# 1AC Districts

## Norms

#### Drone prolif is inevitable---the plan establishes norms for restrained use that prevents great powers war.

**Roberts 13**. Roberts, Kristen. March 22nd, 2013. “When the whole world has drones” “ <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321> (news editor for the National Journal. She has a Masters degree in security studies from Georgetown)

The proliferation of drone technology has moved well beyond the control of the United States government and its closest allies. The aircraft are too easy to obtain, with barriers to entry on the production side crumbling too quickly to place limits on the spread of a technology that promises to transform warfare on a global scale. Already, more than 75 countries have remote piloted aircraft. More than 50 nations are building a total of nearly a thousand types. At its last display at a trade show in Beijing, China showed off 25 different unmanned aerial vehicles. Not toys or models, but real flying machines. It’s a classic and common phase in the life cycle of a military innovation: An advanced country and its weapons developers create a tool, and then others learn how to make their own. But what makes this case rare, and dangerous, is the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use. This technology is snowballing through a global arena where the main precedent for its application is the one set by the United States; it’s a precedent Washington does not want anyone following. America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts. To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order. Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan. This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself that would at minimum create a globally relevant standard for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation. THE WRONG QUESTION The United States is the indisputable leader in drone technology and long-range strike. Remote-piloted aircraft have given Washington an extraordinary ability to wage war with far greater precision, improved effect, and fewer unintended casualties than conventional warfare. The drones allow U.S. forces to establish ever greater control over combat areas, and the Pentagon sees the technology as an efficient and judicious force of the future. And it should, given the billions of dollars that have gone into establishing and maintaining such a capability. That level of superiority leads some national security officials to downplay concerns about other nations’ unmanned systems and to too narrowly define potential threats to the homeland. As proof, they argue that American dominance in drone warfare is due only in part to the aircraft itself, which offers the ability to travel great distances and loiter for long periods, not to mention carry and launch Hellfire missiles. The drone itself, they argue, is just a tool and, yes, one that is being copied aggressively by allies and adversaries alike. The real edge, they say, is in the unparalleled intelligence-collection and data-analysis underpinning the aircraft’s mission. “There is what I think is just an unconstrained focus on a tool as opposed to the subject of the issue, the tool of remotely piloted aircraft that in fact provide for greater degrees of surety before you employ force than anything else we use,” said retired Lt. Gen. David Deptula, the Air Force’s first deputy chief of staff for intelligence, surveillance, and reconnaissance. “I think people don’t realize that for the medium altitude aircraft—the MQ-1 [Predator] and MQ-9 [Reaper] that are generally written about in the press—there are over 200 people involved in just one orbit of those aircraft.… The majority of those people are analysts who are interpreting the information that’s coming off the sensors on the aircraft.” The analysts are part of the global architecture that makes precision strikes, and targeted killing, possible. At the front end, obviously, intelligence—military, CIA, and local—inform target decisions. But in as near-real time as technologically possible, intel analysts in Nevada, Texas, Virginia, and other locations watch the data flood in from the aircraft and make calls on what’s happening on target. They monitor the footage, listen to audio, and analyze signals, giving decision-makers time to adjust an operation if the risks (often counted in potential civilian deaths) outweigh the reward (judged by the value of the threat eliminated). “Is that a shovel or a rifle? Is that a Taliban member or is this a farmer? The way that warfare has advanced is that we are much more exquisite in our ability to discern,” Maj. Gen. Robert Otto, commander of the Air Force Intelligence, Surveillance, and Reconnaissance Agency, told National Journal at Nellis Air Force Base in Nevada. “We’re not overhead for 15 minutes with a fighter that’s about to run out of gas, and we have to make a decision. We can orbit long enough to be pretty sure about our target.” Other countries, groups, and even individuals can and do fly drones. But no state or group has nearly the sophisticated network of intelligence and data analysis that gives the United States its strategic advantage. Although it would be foolish to dismiss the notion that potential U.S. adversaries aspire to attain that type of war-from-afar, pinpoint-strike capability, they have neither the income nor the perceived need to do so. That’s true, at least today. It’s also irrelevant. Others who employ drones are likely to carry a different agenda, one more concerned with employing a relatively inexpensive and ruthlessly efficient tool to dispatch an enemy close at hand. “It would be very difficult for them to create the global-strike architecture we have, to have a control cell in Nevada flying a plane over Afghanistan. The reality is that most nations don’t want or need that,” said Peter Singer, director of the Brookings Institution’s Center for 21st Century Security and Intelligence and one of the foremost experts in advanced military technology. “Turkey’s not looking to conduct strikes into the Philippines.... But Turkey is looking to be able to carry out long-duration surveillance and potentially strike inside and right on its border.” And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.” BEHIND CLOSED DOORS The argument against public debate is easy enough to understand: Operational secrecy is necessary, and total opacity is easier. “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things,” said Dennis Blair, Obama’s former director of national intelligence. “The reason it’s not been undertaken by the administration is that they just make a cold-blooded calculation that it’s better to hunker down and take the criticism than it is to get into the public debate, which is going to be a hard one to win.” But by keeping legal and policy positions secret, only partially sharing information even with congressional oversight committees, and declining to open a public discussion about drone use, the president and his team are asking the world to just trust that America is getting this right. While some will, many people, especially outside the United States, will see that approach as hypocritical, coming from a government that calls for transparency and the rule of law elsewhere. “I know these people, and I know how much they really, really attend to the most important details of the job,” said Barry Pavel, a former defense and security official in the Bush and Obama administrations who is director of the Brent Scowcroft Center on International Security at the Atlantic Council. “If I didn’t have that personal knowledge and because there isn’t that much really in the press, then I would be giving you a different rendering, and much more uncertain rendering.” That’s only part of the problem with the White House’s trust-us approach. The other resides in the vast distance between the criteria and authorization the administration says it uses in the combat drone program and the reality on the ground. For example, according to administration officials, before a person is added to the targeted strike list, specific criteria should be met. The target should be a 1) senior, 2) operational 3) leader of al-Qaida or an affiliated group who presents 4) an imminent threat of violent attack 5) against the United States. But that’s not who is being targeted. Setting aside the administration’s redefining of “imminence” beyond all recognition, the majority of the 3,500-plus people killed by U.S. drones worldwide were not leaders of al-Qaida or the Taliban; they were low- or mid-level foot soldiers. Most were not plotting attacks against the United States. In Yemen and North Africa, the Obama administration is deploying weaponized drones to take out targets who are more of a threat to local governments than to Washington, according to defense and regional security experts who closely track unrest in those areas. In some cases, Washington appears to be in the business of using its drone capabilities mostly to assist other countries, not to deter strikes against the United States (another precedent that might be eagerly seized upon in the future). U.S. defense and intelligence officials reject any suggestion that the targets are not legitimate. One thing they do not contest, however, is that the administration’s reliance on the post-9/11 Authorization for Use of Military Force as legal cover for a drone-strike program that has extended well beyond al-Qaida in Afghanistan or Pakistan is dodgy. The threat that the United States is trying to deal with today has an ever more tenuous connection to Sept. 11. (None of the intelligence officials reached for this article would speak on the record.) But instead of asking Congress to consider extending its authorization, as some officials have mulled, the administration’s legal counsel has chosen instead to rely on Nixon administration adviser John Stevenson’s 1970 justification of the bombing of Cambodia during the Vietnam War, an action new Secretary of State John Kerry criticized during his confirmation hearing this year. Human-rights groups might be loudest in their criticism of both the program and the opaque policy surrounding it, but even the few lawmakers who have access to the intelligence the administration shares have a hard time coping with the dearth of information. “We can’t always assume we’re going to have responsible people with whom we agree and trust in these positions,” said Sen. Angus King, I-Maine, who sits on the Senate Intelligence Committee. “The essence of the Constitution is, it shouldn’t matter who is in charge; they’re still constrained by principles and rules of the Constitution and of the Bill of Rights.” PEER PRESSURE Obama promised in his 2013 State of the Union to increase the drone program’s transparency. “In the months ahead, I will continue to engage Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world,” the president said on Feb. 12. Since then, the administration, under pressure from allies on Senate Intelligence, agreed to release all of the legal memos the Justice Department drafted in support of targeted killing. But, beyond that, it’s not certain Obama will do anything more to shine light on this program. Except in situations where leaks help it tell a politically expedient story of its skill at killing bad guys, the administration has done little to make a case to the public and the world at large for its use of armed drones. Already, what’s become apparent is that the White House is not interested in changing much about the way it communicates strike policy. (It took Sen. Rand Paul’s 13-hour filibuster of CIA Director John Brennan’s nomination to force the administration to concede that it doesn’t have the right to use drones to kill noncombatant Americans on U.S. soil.) And government officials, as well as their surrogates on security issues, are actively trying to squash expectations that the administration would agree to bring the judicial branch into the oversight mix. Indeed, judicial review of any piece of the program is largely off the table now, according to intelligence officials and committee members. Under discussion within the administration and on Capitol Hill is a potential program takeover by the Pentagon, removing the CIA from its post-9/11 role of executing military-like strikes. Ostensibly, that shift could help lift the secret-by-association-with-CIA attribute of the program that some officials say has kept them from more freely talking about the legitimate military use of drones for counterterrorism operations. But such a fix would provide no guarantee of greater transparency for the public, or even Congress. And if the administration is not willing to share with lawmakers who are security-cleared to know, it certainly is not prepared to engage in a sensitive discussion, even among allies, that might begin to set the rules on use for a technology that could upend stability in already fragile and strategically significant places around the globe. Time is running out to do so. “The history of technology development like this is, you never maintain your lead very long. Somebody always gets it,” said David Berteau, director of the International Security Program at the Center for Strategic and International Studies. “They’re going to become cheaper. They’re going to become easier. They’re going to become interoperable,” he said. “The destabilizing effects are very, very serious.” Berteau is not alone. Zenko, of the Council on Foreign Relations, has urged officials to quickly establish norms. Singer, at Brookings, argues that the window of opportunity for the United States to create stability-supporting precedent is quickly closing. The problem is, the administration is not thinking far enough down the line, according to a Senate Intelligence aide. Administration officials “are thinking about the next four years, and we’re thinking about the next 40 years. And those two different angles on this question are why you see them in conflict right now.” That’s in part a symptom of the “technological optimism” that often plagues the U.S. security community when it establishes a lead over its competitors, noted Georgetown University’s Kai-Henrik Barth. After the 1945 bombing of Hiroshima and Nagasaki, the United States was sure it would be decades before the Soviets developed a nuclear-weapon capability. It took four years. With drones, the question is how long before the dozens of states with the aircraft can arm and then operate a weaponized version. “Pretty much every nation has gone down the pathway of, ‘This is science fiction; we don’t want this stuff,’ to, ‘OK, we want them, but we’ll just use them for surveillance,’ to, ‘Hmm, they’re really useful when you see the bad guy and can do something about it, so we’ll arm them,’ ” Singer said. He listed the countries that have gone that route: the United States, Britain, Italy, Germany, China. “Consistently, nations have gone down the pathway of first only surveillance and then arming.” The opportunity to write rules that might at least guide, if not restrain, the world’s view of acceptable drone use remains, not least because this is in essence a conventional arms-control issue. The international Missile Technology Control Regime attempts to restrict exports of unmanned vehicles capable of carrying weapons of mass destruction, but it is voluntary and nonbinding, and it’s under attack by the drone industry as a drag on business. Further, the technology itself, especially when coupled with data and real-time analytics, offers the luxury of time and distance that could allow officials to raise the evidentiary bar for strikes—to be closer to certain that their target is the right one. But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions. A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs. Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists. The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

#### That lowers the threshold for use for US policymakers

Rosa **Brooks 13**, Prof of Law @ Georgetown University Law Center, Bernard L. Schwartz Senior Fellow, New America Foundation, 4/23/13, The Constitutional and Counterterrorism Implications of Targeted Killing, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

But the advantages of drones are as overstated and misunderstood as the problems they pose — and in some ways, their very perceived advantages cause new problems. Drone technologies temptingly lower or disguise the costs of lethal force, but their availability can blind us to the potentially dangerous longer - term costs and consequences of our strategic choices. Armed drones lower the perceived costs of using lethal force in at least three ways. First, drones reduce the dollar cost of using lethal force inside foreign countries. 13 Most drones are economical compared with the available alternatives. 14 Manned aircraft, for instance, are quite expensive: 15 Lockheed Martin's F - 22 fighter jets cost about $150 million each; F - 35s are $90 million; and F - 16s are $55 million. But the 2011 price of a Reaper drone was approximately $28.4 million, while Predator drones cost only about $5 million to make. 16 As with so many things, putting a dollar figure on drones is difficult; it depends what costs are counted, and what time frame is used. Nevertheless, drones continue to be perceived as cheaper by government decision - makers. Second, relying on drone strikes rather than alternative means reduces the domestic political costs of using lethal force. Sending manned aircraft or special operations forces after a suspected terrorist places the lives of U.S. personnel at risk, and full - scale invasions and occupations endanger even more American lives. In contrast, using armed drones eliminates all short - term risks to the lives of U.S. personnel involved in the operations. Third, by reducing accidental civilian casualties, 17 precision drone technologies reduce the perceived moral and reputational costs of using lethal force. The US government is extraordinarily concerned about avoiding unnecessary civilian casualties, and rightly so. There are moral and legal reasons for this concern, and there are also pragmatic reasons: civilian casualties cause pain and resentment within local populations and host - country governments and alienate the international community It is of course not a bad thing to possess military technologies that are cost little, protect American lives and enable us to minimize civilian casualties. When new technologies appear to reduce the costs of using lethal force, however, the threshold for deciding to use lethal force correspondingly drops, and officials will be tempted to use lethal force with greater frequency and less wisdom.¶ Over the last decade, we have seen US drone strikes evolve from a tool used in extremely limited circumstances to go after specifically identified high - ranking al Qaeda officials to a tool relied on in an increasing number of countries to go after an eternally lengthening list of putative bad actors, with increasingly tenuous links to grave or imminent threats to the United States. Some of these suspected terrorists have been identified by name and specifically targeted, while others are increasingly targeted on the basis of suspicious behavior patterns. Increasingly, drones strikes have targeted militants who are lower and lower down the terrorist food chain, 18 rather than terrorist masterminds. 19 Although drone strikes are believed to have killed more than 3,000 people since 2004, 20 analysis by the New America Foundation and more recently by a the McClatchy newspaper s suggests that only a small fraction of the dead appear to have been so - called "high - value targets." 21 What’s more, drone strikes have spread ever further from "hot" battlefields, migrating from Pakistan to Yemen to Somalia (and perhaps to Mali 22 and the Philippines as well). 23

#### These conflicts go nuclear --- wrecks global stability

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

#### That makes great power war inevitable---causes escalation as traditional checks don’t apply

Eric **Posner 13**, a professor at the University of Chicago Law School, May 15th, 2013, "The Killer Robot War is Coming," Slate, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/drone\_warfare\_and\_spying\_we\_need\_new\_laws.html

Drones have existed for decades, but in recent years they have become ubiquitous. Some people celebrate drones as an effective and humane weapon because they can be used with precision to slay enemies and spare civilians, and argue that they pose no special risks that cannot be handled by existing law. Indeed, drones, far more than any other weapon, enable governments to comply with international humanitarian law by avoiding civilian casualties when attacking enemies. Drone defenders also mocked Rand Paul for demanding that the Obama administration declare whether it believed that it could kill people with drones on American territory. Existing law permits the police to shoot criminals who pose an imminent threat to others; if police can gun down hostage takers and rampaging shooters, why can’t they drone them down too?¶ While there is much to be said in favor of these arguments, drone technology poses a paradox that its defenders have not confronted. Because drones are cheap, effective, riskless for their operators, and adept at minimizing civilian casualties, governments may be tempted to use them too frequently.¶ Indeed, a panic has already arisen that the government will use drones to place the public under surveillance. Many municipalities have passed laws prohibiting such spying even though it has not yet taken place. Why can’t we just assume that existing privacy laws and constitutional rights are sufficient to prevent abuses?¶ To see why, consider U.S. v. Jones, a 2012 case in which the Supreme Court held that the police must get a search warrant before attaching a GPS tracking device to a car, because the physical attachment of the device trespassed on property rights. Justice Samuel Alito argued that this protection was insufficient, because the government could still spy on people from the air. While piloted aircraft are too expensive to use routinely, drones are not, or will not be. One might argue that if the police can observe and follow you in public without obtaining a search warrant, they should be able to do the same thing with drones. But when the cost of surveillance declines, more surveillance takes place. If police face manpower limits, then they will spy only when strong suspicions justify the intrusion on targets’ privacy. If police can launch limitless drones, then we may fear that police will be tempted to shadow ordinary people without good reason.¶ Similarly, we may be comfortable with giving the president authority to use military force on his own when he must put soldiers into harm’s way, knowing that he will not risk lives lightly. Presidents have learned through hard experience that the public will not tolerate even a handful of casualties if it does not believe that the mission is justified. But when drones eliminate the risk of casualties, the president is more likely to launch wars too often.¶ The same problem arises internationally. The international laws that predate drones assume that military intervention across borders risks significant casualties. Since that check normally kept the peace, international law could give a lot of leeway for using military force to chase down terrorists. But if the risk of casualties disappears, then nations might too eagerly attack, resulting in blowback and retaliation. Ironically, the reduced threat to civilians in tactical operations could wind up destabilizing relationships between countries, including even major powers like the United States and China, making the long-term threat to human life much greater.¶ These three scenarios illustrate the same lesson: that law and technology work in tandem. When technological barriers limit the risk of government abuse, legal restrictions on governmental action can be looser. When those technological barriers fall, legal restrictions may need to be tightened.

#### Congressional inaction has made this a defining policy doctrine---expansive executive authority triggers overreach

Maxwell 12 - Colonel and Judge Advocate, U.S. Army, 1st Quarter 2012, “TARGETED KILLING, THE LAW, AND TERRORISTS: FEELING SAFE?,” Joint Force Quarterly, p. 123-130, Mark David Maxwell.

