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## Intel

**Advantage two is Hezbollah Terrorism -**

#### Nuclear terrorism is extremely likely

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(Zafar Nawaz, “Nuclear/Radiological Terrorism: Myth or Reality?”, Journal of Political Studies, Vol. 19, Issue - 1, 2012, 91:111, dml)

The misperception, miscalculation and above all ignorance of the ruling elite about security puzzles are perilous for the national security of a state. Indeed, in an age of transnational terrorism and unprecedented dissemination of dualuse nuclear technology, ignoring nuclear terrorism threat is an imprudent policy choice. The incapability of terrorist organizations to engineer fissile material does not eliminate completely the possibility of nuclear terrorism. At the same time, the absence of an example or precedent of a nuclear/ radiological terrorism does not qualify the assertion that the nuclear/radiological terrorism ought to be remained a myth. Farsighted rationality obligates that one should not miscalculate transnational terrorist groups — whose behavior suggests that they have a death wish — of acquiring nuclear, radiological, chemical and biological material producing capabilities. In addition, one could be sensible about the published information that huge amount of nuclear material is spread around the globe. According to estimate it is enough to build more than 120,000 Hiroshima-sized nuclear bombs (Fissile Material Working Group, 2010, April 1). The alarming fact is that a few storage sites of nuclear/radiological materials are inadequately secured and continue to be accumulated in unstable regions (Sambaiew, 2010, February). Attempts at stealing fissile material had already been discovered (Din & Zhiwei, 2003: 18).

#### That causes a nuclear war

**Ayson 10**

(Robert Ayson, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, 2010 (“After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, Available Online to Subscribing Institutions via InformaWorld)

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. t may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against **them**. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response.

#### Also, a war in Lebanon would go global and nuclear

The Earl of Stirling 11, hereditary Governor & Lord Lieutenant of Canada, Lord High Admiral of Nova Scotia, & B.Sc. in Pol. Sc. & History; M.A. in European Studies, “General Middle East War Nears - Syrian events more dangerous than even nuclear nightmare in Japan”, http://europebusines.blogspot.com/2011/03/general-middle-east-war-nears-syrian.html

**Any Third Lebanon War**/General Middle East War is apt to involve WMD on both side quickly as both sides know the stakes and that the Israelis are determined to end, once and for all, any Iranian opposition to a 'Greater Israel' domination of the entire Middle East. **It will be a case of 'use your WMD or lose them' to enemy strikes. Any massive WMD usage against Israel will result in the usage of Israeli thermonuclear warheads against Arab and Persian populations centers in large parts of the Middle East, with the resulting spread of radioactive fallout over large parts of the Northern Hemisphere.** However, the first use of nukes is apt to be lower yield warheads directed against Iranian underground facilities including both nuclear sites and governmental command and control and leadership bunkers, with some limited strikes also likely early-on in Syrian territory.¶ **The Iranians are well prepared to launch a global Advanced Biological Warfare terrorism based strike against not only Israel and American and allied forces in the Middle East but also against the American, Canadian, British, French, German, Italian, etc., homelands. This will utilize DNA recombination based genetically engineered 'super killer viruses' that are designed to spread themselves throughout the world using humans as vectors.** There are very few defenses against such warfare, other than total quarantine of the population until all of the different man-made viruses (and there could be dozens or even over a hundred different viruses released at the same time) have 'burned themselves out'**. This could kill a third of the world's total population.¶Such a result from an Israeli triggered war would almost certainly cause a Russian-Chinese response that would eventually finish off what is left of Israel and begin a truly global war/WWIII with multiple war theaters around the world. It is highly unlikely that a Third World War, fought with 21st Century weaponry will be anything but the Biblical Armageddon.**

#### Currently, Hezbollah attacks are increasing and will become more deadly

Carafano 13June 7th, 2013. “Hezbollah Plays a Dangerous Game” James Jay Cafano <http://www.heritage.org/research/commentary/2013/6/james-jay-carafano-hezbollah-plays-a-dangerous-game> (James Jay Carafano, a leading expert in national security and foreign policy challenges, is The Heritage Foundation’s Vice President, Foreign and Defense Policy Studies, E. W. Richardson Fellow, and Director of the Kathryn and Shelby Cullom Davis Institute for International Studies)

"The system was blinking red." That's how the 9/11 Commission Report described the intelligence community's state of concern shortly before the 2001 terrorist attacks on New York and Washington.¶ "Counterterrorism officials were receiving frequent but fragmentary reports about threats," the commission reported, adding, "Indeed, there appeared to be possible threats almost everywhere the United States had interests--including at home."¶ But not until planes plowed into the Twin Towers did everyone understand what the chatter meant.¶ In a recent speech at The National Defense University, President Obama declared that the transnational terrorism threat is well in hand. But, plenty of signs indicate that's not the case.¶ **Consider Hezbollah. This multi-tentacle stooge of Iran is a Shi'a Islamist terrorist group. It is also a political party that operates a shadow government in Lebanon.¶** For more than a year, **Hezbollah has been increasing the tempo of its attacks on Western and Israeli targets in Asia and Europe**. The Bulgarian government, for example, has connected the group to a bus bombing that killed five Israeli tourists and their driver last year.¶ Most recently, **Hezbollah deployed "foreign fighters" to assist the Assad regime in beating back the opposition in Syria. This offensive further complicated an already complex crisis. It broadened the sectarian nature of the war, pitting Shi'a (Hezbollah, Iran, and the Syrian militias supporting Assad) against Sunni (the rebels).¶** **It has also pitted terrorists groups against one another. Hezbollah is battling Assad's opposition whether they are "freedom fighters" or al Qaeda. Jabhat al-Nusra, the al Qaeda affiliate in Syria, is now pretty much at war with Hezbollah**.¶ That may not sound like a bad thing, **but it means the war will surely spread to Lebanon**. Hezbollah has to expect payback. Car bombs will explode in Beirut, as Jabhat al-Nusra pays back Hezbollah. And, as terrorists kill terrorists, the people of Lebanon will be caught in the crossfire.¶ The Lebanese recognize this--and they are none too happy about it. Already some have expressed resentment over Hezbollah dragging the country into Syria's civil war. The people are seeing the group for what it is, a tool of Tehran.¶ That awareness may bring pain. **Hezbollah's impulse will likely be to turn up the violence even more--while directing as much blame and animosity as possible toward Israel. And that could spark another military confrontation.**¶ While Hezbollah sets the red lights blinking, the West mostly just blinks. The European Union remains bitterly divided over designating the terrorist organization as... a terrorist organization.¶ France, Britain and Germany are going halfsies--pressing the EU to label Hezbollah's armed-militia wing as a terrorist organization, while letting the political arm off the hook.¶ As long as the political arm is excluded, Europe won't be able to shut down terrorist fund-raising and recruiting in its own backyard.¶ The UN is not doing much to help either. Since 1978, the United Nations Interim Force in Lebanon (UNIFIL) has been charged with making sure the Lebanese-Israeli border region is free of any non-governmental armed personnel or weaponry. Clearly it has failed, in part because of self-imposed restrictions. For example, UNIFIL peacekeepers cannot even conduct regular building searches for arms!¶ Transnational terrorism is not in hand. **The U.S. desperately needs to shore up its position in the Middle East**. That means showing real leadership in dealing with Turkey, Israel, Iraq, Jordan and the six-nation Gulf Cooperation Council.¶ It means making clear that the "pivot to Asia" does not entail disengaging from the region. It means ramping up, not standing down, our global anti-terrorism initiative.¶ **And it means developing a real strategy to prevent** Islamist **extremists from hijacking the Arab Spring.**

THE A-TEAM OF ISLAMIC TERRORISTS

#### Hezbollah is an extremely effective organization that can execute in multiple scenarios leading to nuclear terrorism

Allison 04**.** Graham, Allison. Nuclear terrorism: The Ultimate Preventable Catastrophe. 2004. 34-36. Print.

**Before 9/11, the group responsible for the single deadliest terrorist attack on Americans in history was not Al Qaeda but Hezbollah**. A violent Islamic terrorist organization, funded mainly by Syria and Iran, Hezbollah was responsible for the truck-bomb attack on the U.S. Marine barracks near the Beirut Airport on October 23. 1983, which killed 241 servicemen. Soon thereafter, President Ronald Reagan announced a “strategic redeployment” and withdrew U.S. troops from Lebanon. **To this day, the group remains active and powerful in the Middle East. Deputy Secretary of State Richard Armitage has called Hezbollah the “A-team of terrorists,” and CIA director Tenet testified in February 2003 that “as an organization with capability and worldwide presence,” Hezbollah is Al Qaedas “equal, if not a far more capable organization.”**42 Hezbollah’s activities have been concentrated in Lebanon. The Israeli army had moved into southern Lebanon in 1982 to expel the Palestine Liberation Organization from the region and continued to occupy part of the country even after that goal was achieved. When Lebanon’s Shiites realized that the Israelis intended to stay, they took up arms. Hezbollah launched a sustained guerrilla war against the Israelis, eventually forcing them to withdraw from Lebanon in May 2000. It was the first time that Arab arms had successfully ousted Israel from occupied territory anywhere in the Middle East, an(l Hezbollah attained heroic status throughout the Arab world. As Lebanon’s president, Emile Lahoud, a Christian, told 60 Minutes: “If it wasn’t for them, we couldn’t have liberated our land. And because of that, we have big esteem for the Hezbollah movement.”’ Flush with victory, the group’s leader, Sayyid Hassan Nasrallah, drew one conclusion: “This ‘Israel’ that owns nuclear weapons and the strongest air force in this region is more fragile than a spider web.” Hezbollahs rhetoric, and its military success, raise the issue of whether the group might be motivated to carry out a nuclear terrorist attack against Tel Aviv or even New York, which Islamic fundamentalists have called “the Jewish capital of the world.” Some analysts discount the possibility, observing a pattern of growing pragmatism as Hezbollah becomes further invested in day-to-day Lebanese politics.’ (I Hezbollah currently holds twelve seats in Lebanon’s parliament.) Indeed, the group has turned part of its energies to providing social services to destitute Shiites in southern Lebanon, a “bombs and schools” strategy that has served other terrorist groups well, including the Irish Republican Army. But as with AI Qaeda, it is important to examine carefully what Hezbollah says. The group’s 1985 manifesto includes a section titled “The Necessity for the Destruction of Israel,” which declares: “Our struggle will end only when this entity is obliterated. We recognize no treaty with it, no cease-fire, no peace agreements.” Hezbollab’s hatred of Israel extends to the United States: “We see in Israel the vanguard of the United States in our Islamic vorld.” Moreover, this rhetoric cannot be dismissed as out of date. As Nasrallah reiterated in 2003, “Death to America was, is, and will stay our sbgall.”47 The CIA bas concluded that Hezbollah “would likely reactto an attack against it, Syria. or Iran with attacks against U.S. and Israeli targets worldwide.”4 In 2002, Israeli security services foiled two attempts by Hezbollah to explode so-called mega-bombs, able to demolish office towers on the scale of the Vorkl Trade Center. One of these plots targeted the Azrieli Towers, to of Tel Aviv’s tallest buildings, in what could have been a sequel to the attacks of 9/11. **As Gal Luft, one of Israel’s most thoughtful counterterrorism experts, has observed, it is only a matter of time before a “mega-attack” succeeds.49 Under what conditions might Hezbollah escalate to nuclear violence? One possibility involves the Iranian connection. In the early 1980s, Iran created Hezbollah as a proxy force against Israel, and it continues to give the group some $100 million a year. Iran also pro vides training, weapons, and explosives, as well as political, diplomatic, and organizational aid.** With Iran actively building the infrastructure of a nuclear weapons program, its leaders fear that Israel could preemptively attack the facilities before they are completed, as it did in 1981 when Israeli aircraft bombed Saddam Hussein’s nuclear reactor at Osirak. Iran has thought carefully about how it could deter such an attack. The Iranian defense minister warned in December 2003: ‘We will strike Israel with all weapons at our (lisposal if the Zionist regime ventures to do so.”° If Hezbollah lab had a suitcase nuclear device and were able credibly to threaten Tel Aviv; would Israel he so quick to attack Iran’s nuclear facilities? **Another possibility is that a splinter group from within Hezbollah could make the move toward nuclear terror. As the current leader ship of Hezbollah becomes further entrenched in domestic Lebanese politics, the group’s more militant operatives may well strike out on their own. Could a plausible threat to destroy Tel Aviv compel Israel to withdraw from the West Bank and Gaza or change its behavior? Revenge against the United States for supporting Israel could also spur senseless destruction. For this purpose, Hezbollah might join forces with Al Qaeda, as it did in the 1996 attack on a U.S. military installation, the Khobar Towers, in Saudi Arabia.** Hezbollah’s security chief, Imad Mughniyah (believed to be behind the Marine barracks bombing in 1983 and the hijacking of TWA Flight 847 to Beirut in 1985), has reportedly met more than once with bin Laden and his top aides to establish their common goal of forcing the United States to withdraw from the Middle East. Ah Mohamed, a former U.S. Special Forces member who pled guilty to conspiring with bin Laden on the 1998 bombings of two American embassies in Africa, testified in October 2000, before a U.S. federal district court, that **Hezbollah has provided Al Queda with explosives training and that he provided security for meetings between Mughiuivab and bin Laden.5’ If Hezbollah perceives U.S. policy as threatening its most vital interests, then it could begin to adopt Al Qaeda’s more radical agenda. With its unrivaled technical terror expertise, Hezbollah would be well positioned to escalate to nuclear terrorism.**

