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## PTX

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.

**Nuclear war**

**Harris and Burrows ‘9**

(Mathew, PhD European History at Cambridge, counselor in the National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” http://www.ciaonet.org/journals/twq/v32i2/f\_0016178\_13952.pdf, AM)

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the harmful effects on fledgling democracies and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which the potential for greater conflict could grow would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. Terrorism’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks\_and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any economically-induced drawdown of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, acquire additional weapons, and consider pursuing their own nuclear ambitions. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an **unintended escalation** and broader conflict if clear red lines between those states involved are not well established. The close proximity of potential nuclear rivals combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on preemption rather than defense, potentially leading to **escalating** **crises**. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in interstate conflicts if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

## T

A. Interpretation – Restrictions on authority confine the ability to execute operations

Simpson, U.S. Appeals Judge for the Fifth Circuit, 1981

(Bowman Transportation v. Interstate Commerce Commission, 643 F.2d 285, Lexis)

In three cases, Freight, All Kinds, L.C.L., Container Charges-U.S.A., 323 I.C.C. 468 (1964), Railway Express Agency, Incorporated, Extension-Traverse City, Mich., 96 M.C.C. 727 (1965), and Nebraska-Iowa Xpress, Inc. v. I.C.C., No. 79-1661 (D.C.Cir.1980), the Commission removed or disallowed weight restrictions on express carriers. In Freight, All Kinds, the examiner had imposed a 500 pound weight restriction on Railway Express Agency and in removing this restriction the Commission stated, "To impose such an unexpected burden upon the respondent would be improper. Assuming, arguendo, that it would be desirable to define "express service' in terms of a definite weight limit, the factual basis for such a limitation could be established only in a general investigation or ex parte proceeding. [\*288] " Freight, All Kinds, L.C.L., Container Charges-U.S.A., supra, 323 I.C.C. at 482. **In removing another** 500 pound weight **limitation** which had been imposed by the joint board, **the Commission stated**:

**The Commission** [\*\*7] **is always reluctant to impose restrictions in grants of** operating **authority** which are administratively undesirable or difficult to enforce. The instant restriction imposed by the board in its recommended grant has both of these characteristics, and **we perceive no useful purpose in** retaining **such a restriction** in the authority granted. **This condition** which **defines and confines the** operation to be performed in terms of an arbitrary weight limit is incompatible with the concept of "express service".

B. Violation

DOD shift doesn’t restrict authority

Spencer Ackerman, Wired DangerRoom, 3/20/13, Little Will Change If the Military Takes Over CIA’s Drone Strikes, www.wired.com/dangerroom/2013/03/military-drones/

**Nor does the change to military drone control restrict** the relevant **legal authorizations** in place. The Obama administration relies on an expansive interpretation of a 2001 congressional authorization to run its global targeted-killing program. If that authorization constrains the military to the “hot” battlefield of Afghanistan, someone forgot to tell the Joint Special Operations Command to get out of Yemen.

Financial barriers are not “restrictions”

Brobeck, Phleger & Harrison 1999 (LLP, “V. LAW FIRMS AND ASSOCIATIONS,” CALIFORNIA LEGAL ETHICS, http://www.law.cornell.edu/ethics/ca/narr/CA\_NARR\_5.HTM)

Addressing the scope of the term "restrict" in CRPC 1-500, the California Supreme Court held that, while an outright prohibition of future representation would violate CRPC 1-500, "[a]n **agreement that** **assesses a** reasonable **cost** against a partner who chooses to compete with his or her former partners **does not restrict**" a lawyer from practicing law in the sense contemplated by CRPC 1-500 because (i) a reasonable cost assessed against a departing lawyer would not discourage the lawyer from representing those clients who wished to continue using his or her services, and (ii) "[t]he traditional view of the law firm as a stable institution with an assured future is now challenged by an awareness that even the largest and most prestigious firms are fragile economic units" that require compensation from a departing partner in order to maintain stability. Howard v. Babcock (1993) 6 Cal.4th 409, 420, 424, 25 Cal.Rptr.2d 80, 863 P.2d 150. Rather, a reasonable cost merely "attaches an economic consequence to a departing partner's unrestricted choice to pursue a particular kind of practice." Howard v. Babcock (1993) 6 Cal.4th 409, 419, 25 Cal.Rptr.2d 80, 863 P.2d 150; L.A. Op. 1995-450 (partnership agreement that imposes only reasonable costs on a departing partner is enforceable).

## K

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

**Margulies ‘11**

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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**.

## CP

The executive branch of the United States federal government should issue and enforce an executive order that no funds may be used for targeted killings using remote piloted aircraft, unless they are conducted by a member of the Armed Forces under the authority provided pursuant to Title 10 of the United States Code. The order should also establish a bipartisan independent executive branch commission to enforce and monitor this restriction and establish public transparent review of targeted killing standards and procedures and clarify department doctrine publically.

Self-restraint is durable and sends a credible signal

Eric Posner, The University of Chicago Law School Professor, and Adrian Vermeule, Harvard Law School Professor of Law, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

The Madisonian system of oversight has not totally failed. Sometimes legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative prerogatives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion unchecked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is.

It is often assumed that this partial failure of the Madisonian system unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are uncertain and possibly nefarious. The partial failure of Madisonian oversight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off.

Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an executive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such.

IV. Executive Signaling: Law and Mechanisms

We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.

This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations. n72 Whether or not this picture is coherent, n73 it is not the question we examine here, although some of the relevant considerations are similar. n74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. [\*895]

Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types.

We begin with some relevant law, then examine a set of possible mechanisms -emphasizing both the conditions under which they might succeed and the conditions under which they might not -and conclude by examining the costs of credibility.

A. A Preliminary Note on Law and Self-Binding

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding. n75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. n76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies.

More schematically, we may speak of formal and informal means of self-binding:

1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.

2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. n77 However, there may be large political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive's issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.

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

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

4. Procedural Requirements

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

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

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

a. Ex Ante Procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Ex Post Review

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

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

## DA

Executive war power primacy now—the plan flips that

Eric Posner, 9/3/13, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President **Obama has reaffirmed the primacy of the executive** in matters of war and peace. The war powers of the presidency remain as mighty as ever. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. **That would have been** worthy of notice, **a reversal of the ascendance of executive power over Congress**. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

The squo gives the president necessarily flexibility that the plan eviscerates

John Bennett, Defense News, 5/24/13, White House Quietly Shifts Armed Drone Program from CIA to DoD, www.defensenews.com/article/20130524/DEFREG02/305240010/White-House-Quietly-Shifts-Armed-Drone-Program-from-CIA-DoD

That official, however — by calling it “a preference” that the military take the lead role — provided important wiggle room and signaled the CIA is not out of the targeted-killing business for good.

To that end, a former senior CIA official told Defense News earlier this week following a not-for-attribution event in Washington that **Obama and his senior national security advisers have wanted for some time to return the CIA to its core missions**.

“Do you want the nation’s top espionage agency conducting a paramilitary mission or performing espionage?” the former senior official asked rhetorically. “The agency, since 9/11, and it’s understandable, has gotten away from its core missions. A lot of the collection and analysis really is now used for targeting.”

The former senior official predicted the revamped drone program will give the president important legal flexibility.

Turning his hand for effect as if turning the dial of a safe or adjusting a thermostat, the former senior CIA official concluded: “What you want is a dial, not a switch.”

Congressional/judicial control of targeted killing destroys war fighting and turns the case.

Issacharoff ‘13

Samuel Issacharoff, Reiss Professor of Constitutional Law, New York University School of Law. and Richard H. Pildes, Sudler Family Professor of Constitutional Law, New York University School of Law; CoDirector, NYU Program on Law and Security, “Drones and the Dilemma of Modern Warfare,” PUBLIC LAW & LEGAL THEORY RESEARCH PAPER SERIES WORKING PAPER NO. 13-34 Star Chamber=politicized secret court from 15th century England, symbol of abuse

Procedural Safeguards

As with all use of lethal force, there must be procedures in place to maximize the likelihood of correct identification and minimize risk to innocents. In the absence of formal legal processes, sophisticated institutional entities engaged in repeated, sensitive actions – including the military – will gravitate toward their own **internal analogues** to legal process, even without the compulsion or shadow of formal judicial review. This is the role of bureaucratic legalism63 in developing sustained institutional practices, even with the dim shadow of unclear legal commands. These forms of self-regulation are generated by programmatic needs to enable the entity’s own aims to be accomplished effectively; at times, that necessity will share an overlapping converge with humanitarian concerns to generate internal protocols or process-like protections that minimize the use of force and its collateral consequences, in contexts in which the use of force itself is otherwise justified. But because these process-oriented protections are not codified in statute or reflected in judicial decisions, they typically are too invisible **to draw the eye of constitutional law scholars** who survey these issues from much higher levels of generality. In theory, such review procedures could be fashioned alternatively as a matter of **judicial review** (perhaps following warrant requirements or the security sensitivities of the FISA court), or accountability **to legislative oversight** (using the processes of select committee reporting), or the institutionalization of friction points within the executive branch (as with review by multiple agencies). Each could serve as a check on the development of unilateral excesses by the executive. And, presumably, each could guarantee that internal processes were adhered to and that there be accountability for wanton error. The centrality of dynamic targeting in the active theaters such as the border areas between Afghanistan and Pakistan **make it** difficult **to** integrate **legislative or judicial review mechanisms**. Conceivably, the decision to place an individual on a list for targeting could be a moment for review outside the boundaries of the executive branch, but even this has its drawback. Any court engaged in the ex parte review of the decision to execute someone outside the formal mechanisms of crime and punishment risks appearing as a modern variant of the Star Chamber.64 Similarly, there are difficulties in forcing a polarized Congress as a whole to assume collective responsibility for decisions of life and death and the incentives have turned out to not to be well aligned to get a subset of Congress, such as the intelligence committees, to play this role effectively.65

That goes nuclear

**Li ‘9**

Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

Bioterror causes extinction

Mhyrvold ‘13

Nathan, Began college at age 14, BS and Masters from UCLA, Masters and PhD, Princeton “Strategic Terrorism: A Call to Action,” Working Draft, The Lawfare Research Paper Series

Research paper NO . 2 – 2013

As horrible as this would be, such a pandemic is by no means the worst attack one can imagine, for several reasons. First, most of the classic bioweapons are based on 1960s and 1970s technology because the 1972 treaty halted bioweapons development efforts in the United States and most other Western countries. Second, the Russians, although solidly committed to biological weapons long after the treaty deadline, were never on the cutting edge of biological research. Third and most important, the science and technology of molecular biology have made enormous advances, utterly transforming the field in the last few decades. High school biology students routinely perform molecular-biology manipulations that would have been impossible even for the best superpower-funded program back in the heyday of biological-weapons research. The biowarfare methods of the 1960s and 1970s are now as antiquated as the lumbering mainframe computers of that era. Tomorrow’s terrorists will have vastly more deadly bugs to choose from. Consider this sobering development: in 2001, Australian researchers working on mousepox, a nonlethal virus that infects mice (as chickenpox does in humans), accidentally discovered that a simple genetic modification transformed the virus.10, 11 Instead of producing mild symptoms, the new virus killed 60% of even those mice already immune to the naturally occurring strains of mousepox. The new virus, moreover, was unaffected by any existing vaccine or antiviral drug. A team of researchers at Saint Louis University led by Mark Buller picked up on that work and, by late 2003, found a way to improve on it: Buller’s variation on mousepox was 100% lethal, although his team of investigators also devised combination vaccine and antiviral therapies that were partially effective in protecting animals from the engineered strain.12, 13 Another saving grace is that the genetically altered virus is no longer contagious. Of course, it is quite possible that future tinkering with the virus will change that property, too. Strong reasons exist to believe that the genetic modifications Buller made to mousepox would work for other poxviruses and possibly for other classes of viruses as well. Might the same techniques allow chickenpox or another poxvirus that infects humans to be turned into a 100% lethal bioweapon, perhaps one that is resistant to any known antiviral therapy? I’ve asked this question of experts many times, and no one has yet replied that such a manipulation couldn’t be done. This case is just one example. Many more are pouring out of scientific journals and conferences every year. Just last year, the journal Nature published a controversial study done at the University of Wisconsin–Madison in which virologists enumerated the changes one would need to make to a highly lethal strain of bird flu to make it easily transmitted from one mammal to another.14 Biotechnology is advancing so rapidly that it is hard to keep track of all the new potential threats. Nor is it clear that anyone is even trying. In addition to lethality and drug resistance, many other parameters can be played with, given that the infectious power of an epidemic depends on many properties, including the length of the latency period during which a person is contagious but asymptomatic. Delaying the onset of serious symptoms allows each new case to spread to more people and thus makes the virus harder to stop. This dynamic is perhaps best illustrated by HIV , which is very difficult to transmit compared with smallpox and many other viruses. Intimate contact is needed, and even then, the infection rate is low. The balancing factor is that HIV can take years to progress to AIDS , which can then take many more years to kill the victim. What makes HIV so dangerous is that infected people have lots of opportunities to infect others. This property has allowed HIV to claim more than 30 million lives so far, and approximately 34 million people are now living with this virus and facing a highly uncertain future.15 A virus genetically engineered to infect its host quickly, to generate symptoms slowly—say, only after weeks or months—and to spread easily through the air or by casual contact would be vastly more devastating than HIV . It could silently penetrate the population to unleash its deadly effects suddenly. This type of epidemic would be almost impossible to combat because most of the infections would occur before the epidemic became obvious. A technologically sophisticated terrorist group could develop such a virus and kill a large part of humanity with it. Indeed, terrorists may not have to develop it themselves: some scientist may do so first and publish the details. Given the rate at which biologists are making discoveries about viruses and the immune system, at some point in the near future, someone may create artificial pathogens that could drive the human race to extinction. Indeed, a detailed species-elimination plan of this nature was openly proposed in a scientific journal. The ostensible purpose of that particular research was to suggest a way to extirpate the malaria mosquito, but similar techniques could be directed toward humans.16 When I’ve talked to molecular biologists about this method, they are quick to point out that it is slow and easily detectable and could be fought with biotech remedies. If you challenge them to come up with improvements to the suggested attack plan, however, they have plenty of ideas. Modern biotechnology will soon be capable, if it is not already, of bringing about the demise of the human race— or at least of killing a sufficient number of people to end high-tech civilization and set humanity back 1,000 years or more. That terrorist groups could achieve this level of technological sophistication may seem far-fetched, but keep in mind that it takes only a handful of individuals to accomplish these tasks. Never has lethal power of this potency been accessible to so few, so easily. Even more dramatically than nuclear proliferation, modern biological science has frighteningly undermined the correlation between the lethality of a weapon and its cost, a fundamentally stabilizing mechanism throughout history. Access to extremely lethal agents—lethal enough to exterminate Homo sapiens—will be available to anybody with a solid background in biology, terrorists included.