In the wake of the attacks by al Qaeda on September 11, 2001, an analogous phenomenon of feeling safe has occurred in a recent U.S. national security policy: America’s explicit use of targeted killings to eliminate terrorists, under the legal doctrines of self-defense and the law of war. Legal scholars define targeted killing as the use of lethal force by a state4 or its agents with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.5 In layman’s terms, targeted killing is used by the United States to eliminate individuals it views as a threat.6 Targeted killings, for better or for worse, have become “a defining doctrine of American strategic policy.”7 Although many U.S. Presidents have reserved the right to use targeted killings in unique circumstances, making this option a formal part of American foreign policy incurs risks that, unless adroitly controlled and defined in concert with Congress, could drive our practices in the use of force in a direction that is not wise for the long-term health of the rule of law. This article traces the history of targeted killing from a U.S. perspective. It next explains how terrorism has traditionally been handled as a domestic law enforcement action within the United States and why this departure in policy to handle terrorists like al Qaeda under the law of war—that is, declaring war against a terrorist organization—is novel. While this policy is not an ill-conceived course of action given the global nature of al Qaeda, there are practical limitations on how this war against terrorism can be conducted under the orders of the President. Within the authority to target individuals who are terrorists, there are two facets of Presidential power that the United States must grapple with: first, how narrow and tailored the President’s authority should be when ordering a targeted killing under the rubric of self-defense; and second, whether the President must adhere to concepts within the law of war, specifically the targeting of individuals who do not don a uniform. The gatekeeper of these Presidential powers and the prevention of their overreach is Congress. The Constitution demands nothing less, but thus far, Congress’s silence is deafening.

#### Congressional restrictions are key---prevents global war

Rosa **Brooks 13**, Professor of Law, Georgetown University Law Center, Bernard L. Schwartz Senior Fellow, New America Foundation, 4/23, The Constitutional and Counterterrorism Implications of Targeted Killing, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

Mr. Chairman, I would like to turn now to the legal framework applicable to US drone strikes. Both the United States and the international community have long had rules governing armed conflicts and the use of force in national self-defense. These rules apply whether the lethal force at issue involves knives, handguns, grenades or weaponized drones. When drone technologies are used in traditional armed conflicts—on “hot battlefields” such as those in Afghanistan, Iraq or Libya, for instance – they pose no new legal issues. As Administration officials have stated, their use is subject to the same requirements as the use of other lawful means and methods of warfare.28 But if drones used in traditional armed conflicts or traditional self-defense situations present no “new” legal issues, some of the activities and policies enabled and facilitated by drone technologies pose significant challenges to existing legal frameworks. As I have discussed above, the availability of perceived low cost of drone technologies makes it far easier for the US to “expand the battlefield,” striking targets in places where it would be too dangerous or too politically controversial to send troops. Specifically, drone technologies enable the United States to strike targets deep inside foreign states, and do so quickly, efficiently and deniably. As a result, drones have become the tool of choice for so-called “targeted killing” – the deliberate targeting of an individual or group of individuals, whether known by name or targeted based on patterns of activity, inside the borders of a foreign country. It is when drones are used in targeted killings outside of traditional or “hot” battlefields that their use challenges existing legal frameworks. Law is almost always out of date: we make legal rules based on existing conditions and technologies, perhaps with a small nod in the direction of predicted future changes. As societies and technologies change, law increasingly becomes an exercise in jamming square pegs into round holes. Eventually, that process begins to do damage to existing law: it gets stretched out of shape, or broken. Right now, I would argue, US drone policy is on the verge of doing significant damage to the rule of law. A. The Rule of Law At root, the idea of “rule of law” is fairly simple, and well understood by Americans familiar with the foundational documents that established our nation, such as the Declaration of Independence, the Constitution and the Bill of Rights. The rule of law requires that governments follow transparent, clearly defined and universally applicable laws and procedures. The goal of the rule of law is to ensure predictability and stability, and to prevent the arbitrary exercise of power. In a society committed to the rule of law, the government cannot fine you, lock you up, or kill you on a whim -- it can restrict your liberty or take your property or life only in accordance with pre-established processes and rules that reflect basic notions of justice, humanity and fairness. Precisely what constitutes a fair process is debatable, but most would agree that at a minimum, fairness requires that individuals have reasonable notice of what constitutes the applicable law, reasonable notice that they are suspected of violating the law, a reasonable opportunity to rebut any allegations against them, and a reasonable opportunity to have the outcome of any procedures or actions against them reviewed by some objective person or body. These core values are enshrined both in the US Constitution and in international human rights law instruments such as the International Covenant on Civil and Political Rights, to which the United States is a party. In ordinary circumstances, this bundle of universally acknowledged rights (together with international law principles of sovereignty) means it is clearly unlawful for one state to target and kill an individual inside the borders of another state. Recall, for instance, the 1976 killing of Chilean dissident Orlando Letelier in Washington DC. When Chilean government intelligence operatives planted a car bomb in the car used by Letelier, killing him and a US citizen accompanying him, the United States government called this an act of murder—an unlawful political assassination. B. Targeted Killing and the Law of Armed Conflict Of course, sometimes the “ordinary” legal rules do not apply. In war, the willful killing of human beings is permitted, whether the means of killing is a gun, a bomb, or a long-distance drone strike. The law of armed conflict permits a wide range of behaviors that would be unlawful in the absence of an armed conflict. Generally speaking, the intentional destruction of private property and severe restrictions on individual liberties are impermissible in peacetime, but acceptable in wartime, for instance. Even actions that a combatant knows will cause civilian deaths are lawful when consistent with the principles of necessity, humanity, proportionality,29 and distinction.30 It is worth briefly explaining these principles. The principle of necessity requires parties to a conflict to limit their actions to those that are indispensible for securing the complete submission of the enemy as soon as possible (and that are otherwise permitted by international law). The principle of humanity forbids parties to a conflict to inflict gratuitous violence or employ methods calculated to cause unnecessary suffering. The principle of proportionality requires parties to ensure that the anticipated loss of life or property incidental to an attack is not excessive in relation to the concrete and direct military advantage expected to be gained. Finally, the principle of discrimination or distinction requires that parties to a conflict direct their actions only against combatants and military objectives, and take appropriate steps to distinguish between combatants and non-combatants.31 This is a radical oversimplification of a very complex body of law.32 But as with the rule of law, the basic idea is pretty simple. When there is no war -- when ordinary, peacetime law applies -- agents of the state aren't supposed to lock people up, take their property or kill them, unless they have jumped through a whole lot of legal hoops first. When there is an armed conflict, however, everything changes. War is not a legal free-for-all33 -- torture, rape are always crimes under the law of war, as is killing that is willful, wanton and not justified by military necessity34 -- but there are far fewer constraints on state behavior. Technically, the law of war is referred to using the Latin term “lex specialis” – special law. It is applicable in—and only in -- special circumstances (in this case, armed conflict), and in those special circumstances, it supersedes “ordinary law,” or “lex generalis,” the “general law” that prevails in peacetime. We have one set of laws for “normal” situations, and another, more flexible set of laws for “extraordinary” situations, such as armed conflicts. None of this poses any inherent problem for the rule of law. Having one body of rules that tightly restricts the use of force and another body of rules that is far more permissive does not fundamentally undermine the rule of law, as long as we have a reasonable degree of consensus on what circumstances trigger the “special” law, and as long as the “special law” doesn’t end up undermining the general law. To put it a little differently, war, with its very different rules, does not challenge ordinary law as long as war is the exception, not the norm -- as long as we can all agree on what constitutes a war -- as long as we can tell when the war begins and ends -- and as long as we all know how to tell the difference between a combatant and a civilian, and between places where there's war and places where there's no war. Let me return now to the question of drones and targeted killings. When all these distinctions I just mentioned are clear, the use of drones in targeted killings does not necessarily present any great or novel problem. In Libya, for instance, a state of armed conflict clearly existed inside the borders of Libya between Libyan government forces and NATO states. In that context, the use of drones to strike Libyan military targets is no more controversial than the use of manned aircraft. That is because our core rule of law concerns have mostly been satisfied: we know there is an armed conflict, in part because all parties to it agree that there is an armed conflict, in part because observers (such as international journalists) can easily verify the presence of uniformed military personnel engaged in using force, and in part because the violence is, from an objective perspective, widespread and sustained: it is not a mere skirmish or riot or criminal law enforcement situation that got out of control. We know who the “enemy” is: Libyan government forces. We know where the conflict is and is not: the conflict was in Libya, but not in neighboring Algeria or Egypt. We know when the conflict began, we know who authorized the use of force (the UN Security Council) and, just as crucially, we know whom to hold accountable in the event of error or abuse (the various governments involved).35 Once you take targeted killings outside hot battlefields, it’s a different story. The Obama Administration is currently using drones to strike terror suspects in Pakistan, Somalia, Yemen, and –perhaps—Mali and the Philippines as well. Defenders of the administration's increasing reliance on drone strikes in such places assert that the US is in an armed conflict with “al Qaeda and its associates,” and on that basis, they assert that the law of war is applicable -- in any place and at any time -- with regard to any person the administration deems a combatant. The trouble is, no one outside a very small group within the US executive branch has any ability to evaluate who is and who isn’t a combatant. The war against al Qaeda and its associates is not like World War II, or Libya, or even Afghanistan: it is an open-ended conflict with an inchoate, undefined adversary (who exactly are al Qaeda’s “associates”?). What is more, targeting decisions in this nebulous “war” are based largely on classified intelligence reporting. As a result, Administration assertions about who is a combatant and what constitutes a threat are entirely non-falsifiable, because they're based wholly on undisclosed evidence. Add to this still another problem: most of these strikes are considered covert action, so although the US sometimes takes public credit for the deaths of alleged terrorist leaders, most of the time, the US will not even officially acknowledge targeted killings. This leaves all the key rule-of-law questions related to the ongoing war against al Qaeda and its "associates" unanswered.36 Based on what criteria might someone be considered a combatant or directly participating in hostilities? What constitutes “hostilities” in the context of an armed conflict against a non-state actor, and what does it mean to participate in them? And just where is the war? Does the war (and thus the law of war) somehow "travel" with combatants? Does the US have a “right” to target enemy combatants anywhere on earth, or does it depend on the consent of the state at issue? Who in the United States government is authorized to make such determinations, and what is the precise chain of command for such decisions? I think the rule of law problem here is obvious: when “armed conflict” becomes a term flexible enough to be applied both to World War II and to the relations between the United States and “associates” of al Qaeda such as Somalia’s al Shabaab, the concept of armed conflict is not very useful anymore. And when we lack clarity and consensus on how to recognize “armed conflict,” we no longer have a clear or principled basis for deciding how to categorize US targeted killings. Are they, as the US government argues, legal under the laws of war? Or are they, as some human rights groups have argued, unlawful murder? C. Targeted Killing and the International Law of Self-Defense When faced with criticisms of the law of war framework as a justification for targeted killing, Obama Administration representatives often shift tack, arguing that international law rules on national self-defense provide an alternative or additional legal justification for US targeted killings. Here, the argument is that if a person located in a foreign state poses an "imminent threat of violent attack" against the United States, the US can lawfully use force in self-defense, provided that the defensive force used is otherwise consistent with law of war principles. Like law of war-based arguments, this general principle is superficially uncontroversial: if someone overseas is about to launch a nuclear weapon at New York City, no one can doubt that the United States has a perfect right (and the president has a constitutional duty) to use force if needed to prevent that attack, regardless of the attacker's nationality. But once again, the devil is in the details. To start with, what constitutes an "imminent" threat? Traditionally, both international law and domestic criminal law understand that term narrowly: 37 to be "imminent," a threat cannot be distant or speculative.38 But much like the Bush Administration before it, the Obama Administration has put forward an interpretation of the word “imminent” that bears little relation to traditional legal concepts. According to a leaked 2011 Justice Department white paper39—the most detailed legal justification that has yet become public-- the requirement of imminence "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future." This seems, in itself, like a substantial departure from accepted international law definitions of imminence. But the White Paper goes even further, stating that "certain members of al Qaeda are continually plotting attacks...and would engage in such attacks regularly [if] they were able to do so, [and] the US government may not be aware of all... plots as they are developing and thus cannot be confident that none is about to occur." For this reason, it concludes, anyone deemed to be an operational leader of al Qaeda or its "associated forces" presents, by definition, an imminent threat even in the absence of any evidence whatsoever relating to immediate or future attack plans. In effect, the concept of "imminent threat" (part of the international law relating to self-defense) becomes conflated with identity or status (a familiar part of the law of armed conflict). That concept of imminence has been called Orwellian, and although that is an overused epithet, in this context it seems fairly appropriate. According to the Obama Administration, “imminent” no longer means “immediate,” and in fact the very absence of clear evidence indicating specific present or future attack plans becomes, paradoxically, the basis for assuming that attack may perpetually be “imminent.” The 2011 Justice Department White Paper notes that the use of force in self-defense must comply with general law of war principles of necessity, proportionality, humanity, and distinction. The White Paper offers no guidance on the specific criteria for determining when an individual is a combatant (or a civilian participating directly in hostilities), however. It also offers no guidance on how to determine if a use of force is necessary or proportionate. From a traditional international law perspective, this necessity and proportionality inquiry relates both to imminence and to the gravity of the threat itself, but so far there has been no public Administration statement as to how the administration interprets these requirements. Is any threat of "violent attack" sufficient to justify killing someone in a foreign country, including a U.S. citizen? Is every potential suicide bomber targetable, or does it depend on the gravity of the threat? Are we justified in drone strikes against targets who might, if they get a chance at some unspecified future point, place an IED that might, if successful, kill one person? Ten people? Twenty? 2,000? How grave a threat must there be to justify the use of lethal force against an American citizen abroad -- or against non-citizens, for that matter? As I have noted, it is impossible for outsiders to fully evaluate US drone strikes, since so much vital information remains classified. In most cases, we know little about the identities; activities or future plans of those targeted. Nevertheless, given the increased frequency of US targeted killings in recent years, it seems reasonable to wonder whether the Administration conducts a rigorous necessity or proportionality analysis in all cases. So far, the leaked 2011 Justice Department White Paper represents the most detailed legal analysis of targeted killings available to the public. It is worth noting, incidentally, that this White Paper addresses only the question of whether and when it is lawful for the US government to target US citizens abroad. We do not know what legal standards the Administration believes apply to the targeting of non-citizens. It seems reasonable to assume, however, that the standards applicable to non-citizens are less exacting than those the Administration views as applicable to citizens. Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41 No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should not depend solely on the good faith and benevolence of government officials. As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness. The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable? 5. Setting Troubling International Precedents Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice. Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder. Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack." The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an ill- defined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

## Plan

#### The United States federal government should substantially increase statutory restrictions on targeted killing strikes carried out under Title 50

## Intel

#### Giving up drones is key to preserve CIA analytic culture and global reputation – key to traditional intelligence gathering.

**Dowd 13** – (4/16, Maureen, NYT, “The CIA’s Angry Birds,” http://www.nytimes.com/2013/04/17/opinion/the-cias-angry-birds.html?\_r=0#h[])

Meanwhile, the C.I.A. was setting up its own Pentagon at Langley, running the ever-expanding paramilitary drone operation. **Spies became soldiers**. Mazzetti writes that after 9/11, the C.I.A. director morphed into “a military commander running a clandestine, global war with a skeleton staff and very little oversight.” Why did the C.I.A., as Gen. James Cartwright asked when he was the vice chairman of the Joint Chiefs of Staff, need to build “a second Air Force”? Leon Panetta made the C.I.A. far more militarized and then went to the Pentagon. When an actual military commander, David Petraeus, became head spook in 2011, he embraced the drone program, pushed to expand the fleet and conducted the first robo-targeted killing of an American citizen. “A spy agency that on September 11, 2001, had been decried as bumbling and risk-averse had, under the watchful eye of four successive C.I.A. directors, gone on a killing spree,” Mazzetti writes. The C.I.A. now has a drone base in Saudi Arabia, and both the Pentagon and the spy agency are running parallel drone wars in Yemen, each fighting for resources. And the Pentagon continues its foray into human spying. As W. George Jameson, a lawyer who spent 33 years at the C.I.A., lamented: **“Everything is backwards. You’ve got an intelligence agency fighting a war and a military organization trying to gather on-the-ground intelligence.”** Mazzetti observes that the C.I.A., playing catch-up through so much of the Arab Spring, has turned a perilous corner, where a new generation at Langley much prefers “the adrenaline rush of being at the front lines” hunting and killing to the more patient, tedious, “gentle” work of intelligence gathering and espionage. Relying on foreign spies for counterterrorism information can blind you to what is really happening on the ground. Ross Newland, a career clandestine officer, told Mazzetti that the allure of killing people by remote control is “catnip,” and that the agency should have given up Predators and Reapers long ago. The death robots have turned the C.I.A. into the villain in places like Pakistan, Newland said, where the agency’s mission is supposed to be nurturing relationships to gather intelligence.