#### Additionally, Hezbollah weapons transfers cause third Lebanon war – it has embedded military infrastructure throughout the country

Badran 13Tony Badran, 7th March 2013. “A Nifty Conceit: The EU, Hezbollah, and Lebanon.” <http://www.defenddemocracy.org/media-hit/a-nifty-conceit-the-eu-hezbollah-and-lebanon/> (Tony Badran is a Research Fellow at the Foundation for Defense of Democracies (FDD) in Washington, DC. He focuses on Lebanon, Syria and Hezbollah. His research includes US policy towards Lebanon and Syria; Syrian foreign policy, with a focus on its regional relations and its ties to militant non-state actors and terrorist groups)

The Hezbollah bus bombing in Bulgaria as well as their foiled operation in Cyprus have put Europe in an uncomfortable position, as pressure increases on the EU to designate Hezbollah as a terrorist organization. The plot in Cyprus is especially embarrassing, as the Hezbollah operative there was arrested and is being publicly tried, making it harder for EU officials to deny evidence laid out in the open. Still, it is painfully obvious that Europe would much prefer this whole Hezbollah inconvenience go away. In resisting calls to designate the Shiite group, the Europeans have hid behind a nifty conceit: designating Hezbollah could destabilize Lebanon. Espousing such a seemingly altruistic position is rather convenient. It affords the Europeans the semblance of judicious sagacity, enabling them to skirt the issue altogether, regardless of the evidence. Take for instance what Gilles de Kerchove, the EU’s Counterterrorism Coordinator, had to [say](http://euobserver.com/foreign/118859) about the matter. While strong evidence is a prerequisite for designating the group, Kechrove opined, there’s also a “political assessment.” The EU counterterrorism official then added, “for Hezbollah, you might ask, given the situation in Lebanon, which is a highly fragile, highly fragmented country, is listing it going to help you achieve what you want?” **The proposition that targeting Hezbollah would negatively impact Lebanon presupposes that the group currently contributes to stability. Such a view requires quite the suspension of disbelief. In reality, Hezbollah has thoroughly subverted the country and its citizens in virtually every aspect. Left unmolested, Hezbollah not only undermines Lebanon's security, institutions, and political system, but is also set track to compromise its foreign relations, ruin its financial system, and destroy whatever remains of its social cohesion. The most obvious threat has been and continues to be Hezbollah’s illegal arsenal.** As I have [written](https://now.mmedia.me/lb/en/commentaryanalysis/israels_free_hand) in recent weeks, **Hezbollah’s effort to transport into Lebanon the strategic weapons it had stored in Syria is placing the country in tremendous danger. What makes the peril inescapable is the fact that Hezbollah has turned entire population centers into military sites. It has embedded its military infrastructure inside towns and villages all throughout the country**. **The Israelis have already struck one such convoy in Syria. However, eventually Hezbollah may succeed in bringing another convoy across the border. This will surely prompt another Israeli strike, which in turn is sure to result in significant collateral damage**. In his February 16 address, Hezbollah’s Secretary **General Hassan Nasrallah** [declared](http://www.ynetnews.com/articles/0%2C7340%2CL-4345592%2C00.html) **that any such Israeli strike inside Lebanon would be met with retaliation against Israel’s infrastructure. Nasrallah’s threats, whether or not they’re to be taken seriously, are unlikely to alter Israel’s calculations regarding the smuggling of strategic weapons. Given that Hezbollah will surely attempt to bring in more of these weapons systems stored in Syria, an Israeli strike in Lebanon is, in all likelihood, a matter of time.** **Hezbollah’s involvement in Syria has had other deleterious effects on Lebanon and its fragile social fabric. By joining the war on the side of the Assad regime, Hezbollah is also acting as the regime’s flank in Lebanon. As such, it has taken action against Lebanese Sunnis who are assisting the Syrian opposition**. Whenever the Shiite group could not do so itself, it has relied on its allies in the military and security apparatuses to perform a task on its behalf, as we witnessed in the Arsal [incident](https://now.mmedia.me/lb/en/commentaryanalysis/hollow-praise-for-the-laf) several weeks ago. The damage has been, therefore, double. On the one hand, Hezbollah further exacerbated Sunni-Shiite tensions. Already it had brought those communal relations to the brink in May 2008, when it assaulted Sunni neighborhoods of Beirut (and the Druze Shouf Mountains), killing dozens. On the other hand, it pitted the Lebanese Armed Forces (LAF) against the Sunni community, which has come to view the Party of God’s relationship with the LAF with great suspicion. In addition, not only does Hezbollah provide cover to a host of criminal activities in its areas of influence – keeping them beyond the reach of the law – but also, the Party of God stands accused in the murder of former Prime Minister Rafiq Hariri. Four of its commanders and operatives have been named as suspects, but, naturally, the LAF would never consider moving in to apprehend them. Perhaps the EU would also prefer to abort justice and gloss over political assassination in order to avoid action that would ‘destabilize’ the country. It’s bad enough that [suspicions](http://www.realclearworld.com/articles/2012/10/25/irans_bloody_power_play_100309.html) over Hezbollah’s role in other political murders and assassination [attempts](http://www.dailystar.com.lb/News/Local-News/2013/Mar-06/209068-judge-requests-life-in-prison-for-suspect-in-harb-case.ashx) have eaten at the core of communal coexistence and the political system altogether. But the Party of God’s penetration of state institutions has also implicated the Lebanese state in Hezbollah’s activities, both in Lebanon and abroad. Take for instance Hezbollah’s control over General Security. That apparatus is responsible for ports of entry as well as for the issue of travel documents. In recent years, as Hezbollah cells have been uncovered abroad, it came to light that many of its operatives held false identification papers that were nevertheless issued by the government. The case of Sami Shehab, who was [arrested](http://www.nytimes.com/2009/04/14/world/middleeast/14egypt.html) in Egypt in 2009, is but one example. Shehab was in Egypt on an officially issued false passport. Such activities abroad have not only damaged Lebanon’s diplomatic relations, but have also hurt Lebanese expatriates, especially those working in the Gulf Arab states. Most recently, the uncovering of Hezbollah cells in the United Arab Emirates have led to the [deportation of Lebanese resident workers](http://www.naharnet.com/stories/en/42441of) in that country. This is hardly the worst economic calamity Hezbollah has brought on Lebanon. **The Party of God’s vast,** [global](http://www.defenddemocracy.org/media-hit/hezbollah-acts-local-thinks-global/)**, criminal,** [enterprise](https://now.mmedia.me/lb/en/reportsfeatures/eyes_on_hezbollah) **has infected the backbone of the Lebanese economy: the banking sector.** [The case of the Lebanese Canadian Bank](http://www.nytimes.com/2011/12/14/world/middleeast/beirut-bank-seen-as-a-hub-of-hezbollahs-financing.html?pagewanted=all) **is one ominous example. And while it may have been papered over, the potential damage to Lebanese banks, as a result of Hezbollah (and Iranian) money-laundering operations is simply devastating.** The group’s terrorist activities in Bulgaria and Cyprus (with whom Lebanon has critical energy interests) are bad enough. But its involvement in the drug trade and laundering of the proceeds through the banking sector and exchange houses is earning Lebanon the unenviable title of a “veritable money laundering machine,” [as illicit finance expert David Asher put it](http://ricks.foreignpolicy.com/posts/2012/01/17/time_to_get_serious_about_sanctions_on_iran_especially_through_lebanese_banks). Asher also notes that Hezbollah’s money laundering has infiltrated the real estate sector just as much as it has the banking sector. Designating Hezbollah, and purging it from the Lebanese financial system, may be the only way to salvage the critical banking sector down the road. The above is but a quick sample of how Hezbollah has corroded Lebanon’s security, economy, society, politics and state institutions. There is much more, including the [mutilation of the political system by force of arms](https://now.mmedia.me/lb/en/commentaryanalysis/the_tyranny_of_the_black_shirts). The bottom line is that the EU rationale for not designating Hezbollah is not only absurd; it is detrimental to Lebanon’s long-term prospects. Lebanon may not in the end survive the metastasis of Hezbollah. But Europe’s refusal to take action against the Party of God will only help ensure Lebanon’s demise.

#### CIA Focus on targeted killing trades off with combating Hezbollah – the CIA needs to shift its foucs

Max **Fisher**, Nov 21, **11**, CIA Outsmarted by Hezbollah: Is This the Cost of Counterterrorism?

<http://www.theatlantic.com/international/archive/2011/11/cia-outsmarted-by-hezbollah-is-this-the-cost-of-counterterrorism/248830/>

Since 2001, the U.S. spy agency has been retooled to fight terror, but what has it lost?