## solvency

Threat con doesn’t result in war

**Kaufman**, Prof Poli Sci and IR – U Delaware, **‘9**

(Stuart J, “Narratives and Symbols in Violent Mobilization: The Palestinian-Israeli Case,” *Security Studies* 18:3, 400 – 434)

Even when hostile narratives, group fears, and opportunity are strongly present, war occurs **only if these factors are harnessed.** Ethnic narratives and fears must combine to create significant ethnic hostility among mass publics. Politicians must also seize the opportunity to manipulate that hostility, evoking hostile narratives and symbols to gain or hold power by riding a wave of chauvinist mobilization. Such mobilization is often spurred by prominent events (for example, episodes of violence) that increase feelings of hostility and make chauvinist appeals seem timely. If the other group also mobilizes and if each side's felt security needs threaten the security of the other side, the result is a security dilemma spiral of rising fear, hostility, and mutual threat that results in violence. **A virtue of** this **symbolist theory is that symbolist logic explains why** ethnic **peace is more common than ethnonationalist war.** Even if hostile narratives, fears, and opportunity exist, severe violence usually can still be avoided if ethnic elites skillfully define group needs in moderate ways and collaborate across group lines to prevent violence: this is consociationalism.17 War is likely only if hostile narratives, fears, and opportunity spur hostile attitudes, chauvinist mobilization, and a security dilemma.

No internal link

**Kydd 97** (Assistant professor of political science, University of California, Riverside, Sheep in Sheep's clothing: Why security seekers do not fight each other, Security Studies)

I HAVE ARGUED that the search for security does not lead to conflict, in spite of uncertainty about motivations. The search for security leads to a focus on the motivations of other states. Security seekers who know each other to be security seekers can avoid conflict entirely. Such states do best by not attacking each other; each is then perfectly secure. Offensive realists argue that motivations are unobservable and hence security seekers will never know if they face security seekers or not. States treat all other states alike; there are no friends in international relations, only current enemies and potential enemies. States therefore seek relative power as a proxy for security. This enables them to maximize their chances of winning in die inevitable wars of die future, whomever they may be fought against. This point of view completely ignores the possibility of revealing motivations offered by transparent democratic policy processes, and deliberate signaling of intentions. It leads scholars such as Mearsheimer to predict increased conflict between Britain, France, and Germany when we see no evidence of such conflict. It ignores the wealth of information available to states about the motivations of other states, and the fact that this information often has a direct impact on foreign-policy making. Such theorizing tells us much about the dynamics of a system in which all states are power maximizers, but it tells us less about the real world in which few states fit that description Defensive realists, more realistically, assert that the search for security does not always cause conflict, because state motivations can sometimes be signaled under certain favorable conditions. The central focus is the offense-defense distinction. When offensive and defensive weapons may be distinguished and when the defensive is strong enough, the security minded state can invest disproportionately in the defensive. Under these conditions, security seekers can know each other by the type of weapons they choose to deploy: aggressive states will choose offensive weapons, and security seekers will choose defensive ones. When these conditions are violated, this avenue for signaling intentions will not be available, or will be considered too costly, and security seekers will invest in offense as well as greedy states. Thus Glaser argues for a "contingent" structural realism: sometimes the security dilemma is harsh and causes conflict, sometimes it is easier to overcome. Glaser and the other defensive realists, however, ignore the odier, nonmilitary avenues open for learning about the intentions of other states. Democratic states reveal a wealth of information regardless of the state of the offense-defense balance. Likewise policy toward minorities, ideology, and treatment of small neighboring states. Defensive realism thus underestimates the ability of states to form reasonable beliefs about each other's intentions, and hence overestimates the likelihood that the search for security can lead to conflict under offense-dominant conditions. I argue that security-seeking states have many avenues to convey their benign motivations and hence are able to avoid conflict and war with each other. The transparency of the democratic policy process facilitates cooperation, provided that the populace and policy makers are in fact security seekers. Also, the ability to send costly signals in both military and nonmilitary matters also makes cooperation between security seekers achievable. Both offensive and defensive structural realists, therefore, exaggerate the negative implications of the search for security. The search for security does not lead to conflict in the absence of genuinely aggressive states.

Life is always valuable

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Ultimately, Aquinas' theory of personhood requires a metaphysical explanation that is rooted in an understanding of the primacy of the existence or esse of the human person. For humans beings, the upshot of this position is clear: while human personhood is intimately connected with a broad range of actions (including consciousness of oneself and others), the definition of personhood is not based upon any specific activity or capacity for action, but upon the primacy of esse. Indeed, human actions would have neither a cause nor any referent in the absence of a stable, abiding self that is rooted in the person's very being. A commitment to the primacy of esse, then, allows for an adequate recognition of the importance of actions in human life, while providing a principle for the unification and stabilizing of these behavioral features. In this respect, the human person is defined as a dynamic being which actualizes the potentiality for certain behavior or operations unique to his or her own existence. Esse thereby embraces all that the person is and is capable of doing.

In the final analysis, **any attempt to define the person in terms of a single attribute, activity, or capability** (e.g., consciousness) flies in the face of the depth and multi-dimensionality which is part and parcel of personhood itself. To do so **would abdicate the ontological core of the person and the very center which renders human activities intelligible**. And Aquinas' anthropology, I submit, provides an effective philosophical lens through which the depth and profundity of the human reality comes into sharp focus. In this respect, Kenneth Schmitz draws an illuminating distinction between "person" (a term which conveys such hidden depth and profundity) and "personality" (a term which pertains to surface impressions and one's public image).40 The preoccupation with the latter term, he shows, is very much an outgrowth of the eighteenth century emphasis upon a human individuality that is understood in terms of autonomy and privacy. This notion of the isolated, atomistic individual was closely linked with a subjective focus whereby the "self" became the ultimate referent for judging reality. By extension, such a presupposition led to the conviction that only self-consciousness provides a means of validating any claims to personhood and membership in a community of free moral agents capable of responsibilities and worthy of rights.

In contrast to such an isolated and enclosed conception (i.e., whereby one is a person by virtue of being "set apart" from others as a privatized entity), Schmitz focuses upon an intimacy which presupposes a certain relation between persons. From this standpoint, intimacy is only possible through genuine self-disclosure, and the sharing of self-disclosure that allows for an intimate knowledge of the other.41 For Schmitz, such a revelation of one's inner self transcends any specific attributes or any overt capacity the individual might possess.42 Ultimately, Schmitz argues, intimacy is rooted in the unique act of presencing, whereby the person reveals his or her personal existence. But such a mystery only admits of a metphysical explanation, rather than an epistemological theory of meaning which confines itself to what is observable on the basis of perception or sense experience. Intimacy, then, discloses a level of being that transcends any distinctive properties. Because intimacy has a unique capacity to disclose being, it places us in touch with the very core of personhood. Metaphysically speaking, intimacy is not grounded in the recognition of this or that characteristic a person has, but rather in the simple unqualified presence the person is.43

Predictions and scenario building are valuable for decision-making, even if they’re not perfect

**Garrett 12**

Banning, In Search of Sand Piles and Butterflies, director of the Asia Program and Strategic Foresight Initiative at the Atlantic Council.

http://www.acus.org/disruptive\_change/search-sand-piles-and-butterflies

“Disruptive change” that produces “strategic shocks” has become an increasing concern for policymakers, shaken by momentous events of the last couple of decades that were not on their radar screens – from the fall of the Berlin Wall and the 9/11 terrorist attacks to the 2008 financial crisis and the “Arab Spring.” These were all shocks to the international system, predictable perhaps in retrospect but predicted by very few experts or officials on the eve of their occurrence. This “failure” to predict specific strategic shocks does not mean we should abandon efforts to foresee disruptive change or look at all possible shocks as equally plausible. Most strategic shocks do not “come out of the blue.” We can understand and project long-term global trends and foresee at least some of their potential effects, including potential shocks and disruptive change. We can construct alternative futures scenarios to envision potential change, including strategic shocks. Based on trends and scenarios, we can take actions to avert possible undesirable outcomes or limit the damage should they occur. We can also identify potential opportunities or at least more desirable futures that we seek to seize through policy course corrections. We should distinguish “strategic shocks” that are developments that could happen at any time and yet may never occur. This would include such plausible possibilities as use of a nuclear device by terrorists or the emergence of an airborne human-to-human virus that could kill millions. Such possible but not inevitable developments would not necessarily be the result of worsening long-term trends. Like possible terrorist attacks, governments need to try to prepare for such possible catastrophes though they may never happen. But there are other potential disruptive changes, including those that create strategic shocks to the international system, that can result from identifiable trends that make them more likely in the future—for example, growing demand for food, water, energy and other resources with supplies failing to keep pace. We need to look for the “sand piles” that the trends are building and are subject to collapse at some point with an additional but indeterminable additional “grain of sand” and identify the potential for the sudden appearance of “butterflies” that might flap their wings and set off hurricanes. Mohamed Bouazizi, who immolated himself December 17, 2010 in Sidi Bouzid, Tunisia, was the butterfly who flapped his wings and (with the “force multiplier” of social media) set off a hurricane that is still blowing throughout the Middle East. Perhaps the metaphors are mixed, but the butterfly’s delicate flapping destabilized the sand piles (of rising food prices, unemployed students, corrupt government, etc.) that had been building in Tunisia, Egypt, and much of the region. The result was a sudden collapse and disruptive change that has created a strategic shock that is still producing tremors throughout the region. But the collapse was due to cumulative effects of identifiable and converging trends. When and what form change will take may be difficult if not impossible to foresee, but the likelihood of a tipping point being reached—that linear continuation of the present into the future is increasingly unlikely—can be foreseen. Foreseeing the direction of change and the likelihood of discontinuities, both sudden and protracted, is thus not beyond our capabilities. While efforts to understand and project long-term global trends cannot provide accurate predictions, for example, of the GDPs of China, India, and the United States in 2030, looking at economic and GDP growth trends, can provide insights into a wide range of possible outcomes. For example, it is a useful to assess the implications if the GDPs of these three countries each grew at currently projected average rates – even if one understands that there are many factors that can and likely will alter their trajectories. The projected growth trends of the three countries suggest that at some point in the next few decades, perhaps between 2015 and 2030, China’s GDP will surpass that of the United States. And by adding consideration of the economic impact of demographic trends (China’s aging and India’s youth bulge), there is a possibility that India will surpass both China and the US, perhaps by 2040 or 2050, to become the world’s largest economy. These potential shifts of economic power from the United States to China then to India would likely prove strategically disruptive on a global scale. Although slowly developing, such disruptive change would likely have an even greater strategic impact than the Arab Spring. The “rise” of China has already proved strategically disruptive, creating a potential China-United States regional rivalry in Asia two decades after Americans fretted about an emerging US conflict with a then-rising Japan challenging American economic supremacy. Despite uncertainty surrounding projections, foreseeing the possibility (some would say high likelihood) that China and then India will replace the United States as the largest global economy has near-term policy implications for the US and Europe. The potential long-term shift in economic clout and concomitant shift in political power and strategic position away from the US and the West and toward the East has implications for near-term policy choices. Policymakers could conclude, for example, that the West should make greater efforts to bring the emerging (or re-emerging) great powers into close consultation on the “rules of the game” and global governance as the West’s influence in shaping institutions and behavior is likely to significantly diminish over the next few decades. The alternative to finding such a near-term accommodation could be increasing mutual suspicions and hostility rather than trust and growing cooperation between rising and established powers—especially between China and the United States—leading to a fragmented, zero-sum world in which major global challenges like climate change and resource scarcities are not addressed and conflict over dwindling resources and markets intensifies and even bleeds into the military realm among the major actors. Neither of these scenarios may play out, of course. Other global trends suggest that sometime in the next several decades, the world could encounter a “hard ceiling” on resources availability and that climate change could throw the global economy into a tailspin, harming China and India even more than the United States. In this case, perhaps India and China would falter economically leading to internal instability and crises of governance, significantly reducing their rates of economic growth and their ability to project power and play a significant international role than might otherwise have been expected. But this scenario has other implications for policymakers, including dangers posed to Western interests from “failure” of China and/or India, which could produce huge strategic shocks to the global system, including a prolonged economic downturn in the West as well as the East. Thus, looking at relatively slowly developing trends can provide foresight for necessary course corrections now to avert catastrophic disruptive change or prepare to be more resilient if foreseeable but unavoidable shocks occur. Policymakers and the public will press for predictions and criticize government officials and intelligence agencies when momentous events “catch us by surprise.” But unfortunately, as both Yogi Berra and Neils Bohr are credited with saying, “prediction is very hard, especially about the future.” One can predict with great accuracy many natural events such as sunrise and the boiling point of water at sea level. We can rely on the infallible predictability of the laws of physics to build airplanes and automobiles and iPhones. And we can calculate with great precision the destruction footprint of a given nuclear weapon. Yet even physical systems like the weather as they become more complex, become increasingly difficult and even inherently impossible to predict with precision. With human behavior, specific predictions are not just hard, but impossible as uncertainty is inherent in the human universe. As futurist Paul Saffo wrote in the Harvard Business Review in 2007, “prediction is possible only in a world in which events are preordained and no amount of actions in the present can influence the future outcome.” One cannot know for certain what actions he or she will take in the future much less the actions of another person, a group of people or a nation state. This obvious point is made to dismiss any idea of trying to “predict” what will occur in the future with accuracy, especially the outcomes of the interplay of many complex factors, including the interaction of human and natural systems. More broadly, the human future is not predetermined but rather depends on human choices at every turning point, cumulatively leading to different alternative outcomes. This uncertainty about the future also means the future is amenable to human choice and leadership. Trends analyses—including foreseeing trends leading to disruptive change—are thus essential to provide individuals, organizations and political leaders with the strategic foresight to take steps mitigate the dangers ahead and seize the opportunities for shaping the human destiny. Peter Schwartz nearly a decade ago characterized the convergence of trends and disruptive change as “inevitable surprises.” He wrote in Inevitable Surprises that “in the coming decades we face many more inevitable surprises: major discontinuities in the economic, political and social spheres of our world, each one changing the ‘rules of the game’ as its played today. If anything, there will be more, no fewer, surprises in the future, and they will all be interconnected. Together, they will lead us into a world, ten to fifteen years hence, that is fundamentally different from the one we know today. Understanding these inevitable surprises in our future is critical for the decisions we have to make today …. We may not be able to prevent catastrophe (although sometimes we can), but we can certainly increase our ability to respond, and our ability to see opportunities that we would otherwise miss.

