefore a bureaucratized process that necessarily relies on judgment and estimations of many uncertainties. Its discretionary and bloodless nature alarms critics, as does its bureaucratic regularization. Yet it is essential to understand, as McNeal observes, that this is not fundamentally different from any other process of targeting that takes place in conventional war, save that it seeks to pinpoint the targets. Conventional war targeting, by contrast, seeks not individuals, but merely formations of hostile forces as groups. In either case, targeting is inherently intelligence-driven and a highly organized activity, whether in the military or across the broader national-security agencies.

Concerns about the nature of the warfare itself leads to a sharing and checking of that discretion among actors; in turn, this leads to committees’ making decisions; and by the time this process of bureaucratic rationalization is complete, it looks like military targeting processes in conventional war, with an extra dollop of intelligence assessments, not some mysterious Star Chamber assassination committee. After all, any group of generals deciding where to hit the enemy in war is, by definition, a “kill list” committee.

## at backlash

No impact to backlash

Byman 11 (Daniel L. Byman, Director of Research at the Saban Center for Middle East Policy at Brookings, 6/3/2011, “Denying Terrorist Safe Havens: Homeland Security Efforts to Counter Threats from Pakistan, Yemen and Somalia”, http://www.brookings.edu/testimony/2011/0603\_terrorism\_byman.aspx)

The U.S. drone campaign against al Qaeda, begun under Bush and put on steroids under Obama, has taken out dozens of al Qaeda figures, primarily in Pakistan. In 2010, the United States launched over 100 drone attacks in Pakistan, according to the New America Foundation.[11] Those killed were far less prominent than bin Laden, but in many cases their skills were in short supply and difficult to replace. Al Qaeda struggles to find seasoned and skilled new leaders, and even when it can it takes time to integrate them into the organization. Even more important, but even harder to see, al Qaeda lieutenants must limit communications to stop U.S. eavesdropping that could lead to airstrikes, reduce their circle of associates to avoid spies, and avoid public exposure, all of which make them far less effective as leaders. This makes it harder, though not impossible, for them to pull off sophisticated attacks that require long-term planning.

Although innocent civilians do die in these attacks, the number of non-combatant deaths is often exaggerated and has been declining. According to Peter Bergen and Katherine Tiedemann, “According to our estimates, the nonmilitant fatality rate since 2004 is approximately 25 percent, and in 2010, the figure has been more like 6 percent -- an improvement that is likely the result of increased numbers of U.S. spies in Pakistan's tribal areas, better targeting, more intelligence cooperation with the Pakistani military, and smaller missiles.”[12] Such innocent deaths are still considerable, and errant strikes have the potential to worsen U.S.-Pakistan relations, but drone strikes are often far less bloody than alternatives such as Pakistani military attacks or U.S. attacks by manned fixed-wing aircraft. In addition, drone strikes involve no risk of U.S. personnel.

Killing terrorist group lieutenants on a large scale can devastate a group. There may still be thousands of people who hate the United States and want to take up arms, but without bomb-makers, passport-forgers, and leaders to direct their actions they are often reduced to menacing bumblers, easier to disrupt and often more a danger to themselves than to their enemies.

Blowback isn’t enough to cause attacks – otherwise it’s inevitable now

Zelin 12 (Aaron, the Richard Borow Fellow in the Washington Institute for Near East Policy's Stein Program on Counterterrorism and Intelligence, 8/31/2012, “Dodging the drones: How militants have responded to the covert US campaign”, http://afpak.foreignpolicy.com/posts/2012/08/31/dodging\_the\_drones\_how\_militants\_have\_responded\_to\_the\_covert\_us\_campaign)

Some analysts believe there could be blowback from the drone program from AQAP, which might be encouraged to plan a revenge attack on the United States. AQAP hinted at this in the eulogy for Fahd al-Quso, who was killed in a drone strike in May this year: "war between us is not over and the days are pregnant [and] will give birth to something new."

While the militant response to drone strikes in Yemen remains to be seen, there is scant evidence that drones strikes have been mobilizing AQC to conduct attacks in response. After Faisal Shahzad's Times Square plot failed, he told investigators that one of his primary motivations had been the increased pace of drone strikes in the Pakistani tribal belt. Al-Qaeda leader Ilyas Kashmiri was also reportedly frustrated over the drone strikes in the tribal areas, leading him to plan an attack on the CEO of Lockheed Martin, according to the testimony of prior associate David Headley, a key operative in the 2008 Mumbai attacks. But besides Shahzad's failed attack and Kashmiri's aspirational plan drone strikes do not appear to be the primary reason why al-Qaeda, its branches, and its affiliates are plotting attacks against the United States.

During the Obama administration, drone strikes have taken out many top al-Qaeda, AQAP, and Taliban leaders, and killed hundreds of mid-level fighters. The losses have pushed these militant groups to establish counter-spy networks, as well as beef up their operational security. Al-Qaeda Central's ability to operate in Pakistan has been severely degraded. At the same time, the drone campaign does not appear to have had an appreciable impact on AQAP or the Taliban - both still show the ability to plan attacks against the United States (either into Afghanistan for the Taliban or against the American homeland for AQAP) and still have influence in their local areas of operation. Defeating these groups with drones is unlikely, but the strikes have at the very least created a nuisance for the militants, as well as prevented more invasive military action that might have otherwise occurred. There are still lingering questions on whether or not the drones have played a significant role in radicalizing a new generation of fighters, but understanding how the drones are affecting and changing these groups can provide new perspective on a vexing challenge.