#### CIA militarization collapses intel gathering and collapses military effectiveness Mazetti and Schmitt 11. April 28th, 2011. “Obama’s Pentagon and C.I.A. Picks Show Shift in How U.S. Fights” <http://www.nytimes.com/2011/04/28/us/28military.html>

[President Obama](http://topics.nytimes.com/top/reference/timestopics/people/o/barack_obama/index.html?inline=nyt-per)’s decision to send an intelligence chief to the Pentagon and a four-star general to the [Central Intelligence Agency](http://topics.nytimes.com/top/reference/timestopics/organizations/c/central_intelligence_agency/index.html?inline=nyt-org) is the latest evidence of a significant shift over the past decade in how the United States fights its battles — the blurring of lines between soldiers and spies in secret American missions abroad. On Thursday, Mr. Obama is expected to announce that [Leon E. Panetta](http://topics.nytimes.com/top/reference/timestopics/people/p/leon_e_panetta/index.html?inline=nyt-per), the C.I.A. director, will become secretary of defense, replacing [Robert M. Gates](http://topics.nytimes.com/top/reference/timestopics/people/g/robert_m_gates/index.html?inline=nyt-per), and that Gen. [David H. Petraeus](http://topics.nytimes.com/top/reference/timestopics/people/p/david_h_petraeus/index.html?inline=nyt-per) will return from Afghanistan to take Mr. Panetta’s job at the C.I.A., a move that is likely to continue this trend.¶ As C.I.A. director, Mr. Panetta hastened the transformation of the spy agency into a paramilitary organization, overseeing a sharp escalation of the C.I.A.’s bombing campaign in Pakistan using armed [drone aircraft](http://topics.nytimes.com/top/reference/timestopics/subjects/u/unmanned_aerial_vehicles/index.html?inline=nyt-classifier), and an increase in the number of secret bases and covert operatives in remote parts of Afghanistan. ¶ General Petraeus, meanwhile, has aggressively pushed the military deeper into the C.I.A.’s turf, using Special Operations troops and private security contractors to conduct secret intelligence missions. As commander of the United States Central Command in September 2009, he also signed a classified order authorizing American Special Operations troops to collect intelligence in Saudi Arabia, Jordan, Iran and other places outside of traditional war zones. ¶ The result is that American military and intelligence operatives are at times virtually indistinguishable from each other as they carry out classified operations in the Middle East and Central Asia. Some members of Congress have complained that this new way of war allows for scant debate about the scope and scale of military operations. In fact, the American spy and military agencies operate in such secrecy now that it is often hard to come by specific information about the American role in major missions in Iraq, Afghanistan, Pakistan and now Libya and Yemen.¶ The operations have also created tension with important allies like Pakistan, while raising fresh questions about whether spies and soldiers deserve the same legal protections. ¶ Officials acknowledge that the lines between soldiering and spying have blurred. “It’s really irrelevant whether you call it a covert action or a military special operation,” said[Dennis C. Blair](http://topics.nytimes.com/top/reference/timestopics/people/b/dennis_c_blair/index.html?inline=nyt-per), a retired four-star admiral and a former director of national intelligence. “I don’t really think there is any distinction.” ¶ The phenomenon of the C.I.A. becoming more like the Pentagon, and vice versa, has critics inside both organizations. Some inside the C.I.A.’s clandestine service believe that its bombing campaign in Pakistan, which has become a cornerstone of the Obama administration’s counterterrorism strategy, has distorted the agency’s historic mission as a civilian espionage agency and turned it into an arm of the Defense Department. ¶ [Henry A. Crumpton](http://topics.nytimes.com/top/reference/timestopics/people/c/henry_a_crumpton/index.html?inline=nyt-per), a career C.I.A. officer and formerly the State Department’s top counterterrorism official, praised General Petraeus as “one of the most sophisticated consumers of intelligence.” But Mr. Crumpton warned more broadly of the “militarization of intelligence” as current or former uniformed officers assume senior jobs in the sprawling American intelligence apparatus.¶ For example, [James R. Clapper Jr.](http://topics.nytimes.com/top/reference/timestopics/people/c/james_r_clapper_jr/index.html?inline=nyt-per), a retired [Air Force](http://topics.nytimes.com/top/reference/timestopics/organizations/a/us_air_force/index.html?inline=nyt-org) general, is director of national intelligence, Mr. Obama’s top intelligence adviser. Maj. Gen. Michael Flynn, formerly the senior intelligence officer in Afghanistan, is soon expected to become one of Mr. Clapper’s top deputies.¶ “If the intelligence community is populated by military officers, they understandably are going to reflect their experiences,” Mr. Crumpton said.¶ At the Pentagon, the new roles raise legal concerns. The more that soldiers are used for espionage operations overseas, the more they are at risk of being thrown in jail and denied[Geneva Convention](http://topics.nytimes.com/top/reference/timestopics/subjects/g/geneva_conventions/index.html?inline=nyt-classifier) protections if they are captured by hostile governments. ¶ And yet few believe that the trend is likely to be reversed. A succession of wars has strained the ranks of both the Pentagon and the C.I.A., and the United States has come to believe that many of its current enemies are best fought with timely intelligence rather than overwhelming military firepower. ¶ These factors have pushed military and intelligence operatives more closely together in the years since the Sept. 11, 2001, attacks. ¶ “In the field, there is a blurring of the mission,” said Senator [Jack Reed](http://topics.nytimes.com/top/reference/timestopics/people/r/jack_reed/index.html?inline=nyt-per), a senior Rhode Island Democrat on the Armed Services Committee who served as an officer in the 82nd Airborne Division. “Military operations can buy time to build up local security forces, but intelligence is the key to operations and for anticipating your adversary.” ¶

#### Institutional inertia means now is key

**Scahill 12** – (11/14, Jeremy, Puffin Foundation Writing Fellow at The Nation Institute, an award-winning investigative journalist, author of Dirty Wars and Blackwater, “The Petraeus Legacy: A Paramilitary CIA?” <http://www.thenation.com/article/171247/petraeus-legacy-paramilitary-cia#axzz2YPwmfs7A>)

While much of the media focus on l’affaire Petraeus has centered on the CIA director’s sexual relationship with his biographer, Paula Broadwell, the scandal opens a window onto a different and more consequential relationship—that between the CIA and the military’s Joint Special Operations Command. In a behind-the-scenes turf war that has raged since 9/11, **the two government bodies have fought for control of the expanding global wars waged by the United States**—a turf war that JSOC has largely won. Petraeus, an instrumental player in this power struggle, **leaves behind an agency that has strayed from intelligence to paramilitary-type activities**. Though his legacy will be defined largely by the scandal that ended his career, to many within military and intelligence circles, Petraeus’s career trajectory, from commander of US military forces in Iraq and Afghanistan to the helm of the CIA, is a symbol of this evolution. “I would not say that CIA has been taken over by the military, but I would say that the CIA has become more militarized,” Philip Giraldi, a retired career CIA case officer, told The Nation. “A considerable part of the CIA budget is now no longer spying; it’s supporting paramilitaries who work closely with JSOC to kill terrorists, and to run the drone program.” The CIA, he added, “is a killing machine now.” As head of US Central Command in 2009, Petraeus issued execute orders that significantly broadened the ability of US forces to operate in a variety of countries, including Yemen, where US forces began conducting missile strikes later that year. During Petraeus’s short tenure at the CIA, drone strikes conducted by the agency, sometimes in conjunction with JSOC, escalated dramatically in Yemen; in his first month in office, he oversaw a series of strikes that killed three US citizens, including 16-year-old Abdulrahman Awlaki. In some cases, such as the raid that killed Osama bin Laden in Pakistan, commandos from the elite JSOC operated under the auspices of the CIA, so that the mission could be kept secret if it went wrong. One current State Department liaison who has also worked extensively with JSOC describes the CIA as becoming “a mini-Special Operations Command that purports to be an intelligence agency.” For all the praise Petraeus won for his counterinsurgency strategy and the “surge” in Iraq, he says, his real legacy is as a “political tool,” an enabler of those within the national security apparatus who want to see a continuation of covert global mini-wars. Pointing to the “mystique that surrounds JSOC” and Adm. William McRaven, commander of the Special Operations Command, the liaison says, “Petraeus was trying to implement that kind of command climate at the CIA.” “Petraeus wanted to be McRaven, and now that window has closed,” he said. “We are firmly in the age of McRaven. There is no other titular figure with the confidence of the president that is able to articulate strategies and hold their own in rooms where everyone else has the same or greater amount of intellectual heft. McRaven is everything that Petraeus is not.” Retired Army Col. W. Patrick Lang, a former senior defense intelligence official, says that Petraeus’s arrogance—“smoothly concealed beneath the appearance of the warrior scholar”—made him deeply unpopular among the military’s high-ranking officers. Dismissing the media’s portrayal of Petraeus as a “super soldier” and great military leader as “phony bullshit,” Lang describes him as the product of a military promotion system that encourages generals to think of themselves as “divinely selected.” “In fact, he didn’t write the COIN manual, the surge was not the main thing in improving the situation in Iraq…. They sent him to Afghanistan to apply the COIN doctrine in the same glorious way he did in Iraq, and it hasn’t worked. So, if you look beneath the surface from all this stuff, it’s just a lot of hot air. There are great generals, but this guy is not one of them.” Arriving at the CIA, Lang says, Petraeus “wanted to drag them in the covert action direction and to be a major player.” As for Petraeus’s future, the State Department liaison said, “There will be a lot of profits to be made by him and his immediate circle of advisers, as they’re given a soft landing, whether it’s in academia or within the nexus of the military-industrial complex.” Giraldi, the former senior CIA officer, expressed concern that in these circumstances, **the “CIA is going to forget how to spy.**” He also noted the “long-term consequence” of the militarization of the CIA: “every bureaucracy in the world is best at protecting itself. So **once the CIA becomes a paramilitary organization, there’s going to be in-built pressure to keep going in that direction**. Because you’ll have people at the senior levels in the organization who have come up that way and are protective of what they see as their turf,” he told me. “**That’s the big danger**.”

#### More resources are irrelevant – culture and focus are key

**Divoll 12** – (12/3, Vicki, former general counsel to the Senate Select Committee on Intelligence and former deputy legal adviser of C.I.A.’s Counterterrorist Center, “Stick to the Basic Tasks It Was Created For,” NYT, http://www.nytimes.com/roomfordebate/2012/12/03/a-new-director-or-a-new-direction-for-the-cia/stick-to-the-basic-tasks-it-was-created-for)

After 9/11 it was convenient, and perhaps necessary, to turn to the C.I.A. for all things. They had an arsenal of unmanned drones capable of scouring the earth to watch the enemy – and, yes, they could be armed. Back then, the Air Force didn’t want them, but the C.I.A. did. And they were ready. The C.I.A. was designed to focus on figuring out what needs to be done, how it could be done and what the consequences would be. The C.I.A. had a directorate of case officers whose personality and training made them experts in getting information from reticent people. They had been taught to use the art of persuasion, not coercion, but if the president wanted sticks rather than carrots, they could and would adapt. Uniquely, the C.I.A. had a network of officers in place, worldwide, ready to do what was needed – and they were quick learners. The C.I.A. has always been willing and able to morph into whatever the policymakers of the time want it to be. It is a flexible, can-do cadre of officers, selected and trained to think outside the box, assess a problem and solve it. **But by asking the C.I.A. to do all of these things, something else has to give.** No matter how many resources you throw at it, the agency cannot maintain its core mission if its focus is diverted in too many directions. Since its creation, the C.I.A. has given policymakers its best estimate of the plans, intentions and capabilities of foreign nations and entities that seek to do us harm. To do that, its officers recruit human assets, develop innovative technology and apply expert analysis to the fruits of the collection. Thus, **the C.I.A.’s core mission was to assess and predict**. We designed the agency to focus on figuring out what needs to be done, whether and how it could be done and, most important, what the consequences of those actions would likely be. The focus of the men and women of the C.I.A. – indeed, the entire culture of the agency – has been hijacked for purposes that are contrary to its original mission. It does not take an intelligence expert to imagine the vast amount of human and technical resources it has taken to identify and locate 2,500 people that were found to have met the standards to justify killing them, according to a recent Times article, and to conduct operations to do so.

#### Plan makes intelligence more effective – solves future conflicts and boosts warfighting capabilities.

**Elder, 12** (Gregory Elder works in the Defense Intelligence Agency. He has advanced degrees in Strategy and Policy and Ethnic Political Violence. His essay “Guns, Gas, and Lost Opportunities” won the 2004 US Army Strategic Landpower Award. “Intelligence in War: It Can Be Decisive Winning with Intelligence.” <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/vol50no2/html_files/Intelligence_War_2.htm>)