They read a Giroux card—You shouldn’t throw out productive parts of the system—that’s the worst possible way to fight oppression

Benjamin **Franks 7**, Lecturer in Social and Political Philosophy at the University of Glasgow, “Who Are You to tell me to Question Authority?”, Variant issue 29, http://www.variant.org.uk/29texts/Franks29.html

Potentially stronger criticisms of Giroux’s text lie precisely in his underlying hypothesis concerning the totalising power of neo-conservatism. Giroux shares with the members of the Frankfurt School, who he approvingly cites, a pessimistic and almost wholly determined account of future social developments, in which the prognosis for alternatives to dominant powers looks bleak. Giroux, like Adorno and Marcuse, fears that we are approaching a one-dimensional future composed of intellectually stunted individuals, who are manipulated by the cultural industries, endorse militarised social hierarchies and engage in relationships conceived of only in terms of market-values. This grim dystopia is subject to continual monitoring by an evermore technologically-equipped police and legitimised by an increasingly subservient, partisan and trivial media. However, whilst Giroux’s account of growing authoritarianism is convincingly expressed, it is potentially disempowering, as it would suggest little space for opposition. It is not simply wishful thinking to suggest that the existing power structures are neither as complete nor as impervious as Giroux’s account would suggest. Whilst the old media of radio, film and television are increasingly dominated by a few giant corporations (p.46), new technologies have opened access to dissident voices and created new forms of communication and organisation. Whilst the military are extending their reach into greater areas of social and political life, and intervening in greater force throughout the globe, resistance to military discipline is also arising, with fewer willing to join the army in both the US and UK.7 Bush’s long term military objectives look increasingly unfeasible as Peter Schoomaker, the former US Chief of Staff, told Congress on December 15, 2006 that even the existing deployment policy is looking increasingly ‘untenable’.8 The ‘overstretch’ of military resources is matched by an economy incapable of fulfilling its primary neo-conservative goals of low taxation, sound national finances and extensive military interventions. Whilst this is not to suggest that the US is on the point of financial implosion, the transition to a fully proto-fascist state is unlikely to be seamless or certain. Giroux’s preferred form of resistance is radical education. The photographs from Abu Ghraib were iconic not just in their encapsulation of proto-fascism, but in their public pedagogic role. Their prominence highlighted the many different sites of interpretation, as Giroux rightly stresses, there is no single way to interpret a photograph, however potent the depiction. The ability to interpret an image requires an ongoing process by a critical citizenry capable of identifying the methods by which a picture’s meanings are constructed (p. 135). Giroux’s critical pedagogy overtly borrows from Adorno’s essay ‘Education After Auschwitz’, and proposes “modes of education that produce critical, engaging and free minds” (p. 141). But herein lies one of the flaws with the text: Giroux never spells out what sorts of existing institutions and social practices are practical models of this critical pedagogy. Thus, he does not indicate what methods he finds appropriate in resisting the proto-fascist onslaught nor how merely interpreting images critically would fundamentally contest hierarchical power-relationships. Questions arise as to the adequacy of his response to the totalising threat he identifies in the main section of the book. Clearly existing academic institutions in the US are barely adequate given the campaigns against dissident academics led by David Horowitz (p.143). Giroux recounts in the final chapter, an interview conducted by Sina Rahmani, his own flight from the prestigious Penn State University to McMaster University in Canada because of managerial harassment following his public criticisms of Penn’s involvement in military research (p. 186). But whilst Giroux recognises that education is far wider than what takes place in institutions of learning there is no account of what practical forms these take. Nor does Giroux give an account of why a critical pedagogy would take priority over informed aesthetic or ethical practices. Such a concentration on education would appear to prioritise those who already have (by virtue of luck or social circumstance) an already existing expertise in critical thinking, risking an oppressive power-relationship in which the expert drills the student into rigorous assessment. This lapse into the role of the strident instructor demanding the correct form of radical response, occasionally appears in Giroux’s text: “within the boundaries of critical education, students have to learn the skills and knowledge to narrate their own stories [and] resist the fragmentation and seductions of market ideologies” (p. 155). Woe betide the student who prefers to narrate the story of the person sitting next to them, or fails to measure up to the ‘educators’ standard of critical evaluation.

## adv

TK restraints decimate timeliness, crushing drone effectiveness—external oversight doesn’t solve backlash—only justifying the current program makes it sustainable

Groves, senior research fellow – Institute for International Studies @ Heritage, 4/10/’13

(Steven, “Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad,” http://www.heritage.org/research/reports/2013/04/drone-strikes-the-legality-of-us-targeting-terrorists-abroad)

A Drone Court? Certain former Obama Administration officials, the editorial board of The New York Times, and at least one U.S. Senator have called for the establishment of a special oversight panel or court to review the Administration’s targeting determinations, particularly in instances in which a U.S. citizen is targeted.[49] Essentially, such a court would scrutinize the Administration’s targeting decisions, presumably including its decisions to place individuals on the “disposition matrix.” The court would apparently have the authority to overrule and nullify targeting decisions. The creation of such a court is ill advised and of doubtful constitutionality. The proponents of a drone court apparently do not appreciate the potential unintended consequences of establishing such an authority. The idea is wrongheaded and raises more questions than it answers. For instance, could the drone court decide as a matter of law that a targeted strike is not justified because the United States is not engaged in an armed conflict with al-Qaeda? Could the drone court rule that members of a force associated with al-Qaeda (e.g., AQAP) may not be targeted because AQAP was not directly involved in the September 11 attacks and therefore the strike is not authorized under the AUMF? The proposed drone court cannot avoid these fundamental questions since the justification for the targeted strikes is dependent on the answers to these questions. Even if the proposed drone court attempts to eschew intervention into foundational questions such as the existence of an armed conflict, it still would not be in a position to rule on the “easy” questions involved in each and every drone strike. Does the target constitute an “imminent threat” to the United States? When civilian casualties may occur as a result of the strike, does the drone court have the authority to overrule the targeting decision as a violation of the principle of proportionality? Is the target an innocent civilian or a civilian “directly participating in hostilities”? Should U.S. forces attempt to capture the target before resorting to a drone strike? Is capture feasible? Any drone court, even if constituted with former military and intelligence officials, is ill suited to weigh all of the competing factors that go into a decision to target an al-Qaeda operative and make a timely decision, particularly when there is **often** only a short window of time to order a strike. Regardless, creating a judicial or quasi-judicial review process will not ameliorate, much less resolve, objections to U.S. targeted killing practices. Critics will continue to demand more judicial process, including appeals from the proposed drone court, and additional transparency no matter what kind of forum is established to oversee targeting decisions. What the U.S. Should Do The U.S. drone program and its practices regarding targeted strikes against al-Qaeda and its associated forces are lawful. They are lawful because the United States is currently engaged in an armed conflict with those terrorist entities and because the United States has an inherent right to defend itself against imminent threats to its security. Moreover, the available evidence indicates that U.S. military and intelligence forces conduct targeted strikes in a manner consistent with international law. Military and intelligence officials go to great lengths to identify al-Qaeda operatives that pose an imminent threat and continually reassess the level of that threat. Decisions on each potential target are debated among U.S. officials before the target is placed in the “disposition matrix.” In conducting targeted strikes U.S. forces strive to minimize civilian casualties, although such casualties cannot always be prevented. The United States will continue to face asymmetric threats from non-state actors operating from the territory of nations that are either unwilling or unable to suppress the threats. To confront these threats, the United States must retain its most effective operational capabilities, including targeted strikes by armed drones, even if U.S. forces degrade al-Qaeda and its associated forces to such an extent that the United States no longer considers itself to be in a non-international armed conflict. Moreover, the United States must continue to affirm its inherent right to self-defense to eliminate threats to its national security, regardless of the presence or absence of an armed conflict recognized by international law. To that end, the United States should: Continue to affirm existing use-of-force authorities. During the past three years, senior officials of the Obama Administration have publicly set out in significant detail U.S. policies and practices regarding drone strikes. The Administration should continue to do so, emphasizing that U.S. policies adhere to widely recognized international law. Critics of the United States will continue to claim that a lack of transparency surrounds U.S. policy and actions. Such critics will likely never be satisfied, not even with full disclosure of the relevant classified legal memoranda, and their criticism will not cease until the United States abandons its practice of targeting terrorist threats in Pakistan, Yemen, and elsewhere. However, consistent repetition of the U.S. legal position on targeted drone strikes **may blunt such criticism.** Not derogate from the AUMF. At the 2012 NATO summit in Chicago, NATO agreed that the vast majority of U.S. and other NATO forces would be withdrawn from Afghanistan by the end of 2014, a time frame that President Obama confirmed during this year’s State of the Union address. Some critics of U.S. drone policy will inevitably argue that due to the drawdown the United States may no longer credibly claim that it remains in a state of armed conflict with the Taliban, al-Qaeda, and its associated forces, whether they are located in Afghanistan, the FATA, or elsewhere. Congress should pass no legislation that could be interpreted as a derogation from the AUMF or an erosion of the inherent right of the United States to defend itself against imminent threats posed by transnational terrorist organizations. Not create a drone court. The concept of a drone court is fraught with danger and may be an unconstitutional interference with the executive branch’s authority to wage war. U.S. armed forces have been lawfully targeting enemy combatants in armed conflicts for more than 200 years without being second-guessed by Congress or a secret “national security court.” Targeting decisions, including those made in connection with drone strikes, are carefully deliberated by military officers and intelligence officials based on facts and evidence gathered from a variety of human, signals, and imagery intelligence sources. During an armed conflict, all al-Qaeda operatives are subject to targeting; therefore, a drone court scrutinizing targeting decisions would serve no legitimate purpose. Conclusion The debate within the international legal, academic, and human rights communities on the legality and propriety of drone strikes will likely continue unabated. To surrender to the demands of such critics would be equivalent to forgetting the lessons of September 11, when a small, non-state terrorist organization operating from a nation with which the United States was not at war planned and launched an attack that killed almost 3,000 Americans. The United States should preserve its ability to use all of the tools in its arsenal to ensure that the plots hatched by terrorist organizations do not become successful attacks on the U.S. homeland. Armed drones have proved to be one of the most effective and discriminating tools available to U.S. forces, and their lawful use should continue until such time as non-state, transnational terrorist organizations no longer present an imminent threat to the United States.

Obama is committed to transitioning drones to the DOD now away from the CIA—the plan messes up the calibrated process and turns the case.

Klaidman 13 (Daniel, The Daily Beast, “Exclusive: No More Drones for CIA”, Mar 19, 2013, http://www.thedailybeast.com/articles/2013/03/19/exclusive-no-more-drones-for-cia.html, ZBurdette)

At a time when controversy over the Obama administration’s drone program seems to be cresting, the CIA is close to taking a major step toward getting out of the targeted killing business. Three senior U.S. officials tell The Daily Beast that the White House is poised to sign off on a plan to shift the CIA’s lethal targeting program to the Defense Department. The move could potentially toughen the criteria for drone strikes, strengthen the program’s accountability, and increase transparency. Currently, the government maintains parallel drone programs, one housed in the CIA and the other run by the Department of Defense. The proposed plan would unify the command and control structure of targeted killings and create a uniform set of rules and procedures. The CIA would maintain a role, but the military would have operational control over targeting. Lethal missions would take place under Title 10 of the U.S. Code, which governs military operations, rather than Title 50, which sets out the legal authorities for intelligence activities and covert operations. “This is a big deal,” says one senior administration official who has been briefed on the plan. “It would be a pretty strong statement.” Officials anticipate a phased-in transition in which the CIA’s drone operations would be gradually shifted over to the military, a process that could take as little as a year. Others say it might take longer but would occur during President Obama’s second term. “You can’t just flip a switch, but it’s on a reasonably fast track,” says one U.S. official. During that time, CIA and DOD operators would begin to work more closely together to ensure a smooth hand-off. The CIA would remain involved in lethal targeting, at least on the intelligence side, but would not actually control the unmanned aerial vehicles. Officials told The Daily Beast that a potential downside of the agency’s relinquishing control of the program was the loss of a decade of expertise that the CIA has developed since it has been prosecuting its war in Pakistan and beyond. At least for a period of transition, CIA operators would likely work alongside their military counterparts to target suspected terrorists. The policy shift is part of a larger White House initiative known internally as “institutionalization,” an effort to set clear standards and procedures for lethal operations. More than a year in the works, the interagency process has been driven and led by John Brennan, who until he became CIA director earlier this month was Obama’s chief counterterrorism adviser. Brennan, who has presided over the administration’s drone program from almost day one of Obama’s presidency, has grown uncomfortable with the ad hoc and sometimes shifting rules that have governed it. Moreover, Brennan has publicly stated that he would like to see the CIA move away from the kinds of paramilitary operations it began after the September 11 attacks, and return to its more traditional role of gathering and analyzing intelligence. Lately, Obama has signaled his own desire to place the drone program on a firmer legal footing, as well as to make it more transparent. He obliquely alluded to the classified program during his State of the Union address in January. “In the months ahead,” he declared, “I will continue to work with Congress to ensure that not only our targeting, detention, and prosecution of terrorists remain consistent with our laws and systems of checks and balances, but that our efforts are even more transparent to the American people and to the world.” Shortly after taking office, Obama dramatically ramped up the drone program, in part because the government’s targeting intelligence on the ground had vastly improved and because the precision technology was very much in line with the new commander in chief’s “light footprint” approach to dealing with terrorism. As the al Qaeda threat has metastasized, U.S. drone operations have spread to more remote, unconventional battlefields in places like Yemen and Somalia. With more strikes, there have been more alleged civilian casualties. Adding to the mounting pressure for the administration to provide a legal and ethical rationale for its targeting polices was the killing of Anwar al-Awlaki, a senior commander of al Qaeda’s Yemen affiliate, who also happened to be a U.S. citizen. (Two weeks later, his 16-year-old son was killed in a drone strike, which U.S. officials have called an accident.) The recent nomination of Brennan to head the CIA became a kind of proxy battle over targeted killings and the administration’s reluctance to be more forthcoming about the covert program. At issue were a series of secret Justice Department legal opinions on targeted killing that the administration had refused to make public or turn over to Congress. It looks like the White House may now be preparing to launch a campaign to counter the growing perception—with elites if not the majority of the public—that Obama is running a secretive and legally dubious killing machine. For weeks, though the White House has not confirmed it, administration officials have been whispering about the possibility that Obama would make a major speech about counterterrorism policy, including efforts to institutionalize—but also reform—the kinds of lethal operations that have been a hallmark of his war on terrorism. With an eye on posterity, Obama may feel the time has come to demonstrate publicly that his policies, for all of the criticism, have stayed within the law and American values. “Barack Obama has got to be concerned about his legacy,” says one former adviser. “He doesn’t want drones to become his Guantánamo.” But for the president to step out publicly on the highly sensitive subject of targeted killings, he’s going to have to do more than simply give an eloquent speech. An initiative like shifting the CIA program to the military, as well as other aspects of the institutionalization plan, may be just what he needs.