US-Russia miscalc ensures

Barrett et al. 13—PhD in Engineering and Public Policy from Carnegie Mellon University, Fellow in the RAND Stanton Nuclear Security Fellows Program, and Director of Research at Global Catastrophic Risk Institute—AND Seth Baum, PhD in Geography from Pennsylvania State University, Research Scientist at the Blue Marble Space Institute of Science, and Executive Director of Global Catastrophic Risk Institute—AND Kelly Hostetler, BS in Political Science from Columbia and Research Assistant at Global Catastrophic Risk Institute (Anthony, 24 June 2013, “Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia,” Science & Global Security: The Technical Basis for Arms Control, Disarmament, and Nonproliferation Initiatives, Volume 21, Issue 2, Taylor & Francis)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have globally catastrophic effects such as severely reducing food production for years, 1 potentially leading to collapse of modern civilization worldwide, and even the extinction of humanity. 2 Nuclear war between the United States and Russia could occur by various routes, including accidental or unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 3 (Brinkmanship strategies incorporate elements of all of the above, in that they involve intentional manipulation of risks from otherwise accidental or inadvertent launches. 4 ) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, and numerous measures also were taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side's forces and command-and-control capabilities led to both sides’ development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. 5 Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. 6 However, it also has been argued that inadvertent nuclear war between the United States and Russia has continued to present a substantial risk. 7 While the United States and Russia are not actively threatening each other with war, they have remained ready to launch nuclear missiles in response to indications of attack. 8 False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 9 Second, terrorist groups or other actors might cause attacks on either the United States or Russia that resemble some kind of nuclear attack by the other nation by actions such as exploding a stolen or improvised nuclear bomb, 10 especially if such an event occurs during a crisis between the United States and Russia. 11 A variety of nuclear terrorism scenarios are possible. 12 Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 13 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 14 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.–Russian crisis conditions, 15 with the Cuban Missile Crisis being a prime historical example. It is possible that U.S.–Russian relations will significantly deteriorate in the future, increasing nuclear tensions. There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 16 **Extinction**

**Bostrom 2002** (Nick Bostrom, 2002. Professor of Philosophy and Global Studies at Yale. "Existential Risks: Analyzing Human Extinction Scenarios and Related Hazards," 38, www.transhumanist.com/volume9/risks.html)

A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization. Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently.

## terror talk

Believing that a nuclear WMD terrorist attack is possible is necessary to prevent it from happening

**Allison, 10**– professor of government and director of the Belfer Center for Science and International Affairs at Harvard (1/25/10, Graham, “A Failure to Imagine the Worst: The first step toward preventing a nuclear 9/11 is believing it could happen,”

[http://www.foreignpolicy.com/articles/2010/01/25/a\_failure\_to\_imagine\_the\_worst?print=yes&hidecomments=yes&page=full](http://www.foreignpolicy.com/articles/2010/01/25/a_failure_to_imagine_the_worst?print=yes&hidecomments=yes&page=full" \t "_blank), JMP)

In his first speech to the U.N. Security Council, U.S. President Barack Obama challenged members to think about the impact of a single nuclear bomb.He said: "Just one nuclear weapon exploded in a city -- be it New York or Moscow, Tokyo or Beijing, London or Paris -- could kill hundreds of thousands of people." The consequences, he noted, would "destabilize our security, our economies, and our very way of life." Before the Sept. 11, 2001, assault on the World Trade Center and Pentagon, who could have imagined that terrorists would mount an attack on the American homeland that would kill more citizens than Japan did at Pearl Harbor? As then-Secretary of State Condoleezza Rice testified to the 9/11 Commission: "No one could have imagined them taking a plane, slamming it into the Pentagon ... into the World Trade Center, using planes as missiles." For most Americans, the idea of international terrorists conducting a successful attack on their homeland, killing thousands of citizens, was not just unlikely. It was inconceivable. As is now evident, assertions about what is "imaginable" or "conceivable," however, are propositions about our minds, not about what is objectively possible. Prior to 9/11, how unlikely was a megaterrorist attack on the American homeland? In the previous decade, al Qaeda attacks on the World Trade Center in 1993, U.S. embassies in Kenya and Tanzania in 1998, and the USS Cole in 2000 had together killed almost 250 and injured nearly 6,000. Moreover, the organization was actively training thousands of recruits in camps in Afghanistan for future terrorist operations. Thinking about risks we face today, we should reflect on the major conclusion of the bipartisan 9/11 Commission established to investigate that catastrophe. The U.S. national security establishment's principal failure prior to Sept. 11, 2001, was, the commission found, a "failure of imagination." Summarized in a single sentence, the question now is: Are we at risk of an equivalent failure to imagine a nuclear 9/11? After the recent attempted terrorist attack on Northwest Airlines Flight 253, this question is more urgent than ever. The thought that terrorists could successfully explode a nuclear bomb in an American city killing hundreds of thousands of people seems incomprehensible. This essential incredulity is rooted in three deeply ingrained presumptions. First, no one could seriously intend to kill hundreds of thousands of people in a single attack. Second, only states are capable of mass destruction; nonstate actors would be unable to build or use nuclear weapons. Third, terrorists would not be able to deliver a nuclear bomb to an American city. In a nutshell, these presumptions lead to the conclusion: inconceivable. Why then does Obama call nuclear terrorism "the single most important national security threat that we face" and "a threat that rises above all others in urgency?" Why the unanimity among those who have shouldered responsibility for U.S. national security in recent years that this is a grave and present danger? In former CIA Director George Tenet's assessment, "the main threat is the nuclear one. I am convinced that this is where [Osama bin Laden] and his operatives desperately want to go." When asked recently what keeps him awake at night, Secretary of Defense Robert Gates answered: "It's the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear." Leaders who have reached this conclusion about the genuine urgency of the nuclear terrorist threat are not unaware of their skeptics' presumptions. Rather, they have examined the evidence, much of which has been painstakingly compiled here by Rolf Mowatt-Larssen, former head of the CIA's terrorism and weapons-of-mass-destruction efforts, and **much of which remains classified.** Specifically, who is seriously motivated to kill hundreds of thousands of Americans? Osama bin Laden, who has declared his intention to kill "4 million Americans -- including 2 million children." The deeply held belief that even if they wanted to, "men in caves can't do this" was then Pakistani President Pervez Musharraf's view when Tenet flew to Islamabad to see him after 9/11. As Tenet (assisted by Mowatt-Larssen) took him step by step through the evidence, he discovered that indeed they could. Terrorists' opportunities to bring a bomb into the United States follow the same trails along which 275 tons of drugs and 3 million people crossed U.S. borders illegally last year. In 2007, Congress established a successor to the 9/11 Commission to focus on terrorism using weapons of mass destruction. This bipartisan Commission on the Prevention of WMD Proliferation and Terrorism issued its report to Congress and the Obama administration in December 2008. In the **commission's unanimous judgment:** "it is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013." Faced with the possibility of an American Hiroshima, many Americans are paralyzed by a combination of denial and fatalism. Either it hasn't happened, so it's not going to happen; or, if it is going to happen, there's nothing we can do to stop it. Both propositions are wrong. **The countdown to a nuclear 9/11 can be stopped, but only by realistic recognition of the threat, a clear agenda for action, and relentless determination to pursue it.**