Force and its employment are significant in driving outcomes in combat. However, it is operational and tactical intelligence, not necessarily numbers, technology, or tactics, that can have the most decisive impact on how forces are employed and how success is achieved in wartime operations. History repeatedly has demonstrated that numerically inferior forces, armed with less capable technologies, can win when leaders are armed with accurate intelligence they believe they can act upon. Such intelligence can be a force multiplier. Therefore, considering the value of force employment, technology, and mass without placing a corresponding value on intelligence is a mistake. In this article I explore the role of tactical and operational intelligence in dictating force employment schemes and as a decisive element in five strategically significant battles— the First Battle of Bull Run (1861), Tannenberg (1914), Midway (1942), Inchon (1950), and the Israeli air strike initiating the Six-Day War in 1967—and I will demonstrate that it was neither technology nor material superiority that won the day, but accurate, timely, actionable intelligence, combined with leaders willing to treat intelligence as a primary factor in deciding outcomes. In each case, intelligence gave commanders the knowledge of the battlefield (battlespace awareness) and the understanding of their foe to focus their forces at the right place and time to win when, in all probability, they should have been defeated. Certainly ADM Chester Nimitz, faced with the job of reversing the losses at Pearl Harbor, would have disputed RADM Thomas A. Brooks’ assertion that intelligence is a secondary factor in war, as would General P. T. Beauregard, who, in 1861, faced the grim possibility of losing the first major battle of the Civil War.[4] [Top of Page] The Battle of Bull Run: 21 July 1861 The battle may be most renowned for the last minute heroics of General “Stonewall” Jackson on Henry House Hill, which led to the rout of the Union army, but the Confederates were able to employ the forces needed to win at Bull Run because they had created, months earlier, an intricate spy network in Washington, DC. By the time the fledgling Union Army had organized itself for its first major campaign into Virginia, its troop strengths, dispositions, and plans had long been compromised. Said Beauregard, commanding Confederate forces in northern Virginia, “I was almost as well advised of the strength of the hostile army in my front as its commander.”[5] In May 1861, just weeks after the announcement of the fall of Fort Sumter, a spy in the quartermaster office of the US War Department had begun recruiting a ring of Confederate sympathizers in the nation’s capital. Among these were bankers, clerks, couriers, housewives, and Rose Greenhow, proprietor of a respectable salon frequented by senior government and military officials. While the network mobilized, a Union force of nearly 36,000 was organizing and training just across the Potomac River. Its commander, General Irvin McDowell, was under pressure from Lincoln to strike the Confederates at the earliest possible date. While the Union Army was concentrated, Confederate forces were split, with 21,000 stationed at Manassas Junction under Beauregard, and 12,800 under General Joseph E. Johnston near Harper’s Ferry. Combined, the Confederate troops still numbered fewer than the Federals, and divided, they stood little chance against a concerted Union offensive. Yet, authorities in Richmond, worried about a Federal incursion down the Shenandoah Valley by a force of 18,000 at Harpers Ferry, had told Beauregard he could unite the two armies only if an attack was imminent. Thus, a McDowell move toward Manassas would spark a race in which Johnston would have to rush to Beauregrad’s aid across piedmont terrain and with limited railroad access. His ability to win this race was possible only if he received timely, detailed, and believable intelligence indicating when, where, and with what forces McDowell would strike. Beauregard’s fate rested in the hands of a few neophyte clandestine agents. On 10 July the network demonstrated its worth, as Rose Greenhow sent word that “McDowell has certainly been ordered to advance on the sixteenth.”[6] This intelligence, however, proved insufficient to start the race. President Davis denied requests to authorize relocation of Johnston’s army. Beauregard, fearing the worst, sent a plea to Greenhow for intelligence reconfirming the date and planned movement of Union forces. On 16 July, she sent word that the Federal forces would move out that very day, marching from Arlington to Manassas, via Centreville, a distance of only 20 miles. This information immediately made its way to Richmond. Consequently, orders were dispatched that night directing Johnston to move south in haste and unite with Beauregard’s forces on the Bull Run. First Battle of Bull Run McDowell began his march on the 16th, as Greenhow had reported, crossed the Bull Run at Sudley Ford on the 21st, and attacked the Confederate left flank on Matthews Hill. Fighting raged throughout the day, and Beauregard’s forces were driven back to Henry Hill. Defeat seemed imminent. Late in the afternoon, however, Johnston’s reinforcements, having arrived via rail at Manassas Junction the night before, made their way to the battle and broke the Union right flank. What seemed a victory for the Federals rapidly deteriorated into a disorganized retreat. And while it was Jackson’s brigade under Johnston’s command that turned the tide of a hard fought battle, it was espionage that provided alternatives to Confederate political and military decisionmakers, allowing them to concentrate their forces and demonstrate that they could defeat the Union in a major engagement. Victory was not certain—defeat was avoided only as a result of the decision to reinforce Beauregard. In What If?, Stephen Sears suggests that without a geographic point at which to regroup, the Confederate Army might have dissolved and the rebellion ended in its first year if the Union had won that day.[7] Intelligence in this case gave the Confederates several advantages. First, with reliable information on the Union order of battle and strategy, they were able to split their smaller forces to defend the Shenandoah Valley and to maintain a check on McDowell’s army. Second, because of the existence of timely indicators and warning, it was inconceivable that the Federals could execute a surprise attack against the Confederates; agents were able to provide fresh, corroborated information on everything the Federals did. Finally, Beauregard knew the strength of his opponent and the route of attack and, therefore, had the ability to consolidate and position his forces on the most advantageous ground. This was all the more important as McDowell had a well-developed concept of operations and superior numbers. Yet force alone cannot win the day. [Top of Page] Battle of Tannenberg: 23–30 August 1914 The Battle of Tannenberg was one of the largest, yet least known, strategically decisive victories in modern warfare. Its outcome allowed the Germans to recover momentum after their loss at the Battle of the Marne on the Western Front, to save Prussia from the Russians, to defeat three successive Russian armies, and to deal the first of several blows leading to the Treaty of Brest Litovsk and the Russian Revolution in 1917. Of the roughly 150,000 Russian soldiers who fought in the battle of Tannenberg, some 30,000 were killed or wounded and another 95,000 captured. The Germans suffered fewer than 20,000 casualties, captured more than 500 guns, and filled dozens of trains with captured equipment for transport to Germany. After losing at Tannenberg, the Russian army could not muster enough offensive strength to re-enter Germany again until World War II. It was nothing short of a complete victory for Germany, and it came in large part because of the German Army’s successful use of intelligence. Modifying the Schlieffen Plan at the outset of the war, Germany sent only one army, the Eighth, to the Eastern Front to face the presumed, slow-to-mobilize Russian armies. Misperceiving how quickly the Russians could bring their forces to bear, the Eighth quickly found itself facing two Russian armies—the First moving west into Prussia, and the Second driving northwest from southern Prussia. While the German Eighth Army was comparable in size to each of the Russian armies, it could not face a combined assault. Battle of Tannenberg The Russian First Army struck first and won a victory at the Battle of Gumbinnen on 20 August 1914. It did not seize the initiative, however, choosing instead to wait until the Second Army could move north to catch the Germans in a pincer. This gave Helmuth von Moltke, the German Chief of Staff in Berlin, time to replace the commander of the Eighth Army, General Maximilian von Prittwitz, with Generals Paul von Hindenburg and Erich Ludendorff, and to regroup. Rather than concede Prussia to the Russians or potentially face another defeat at the hands of the First Army, Ludendorff looked south for an opening to attack the Russian Second Army. He authorized the movement of a corps from Gumbinnen south via railroad to attack the Second Army’s left flank. He also considered marching the bulk of his remaining forces south to envelop the right flank—this, however, would leave northern Prussia exposed to the First Army. Shifting fronts would be risky. While both side’s staffs planned for the coming great battle, a secret war was waged behind the scenes by cryptologists. Early in the days of radio communications, neither side was particularly astute in communications security, and both exposed their vulnerabilities over the airwaves. But the poorly educated and trained Russian cryptologists were unable even to master their simple cipher system and, in the case of the First Army, did not use a communications code. This led to frequent lapses in security and resulted in operators repeatedly resending messages, often uncoded, in plain language. The result was a windfall of intelligence for the Germans. Intercepting Russian communications, German cryptologists deduced troop strengths and movement schedules, picked up orders, and, most importantly, messages between the First and Second Armies that showed how poorly the two were coordinating their efforts.[8] While the German staff can be credited with developing the concept of operations that would lead to victory in the engagement, it was communications intelligence that provided a clear picture of the battlefield, or in today’s parlance, the battlespace awareness. As the single German corps under General Hermann von Francois began its attack against the exposed left flank of the Second Army on 27 August, two particularly important unencrypted communications transmitted by the Russian First and Second Armies were intercepted.[9] The first, sent by General Paul von Rennenkampf, commander of the First Army, revealed the distance between the two armies and that Rennenkampf needed at least three days before his army could join the Second Army in attacking the Germans. This suggested to Ludendorff that he need not worry about First Army assistance to the Second or exploitation of the gap created by his own army’s movement south. The second intercept, a communiqué from the Second Army, provided a complete description of its dispositions and planned route of attack to the north. As important as the first, this gave Ludendorff the foreknowledge he needed to achieve surprise and a concentration of force against an exposed adversary. As the bulk of the German Eighth Army advanced on the right flank of the Russian’s Second Army and the Russians’ plight became apparent, German cryptologists began intercepting pleas for assistance, as well as orders from General Zhilinski, overall commander of Russian forces, directing the First Army to move northwest, away from Second Army—a clear sign that the Russian leaders did not have a clear understanding of German dispositions or just how precarious Second Army’s situation was. This knowledge emboldened the Germans. With the two corps from Gumbinnen and Francois’ corps to the south, the German forces swept around the Second Army and on 29 August completed the encirclement that would spell its demise. By destroying Second Army with relatively little loss, Hindenburg and Ludendorff could turn north against the First Army and a newly formed army, the Tenth. These were defeated at the Battle of First and Second Masurian Lakes and effectively destroyed Russia’s capacity for carrying out offensive operations against Germany. Intelligence at Tannenberg did not win the battle, but it did play a decisive role in dictating the way the Germans employed their units against a force that was, overall, larger than theirs. German leaders had a thorough understanding of their adversary’s capabilities, schedules, and concept of operations, and this knowledge allowed them to exploit Russian vulnerabilities and defeat them in detail. Thus, if “[O]nly numbers can annihilate,” as suggested by Lord Nelson, the successful exploitation of intelligence in this case demonstrates that they need not be superior numbers.[10] [Top of Page] The Battle of Midway: 4-7 June 1942 Midway was one of the decisive battles of history. The loss of her fleet carrier force deprived Japan of the initiative; henceforward she was on the defensive—attempting to hold the great spread of the Southern Resources Area and contiguous regions she had so handily won.… Two basic factors led to the result: first and foremost, the American knowledge of the Japanese secret codes, which presented Nimitz with an accurate picture of Japanese intentions and dispositions. —R. Earnest and Trevor Dupuy[11] As with battles on land, intelligence can drive the employment schemes necessary for a leader to win against superior odds at sea. Midway, a battle in which intelligence allowed the United States to spring a trap against what the Japanese had planned as their own ambush, resulted in an immediate shift in the balance of sea power in the Pacific. The Japanese Navy, which had a fleet of six carriers before the battle, lost four at Midway, and it lost the bulk of its trained pilots and hundreds of aircraft. While the United States would lose one carrier, it was left with five spread throughout the world. Thirteen more were under construction. Yamamoto believed that for Japan to win the war it would need to destroy the carriers early.[12] Due in large part to the foresight provided by US naval intelligence, he failed. Following the victory at Pearl Harbor, Japanese strategists had different conceptions about how to proceed in the war in the Pacific. However, James Doolittle’s carrier strike on Tokyo in April 1942 gave impetus to the argument that what was needed was the destruction of America’s carrier fleet. In considering the options, Yamamoto believed that the United States, whose naval order of battle in the Pacific after the Pearl Harbor strike was significantly less than that of Japan, would not risk a major fleet engagement for anything other than defense of a vital target. Midway fit this bill.[13] Were the Japanese to take Midway, they would threaten not only the Hawaiian Islands, but they could use Midway as a springboard for attacks on the continental United States. As such, a direct attack against Midway would force the US hand. In this, Yamamoto was right. Meanwhile, the United States was facing its own strategic dilemmas. Having lost so much of its fleet at Pearl Harbor, it had only limited options. First, the United States was committed to a defensive war in the Pacific—they had to react to Japanese actions, and, second, since they were committed to defend the Hawaii-Australia line with inferior numbers and weapons, the only real chance for success was to concentrate their forces at the right place at the right time.[14] To succeed, therefore, foreknowledge of the Japanese plans was vital. And if the US command had it, it could compensate for the disproportionately large force that Japan could bring to bear. And foreknowledge the US Navy had. Since World War I, the Navy had placed a good deal of effort into developing a strong communications intelligence capability. Its OP-20-G Navy Radio Intelligence Section had over the years garnered a number of successes, including breaking many of the Japanese Navy’s codes. While diverted from conducting operational intelligence prior to Pearl Harbor, OP-20-G had reestablished its functional capabilities by March 1942 and was reporting daily on hundreds of Japanese naval intercepts.[15] The Japanese, like the Russians before Tannenberg, committed the egregious error of having to resend messages because command elements used outdated code books—US cryptologists had the benefit of capturing transmissions in both old and new codes, thereby providing multiple opportunities to mine transmissions for useful intelligence. OP-20-G’s successful reporting of Japanese naval movements prior to the Battle of the Coral Sea, which ADM Nimitz had used to determine what forces to commit, bolstered its credibility. Even as the Coral Sea engagement was being waged, intercepts strongly suggested a major Japanese combined, amphibious buildup. Naval intelligence determined in early May the composition of Japanese forces, where they were staging, and their operational schedules.[16] The precise location of attack, however, was more difficult to surmise because the codes for Japanese geographic designators remained unknown. Nimitz believed the Japanese would strike Oahu; others felt the target was the US West Coast. OP-20-G, though, reasoned that the target was Midway. In order to validate their position, the cryptologists successfully used a ruse to get the Japanese to reveal their target. The idea was to send a message, via the cable to Midway, to the Commanding Officer of the Naval Base instructing him to “…send a plain language message to Com 14 (Commandant 14th Naval District) stating in effect, that the distillation plant had suffered a serious casualty and that fresh water was urgently needed—to which Com 14 would reply, (also in plain language), that water barges would be sent, under tow, soonest.[17] Soon after that message was sent, a Japanese message was intercepted noting that “AF is short of water.” OP-20-G was able to report to Admiral Nimitz that the objective was, indeed, Midway. By the time the Japanese changed their cipher codes on 28 May, it was too late. Having been provided Yamamoto’s strategy, order of battle, transit dates, and carrier strike point, Nimitz had what he needed to commit his forces to battle. Rather than fall into a Japanese trap, Nimitz could set one himself by concentrating his forces against an unsuspecting enemy. Deploying three carriers north of Midway to lie in wait, Nimitz had nearly evened the odds. On 2 June 1942, with a good understanding of the general whereabouts of the Japanese fleet—a result of communications intercepts from the Japanese carriers—a US Navy patrol aircraft located and maintained regular contact with it.[18] In the ensuing battle, US intelligence, surveillance, and reconnaissance allowed for the coup de main on 4 June when dive-bomber squadrons from the carriers caught the Japanese completely by surprise, sinking the carriers Akagi, Kaga, and Hiryu. Having gained the advantage, US forces traded blows, sinking the Hiryu, while losing Yorktown. In addition to the lost four carriers, three Japanese battleships were damaged, two heavy cruisers sunk and three more damaged, and several destroyers and auxiliary ships were sunk. But, what if in mid-May 1942, a Japanese sailor, after transcribing a radio message he had just intercepted from Midway Island, had turned to his superior to ask, “Why are they broadcasting this message in the clear?”… A simple question, heightened alertness, and suddenly what historians have often described as the decisive US advantage in the close-run Battle of Midway might well have become the Japanese side’s key to a great victory in the central Pacific, dramatically altering the course of the Second World War.[19] Keegan’s analysis of the battle in Intelligence and War stresses that even with all the intelligence that Nimitz had, and while striking a sizable blow to the Japanese, it had nearly been a major US defeat: [M]idway demonstrates that even possession of the best intelligence does not guarantee victory…. A little less intuition by McClusky of Bombing 6, a little more intellectual resolution by Nagumo, and it would have been the carriers of TF 16 and 17, not those of Yamamoto’s Mobile Force, which would have been left burning and bereft in the bright waters of the Pacific on 4 June 1942.[20] This conclusion misses the point. Battle is always risky and can be swayed one way or another by sheer chance. Yet the US Navy would never have had the opportunity at Midway to avoid the Japanese trap and to concentrate its forces in a surprise attack against an adversary with numerical superiority had it not been for operational and tactical intelligence of the kind it received. “Armed with the support of excellent communications intelligence and of his superiors in Washington, CINCPAC was able to satisfy all three of Clausewitz’s ‘principles of warfare’: decision, concentration, and offensive action.”[21] Foreknowledge, not willpower, was the most decisive factor at Midway. [Top of Page] Inchon Landing: 15 September 1950 The first three examples illustrate how intelligence can help lead to victory through clandestine intelligence operations designed to provide indications and warning information of impending attacks or operations. Another way is through the support intelligence gives to planning, when it provides information on the adversary’s capabilities and vulnerabilities—in today’s terminology “intelligence preparation of the battlespace.” “Intelligence reduces the unknowns that planners must face and forms the basis for both deliberate and crisis action planning,” the Naval Doctrinal Publication points out.[22] In the case of the amphibious assault at Inchon, an attack that led to the collapse of the North Korean army and the taking of some 125,000 prisoners, intelligence gathering and planning allowed US forces to overcome geographic disadvantages and take the enemy by surprise. On 25 June 1950 four columns of North Korean infantry and tanks under the command of Marshal Choe Yong Gun surprised the world by driving south and pushing South Korean and contingents of US forces to the southeast corner of the Korean peninsula. While winning a series of tactical successes, the North was unable to gain its strategic objective— command of all Korea—and was faced with the proposition of using all its remaining forces against the last allied forces holding the Pusan perimeter. Through August and into September, the North threw 13 infantry and two armored divisions (98,000 men) at the Allies, necessitating the commitment of all UN reserves. And while the North suffered horrendous casualties, its tenacious attacks and acceptance of losses suggested a stronger force than they had. General MacArthur, the supreme allied commander in Korea, considered a major counterstroke to catch Choe’s forces in a net. This would involve a two-pronged attack in which an amphibious landing would be made on the west coast. The amphibious assault was designed to sever Choe’s lines of communication and retreat and would be coupled with a break-out from the Pusan perimeter. Two questions, however, had to be answered: (1) Where should the landing occur? and (2) What forces could the enemy bring to bear when it began? The intelligence community set about answering these questions. After a prototypical Intelligence Preparation of the Battlespace, General Douglas MacArthur decided that naval forces could dramatically alter the course of the war by seizing Inchon, a major port on Korea’s Yellow Sea coast. Possession of Inchon would enable the allies to recapture a key air base, and mount a major ground offensive on Seoul which would cut off North Korean forces in the south.[23] Inchon, however, was not ideal. The 45-mile-long approach from the open ocean to the landing area would be complicated by tides— which caused the water’s depth in the landing area to recede to dangerously low depths—and the proximity of several small islands occupied by North Korean forces. To be successful, the Allies would need to clear the islands, intelligence would need to be collected on water depths, and enemy troop strengths in the surrounding area ascertained. In addition, a forward reconnaissance element would need to be in place to provide eyes and ears to the Marines assigned to the assault. The assignment fell to a Naval Intelligence officer attached to the ROK Navy, LT Eugene Clark. Clark, a veteran of the OSS, recruited local fishermen and partisans for his team. Deployed on the 26th of August, he and his team silenced opposition on most of the islands by 8 September and began a thorough reconnaissance of approaches and Inchon itself.[24] Particularly crucial to success was the assessment of the depths and advice to planners on where and when to strike. Clark and a companion measured tides and found that the mud flats initially selected for the attack were not suitable to withstand the weight of fully armed marines. This critical piece of what today would be known as measurements and signatures intelligence (MASINT) averted what could have been a disaster, as the landing plans were modified to account for the findings. Clark and his men also held key positions up to the morning of the attack and lit beacons to guide the lead elements of the assault force. While Clark was providing on-site intelligence, planners were aided by imagery and human intelligence. Aerial photographs and reports from former inhabitants were used in shaping the operational plans for the amphibious task force commander, RADM James Doyle and his staff. Taken with Clark’s information, “intelligence helped Admiral Doyle select the best water approach, set the time for the amphibious assaults, and identify the North Korean Army line of communication as a critical vulnerability.”[25] Additionally, the intelligence estimates suggested that the North did not have forces enough in the area to offer significant resistance to the landing or to the recapture of Seoul.[26] With a full understanding of what he faced, MacArthur told the Joint Chiefs of Staff that he could conduct a successful amphibious operation. Meanwhile, he and his staff developed a concept of operations that would allow for concentration of force, and surprise, against a most vulnerable enemy point. This comprehensive planning bore fruit on 15 September, when the allied amphibious task force launched its initial assault from the sea. By the 19th, the 1st Marine Division seized the air base at Kimpo and began the assault on Seoul. U.S. Army troops pushed out from the Inchon beachhead and on the 27th linked up with their comrades advancing north from the Pusan perimeter. Two days later, the Marines captured Seoul. Thus, by skillfully incorporating intelligence into operational planning, in a little more than two weeks, allied forces were able to oust the invaders from the Republic of Korea.[27] The role of intelligence in the Inchon landing is significant if for no other reason than it shows how central it is to planning a victorious campaign. Intelligence at Inchon was not happenstance, like the discovery of Lee’s lost orders before Antietam, but a conscious and necessary task assigned by leadership; before MacArthur could determine how to employ his forces, he first had to know whether he could attack or not and where he could attack if it was possible. By emphasizing intelligence, MacArthur conducted a masterful offensive and avoided an American Gallipoli. [Top of Page] The Six-Day War: 5 June 1967 Israeli intelligence was outstanding, having pinpointed the location of every Egyptian squadron, revealed the layout of every air base, and mastered every detail of Egyptian Air Force operational procedure…. During the course of the morning, the Israelis struck 18 of Egypt’s Air Force bases, cratering runways, blowing up aircraft, and destroying support facilities. The Egyptians lost over 300 of their 420 combat aircraft, and 100 of their 350 qualified combat pilots. —Kenneth Pollack[28] Israeli intelligence was, indeed, outstanding in the Six-Day War. It demonstrated how strategic intelligence can be used in conjunction with operational intelligence to provide senior decisionmakers information necessary to make well-informed national security decisions and to give leaders opportunities to mitigate the numerical superiority of an adversary. Yet, just as Israeli intelligence in this case can be viewed as an example of how intelligence operations should be conducted, Egypt’s poor intelligence opened the door to its own defeat. In 1967, Israel faced a monumental security task: defense of the nation against several Arab armed forces that, when combined, held an advantages of two to one in manpower, two to one in tanks, seven to one in artillery, three to one in aircraft, and four to one in warships. On its southern border, Israel had roughly 70,000 troops in the Sinai against Egypt’s 100,000; 700 tanks against 950; and it had to distribute its 200 aircraft across all fronts while facing Egypt’s concentrated 430.[29] Nor could Israel count on technological superiority to overcome the odds. Israeli intelligence, for example, had scored a coup by obtaining a MiG-21 fighter from an Iraqi defector, and it had determined that Egypt’s MiGs were better than all but their Mirage aircraft. Egyptian artillery was superior, and their T-55 tanks were more capable than the majority of Israel’s tanks.[30] And while Israeli forces were better trained, had superior leadership, and had a far more flexible doctrine, Egypt’s army could boast that the majority of its soldiers were combat veterans. Israel faced a similar situation to its north, against Syria and Lebanon, and to its east, against Jordan. Finally, Israel faced a hostile international community; the United States was an ally but eager to avoid any spark that could ignite a conflict with Egypt’s ally, the Soviet Union. Events began spinning into war in November 1966, with the signing of an Egyptian and Syrian alliance, and led to an Egyptian threat to use force on 18 May 1967. Egypt had mobilized its military and announced combat readiness in the Sinai, followed on the 23rd by a closure of the Straits of Tiran, blockading the Israeli port of Eliat. Israel took these acts, particularly the blockade, to be cause for war. Further, Israeli intelligence was able to verify that Egypt had plans for an attack, code named Asad, on Eliat and other targets in the Negev on the 27th. This revelation was passed to the United States, which placed sufficient pressure on the Soviet Union and Egypt to force a cancellation of the attack.[31] But all other diplomatic efforts failed, and the Israelis confronted the decision of (1) preempting their enemies’ first strikes; (2) allowing themselves to be hit first by a numerically stronger adversary; or (3) continuing an unacceptable status quo. Israel chose to attack first. A preemptive strike against the Arabs had always been a major part of the Israeli concept of operations, but it was their military intelligence, under the command of the bright and aggressive Aharon Yariv, that proved decisive. ‘Know your enemy’ was not, Yariv told his heads of departments, merely a figure of speech; it had to be taken literally. It was not enough to know Arab strategy on the grand scale; Yariv wanted to know everything about every Arab unit down to the menus served in the sergeants’ mess.[32] And, quite literally, Israeli intelligence had a clearer picture of the Egyptian order of battle and capabilities than did Egypt’s own commanders. In the two-years before the Six-Day War, Yariv not only set about knowing the whereabouts of every Arab air base, but also having each inspected. Israeli intelligence officers, often working as chefs or coopting Egyptian soldiers, provided a complete picture of the EAF, including: the whereabouts of every aircraft and name/information on the pilot; the name, background, status, and schedule of every base commander; schedules and turnovers of Egyptian radar controllers; reveille and morning schedules for the pilots and ground crews; the complete Egyptian battle codes and communications networks; and when senior air officials would be absent from their commands, and unable to direct operations.[33] From this information, Israeli intelligence developed a precise targeting package. It knew when the EAF would be most vulnerable–when the aircraft would be most exposed; when the pilots would be slowest in getting to their aircraft for flight operations; and when leadership would be unable to provide direction. With comparable intelligence on Egypt’s land forces and effectiveness, Yariv believed that Israel could not conceivably lose the war. “So finely tuned was his intelligence apparatus that he was able to predict an outcome which was to astonish the world when it was all over.”[34] Coupled with military operational intelligence, the Israeli Mossad—its state intelligence agency—had developed relationships with foreign governments and intelligence agencies that provided new and corroborated strategic and tactical intelligence before the war. The relationship with the United States, in particular, served a critical role before the preemptive strike by making clear to both the CIA and Pentagon that war was inevitable and getting tacit buy-in on the plan. “The United States understood Israel’s reasoning and did not object to the preemptive attack. Amit’s (head of the Mossad) achievement in secret diplomacy was built upon the international intelligence links which the Mossad had worked so hard to foster for years.”[35] Knowing that the United States would not condemn the attack and armed with an exceptionally well-developed plan, Israeli leaders authorized the use of force, thus seizing the initiative from their adversaries. The preemptive air strike proved decisive. The attack caught the Egyptian Air Force with its commander, General Mahmud, out of contact with his forces. “In his absence, the EAF was paralyzed. Without specific authorization, the vast majority of Egypt’s air force officers, from air sector commanders all the way down to pilots, were uwilling to take even the most obvious emergency procedures.”[36] Only eight MiGs got into the air to defend their airfields; every one was shot down. The airfields that were undamaged in the initial strikes managed to get only 20 aircraft into the air, all of which were either shot down or crashed when they could find no undamaged airstrips to which to return. All told, three-quarters of the EAF was destroyed in the first hours of the war. Intelligence had paved the way for the Israeli Air Force to win one of the most lopsided victories in history. But credit for Israel’s success cannot be explained by its intelligence alone; indicators and warning should have prepared the Egyptians for what was to come. As Kenneth Pollack contends, “There was a colossal failure on the part of Cairo’s intelligence services to provide the Egyptian military with the information required to fight Israel.” He notes that Egyptian intelligence: was biased to the political climate and, therefore, did not provide clear and decisive analysis on whether Israel was going to attack; issued reports to commanders that changed daily and were often contradictory; provided no credible intelligence on Israel’s order of battle, effectiveness, doctrine, or planned strategy; had no intelligence on where Israeli forces were and, to the extent that it had information, fell victim to Israel’s denial and deception campaign; and did not understand the concept of flexibility stressed by the Israeli military in conducting joint and independent operations.[37] As a result of these failings, even had Egypt’s military been better trained and led, it was at a significant disadvantage from the outset. Once combat began, Egyptian forces had no understanding of where Israel would strike, with what force, in what manner, with what tactics or effect, over what duration, or with what objective—in short, they were blind. [Top of Page] Conclusion Kimmel stood by the window of his office at the submarine base, his jaw set in stony anguish. As he watched the disaster across the harbor unfold with terrible fury, a .50-caliber machine gun bullet crashed through the glass. It brushed the admiral before it clanged to the floor. It cut his white jacket and raised a welt on his chest. “It would have been merciful had it killed me.” —RADM Edwin Layton[38] The great military victory we achieved in Desert Storm and the minimal losses sustained by U.S. and Coalition forces can be directly attributed to the excellent intelligence picture we had on the Iraqis. —General H. Norman Schwarzkopf III, U.S. Army[39] Battle is a physical activity and requires force. And yet, to speak of force without associating a corresponding value to intelligence is akin to speaking of a boxer without eyes or a brain. Additionally, “employment of force” is hollow without an understanding of where, in what conditions and geography, and against whom to employ force. Success in the physical act of battle requires well-trained soldiers who are properly equipped, led by strong leadership willing to use force against a clear objective, employing it correctly, and sacrificing when necessary. But it also requires foresight, analysis, eyes and ears, and the development of a playbook on how to win—it takes intelligence. Therefore, just as Keegan correctly states that “Knowledge of what the enemy can do and of what he intends is never enough to ensure security,” so too, having superior forces equipped with better technology is no insurance for victory when opposing an enemy that invests in intelligence.[40] Absolute power does not win absolutely. None of the battles described were won by intelligence alone—victory was achieved by the application of force. However, in each case, the victor could only employ the forces necessary to achieve victory through the advantage of foreknowledge. What would have happened, for instance, had Jackson not reached Bull Run in time to “stand like a Stonewall”? How would Germany have fared had it been faced with defeat on the Eastern Front just one month after the initiation of hostilities in 1914? How would Nimitz have handled the Japanese attack on Midway had he not known in advance of the trap? How successful would the Inchon landings have been if intelligence had not warned of the mud flats on the approaches to the proposed landing sites? And, how much longer and precarious would the 1967 war have been had Israel’s intelligence not warned of the impending Arab attack, or had it not expended so much effort in knowing every detail of its adversaries force composition? Intelligence “failures,” too, tell of the significance intelligence plays. Pearl Harbor, Tet, or, for that matter, the attacks of September 11th, do not diminish the importance of intelligence but rather demonstrate the impact of not placing sufficient emphasis on it. Britain’s failed intelligence and misunderstanding regarding Japan’s military capabilities prior to 1942, for example, doomed its army of some 146,000 in Singapore to a crushing defeat at the hands of only 35,000.[41] History abounds with such examples. As in the past, intelligence will continue to play a vital role in future conflicts. As General Hugh Shelton, former chairman of the joint chiefs of staff, noted in 2000: “Successful employment of modern weapons systems, new operational concepts, and innovative combat techniques— particularly those involving forces that are lighter, faster, more agile, and more lethal—also depends on rapid, precise, accurate, and detailed intelligence.”[42] It behooves the planner, the operator, political and military leadership, and members of the Intelligence Community to understand this and not relegate intelligence to a secondary status as authors such as John Keegan suggest. The strongest boxer cannot defeat the foe he hasn’t studied or cannot see.