Obama’s regulating the drone program—solves sustainability and signal

Corn 13

David Corn, Washington bureau chief of Mother Jones magazine and an MSNBC commentator, Mother Jones, May 23, 2013, " Obama's Counterterrorism Speech: A Pivot Point on Drones and More?", http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes. The New York Times received the customary pre-speech leak and reported: A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists. Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted. These moves may not satisfy civil-liberties-minded critics on the right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?) Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis. With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism. But the speech may well mark a pivot point. Not shockingly, Obama is attempting to find middle ground, where there is more oversight and more restraint regarding activities that pose serious civil liberties and policy challenges. The McCainiacs of the world are likely to howl about any effort to place the effort to counter terrorism into a more balanced perspective. The civil libertarians will scoff at half measures. But Obama, at the least, is showing that he does ponder these difficult issues in a deliberative manner and is still attempting to steer the nation into a post-9/11 period. That journey, though, may be a long one.

Targeted killing regulation is impossible

Alston, professor – NYU Law, ‘11

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

Despite the existence of a multiplicity of techniques by which the CIA might be held to account at the domestic level, the foregoing survey demonstrates that there is no evidence to conclude that any of them has functioned effective-ly in relation to the expanding practices involving targeted killings. The CIA Inspector General's Office has been unable to exact accountability and proposals to expand or strengthen his role run counter to almost all official actions taken in relation to his work. The President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board are lauded by some for their potential, but there is no indication that they scrutinize activities such as targeted killings policy or practice, and many indications that they view their role as being to support rather than monitor the intelligence community. The Privacy and Civil Liberties Oversight Board remains dormant. Congressional oversight has been seriously deficient and far from manifesting an appetite to scrutinize the CIA's targeted killings policies, a range of senior members of congress are on record as favoring a hands-off policy. And a combination of the political question doctrine, the state secrets privilege, and a reluctance to prosecute,

ensure that the courts have indeed allowed the CIA to fall into a convenient legal **grey hole**. Finally, civil society has been largely stymied by the executive and the courts in their efforts to make effective use of freedom of information laws. All that remains is the media, and most of what they obtain through leaks come from government sources that are deliberately "spinning" the story in their own favor. Simi-lar conclusions have been reached in closely related contexts. Thus, for example, Kitrosser's survey of official responses to the warrantless wiretapping initiated after 9/11 led her to conclude that it was a shell [\*406] game, involving "an indefinite bi-partisan, cross-administration, cross-institutional pattern of accountability-avoidance." n450 In brief, at least in relation to targeted killings, the CIA enjoys almost complete impunity and is not subject to any form of meaningful internal or external accountability. Whether from the perspective of democratic theory or of interna-tional accountability for violations of the right to life, this is deeply problematic. One solution to this that has been sug-gested by some commentators is to follow the precedent set by Israel in its efforts to ensure legal oversight of its target killings programs. We turn now to examine the feasibility and desirability of pursuing such an option.

# 2NC

## 2nc---at we meet

They don’t prohibit the power to act, which is “authority” – it is still granted

Merriam-Webster’s Dictionary of Law 1996

(“Authority,” Credo Reference, Georgetown University Library)

au•thor•i•ty

n, pl -ties

1

: an official decision of a court used esp. as a precedent

2

a

: **a power to act** esp. over others **that derives from status**, **position**, **or office** 〈the ~ of the president〉; also : jurisdiction

b

: **the power to act that is officially or formally granted** (**as by statute**, corporate bylaw, or court order) 〈within the scope of the treasurer's ~〉 〈police officers executing a warrant…are not required to “knock and announce” their ~ and purposes before entering — National Law Journal〉

c

: power and capacity to act granted by someone in a position of control; specif : **the power to act granted by a principal to his or her agent**

## 2nc at ci

There's a clear brightline---restrictions sets a ceiling--- not just process

USCA 77, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 564 F.2d 292, 1977 U.S. App. LEXIS 10899,. 1978 Fire & Casualty Cases (CCH) P317

Continental argues that even if the Aetna and Continental policies provide coverage for the Cattuzzo accident, that coverage should [\*\*8] be limited to a total of $300,000 because Atlas agreed to procure "not less than" $300,000 coverage. The District Court properly found that the subcontract language does not support a restriction on the terms of Continental's policy because the subcontract only sets a floor, not a ceiling, for coverage.

## 2nc do both

The perm is the worst of all worlds—aff or CP are individually better

Metzger ‘9

Gillian, Professor of Law, Columbia Law School, “THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS,” 59 Emory L.J. 423

Equally important, the relationship between internal and external separation of powers is reciprocal: Internal and external checks reinforce and operate in conjunction with one another. Congress needs information to conduct meaningful oversight of the Executive Branch. n94 Internal agency experts and watchdogs are important sources of that information, whether in the guise of [\*445] formal reports, studies, and testimony or informal conversations and leaks. n95 Procedural constraints within agencies can serve a similar function, alerting Congress to agency activities. n96 Internal mechanisms also reinforce congressional mandates by creating bodies of personnel within the Executive Branch who are committed to enforcing the governing statutory regime that sets out the parameters of their authority and regulatory responsibilities - and on whose expertise the functioning of these regulatory regimes often depends. n97 Courts equally depend on information and evidence compiled by agency personnel to review agency actions, and they have invoked this dependence to justify the requirement that agencies disclose underlying information and offer detailed explanations of their decisions. n98 Moreover, despite courts regularly intoning that "it [is] not the function of the court to probe the mental processes of Secretaries in reaching [their] conclusions," n99 judicial review of agency actions often appears to turn on judges' perceptions of the role politics played in decisionmaking by agency officials. n100 Evidence that decisions were made over the objections of career staff and agency professionals often triggers more rigorous review. n101 A particularly striking [\*446] suggestion of how internal checks can effect judicial review came in the recent Boumediene litigation. Just a few months after refusing to grant certiorari in order to allow the Combatant Status Review Tribunal process to proceed, the Court reversed course and granted review, apparently influenced by the concerns of military lawyers about how the tribunals were functioning. n102

## 2nc at delay/circumvention

Comparative risk of delay and circumvention is higher with the plan

Metzger, professor of law at Columbia, 2009

(Gillian E., THE INTERDEPENDENT RELATIONSHIP BETWEEN INTERNAL AND EXTERNAL SEPARATION OF POWERS, 59 Emory L.J. 423, Lexis)

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they avoid the delay in application that can hamper both judicial and congressional oversight. n76 Second, internal mechanisms often operate continuously, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. n77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. n78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. n79

Err neg—their evidence is media hype

Nathan Alexander Sales, Assistant Professor of Law, George Mason University School of Law, 8/29/2012, Self-Restraint and National Security, http://jnslp.com/2012/08/29/self-restraint-and-national-security/

If the only thing we knew about national security was what we learned from Hollywood, we would come away with the impression that the Pentagon and CIA were populated entirely by rogue agents who routinely, if not gleefully, flout the legal restrictions that govern them. Think of Jack Bauer goading a captured terrorist into talking by staging a mock execution of his young son, or General Jack Ripper enthusiastically ordering a nuclear strike on the Soviet Union. That crude caricature is almost the exact opposite of reality. Military and intelligence officials are often scrupulously careful when deciding how to deploy the immense powers at their fingertips. They **frequently adopt constraints on their ability to carry out certain national security operations**, **restrictions that go farther than what is required** by the applicable principles of domestic or international law. Recent history offers plenty of examples. Counterterrorism interrogators aren’t getting as close as possible to the lines drawn by the Convention Against Torture, the federal torture statute, and the Detainee Treatment Act; they are restricted to the relatively benign techniques authorized in the Army Field Manual. In the 1980s and 1990s, officials were reluctant to order targeted killings that they believed were perfectly consistent with domestic and international prohibitions on assassination; they either rejected them outright (in the case of Osama bin Laden) or modified them to camouflage their true purpose (in the case of Mohammar Qadaffi). Military officers aren’t itching to order attacks that are even arguably permissible under the law of war; they sometimes forego lawful strikes that members of the JAG corps regard as problematic for moral, economic, and other non-legal reasons. Justice Department lawyers didn’t aggressively promote information sharing under the Foreign Intelligence Surveillance Act; they built a wall that segregated cops from spies and set themselves up as the department’s information sharing gatekeepers. Why? Public choice theory can help answer that question. As developed in this article, there are at least two explanations that can account for the government’s tendency to tie its own hands in national security operations: cost-benefit asymmetry and empire building. Officials in military and intelligence agencies tend to be cautious for a straightforward reason. It is in their interest to be cautious. The expected costs of national security operations are often greater than the expected benefits. The best case scenario for a cop, spy, or soldier is that he gets a pat on the back; the worst is that he goes to jail. **That gap naturally predisposes officials to play it safe,** and **senior government policymakers** (and therefore their lawyers) **are likely to be** especially cautious. It shouldn’t come as much of a surprise, then, when attorneys in the intelligence community or the Pentagon veto an operation – even a concededly lawful operation – that has the potential to inspire demoralizing propaganda campaigns by adversaries, expose officials to criminal prosecutions, or worse. The lawyers are doing what all lawyers do – trying to keep their clients out of trouble. You may be convinced that it’s legal to bomb a particular convoy or share a particular intelligence report with your buddy at the FBI. But there’s no guarantee that Belgian war crimes prosecutors or the FISA Court will see things the same way. Why take the chance? Of course, lawyers are not pristinely disinterested altruists. They, too, are rationally self interested actors, and this insight suggests a second possible explanation for self-restraint. Vetoes can help attorneys build their bureaucratic empires. A Justice Department lawyer who wants to enhance his pull and that of his office knows that he can do so by raising doubts about the wisdom of the CIA’s proposal to gun down Osama bin Laden, or by preventing prosecutors in the Southern District of New York from getting too cozy with intelligence analysts at FBI headquarters. **Nobody respects a yes man**; the person they respect is the one who can keep them from doing what they want. Vetoes thus can magnify two of the things that turf warriors care about the most – their influence over senior policymakers and their autonomy to pursue their own agendas. The lawyers tend to say no because it’s in their interest to say no; doing so advances their personal and institutional welfare.

## 2nc at rollback

And executive orders have the force of law:

Oxford Dictionary of English 2010

(Oxford Reference, Georgetown Library)

executive order

▶ noun US (Law) a rule or order issued by the President to an executive branch of the government and having the force of law.

Executive orders are permanent

Duncan, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

The trajectory of the evolution of the executive power in the United States, as seen through the prism of the growing edifice of executive orders have become increasingly formal and permanent. The evolution of executive power in the United States has shifted executive orders from mere legislative interpretation to ancillary legislation. **Executive orders continue to influence subsequent presidents**. The elaboration of executive order promulgation, as an autopoietic process was necessary to the very existence of presidential power. That is, the mechanisms for formalizing executive orders have always existed in the executive power in a government whose legitimacy lives in written pronouncements treated as delicate, sacred, and worth protecting at all cost. **Part of this formalization is** a consequence of **the reverence for precedent**. Thus, **prior presidents influence future presidents**, less because future presidents wish to mimic their predecessors, but more **because future presidents act within an edifice their predecessors have already erected**. Thus, the growth and elaboration of an ever more robust structure of executive orders resembles an autopoietic process. n561

Creates a stable legal framework that constrains future presidents

Brecher, JD University of Michigan, December 2012

(Aaron, Cyberattacks and the Covert Action Statute, 111 Mich. L. Rev. 423, Lexis)

The executive might also issue the proposed order, even though it would limit her freedom in some ways, because of the possible benefits of **constraining future administrations** or preempting legislative intervention. n149 For example, in this context, an administration may choose to follow the finding and reporting requirements in order to convince Congress that legislative intervention is unnecessary for proper oversight. This is acceptable if the covert action regime is in fact adequate on its own. Moreover, if greater statutory control over cyberattacks is needed, the information shared with Congress may give Congress the tools and knowledge of the issue necessary to craft related legislation. n150 Additionally, while executive orders are hardly binding, **the inertia following adoption of an order may help constrain future administrations**, which may be more or less trustworthy than the current one. **Creating a presumption through an executive order** also **establishes a stable legal framework** for cyberattacks that allows law to follow policy in this new field, and permits decisionmakers to learn more about the nature of cyberoperations before passing detailed statutes that may result in unintended consequences.