Threat construction in terms of terror is good – censorship precludes prevention

**Rychlak 10** (Ronald, Professor of Law and Associate Dean for Academic Affairs, University of Mississippi School of Law; adviser to the Holy See's delegation to the United Nations., <http://newsweek.washingtonpost.com/onfaith/panelists/ronald_rychlak/2010/07/the_language_of_counter-terrorism.html>)

**What we call terrorists may not matter very much, but a restriction on what we can call them is of enormous importance**. In order to get to the truth of any issue, people have to be free to talk about it without fear of repercussion. Unfortunately, one of the issues around which many problems revolve - religion - is also a topic that is particularly hard to discuss freely. In our day-to-day life, we may avoid the topic with only minimal inconvenience. **When it comes to global terrorism, restricting what we say about religion can lead to devastating results**. Next month I will start the new semester by teaching a course called "Terrorism and the Law." On the very first day, I will explain to the students that we will be talking about religion even though we are at a state law school. Islam, or at least the way some people interpret Islam, is an important issue when it comes to modern terrorism. I will, of course, explain that not all Muslims agree with the terrorist tactics - or even their long term aims - and not all terrorists are Muslim, but **we can't really study modern terrorism without developing an understanding of the motivations.** Unfortunately, religion is a significant motivation underlying much modern terrorism. Four or five years ago I traveled with a group to Israel. Instead of studying the holy sites, however, the focus of our trip was on counter-terrorism. Most members of my group were college educators who taught courses on terrorism. One of them had authored a major textbook. He told me that his publisher forbid him from any discussion of religion in the book. He said that was common. Publishers were afraid that books would not be used if they ventured into that area. He also said that most experts in the field lacked the knowledge to write about religion anyway. **By keeping religion out of these textbooks and the related courses we were knowingly providing an insufficient education to our next generation of counter-terror experts**. The author said that when the book came out in its next edition (which was going to be its third), he planned to demand inclusion of religious issues. He felt that by then the book would be well enough established that he would be able to make that demand. Still, the very idea that we had been intentionally excluding important issues when discussing this topic was shocking. Of course, a private entity might fear a violent reaction such as the riots that followed the publication of those Danish political cartoons. It is not, however, only private publishing interests that feel unable to talk about religion. The United States government also has a very hard time doing it. After all, as an inclusive society, we can't really argue that a Christian or Judeo-Christian outlook is better than even "hard-line" Islam, can we? The government's inability to talk about religion reached almost comical proportions in 2003, when the Department of State launched a "cultural magazine" for young men and women in Arab-speaking countries. A special coordinator for public diplomacy in the State Department explained: "This is a long-term way to build a relationship with people who will be the future leaders of the Arab world.... This is, in a very subtle way, a vehicle for American values." "Hi" magazine focused on things like entertainment, technology, and sports. Among the early articles that I remember was one about sand-surfing and another about protecting against over-exposure to the sun. There was, of course, no direct discussion of religion or religious values. The magazine floundered for a year or two, added an English version, went online, and finally died a quiet death. It was a phenomenal waste of time and money. I don't know how we are going to resolve issues that surround our very different world views, but I am quite certain that **restricting what we say - whether that means barring topics from textbooks or rejecting the use of terms like 'Islamic terrorist' and 'jihad' - is not a good start.** Let's first be honest in our language and our discussions. That will be hard, but it is the surest way to the truth. If we get to the truth, let's hope that we can also find peace.

# 1nr\*\*\*

## OV

Economic crisis causes rampant disease spread- crushes health infrastructure - causes unclean water, inability to respond to pandemics - that's sreads globally and risks extinction - that's Quammen

Turns their impacts

Ban Ki-Moon, secretary general of the United Nations, 4/2/’9

(<http://www.guardian.co.uk/commentisfree/2009/apr/02/g20-recession-ban-ki-moon>)

Today's G20 meeting can make the difference between human hope and despair, between economic recovery and a plunge into deepening recession. We have seen the frightening velocity of change. What began as a financial crisis has become a global economic crisis. I fear worse to come: a full-blown political crisis defined by growing social unrest, weakened governments and angry publics who have lost all faith in their leaders and their own future.

We must stop the slide. The recession hurts everyone, but those hurt worst are the poor - people with no homes or savings to lose, who in some countries spend as much as 80% of their income on food, and often lack the basics of healthcare, water and sanitation. They are the majority of the world's people - and they have no safety net.

In good times, economic and social development comes slowly. In bad times, things fall apart alarmingly fast. It is a short step from hunger to starvation, from disease to death, from peace and stability to conflict and wars that spill across borders and affect us all, near and far. Unless we can build a worldwide recovery we face a looming catastrophe in human development.