The Lebanese militant group **Hezbollah has unraveled much of the CIA's mission in Lebanon, capturing up to a dozen U.S. spies in the country and effectively shutting down the agency's crucial operations there. "Beirut station is out of business," a source told the Los Angeles Times today. The incident is a major blow to the CIA and to U.S. intelligence. The agency's posting in Lebanon has for decades been one of its most aggressive, most highly valued, and, for its staff, most prestigious.** Though the CIA base there aggressively tracks Hezbollah, it is also a headquarters for monitoring and often countering Syria and Iran**.**¶**How was the CIA outmaneuvered by one of its oldest foes** in one of its proudest outposts? **CIA sources**that spoke to the Associated Press, which broke the story along with the L.A. Times, seem not to fear a strengthening Hezbollah or even to blame the agency's White House overseers, as spy officials often do, but rather **cite a changing culture in the CIA itself. The old CIA mission of counterintelligence, of spy-versus-spy, has taken a back seat to** the new emphasis on **killing terrorists**, they seem to worry, and the agency has suffered as a result.¶ **The Lebanon crisis is the latest mishap involving CIA counterintelligence, the undermining or manipulating of the enemy's ability to gather information**. Former CIA officials have said **that once-essential skill has been eroded as the agency shifted from outmaneuvering rival spy**agencies **to fighting terrorists. In the rush for immediate results,** former officers say, **tradecraft has suffered**.¶ The most recent high-profile example was the suicide bomber who posed as an informant and killed seven CIA employees and wounded six others in Khost, Afghanistan in December 2009.¶ The Khost incident, which was devastating to the CIA, neatly encapsulates how the world's premier spy agency managed to lose so much of its spy skills. Since September 2001, **the agency's mission has been less and less about subterfuge and intelligence-gathering but more and more about killing terrorists. In its growing emphasis on finding targets over finding information, it over-exposed itself** to the double-agent at Khost. This year, **as it was ramping up drone strikes** **in Pakistan, paramilitary operations in Somalia, and targeted killings in Yemen**, **it seems to have lost**some of **its once-prized focus on outwitting** such hostile agencies as **Hezbollah's "spy**combat **unit**."¶ The CIA first began to take a more aggressive posture during the Cold War, when presidents from Kennedy to Reagan used it to arm and train anti-Soviet opposition groups. But even then it remained mostly in the shadows, attempting to manipulate world events in the U.S.'s favor. And its primary tools -- back channels, foreign assets, secret bank accounts, and misinformation -- remained the same, even as the mission evolved. It was not until September 2001, when the U.S. quickly and dramatically changed its national security focus to terrorism, that the CIA began its slow transformation from a spy agency into something that at times more closely resembles a paramilitary organization.¶ How much has the CIA changed since 2001? In the late 1990s, senior officials in the Clinton administration debated endlessly over whether the CIA could legally be granted the authority to kill Osama bin Laden; the agency had been banned from assassinations since 1976, following revelations that it had tried to kill Fidel Castro a decade earlier. Even the idea of a direct presidential order to kill the world's most dangerous terrorist, a man who had already blown up two U.S. embassies, was considered controversial and outside the CIA's normal realm. Yet in the first 20 months of the Obama administration, the CIA's drone program in Pakistan alone killed over 800 people. It runs or helps run drone programs and special operations in several countries and even operates detention centers. Under Obama, the CIA and Pentagon have borrowed one another's methods in Afghanistan and Iraq (not to mention one another's leadership) so regularly that the line between U.S. intelligence and the U.S. military has blurred in unprecedented ways.¶ The change has also been political. In the days immediately after September 11, 2001, the Bush administration decided to put the agency on a much tighter leash, using something it called Top Secret Codeword/Threat Matrix. Intelligence reports were fed directly to the White House, which announced it would begin more directly controlling CIA activities. "The mistake was not to have proper analysis of the intelligence before giving it to the president," National Security Council member Roger Cressey told New Yorker reporter Jane Mayer for her Pulitzer-winning book on U.S. national security policy after September 2001, The Dark Side. "There was no filter. Most of it was garbage. None of it had been corroborated or screened. But it went directly to the president and his advisers, who are not intelligence experts. That's when mistakes got made."¶ That's also when the White House began pushing the CIA in a way that encouraged it to put less emphasis on its long-term information-collection and counterintelligence efforts, slow-boil missions that might takes years or more to yield results and that might be more about detecting future threats than combating existing ones. The White House's new urgency about terrorism and al-Qaeda placed far greater pressure on the CIA to deliver immediate results on known threats. First that meant tracking terrorists, then capturing and "interrogating" them, and within a few years it meant killing them outright. That urgency and pressure has been sustained for over a decade now. Judging by Hezbollah's recent victory over the CIA in Lebanon, which appears to have grown somewhat sloppy in its spycraft, some of the patience from the old days was lost.¶ While some in the CIA have zealously embraced the new mission, some have not, speaking out (though always anonymously) to the press. Ultimately, the CIA is guided by the White House and its prevailing assessment of what threatens the nation and how to fight back. In the 1980s, the CIA was so consumed by the Reagan administration's anti-Soviet fervor that in funneled millions of dollars to mujaheddin fighting the Soviet Union in Afghanistan without sufficiently considering whether its actions would increase other threats. The agency was so focused on bleeding the Soviets that, while the mission succeeded, it helped fuel a generation of militants who are still fighting against the U.S. around the world. **A similar sense of myopia appears to have returned to CIA policy since September 2001, with the agency and its White House overseers so obsessed with fighting terrorism that other skills go underdeveloped and other threats under-addressed**.¶As in the Cold War, unity of purpose has made the CIA incredibly effective at its central task: al-Qaeda's "central" organization in Afghanistan and Pakistan has been decimated, its Yemen-based branch severely curtailed, and its efforts at expansion left struggling. But as Andrew Exum wrote in response to the story, "It's great to have an intelligence agency with a knife in its teeth, but **the primary mission of an intelligence organization is to gather and analyze intelligence, not to thwack bad guys."**¶ It's not clear if the CIA's "primary mission" has changed as a result of deliberate, top-down decision-making, or if it was simply a slow but inexorable process of mission creep. As the CIA has gotten better at killing, it appears to have simultaneously become worse at spying. Maybe that's the path that the CIA had to take, with instability-fueled insurgencies increasingly able, willing, and interested in attacking U.S. assets and even civilians. **But this changing focus will necessarily leave it, and the U.S., more vulnerable to the non-terrorism threats that the CIA traditionally battles: rogue states, rising powers, and violent but shrewd organizations such as Hezbollah.**¶**Maybe the CIA can continue to handle both its old missions as well as its new, more aggressive tasks. But the agency's embarrassment in Lebanon suggests that it has emphasized paramilitary-style counterterrorism at the expense of spycraft. And while al-Qaeda has certainly posed a significant threat to the U.S., the terrorist group's power is eroding. Meanwhile, the U.S. still has to live in a world with dangerous rogue states such as Iran and North Korea, semi-hostile foreign intelligence services such as Russia's and China's, and anti-American groups from Hezbollah to the Pakistani Inter-Services Intelligence to Mexican drug cartels. At some point, the CIA -- and the White House -- will have to decide whether al-Qaeda and related groups really outweigh all of those threats**

#### Hezbollah is vulnerable to spying, but the CIA to focus more on espionage operations in order to disrupt the organization

**Smith 11.** Lee Smith “Fallible” <http://www.tabletmag.com/jewish-news-and-politics/84358/fallible> (Lee Smith is an American journalist, and senior editor for The Weekly Standard. He is the author of The Strong Horse: Power, Politics, and the Clash of Arab Civilizations (2003). Smith has written for Slate, the New York Times, the Boston Globe, and a variety of Arab media outlets. He is also a fellow of the Hudson Institute and Foundation for Defense of Democracies.)

Nonetheless, Hezbollah officials are putting up a good front. “The resistance blinded American intelligence eyes,” one Hezbollah member of Lebanese parliament [said](http://www.nowlebanon.com/NewsArticleDetails.aspx?ID=335221) last week. Perhaps he’s right—even as there are plenty of good reasons for the American intelligence community to encourage Hezbollah to think it bested the CIA. But **contrary to its reputation, Hezbollah may be more vulnerable to hostile clandestine services than any organization in the history of espionage. Hassan Nasrallah certainly thinks so.** Unique among world leaders, Nasrallah lives in hiding. **He has spent the last five years since the end of the party’s 2006 war with Israel bunkered underground because he fears his organization is so porous** that the Israelis have a good shot at assassinating him. Other recent intelligence triumphs against Hezbollah include Israel [destroying](http://www.ynetnews.com/articles/0%2C7340%2CL-3284302%2C00.html) most of the party’s long- and medium-range missiles within the first few hours of the 2006 war. Perhaps most spectacularly, Hezbollah’s legendary commander, Imad Mugniyeh, was [assassinated](http://blogs.law.harvard.edu/mesh/2008/02/imad_mughniyah_is_dead/) in February 2008 in the middle of Damascus. Then there was an Israeli spy ring that penetrated Hezbollah. And even though more than 100 people have been detained by Hezbollah and[arrested](http://www.tabletmag.com/jewish-news-and-politics/84358/%20http%3A/www.nowlebanon.com/NewsArticleDetails.aspx?ID=335221) by Lebanese security forces for espionage since April 2009, things keep blowing up—literally—in Hezbollah strongholds. Maybe the [blast](http://www.newenglishreview.org/blog_display.cfm/blog_id/39212) last week at a Hezbollah arms depot in Tyre was just an accident. Or perhaps it was a timely reminder that there are plenty of hostile assets still operating successfully in some of Hezbollah’s most sensitive areas. It is best, then, to treat Hezbollah’s Spartan reputation with a grain of salt. Unfortunately, many Western experts legitimize the party’s propaganda. For instance, Hezbollah leadership denied for many years that Mughniyeh had any official relationship to the organization. It was bad enough that [researchers](http://beirut2bayside.blogspot.com/2008/02/paging-norton-and-other-hezbollah.html) and journalists swallowed the party’s line. But even after Hezbollah buried Mughniyeh with full honors—not merely as a Hezbollah martyr, but as a pillar of the party’s revered leadership—regional experts never stopped to wonder: If Hezbollah lied about that, maybe they were lying about other things as well. Obviously Hezbollah, like all security and intelligence institutions, dissimulates. What’s different about Hezbollah is that its fictions are the foundation of a self-image that touches not only on earthly matters, but on heavenly ones as well. The CIA is the intelligence service of a regular state; it is designed and ruled by human beings and therefore imperfect in its very nature. Hezbollah, however, is not a regular political organization, but the party of God. **The arms of the resistance are sacred, entrusted with the duty of liberating Jerusalem, and its victories, like the 2006 war, are divine. But as it turns out, Hezbollah is not divine. It’s in fact quite flawed. And so the CIA story comes as another blow in a series of shocks to the Islamic resistance’s prestige**. Only credulous Western media sources believe that Hezbollah won a “divine victory” over Israel in 2006. The Shiite community in southern Lebanon knows better, which is why tens of thousands of them tried to flee when a rocket was fired from their area during the middle of Cast Lead in 2008-09. Even Hezbollah knows it is deterred, which is why the border with Israel has been relatively quiet since then. On the domestic front, Hezbollah isn’t faring much better. In 2009, a financier close to the party and nicknamed the [Lebanese Madoff](http://www.reuters.com/article/2009/09/22/us-lebanon-businessman-idUSTRE58L00Q20090922) was found to have stolen more than half a billion dollars from the Shiite community. Hezbollah’s May 2008 [attack](http://news.bbc.co.uk/2/hi/7391600.stm) on Sunni neighborhoods in Beirut and on Druze regions in the mountains sullied the resistance—through the use of weapons that, according to Hezbollah mythology, are only to be used against the Zionist invaders, not fellow Lebanese. Even more significantly, Hezbollah has been named in the assassination of former Lebanese Prime Minister Rafik Hariri. In August, the Special Tribunal for Lebanon [indicted](http://www.dailystar.com.lb/News/Politics/2011/Aug-17/Hariri-assassination-result-of-suicide-attack.ashx#axzz1f4LUn14I) four Hezbollah operatives, including two of Mughniyeh’s brothers-in-law, for their role in the killing. In other words, the party of God stands accused of murdering one of the Middle East’s major Sunni leaders, which puts Hezbollah in a dangerous position with its Sunni neighbors inside Lebanon and around the region. It certainly doesn’t help the party’s reputation that its Syrian patron, President Bashar al-Assad, has been slaughtering members of the Sunni-majority uprising in neighboring Syria. Without Assad, Hezbollah will lose its supply lines. Even with Assad fighting to survive, circumstances are trying for Hezbollah. In the eyes of the regional Sunni majority, the regime in Damascus and Hezbollah are no longer Arabs at war with Israel—they are minorities, killing fellow Arabs on behalf of the Iranians. **It’s true the CIA has made plenty of mistakes in Beirut over the last several decades, and the U.S. intelligence community may have blundered badly in this instance, too. And yet no one knows exactly the parameters of the game now under way in Lebanon, where a number of regional and internatio0nal actors**—including, among others, Syria, Iran, Saudi Arabia, France, Israel, and the United States—**all have a stake in the outcome. All we know for certain is that the timing is bad for Hezbollah,** divine no more

#### Creating effective Intelligence gathering is key to stop weapons transfers

**Riedel 12** Bruce Riedel. December 12th, 2012. “Syria and Chemical Weapons: What Can the U.S. do now? “<http://www.brookings.edu/research/opinions/2012/12/12-syria-chemical-weapons-us-riedel> (Bruce Riedel is senior fellow and director of the [Brookings Intelligence Project](http://www.brookings.edu/about/projects/intelligence), part of Brookings’ new [Center for 21st Century Security and Intelligence](http://www.brookings.edu/about/centers/security-and-intelligence). Riedel also serves as a senior fellow in the [Saban Center for Middle East Policy](http://www.brookings.edu/about/centers/saban). Riedel joined Brookings following a 30-year career at the Central Intelligence Agency, a tenure which included multiple overseas postings. He served as a senior advisor to the last four U.S. presidents on South Asia and the Middle East, working as a senior member of the National Security Council)

**Syria has the Arab world’s most lethal arsenal of weapons of mass destruction, hundreds of chemical warheads, dozens of Scud missiles and bombs which can deliver them anywhere in the Levant. Stopping them from falling into terrorist hands should be our top intelligence priority.** Syrian scientists developed an effective chemical weapons program using primarily the nerve agent sarin, a substance 500 times more toxic than cyanide, in the 1980s. Syria mated the nerve agent with Scud missiles and with bombs and artillery shells. When Israel learned of the Syrian program it considered military action to destroy it but concluded the program was too disbursed to be susceptible to air attacks without an unacceptable risk that Syria would respond by firing chemicals into Tel Aviv. Securing all of the arsenal today would require a very large military intervention. As Syria collapses further into chaos over the next few months the most immediate danger is that al-Qaeda’s Syrian wing, the al-Nusra front, will take control of a military facility with a cache of chemical weapons. They could use them against Assad’s forces, or more likely spirit them into a third country to attack an American target. Jordan foiled an al-Qaeda plot to attack our Embassy in Amman this fall with mortar fire. How well al-Qaeda could maintain and use chemicals is unknown. Chemical weapons in amateur hands can be very dangerous both to the amateur and his enemy. We don’t want to take the chance**. The key to stopping al-Qaeda or Hezbollah gaining control of a cache is good real time actionable intelligence. The CIA and Mossad have had almost two years to ramp up intelligence collection on Syria but it’s a formidable challenge. U.S. and Jordanian commandoes need to be ready to secure any loose bombs**.