#### Its revers causal- absent effective intel war fighting capabilities collapse

**Deputies Committee of the National Security Council, 96** (senior policy representatives from the Departments of State, Defense, Justice, and Treasury, the Joint Chiefs of Staff, and the Office of Management and Budget, as well as the President's National Security Advisor, “The Role of Intelligence” <http://www.fas.org/irp/offdocs/int006.html>)

Another traditional mission of the Intelligence Community is to provide support to U.S. military operations. This mission encompasses not only warning of attack on U.S. territory and installations, but also providing information needed to plan for and carry out military operations of all kinds. In the past, this has largely involved the provision of order of battle information on opposing military forces: their size, nature, location, morale and capabilities. In recent years, however, this mission has been rapidly expanding. U.S. military operations since the Cold War have been carried out largely in the context of multilateral commitments of forces, increasing the need for joint planning and execution. Ironically, the number of occasions where U.S. military forces have been deployed outside the United States since the Cold War has greatly exceeded the rate of such deployments during the Cold War. Moreover, neither the location of such deployments, e.g. Panama, Somalia, Rwanda, Haiti, nor their purposes, e.g. preventing famine or genocide, "nation building," emergency evacuations, were typical of the Cold War period. Recent years have also seen radical change in the nature of warfare. The 1991 Persian Gulf war lasted only a few weeks, but signaled a quantum leap in U.S. military capability. The world saw U.S. weapons fired from aircraft, ships, and land batteries far from the point of impact and delivered with pinpoint precision and devastating consequences. The war ended quickly, and U.S. casualties were minimal. To a large degree, American success in the Persian Gulf war was due to information provided by intelligence systems both at the national and tactical levels. While achieving timely dissemination of such information was not without its problems, never before had so much information been gathered and relayed to a combat force so rapidly with such effect. The military began to look even more seriously at how intelligence capabilities could be brought to bear on their problems. U.S. intelligence should also continue to support defense planning, another traditional mission. This mission entails providing information on foreign military capabilities in order for defense planners to shape the size, nature, and disposition of U.S. military forces. It also includes necessary information to guide military research and development activities and future military acquisition decisions. It encompasses information about foreign military tactics and capabilities, which can then be used to train and protect U.S. forces.

#### Warfighting is key to heg

**Flourney and Davidson 12** (Michèle Angelique Flournoy, former [Under Secretary of Defense for Policy](http://en.wikipedia.org/wiki/Under_Secretary_of_Defense_for_Policy) of the United States, Janine Davidson holds a PhD and a Master's of Arts degree in international studies, “Obama's New Global Posture: The Logic of U.S. Foreign Deployments,” Foreign Affairs, Jul/Aug 2012, 54-63, ProQuest)

During the Pentagon's last global posture review, in 2004, then U.S. Secretary of Defense Donald Rumsfeld's guiding principle was closing overseas bases and bringing home U.S. troops stationed abroad. In contrast, the Obama administration has emphasized making the country's forward posture more e/cient and eaective. American forces stationed abroad should be aiming to prevent conflict, build the capacity of key partners, maintain core alliances, and ensure the U.S. military's ability to secure American interests in critical regions. Forward engagement, as this approach is called, does not mean policing the world or letting other countries free-ride on U.S. security guarantees. And partnership does not mean relinquishing American sovereignty to regional and international institutions. Rather, forward engagement means leveraging the United States' biggest strength, the ability to lead, while encouraging others to share the burden. The cornerstone of forward engagement will be positioning U.S. troops in vital regions to help deter major conflicts and promote stability, particularly in Asia and the Middle East. As the long-term U.S. deployments in Europe and Asia have demonstrated, the physical presence of military forces sends a powerful message to potential adversaries. Some believe that troops garrisoned at home are just as eaective a deterrent, given the global reach and technological superiority of the U.S. armed forces. But that argument, which was the cornerstone of Rumsfeld's posture vision, ignores the realities of time, distance, logistics, and politics. As the United States' experience in the two Iraq wars demonstrated, it takes weeks, if not months, to deploy a force of the size and strength required for some of the most likely and most dangerous scenarios the United States could face around the world. Furthermore, moving troops from the United States to a conflict zone just as tensions begin to rise can exacerbate or escalate a crisis. Forward-postured forces also reassure allies of the United States' commitment to their security. On the Korean Peninsula, for example, the presence of some 28,000 U.S. personnel reminds Seoul that the United States stands ready to defend South Korea against North Korean aggression. Further south, U.S. naval and air forces engaged in Australia, the Philippines, Singapore, and Thailand give allies in Southeast Asia greater confidence that the United States will not abandon the region at a time of great change and uncertainty. Should deterrence fail, forward-stationed military forces are well placed to facilitate a collective response. As the recent nato operation in Libya showed, responding to threats requires guaranteed access to supply routes and bases, diplomatic support, and, ideally, the help of allies in the field. Quickly assembling a posse to get the bad guys might have worked in old Westerns, but it does not work in complex, hightech military operations. For those, common command-and-control protocols, interoperable technologies, doctrines, and planning processes should be developed well in advance. And more than any other forces, forward-stationed forces can spearhead those preparations. They can conduct regular training exercises with allies to identify and correct shortfalls, build trust among U.S. and allied service members, and develop the shared practices that make the militaries work together more eaectively in the field. Another good reason for forces to remain engaged abroad, even in peacetime, is to serve as an investment in burden sharing. Training and conducting real-world missions with allies and partners, such as the United States' multilateral antipiracy operations oa the Horn of Africa and its freedom-of-navigation exercises in the Persian Gulf, helps build up their capacities. Such engagement also promotes a shared vision of the world, in which the rule of law dominates, disputes can be resolved without the use of force, and commerce flows freely. In turn, such partners are more able to address problems at home without the need for U.S. forces. Such relatively small investments in peacetime activities can mean not having to put American men and women in harm's way later. Forward engagement is not only an eaective way to safeguard U.S. national security interests; it is also a responsible and e/cient way to position U.S. forces in a time of economic constraint. The political scientists Joseph Parent and Paul MacDonald argued in these pages ("The Wisdom of Retrenchment," November/December 2011) that closing U.S. overseas bases and bringing U.S. personnel home would save billions of dollars. Such an argument misunderstands how U.S. armed forces are sustained abroad and underestimates the expense of relocating them. The United States has 1.4 million men and women in uniform. All of them, and their families, must be housed and trained somewhere. It is not necessarily cheaper to do that in the United States, especially since some countries, including Germany, Japan, and South Korea, help foot the bill for U.S. facilities stationed there. Furthermore, it would be a colossal misallocation of resources to abandon significant capital investments-for example, the world-class U.S. Army training center in Hohenfels, Germany-only to build duplicate facilities at home. The United States should position its forces to provide national security in the most e/cient and responsible way possible. In the coming years, the U.S. military will likely be operating in a tight budget environment, but Washington can get more for less by positioning a larger percentage of its forces in key regions. Take, for example, the rotation cycles of U.S. naval ships. For every ship out securing sealanes or deterring aggression, there are three others in various stages of maintenance or in transit. Porting ships closer to their areas of operation in Europe or Asia would save each vessel three to four weeks in transit time and would require keeping one-third fewer ships in U.S. inventories. That alone would save billions of dollars in acquisition, operations, and maintenance costs. Similarly, the strategic forward stationing of U.S. forces, combined with periodic rotations by U.S. forces to train with allies, makes the best use of American resources, enhances cooperation and burden sharing, and ensures that the military is positioned and ready to respond to emerging threats and crises.

**Absent effective U.S. power – global wars will ensue**

**Brooks et al 13** (Stephen, Associate Professor of Government at Dartmouth College, John Ikenberry is the Albert G. Milbank Professor of Politics and International Affairs at Princeton University in the Department of Politics and the Woodrow Wilson School of Public and International Affairs, William C. Wohlforth is the Daniel Webster Professor in the Department of Government at Dartmouth College “Don’t Come Home America: The Case Against Retrenchment,” International Security, Vol. 37, No. 3 (Winter 2012/13), pp. 7–51)

A core premise of deep engagement is that it prevents the emergence of a far more dangerous global security environment. For one thing, as noted above, the United States’ overseas presence gives it the leverage to restrain partners from taking provocative action. Perhaps more important, its core alliance commitments also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged U.S. power dampens the baleful effects of anarchy is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the “American Pacifier” is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive war temptations, regional rivalries, and even runs at regional hegemony and full-scale great power war. 72 How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia’s security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge. The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions. 73 Defensive realists maintain that the high expected costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia’s major states could manage regional multipolarity peacefully without the American pacifier. Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays. 74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers. What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins to swing toward pessimists concerned that states currently backed by Washington— notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimism regarding the region’s prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by a still-engaged United States. 75 The second body of scholarship casting doubt on the bet on defensive realism’s sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism’s optimism about what would happen if the United States retrenched is very much dependent on its particular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. Burgeoning research across the social and other sciences, however, undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and they engage in trade-offs among the various objectives. 76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case. 77 In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices. To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world’s key regions. We have already mentioned the third, even more alarming body of scholarship. Offensive realism predicts that the withdrawal of the American pacifier will yield either a competitive regional multipolarity complete with associated insecurity, arms racing, crisis instability, nuclear proliferation, and the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional great power war). Hence it is unsurprising that retrenchment advocates are prone to focus on the second argument noted above: that avoiding wars and security dilemmas in the world’s core regions is not a U.S. national interest. Few doubt that the United States could survive the return of insecurity and conflict among Eurasian powers, but at what cost? Much of the work in this area has focused on the economic externalities of a renewed threat of insecurity and war, which we discuss below. Focusing on the pure security ramifications, there are two main reasons why decisionmakers may be rationally reluctant to run the retrenchment experiment. First, overall higher levels of conflict make the world a more dangerous place. Were Eurasia to return to higher levels of interstate military competition, one would see overall higher levels of military spending and innovation and a higher likelihood of competitive regional proxy wars and arming of client states—all of which would be concerning, in part because it would promote a faster diffusion of military power away from the United States. Greater regional insecurity could well feed proliferation cascades, as states such as Egypt, Japan, South Korea, Taiwan, and Saudi Arabia all might choose to create nuclear forces. 78 It is unlikely that proliferation decisions by any of these actors would be the end of the game: they would likely generate pressure locally for more proliferation. Following Kenneth Waltz, many retrenchment advocates are proliferation optimists, assuming that nuclear deterrence solves the security problem. 79 Usually carried out in dyadic terms, the debate over the stability of proliferation changes as the numbers go up. Proliferation optimism rests on assumptions of rationality and narrow security preferences. In social science, however, such assumptions are inevitably probabilistic. Optimists assume that most states are led by rational leaders, most will overcome organizational problems and resist the temptation to preempt before feared neighbors nuclearize, and most pursue only security and are risk averse. Confidence in such probabilistic assumptions declines if the world were to move from nine to twenty, thirty, or forty nuclear states. In addition, many of the other dangers noted by analysts who are concerned about the destabilizing effects of nuclear proliferation—including the risk of accidents and the prospects that some new nuclear powers will not have truly survivable forces—seem prone to go up as the number of nuclear powers grows. 80 Moreover, the risk of “unforeseen crisis dynamics” that could spin out of control is also higher as the number of nuclear powers increases. Finally, add to these concerns the enhanced danger of nuclear leakage, and a world with overall higher levels of security competition becomes yet more worrisome. The argument that maintaining Eurasian peace is not a U.S. interest faces a second problem. On widely accepted realist assumptions, acknowledging that U.S. engagement preserves peace dramatically narrows the difference between retrenchment and deep engagement. For many supporters of retrenchment, the optimal strategy for a power such as the United States, which has attained regional hegemony and is separated from other great powers by oceans, is offshore balancing: stay over the horizon and “pass the buck” to local powers to do the dangerous work of counterbalancing any local rising power. The United States should commit to onshore balancing only when local balancing is likely to fail and a great power appears to be a credible contender for regional hegemony, as in the cases of Germany, Japan, and the Soviet Union in the midtwentieth century. The problem is that China’s rise puts the possibility of its attaining regional hegemony on the table, at least in the medium to long term. As Mearsheimer notes, “The United States will have to play a key role in countering China, because its Asian neighbors are not strong enough to do it by themselves.” 81 Therefore, unless China’s rise stalls, “the United States is likely to act toward China similar to the way it behaved toward the Soviet Union during the Cold War.” 82 It follows that the United States should take no action that would compromise its capacity to move to onshore balancing in the future. It will need to maintain key alliance relationships in Asia as well as the formidably expensive military capacity to intervene there. The implication is to get out of Iraq and Afghanistan, reduce the presence in Europe, and pivot to Asia— just what the United States is doing. 83 In sum, the argument that U.S. **security** commitments are unnecessary **for peace** is countered by a lot of scholarship, including highly influential realist scholarship. In addition, the argument that Eurasian peace is unnecessary for U.S. security is weakened by the potential for a large number of nasty security consequences as well as the need to retain a latent onshore balancing capacity that dramatically reduces the savings retrenchment might bring. Moreover, switching between offshore and onshore balancing could well be difªcult. Bringing together the thrust of many of the arguments discussed so far underlines the degree to which the case for retrenchment misses the underlying logic of the deep engagement strategy. By supplying reassurance, deterrence, and active management, the United States lowers security competition in the world’s key regions, thereby preventing the emergence of a hothouse atmosphere for growing new military capabilities. Alliance ties dissuade partners from ramping up and also provide leverage to prevent military transfers to potential rivals. On top of all this, the United States’ formidable military machine may deter entry by potential rivals. Current great power military expenditures as a percentage of GDP are at historical lows, and thus far other major powers have shied away from seeking to match top-end U.S. military capabilities. In addition, they have so far been careful to avoid attracting the “focused enmity” of the United States. 84 All of the world’s most modern militaries are U.S. allies (America’s alliance system of more than sixty countries now accounts for some 80 percent of global military spending), and the gap between the U.S. military capability and that of potential rivals is by many measures growing rather than shrinking. 85 n