## Uq

uq = frame for pc

Obama will get a deal now - he's in a strong negotiating position with a united democratic base - causes isolation of the extreme right wing - that's Allen

Their ev is media hype—GOP opposition isn’t immovable—House GOP strategy makes a deal likely

Chris Weignant, 9/18/13, The Boehner and the Restless, www.chrisweigant.com/2013/09/18/the-boehner-and-the-restless/

The politico-media empire which writes the rules of the Washington "What Serious People Are Saying" game have apparently decided that the government shutdown is now melodramatically going to happen. Cue ominous organ music blast (dum Dum DUM!). The key word in that opening sentence is "melodramatically," because our government can now be seen as nothing more than a continuing soap opera. Call it "As The Boehner Turns," or perhaps more appropriately "The Boehner And The Restless." Personally, I don't buy it. I'm taking the contrarian position on this one. John Boehner just announced that the House will vote on a continuing resolution (to continue funding the government past the first of October) which attempts to "defund" Obamacare, and that the vote will happen this Friday. Across Washington, in newsrooms everywhere, pearls were clutched and editors swooned (and had to be revived with smelling salts). The sky is falling! The shutdown will happen! Oh, my goodness! What a calamity! The melodrama was turned up to eleven, and the knob was then snapped off. The car was about to careen off the cliff (right before the commercial break), so stay tuned, folks.... But, as I said, I don't buy it. In fact, I will go so far as to say that **the timing of the vote increases the chances that the** government shutdown will not in fact happen. The vote, I suspect, is nothing more than John Boehner showboating within his own caucus -- nothing more than a sop to the rabid Tea Party members who are demanding this showdown. The reason I reach this conclusion is that if Boehner were truly serious about using this bill as his only negotiating position, he would have waited until the last minute to introduce it. Instead, he's going to hold a vote this Friday. There are three basic endgames which are possible in the showdown. The first is that Senate Democrats and President Obama wake up one morning and, in astonishment, blurt out, "What were we thinking? Obamacare sucks! Let's repeal the signature legislation of Barack Obama's term in office!" They then leap out of bed, pass the House's bill and sign it into law. Obamacare is dead! Well, this isn't really true, since the House "defunding" Obamacare doesn't actually defund something like 80 percent of Obamacare, but whatever. The chances of this scenario happening are precisely zero, so it's a moot point. The second endgame is that the House Republicans refuse to budge, the Senate and the House can't agree on a continuing resolution, and the government shuts down at the start of next month. This is what the media is salivating over, with full soundtrack and all the melodrama they can heap upon it. What a great start to the fall season for the soap opera that is Washington! The chances of this happening are unknown, but I predict that they are one whale of a lot smaller than the media would have you currently believe. And, as I said, holding the vote this Friday means the chances of a shutdown actually happening have just grown even smaller. If Boehner really wanted this scenario to happen (he's publicly said he does not, for the record), then he would use the clock to his advantage and delay the vote on the Tea Party bill until, perhaps, next Friday -- giving the Senate almost no time to react. But he's not taking this route, which is the main point everyone seems to be missing (or willfully ignoring, to boost ratings for the soap opera). The third scenario is the most likely. John Boehner, following a script he has used in the past, allows the Tea Party to pillage and riot for a very precise amount of time. He allows their "take no prisoners" bill to be voted on. There is no guarantee that it'll even pass -- another fact many media types are ignoring today. Boehner has had to ignobly yank quite a few bills from the floor before the vote because he simply cannot round up enough votes within his own party to pass them. This could happen with Friday's bill, although it is more likely that Boehner will allow the vote even if he knows it will fail (because doing so will strengthen his position). But say for the sake of conversation that it does pass. The Tea Party will triumphantly proclaim victory, and the Senate will quickly dispose of the bill in one fashion or another -- leaving us right back at square one. The Senate leaders will then meet with the White House and come up with a budget bill which is acceptable to sane Republicans in the Senate, but which does not touch Obamacare's funding. The Senate will pass this bill, and send it over to the House (technically the House has to originate spending bills, but this can be dealt with by a gimmick, as it always is). The ball will be back in Boehner's court. Boehner has already cancelled vacation days scheduled for next week. The House will be in session. And it'll **have enough time to act before the deadline is reached**. Boehner will (again, he's done this before, folks) reluctantly tell his Tea Party members "well, we tried our hardest, but it didn't work." And then -- at the last minute, no doubt -- he'll put the Senate bill on the House floor for a vote, breaking the Republican "Hastert Rule" once again. Virtually all the Democrats will vote for it, and at least a few dozen Republicans will join them (those in such safe districts that they don't worry about Tea Party primary challenges, for the most part). The bill will pass. A few minor concessions may be wrung from the budget itself, as a sort of consolation prize for House Republicans ("See? We did get some sort of victory!"), and this tweaked bill will go back to the Senate for a vote. The Senate will pass it, and it will thus be placed upon Obama's desk for his signature. Obama, of course, will sign it. The only real question in this scenario is how close we come to hitting the deadline. Maybe the government will temporarily "shut down" for a day or two as the last Senate vote happens, at worst. But some sort of budget will be in place, until the next time this budgetary plot device arises (which seems to be planned for December, just so we can all have a holiday special for the Washington soap opera). Call me an optimist if you will, but this still seems the most-likely scenario. Boehner, by holding the big vote early, is signaling that there will be plenty of time to fix things at the last minute after he tosses the Tea Party their bone. The Tea Partiers will experience a few days of euphoria and then be consumed with white-hot rage when they don't ultimately get their way. Primary challenges will be threatened all around. Talk radio and the conservative echo chamber in the media will explode with angst and denunciation. But we will have a budget, and the government will not shut down.