#### Lack of GAO access stunts congressional capabilities to promote a revolution in intelligence

Nancy C. **Roberts et. al**. , Editor, Richard J. Harknett, associate professor of political science and chair of the University Faculty at the University of Cincinnati, James A. Stever, Professor at University of Cincinnati, The Struggle to Reform Intelligence after 9/11, Public Administration Review • September | October **2011** <http://onlinelibrary.wiley.com/store/10.1111/j.1540-6210.2011.02409.x/asset/j.1540-6210.2011.02409.x.pdf?v=1&t=hmr69l0i&s=e5ff970bfdd6af39edc4a3dbaa5e3c920f9f5339>

The schism between the executive and Congress has been exacer- bated by the CIA. The CIA refuses to supply information to the Government Accountability Office (GAO) and encourages other intelligence agencies to do the same (Donald-son 2010, 21–23). This controversial refusal is supported by the Justice Department Office of Counsel’s 1988 opinion that intelligence activities are exempt from GAO reviews.10 When the Senate in 2010 attempted to settle the issue and pass legislation granting the GAO the authority to review the full array of agencies in the intelligence community, Peter Orszag, director of the Office of Management and Budget, informed Senator Dianne Fein- stein that the president would veto the bill if it included that provision.11¶ This schism has reduced the scope of legisla- tive involvement in the intelligence commu- nity. Deprived of GAO analysis to inform and support its recommendations, the congres- sional impact on the budget, policy, and structure of intelligence agencies has been reduced. The secondary effect is that GAO analysis is not available to institutions outside the Congress and to the public. The Office ￼of Management and Budget, which has full access to intelligence community budgetary information, does not share and publish this information in the same manner as the GAO.¶ There are, of course, two separable points of contention here relating to congressional involvement. First is the potentially less controversial notion that more GAO access in evaluating budgets, policies, and structures of intelligence agencies would position congressional committees to more effectively conduct their oversight roles. In the particular area of how structural reforms are influencing function, the lack of GAO analysis likely handicaps informed congressional action. Second, and more to Senator Bond’s point, is the more con- troversial and problematic contention that greater access is needed so that analysis of the analysis could take place. Here, the point is that if committee staff had more access to the raw intelligence underlying finished intelligence products (judgments produced by the intelligence agencies), the committees could make their own analytic judgments and thus judge the professional assessments of the intelligence agencies. Of course, the inherent political nature of Congress raises the concern that legislative involvement in intelli- gence analysis would politicize the analysis.¶ Where the GAO should fit regarding these points of contention was not addressed in the IRTPA. The GAO has not been silent about¶ its marginal role. Four years after IRTPA, amid mounting congres- sional discontent, it argued before the Senate for a greater role in intelligence analysis (GAO 2008). In his testimony, Comptroller General David M. Walker stressed that management oversight could improve personnel management throughout the intelligence com- munity and the laborious security clearance process. Conclusions¶ It is still an open question whether the IRTPA’s vision of transform- ing agency-based intelligence into an integrated networked intelli- gence enterprise can succeed. The intelligence community confronts an old conundrum: revolution versus evolution. Reform in the latter mode defaults to the importance of the imme- diate and thus to a less disruptive incremental approach; reform in the former mode gives priority to the consequences of future failure and thus supports dramatic overhaul. As we noted earlier, the intelligence reforms of 9/11 created an office that could be visionary, but it did not empower an officer that could be transformational. If one accepts the premises of Vision 2015—that we face a threat envi- ronment that requires an intelligence structure that is agile, flexible, and adaptive—then the conclusion one must draw ten years out from 9/11 is that we have a vision of where we need to go, but not the legislative basis on which to move beyond the half measure of intelligence reform that is the IRTPA. Ten years after 9/11, it remains unclear whether the IRTPA and the documents that the act inspired rep- resent a road to reform that is potentially only half traveled or has run its course.

#### GAO enforcement is essential to intelligence quality – makes intel more effective and efficient

**Walker, 7** (David M. Walker, Comptroller of the United States Federal Government, GAO, <http://www.fas.org/irp/gao/walker030107.pdf>)

Finally, you asked us to address the benefits or drawbacks, if any, of obtaining the assistance of GAO, whether on the initiative of the Intelligence Community or either the House of Senate intelligence committee, in examining and reporting on the financial transactions, programs, and activities of the Intelligence Community. The benefits that GAO can provide the committee, the Congress, and the Intelligence Community would be significant. First, GAO efficiently uses its resources to meet the needs of the Congress and exercises the independence and objectivity necessary to ensure that its work and products not only conform to applicable professional standards, but that its work is professional, objective, fact-based, nonpartisan, nonideological, fair, and balanced. Second, GAO has the capability to form multidisciplinary teams, including accountants, analysts, program evaluators, cost analysts, attorneys, information technology specialists, economists, methodologists, engineers, and expert consultants to provide a total picture on a given issue. These multidisciplinary teams have experience in examining many other government agencies and programs, such as strategic planning, organizational alignment, human capital management, information technology architectures and systems, knowledge management, and specific program and activity knowledge across most key government functions. In addition, GAO has long-standing and ongoing work in the national security, homeland security, and international affairs issues. Each year, GAO’s work results in major improvements and efficiencies in government operations and billions of dollars in financial benefits. Third, GAO has a broad perspective through preforming extensive domestic and overseas fieldwork across the entire spectrum of federal departments and agencies, providing an in-depth, “end-to-end” perspective on crosscutting government programs and actives, such as multiple agencies’ actives abroad and the coordination challenges they face. Fourth, GAO operates with agreed-upon rules of engagement and agency protocols, including formal entrance and exit conferences with agency officials. For example, at an exist conference, GAO provides the agency with a statement of fact to confirm that the critical facts and key information used to formulate GAO’s analyses and findings are current, correct, and complete. Agency issues and additional information can be incorporated into GAO’s analysis and observations, and agency comments on draft reports are included in GAO products so clients can see the agency’s views. Fifth, GAO provides its clients with the information they need- when they need it. GAO uses a wide variety of products to meet its clients’ information needs and time frames, including briefings, congressional testimony, reports and legal opinions. Finally, unlike individual inspectors general, GAO can reach across multiple agencies govermentwide in crosscutting reviews to examine and identify challenges and ways to improve Intelligence Community management and business processes and results (much of which would not require getting sources and methods). For example, GAO can review the following types of transactions, programs, and activities: Intelligence Community transition initiatives, metrics, and results. Collection management, processing, exploitation, and dissemination. Budget scrubs, “quick looks,” and drill-down acquisition reviews of programs in the National Intelligence Program and Military Intelligence Program. Others have suggested some concerns related to GAO examining and reporting on the financial transactions, programs, and actives of the Intelligence Community. These concerns include (1) a limited number of personnel at GAO which proper sensitive compartmented information (SCI) access; (2) public or wide availability of GAO reports; (3) the lack of GAO facilities approved to store SCI material; (4) the lack of insight into unique Intelligence Community authorities, policies, and practices; and (5) potential duplication or overlap of GAO work with that of inspectors general and other audit organizations. We believe we can effectively address these potential concerns. First, GAO already has a number of personnel with SCI access, especially within our multidisciplinary teams, and GAO would work with the Intelligence Community to expand the number of analysts with the appropriate access. GAO has already embarked on that process. Second, GAO tightly controls and limits dissemination of the results of its classified work, both written and oral, which are tailored to the needs of its client (e.g., intelligence or other committees of jurisdiction and the intelligence agencies’ leadership). I am prepared to consider further restrictions, if necessary, on the dissemination of GAO’s work results relating to the Intelligence Community. Third, while GAO’s headquarters currently does not have facilities approved to store SCI material, GAO personal can conduct their reviews in an agency approved space. GAO currently is assessing the need to store SCI material at its headquarters. In addition, GAO’s Dayton Office has access to facilities approved to process and store SCI material at Wright-Patterson Air Force Base, Ohio. Forth, regarding a need for insight intro unique Intelligence Community authorities and policies, and practices, GAO’s work overall is deeply rooted in an understanding of authorities and policies when examining programs and actives. Although we have not formally been conducting reviews in the Intelligence Community, we regularly engage in discussions with officials, many of whom have dual-hatted responsibilities. Finally, inspectors general play a valuable and important role and we recognize that the Intelligence Community already has some degree of oversight through existing organizations. However, GAO already coordinates with inspectors general and other audit organizations to avoid overlap and duplication when reviewing other agencies’ programs and actives and would continue to do so for its work in the Intelligence Community.

#### Strong CIA intelligence checks conflict – reliable data is key to leverage that mitigates flashpoints

Human Rights First 2011, “Disrupting the Supply Chain for Mass Atrocities How to Stop Third-Party Enablers of Genocide and Other Crimes Against Humanity”

<http://www.humanrightsfirst.org/wp-content/uploads/pdf/Disrupting_the_Supply_Chain-July_2011.pdf>

**Intelligence collection and analysis are key to identifying threats of mass atrocities** **and developing responses.** **Better intelligence on third-party enablers** **of atrocities** **would reveal** **additional** **policy options to prevent or mitigate violence** **against civilians.** **Mapping** **the actors and dynamics in atrocity situations** **willclarify** **the identities of the enablers, their specific roles, and the actors or** **connections in the supply chain that may be** **particularly** **susceptible to pressure. The government alone can accomplish this work; no non-governmental entity,** **whether in journalism, research, or advocacy,** **has sufficient** **money,** **people, and networks** **to draw a complete picture.¶** **In some cases, the enablers will be the very same actors that interest the United States for their role in other illicit transnational networks.** **By prioritizing** **a focus on** **enablers of atrocities in intelligence collection, and by sharing information and analysis across agencies,intelligence** **collection** **can yield high-value information on** **a broader set of** **national** **security challenges** **such as money laundering, terrorist financing, andnarcotics** **trafficking**.¶ Policy makers should ensure that the intelligence it routinely analyzes can be used to an even broader extent. For example, the CIA’s office on war crimes contributes to the twice-yearly Atrocities Watch List and supports war crimes tribunals; the information collection and analysis required for those functions, and the Watch List itself, should be expanded to include (if they do not already) not only perpetrators of ongoing atrocities and potential perpetrators in regions listed on the Watch List, but also the third-party actors that enable them. The intelligence community (IC) should also be charged with identifying and collecting intelligence on those enablers that have played roles in recent atrocities, since past behavior— such as the Government of Sudan’s in Darfur—may well continue even in other regions—such as South Kordofan or Abyei. Congress’s oversight function could be used more consistently to ensure that the IC maintains a focus on atrocities as a national security priority. In 2010, then- Director of National Intelligence Dennis Blair told Congress at a hearing on the ODNI’s Annual Threat Assessment that “over the next five years, a number of countries in Africa and Asia are at significant risk for a new outbreak of mass killing. . . . a new mass killing or genocide is most likely to occur in Southern Sudan.”18 DNI ames Clapper’s February 2011 testimony regarding the Annual Threat Assessment included no such attention to atrocities, despite the ongoing violence in Darfur, the absence of resolution of many problems in Southern Sudan, and violence against civilians in Côte d’Ivoire, Kyrgyzstan, and elsewhere in the previous nine months, as well as worries about violence around upcoming elections in Kenya.¶ While **intelligence on enablers can help policy makers target** **key actors or interruption points,** **the coordinated and committed use of the appropriate policy tools— political pressures, economic** sanctions, or even military actions—is also critical to effective action.