#### Hegemony is uniquely a stabilizing force –statistics prove our argument

**Owen 11** John M. Owen Professor of Politics at University of Virginia PhD from Harvard "DON’T DISCOUNT HEGEMONY" Feb 11 www.cato-unbound.org/2011/02/11/john-owen/dont-discount-hegemony/

Andrew Mack and his colleagues at the Human Security Report Project are to be congratulated. Not only do they present a study with a striking conclusion, driven by data, free of theoretical or ideological bias, but they also do something quite unfashionable: they bear good news. Social scientists really are not supposed to do that. Our job is, if not to be Malthusians, then at least to point out disturbing trends, looming catastrophes, and the imbecility and mendacity of policy makers. And then it is to say why, if people listen to us, things will get better. We do this as if our careers depended upon it, and perhaps they do; for if all is going to be well, what need then for us? Our colleagues at Simon Fraser University are brave indeed. That may sound like a setup, but it is not. I shall challenge neither the data nor the general conclusion that violent conflict around the world has been decreasing in fits and starts since the Second World War. When it comes to violent conflict among and within countries, things have been getting better. (The trends have not been linear—Figure 1.1 actually shows that the frequency of interstate wars peaked in the 1980s—but the 65-year movement is clear.) Instead I shall accept that Mack et al. are correct on the macro-trends, and focus on their explanations they advance for these remarkable trends. With apologies to any readers of this forum who recoil from academic debates, this might get mildly theoretical and even more mildly methodological. Concerning international wars, one version of the “nuclear-peace” theory is not in fact laid to rest by the data. It is certainly true that nuclear-armed states have been involved in many wars. They have even been attacked (think of Israel), which falsifies the simple claim of “assured destruction”—that any nuclear country A will deter any kind of attack by any country B because B fears a retaliatory nuclear strike from A. But the most important “nuclear-peace” claim has been about mutually assured destruction, which obtains between two robustly nuclear-armed states. The claim is that (1) rational states having second-strike capabilities—enough deliverable nuclear weaponry to survive a nuclear first strike by an enemy—will have an overwhelming incentive not to attack one another; and (2) we can safely assume that nuclear-armed states are rational. It follows that states with a second-strike capability will not fight one another. Their colossal atomic arsenals neither kept the United States at peace with North Vietnam during the Cold War nor the Soviet Union at peace with Afghanistan. But the argument remains strong that those arsenals did help keep the United States and Soviet Union at peace with each other. Why non-nuclear states are not deterred from fighting nuclear states is an important and open question. But in a time when calls to ban the Bomb are being heard from more and more quarters, we must be clear about precisely what the broad trends toward peace can and cannot tell us. They may tell us nothing about why we have had no World War III, and little about the wisdom of banning the Bomb now. Regarding the downward trend in international war, Professor Mack is friendlier to more palatable theories such as the “democratic peace” (democracies do not fight one another, and the proportion of democracies has increased, hence less war); the interdependence or “commercial peace” (states with extensive economic ties find it irrational to fight one another, and interdependence has increased, hence less war); and the notion that people around the world are more anti-war than their forebears were. Concerning the downward trend in civil wars, he favors theories of economic growth (where commerce is enriching enough people, violence is less appealing—a logic similar to that of the “commercial peace” thesis that applies among nations) and the end of the Cold War (which end reduced superpower support for rival rebel factions in so many Third-World countries). These are all plausible mechanisms for peace. What is more, none of them excludes any other; all could be working toward the same end. That would be somewhat puzzling, however. Is the world just lucky these days? How is it that an array of peace-inducing factors happens to be working coincidentally in our time, when such a magical array was absent in the past? The answer may be that one or more of these mechanisms reinforces some of the others, or perhaps some of them are mutually reinforcing. Some scholars, for example, have been focusing on whether economic growth might support democracy and vice versa, and whether both might support international cooperation, including to end civil wars. We would still need to explain how this charmed circle of causes got started, however. And here let me raise another factor, perhaps even less appealing than the “nuclear peace” thesis, at least outside of the United States. That factor is what international relations scholars call hegemony—specifically American hegemony. A theory that many regard as discredited, but that refuses to go away, is called hegemonic stability theory. The theory emerged in the 1970s in the realm of international political economy. It asserts that for the global economy to remain open—for countries to keep barriers to trade and investment low—one powerful country must take the lead. Depending on the theorist we consult, “taking the lead” entails paying for global public goods (keeping the sea lanes open, providing liquidity to the international economy), coercion (threatening to raise trade barriers or withdraw military protection from countries that cheat on the rules), or both. The theory is skeptical that international cooperation in economic matters can emerge or endure absent a hegemon. The distastefulness of such claims is self-evident: they imply that it is good for everyone the world over if one country has more wealth and power than others. More precisely, they imply that it has been good for the world that the United States has been so predominant. There is no obvious reason why hegemonic stability theory could not apply to other areas of international cooperation, including in security affairs, human rights, international law, peacekeeping (UN or otherwise), and so on. What I want to suggest here—suggest, not test—is that American hegemony might just be a deep cause of the steady decline of political deaths in the world. How could that be? After all, the report states that United States is the third most war-prone country since 1945. Many of the deaths depicted in Figure 10.4 were in wars that involved the United States (the Vietnam War being the leading one). Notwithstanding politicians’ claims to the contrary, a candid look at U.S. foreign policy reveals that the country is as ruthlessly self-interested as any other great power in history. The answer is that U.S. hegemony might just be a deeper cause of the proximate causes outlined by Professor Mack. Consider economic growth and openness to foreign trade and investment, which (so say some theories) render violence irrational. American power and policies may be responsible for these in two related ways. First, at least since the 1940s Washington has prodded other countries to embrace the market capitalism that entails economic openness and produces sustainable economic growth. The United States promotes capitalism for selfish reasons, of course: its own domestic system depends upon growth, which in turn depends upon the efficiency gains from economic interaction with foreign countries, and the more the better. During the Cold War most of its allies accepted some degree of market-driven growth. Second, the U.S.-led western victory in the Cold War damaged the credibility of alternative paths to development—communism and import-substituting industrialization being the two leading ones—and left market capitalism the best model. The end of the Cold War also involved an end to the billions of rubles in Soviet material support for regimes that tried to make these alternative models work. (It also, as Professor Mack notes, eliminated the superpowers’ incentives to feed civil violence in the Third World.) What we call globalization is caused in part by the emergence of the United States as the global hegemon.

#### Intel is key to diplomacy- solves every major impact and makes all conflict less likely

**Sims, 12** (Jennifer E. Sims, a senior fellow at the Chicago Council on Global Affairs, served as deputy assistant secretary of state for intelligence coordination and as coordinator for intelligence resources and planning at the Department of State. Gordon Adams is a professor of international relations at the School of International Service, American University. He was the senior White House official for national security budgets from 1993 to 1997. “Demilitarize the C.I.A.” http://www.nytimes.com/roomfordebate/2012/12/03/a-new-director-or-a-new-direction-for-the-cia/demilitarize-the-cia)

Although the departure of General Petraeus is a significant loss for the intelligence community, it is also an opportunity to better balance intelligence support for military and diplomatic operations. This will be no easy challenge. Roughly 80 percent of the intelligence budget is financed through the Defense Department – an old administrative arrangement that was never meant to bias intelligence agencies’ support for military operations over diplomatic ones. The agency should be rededicated to support diplomatic operations. Our ambassadors need robust intelligence to manage crises. Since the end of the cold war, however, well-informed observers on both sides of the political aisle have seen a trend toward the militarization of intelligence operations. As the United States engaged in wars in Somalia, the Balkans, Iraq and Afghanistan diplomatic budgets declined relative to military ones and the intelligence community increasingly justified operations by emphasizing support for the war planners and fighters. Improved intelligence support to military operations is a good thing; we need to win the wars we fight. But perhaps the most important lesson from the Benghazi attack, during which an American ambassador lost his life trying to help Libyans build a new democracy, is that diplomacy is on the front line too. It also carries risks and needs strong intelligence to be effective. The United States has over 280 diplomatic posts worldwide. They are working on drug interdiction, arms control negotiations, border security, counterterrorism, access to energy and trade, implementing sanctions, fair trade and the like. Intelligence helps diplomats recognize everything from cheating on agreements to social unrest and surprise attack. And it helps them make decisions that lower the risks and consequences of war. The new director should rededicate the C.I.A. to supporting these diplomatic operations. Our ambassadors need robust intelligence to manage the Syrian crisis, ease the transition in Afghanistan, help advise and rebuild war-torn countries such as Libya, ensure the security of Americans and their borders, move food and other resources safely from ports to refugees, and resolve conflicts that cost U.S. companies money and jobs. The new C.I.A. director needs to understand these non-military requirements and fight for the resources necessary to support civilian decision-making.

#### The plan shifts the CIA to focus to intel – key to drone effectiveness

Kenneth Anderson, 13 Professor of law at Washington College of Law, American University; a visiting fellow of the Hoover Institution and member of its Task Force on National Security and Law; and a non-resident senior fellow of the Brookings Institution. He writes on international law, the laws of war, and national security, and his most recent book is "Living with the UN: American Responsibilities and International Order.", “Taking the CIA Out of Drone Strikes? The Obama Administration’s Yemen Experience”, <http://www.lawfareblog.com/2013/05/taking-the-cia-out-of-drone-strikes-the-obama-administrations-yemen-experience/>, May 28, 2013)

Washington Post national security reporter Greg Miller has an excellent story in Sunday’s paper on the operational role of the CIA in drone warfare. Back at the time of the Brennan confirmation hearings, and even before, there had been discussion that the CIA would be pulled – even if only gradually – out of drone warfare and this form of using lethal force would be turned over the military. The CIA would re-focus itself on intelligence gathering and analysis, which many commentators inside and outside government said had taken a backseat to operational roles. Brennan himself urged this re-configuring of CIA priorities – including a shift away from counterterrorism to re-emphasize other intelligence missions; and the administration has said similar things in recent weeks. Focusing on drone warfare in Yemen, however, Miller’s report suggests this is easier said than done – whether in Yemen (or, it might be added, in Pakistan). A fundamental reason seems to be something noted many times here at Lawfare – the firing of a missile from a drone is the last kinetic step in a long chain of intelligence-gathering that includes surveillance over time from drones, signals intelligence and, crucially, on-ground human intelligence networks that give the US reason to be focusing on certain people as possible targets. Whether in Pakistan or Yemen, the effectiveness of drone warfare has been a function of the quality of the front-end intelligence that finally might lead to a strike. The drone’s contribution to the intelligence is far from being entirely tactical, of course – the drone’s surveillance has far more utility than just the preparation of a strike and that surveillance is crucial for reducing collateral harm from the strike itself. But drones are not quite so useful if one has no prior idea who one is searching for or where he might be or even why him – and much of this intelligence is gathered at the front end of the process in reliance on human intelligence networks. Although in principle the functions of intelligence gathering at the front end might be separated out from the intelligence involved in the preparation of a strike and from the actual strike itself, with the CIA engaged in the intelligence side and the military serving as the trigger pullers, the experience in Yemen raises some cautions about how easy it is to create this division of labor.

#### Shifting authority to the DoD is the only way to enable Congressional oversight – that makes foreign policy objectives more clear

Zenko 13([Micah Zenko](http://www.cfr.org/experts/national-security-conflict-prevention/micah-zenko/b15139), Douglas Dillon Fellow, “Transferring CIA Drone Strikes to the Pentagon,” April 2013, <http://www.cfr.org/drones/transferring-cia-drone-strikes-pentagon/p30434>)

ONE MISSION, TWO PROGRAMS

U.S. targeted killings are needlessly made complex and opaque by their division between two separate entities: JSOC and the CIA. Although drone strikes carried out by the two organizations presumably target the same people, the organizations have different authorities, policies, accountability mechanisms, and oversight. Splitting the drone program between the JSOC and CIA is apparently intended to allow the plausible deniability of CIA strikes. Strikes by the CIA are classified as Title 50 covert actions, defined as “activities of the United States Government . . . where it is intended that the role . . . will not be apparent or acknowledged publicly, but does not include traditional . . . military activities.” As covert operations, the government cannot legally provide any information about how the CIA conducts targeted killings, while JSOC operations are guided by Title 10 “armed forces” operations and a publicly available military doctrine. Joint Publication 3-60, Joint Targeting, details steps in the joint targeting cycle, including the processes, responsibilities, and collateral damage estimations intended to reduce the likelihood of civilian casualties. Unlike strikes carried out by the CIA, JSOC operations can be (and are) acknowledged by the U.S. government. The different reporting requirements of JSOC and the CIA mean that congressional oversight of U.S. targeted killings is similarly murky. Sometimes oversight is duplicated among the committees; at other times, there is confusion over who is mandated to oversee which operations. CIA drone strikes are reported to the intelligence committees. Senator Dianne Feinstein (D-CA), chair of the Senate Select Committee on Intelligence (SSCI), has confirmed that the SSCI receives poststrike notifications, reviews video footage, and holds monthly meetings to “question every aspect of the program.” Representative Mike Rogers (R-MI), chair of the House Permanent Select Committee on Intelligence (HPSCI), has said that he reviews both CIA and JSOC counterterrorism airstrikes. JSOC does not report to the HPSCI. As of March 2012, all JSOC counterterrorism operations are reported quarterly to the armed services committees. Meanwhile, the foreign relations committees—tasked with overseeing all U.S. foreign policy and counterterrorism strategies—have formally requested briefings on drone strikes that have been repeatedly denied by the White House. However, oversight should not be limited to ensuring compliance with the law and preventing abuses, but rather expanded to ensure that policies are consistent with strategic objectives and aligned with other ongoing military and diplomatic activities. This can only be accomplished by DOD operations because the foreign relations committees cannot hold hearings on covert CIA drone strikes. CONSOLIDATING EXECUTIVE AUTHORITY In 2004, the 9/11 Commission recommended that the “lead responsibility for directing and executing paramilitary operations, whether clandestine or covert, should shift to the Defense Department” to avoid the “creation of redundant, overlapping capabilities and authorities in such sensitive work.” The recommendation was never seriously considered because the CIA wanted to retain its covert action authorities and, more important, it was generally believed such operations would remain a rarity. (At the time, there had been only one nonbattlefield targeted killing.) Nearly a decade later, there is increasing bipartisan consensus that consolidating lead executive authority for drone strikes would pave the way for broader strategic reforms, including declassifying the relevant legal memoranda, explicitly stating which international legal principles apply, and providing information to the public on existing procedures that prevent harm to civilians. During his February 2013 nomination hearing, CIA director John O. Brennan welcomed the transfer of targeted killings to the DOD: “The CIA should not be doing traditional military activities and operations.” The main objection to consolidating lead executive authority in DOD is that it would eliminate the possibility of deniability for U.S. covert operations. However, any diplomatic or public relations advantages from deniability that once existed are minimal or even nonexistent given the widely reported targeted killings in Pakistan and Yemen. For instance, because CIA drone strikes cannot be acknowledged, the United States has effectively ceded its strategic communications efforts to the Pakistani army and intelligence service, nongovernmental organizations, and the Taliban. Moreover, Pakistani and Yemeni militaries have often taken advantage of this communications vacuum by shifting the blame of civilian casualties caused by their own airstrikes (or others, like those reportedly conducted by Saudi Arabia in Yemen) to the U.S. government. This perpetuates and exacerbates animosity in civilian populations toward the United States. If the United States acknowledged its drone strikes and collateral damage—only possible under DOD Title 10 authorities—then it would not be held responsible for airstrikes conducted by other countries.

#### Only congress can refocus the CIA- charter legislation is key

**Prados 12** – (2012, John, Senior Fellow and Co-Director of the Iraq Documentation Project, and Director of the Vietnam Project at the National Security Archive at The George Washington University, “The Continuing Quandary of Covert Operations,” JOURNAL OF NATIONAL SECURITY LAW &POLICY, Vol. 5:359)

Reviving the covert operations capability from its present atrophied state immediately raises overarching questions as to the suitability and constitutionality of covert operations techniques. The issues need to be addressed much more systematically. Within the terms of this discussion, **a branch able to do little more than rent armies is not a proper covert operations unit**. Moreover, the present formula of a high tech marriage between secret intelligence – primarily technical collection – and remote action (drones) is not a robust covert action capability either. It is attractive. Much like reconnaissance satellites, such mechanisms can be managed and budgeted with some ease, and have a certain apparent responsiveness. But that does not make them supple instruments, nor does such activity amount to a covert operation. **At the core, it is a conventional military action.** The Pakistanis today complain of a drone campaign out of control and they are right. **When the drones are striking, on average, every three days, that is aerial interdiction, not a targeted covert operation**. CIA lawyers insist that every individual drone target is selected from careful accumulation of evidence resulting in a proposal to neutralize, put in a memorandum and approved at a high level. That is not possible, given the number of targets struck, without expanding the target set far beyond the top levels of adversary leadership. Former CIA Director Panetta has affirmed that al Qaeda activists still in the region number only forty to fifty persons. By Pakistani accounts, most Predators now strike much lower level operatives, and of the Taliban, not al Qaeda. This follows perfectly from the fact that the top leaders have learned to exercise complete communications security, while CIA high technology surveillance depends on those data to acquire the targets. The drones are fishing, and the big fish are not biting. The bin Laden attack – apart from potential controversies about his assassination, or U.S. relations with Pakistan – shows that old school methods still work. Someone off the grid could be hunted down and dealt with. But the momentum of the technologically-driven covert operation has arguably reached the point of no return. **This is not an intelligence approach; it is a military one**. Today’s CIA is increasingly an auxiliary of the U.S. military. Since the 1990-1991 Persian Gulf war, and the Somali and Bosnian peacemaking operations that followed, the Pentagon has made increasing demands for improved national intelligence “support to military operations.” Larger numbers of military personnel have been seconded to the CIA, and military culture increasingly pervades the Agency. **The support has become the operation./////.**