Capital key determines uniqueness—overcomes House GOP opposition

Heidi Moore, The Guardian, 9/10/13, Syria: the great distraction, www.theguardian.com/commentisfree/2013/sep/10/obama-syria-what-about-sequester

Political capital – **the ability to horse-trade and win political favors from a receptive audience** – is a finite resource in Washington. Pursuing misguided policies takes up time, but it also eats up credibility in asking for the next favor. It's fair to say that congressional Republicans, particularly in the House, have no love for Obama and are likely to oppose anything he supports. **That's exactly the reason the White House should stop** proposing policies as if it is **scattering buckshot and focus with intensity on the domestic tasks it wants to accomplish, one at a time**.

The president is scheduled to speak six times this week, mostly about Syria. That includes evening news interviews, an address to the nation, and numerous other speeches. Behind the scenes, he is calling members of Congress to get them to fall into line. Secretary of State John Kerry is omnipresent, so ubiquitous on TV that it may be easier just to get him his own talk show called Syria Today.

It would be a treat to see White House aides lobbying as aggressively – and on as many talk shows – for a better food stamp bill, an end to the debt-ceiling drama, or a solution to the senseless sequestration cuts, as it is on what is clearly a useless boondoggle in Syria.

There's no reason to believe that Congress can have an all-consuming debate about Syria and then, somehow refreshed, return to a domestic agenda that has been as chaotic and urgent as any in recent memory. The President should have judged his options better. As it is, he should now judge his actions better.

his capital is key to resolution

AP, 9/12/13, Syria debate on hold, Obama refocuses on agenda, www.timesleader.com/news/apbusiness/569385542543256648058/Syria-debate-on-hold-Obama-refocuses-on-agenda

With a military strike against Syria on hold, President Barack **Obama tried** Thursday **to reignite momentum for his second-term domestic agenda**. But his progress could hinge on the strength of his standing on Capitol Hill after what even allies acknowledge were missteps in the latest foreign crisis.

"It is still important to recognize that we have a lot of things left to do here in this government," Obama told his Cabinet, starting a sustained White House push to refocus the nation on matters at home as key benchmarks on the budget and health care rapidly approach.

"The American people are still interested in making sure that our kids are getting the kind of education they deserve, that we are putting people back to work," Obama said.

The White House plans to use next week's five-year anniversary of the 2008 financial collapse to warn Republicans that shutting down the government or failing to raise the debt limit could drag down the still-fragile economy. With Hispanic Heritage Month to begin Monday, Obama is also expected to press for a stalled immigration overhaul and urge minorities to sign up for health care exchanges beginning Oct. 1.

Among the events planned for next week is a White House ceremony highlighting Americans working on immigrant and citizenship issues. Administration officials will also promote overhaul efforts at naturalization ceremonies across the country. On Sept. 21, Obama will speak at the Congressional Black Caucus Gala, where he'll trumpet what the administration says are benefits of the president's health care law for African-Americans and other minorities.

Two major factors are driving Obama's push to get back on track with domestic issues after three weeks of Syria dominating the political debate. Polls show the economy, jobs and health care remain Americans' top concerns. And Obama has a limited window to make progress on those matters in a second term, when lame-duck status can quickly creep up on presidents, particularly if they start losing public support.

Convergence of a war power fight during the budget showdown undermines needed capital and focus - focus link is independent even if PC thesis is wrong

Paul Kane, Washington Post, 9/7/13, Syria resolution could stall, articles.washingtonpost.com/2013-09-07/politics/41856008\_1\_chemical-weapons-syria-resolution-damascus

President Obama’s decision to seek congressional approval of military strikes against Syria threatens to make an already contentious fall agenda on Capitol Hill even more unstable, heightening the chance of political gridlock.

Congressional leaders, who will return Monday after a five-week break, had planned to use September to position their caucuses for a showdown over government funding levels and a bid to increase the federal debt limit, the third clash over the debt since 2011. The two sides are also jockeying over a proposed immigration overhaul and a continuing struggle over the farm bill, which was a victim of a conservative revolt over food stamps.

Instead, the first order of business is the question of whether to support missile strikes in response to Syrian President Bashar al-Assad’s alleged chemical attack on civilians. Rank-and-file lawmakers, many of whom were demanding congressional input on the decision, now appear stunned that it is before them amid so many other divisive issues.

“**We’re having trouble walking and chewing gum already. This doesn’t make it any easier**,” 10-term Rep. Frank A. LoBiondo (R-N.J.) said last week as he left a classified briefing on Syria.

The convergence of these issues sets up a complicated negotiating environment, with the Syria question burning up a significant amount of political capital for both Democratic and Republican leaders.

## Shutdown

Government shutdown collapses the economy

Yi Wu, Policy Mic, 8/27/13, Government Shutdown 2013: Still a Terrible Idea , www.policymic.com/articles/60837/government-shutdown-2013-still-a-terrible-idea

Around a third of House Republicans, many Tea Party-backed, sent a letter last week calling on Speaker John Boehner to reject any spending bills that include implementation of the Affordable Care Act, otherwise known as Obamacare. Some Senate Republicans echo their House colleagues in pondering this extreme tactic, which is nothing other than a threat of government shutdown as neither congressional Democrats nor President Obama would ever agree on a budget that abolishes the new health care law. Unleashing this threat would amount to holding a large number of of the federal government's functions, including processing Social Security checks and running the Centers for Disease Control, hostage in order to score partisan points. **It would be an irresponsible move inflicting enormous damage to the U.S. economy** while providing no benefit whatsoever for the country, and Boehner is rightly disinclined to pursue it.

Government shutdowns are deleterious to the economy. Two years ago in February 2011, a similar government shutdown was looming due to a budget impasse, and a research firm estimated that quater's GDP growth would be reduced by 0.2 percentage points if the shutdown lasted a week. After the budget is restored from the hypothetical shutdown, growth would only be "partially recouped," and a longer shutdown would result in deeper slowdowns. Further, the uncertainties resulting from a shutdown would also discourage business. A shutdown was avoided last-minute that year, unlike in 1995 during the Clinton administration where it actually took place for four weeks and resulted in a 0.5 percentage-point dent in GDP growth. Billions of dollars were cut from the budget, but neither Boehner nor the Republicans at the time were reckless enough to demand cancellation of the entire health care reform enacted a year before.