#### Intel is key to locating rouge states nukes– stops war from going nuclear

**Lieber and Press 09** (Keir A.,  Associate Professor @ Georgetown University,  Daryl G., Associate Professor of Government, Dartmouth College, Foreign Affairs, Nov/Dec)

MODELING THE UNTHINKABLE To illustrate the growth in U.S. counterforce capabilities, we applied a set of simple formulas that analysts have used for decades to estimate the effectiveness of counterforce attacks. We modeled a U.S. strike on a small target set: 20 intercontinental ballistic missiles (ICBMs) in hardened silos, the approximate size of China's current long-range, silo-based missile force. The analysis compared the capabilities of a 1985 Minuteman ICBM to those of a modern Trident II submarine-launched ballistic missile. [The technical details of the analysis presented in this essay are available online [2].] In 1985, a single U.S. ICBM warhead had less than a 60 percent chance of destroying a typical silo. Even if four or five additional warheads were used, the cumulative odds of destroying the silo would never exceed 90 percent because of the problem of "fratricide," whereby incoming warheads destroy each other. Beyond five warheads, adding more does no good. A probability of 90 percent might sound high, but it falls far short if the goal is to completely disarm an enemy: with a 90 percent chance of destroying each target, the odds of destroying all 20 are roughly 12 percent. In 1985, then, a U.S. ICBM attack had little chance of destroying even a small enemy nuclear arsenal. Today, a multiple-warhead attack on a single silo using a Trident II missile would have a roughly 99 percent chance of destroying it, and the probability that a barrage would destroy all 20 targets is well above 95 percent. Given the accuracy of the U.S. military's current delivery systems, the only question is target identification: silos that can be found can be destroyed. During the Cold War, the United States worked hard to pinpoint Soviet nuclear forces, with great success. Locating potential adversaries' small nuclear arsenals is undoubtedly a top priority for U.S. intelligence today. The revolution in accuracy is producing an even more momentous change: it is becoming possible for the United States to conduct low-yield nuclear counterforce strikes that inflict relatively few casualties. A U.S. Department of Defense computer model, called the Hazard Prediction and Assessment Capability (HPAC), estimates the dispersion of deadly radioactive fallout in a given region after a nuclear detonation. The software uses the warhead's explosive power, the height of the burst, and data about local weather and demographics to estimate how much fallout would be generated, where it would blow, and how many people it would injure or kill. HPAC results can be chilling. In 2006, a team of nuclear weapons analysts from the Federation of American Scientists (FAS) and the Natural Resources Defense Council (NRDC) used HPAC to estimate the consequences of a U.S. nuclear attack using high-yield warheads against China's ICBM field. Even though China's silos are located in the countryside, the model predicted that the fallout would blow over a large area, killing 3-4 million people. U.S. counterforce capabilities were useless, the study implied, because even a limited strike would kill an unconscionable number of civilians. But the United States can already conduct nuclear counterforce strikes at a tiny fraction of the human devastation that the FAS/NRDC study predicted, and small additional improvements to the U.S. force could dramatically reduce the potential collateral damage even further. The United States' nuclear weapons are now so accurate that it can conduct successful counterforce attacks using the smallest-yield warheads in the arsenal, rather than the huge warheads that the FAS/NRDC simulation modeled. And to further reduce the fallout, the weapons can be set to detonate as airbursts, which would allow most of the radiation to dissipate in the upper atmosphere. We ran multiple HPAC scenarios against the identical target set used in the FAS/NRDC study but modeled low-yield airbursts rather than high-yield groundbursts. The fatality estimates plunged from 3-4 million to less than 700 -- a figure comparable to the number of civilians reportedly killed since 2006 in Pakistan by U.S. drone strikes. One should be skeptical about the results of any model that depends on unpredictable factors, such as wind speed and direction. But in the scenarios we modeled, the area of lethal fallout was so small that very few civilians would have become ill or died, regardless of which way the wind blew. Critics may cringe at this analysis. Many of them, understandably, say that nuclear weapons are -- and should remain -- unusable. But if the United States is to retain these weapons for the purpose of deterring nuclear attacks, it needs a force that gives U.S. leaders retaliatory options they might actually employ. If the only retaliatory option entails killing millions of civilians, then the U.S. deterrent will lack credibility. Giving U.S. leaders alternatives that do not target civilians is both wise and just. A counterforce attack -- whether using conventional munitions or low- or high-yield nuclear weapons -- would be fraught with peril. Even a small possibility of a single enemy warhead's surviving such a strike would undoubtedly give any U.S. leader great pause. But in the midst of a conventional war, if an enemy were using nuclear threats or limited nuclear attacks to try to coerce the United States or its allies, these would be the capabilities that would give a U.S. president real options.

## 1AC Plan Text

**The Congress of the United States federal government should statutorily restrict funding for drone based targeted killing strikes carried out by the Central Intelligence Agency and enforce that restriction through budgetary watchdog organizations.**

## Norms

#### Countries are modeling CIA drone policy

Betty McCollum, 2013- Congressional Record. June 14, 2013. Betty Louise McCollum is the U.S. Representative for Minnesota's 4th congressional district, serving since 2001. http://www.gpo.gov/fdsys/pkg/CREC-2013-06-14/pdf/CREC-2013-06-14-pt1-PgE861-2.pdf#page=1

Ms. MCCOLLUM. Mr. Speaker, yesterday in the House Appropriations Committee I offered an amendment to the fiscal year 2014 defense appropriations bill regarding lethal drone strikes. The amendment stated: None of the funds made available by this Act may be used for weapons strikes or lethal action using unmanned aerial vehicles unless conducted by a member of the Armed Forces under the authority provided pursuant to Title 10, United States Code. The amendment was defeated in committee on a voice vote and my request for a recorded vote was denied by the committee. It is my intention to offer this same amendment on the floor of the House in the coming weeks when the defense appropriations bill is debated by the full House. My statement (as prepared for delivery in committee) is as follows: Full Appropriations Committee Statement on the McCollum Amendment: Mr. Chairman, within the classified portion of this bill hundreds of millions of dollars, perhaps billions, are appropriated for a targeted killing program operated by the Central Intelligence Agency. The CIA operates a fleet of weaponized drones armed with laser guided Hellfire missiles. They conduct lethal air strikes against targets in Pakistan, Yemen and Somalia. The program’s targets are identified terrorists or they are unidentified individuals targeted and killed based on a pattern of behavior. My amendment places sole responsibility for conducting lethal military action using weaponized drones in the hands of the Department of Defense conducted by members of the Armed Forces under the authority of Title 10 of the U.S. Code. The CIA’s use of drones to conduct surveillance and intelligence gathering in support of Defense Department lethal action continues under my amendment. Some of our colleagues do not believe that the Pentagon is not up to the task of carrying out this responsibility. I disagree with that. The Joint Special Operations Command (JSOC) is conducting drone strikes now. The Air Force and the Army possess and operate weaponized drones. They operate within a clear chain of command and legal accountability. Lethal military operations using sophisticated weapons systems should be in the hands of the Secretary of Defense and military commanders who are accountable to Congress. CIA strikes have been effective. Terrorists have been killed. But they are not secret. The whole world knows these are CIA strikes operating on behalf of the American people, without transparency, accountability or oversight. In fact, CIA Director John Brennan may actually agree with this amendment. During his Senate confirmation hearing he stated, ‘‘The CIA should not be doing traditional military activities and operations.’’ There are costs associated with these targeted killings. Hundreds of innocent civilians have been killed. There are legal questions, human rights concerns, foreign policy implications and ultimately moral issues. You could dismiss all of these concerns because the program is killing terrorists. But in the near future, as armed drone technology proliferates, if we dismiss these concerns I can guarantee you that China, Iran, Russia and other nations will also dismiss these concerns when they are capable of conducting targeted killings. Why, because we are setting the example. If we want other countries to use these technologies responsibly, then we must use them responsibly. What’s at stake is our country’s moral authority. The Obama Administration is not leading on this issue of ensuring transparency, accountability and oversight. The president claims these CIA strikes are within ‘‘clear guidelines, oversight and accountability’’ that his administration determined all by itself—without input or even the consideration of Congress. And Congress has done less. In fact Congress has done nothing except write a black check that allows a paramilitary force of CIA officers and civilian contractors to kill suspected terrorists and anyone else unlucky enough to be in the vicinity—including women and children—using one of the most sophisticated weapons platforms in our military arsenal. For this Congress and this committee to passively allow the CIA to fire laser guided missiles at human targets in countries in which we are not at war without demanding oversight or accountability is a complete abdication of our sworn obligation to the Constitution and our citizens. This is not intelligence gathering, these are military operations that should be conducted by our Armed Forces and with direct oversight by Congress. Our country is at war with AI-Qaeda and its terrorist affiliates. I trust the members of our Armed Forces to do their job, defeat the enemy, and protect our nation. The drone strike program is a military program and Congress should demand that it be conducted within the same legal framework as any other military operation during a time of war. McCollum statement at the close of debate on the amendment: It is no surprise the White House opposes this amendment. The executive branch wants to maintain its CIA drone program and its target list without congressional oversight, without transparency or accountability. It is absolutely appropriate and responsible for this committee to make the Department of Defense solely responsible for military operations using armed drone program. Doing so does not diminish our military capacity, it in fact it strengthens the program with regard to international law and accountability to Congress and the American people. Right now the CIA is running an assassination program and the world is watching. Soon China, Russia and Iran will have the same capability and will use the CIA’s standard of killing anyone profiled as an enemy. It is time Congress demands transparency, accountability, and oversight to a program that has killed thousands of people—including innocent civilians.

#### Drone strike accountability crucial to US credibility on drones and sets a model for checks and balances.

Peter J **Fusco 12**, McGill University, http://archive.atlantic-community.org/index/articles/view/America's\_Drone\_Strikes\_Setting\_Dangerous\_Precedent\_

The **Obama** administration **is setting a very dangerous global precedence for sending drones** over borders to kill enemies (sometimes innocents). **These drone strikes lack the congressional oversight of the executive branch while Congress does little to oppose it**. At the same time, **employing drones qualifies as a "moral hazard." Drone warfare**, like all developments of new military technologies, **require close examination of their ethical, legal, and political implications.** **The world's first encounter with the use of drones in warfare by** the **Obama** Administration **has set a dangerous precedent for two reasons**. **First, because of the questionable ethics of drone warfare itself and second, because the administration has sidestepped federal checks and balances**. In the coming decades, **this tech**nology **will inevitably diffuse into other nation's military arsenals**, **American policy in the use of drones must change and the model set by** the **Obama** administration **must not be followed**. A recent New York Times blog post co-written by John Kaagand & Sarah Kreps, argues that **drone warfare checks all the boxes to qualify as a "moral hazard."** A moral hazard is an ethical situation in which costs incurred by risks are barely felt, if at all, by those taking the risk. **Drones**, accordingly, minimize or **eliminate government's incentive to prudently exercise lethal force**. **Greater and greater risks are taken,** as the risk taker is able to avoid or minimize taking-on costs. The **Obama** administration**'s** **use of drones is a moral hazard because it allows an unchecked branch of government to wage a counter-terrorism war** **without** the risk of American casualties and limited economic **costs.** **Moral hazards are at the root of many foreign and military policy decisions but they must be subject to checks and balances to prevent gross abuses of executive power**. The Obama Administration fails to acknowledge this and offers a bunk ethical justification instead: drones have the capacity to kill much more efficiently and with less collateral damage. This is not truly a justification because it fails to make a fact-value distinction. Just because we can easily and cheaply carry out targeted killings by the use of drones does not mean we ought to. But, neither the moral hazard created by the use of drones nor the lack official justifications categorically damns drones as unethical. With it's ethical status in limbo, it illustrates the caution with which this new type of weapon must be treated and the need for new policy controlling its usage**. The discourse surrounding the use of drones shows that** our administration and **our society have not engaged with the ethical subject matter sufficiently to warrant the prolif**eration **of drone warfare**. Furthermore, the Obama administration has not used caution nor even followed existing policy. In June 2011, **the Administration released a statement to Congress offering legal justification for sidestepping the** 1973 War Powers Resolution. **This resolution states that in order to maintain the spirit of Constitutional checks and balances, military operations initiated by the executive branch must be disclosed and justified to the Congress** within 48 hours. Operations lasting beyond 60 days require congressional approval. **The administration's statement, outlining the use of drones in Libya, stated that because the drones does not "involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof" their use does not fall under the War Powers Resolution's jurisdiction.** Thus, **the executive branch has complete control over these classified operations without Congressional oversight.** **As political scientist** Peter W. **Singer** in a recent New York Times Magazine article rightly **points out, this is entirely undemocratic.** **Congress has been circumvented and with the public burden of warfare removed there is almost no public stake in drone military action**. **The dangerous precedent set by** the **Obama** administration **is to ignore the ethical hazards of drone warfare, which demand governmental and public checks, balances, and scrutiny.** In the near future, **drone tech**nology **will cheapen and diffuse into the arsenals of other nations.** The ability to kill more precisely and more cheaply will become widespread**. Other nations must ignore the way in which the Obama Administration first used drones in order to prevent concentrations of power, uphold democratic procedures, preserve the whole idea of taking costly measures to avoid war and protect international diplomacy**.

**Absent a model drone proliferation continues** – it will escalate existing conflicts and erode global deterrence without strong norms. This risks multiple scenarios for international conflict.