## 2nc follow on

Creates a precedent for future administrations and leads to Congressional follow-on

Duncan, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

**Executive orders** can serve the purpose of allowing the President to generate favorable publicity, such as when President Clinton signed an executive order on ethics, n493 and when President George W. Bush signed the first of a series of executive orders to launch his Faith-Based and Community Initiatives. n494 While these orders pay off political debts and thus may seem trivial, they nevertheless **create both infrastructural and regulatory precedents for future administrations**. Hence, they create an avenue for key constituencies of each administration to influence the executive structure as a whole without necessarily permitting that influence to extend to arenas of reserved for Congress. That is, while the President can act more swiftly and precisely to satisfy political commitments, the impact of his action will fall considerably short of analogous congressional action. This in turn serves to satisfy selected constituencies without giving them undue power via the presidency. Executive orders have even served to create presidential commissions to investigate and research problems, and have been instrumental in solving remedial issues. n495 **Commission reports** that result from such orders can in [\*398] turn **put pressure on Congress to** enact legislation to respond to those problems. President Franklin Roosevelt pursued this process when he issued a report of the Committee on Economic Security studying financial insecurity due to "unemployment, old age, disability, and health." n496 This report led to the Social Security Act. n497

## 2nc solves signal

CP sends the most powerful signal (while avoiding Congressional confrontation)

Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, 12/3/12, Obama's Moment, www.foreignpolicy.com/articles/2012/12/03/obamas\_moment

In foreign affairs, the central challenge now facing President Barack Obama is how to regain some of the ground lost in recent years in shaping U.S. national security policy. Historically and politically, in America's system of separation of powers, it is the president who has the greatest leeway for decisive action in foreign affairs. He is viewed by the country as responsible for Americans' safety in an increasingly turbulent world. He is seen as the ultimate definer of the goals that the United States should pursue through its diplomacy, economic leverage, and, if need be, military compulsion. And the world at large sees him -- for better or for worse -- as the authentic voice of America. To be sure, he is not a dictator. Congress has a voice. So does the public. And so do vested interests and foreign-policy lobbies. The congressional role in declaring war is especially important not when the United States is the victim of an attack, but when the United States is planning to wage war abroad. Because America is a democracy, public support for presidential foreign-policy decisions is essential. But no one in the government or outside it can match the president's authoritative voice when he speaks and then decisively acts for America. This is true **even in the face of determined opposition**. Even when some lobbies succeed in gaining congressional support for their particular foreign clients in defiance of the president, for instance, many congressional signatories still quietly convey to the White House their readiness to support the president if he stands firm for "the national interest." And a president who is willing to do so publicly, while skillfully cultivating friends and allies on Capitol Hill, can then establish such intimidating credibility that it is politically unwise to confront him. This is exactly what Obama needs to do now.

Self-restraint creates a credible signal

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that **the credibility dilemma can be addressed by** executive signaling. **Without any new constitutional amendments, statutes, or legislative action**, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.

Their solvency deficits assume the squo which the CP resolves

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, 2007, The Credible Executive, 74 U. Chi. L. Rev. 865

For presidents, credibility is power. **With credibility, the formal rules of the separation of powers system can be bargained around or** even **defied**, as Lincoln and FDR demonstrated. Without credibility, a nominally all-powerful president is a helpless giant. Even if legal and institutional constraints are loose and give the president broad powers, those powers cannot effectively be exercised if the public believes that the president lies or has nefarious motives. But presidential credibility can benefit all relevant actors, not just presidents. The decline of congressional and judicial oversight has not merely increased the power of ill-motivated executives, the typical worry of civil libertarians. It also threatens to diminish the power of well-motivated presidents, with indirect harms to the public. Such presidents would, if credibly identified, receive even broader legal delegations and greater informal trust -from legislators, judges, and the public -than presidents as a class actually have. Absent other credibility-generating mechanisms, such as effective congressional oversight, **presidents must** bootstrap themselves into credibilitythrough the use of signaling mechanisms. In this Article, we suggest a range of such mechanisms, and suggest that under the conditions we have tried to identify, those mechanisms can make all concerned better off.

## 2nc transparency solves

Transparency solves

John Harwood, Major, J.D. and LL.M., Judge Advocate in USAF, Fall 2012, ARTICLE: KNOCK, KNOCK; WHO'S THERE? ANNOUNCING TARGETED KILLING PROCEDURES AND THE LAW OF ARMED CONFLICT, 40 Syracuse J. Int'l L. & Com. 1

While the law may not require states to publicly disclose their targeting procedures and an analysis for each individual targeted killing during armed conflict, as a matter of policy **the U.S. should provide enough information to allow the public to be satisfied that the government is fulfilling its international obligations**. The speeches of the nation's prominent national security lawyers are a good start; however, the government should continue to provide information on the processes and procedures of the targeted killing program, where operational and intelligence considerations allow. As a beginning point, now that the existence of the targeted killing program is an acknowledged fact, the government should disclose whether the legal structures of aerial targeting are being followed by all the departments and agencies of the government who are engaged in targeted killings. The legal principles that the Air Force and the Department of Defense follow in aerial targeting are well-known and publicly available. While our enemies have occasionally sought to use our adherence to lawful targeting procedures to their benefit, n114 this openness has not been shown to be a hindrance to air-based military operations. n115 Second, the government should discuss in general terms the process of vetting targets and approving them for targeted killing. While covertness and operational security should protect the disclosure of the details of any individual strike, a general description of the procedures would "credibly convey to the public that [the government's] decisions

about who is being targeted - [\*26] especially when the target is a U.S. citizen - are sound." n116 The basis of these disclosures, however, should be rooted in policy - as shown, there is no requirement under LOAC to divulge military targeting procedures during an armed conflict. VI. Conclusion International observers and human rights groups have rightly scrutinized targeted killing programs for compliance with international law. All programs, procedures, and operations should be subject to rigorous scrutiny; as noted by Mr. Brennan, "there is no more consequential a decision than deciding whether to use lethal force against another human being." n117 Because the subject matter is so weighty, there are no sacred cows in armed conflict. Too often, however, IHRL has been the prism through which criticism of the targeted killing program has come. Rather than providing a license to kill, as is feared by Alston and others, LOAC provides a robust legal framework for analyzing the legality of targeted killings. To its credit, the **Obama** administration **has taken steps to reassure the public that the targeted killing program is being conducted in a lawful manner**; most notably by dispatching high-level officials and attorneys to speak openly and publicly. There is more that could be done, however, without compromising intelligence and ongoing operations. The administration could begin by requiring the CIA to conduct all aerial targeting in accordance with the well-established principles of military aerial targeting, and then publicize this requirement. This would rebut the claim that the CIA's operational-level targeting decisions are being made in a lawless vacuum. Also, the administration could provide a basic, on-the-record description of the strategic-level target vetting process, rather than the non-specific "just trust us" statements previously made by Mr. Brennan and others. n118 While **these steps** may not placate the [\*27] critics of targeted killing, and fall far short of what Professor Alston calls for, they **would** help to reassure the public and the international community that the U.S. is committed to the rule of law during armed conflict.

Transparency solves

Washington Post, 11/1/’12

(“Pulling the U.S. drone war out of the shadows,” Editorial Board)

All of this causes increasing unease among Americans of both political parties — not to mention many U.S. allies. They are disturbed by the antiseptic nature of U.S. personnel launching strikes that they watch on screens hundreds or thousands of miles from the action. They question whether drone attacks are legal. They ask why the process of choosing names for the kill list as well as the strikes themselves are secret and whether such clandestine warfare does more harm than good to long-term U.S. interests. Some of these anxieties seem to us misplaced. But the means and objectives of drone attacks — and the Obama administration’s steps toward institutionalizing the system — deserve much more debate than they have attracted during the presidential campaign. Start with the misconceptions: Many critics second Kurt Volker, a former U.S. ambassador to NATO under President George W. Bush, who wrote on the opposite page Sunday that drone strikes allow U.S. adversaries to portray the United States as “a distant, high-tech, amoral purveyor of death.” While drones may indeed prompt such propaganda, they are really a more effective and — yes — humane way to conduct one of the age-old tactics for combating an irregular enemy: identifying and eliminating its leaders. That drones do not put the lives of U.S. soldiers at risk and cause fewer collateral deaths are virtues, not evils. Similarly, Mr. Volker asks “what we would say if others used drones to take out their opponents” — such as Russia in Chechnya or China in Tibet. The answer is twofold: Other nations will inevitably acquire and use armed drones, just as they have adopted all previous advances in military technology, from the bayonet to the cruise missile. But the legal and moral standards of warfare will not change. It’s hard to imagine that Russian drones would cause more devastation in Grozny than did Russian tanks and artillery, but if used there they would surely attract international censure. That brings us to the question of whether the United States deserves such censure for the way it is using drones in Pakistan, Yemen and Somalia — the three places they have been employed outside a conventional war zone. As we have written previously, the strikes meet tests for domestic and international legality. War against al-Qaeda and those who harbor it was authorized in 2001 by Congress, and the United States has the right under international law to defend against attacks on its homeland, which al-Qaeda forces in Pakistan and Yemen have launched. Moreover, the governments of Yemen, Somalia and, up to a point, Pakistan have consented to the strikes. The Obama administration’s heavy and increasing dependence on drones is nevertheless troubling. As Mitt Romney said in endorsing the drone strikes during the last presidential debate, “we can’t kill our way out of this.” Terrorism can be defeated only by a comprehensive effort to encourage stable and representative governments and economic development in countries such as Pakistan and Afghanistan — a mission the administration, with its harping about “nation-building here at home,” appears increasingly disinclined to take on. Moreover, drone strikes do stoke popular hostility and therefore make U.S. political and diplomatic goals more difficult to achieve. Perhaps most troubling, the relative ease of using drones, combined with the Obama administration’s reluctance to detain foreign militants, which would be politically difficult at home, has produced a stark record: Thousands of al-Qaeda suspects killed by drones have been balanced by only one significant capture — a Somali who was held on a U.S. warship for two months before being turned over to the U.S. civilian justice system. In recent months drone strikes in Pakistan have decreased, partly in response to these negative effects. But The Post’s reporting suggests that the administration is working to institutionalize the system of creating “kill or capture” lists and is contemplating the use of drones in more countries where jihadist forces are active, including Libya and Mali. This raises new legal and political quandaries. The further — in geography, time and organizational connection — that the drone war advances from the original al-Qaeda target in Afghanistan, the less validity it has under the 2001 congressional authorization. While the United States has legal cause to retaliate against the terrorists who attacked the U.S. Consulate in Benghazi, Libya, most of the world is unlikely to accept an argument that the Sept. 11, 2001, attacks justify drone strikes more than a decade later in Northern Africa. In our view, the continuing fight against al-Qaeda and other Islamic jihadists targeting the United States must be considered a war and conducted as such. Nevertheless, when that war ranges far from conventional battlefields, U.S. interests will be better served by greater disclosure, more political accountability, more checks and balances and more collaboration with allies. Drone strikes should be carried out by military forces rather than by the CIA; as with other military activities, they should be publicly disclosed and subject to congressional review. The process and criteria for adding names to kill lists in non-battlefield zones should be disclosed and authorized by Congress — just like the rules for military detention and interrogation. Before operations begin in a country, the administration should, as with other military operations, consult with Congress and, if possible, seek a vote of authorization. It should seek open agreements with host countries and other allies. There may be cases where the president **must act immediately** against an imminent threat to the country, perhaps from an unexpected place. But to institutionalize a secret process of conducting covert drone strikes against militants across the world is contrary to U.S. interests and ultimately unsustainable.

## 2nc solves modeling

Solves drone modeling

Twomey, JD candidate – Trinity College Dublin, 3/14/’13

(Laura, “Setting a Global Precedent: President Obama's Codification of Drone Warfare,” Cambridge Journal of International and Comparative Law Blog)

It is clear that, as the first State to deploy remote targeting technology in a non international armed conflict, the legal framework forged by the US during President Obama's second term will set significant precedent for the future practice of the estimated 40 States developing their own drone technology. On 7 March 2013, members of the European Parliament expressed deep concern about the “unwelcome precedent” the programme sets, citing its “destabilising effect on the international legal framework” that “destroys ... our common legal heritage.” This 'destabilising effect' arises from the classified and seemingly amorphous substantive legal basis for the programme and the apparent lack of procedural standards in place. It remains to be seen if the classified 'rulebook' will be released for public scrutiny, and allay these concerns. Reliance on international law in world order is based on consent, consensus, good faith and, crucially in this instance, reciprocity. The US programme may harbour short term gains in the pursuit of al-Qaeda operatives, however, if the aforementioned substantive legal justifications continue to be invoked, it risks engendering long term disadvantages. Pursuing this policy encourages other States to adopt similar policies. Administration officials have cited particular concern about setting precedent for Russia, Iran and China, all of which are developing their own remote targeting technology. It is therefore suggested that the Administration should take this opportunity to codify the rules, clarify terms where ambiguity may currently allow for broader interpretations, and to bring its regulations in line with the existing framework of international law. This legal framework should then be made available to the public, with covert operational necessities redacted. This could set a valuable legal precedent, of particular importance at this turning point wherein international law must adapt to the 21st century model of warfare, a model which lacks a clear enemy and a demarcated battlefield.

## 92nc effective constraint

Political constraints solve TK

Gregory McNeal, Pepperdine University Professor, 3/15/13, Presidential Politics, International Affairs and (a bit on) Pakistani Sovereignty, www.lawfareblog.com/2013/03/presidential-politics-international-affairs-and-a-bit-on-pakistani-sovereignty/