Besides the economic effects in numbers, a shutdown this year will harm some of the most vulnerable, while at the same time not shutting down government policies that have been the most intrusive upon American people. "Essential services" would continue running, but what the federal government deems "essential" often does not coincide with what we consider essential. In the 1995 shutdown, the cleanup of toxic waste at 609 sites came to a halt. Who knows how many people were affected by the poisonous substances left over unattended?Similarly, health and welfare services for veterans were pulled back as well. Yet, a government shutdown does nothing to stop the operations of Drug Enforcement Administration (DEA), which is considered an "essential service" despite the failed War on Drugs having done much more harm than good. The NSA wiretapping program, which some consider to violate civil liberties, would likely be unaffected, as would the TSA pat-downs.

To force a budget without Obamacare, the signature legislation of the administration, in this manner would be akin to threatening to shut down all government agencies unless Social Security or the EPA is done away with here and now. If during the Bush years in 2006 the Democrats told the president to sign a budget ceasing all military operations in Iraq and Afghanistan or face a shutdown, not only would Bush refuse to comply, Republicans would be calling Democrats traitors to the country. One can in principle support privatization of Social Security or oppose government regulation of health care, but legislating by hostage-taking is inimical to democracy. American people should be worried, additionally, as some Republicans are also considering using the debt ceiling this fall to bring down Obamacare. Not raising the debt ceiling when it is reached can be even more dangerous for us than a government shutdown. As economist Alice Rivlin explained, it would cause the U.S. to default and become a "deadbeat country" like Greece. In the stern words of Austan Goolsbee, such default would be "the first default in history caused purely by insanity."

## mcconnel

mconnell doesn't solve, PC is key

their cite

their card ends

Up for reelection in Kentucky next year, McConnell faces a serious tea party challenge in the GOP primary—with die-hard conservatives in the state griping that the senator, who last year scored a 100 percent rating from the American Conservative Union, is not sufficiently right-wing. (His latest sin: supporting legislation funding the entire federal government that included appropriations related to the implementation of Obamacare.) Faced with a threat from the right, McConnell has placed his reelection campaign in the hands of Jesse Benton, an operative firmly associated with Sen. Rand Paul, a darling of Kentucky's tea party set. Still, McConnell must fear the wrath of Paul and the Paulites, should he engage in wheeling and dealing that results in any accords that offend the sensibilities of the tea partiers. Caught between Rand Paul and the White House, one of the most powerful and sly politicians in Washington has little room to work his behind-closed-doors magic.

## Syria

Syria validates the link thesis, but the deal and lack of a vote mean it won’t impact the short-term agenda—that’s all that matters!

Matthew Baum, AlJazeera America, 9/16/13, Obama's good fortune on Syria, america.aljazeera.com/articles/2013/9/16/obama-opinion-pollingsyria.html

Secretary of State John Kerry's announcement Saturday morning of a framework agreement with Russia on dismantling Syrian President Bashar al-Assad's chemical weapons arsenal capped (for now, at least) what undoubtedly has been one of the most bizarre episodes in memory for U.S. foreign policy. In the span of two weeks, U.S. plans caromed from the seemingly imminent use of force to a surprise time-out for consultation with Congress to a full-throttled presidential media blitz on the need for military strikes to slamming on the brakes and calling off the congressional vote in favor of renewed diplomacy with Russia, the U.S.'s erstwhile nemesis on Syria. The Obama administration undoubtedly dodged a very large domestic political bullet, at least in the short term. The president took a calculated but substantial risk when he decided to slow the seemingly inexorable march toward military action against Syria and invite Congress to weigh in on the matter. All available evidence suggests that even if he somehow managed to persuade a reluctant Senate to go along, House approval was improbable at best. **Had he lost a congressional vote** on a military strike, **the** costs in political capital **at home** and credibility abroad, as well as to the executive branch itself, **could have been** severe**.** The administration did not help its case or its public image by issuing cringe-worthy pronouncements, such as Kerry's promise that any military strike would be "unbelievably small." This forced Obama to reassure the American people that the U.S. military "does not do pinpricks." Satirists from "The Daily Show" to "Saturday Night Live" were doubtless exchanging high fives. On the other hand, Kerry's seemingly off-the-cuff offer to call off military action if Assad agreed to surrender his chemical weapons **turned out to be extraordinarily good political fortune**. Surely Kerry did not anticipate that Russia and Syria would call his bluff. Yet they did, thereby **taking the impending congressional vote** -- **and with it a potentially epic domestic political** and international diplomatic **fiasco** -- **off the table and the front pages**. For the president, **this change of subject came not a moment too soon**. In a CNN/ORC International poll taken on the eve of his Sept. 10 prime-time television address on Syria, public approval for his handling of foreign affairs reached a new low of 40 percent, while only 31 percent approved of his handling of the situation in Syria. At the same time, numerous surveys found fewer than 30 percent of Americans supported U.S. military action in Syria, and Obama's overall approval rating dipped to 43.5 percent in Gallup's tracking poll. One should not make too much of opinion polls taken prior to a military intervention, yet these numbers make Syria among the least popular proposed U.S. military interventions in recent memory. By comparison, in several surveys leading up to the 2011 U.S.-led intervention in Libya, half or more of the public supported the plan to establish a no-fly zone, and 43 percent approved of the administration's handling of that crisis. Despite the surreal nature of the past two weeks' events, it is worth considering that had the administration announced such a diplomatic breakthrough before the decision to consult Congress, the media likely would have been abuzz with stories of Obama's diplomatic prowess. As it is, a more positive media narrative may yet replace or at least challenge the current dominant media representation of a feckless president stumbling and improvising his way through a crisis. Revisionist accounts have already arisen, asserting that Kerry's comments actually represented a policy option that the U.S. and Russia had been discussing for over a year. Granted, whatever the origins of the deal, it is far from done. The U.S. and Russia are already bickering over the number of Syrian-government-controlled chemical weapons sites to be disarmed. Assad may engage in a Saddam Hussein–like cat-and-mouse game with U.N. inspectors, attempting to thwart or at least delay their efforts. And the consequences if Assad fails to fully cooperate are uncertain at best. Referral to the U.N. Security Council faces veto by Russia and China of any resolution to authorize military force. Even if every dispute can be resolved, safely dismantling all of Assad's chemical weapons would be a daunting task even absent an ongoing civil war. Regardless, unless the deal with Russia collapses, **the chances are very good** that a month from now the media and public will have moved on from Syria to focus on an array of pressing domestic issues, including looming showdowns **between the White House and congressional Republicans over the budget and the debt ceiling** and the launch of critical elements of the Affordable Care Act. According to a Sept. 11 Gallup poll, despite all the attention heaped on Syria, Americans rate it as only the fifth most important problem facing the nation, well behind a host of domestic concerns. Whether or not Syria is ultimately disarmed and if the process drags on for many months or years, the ultimate success or failure of Obama's second term may rest far less on Syria than on those imminent domestic political battles and, of course, the state of the economy, where his approval rating stood at a precarious 43 percent in the CNN/ORC International poll -- just one percentage point higher than his approval rating on health care policy.