Boyle 13. Michael J. Boyle. January 15th, 2013. (Michael Boyle is an Assistant Professor of Political Science at La Salle University in Philadelphia. He was previously a Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence (CSTPV) at the University of St. Andrews. He is also an alumnus of the Political Science Department at La Salle. ) <http://onlinelibrary.wiley.com/doi/10.1111/1468-2346.12002/abstract>

An important, but overlooked, strategic consequence of the [Obama’s] administration’s embrace of drones is that it has generated a new and dangerous arms race for this technology. At present, the use of lethal drones is seen as acceptable to US policy-makers because no other state possesses the ability to make highly sophisticated drones with the range, surveillance capability and lethality of those currently manufactured by the United States. Yet the rest of the world is not far behind. At least 76 countries have acquired UAV technology, including Russia, China, Pakistan and India.120 China is reported to have at least 25 separate drone systems currently in development.121 At present, there are 680 drone programmes in the world, an increase of over 400 since 2005.122 Many states and non-state actors hostile to the United States have begun to dabble in drone technology. Iran has created its own drone, dubbed the ‘Ambassador of Death’, which has a range of up to 600 miles.123 Iran has also allegedly supplied the Assad regime in Syria with drone technology.124 Hezbollah launched an Iranian-made drone into Israeli territory, where it was shot down by the Israeli air force in October 2012.125 A global arms race for drone technology is already under way. According to one estimate, global spending on drones is likely to be more than US$94 billion by 2021.126 One factor that is facilitating the spread of drones (particularly non-lethal drones) is their cost relative to other military purchases. The top-of-the line Predator or Reaper model costs approximately US$10.5 million each, compared to the US$150 million price tag of a single F-22 fighter jet.127 At that price, drone technology is already within the reach of most developed militaries, many of which will seek to buy drones from the US or another supplier. With demand growing, a number of states, including China and Israel, have begun the aggressive selling of drones, including attack drones, and Russia may also be moving into this market.128 Because of concerns that export restrictions are harming US competitiveness in the drones market, the Pentagon has granted approval for drone exports to 66 governments and is currently being lobbied to authorize sales to even more.129 The Obama administration has already authorized the sale of drones to the UK and Italy, but Pakistan, the UAE and Saudi Arabia have been refused drone technology by congressional restrictions.130 It is only a matter of time before another supplier steps in to offer the drone technology to countries prohibited by export controls from buying US drones. According to a study by the Teal Group, the US will account for 62 per cent of research and development spending and 55 per cent of procurement spending on drones by 2022.131 As the market expands, with new buyers and sellers, America’s ability to control the sale of drone technology will be diminished. It is likely that the US will retain a substantial qualitative advantage in drone technology for some time, but even that will fade as more suppliers offer drones that can match US capabilities. The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, such as Russia and China, are beginning rapidly to develop and deploy drones for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own. A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them. Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144 Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 Given this precedent, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government. One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147 Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them. Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus tilting the balance of power in authoritarian regimes even more decisively towards those who wield the coercive instruments of power and against those who dare to challenge them.

**These conflicts go nuclear.**

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**Where do you see the main challenges for the international community regarding the use of armed un~~man~~ned systems by the military**. What are the specific challenges of autonomous systems as compared to current telerobotic systems? **The main challenge is in deciding whether the present trend should continue and expand to many more countries and to many more types of armed uninhabited vehicles** (in the air, on and under water, on the ground, also in outer space**), or whether efforts should be taken to constrain this arms race and limit the dangers connected to it**. Here not only governments, but non-governmental organisations and the general public should become active. **Autonomous systems obviously would open many new possibilities for war by accident** (possibly **escalating up to nuclear war) and for violations of the international laws of warfare**. A human decision in each single weapon use should be the minimum requirement.

#### Congress key to legal clarity

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

The weakness of this theory is that it is not codified in U.S. law; it is merely the extrapolation of international theorists and organizations. The only entity under the Constitution that can frame and settle Presidential power regarding the enforcement of international norms is Congress. As the check on executive power, Congress must amend the AUMF to give the executive a statutory roadmap that articulates when force is appropriate and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, statutory clarification will give other states a roadmap for the contours of what constitutes anticipatory self-defense and the proper conduct of the military under the law of war. Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74 The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order targeted killing without congressional limits means the President can manipulate force in the name of national security without tethering it to the law advanced by international norms. The potential consequence of such unilateral executive action is that it gives other states, such as North Korea and Iran, the customary precedent to do the same. Targeted killing might be required in certain circumstances, but if the guidelines are debated and understood, the decision can be executed with the full faith of the people’s representative, Congress. When the decision is made without Congress, the result might make the United States feel safer, but the process eschews what gives a state its greatest safety: the rule of law.

**Only only Congress solves public trust.**

**Goldsmith 13** – (5/1, Jack, Henry L. Shattuck Professor at Harvard Law School, former Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with 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." So far, this promise, like similar previous ones, remains unfulfilled.

The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust.

A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. **The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war.** **The president** **cannot establish trust in the way of the knife through internal moves and more words.** Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

Administration officials resist this route because they worry about the outcome of the public debate, and because the president is, as The Washington Post recently reported, "seen as reluctant to have the legislative expansion of another [war] added to his legacy." But the administration can influence the outcome of the debate only by engaging it. And as Mazzetti makes plain, the president's legacy already includes the dramatic and unprecedented unilateral expansion of secret war. What the president should be worried about for legacy purposes is that this form of warfare, for which he alone is today responsible, is increasingly viewed as illegitimate.

**Means executive transparency fails – destroys the sustainability of the drone program in the future.**

**Goldsmith 13** – (5/1, Jack, Henry L. Shattuck Professor at Harvard Law School, former Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. **But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms**. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges.

As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These **trust-destroying tendencies** are exacerbated by its persistent resistance to transparency **demands from Congress**, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.

A related sin is the Obama administration's surprising failure to secure **formal congressional support.** Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have **worked with Congress to update these laws**, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a **firmer political and legal foundation.** But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.

The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need **sustained domestic and international support."**

# 2AC

## 2ac: Top Line

#### 1. Plan sovles- allows congressional watchdog organizations to oversee the CIAs budget to garuuntee that the plan is not being circumvented, and if it is the funding is snatched and there is no money to conduct the strikes, that’s the GAO evidence

#### 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.

#### Statutes have spillover restraint effects

Cole 11. “Where Liberty Lies: Civil Society and Individual Rights After 9/11” <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2129&context=facpub> (Professor, Georgetown University Law Center.)

**In my view, Posner and Vermeule simultaneously underestimate the constraining force of law and overestimate the influence of political limits on executive overreaching. Sounding like Critical Legal Studies adherents, they sweepingly claim that law is so indeterminate and manipulable as to constitute only a “façade of lawfulness.”242 But in assessing law’s effect, they look almost exclusively to formal indicia— statutes and court decisions.243 That approach disregards the role that law plays without coming to a head in a judicial decision or legislative act. As the post-9/11 period illustrates, when law is reinforced and defended by civil society institutions, it can have a disciplining function long before cases reach final judgment, and even when no case is ever filed, a reality to which anyone who has worked in the executive branch will attest.244 While they are overly skeptical about law, Posner and Vermeule are unrealistically romantic about the constraining force of majoritarian politics. The political checks they identify consist solely of the fact that Presidents must worry about election returns, and must cultivate Executive officials generally cannot know in advance whether their actions will attract the attention of civil society watchdogs, or lead to court review. They often cannot know whether such oversight— whether by a court, a legislative committee, or a nongovernmental organization—will be strict or deferential. As long as there is some risk of such oversight, the resultant uncertainty itself is likely to have a disciplining effect on the choices they make. There are, in short, 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 objectives. And they cannot predict when a legal claim will be advanced against them. Similarly, in focusing exclusively on statutes and their enforcement by courts, Posner and Vermeule disregard the considerable checking function that Congress’s legal oversight role plays through means short of formal statutes, such as by holding hearings, launching investigations, requesting information about doubtful executive practices, or restricting federal expenditures. The effectiveness of these checks, moreover, will often turn on the strength of civil society. If there are significant watchdogs in the nongovernmental sector and/or the media focused on executive actions, ready to bring allegedly illegal conduct to public attention, the law will have substantial deterrent effect, with or without actual court decisions.**

## 2AC A/T: Circumvention – Purse

#### Congress would invoke the power of the purse- solves

**Elsea et al ’13** (Jennifer K. Elsea, Legislative Attorney; Michael John Garcia, Legislative Attorney; Thomas J. Nicola, Legislative Attorney; CRS Report for Congress, “Congressional Authority to Limit Military Operations”, <http://fpc.state.gov/documents/organization/206121.pdf>, February 19, 2013)

The Purpose Statute states that funds may be used only for purposes for which they have been appropriated; by implication it precludes using funds for purposes that Congress has prohibited. When Congress states that no funds may be used for a purpose, an agency would violate the Purpose Statute if it should use funds for that purpose; it also in some circumstances could contravene a provision of the Antideficiency Act, 31 U.S.C. Section 1341. Section 1341 prohibits entering into obligations or expending funds in advance of or in excess of an amount appropriated unless authorized by law. If Congress has barred using funds for a purpose, entering into an obligation or expending any amount for it would violate the act by exceeding the amount— zero—that Congress has appropriated for the prohibited purpose.

#### Congress exerting the power of the purse key to check presidential warfare

**Fisher ‘7** (Louis Fisher is a specialist in constitutional law with the Law Library of the Library of Congress, after working for the Congressional Research Service from 1970 to March 6, 2006. During his service with CRS he was research di rector of the House Iran-Contra Committee in 1987, writing major sections of the final report. Fish er received his doctorate in political science from the New School for Social Research and has taught at a number of universities and law schools, appearing before the Senate Committee on the Judiciary, loc.gov/law/help/usconlaw/pdf/Feingold2007rev.pdf, “Exercising Congress’s Constitutional Power to End a War”, January 30, 2007)

The framers carefully studied this monarchical model and repudiated it in its entirety. Not a single one of Blackstone’s prerogatives was granted to the President. They are either assigned entirely to Congress (declare war, issue letters of marque and reprisal, raise and regulate fleets and armies) or shared between the Senate and the President (appointing ambassadors and making treaties). The rejection of the British and monarchical models could not have been more sweeping. This explains what the framers did. The next question is why they did it. The framers gave Congress the power to initiate war because they concluded — based on the history of other nations — that Executives, in their quest for fame and personal glory, had too great an appetite for war and little care for their subjects or the long-term interests of their country. John Jay, whose experience in the Continental Congress and the early years of the Republic was generally in foreign affairs, warned in Federalist No. 4 that “absolute monarchs will often make war when their nations are to get nothing by it, but for purposes and objects merely personal, such as a thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans. These and a variety of other motives, which affect only the mind of the sovereign, often lead him to engage in wars not sanctified by justice or the voice and interests of his people.” Joseph Story, who served on the Supreme Court from 1811 to 1845, similarly wrote about the need to vest in the representative branch the decision to go to war. The power to declare war “is in its own nature and effects so critical and calamitous, that it requires the utmost deliberation, and the successive review of all the councils of the nations. War, in its best estate, never fails to impose upon the people the most burthensome taxes, and personal sufferings. It is always injurious, and sometime subversive of the great commercial, manufacturing, and agricultural interests.” Story found war as “sometimes fatal to public liberty itself, by introducing a spirit of military glory, which is ready to follow, wherever a successful commander will lead.” Through their study of history and political ambition, the framers came to fear the Executive appetite for war. Human nature has not changed over the years to justify trust in independent and unchecked presidential decisions in war. The record of two centuries in America teaches us that what Jay said in 1788 applies equally well to contemporary times. Offensive and Defensive Wars The debates at the Philadelphia Convention in 1787 underscore the framers’ intent to keep offensive wars in the hands of Congress while reserving to the President certain actions of a defensive nature. All three branches understood that distinction for 160 years, until President Truman went to war against North Korea by going to the UN Security Council for “authority” instead of to Congress. Review what the framers said in Philadelphia. On June 1, 1787, Charles Pinckney offered his support for “a vigorous Executive but was afraid the Executive powers of <the existing> Congress might extend to peace & war &c which would render the Executive a Monarchy, of the worst kind, towit an elective one.” 1 Farrand 64-65. John Rutledge wanted the executive power placed in a single person, “tho’ he was not for giving him the power of war and peace.” James Wilson, who also preferred a single executive, “did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of a Legislative nature. Among others that of war & peace &c.” Id. at 65-66. Edmund Randolph worried about executive power, calling it “the foetus of monarchy.” The delegates to the Philadelphia Convention, he said, had “no motive to be governed by the British Governmt. as our prototype.” Alexander Hamilton, in a lengthy speech on June 18, strongly supported a vigorous and independent President, but plainly jettisoned the British model of executive prerogatives in foreign affairs and the war power. In discarding the Lockean and Blackstonian doctrines of executive power, he proposed giving the Senate the “sole power of declaring war.” The President would be authorized to have “the direction of war when authorized or begun.” Id. at 292. In Federalist No. 69, Hamilton explained the break with English precedents. The power of the king “extends to the declaring of war and to the raising and regulating of fleets and armies.” The delegates decided to place those powers, he said, in Congress. At the constitutional convention, Charles Pinckney objected that legislative proceedings “were too slow” for the safety of the country in an emergency, since he expected Congress to meet but once a year. James Madison and Elbridge Gerry moved to amend the draft constitution, empowering Congress to “declare war” instead of to “make war.” This change in language would leave to the President “the power to repel sudden attacks.” Their motion carried. 2 Farrand 318-19. Reactions to the Madison-Gerry amendment reinforce the narrow grant of authority to the President. Pierce Butler wanted to give the President the power to make war, arguing that he “will have all the requisite qualities, and will not make war but when the Nation will support it.” Not a single delegate supported him. Roger Sherman objected: “The Executive shd. be able to repel and not to commence war.” Id. at 318. Gerry said he “never expected to hear in a republic a motion to empower the Executive alone to declare war.” George Mason spoke “agst giving the power of war to the Executive, because not <safely> to be trusted with it. . . . He was for clogging rather than facilitating war.” 2 Farrand 319. His remarks echo what Jay said in Federalist No. 4. At the Pennsylvania ratifying convention, James Wilson expressed the prevailing sentiment that the system of checks and balances “will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large.” 2 Elliot 528. The power of initiating war was vested in Congress. To the President was left certain defensive powers “to repel sudden attacks.” This distrust of presidential power in matters of war was expressed frequently after the Philadelphia convention. In 1793, Madison called war “the true nurse of executive aggrandizement. . . . In war, the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow they are to encircle. The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honourable or venial 4 love of fame, are all in conspiracy against the desire and duty of peace.” Five years later, in a letter to Thomas Jefferson, Madison said that the Constitution “supposes, what the History of all Govts demonstrates, that the Ex. is the branch of power most interested in war, & most prone to 5 it. It has accordingly with studied care, vested the question of war in the Legisl.” The need to keep the purse and the sword in separate hands was a bedrock principle for the framers. They recalled the efforts of English kings who, denied funds from Parliament, decided to rely on outside sources of revenue for their military expeditions. The result was civil war and the loss of Charles I of both his office and his head. The growth of democratic government is directly tied to legislative control over all expenditures, including those for fo and military affairs. reign The U.S. Constitution attempted to avoid the British history of civil war and bloodshed by vesting the power of the purse wholly in Congress. Under Article I, Section 9, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” In Federalist No. 48, Madison explained that “the legislative department alone has access to the pockets of the people.” The President gained the title of Commander in Chief but Congress retained the power to finance military operations. For Madison, it was a fundamental principle of democratic government that “[t]hose who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.” This understanding of the war power was widely understood. Jefferson praised the transfer of the war power “from the executive to the Legislative body, from those who are to spend to those who are to pay.”