Despite this lack of interest, some evidence exists to suggest that presidents do care about how their activities may be viewed by the public. As Baker has noted, during the bombing campaign in Kosovo, the possibility of civilian casualties from any given airstrike was seen as both a legal and political constraint. Due to this fact, some individual target decisions were deemed to have strategic policy implications that only the president could resolve (and we see similar presidential approvals for certain strikes in current operations). Moreover, **even in the absence of effective judicial constraints, and even without evidence of public concern** over matters of foreign policy, **the president is still constrained by politics and public opinion**. As Posner and Vermeule state, the president needs “both popularity, in order to obtain political support for his policies, and credibility, in order to persuade others that his factual and causal assertions are true and his intentions are benevolent.” As was described in prior posts, the President is oftentimes directly involved in targeting decisions. This is due in part to globalized communications and also because as precision has increased, so too has the expectation (unrealistic as it is) that civilian casualties will be low or nonexistent. Given these expectations, presidents have oftentimes felt compelled to involve themselves to a greater degree in targeting decisions. This involvement brings with it enhanced political accountability. It allows for greater public awareness of kinetic operations and creates direct responsibility for results tied to the commander in chief’s immediate involvement in the decision-making process. Successes and failures are imputed (or at least can be imputed) directly to the president. Presidential decision-making brings to light public recognition that the military and intelligence community are implementing rather than making policy. Moreover, when the president chooses to nominate people to assist him in making targeted killing decisions, the nomination process provides a mechanism of political accountability over the executive branch. This was aptly demonstrated by President Obama’s nomination of John Brennan to head the CIA. Given Brennan’s outsized role as an adviser to the president in the supervision of targeted killings, his nomination provided an opportunity to hold the president politically accountable by allowing senators to openly question him about the targeted killing process, and by allowing interest groups and other commentators to suggest questions that should be asked of him. Of course, secrecy can stifle some aspects of political accountability, but secrecy also has costs. Presidents require public support for their actions, and if the public does not trust him, that lack of trust may undermine other items on the administration’s agenda. INTERNATIONAL POLITICAL CONSTRAINTS Other political constraints from outside the U.S. may also impose costs on the conduct of targeted killings and those costs may serve as a form of accountability. For example, in current operations, targeted killings that affect foreign governments (as in domestic public opinion in Pakistan) or alliances (as in the case of UK support to targeting) all have associated with them higher political costs. Other **international political constraints can impose accountability on the targeting process**. For example, if Pakistan wanted to credibly protest the U.S. conduct of targeted killings, they could do so through formal mechanisms such as complaining at the UN General Assembly, petitioning the UN Security Council to have the matter of strikes in their country added to the Security Council’s agenda, or they could lodge a formal complaint with the UN Human Rights Committee. (UPDATE: In Emmerson’s letter he notes that the Pakistani government says they have at least made “public statements” regarding their lack of consent and their calls for “an immediate end to the use of drones by any other State on the territory of Pakistan.”). Pakistan could also expel U.S. personnel from their country, reject U.S. foreign aid, cut off diplomatic relations, and even threaten to shoot down U.S. aircraft. Despite apoplectic headlines, ledes and press releases, the fact that Pakistan has not pursued these means of international political accountability says a lot about the credibility of the sovereignty complaint. Another international political mechanism can be seen in the form of overflight rights. As Zenko notes, sovereign states can constrain U.S. intelligence and military activities; “[t]hough not sexy and little reported, deploying CIA drones or special operations forces requires constant behind-the-scenes diplomacy: with very rare exceptions—like the Bin Laden raid—the U.S. military follows the rules of the world’s other 194 sovereign, independent states.” Other international political checks can be seen in the conduct of military operations. For example, during the 1991 Gulf War, the U.S. lawfully targeted Iraqi troops as they fled on what became known as the “highway of death.” The images of destruction broadcast on the news caused a rift in the coalition. Rather than lose coalition partners, the U.S. chose to stop engaging fleeing Iraqi troops, even though those troops were lawful targets. The U.S. government has similarly noted the importance of international public opinion, even highlighting its importance in its own military manuals. For example, the Army’s Civilian Casualty Mitigation manual states civilian casualties may “lead to ill will among the host-nation population and political pressure that can limit freedom of action of military forces. If Army units fail to protect civilians, for whatever reason, the legitimacy of U.S. operations is likely to be questioned by the host nation and other partners.”(See more here). Critics of targeted killings tend to favor judicial mechanisms of accountability, believing that such externally imposed measures are the only effective mechanism of control over executive action. However, judicial accountability is not the only mechanism of control over targeted killings — **political accountability can**, under the right circumstances, **serve as an effective mechanism of control**. In the paper I also discuss bureaucratic and professional accountability, two of the less visible mechanisms of control in the targeted killing process. My next post will discuss reform recommendations that can enhance accountability for targeted killings.

## 2nc ov

Restrictions cause global Al Qaeda spread—destabilizes multiple hotspots

James Carafano, Ph.D., Heritage VP for Foreign and Defense Policy Studies, 2/27/13, Drone of Battle, www.heritage.org/research/commentary/2013/2/drone-of-battle

**Drone strikes** and other covert operations **clearly serve a military purpose: defending the U.S. against real, legitimate threats of armed violence.** Yet, the president's drone wars raise some serious concerns. They have become this administration's primary means for battling transnational terrorism and they are inadequate. Al Qaeda is not simply about attacking the U.S. That is just a means to an end. The terrorist organization is part of a global Islamist insurgency, dedicated to seizing power and territory and ruling in a manner that is contrary to the vital national interests of this nation. It will rule without humanity or prudence, **bringing war** and crushing freedom wherever its shadow can spread. So even though we are preventing them from attacking our homeland, it doesn't mean we are winning. A**l** Q**aeda and its affiliates are making progress on other fronts in the Caucuses, the Middle East, North Africa and South Asia.** Further, **just killing its leadership won't stop** a**l** Q**aeda**. This organization is a human web. Killing a few nodes in the web just like cutting a few strands in a real web won't take it down. Worrying about the legality of drone wars is distracting concern from what Washington really ought to be worried about: the very real possibility that it may be losing the larger war against radical Islamism.

Caucuses escalates

Merry, senior fellow for Europe and Eurasia – American Foreign Policy Council, 1/31/’13

(E. Wayne, “Another Regional War in the Wings,” The National Interest)

Two decades ago the newly independent states of Armenia and Azerbaijan fought a bitter war over this remote area of mountains and valleys. Armenia won the war, but nobody has achieved peace. A fragile ceasefire signed in 1994 remains the only tangible achievement of diplomacy. Since then, a mediation effort led by Washington, Moscow and Paris has sought a solution. Despite the best efforts of the three governments—including presidential initiatives by all three—**the parties** to the conflict do not and **will not negotiate.** This impasse has contributed to a dangerous evolution of the dispute in recent years from post-war to pre-war. A major arms race is underway, fueled by Azerbaijan’s oil and gas wealth and by Armenia’s support from Russia. Azerbaijan is acquiring a distinct advantage in military technology and firepower, but Armenia retains major advantages of terrain and operational skill. Azerbaijan has a patron in Turkey, which feels a fraternal commitment, but Armenia has a treaty-based security alliance and historical partnership with Russia. A new war would likely be pyrrhic for both sides, but also dwarf the first war in scale and destruction. The initial conflict was limited to Karabakh and its surroundings, and was largely an infantry fight. The next war will engage Armenia and Azerbaijan against each other directly, with greatly expanded arsenals. Both sides plan on this basis and both threaten to target civilian infrastructure, such as pipelines. Serious ceasefire violations have recently occurred on their joint border, not just around Karabakh. The international mediation effort, though complex, envisions a final settlement involving an exchange of land for peace. In earlier years, diplomats and politicians in Baku and Yerevan privately acknowledged that a settlement would involve Armenian withdrawal from lowland territories to the east and south of Karabakh, as well as Azerbaijani acceptance of an Armenian identity for Karabakh and a link with Armenia to the west. Today, the land-for-peace concept is essentially dead on both sides. Armenia demands “comprehensive security” in the captured lands around Karabakh, while Azerbaijan believes its new weaponry and support from Turkey can restore its full Soviet-era territorial control. Political rhetoric on both sides dehumanizes the other. Each side exploits its refugees and wallows in a cult of victimization. Each side outrages the other: last year Baku lionized an officer who committed a vicious axe murder of an Armenian in Hungary; Yerevan publishes maps of “Armenia” which include large swaths of inherently Azerbaijani territory. Each believes war will bring military triumph and historical fulfillment. Both cannot be correct in their expectations, but both certainly can be wrong. The broader danger lies in the patron-client relationships of the regional great powers, Russia with Armenia and Turkey with Azerbaijan. **Ankara and Moscow** would not actually come to blows in a new Karabakh war, but both **can be dragged into dangerous circumstances by their clients.** The Azerbaijani tail has already wagged the Turkish dog to prevent normalizing relations between Ankara and Yerevan. (For the time being, **Iran** plays a marginal political role, but **provides vital energy and trade links to Armenia.** However, Tehran’s relations with Baku are poisonous and, in a new Karabakh war, Iran might seek to settle accounts.)

Afghanistan goes nuclear

Morgan 7

(Stephen John, former National Executive Officer of the British Labour Party, his responsibilities included international relations, ethnic minority work, women’s issues, finance, local government and organization, he specialised particularly in international crisis situations spending long periods working in Belfast, in efforts to overcome sectarian strife and terrorism, former Director of WIC, a research and publishing company based in London, he went to live in Budapest during the Gorbachov period from where he helped build opposition groups in the underground in Hungary, Yugoslavia, Bulgaria and East Germany, Stephen left active politics in the early 1990 and came to live in Brussels, where he established and managed his own publishing company, has lived and worked in more than 27 different countries, including underground political work during the troubles in in Northern Ireland and war in Yugoslavia, http://www.electricarticles.com/display.aspx?id=639)

Although disliked and despised in many quarters, the Taliban could not advance without the support or acquiescence of parts of the population, especially in the south. In particular, the Taliban is drawing on backing from the Pashtun tribes from whom they originate. The southern and eastern areas have been totally out of government control since 2001. Moreover, not only have they not benefited at all from the Allied occupation, but it is increasingly clear that with a few small centres of exception, all of the country outside Kabul has seen little improvement in its circumstances. The conditions for unrest are ripe and the Taliban is filling the vacuum. The Break-Up of Afghanistan? However, the Taliban is unlikely to win much support outside of the powerful Pashtun tribes. Although they make up a majority of the nation, they are concentrated in the south and east. Among the other key minorities, such as Tajiks and Uzbeks, who control the north they have no chance of making new inroads. They will fight the Taliban and fight hard, but their loyalty to the NATO and US forces is tenuous to say the least. The Northern Alliance originally liberated Kabul from the Taliban without Allied ground support. The Northern Alliance are fierce fighters, veterans of the war of liberation against the Soviets and the Afghanistan civil war. Mobilized they count for a much stronger adversary than the NATO and US forces. It is possible that, while they won’t fight for the current government or coalition forces, they will certainly resist any new Taliban rule. They may decide to withdraw to their areas in the north and west of the country. This would leave the Allied forces with few social reserves, excepting a frightened and unstable urban population in Kabul, much like what happened to the Soviets. Squeezed by facing fierce fighting in Helmund and other provinces, and, at the same time, harried by a complementary tactic of Al Qaeda-style urban terrorism in Kabul, sooner or later, a “Saigon-style” evacuation of US and Allied forces could be in the cards. The net result could be the break-up and partition of Afghanistan into a northern and western area and a southern and eastern area, which would include the two key cities of Kandahar and, the capital Kabul. « Pastunistan?» The Taliban themselves, however may decide not to take on the Northern Alliance and fighting may concentrate on creating a border between the two areas, about which the two sides may reach an agreement regardless of US and Allied plans or preferences. The Taliban may claim the name Afghanistan or might opt for “Pashtunistan” – a long-standing, though intermittent demand of the Pashtuns, within Afghanistan and especially along the ungovernable border regions inside Pakistan. It could not be ruled out that the Taliban could be aiming to lead a break away of the Pakistani Pashtuns to form a 30 million strong greater Pashtun state, encompassing some 18 million Pakistani Pashtuns and 12 Afghan Pashtuns. Although the Pashtuns are more closely linked to tribal and clan loyalty, there exists a strong latent embryo of a Pashtun national consciousness and the idea of an independent Pashtunistan state has been raised regularly in the past with regard to the disputed territories common to Afghanistan and Pakistan. The area was cut in two by the “Durand Line”, a totally artificial border between created by British Imperialism in the 19th century. It has been a question bedevilling relations between the Afghanistan and Pakistan throughout their history, and with India before Partition. It has been an untreated, festering wound which has lead to sporadic wars and border clashes between the two countries and occasional upsurges in movements for Pashtun independence. In fact, is this what lies behind the current policy of appeasement President Musharraf of Pakistan towards the Pashtun tribes in along the Frontiers and his armistice with North Waziristan last year? Is he attempting to avoid further alienating Pashtun tribes there and head–off a potential separatist movement in Pakistan, which could develop from the Taliban’s offensive across the border in Afghanistan? Trying to subdue the frontier lands has proven costly and unpopular for Musharraf. In effect, he faces exactly the same problems as the US and Allies in Afghanistan or Iraq. Indeed, fighting Pashtun tribes has cost him double the number of troops as the US has lost in Iraq. Evidently, he could not win and has settled instead for an attempted political solution. When he agreed the policy of appeasement and virtual self-rule for North Waziristan last year, President Musharraf stated clearly that he is acting first and foremost to protect the interests of Pakistan. While there was outrageous in Kabul, his deal with the Pashtuns is essentially an effort to firewall his country against civil war and disintegration. In his own words, what he fears most is, the « Talibanistation » of the whole Pashtun people, which he warns could inflame the already fierce fundamentalist and other separatist movement across his entire country. He does not want to open the door for any backdraft from the Afghan war to engulf Pakistan. Musharraf faces the nationalist struggle in Kashmir, an insurgency in Balochistan, unrest in the Sindh, and growing terrorist bombings in the main cities. There is also a large Shiite population and clashes between Sunnis and Shias are regular. Moreover, fundamentalist support in his own Armed Forces and Intelligence Services is extremely strong. So much so that analyst consider it likely that the Army and Secret Service is protecting, not only top Taliban leaders, but Bin Laden and the Al Qaeda central leadership thought to be entrenched in the same Pakistani borderlands. For the same reasons, he has not captured or killed Bin Laden and the Al Qaeda leadership. Returning from the frontier provinces with Bin Laden’s severed head would be a trophy that would cost him his own head in Pakistan. At best he takes the occasional risk of giving a nod and a wink to a US incursion, but even then at the peril of the chagrin of the people and his own military and secret service. The Break-Up of Pakistan? Musharraf probably hopes that by giving de facto autonomy to the Taliban and Pashtun leaders now with a virtual free hand for cross border operations into Afghanistan, he will undercut any future upsurge in support for a break-away independent Pashtunistan state or a “Peoples’ War” of the Pashtun populace as a whole, as he himself described it. However events may prove him sorely wrong. Indeed, his policy could completely backfire upon him. As the war intensifies, he has no guarantees that the current autonomy may yet burgeon into a separatist movement. Appetite comes with eating, as they say. Moreover, should the Taliban fail to re-conquer al of Afghanistan, as looks likely, but captures at least half of the country, then a Taliban Pashtun caliphate could be established which would act as a magnet to separatist Pashtuns in Pakistan. Then, the likely break up of Afghanistan along ethnic lines, could, indeed, lead the way to the break up of Pakistan, as well. Strong centrifugal forces have always bedevilled the stability and unity of Pakistan, and, in the context of the new world situation, the country could be faced with civil wars and popular fundamentalist uprisings, probably including a military-fundamentalist coup d’état. Fundamentalism is deeply rooted in Pakistan society. The fact that in the year following 9/11, the most popular name given to male children born that year was “Osama” (not a Pakistani name) is a small indication of the mood. Given the weakening base of the traditional, secular opposition parties, conditions would be ripe for a coup d’état by the fundamentalist wing of the Army and ISI, leaning on the radicalised masses to take power. Some form of radical, military Islamic regime, where legal powers would shift to Islamic courts and forms of shira law would be likely. Although, even then, this might not take place outside of a protracted crisis of upheaval and civil war conditions, mixing fundamentalist movements with nationalist uprisings and sectarian violence between the Sunni and minority Shia populations. The nightmare that is now Iraq would take on gothic proportions across the continent. The prophesy of an arc of civil war over Lebanon, Palestine and Iraq would spread to south Asia, stretching from Pakistan to Palestine, through Afghanistan into Iraq and up to the Mediterranean coast. Undoubtedly, this would also spill over into India both with regards to the Muslim community and Kashmir. Border clashes, terrorist attacks, sectarian pogroms and insurgency would break out. A new war, and possibly nuclear war, between Pakistan and India could not be ruled out. Atomic Al Qaeda Should Pakistan break down completely, a Taliban-style government with strong Al Qaeda influence is a real possibility. Such deep chaos would, of course, open a "Pandora's box" for the region and the world. With the possibility of unstable clerical and military fundamentalist elements being in control of the Pakistan nuclear arsenal, not only their use against India, but Israel becomes a possibility, as well as the acquisition of nuclear and other deadly weapons secrets by Al Qaeda. Invading Pakistan would not be an option for America. Therefore a nuclear war would now again become a real strategic possibility. This would bring a shift in the tectonic plates of global relations. It could usher in a new Cold War with China and Russia pitted against the US. What is at stake in "the half-forgotten war" in Afghanistan is far greater than that in Iraq. But America's capacities for controlling the situation are extremely restricted. Might it be, in the end, they are also forced to accept President Musharraf's unspoken slogan of «Better another Taliban Afghanistan, than a Taliban NUCLEAR Pakistan!