# CP

The entire executive branch will comply

Johnsen, professor of law at Indiana University, August 2007

(Dawn, “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

The Torture Opinion thrust into the public eye a previously obscure, though enormously influential, office within the Department of Justice: the Office of Legal Counsel. The constitutional text and structure make plain the President's obligation to act in conformity with the law and to ensure that all in the executive branch do the same as they perform myriad responsibilities. To fulfill their oath of office n82 and obligation to "take Care that the Laws be faithfully executed," n83 Presidents require a reliable source of legal advice. In recent decades OLC has filled that role. Thus, OLC's core function is to provide the legal advice that the President - and, by extension, the entire executive branch - needs to faithfully execute the laws.

 [\*1577] OLC functions as a kind of general counsel to the numerous other top lawyers in the executive branch who tend to send OLC their most difficult and consequential legal questions. n84 OLC's staff of about two dozen lawyers (most of whom are career employees, led by several political appointees) responds to legal questions from the counsel to the President, the attorney general, the general counsels of the various executive departments and agencies, and the assistant attorneys general for the other components of the Department of Justice. A relatively high percentage of OLC's work comes from the White House or otherwise involves the White House. Regulations require the submission of legal disputes between executive branch agencies to OLC for resolution. n85 **By virtue of regulation and tradition**, **OLC's legal interpretations** typically **are** considered **binding within the executive branch**, unless overruled by the attorney general or the President (an exceedingly rare occurrence). n86

OLC's advice therefore ordinarily must be **followed by the entire executive branch**, from the counsel to the President and cabinet officers to the military and career administrators, **regardless of any disagreement or unhappiness**. The President, however, may overrule the advice through formal means or simply by declining to follow it. To take a quasi-hypothetical example, if the CIA wanted to use waterboarding to interrogate a detainee but the Department of Justice's criminal division and the U.S. Department of State believed that doing so would be illegal, OLC would resolve that dispute. The CIA would be bound by an OLC conclusion that waterboarding was unlawful. The President or attorney general could lawfully override OLC only pursuant to a good faith determination that OLC erred in its legal analysis. The President would violate his constitutional obligation if he were to reject OLC's advice solely on policy grounds. [\*1578] Of course, even if OLC were to find waterboarding lawful, the President or other appropriate officials could make the policy determination not to use it as a method of interrogation. The President or the attorney general also could disagree with OLC's interpretation of the relevant law and prohibit waterboarding on legal grounds.

Presidential endorsement guarantees

Morrison, professor of law at Columbia, May 2011

(Trevor W., ‘LIBYA, "HOSTILITIES," THE OFFICE OF LEGAL COUNSEL, AND THE PROCESS OF EXECUTIVE BRANCH LEGAL INTERPRETATION,’ 124 Harv. L. Rev. F. 62, Lexis)

OLC does not have the power to impose conclusive, binding legal obligations on the President, but by longstanding tradition its opinions are treated as presumptively binding and are virtually never overruled by the President or Attorney General. As re-specified by Ackerman, that is the most the Supreme Executive Tribunal could ever hope for -- but without the benefit of longstanding traditions to sustain it. In either case, the key is not any external statutory guarantee of interpretive authority, but **a commitment by the White House to respect the legal conclusions in question**. Yet if presidents are not willing to engage in executive self-binding with respect to a time-honored institution like OLC, why should we expect they would do so for Ackerman's new Tribunal? We should not. What this reveals is that newfangled institutions are not the answer. As I say in the conclusion to my review of Decline and Fall, "[t]he key lies not in any transformation of the executive branch but in the 'cultural norms' of offices like OLC . . . and in a President, [\*74] Congress, and public that care whether those norms are preserved." n32

That alone creates solvency

Johnsen, professor of law at Indiana University, August 2007

(Dawn, “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

Public cynicism notwithstanding, **it is** both **possible** and necessary **for executive branch lawyers to constrain** unlawful **executive branch action**. Ultimately, though, **the President's own attitude toward the rule of law will go a long way toward setting the tone for the administration**. If the President desires only a rubberstamp, OLC will have to struggle mightily to provide an effective check on unlawful action. In addition to being prepared to say no, therefore, the assistant attorney general for OLC and other top Department of Justice officials must also be prepared to resign in the extraordinary event the President persists in acting unlawfully or demands that OLC legitimize unlawful activity. Even from within the Bush Administration, some cause for optimism can be found in reports of internal opposition to extreme interrogation policies, as well as in the threatened resignation of up to thirty Department of Justice officials if Bush had persisted in a domestic surveillance program the Department had determined was unlawful. n169 This is as it should be: Commitment to the rule of law must not be a partisan issue. Congress, the courts, and the public should all work to empower principled executive branch legal advisors - in administrations of both political parties - to safeguard our constitutional democracy.