 Director Panetta’s predecessor was an Air Force general. His successor is an Army general. Support for military operations has involved a learning curve, but increasingly the intelligence agencies are cast as adjuncts to the military. The high “operational tempo” demanded by Director Michael Hayden, Panetta’s predecessor, in fact required the CIA to work more like the military, discarding careful intelligence work in favor of “actionable intelligence,” further emphasizing technical collection programs. Under Director David Petraeus, another general, it is a safe prediction that this trend will continue. Under Secretary of Defense Donald Rumsfeld, the Pentagon moved strongly to supplant CIA operations. Under the slogan “military preparation of the battlefield,” the U.S. Special Operations Command tried to recruit agents, conduct operations, and do all manner of things traditionally reserved to the clandestine service. Secretary of Defense Robert Gates cut back some of those efforts and negotiated with the CIA regarding the roles and missions of each. Needless to say **this has been made easier as the agency became more militarized.** In Presidents’ Secret Wars, written amid the excesses of Reagan-era covert operations, I argued for vesting authority for the covert operations function within the Department of Defense (DoD). That was partly a matter of the DoD providing more of the full-service covert operations panoply within its Special Operations Forces – a point illustrated by the bin Laden attack – and partly a reflection of the sense that military regulations should ensure more proper legal controls. In Safe for Democracy, written in 2006, I was not so confident, and argued for preserving the main lines of covert operations authority within the CIA. But the CIA was guilty of excesses in the struggle against terrorism and has become excessively militarized, while the military remains as clumsy as ever. Today I am not comfortable with either solution. The presumptive authority for covert operations remains where it has been, with the CIA, but the Agency has become militarized, has **lost skills**, and still lacks a proper mechanism for cost-benefit analysis. **Covert capability needs to rebuild tradecraft, refine its decision devices, and be placed within a proper legal framework.** This brings us to the final, legal questions. I have consistently held, and still do, that no legal authority for covert operations exists under the U.S. Constitution. The underpinning for presidential approval of covert operations rests entirely on the ambiguous “such other functions” clause of the National Security Act of 1947. The CIA’s own General Counsel concluded on multiple occasions that covert operations did not fall within the scope of that language. Should the President instead rely upon his authority as Commander in Chief of the armed forces, the problem is that the CIA is not an “armed force.” Even if it were, the President would then have to be deemed to be acting under the provisions of the War Powers Resolution of 1973. This requires congressional approval of an action within sixty to ninety days. We can debate whether Congress has abdicated its responsibilities for enforcement of this statute, but the fact remains that it is the law of the land. Alternatively, were the CIA to be construed as an unofficial armed force for the purpose of conducting paramilitary action – which is, after all, an act of force – then the Constitution (Article I, Section 8) expressly reserves to the Congress all authority to issue “Letters of Marque.” The eighteenth century equivalent of grants of unofficial combatant status, given to privateers, Letters of Marque authorize the use of force by private individuals (read CIA operatives). The system of “presidential findings” (“Memoranda of Notification”) that exists today was cobbled together through the 1970s and 1980s by a Congress anxious to assert some sort of oversight and an Executive eager to avoid it. These presidential findings are functional equivalents of Letters of Marque. Since statutory law does not and cannot supersede the Constitution, the current system still fails to meet constitutional requirements. Congress and the Executive spent more than a decade from the 1980s into the 1990s fighting each other to regularize the format and content of presidential findings, which became a staple of congressional oversight debates. The wounds had barely healed when, after 9/11, the Bush administration further exploited the presidential finding system regarding non-covert operations matters (National Security Agency telephone monitoring) as covered by the system, by manipulating questions of what legislators (“Big Eight,” “Big Four,” the intelligence oversight committees, no one?) had to be informed on particular issues, and by continuing to dispute the issue left outstanding in the 1990s – what constituted “current” notification. The proper constitutional solution under Article I, Section 8, is to craft a mechanism for congressional approval of presidential findings. That would locate responsibility squarely and settle the matter of definitions. Congress would be entitled to whatever information is required to reach its decisions, and its affirmative action would give covert operations a degree of **political cover** they presently lack. **The legitimate vehicle for the expression of this formula is a CIA charter**, or more precisely a charter covering the intelligence community as a whole. **Charter legislation is the place to reframe all the questions of regulation and responsibility for various aspects of intelligence agency roles and missions that have been raised here and in other recent assessments of covert operations**. Congress and the Executive failed to reach agreement on intelligence charter legislation during the Carter administration. It is long overdue, and its necessity has only been confirmed by recent excesses.

# 2AC v. Michigan HK

## a/t: circumvention

#### 2. Obama will follow through- aligns himself with Congress

**Bellinger ’13** (John B. Bellinger III, Adjunct Senior Fellow for International and National Security Law, “Seeking Daylight on U.S. Drone Policy”, <http://www.cfr.org/drones/seeking-daylight-us-drone-policy/p30348>, March 29, 2013)

The president also has additional constitutional authority anytime to use force to protect the Unites States, either in self-defense or because he believes that it's in our national security interest. So if President Obama concludes that it's necessary to carry out a drone strike against a terror suspect, but that individual does not fall into the categories covered by the AUMF, he would have additional constitutional authority. But this administration has taken great pains to emphasize that it has been relying on congressional grant of authority rather than the president's own constitutional authority to conduct most of its counterterrorism operations. It has wanted to do that to contrast itself with the Bush administration, which had, at least early in its tenure, relied heavily on the president's constitutional authority. It's not clear though, at this point, given how old and somewhat limited the AUMF is, if the Obama administration has now been forced to rely on constitutional powers for certain drone strikes. It appears to many observers that the administration may be stretching the limits of the AUMF by targeting people who were not responsible for 9/11 or who were not affiliated or associated co-belligerents with those who carried out 9/11. In theory, could the president always claim constitutional authority with regard to these strikes? Although, as you pointed out, the administration is obviously loath to do that. This administration is already finding that 95 percent of its counterterrorism policies, and the legal basis therefore, are the same as the Bush administration's. Absolutely. I think the issue is, in this administration, political. This administration is already finding that 95 percent of its counterterrorism policies, and the legal basis therefore, are the same as the Bush administration's. It came into office with both domestic and international supporters expecting that it would change all of those policies. So one area where it really has been loath to act like the Bush administration is to rely heavily on the president's constitutional authority. We simply don't know whether they are doing it, but politically I'm sure that administration officials would be very reluctant to have to acknowledge that they are acting outside of the grant given to them by Congress.

#### Framing issue – perception is key – military control would assuage public fears.

**Khan 13** – (3/20, citing Jeh Johnson, JD, former General Counsel for the Defense Department, Taimur, “CIA should not control drone strikes, says former Pentagon legal chief,” http://www.thenational.ae/news/world/americas/cia-should-not-control-drone-strikes-says-former-pentagon-legal-chief)

The remarks from Jeh Johnson come five weeks after John Brennan, who oversaw the CIA's expansion of the targeted killing, was forced to defend the drone programme during his confirmation hearings to become CIA director.

With the legal process around targeted killings, especially of Americans, "shrouded in secrecy ... **many in the public fill the void by envisioning the worst**", Mr Johnson said in a speech at a national security conference at New York's Fordham University on Monday.

He said the public saw "dark images" of officials "in the basement of the White House acting … as prosecutor, judge, jury and executioner".

Instead, **he proposed that the military should take control of all drone and targeted-killing operations**, rather than the CIA, because this would make the process more transparent and address legal concerns.

As the Department of Defence general counsel until the end of last year, Mr Johnson signed off on every targeted killing by the military throughout president Barack Obama's first term. As a supporter of the use of drone strikes under the framework of Congress-approved war powers, his speech offered a rare window into the thinking among those in the administration's inner circles.

There is growing consensus across the political spectrum, among civil liberties groups as well as conservatives in Washington, that something must be done to **assuage fears about unchecked executive** killing power.

#### That’s key – military rules and institutional culture is transparent and trusted.

**Vogel 10** – (2010, Ryan, JD, Foreign Affairs Specialist, Office of the Secretary of Defense, U.S. Department of Defense, LLM Candidate, “DRONE WARFARE AND THE LAW OF ARMED CONFLICT,” DENV. J. INT’L L. & POL’Y VOL. 39:1, google scholar)

A number of critics also point to the lack of accountability for CIA drone strikes as reason for concern. O’Connell, for example, claims that CIA personnel are not trained in the laws of war and do not take into account the constraints imposed by that legal framework when conducting strike operations.182 The military, in contrast, is trained in the laws of war and expected to comply with them, perform all operations under a strict command structure, and are held accountable for their actions under the Uniform Code for Military Justice. In addition, the military is subject to its own internal rules and regulations as well as the guidance from its commanders that further restrain its personnel.183 Of course, this is not to say that the CIA does not require its personnel to abide by many of the same rules with equal rigor and accountability—they certainly may. But the **public does not know what rules apply and neither does the enemy**, in contrast to the **military’s requirement for transparency** in promulgating its rules and regulations.

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#### Maximizing all lives is the only way to affirm equality

Cummiskey 90 – Professor of Philosophy, Bates (David, Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, jstor,)

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. **Persons** may **have "dignity**, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), **but**, as rational beings, persons **also** have **a fundamental equality which dictates that some must** sometimes **give way for the sake of others.** The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

#### Prior questions fail and prevent productive politics

Owen 2 (David Owen, Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7)

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

#### Threats real and not constructed—rational risk assessment goes aff

**Knudsen 1**– PoliSci Professor at Sodertorn (Olav, Post-Copenhagen Security Studies, Security Dialogue 32:3)

Moreover, I have a problem with the underlying implication that it is unimportant whether states 'really' face dangers from other states or groups. In the Copenhagen school, threats are seen as coming mainly from the actors' own fears, or from what happens when the fears of individuals turn into paranoid political action. In my view, this emphasis on the subjective is a **misleading conception of threat**, in that it discounts an independent existence for what- ever is perceived as a threat. Granted, political life is often marked by misperceptions, mistakes, pure imaginations, ghosts, or mirages, but such phenomena **do not occur simultaneously** to large numbers of politicians, and **hardly most of the time**. During the Cold War, threats - in the sense of plausible possibilities of danger - referred to 'real' phenomena, and they **refer to 'real' phenomena** now. The objects referred to are often not the same, but that is a different matter. Threats have to be dealt with both ín terms of perceptions and in terms of the phenomena which are perceived to be threatening. The point of Waever’s concept of security is not the potential existence of danger somewhere but the use of the word itself by political elites. In his 1997 PhD dissertation, he writes, ’One can View “security” as that which is in language theory called a speech act: it is not interesting as a sign referring to something more real - it is the utterance itself that is the act.’24 The deliberate disregard of objective factors is even more explicitly stated in Buzan & WaeVer’s joint article of the same year.” As a consequence, the phenomenon of threat is reduced to a matter of pure domestic politics.” It seems to me that the security dilemma, as a central notion in security studies, then loses its foundation. Yet I see that Waever himself has no compunction about referring to the security dilemma in a recent article." This discounting of the objective aspect of threats shifts security studies to insignificant concerns. What has long made 'threats' and ’threat perceptions’ important phenomena in the study of IR is the implication that **urgent action may be required**. Urgency, of course, is where Waever first began his argument in favor of an alternative security conception, because a convincing sense of urgency has been the chief culprit behind the abuse of 'security' and the consequent ’politics of panic', as Waever aptly calls it.” Now, here - in the case of urgency - another baby is thrown out with the Waeverian bathwater. When real situations of urgency arise, those situations are challenges to democracy; they are actually at the core of the problematic arising with the process of making security policy in parliamentary democracy. But in Waever’s world, threats are merely more or less persuasive, and the claim of urgency is just another argument. I hold that instead of 'abolishing' threatening phenomena ’out there’ by reconceptualizing them, as Waever does, we should continue paying attention to them, because **situations with a credible claim to urgency will keep coming back** and then we need to know more about how they work in the interrelations of groups and states (such as civil wars, for instance), not least to find adequate democratic procedures for dealing with them.’

#### Legal restraints work---exception theory is self-serving and wrong

William E. Scheuerman 6, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices in order then to argue against legal or juridical solutions to them. The claim also suffers from a certain vagueness and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, legal devices have undoubtedly played a positive role in taming or at least minimizing the potential dangers of harsh political antagonisms. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, it is by no means self-evident that trying to give coherent legal form to a transitional political and social moment is always doomed to fail. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, the general trend towards extending basic protections to non-state actors is plausibly interpreted in a more positive – and by no means incoherent – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet one possible resolution of the dilemma he describes would be to figure how to reform the process whereby rules of war are adapted to novel changes in military affairs in order to minimize the danger of anachronistic or out-of-date law. Instead, Schmitt simply employs the dilemma of legal obsolescence as a battering ram against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

#### Legal reforms restrain the cycle of violence and prevent error replication

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

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

#### Engaging the state is critical to solve global challenges: Engagement refocuses energies through citizen participation in national institutions that solve for war as well as environmental and social challenges

Sassen 2009

[ColumbiaUniversity, istheauthorof TheGlobalCity (2ndedn, Princeton, 2001), Territory, Authority, Rights: From Medieval to Global Assemblages (Princeton, 2008) and A Sociology of Globalisation (Norton,2007), among others, 2009, The Potential for a Progressive State?,)

Using state power for a new global politics These post-1980s trends towards a greater interaction of national andglobal dynamics are not part of some unidirectional historical progres-sion. There have been times in the past when they may have been as strong in certain aspects as they are today (Sassen, 2008a: chapter 3). But the current positioning of national states is distinctive precisely because 270 Saskia Sassen the national state has become the most powerful complex organizational entity in the world, and because it is a resource that citizens, confined largely to the national, can aim at governing and using to develop novel political agendas. It is this mix of the national and the global that is so full of potential. The national state is one particular form of state: at the other end of this variable the state can be conceived of as a technical administrative capability that could escape the historic bounds of narrow nationalisms that have marked the state historically, or colonialism as the only form of internationalism that states have enacted. Stripping the state of the particularity of this historical legacy gives me more analytic freedom in conceptualising these processes and opens up the possibility of the denationalised state.As particular components of national states become the institutional home for the operation of some of the dynamics that are central to glob-alisation they undergo change that is difficult to register or name. In my own work I have found useful the notion of an incipient denation-alising of specific components of national states, i.e. components that function as such institutional homes. The question for research then becomes what is actually ‘national’ in some of the institutional compo-nents of states linked to the implementation and regulation of economic globalisation. The hypothesis here would be that some components of national institutions, even though formally national, are not national in the sense in which we have constructed the meaning of that term overthe last hundred years.This partial, often highly specialised or at least particularised, dena-tionalisation can also take place in domains other than that of economic globalisation, notably the more recent developments in the humanrights regime which allow national courts to sue foreign firms and dictators, or which grant undocumented immigrants certain rights. Denationalisation is, thus, multivalent: it endogenises global agendas of many different types of actors, not only corporate firms and financial markets, but also human rights and environmental objectives. Those confined to the national can use national state institutions as a bridge into global politics. This is one kind of radical politics, and only one kind, that would use the capacities of hopefully increasingly denationalized states. The existence and the strengthening of global civil society organ-isations becomes strategic in this context. In all of this lie the possibilities of moving towards new types of joint global action by denationalized states–coalitions of the willing focused not on war but on environmental and social justice projects.

#### Liberalism is inevitable

Sparer ‘84

[Ed, Prof. Law and Soc Welfare @ Pennsylvania, “Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement,” 36 Stan. L. Rev. 509, January]

The thrust of CLS critique is devoted, in turn, to the exposure of the contradictions in liberal philosophy and law. This strand of the Critical legal critique is quite powerful and makes a much-needed contribution. In my view, however, it suffers from two general problems. First, the critique lends itself to exaggeration. This observation may be appreciated by considering what happens when Critical legal theorists themselves make tentative gestures at the social direction in which we should move. Such gestures, even from the most vigorous critics of liberalism, do not escape from liberalism and, indeed, liberal rights theory. Nevertheless, those gestures have great merit, particularly because of their use of liberal rights. For example, Frug, while expounding his vision of the city as a site of localized power and participatory democracy, attacks liberal theory and its dualities as an obstacle to his vision. n19 At the same time, without [\*518] acknowledging the significance of what he is doing, Frug relies on the liberal image of law and rights to defend the potential of his vision. He writes: It should be emphasized that participatory democracy on the local level need not mean the tyranny of the majority over the minority. Cities are units within states, not the state itself; cities, like all individuals and entities within the state, could be subject to state-created legal restraints that protect individual rights. Nor does participatory democracy necessitate the frustration of national political objectives by local protectionism; participatory institutions, like others in society, could still remain subject to general regulation to achieve national goals. The liberal image of law as mediating between the need to protect the individual from communal coercion and the need to achieve communal goals could thus be retained even in the model of participatory democracy. n20

#### Discourse doesn’t shape policy making

**Walt 13** ([Stephen M. Walt](http://www.foreignpolicy.com/author/Stephen%20M.%20Walt), is the Robert and Renée Belfer professor of international relations at Harvard University. “[Empty words](http://walt.foreignpolicy.com/posts/2013/03/25/empty_words),” March 25, 2013, Foreign Policy, Realist In an Ideological Age) GANGEEZY

And therein lies the test of competing theories. There is a broad school of thought in international relations -- often labeled "social constructivism" -- which maintains that discourse can be of tremendous importance in shaping the conduct of states. In this view, how leaders talk and how intellectuals write gradually shapes how we all think, and over time these discursive activities can exert a tremendous influence on norms, identities, and perceptions of what is right and what is possible. It is this view of the world that President Obama was channeling during his trip. By telling Israelis that he loved them and by telling both Israelis and Palestinians that the latter had just as much right to a state as the former, he was hoping to mold hearts and minds and convince them -- through logic and reason -- to end their century-old conflict. And make no mistake: He was saying that peace would require a powerful and increasingly wealthy Israel to make generous concessions, because the Palestinians have hardly anything more to give up. As Churchill put it, "in victory, magnanimity." Discourse does matter in some circumstances, of course, and perhaps Obama's words will prompt some deep soul-searching within the Israeli political establishment. But there is another broad family of IR theories -- the realist family -- and it maintains that what matters most in politics is power and how it is applied. In this view, national leaders often say lots of things they don't really mean, or they say things they mean but then fail to follow through on because doing so would be politically costly. From this perspective, words sometimes inspire and may change a few minds on occasion, but they are rarely enough to overcome deep and bitter conflicts. No matter how well-written or delivered, a speech cannot divert whole societies from a well-established course of action. Policies in motion tend to remain in motion; to change the trajectory of a deeply-entrenched set of initiatives requires the application of political forces of equal momentum. For realists like me, in short, halting a colonial enterprise that has been underway for over forty years will require a lot more than wise and well-intentioned words. Instead, it would require the exercise of power. Just as raw power eventually convinced most Palestinians that Israel's creation was not going to be reversed, Israelis must come to realize that denying Palestinians a state of their own is going to have real consequences. Although Obama warned that the occupation was preventing Israel from gaining full acceptance in the world, he also made it clear that Israelis could count on the United States to insulate them as much as possible from the negative effects of their own choices. Even at the purely rhetorical level, in short, Obama's eloquent words sent a decidedly mixed message. Because power is more important than mere rhetoric, it won't take long before Obama's visit is just another memory. The settlements will keep expanding, East Jerusalem will be cut off from the rest of the West Bank, the Palestinians will remain stateless, and Israel will continue on its self-chosen path to apartheid. And in the end, Obama will have proven to be no better a friend to Israel or the Palestinians than any of his predecessors. All of them claimed to oppose the occupation, but none of them ever did a damn thing to end it. And one of Obama's successors will eventually have to confront the cold fact that two states are no longer a realistic possibility. What will he or she say then?