## 2nc squo solves

And solves drone sustainability

Matthew Waxman, 3/20/13, Going Clear, www.foreignpolicy.com/articles/2013/03/20/going\_clear

So, moving operations to the Pentagon may modestly improve transparency and compliance with the law **but -ironically for drone critics -it may also entrench targeted-killing policy for the long term**. For one thing, the U.S. government will now be better able to defend publicly its practices at home and abroad. The CIA is institutionally oriented toward extreme secrecy rather than public relations, and the covert status of CIA strikes makes it difficult for officials to explain and justify them. The more secretive the U.S. government is about its targeting policies, the less effectively it can participate in the broader debates about the law, ethics, and strategy of counterterrorism. Many of the criticisms of drones and targeting are fundamentally about whether it's appropriate to treat the fight against al Qaeda and its allies as a war -with all the legal authorities that flow from that, like the powers to detain and kill. The U.S. government can better defend its position without having to maintain plausible deniability of its most controversial program and without the negative image (whether justified or not) that many audiences associate with the CIA. Under a military-only policy, the United States would also be better positioned to correct lingering misperceptions about targeted killings and to take remedial action when it makes a mistake. Moreover, clearer legal limits and the perception of stricter oversight will make drone policy more legitimate in the public's eyes. Polling shows that Americans support military drone strikes more strongly than CIA ones, so this move will likely **strengthen political backing** for continued strikes. Consider the case of Guantanamo: The shuttering of black sites, as well as the Supreme Court's decisions that detainees there can challenge their detention in federal court and that all detainees are protected by the Geneva Convention, have muted criticism of the underlying practice of detention without trial. Here, too, the proposed **reforms would put the remaining policy on stronger footing**. It's difficult to assess fully the pros and cons of getting the CIA out of the lethal targeting business because the government has not explained why it has been using the CIA for some operations and not others. As to efficacy -how the advantages of targeted strikes match up against the costs -strategy should dictate which agency should be responsible, not the other way around. That said, the result of shifting control to the Pentagon will likely be a more sustainable, if perhaps more restrained and formalized, long-term policy of targeted killing.

## 2nc circumvention

No political will to implement the plan

Druck, JD – Cornell Law, ‘12

(Judah, 98 Cornell L. Rev. 209)

There are obvious similarities between the causes and effects of the public scrutiny associated with the larger wars discussed above. In each situation, the United States was faced with some, or even all, of the traditional costs associated with war: a draft, an increasingly large military industry, logistical sacrifices (such as rationing and other noncombat expenses), and significant military casualties. n114 Americans looking to keep the United States out of foreign affairs ob-viously had a great deal on the line, which provided sufficient incentive to scrutinize military policy. In the face of these potentially colossal harms, the public was willing to assert a significant voice, which in turn increased the willingness of politicians to challenge and subsequently shift presidential policy. As a result, public scrutiny and activism placed a President under constant scrutiny in one war, delayed U.S. intervention in another, and even helped end two wars entire-ly. Thus, we may extract a general principle from these events: when faced with the prospect of a war requiring heavy domestic sacrifices, and absent an incredibly compelling reason to engage in such a war (as seen in World War II, for example), n115 the public is properly incentivized to emerge and exert social (and, consequently, political) pressure in order to engage and shift foreign policy. However, as we will see, the converse is true as well. B. The Introduction of Technology-Driven Warfare and Shifting Wartime Doctrines The recent actions in Libya illustrate the culmination of a shift toward a new era of warfare, one that upsets the system of social and political checks on presidential military action. Contrary to the series of larger conflicts fought in the twen-tieth century, this new era has ushered in a system of war devoid of some of the fundamental aspects of war, including the traditional costs discussed above. Specifically, through the advent of military technology, especially in the area of robotics, modern-day hostilities no longer require domestic sacrifices, thereby concealing the burden of war from main-stream consciousness. n116 By using fewer troops and introducing drones and other [\*228] forms of mechanized warfare into hostile areas more frequently, n117 an increased number of recent conflicts have managed to avoid many domestic casualties, economic damages, and drafts. n118 In a way, less is on the line when drones, rather than people, take fire from enemy combatants, and this reality displaces many hindrances and considerations when deciding whether to use drones in the first place. n119 This move toward a limited form of warfare has been termed the "Obama Doctrine," which "emphasizes air power and surgical strikes, rather than boots on the ground." n120 Under this military framework, as indicated by the recent use of drones in the Middle East, the traditional harms associated with war might become increasingly obsolete as technolo-gy replaces the need for soldiers. Indeed, given the increased level of firepower attached to drones, we can imagine a situation where large-scale military engagements are fought without any American soldiers being put in harm's way, without Americans having to ration their food purchases, and without teenagers worrying about being drafted. n121 For example, "with no oxygen-and sleep-needing human on board, Predators and other [unmanned aerial vehicles] can watch over a potential target for 24 hours or more - then attack when opportunity knocks." n122 Thus, if the recent actions in Libya are any indication of what the future will look like, we can predict a major shift in the way the United States carries out wars . n123 [\*229] C. The Effects of Technology-Driven Warfare on Politics and Social Movements The practical effects of this move toward a technology-driven, and therefore limited, proxy style of warfare are mixed. On the one hand, the removal of American soldiers from harm's way is a clear benefit, n124 as is the reduced harm to the American public in general. For that, we should be thankful. But there is another effect that is less easy to identify: pub-lic apathy. By increasing the use of robotics and decreasing the probability of harm to American soldiers, modern war-fare has "affected the way the public views and perceives war" by turning it into "the equivalent of sports fans watching war, rather than citizens sharing in its importance." n125 As a result, the American public has slowly fallen victim to the numbing effect of technology-driven warfare; when the risks of harm to American soldiers abroad and civilians at home are diminished, so too is the public's level of interest in foreign military policy. n126 In the political sphere, this effect snowballs into both an uncaring public not able (or willing) to effectively mobi-lize in order to challenge presidential action and enforce the WPR, and a Congress whose own willingness to check presidential military action is heavily tied to public opinion. n127 Recall, for example, the case of the Mayaguez, where potentially unconstitutional action went unchecked because the mission was perceived to be a success. n128 Yet we can imagine that most missions involving drone strikes will be "successful" in the eyes of [\*230] the public: even if a strike misses a target, the only "loss" one needs to worry about is the cost of a wasted missile, and the ease of deploying another drone would likely provide a quick remedy. Given the political risks associated with making critical statements about military action, especially if that action results in success, n129 we can expect even less congressional WPR en-forcement

as more military engagements are supported (or, at the very least, ignored) by the public. In this respect, the political reaction to the Mayaguez seems to provide an example of the rule, rather than the exception, in gauging politi-cal reactions within a technology-driven warfare regime. Thus, when the public becomes more apathetic about foreign affairs as a result of the limited harms associated with technology-driven warfare, and Congress's incentive to act consequently diminishes, the President is freed from any possible WPR constraints we might expect him to face, regardless of any potential legal issues. n130 Perhaps unsurpris-ingly, nearly all of the constitutionally problematic conflicts carried out by presidents involved smaller-scale military actions, rarely totaling more than a few thousand troops in direct contact with hostile forces. n131 Conversely, conflicts that have included larger forces, which likely provided sufficient incentive for public scrutiny, have generally complied with domestic law. n132 The result is that as wars become more limited, n133 unilateral presidential action will likely become even more un-checked as the triggers for WPR enforcement fade away. In contrast with the social and political backlash witnessed during the Civil War, World War I, the Vietnam War, and the Iraq War, contemporary military actions provide insuffi-cient incentive to prevent something as innocuous and limited as a drone strike. Simply put, technology-driven warfare is not conducive to the formation of a substantial check on presidential action. n134

# 1NR

## 2nc ov

Howell ‘7

William, professor of political science at U-Chicago, and Jon C. Pevehouse, professor of Political Science UW-Madison, “While Dangers Gather : Congressional Checks on Presidential War Powers,” 2007 ed.

SIGNALING RESOLVE To the extent that congressional discontent signals domestic irresolution to other nations, the job of resolving a foreign crisis is made all the more difficult. As Kenneth Schultz shows, an ''opposition party can undermine the credibility of some challenges by publicly opposing them. Since this strategy threatens to increase the probability of resistance from the rival state, it forces the government to be more selective about making threats "—and, concomitantly, more cautious about actually using military force.'4 When members of Congress openly object to a planned military operation, would-be **adversaries** of the United States may feel emboldened, believing that the president lacks the domestic support required to see a military venture through. Such nations, it stands to reason, will be more willing to enter conflict, and if convinced that the United States will back down once the costs of conflict are revealed, they may fight longer and make fewer concessions. Domestic political strife, as it were, weakens the ability of presidents to bargain effectively with foreign states, while increasing the chances that military entanglements abroad will become **protracted and unwieldy.** A large body of work within the field of international relations supports the contention that a nation's ability to achieve strategic military objectives in short order depends, in part**,** on the head of state's **credibility in conveying political resolve.** Indeed, a substantial game theoretic literature underscores the importance of domestic political institutions and public opinion as state leaders attempt to credibly commit to war,75 Confronting widespread and vocal domestic opposition, the president may have a difficult time signaling his willingness to see a military campaign to its end, While congressional opposition may embolden foreign enemies, the perception on the part of allies that the president lacks support may make them wary of **committing any troops at all.**

Also causes rollback/circumvention

Laura Young, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

A president looks for chances to increase his power (Moe and Howell 1999). Windows of opportunity provide those occasions. These **openings create an environment where the president faces little backlash from Congress, the judicial branch, or even the public**. Though institutional and behavioral conditions matter, domestic and international crises play a pivotal role in aiding a president who wishes to increase his power (Howell and Kriner 2008, 475). These events overcome the obstacles faced by the institutional make-up of government. They also allow a president lacking in skill and will or popular support the opportunity to shape the policy formation process. In short, focusing events increase presidential unilateral power.

Outweighs their mechanism

Laura Young, Ph.D., Purdue University Associate Fellow, June 2013, Unilateral Presidential Policy Making and the Impact of Crises, Presidential Studies Quarterly, Volume 43, Issue 2

During periods of crisis, the time available to make decisions is limited. Because the decision-making process is often arduous and slow in the legislative branch, it is not uncommon for the executive branch to receive deference during a crisis because of its ability to make swift decisions. The White House centralizes policies during this time, and presidents seize these opportunities to expand their power to meet policy objectives. Importantly, presidents do so with limited opposition from the public or other branches of government (Howell and Kriner 2008). In fact, despite the opposition presidents often face when centralizing policies, research shows policies formulated via centralized processes during times of crisis receive more support from Congress and the American people (Rudalevige 2002, 148-49). For several reasons, a crisis allows a president to promote his agenda through unilateral action. First, a critical exogenous shock shifts attention and public opinion (Birkland 2004, 179). This shift is a phenomenon known as the “rally round the flag” effect (Mueller 1970). The rally effect occurs because of the public's increase in “its support of the president in times of crisis or during major international events” (Edwards and Swenson 1997, 201). Public support for the president rises because he is the leader and, therefore, the focal point of the country to whom the public can turn for solutions. Additionally, individuals are more willing to support the president unconditionally during such times, hoping a “united front” will increase the chance of success for the country (Edwards and Swenson 1997, 201). As a result, a crisis or focusing event induces an environment that shifts congressional focus, dispels gridlock and partisanship, and increases positive public opinion—each of which is an important determinant for successful expansion of presidential power (Canes-Wrone and Shotts 2004; Howell 2003). In other words, a crisis embodies key elements that the institutional literature deems important for presidential unilateral policy making. The president's ability to focus attention on a particular issue is also of extreme importance if he wishes to secure support for his agenda (Canes-Wrone and Shotts 2004; Edwards and Wood 1999; Howell 2003; Neustadt 1990). The role the media play is pivotal in assisting a president in achieving such a result because of its ability to increase the importance of issues influencing the attention of policy makers and the priorities of viewers. Although it is possible a president can focus media attention on the policies he wishes to pursue through his State of the Union addresses or by calling press conferences, his abilities in this regard are limited, and the media attention he receives is typically short lived (Edwards and Wood 1999, 328-29). High-profile events, on the other hand, are beneficial because they allow the president to gain focus on his agenda. This occurs because the event itself generates attention from the media without presidential intervention. Thus, the ability of crises to set the agenda and shift media and public attention provides another means for overcoming the constraints placed upon the president's ability to act unilaterally. Finally, Rudalevige finds support that a crisis increases the success of presidential unilateral power even if the policy process is centralized. A crisis allows little time to make decisions. As a result, “the president and other elected officials are under pressure to ‘do something’ about the problem at hand” (2002, 89, 148). Because swift action is necessary, presidents rely on in-house advice. As a result, the policy formation process is centralized, and the president receives deference to unilaterally establish policies to resolve the crisis. During a crisis, the president has greater opportunity to guide policy because the event helps him overcome the congressional and judicial obstacles that typically stand in his way.2 This affords the president greater discretion in acting unilaterally (Wildavsky 1966). It is possible the institutional make-up of the government will align so that the president will serve in an environment supportive of his policy decisions. It is also likely a president will have persuasive powers that enable him to gain a great deal of support for his policy agenda. An event with the right characteristics, however, enhances the president's ability to act unilaterally, regardless of the institutional make-up of government or his persuasive abilities.