## Solves SOP

OLC settles constitutional questions - not deference

Pillard, associate professor of law at Georgetown, February 2005

(Cornelia T., THE UNFULFILLED PROMISE OF THE CONSTITUTION IN EXECUTIVE HANDS, 103 Mich. L. Rev. 676, Lexis)

In one very important way, the OLC has an advantage over the SG with regard to checking constitutional violations. Whereas the SG is a litigator who necessarily examines potential constitutional problems only after challenged government action is already a fait accompli, the Assistant Attorney General for OLC can weigh in before federal [\*715] initiatives are undertaken **to** nip constitutional problems in the bud. n119 Assume, for example, that the SG and OLC preliminarily held the same view about an issue, such as the constitutionality of federal funding for religious as well as nonreligious instruction. n120 The fact that the SG would face the issue only after the government had given such aid would create incentives for the SG to interpret the Constitution to permit it, in order to facilitate his defense of the conduct in court - incentives that OLC would not face when considering the issue in advance of any commitment to such aid. OLC thus, at least in theory, has opportunities, which the SG lacks, to prevent unconstitutional action from occurring in the first place. n121

Moreover, its ex ante review makes OLC interpretations that impose constitutional constraints less subject to judicial second-guessing than those of the SG. **If OLC were to advise against proposed conduct based on constitutional concerns and the executive were to follow the advice**, **no justiciable controversy would arise**. **OLC's opinion would** effectively **be final**. n122 OLC also addresses many nonjusticiable issues, where the absence of any prospect of judicial review makes its views even more definitive. In contrast, if the SG were to take a moderate rather than extreme view of government power in defense of conduct challenged in litigation, there is no guarantee that the Court, in its own decision, would show the same restraint. n123 A joke about his own promotion from OLC to SG that Walter Dellinger made captures this OLC-SG difference: After Dellinger had served for three years as AAG for OLC, Clinton appointed him Acting Solicitor General. Dellinger then argued his first case in the Court, and once the Chief Justice intoned, "The case is submitted," Dellinger thought to himself, "What do you [\*716] mean "the case is submitted'? I've made up my mind. What more is there to do?" n124

## prec

Solves perception and precedent

Johnsen, professor of law at Indiana University, August 2007

(Dawn, “The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559, Lexis)

Perhaps most essential to avoiding a culture in which OLC becomes merely an advocate of the administration's policy preferences is transparency [\*1597] in the specific legal advice that informs executive action, as well as in the general governing processes and standards. The Guidelines state that "**OLC should publicly disclose its written legal opinions** in a timely manner, absent strong reasons for delay or nondisclosure." n151 The Guidelines describe several values served by a presumption of public disclosure, beyond the general public accountability that accompanies openness in government. **The likelihood of public disclosure will encourage both the reality and the appearance of governmental adherence to the rule of law by deterring "excessive claims of executive authority" and promoting public confidence that executive branch action actually is taken with regard to legal constraints**. n152 The Guidelines note as well that public discourse and "the development of constitutional meaning" may benefit from the executive's important voice, valuable perspective, and expertise. n153

## Norms

The CP changes executive practice – that’s the key link to legal norms

Bradley, professor of law at Duke, and Morrison, professor of law at Columbia, May 2013

(Curtis A. and Trevor W., PRESIDENTIAL POWER, HISTORICAL PRACTICE, AND LEGAL CONSTRAINT, 113 Colum. L. Rev. 1097, Lexis)

Perhaps **the** most obvious **way that law can have a constraining effect is if the relevant actors** have **internalize**d the legal norms, **whether those norms are** embodied **in** authoritative text, **judicial decisions**, **or institutional practice**. As a general matter, the internalization of legal norms is a phenomenon that can potentially take place wherever the law is thought to operate, in both the private and public sectors. But precisely how that internalization operates, including how it affects actual conduct, depends heavily on institutional context. When speaking of legal norm internalization as it relates to the presidency, it is important first to note that Presidents act through a wide array of agencies and departments, and that presidential decisions are informed - and often made, for all practical purposes - by officials other than the President. In most instances involving presidential power, therefore, **the relevant question is whether there has been an internalization of legal norms by the executive branch**.

The executive branch contains thousands of lawyers. n124 The President and other executive officials are regularly advised by these lawyers, and sometimes they themselves are lawyers. Although lawyers serve in a wide variety of roles throughout the executive branch, their [\*1133] experience of attending law school means that they have all had a common socialization - a socialization that typically entails taking law seriously on its own terms. n125 Moreover, the law schools attended by virtually all U.S. government lawyers are American law schools, which means that the lawyers are socialized in an ethos associated with the American polity and the American style of law and government. n126 These lawyers are also part of a professional community (including the state bars to which they are admitted) with at least a loosely shared set of norms of argumentative plausibility.

Certain legal offices within the executive branch have developed their own distinctive law-internalizing practices. This is particularly true in places like OLC, which, as noted above, provides legal advice based on its best view of the law. OLC has developed a range of practices and traditions - including a strong norm of adhering to its own precedents even across administrations - that help give it some distance and relative independence from the immediate political and policy preferences of its clients across the executive branch, and that make it easier for OLC to act on its own internalization of legal norms. n127 Another example is the State Department Legal Adviser's Office, which often takes the lead within the executive branch on matters of international law and which has developed its own set of traditions and practices that help protect it from undue pressure from its clients. n128