#### Presidential warfare causes nuclear war

**Symonds 13** [Peter, leading staff writer for the World Socialist Web Site and a member of its International Editorial Board. He has written extensively on Middle Eastern and Asian politics, contributing articles on developments in a wide range of countries, 4-5, “Obama’s “playbook” and the threat of nuclear war in Asia,” <http://www.wsws.org/en/articles/2013/04/05/pers-a05.html>]

The Obama administration has engaged in reckless provocations against North Korea over the past month, inflaming tensions in North East Asia and heightening the risks of war. Its campaign has been accompanied by the relentless demonising of the North Korean regime and claims that the US military build-up was purely “defensive”. However, the Wall Street Journal and CNN revealed yesterday that the Pentagon was following a step-by-step plan, dubbed “the playbook”, drawn up months in advance and approved by the Obama administration earlier in the year. The flights to South Korea by nuclear capable B-52 bombers on March 8 and March 26, by B-2 bombers on March 28, and by advanced F-22 Raptor fighters on March 31 were all part of the script.¶ There is of course nothing “defensive” about B-52 and B-2 nuclear strategic bombers. The flights were designed to demonstrate, to North Korea in the first instance, the ability of the US military to conduct nuclear strikes at will anywhere in North East Asia. The Pentagon also exploited the opportunity to announce the boosting of anti-ballistic missile systems in the Asia Pacific and to station two US anti-missile destroyers off the Korean coast.¶ According to CNN, the “playbook” was drawn up by former defence secretary Leon Panetta and “supported strongly” by his replacement, Chuck Hagel. The plan was based on US intelligence assessments that “there was a low probability of a North Korean military response”—in other words, that Pyongyang posed no serious threat. Unnamed American officials claimed that Washington was now stepping back, amid concerns that the US provocations “could lead to miscalculations” by North Korea.¶ However, having deliberately ignited one of the most dangerous flashpoints in Asia, there are no signs that the Obama administration is backing off. Indeed, on Wednesday, Defence Secretary Hagel emphasised the military threat posed by North Korea, declaring that it presented “a real and clear danger”. The choice of words was deliberate and menacing—an echo of the phrase “a clear and present danger” used to justify past US wars of aggression.¶ The unstable and divided North Korean regime has played directly into the hands of Washington. Its bellicose statements and empty military threats have nothing to do with a genuine struggle against imperialism and are inimical to the interests of the international working class. Far from opposing imperialism, its Stalinist leaders are looking for a deal with the US and its allies to end their decades-long economic blockade and open up the country as a new cheap labour platform for global corporations.¶ As the present standoff shows, Pyongyang’s acquisition of a few crude nuclear weapons has in no way enhanced its defence against an American attack. The two B-2 stealth bombers that flew to South Korea could unleash enough nuclear weapons to destroy the country’s entire industrial and military capacity and murder even more than the estimated 2 million North Korean civilians killed by the three years of US war in Korea in the 1950s.¶ North Korea’s wild threats to attack American, Japanese and South Korean cities only compound the climate of fear used by the ruling classes to divide the international working class—the only social force capable of preventing war.¶ Commentators in the international media speculate endlessly on the reasons for the North Korean regime’s behaviour. But the real question, which is never asked, should be: why is the Obama administration engaged in the dangerous escalation of tensions in North East Asia? The latest US military moves go well beyond the steps taken in December 2010, when the US and South Korean navies held provocative joint exercises in water adjacent to both North Korea and China.¶ Obama’s North Korea “playbook” is just one aspect of his so-called “pivot to Asia”—a comprehensive diplomatic, economic and military strategy aimed at ensuring the continued US domination of Asia. The US has stirred up flashpoints throughout the region and created new ones, such as the conflict between Japan and China over the disputed Senkaku/Diaoyu islands in the East China Sea. Obama’s chief target is not economically bankrupt North Korea, but its ally China, which Washington regards as a dangerous potential rival. Driven by the deepening global economic crisis, US imperialism is using its military might to assert its hegemony over Asia and the entire planet.¶ The US has declared that its military moves against North Korea are designed to “reassure” its allies, Japan and South Korea, that it will protect them. Prominent figures in both countries have called for the development of their own nuclear weapons. US “reassurances” are aimed at heading off a nuclear arms race in North East Asia—not to secure peace, but to reinforce the American nuclear monopoly.¶ The ratcheting-up of tensions over North Korea places enormous pressures on China and the newly-selected leadership of the Chinese Communist Party. An unprecedented public debate has opened up in Beijing over whether or not to continue to support Pyongyang. The Chinese leadership has always regarded the North Korean regime as an important buffer on its northeastern borders, but now fears that the constant tension on the Korean peninsula will be exploited by the US and its allies to launch a huge military build-up.¶ Indeed, all of the Pentagon’s steps over the past month—the boosting of anti-missile systems and practice runs of nuclear capable bombers—have enhanced the ability of the US to fight a nuclear war against China. Moreover, the US may not want to provoke a war, but its provocations always run the risk of escalating dangerously out of control. Undoubtedly, Obama’s “playbook” for war in Asia contains many more steps beyond the handful leaked to the media. The Pentagon plans for all eventualities, including the possibility that a Korean crisis could bring the US and China head to head in a catastrophic nuclear conflict.

## AT P and V

#### Posner and Vermuele are wrong. No political limitations on president w/o legal restraints + legal restraints limit action better.

Cole 11. “Where Liberty Lies: Civil Society and Individual Rights After 9/11” <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2129&context=facpub> (Professor, Georgetown University Law Center.)

In my view, Posner and Vermeule simultaneously underestimate the constraining force of law and overestimate the influence of political limits on executive overreaching. Sounding like Critical Legal Studies adherents, they sweepingly claim that law is so indeterminate and manipulable as to constitute only a “façade of lawfulness.”242 But in assessing law’s effect, they look almost exclusively to formal indicia— statutes and court decisions.243 That approach disregards the role that law plays without coming to a head in a judicial decision or legislative act**. As the post-9/11 period illustrates, when law is reinforced and defended by civil society institutions, it can have a disciplining function long before cases reach final judgment, and even when no case is ever filed, a reality to which anyone who has worked in the executive branch will attest**.244 While they are overly skeptical about law, **Posner and Vermeule are unrealistically romantic about the constraining force of majoritarian politics. The political checks they identify consist solely of the fact that Presidents must worry about election returns, and must cultivate Executive officials generally cannot know in advance whether their actions will attract the attention of civil society watchdogs, or lead to court review. They often cannot know whether such oversight— whether by a court, a legislative committee, or a nongovernmental organization—will be strict or deferential. As long as there is some risk of such oversight, the resultant uncertainty itself is likely to have a disciplining effect on the choices they make. There are, in short, 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 objectives. And they cannot predict when a legal claim will be advanced against them. Similarly, in focusing exclusively on statutes and their enforcement by courts, Posner and Vermeule disregard the considerable checking function that Congress’s legal oversight role plays through means short of formal statutes, such as by holding hearings, launching investigations, requesting information about doubtful executive practices, or restricting federal expenditures. The effectiveness of these checks, moreover, will often turn on the strength of civil society.** If there are significant **watchdogs in the nongovernmental sector and/or the media focused on executive actions, ready to bring allegedly illegal conduct to public attention, the law will have substantial deterrent effect, with or without actual court decisions.**

## T- Authority

#### We meet- we ban the president’s authority to conduct strikes using the CIA-and that’s Authority

**Chesney 12**  (2012, Robert, Charles I. Francis Professor in Law at the University of Texas School of Law, non-resident Senior Fellow of the Brookings Institution, “Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate,” JOURNAL OF NATIONAL SECURITY LAW and POLICY, Vol. 5:539)

Title 50 is a portion of the U.S. Code that contains a diverse array of statutes relating to national security and foreign affairs. These include the standing affirmative grants of authority through which Congress originally empowered the CIA to carry out its various functions. That set in turn includes the sweeping language of the so-called fifth function, which the executive branch has long construed to grant authority to engage in covert action. Separately, Title 50 also contains the statutes that define covert action, require presidential findings in support of them, and oblige notification of them to SSCI and HPSCI. As a result, Title 50 authority has also become a shorthand, in this case one that refers to the domestic law authorization for engaging in quintessential intelligence activities such as intelligence collection and covert action.

#### C/I Authority includes power to act or conduct an act

#### Hill 05 Free Legal Dictionary definition. <http://legal-dictionary.thefreedictionary.com/authority> (Gerald and Kathleen Hill are co-authors of 25 books, including The People's Law Dictionary, Real Life Dictionary of the Law, Encyclopedia of Federal Agencies and Commissions, Facts On File Dictionary of American Politics, and the popular Hill Guides: Sonoma Valley: The Secret Wine Country, Napa Valley: Land of Golden Vines; Victoria and Vancouver Island: the Almost Perfect Eden; Northwest Wine Country; Santa Barbara and the Central Coast: California's Riviera; and Monterey and Carmel: Eden by the Sea. Gerald has practiced law for more than four decades in both San Francisco's financial district and the town of Sonoma, California. He has an A.B. from Stanford University and Juris Doctor from Hastings College of the Law of the University of California. He was Executive Director of the California Governor’s Housing Commission, drafted legislation, taught at Golden Gate University Law School, served as an arbitrator and pro tem judge, edited and co-authored Housing in California, was an elected trustee of a public hospital, and has testified before Congressional committees.)

authority n. permission, a right coupled with the power to do an act or order others to act. Often one person gives another authority to act, as an employer to an employee, a principal to an agent, a corporation to its officers, or governmental empowerment to perform certain functions. There are different types of authority including "apparent authority" when a principal gives an agent various signs of authority to make others believe he or she has authority, "express authority" or "limited authority" which spell out exactly what authority is granted (usually a written set of instructions), "implied authority" which flows from the position one holds, and "general authority" which is the broad power to act for another.