## 2nc spill

Spills over to all military action

Howell ‘7

William, professor of political science at U-Chicago, and Jon C. Pevehouse, professor of Political Science UW-Madison, “While Dangers Gather : Congressional Checks on Presidential War Powers,” 2007 ed.

Immersed in all of the uncertainty that precedes war, presidents struggle mightily to assess the possibility that the military's plans will fail, and to evaluate whether Congress in due course either will publicly condemn him and actively work to dismantle the engagement or will affirm its allegiance to him and give him the money and delegated authority he needs to proceed. If Congress will come to the president's aid and ptovide him with political cover, then he may have the assurances he needs to incur the risks involved. On the other hand, if the president looks up at Capitol Hill and sees a swarm of representatives poised to pounce at the first misstep taken, he may instead choose to abandon military options altogether. In chapter 2 of this book, we discuss in some detail how presidents make this calculation.

## 2nc ext.

Only constrains humanitarian operations

Goldsmith 8/31/13

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Peter Spiro at OJ, and David Rothkopf of FP whom he cites, both say that President Obama’s request for congressional authorization for Syria will allow Congress to hamstring future Presidents from using military force. Rothkopf exaggerates when he says that President Obama reversed “decades of precedent regarding the nature of presidential war powers” by going to Congress here, and Spiro exaggerates when he says that this is “a huge development with broad implications . . . for separation of powers.” What would have been unprecedented, and a huge development for separation of powers, is a unilateral strike in Syria. Seeking congressional authorization here in no way sets a precedent against President using force in national self-defense, or to protect U.S. persons or property, or even (as in Libya) to engage in humanitarian interventions (like Libya) with Security Council support. Moreover, the President and his subordinates have been implying for a while now that they will rely on Article II to use force without congressional authorization against extra-AUMF terrorist threats (and for all we know they already are). There is no reason to think that unilateral presidential military powers for national self-defense are in any way affected by the President’s decision today. That is as it should be. To the extent that Spiro is suggesting that **pure humanitarian interventions** might be harder for presidents to do unilaterally after today (I think this is what he is suggesting, but I am not sure), I agree. Kosovo is the only other real precedent here, and the Clinton administration never explained why it was lawful as an original matter. The constitutional problem with pure humanitarian interventions – and especially ones (like Kosovo and Syria) that lack Security Council cover, and thus that do not implicate the supportive Korean War precedent – is that Presidents cannot easily articulate a national interest to trigger the Commander in Chief’s authority that is not at the same time boundless. President Obama, like President Clinton before him in Kosovo, had a hard time making that legal argument because it is in fact a hard argument to make. That is one reason (among many others) why I think it was a good idea, from a domestic constitutional perspective, for the President in this context to seek congressional approval.

## at: secrecy bad

They are just wrong – less secrecy undermines warfighting – even if secrecy in the context of drones is bad the transparency movement started by the plan is devestating

Carrie Cordero, Former Justice Dept. Official, Georgetown University Law Center National Security Studies Director, 6/7/13, Why These Leaks Hurt, www.lawfareblog.com/2013/06/why-these-leaks-hurt/

Without discussing the order or collection programs themselves—which were, and remain—classified, I would like to comment briefly on why these **leaks could be** potentially very damaging **to the Intelligence Community’s ability to protect the country from terrorist and** other **national security threats**. For the record, the official measure of how damaging a release of classified information is depends on the level of classification. So, for example, the unauthorized disclosure of just one Top Secret document is asserted by the government to cause “exceptionally grave damage to the national security.” (See, e.g., E.O. 13526) But these types of blanket assertions can be unsatisfying. Why, I was asked yesterday, does this type of information really need to be kept secret? To put it plainly: the biggest, and perhaps obvious, reason is that the more information that is public about how we collect intelligence, the more the adversary will understand the United States’ capabilities, and therefore be able to thwart them. If the adversary knows that we collect X type of data, and that we collect it when it travels through X service provider, and that we collect it in Y or Z format, and that we collect certain information pursuant to a Court order which requires a certain legal standard, then the adversary has the information, and therefore power, to adapt their own techniques and tradecraft to beat us. And **when what they are beating us at is launching a terrorist attack**, for example, **then why in the world would we want to give them that advantage**? More specifically, from a signals intelligence perspective, what bigger advantage is there than details of how the Intelligence Community collects communications for foreign intelligence purposes? This is why information about private sector partners is exceptionally sensitive information, and its disclosure can have extraordinarily harmful consequences. From the government’s perspective, private sector relationships are critical in conducting intelligence operations, both FISA-related and, other. In many circumstances, but for the cooperation of a communications provider, certain FISA collection activities could not take place. As a result, the government would be at a disadvantage in collecting intelligence regarding a particular threat to national security. Once a company is exposed publicly, a target may not use that particular service anymore. Sometimes, additional investigation may reveal the target’s other modes of communication. But in other circumstances, intelligence information about that target may be lost forever. From a company’s perspective, protection from legal liability is paramount. Accordingly, when a company complies with a valid FISA Court order, the company is protected. (See, e.g., 50 U.S.C. § 1861(e) (liability protection for the production of tangible things) But there are additional financial risks to companies. Companies have investors, customers, perhaps international partners. These stakeholders may not like that the company is cooperating in U.S. government intelligence activities, even if they are lawful and pursuant to a court order. Technology or social media companies in particular, which have thrived by providing platforms for people to communicate and share ideas in new ways, may be particularly susceptible to angry stakeholder reactions. In the case of a company with international subsidiaries, or, international parent companies, the cooperation with the U.S. government could be at odds with the interests of other parts of the company. The results of any of these scenarios may be that the next time the government arrives with a court order, the company may be more likely to explore ways to challenge it. Or, may not comply and face enforcement consequences. Or, may choose not to cooperate in intelligence activities that require voluntary, not compelled cooperation. These are some potential reactions by private sector entities whose existence and success depends not on the government, but on its investors, customers, owners and users.

## --xt posner and vermule

Political constraints check

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, March 2011, The Executive Unbound, p. 176-7

So far we have attempted to show that **the administrative state relaxes legal constraints** on the executive, **but generates political constraints** in the form of public opinion. In this chapter we fit this picture together with the fear of unbridled executive power that is such a prominent strand in liberal legalism. We suggest that liberal legalists overlook the importance of de facto constraints arising from politics, and thus equate a legally unconstrained executive with one that is unconstrained tout court. The horror of dictatorship that results from this fallacy and that animates liberal legalism is what we call "tyrannophobia." Tyranny looms large in the American political imagination. For the framers of the Constitution, Caesar, Cromwell, James II, and George III were antimodels; for the current generation, Hitler takes pride of place, followed by Stalin, Mao, and a horde of tyrants both historical and literary. Students read 1984 and Animal Farm and relax by watching Chancellor Palpatine seize imperial power in Star Wars. Unsurprisingly, comparisons between sitting presidents and the tyrants of history and fiction are a trope of political discourse. Liberals and libertarians routinely compared George W. Bush to Hitler, George III, and Caesar. Today, Barack Obama receives the same treatment, albeit in less respectable media of opinion. All major presidents are called a "dictator" or said to have "dictatorial powers" from time to time.' **Yet the U**nited **S**tates **has never had a Caesar or** a Cromwell, **or even come close** to having one, and rational actors should update their risk estimates in the light of experience, reducing them if the risk repeatedly fails to materialize. **By now, 235 years after independence, these risk estimates should be** close to zero. Why then does the fear of dictatorship—tyrannophobia—persist so strongly in American political culture? Is the fear justified, or irrational? Does tyrannophobia itself affect the risk of dictatorship? If so, does it reduce the risk or increase it?

Bureaucracy checks, doesn’t enable tyranny

Eric Posner, Professor of Law, The University of Chicago Law School, and Adrian Vermeule, Professor of Law, Harvard Law School, March 2011, The Executive Unbound, p. 59

The upshot of the massive size of the executive is that the president can exert control only in certain areas—for example, counterterrorism policy during the Bush administration, and then subject to numerous constraints, and not over many other areas, where he can at best set the tone (which may well be ignored by subordinates), or through appointments of people who may not act in the president's interest or may not be able to control those below them. So **the sheer complexity of the government response to regulatory problems limits the impact of a single person**, **and renders inappropriate the use of words like "dictator" to describe the president**. What this means is that a large area of public policy is determined by a self-replicating career bureaucracy that probably roughly shares the political preferences of the center (albeit no doubt with occasional significant deviations) and in general acts with typical bureaucratic caution with an eye to avoiding scandal. The traditional separation-of-powers model does not, of course, capture this phenomenon. The bureaucracy is not a representative institution like the legislature, nor a judicial institution—although efforts have been made to introduce representative and judicial elements to it, as though to take up the slack left by the collapse of liberal institutions outside the executive.86

## --a2: scenarios

They’re accurate – and the public is worse

Bryan **Caplan**, Associate Professor of Economics at George Mason University, 12-26-**2005**, EconLog, http://econlog.econlib.org/archives/2005/12/tackling\_tetloc\_1.html

## Util

**4) Ethics focus turns the K - Focus on guilt-based pancea politics leads to compassion fatigue that results in a net-decrease in ethical acts**

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It all started with an advertising campaign. We have all been cued by that famous series of ads by Save the Children. You can help this child or you can turn the page. The first time a reader sees the advertisement he is arrested by guilt. He may come close to actually sending money to the organization. The second time the reader sees the ad he may linger over the photograph, read the short paragraphs of copy and only then turn the page. The third time the reader sees the ad he typically turns the page without hesitation. The fourth time the reader sees the ad he may pause again over the photo and text, not to wallow in guilt, but to acknowledge with cynicism how the advertisement is crafted to manipulate readers like him— even if it is in a “good” cause. As the Chicago Tribunes 1998 series investigating four international charities bluntly stated, “Child sponsorship is one of the most powerful and seductive philanthropic devices ever conceived.” 7 Most media consumers eventually get to the point where they turn the page. Because most of us do pass the advertisement by, its curse is on our heads. “Either you help or you turn away,” stated one ad. “Whether she lives or dies, depends on what you do next.” Turning away kills this child. We are responsible. “Because without your help, death will be this child’s only relief.” 8 In turning away we become culpable. But we can’t respond to every appeal. And so we’ve come to believe that we don’t care. If we turn the page originally because we don’t want to respond to what is in actuality a fund-raising appeal, although in the guise of a direct humanitarian plea, it becomes routine to thumb past the pages of news images showing wide-eyed children in distress. We’ve got compassion fatigue, we say, as if we have involuntarily contracted some kind of disease that we’re stuck with no matter what we might do. But it’s not just the tactics of the advocacy industry which are at fault in our succumbing to this affliction. After all, how often do we see one of their ads, anyway?…unless it’s Christmastime and we’re opening all our unsolicited mail. It’s the media that are at fault. How they typically cover crises helps us to feel overstimulated and bored all at once. Conventional wisdom says Americans have a short attention span. A parent would not accept that pronouncement on a child; she would step in to try to teach patience and the rewards of sticktoitiveness. But the media are not parents. In this case they are more like the neighborhood kid who is the bad influence on the block. Is your attention span short? Well then, let the media give you even more staccato bursts of news, hyped and wired to feed your addiction. It is not that there’s not good, comprehensive, responsible reporting out there. There is. “Sometimes,” said the late Jim Yuenger, former foreign editor with the Chicago Tribune, “you put the news in and people just aren’t going to read it and you have to say the hell with it.” 9 But that type of coverage is expensive as well as spaceand time-consuming. It rarely shows enough bang for the buck. So only a few elite media outlets emphasize such coverage, and even they frequently lapse into quick once-over reporting. “We give you the world,” yes, but in 15-second news briefs. The print and broadcast media are part of the entertainment industry— an industry that knows how to capture and hold the attention of its audience. “The more bizarre the story,” admitted UPI foreign editor Bob Martin, “the more it’s going to get played.” 10 With but a few exceptions, the media pay their way through selling advertising, not selling the news. So the operating principle behind much of the news business is to appeal to an audience— especially a large audience— with attractive demographics for advertisers. Those relatively few news outlets that consider international news to be of even remote interest to their target audiences try to make the world accessible. The point in covering international affairs is to make the world fascinating— or at least acceptably convenient: “News you can use.” “When we do the readership surveys, foreign news always scores high,” said Robert Kaiser, former managing editor of The Washington Post. “People say they’re interested and appreciate it, and I know they’re lying but I don’t mind. It’s fine. But I think it’s an opportunity for people to claim to be somewhat better citizens than they are.” 11 But in reality, they’re bored. When problems in the news can’t be easily or quickly solved— famine in Somalia, war in Bosnia, mass murder of the Kurds— attention wanders off to the next news fashion. “What’s hardest,” said Yuenger, “is to sustain interest in a story like Bosnia, which a lot of people just don’t want to hear about.” The media are alert to the first signs in their audience of the compassion fatigue “signal,” that sign that the short attention span of the public is up. “If we’ve just been in Africa for three months,” said CBS News foreign editor Allen Alter, “and somebody says, ‘You think that’s bad? You should see what’s down in Niger,’ well, it’s going to be hard for me to go back. Everybody’s Africa’d out for the moment.” As Milan Kundera wrote in The Book of Laughter and Forgetting, “The bloody massacre in Bangladesh quickly covered over the memory of the Russian invasion of Czechoslovakia, the assassination of Allende drowned out the groans of Bangladesh, the war in the Sinai Desert made people forget Allende, the Cambodian massacre made people forget Sinai and so on and so forth, until ultimately everyone lets everything be forgotten.” 12 The causes of compassion fatigue are multiple. Sometimes there are just too many catastrophes happening at once. “I think it was the editor Harold Evans,” said Bill Small, former president of NBC News and UPI, “who noted that a single copy of the [London] Sunday Times covers more happenings than an Englishman just a few hundred years ago could be expected to be exposed to in his entire lifetime.” 13 In 1991, for instance, it was hard not to be overwhelmed by the plethora of disasters. So compassion fatigue may simply work to pre-empt attention of “competing” events.