#### The Alt’s prioritization of politics over law encourages violence

David **COLE** Law @ Georgetown ’**12** “The Politics of the Rule of Law: The Role of Civil Society in the Surprising Resilience of Human Rights in the Decade after 9/11” http://www.law.uchicago.edu/files/files/Cole%201.12.12.pdf p. 44-49

If political pressure from civil society, rather than the force of law itself or the separation of powers, is to be credited for the partial restoration of the rule of law in the decade afterSeptember 11, then it is essential that we understand how that politics works. In my view, it is a particular politics – a politics of the rule of law – that is required. And civil society has a peculiar role to play in facilitating and propagating that politics. Thus, a robust civil society devoted to the rule of law may be as important as the more formal elements of the rule of law in checking executive abuse. At the same time, as the Guantanamo cases illustrate, there is a complex interrelationship between this type of politics and more formal legal constraints. Legal disputes form the focal point for political organizing and advocacy for claims founded on rule-of-law values, and that organizing and advocacy in turn can affect the outcomes of legal disputes.

Politics, however, is not sufficient on its own. In The Executive Unbound, Eric Posner and Adrian Vermeule maintain that a robust political process is sufficient to deter executive abuse in times of crisis. They argue that in the modern era, the rule of law cannot effectively constrain the executive, especially in emergencies, but that the executive is sufficiently limited by political checks. 82

82 Eric Posner and Adrian Vermeule, The Executive Unbound: After the Madisonian Republic (2010). At first glance the past decade seems to vindicate Posner and Vermeule’s views, as political forces were more effective at checking the president than were Congress or the judiciary. But Posner and Vermeule’s valorization of politics over law overstates the power of politics, understates the force of law, and misses the complicated and essential interplay between the two. Posner and Vermeule may be right that the law alone is not enough, but they fail to see that politics alone is at least as wanting. In the end, the rule of law and politics must work in tandem. When they do, as they arguably did to an important extent in the wake of September 11, they can mount a significant defense of basic human rights and the rule of law against executive overreaching. To Posner and Vermeule, the rule of law and the separation of powers are, for all practical purposes, defunct. In their view, the modern executive cannot possibly be constrained by the legislative and judicial branches, or even by law itself. Like many commentators before them, they attribute this development largely to the growth of the administrative state and to the near constant state of emergency in which modern American government now seems to operate. 83 As a practical matter, the vast and complex matters subject to federal regulation require Congress to cede control to the executive, through broad delegations of authority to administrative agencies. Members of Congress lack the time and experience to micromanage such diverse matters as energy, commerce, transportation, telecommunications, the environment, and immigration. And the executive vastly outnumbers the other branches; about 98 percent of the federal government’s nearly two million employees work in the executive branch. Globalization exacerbates these trends, as the president is the nation’s primary voice abroad, and increasingly addressing our own social problems requires coordination across borders. In emergencies, the executive’s characteristics of speed, flexibility, unified command, and secrecy are especially valued, so Congress tends to delegate even more broadly, and courts in turn typically defer to executive action. Under these conditions, Posner and Vermeule maintain, it’s just not feasible for the other two branches to keep effective tabs on what the executive is up to. But where other commentators view these developments as profound challenges to our constitutional order, Posner and Vermeule insist that they are of little concern because political constraints on the executive render the rule of law unnecessary. That view, however, both underestimates the constraining force of law and overestimates the extent of political limits onexecutive overreaching. Dismissing the role of law, Posner and Vermeule sweepingly claim, sounding almost like critical legal studies scholars, that law is so indeterminate and manipulable as to constitute only a “façade of legality.” 85 But in assessing law’s effect, they look almost exclusively to formal indicia – statutes and court decisions. That approach disregards the possibility that law has a disciplining function long before cases get to court, and even when no case is ever filed, a reality to which anyone who has worked in the executive branch will attest. Executive officials generally cannot know in advance whether court review will be strict or deferential, and that uncertainty itself has a deterrent effect on the choices they make. There are plenty of reasons why executive lawyers generally take legal limits seriously: they take an oath and are acculturated to do so, they know that claims of illegality can undermine their programmatic objectives, and they cannot predict when they will end up in court. Similarly, in focusing on statutes and their enforcement by courts, Posner and Vermeule disregard the considerable checking function that Congress plays through means short of formal statutes, such as by holding oversight hearings, requesting information about or investigations of doubtful executive practices, or restricting federal expenditures. President Obama, who has had to fight tooth and nail with an obstructionist Congress on his every initiative, from economic reform to health care to closing Guantanamo, would certainly be surprised to learn that his power is “unbound.” At the same time, Posner and Vermeule have an unrealistically romantic view of the constraining force of politics. The “politics” they identify consists solely of the fact that presidents must worry about election returns, and must cultivate credibility and trust among the electorate. There are several reasons to doubt that these political realities are sufficient to guard against executive overreaching. First, and most fundamentally, while the democratic process is well designed to protect the majority’s rights and interests, it is terrible at protecting the rights of minorities, and even worse at protecting the rights of foreign nationals, who have no say in the political process. In times of crisis, the executive nearly always selectively sacrifices the rights of foreign nationals, often defending its actions by claiming that “they” don’t deserve the same rights that “we” do. To say the rule of law is superfluous because we have elections is to relegate foreign nationals, and minorities generally, to largely unchecked abuse

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. The political process did nothing to protect the foreign nationals rounded up during the Palmer Raids of 1919, the Japanese nationals and Japanese Americans interned during World War II, or the Arab and Muslim immigrants detained and abused after September 11Second, the ability of the political process to police the executive is hampered by secrecy. Much of what the executive does, especially in times of crisis, is secret, and even when some aspects of executive action are public, its justifications often rest on grounds that are assertedly secret. Courts and Congress have at least some ability to pierce that veil and to insist on accountability. Absent legal rights, such as those created by the Freedom of Information Act, the public has virtually no ability to do so. Third, the political process is a blunt-edged sword. Presidential elections occur only once every four years, and necessarily encompass a broad range of issues. They are therefore unlikelyto be effective at addressing specific abuses of power. Voters’ concerns about abstract institutional issues such as executive power may clash with their interests on the substantive merits of particular issues, such as whether to use military force in support of Libyan rebels. There is no guarantee that citizens will separate these issues in their minds, and no reason to believe that if they do so, they will favor abstract institutional concerns over specific policy preferences. Fourth, the political process is notoriously focused on the short term, while structural issues of separation of powers generally serve long-term values. It was precisely because ordinary politics tend to be short-sighted that the framers adopted a constitutional democracy. A constitution identifies those values that society understands as important to preserve for the long term, but knows it will be tempted to sacrifice in the short term. If ordinary politics were sufficient to protect such concerns, we would not need a constitution in the first place.

## facts

#### Even if our facts are false- Scenario planning is good. In a catastrophe-ridden world it’s vital to make predictions about the future.

Kurasawa, 2004

[Fuyuki, Professor of Sociology at York University, “Cautionary Tales: The Global Culture of Prevention

and the Work of Foresight.” 2004, Constellations, Vol. 11, No. 4]

Independently of this room for maneuver and the chances of success. Humanitarian, environmental, and techno-scientific activists have convincingly shown that we cannot afford not to engage in preventive labor. contractualist justification, global civil society actors are putting forth a number of arguments countering temporal myopia on rational grounds. They make the case that no generation, and no part of the world, is immune from catastrophe. Complacency and parochialism are deeply flawed in that even if we earn a temporary reprieve, our children and grandchildren will likely not be so fortunate unless steps are taken today. Similarly, though it might be possible to minimize or contain the risks and harms of actions to faraway places over the short-term, parrying the eventual blowback or spillover effect is improbable. In fact, as I argued in the previous section, all but the smallest and most isolated of crises are rapidly becoming globalized due to the existence of transnational circuits of ideas, images, people, and commodities. Regardless of where they live, our descendants will increasingly be subjected to the impact of environmental degradation, the spread of epidemics, gross North-South socioeconomic inequalities, refugee flows, civil wars, and genocides. What may have previously appeared to be temporally and spatially remote risks are ‘coming home to roost’ in ever faster cycles. In a word, then, procrastination makes little sense for three principal reasons: it exponentially raises the costs of eventual future action; it reduces preventive options; and it erodes their effectiveness. With the foreclosing of long-range alternatives, later generations may be left with a single course of action, namely, that of merely reacting to large-scale emergencies as they arise. We need only think of how it gradually becomes more difficult to control climate change, let alone reverse it, or to halt mass atrocities once they are underway. Preventive foresight is grounded in the opposite logic, whereby the decision to work through perils today greatly enhances both the subsequent Moreover, I would contend that farsighted cosmopolitanism is not as remote or idealistic a prospect as it appears to some, for as Falk writes, “[g]lobal justice between temporal communities, however, actually seems to be increasing, as evidenced by various expressions of greater sensitivity to past injustices and future dangers.”36 Global civil society may well be helping a new generational self-conception take root, according to which we view ourselves as the provisional caretakers of our planetary commons. Out of our sense of responsibility for the well-being of those who will follow us, we come to be more concerned about the here and now.

#### Even if our facts are false, we shouldn’t risk it

Krieger 12 David, President of the Nuclear Age Peace Foundation, "Fear of Nuclear Weapons", June 19, www.wagingpeace.org/articles/db\_article.php?article\_id=371

I was recently asked during an interview whether people fear nuclear weapons too much, causing them unnecessary anxiety. The implication was that it is not necessary to live in fear of nuclear weapons.¶ My response was that fear is a healthy mechanism when one is confronted by something fearful. It gives rise to a fight or flight response, both of which are means of surviving real danger.¶ In the case of nuclear weapons, these are devices to be feared since they are capable of causing terrifying harm to all humanity, including one’s family, city and country. If one is fearful of nuclear weapons, there will be an impetus to do something about the dangers these weapons pose to humanity.¶ But, one might ask, what can be done? In reality, there is a limited amount that can be done by a single individual, but when individuals band together in groups, their power to bring about change increases. Individual power is magnified even more when groups join together in coalitions and networks to bring about change.¶ Large numbers of individuals banded together to bring about the fall of the Berlin Wall, the breakup of the Soviet Union and the end of apartheid in South Africa. The basic building block of all these important changes was the individual willing to stand up, speak out and join with others to achieve a better world. The forces of change have been set loose again by the Arab Spring and the Occupy Movement across the globe.¶ When dangers are viewed rationally, there may be good cause for fear, and fear may trigger a response to bring about change. On the other hand, complacency can never lead to change. Thus, while fear may be a motivator of change, complacency is an inhibitor of change. In a dangerous world, widespread complacency should be of great concern. ¶ If a person is complacent about the dangers of nuclear weapons, there is little possibility that he will engage in trying to alleviate the danger. Complacency is the result of a failure of hope to bring about change. It is a submission to despair.¶ After so many years of being confronted by nuclear dangers, there is a tendency to believe that nothing can be done to change the situation. This may be viewed as “concern fatigue.” We should remember, though, that any goal worth achieving is worth striving for with hope in our hearts. A good policy for facing real-world dangers is to never give up hope and never stop trying.

# 1ar v. Michigan hk

## Norms

### Effective

#### Best recent scholarship and examples prove that law can constrain the exec

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

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

### Security

#### Threat construction good

Ole Weaver, International relations theory and the politics of European integration, 2000 p. 284-285

The other main possibility is to stress' responsibility. Particularly in a field like security one has to make choices a nd deal with the challenges and risks that one confronts – and not shy away into long-range or principled trans-formations. The meta political line risks (despite the theoretical commit¬ment to the concrete other) implying that politics can be contained within large 'systemic questions. In line with he classical revolutionary tradition, after the change (now no longer the revolution but the meta-physical trans¬formation), there will be no more problems whereas in our situation (until the change) we should not deal with the 'small questions' of politics, only with the large one (cf. Rorty 1996). However, the ethical demand in post-structuralism(e.g. Derrida's 'justice') is of a kind that can never be instantiated in any concrete political order – It is an experience of the undecidable that exceeds any concrete solution and reinserts politics. Therefore, politics can never be reduced to meta-questions there is no way to erase the small, particular, banal conflicts and controversies. In contrast to the quasi-institutionalist formula of radical democracy which one finds in the 'opening' oriented version of deconstruction, we could with Derrida stress the singularity of the event. To take a position, take part, and 'produce events' (Derrida 1994: 89) means to get involved in specific struggles. Politics takes place 'in the singular event of engage¬ment' (Derrida 1996: 83). Derrida's politics is focused on the calls that demand response/responsi¬bility contained in words like justice, Europe and emancipation. Should we treat security in this manner? No, security is not that kind of call. 'Security' is not a way to open (or keep open) an ethical horizon. Security is a much more situational concept oriented to the handling of specifics.It belongs to the sphere of how to handle challenges – and avoid 'the worst' (Derrida 1991). Here enters again the possible pessimism which for the security analyst might be occupational or structural. The infinitude of responsibility (Derrida 1996: 86) or the tragic nature of politics (Morgenthau 1946, Chapter 7) means that one can never feel reassured that by some 'good deed', 'I have assumed my responsibilities ' (Derrida 1996: 86). If I conduct myself particularly well with regard to someone, I know that it is to the detriment of an other; of one nation to the detriment of my friends to the detriment of other friends or non-friends, etc. This is the infinitude that inscribes itself within responsibility; otherwise there would he no ethical problems or decisions. (ibid.; and parallel argumentation in Morgenthau 1946; Chapters 6 and 7) Because of this there will remain conflicts and risks - and the question of how to handle them. Should developments be securitized (and if so, in what terms)? Often, our reply will be to aim for de-securitization and then politics meet meta-politics; but occasionally the underlying pessimism regarding the prospects for orderliness and compatibility among human aspirations will point to scenarios sufficiently worrisome that responsibility will entail securitization in order to block the worst. As a security/securitization analyst, this means acceptingthe task of trying to manage and avoid spirals and accelerating security concerns, to try to assist in shaping the continent in a waythat creates the least insecurity and violence - even if this occasionally meansinvoking/producing `structures' or even using the dubious instrument of securitization. In the case of the current European configuration, the above analysis suggests the use of securitization at the level of European scenarios with the aim of pre-empting and avoiding numerous instances of local securitization that could lead to security dilemmas and escalations, violence and mutual vilification.

## Kritik

### CIA links

#### Our epistomolgy is good- the CIA can effectively solve conflict

**Johnson 10** – (2010, Loch, PhD, Regents Professor of Political Science at the University of Georgia, “Evaluating ‘Humint’: The Role of Foreign Agents in U.S. Security,” Comparative Strategy Volume 29, Issue 4, 2010, taylor and francis)

**Intelligence is** considered **the first line of defense in U.S. security against foreign threats**. Relying on archival research, rare survey data, and interviews with policymakers and intelligence professionals, this research explores the contribution to America's security made by humint—spies—over the years. Humint has its downsides, especially the unreliability of agents, but it has proved to be a useful tool for gathering information about world affairs. Survey data from inside the intelligence community indicates a high level of reliance on humint by Washington decision makers. The prudent policymaker will continue to seek information from all collection sources, with human intelligence having a valuable role to play. Introduction **The world is a dangerous place**, plagued by terrorist cells; failed or failing states; competition for scarce resources, such as oil, water, uranium, and food; **chemical, biological, and nuclear weapons**, not to mention bristling arsenals of conventional armaments; and deep-seated animosities between rival nations and factions. For self-protection, if for no other reason, government leaders seek information about the capabilities and—an especially elusive topic—the intentions of those overseas (or subversives at home) who can inflict harm upon the nation. **That is the core purpose of espionage**: ///

to gather information about threats, whether external or internal, and to warn leaders about perils facing the homeland. Further, the secret services hope to provide leaders with data that can help advance the national interest: the opportunity side of the security equation. Through the practice of espionage—spying or clandestine human intelligence, whichever is one's favorite term—the central task, stated baldly, is to steal secrets from adversaries to achieve a more thorough understanding of threats and opportunities in the world. National governments study information available in the public domain (Chinese newspapers, for example), but knowledge gaps are bound to arise. A favorite metaphor for intelligence is the jigsaw puzzle. Many of the pieces to the puzzle are available in the stacks of the Library of Congress or on the Internet; nevertheless, there will continue to be several missing pieces, perhaps even the most important ones. They may be hidden away in Kremlin vaults or in caves where members of al Qaeda hunker down along Pakistan's western frontier. The public pieces of the puzzle can be acquired through careful research; but often discovery of the missing secret pieces requires spying, if they can be found at all. Some things, “mysteries” in the argot of intelligence professionals, are unknowable in any definitive way, such as who is likely to replace the current leader of North Korea. Secrets, by contrast, may be uncovered with a combination of luck and skill, such as the discovery of the number of Chinese nuclear-armed submarines, which are vulnerable to satellite and sonar tracking. Espionage can be pursued with human agents or machines, respectively known inside America's secret agencies as human intelligence (“humint,” in the acronym) and technical intelligence (“techint”). Humint consists of spy rings that rely on foreign agents or “assets” in the field, recruited by intelligence professionals (known as case officers during the Cold War or, in more current jargon, operations officers). 1 Techint includes mechanical devices large and small, including satellites the size of Greyhound buses equipped with fancy cameras and listening devices that can see and hear acutely from orbits deep in space; reconnaissance aircraft, most famously the U-2; unmanned aerial vehicles (UAVs) or drones, such as the Predator—often armed with Hellfire missiles, allowing the option to kill what its handlers have just spotted through the lens of an onboard camera; enormous ground-based listening antennae, aimed at enemy territory; listening devices clamped surreptitiously on fiber-optic communications cables that carry telephone conversations; and miniature listening “bugs” concealed within sparkling cut-glass chandeliers in foreign embassies or palaces. Techint attracts the most funding in Washington, DC (machines are costly, especially heavy satellites that must be launched into space), by a ratio of some nine-to-one over humint in America's widely estimated $75 billion annual intelligence budget. Human spies, though, continue to be recruited by the United States in most every region of the globe. Some critics contend that these spies contribute little to the knowledge of Washington officials about the state of international affairs; other authorities maintain, though, that **only human agents can provide insights into that most vital of all national security questions**: the intentions of one's rivals, especially those adversaries who are well **armed and hostile**. The purpose of this essay is to examine the value of humint, based on a review of the research literature on intelligence, survey data, and the author's interviews with individuals in the espionage trade.

### Resolved

**“Resolved” is “to express; to decide by a formal vote” that’s a quote from**

**Webster’s 98 –** Revised Unabridged Dictionary,(dictionary.com)

Resolved**:**

5. To express, as an opinion or determination, by resolution and vote; to declare or decide by a formal vote; -- followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be apropriated (or, to appropriate no money).