#### Funding restrictions are restrictions on authority , rooted in U.S. code

Richard F. Grimmett, Specialist in National Defense Foreign Affairs, Defense, and Trade Division, 2007 CRS, Congressional Use of Funding Cutoffs Since 1970 Involving U.S. Military Forces and Overseas Deployments

Uses by Congress of Funding Restrictions to Affect Presidential Policy Toward Foreign Military/Paramilitary Operations

Although not directly analogous to efforts to seek withdrawal of American military forces from abroad by use of funding cutoffs, Congress has used funding restrictions to limit or prevent foreign activities of a military or paramilitary nature. As such, these actions represent alternative methods to affect elements of presidentially sanctioned foreign military operations. Representative examples of these actions are in legislation relating to Angola and Nicaragua, which are summarized below. In 1976, controversy over U.S. covert assistance to paramilitary forces in Angola led to legislative bans on such action. These legislative restrictions are summarized below. ! The Defense Department Appropriations Act for FY1976, P.L. 94-212, signed February 9, 1976, provided that none of the funds “appropriated in this Act may be used for any activities involving Angola other than intelligence gathering....” This funding limitation would expire at the end of this fiscal year. Consequently, Congress provided for a ban in permanent law, which embraced both authorization and appropriations acts, in the International Security Assistance and Arms Export Control Act of 1976. ! Section 404 of the International Security Assistance and Arms Export Control Act of 1976, P.L. 94-329, signed June 30, 1976, stated that “Notwithstanding any other provision of law, no assistance of any kind may be provided for the purpose, or which would have the effect, of promoting, augmenting, directly or indirectly, the capacity of any nation, group, organization, movement, or individual to conduct military or paramilitary operations in Angola, unless and until Congress expressly authorizes such assistance by law enacted after the date of enactment of this section.” This section also permitted the President to provide the prohibited assistance to Angola if he made a detailed, unclassified report to Congress stating the specific amounts and categories of assistance to be provided and the proposed recipients of the aid. He also had to certify that furnishing such aid was “important to the national security interests of the United States.” ! Section 109 of the Foreign Assistance and Related Programs Appropriations Act for FY1976, P.L. 94-330, signed June 30, 1976, provided that “None of the funds appropriated or made available pursuant to this Act shall be obligated to finance directly or indirectly any type of military assistance to Angola.” In 1984, controversy over U.S. assistance to the opponents of the Nicaraguan government (the anti-Sandinista guerrillas known as the “contras”) led to a prohibition on such assistance in a continuing appropriations bill. This legislative ban is summarized below. ! The continuing appropriations resolution for FY1985, P.L. 98-473, 98 Stat. 1935-1937, signed October 12, 1984, provided that “During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.” This legislation also provided that after February 28, 1985, if the President made a report to Congress specifying certain criteria, including the need to provide further assistance for “military or paramilitary operations” prohibited by this statute, he could expend $14 million in funds if Congress passed a joint resolution approving such action.

#### The “war powers authority” of the President is his Commander-in-Chief authority

Gallagher, Pakistan/Afghanistan coordination cell of the U.S. Joint Staff, Summer 2011

(Joseph, “Unconstitutional War: Strategic Risk in the Age of Congressional Abdication,” *Parameters*, http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/2011summer/Gallagher.pdf)

First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder can wield an inordinate amount of power or influence. The founders carefully crafted constitutional war-making authority with the branch most representative of the people—Congress.4

The Federalist Papers No. 51, “The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments,” serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.5 This principle applies in practice to all decisions of considerable national importance. **Specific to war powers authority**, **the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief.**6 This construct designates Congress, not the president, as the primary decisionmaking body to commit the nation to war—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the effort.

#### Commander in Chief powers are the justification for TK

Wheeler 13 “The AUMF fallacy” Marcy Wheeler, founder of EmptyWheel – a national security blog, PhD in comparative lit

<http://www.emptywheel.net/2013/02/18/the-aumf-fallacy/>

And ultimately, we should look to what Stephen Preston — the General Counsel of the agency that actually carried out the Awlaki killing — has to say about where the CIA gets its authorization to engage in lethal covert operations.

Let’s start with the first box: **Authority to Act under U.S. Law**.

First, we would confirm that **the contemplated activity is authorized by the President in the exercise of his powers under Article II of the U.S. Constitution, for example, the President’s responsibility as Chief Executive and Commander-in-Chief to protect the country from an imminent threat of violent attack**. This would not be just a one-time check for legal authority at the outset. Our hypothetical program would be engineered so as to ensure that, through careful review and senior-level decision-making, each individual action is linked to the imminent threat justification.

#### Our interp is fair. They still get all of their off cases.

#### Their interp is overlimiting. Means we ony get 4 affs

#### Their interp kills fairness. Means aff never gets access to anything based on exercise of authority.

#### Their Interp kills education. Never learn about impacts of targeted killings. Only talk about legal authority.

## Top shelf

#### Doesn’t solve-

#### A. Doesn’t solve

Only congress can leverage the GAO

By Julian Sanchez, Julian Sanchez is a research fellow at the Cato Institute and a contributing editor for Reason magazine, Newsweek on July 29, 2010. “Why the Intelligence Community Needs GAO Oversight” http://www.cato.org/publications/commentary/why-intelligence-community-needs-gao-oversight?print

The shroud of secrecy that necessarily shields intelligence work has always made robust internal oversight especially vital, even while rendering it exponentially more difficult. As the Post notes, even the handful of Defense Department “Super Users” meant to have a bird’s-eye view of all classified intelligence programs can’t keep track of the sprawl, or as one put it, “I’m not going to live long enough to be briefed on everything.”¶ Harried legislators on oversight committees are in an even more hopeless position. The most sensitive programs — such as the warrantless wiretapping that President George W. Bush authorized the NSA to carry out in the wake of 9/11 — may be disclosed only to a “Gang of Eight” senior legislators, barred from taking notes or seeking expert advice. Even when full committees are briefed, the intelligence agencies are often delinquent with statutorily mandatory reporting, and in any event members of Congress have scant incentive to commit scarce time and staff to cracking down on intelligence waste or inefficiency. You can’t rally public outrage behind the cause of reforming wasteful secret intelligence programs, and if you do manage to fix a problem, you don’t get to issue a self-congratulatory press release. The result is a pattern scholars have dubbed the “fire alarm” model of oversight: a spike of intense scrutiny following a major intelligence scandal, followed by long stretches of relative congressional apathy.¶ As intelligence scholar Jennifer Kibbe notes in a recent paper, fragmented jurisdiction compounds the problem. During the ’90s, Congress failed to review the FBI’s attempts at counterterrorism reform because the intelligence and judiciary committees each considered it the other’s authority. In theory, the intelligence committees have primary oversight authority. But when they don’t manage to pass a formal intelligence authorization bill, as they failed to do from 2006 – 09, budgetary control effectively falls to the appropriations subcommittees, which have only a tiny fraction of the cleared staff needed to do serious scrutiny of intelligence budgets.¶ Meanwhile, those exploding budgets increasingly line the coffers of private firms who provide not only an arsenal of spy gadgets, but some 30 percent of the staff at the intelligence agencies. Assuming that private contracts continue to account for about 70 percent of the intelligence budget, the firms in the secret sector are competing for some $50 billion annually in tax money. (By way of comparison, the global movie industry pulled in a hair under $30 billion in 2009.)¶ In a few cases — such as the scandal that brought down disgraced Rep. Randy “Duke” Cunningham — that cash has found its way directly back to government in the form of bribes. More often it greases the perfectly legal revolving door between senior intelligence positions and executive suites. Lt. Gen. James Clapper, President Obama’s nominee for director of national intelligence (DNI), is a former chairman of the largest intel contractors’ trade association, the Intelligence and National Security Alliance. So was his Bush-era predecessor Mike McConnell, who has since rejoined many of his old governmental colleagues at behemoth contractor Booz Allen Hamilton.¶ Combine thick bankrolls and thick secrecy with thin walls between the public and for-profit sides of the intel world, and you’ve got a perfect incubator for bloat and waste, a sector “so massive,” the Post concluded, “that its effectiveness is impossible to determine.”¶ In the rest of the federal government, responsibility for checking such excesses falls primarily to the watchdog GAO. And it’s a natural fit for the job of holding intelligence to account as well.¶ The GAO has the capacity Congress lacks: as of last year, the office had 199 staffers cleared at the top-secret level, with 96 holding still more rarefied “sensitive compartmented information” clearances. And those cleared staff have a proven record of working to oversee highly classified Defense Department programs without generating leaks. Gen. Clapper, the prospective DNI, has testified that the GAO “held our feet to the fire” at the Pentagon with thorough analysis and constructive criticism.¶ Unlike the inspectors general at the various agencies — which also do vital oversight work — the GAO is directly answerable to Congress, not to the executive branch. And while it’s in a position to take a broad, pangovernmental view, the GAO also hosts analysts with highly specialized economic and management expertise the IG offices lack. Unleashing GAO would be the first step in discovering what the Post couldn’t: whether the billions we’re pouring into building a surveillance and national security state are really making us safer.

#### Means they don’t solve the intel advantage- only GAO auditing makes the CIA more efficenit at intel gaithering

####  Dosnt solve norms- only congress can send a credible legal roadmap for other international actors to follow, that’s Maxwell. Goldsmith evidence says only congress can send a crediable singal.

#### Heres more evidene-

#### Congress key to legal clarity

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

The weakness of this theory is that it is not codified in U.S. law; it is merely the extrapolation of international theorists and organizations. The only entity under the Constitution that can frame and settle Presidential power regarding the enforcement of international norms is Congress. As the check on executive power, Congress must amend the AUMF to give the executive a statutory roadmap that articulates when force is appropriate and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, statutory clarification will give other states a roadmap for the contours of what constitutes anticipatory self-defense and the proper conduct of the military under the law of war. Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74 The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order targeted killing without congressional limits means the President can manipulate force in the name of national security without tethering it to the law advanced by international norms. The potential consequence of such unilateral executive action is that it gives other states, such as North Korea and Iran, the customary precedent to do the same. Targeted killing might be required in certain circumstances, but if the guidelines are debated and understood, the decision can be executed with the full faith of the people’s representative, Congress. When the decision is made without Congress, the result might make the United States feel safer, but the process eschews what gives a state its greatest safety: the rule of law.

#### Perm do both- the plan would cut the funding from CIA drone stirkes, while the president stops using them. Perms should be a test of mutal exclusivity, and should not be required to have a net bennifit. Its aslo normal means.

#### Counter plan doesn’t solve and links to politics- the president will overreach his power

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With discretion comes distrust. n2 Voters and legislators grant the executive discretion, through action or inaction, and increase executive discretion during emergencies, because they believe that the benefits of doing so outweigh the risks of executive abuse. n3 By the same token, political actors will attempt to constrain the executive, or will simply fail to grant powers they otherwise would have preferred to grant, where they believe that the risks and harms of abuses outweigh any benefits in security or other goods. The fear of executive abuse arises from many sources, but the basic problem is uncertainty about the executive's motivations. The executive may, for example, be a power maximizer, intent on using legal or factual discretion to harm political opponents and cement his political position, or that of his political party; or he may be an empire builder, interested in expanding his turf at the expense of other institutions.

Where the executive is indeed ill motivated in any of these ways, constraining his discretion (more than the voters would otherwise choose) may be sensible. But the executive may not be ill motivated at all. Where the executive is in fact a faithful agent, using his increased discretion to promote the public good according to whatever conception of the public good voters hold, then constraints on executive discretion are all cost and no benefit. Voters, legislators, and judges know that different executive officials have different motivations. Not all presidents are power maximizers or empire builders. n4 Of course, the executive need not be pure of heart; his devotion to the public interest may in turn be based on concern for the judgment of history. But so long as that motivation makes him a faithful agent of the principal(s), he counts as well motivated.¶ The problem, however, is that the public has no simple way to know which type of executive it is dealing with. An ill-motivated executive will just mimic the statements of a well-motivated one, saying [\*867] the right things and offering plausible rationales for policies that outsiders, lacking crucial information, find difficult to evaluate -- policies that turn out not to be in the public interest. The ability of the ill-motivated executive to mimic the public-spirited executive's statements gives rise to the executive's dilemma of credibility: the well-motivated executive has no simple way to identify himself as such. Distrust causes voters (and the legislators they elect) to withhold discretion that they would like to grant and that the well-motivated executive would like to receive. Of course, the ill-motivated executive might also want discretion. The problem is that voters who would want to give discretion (only) to the well-motivated executive may choose not to do so, because they are not sure what type he actually is. The risk that the public and legislators will fail to trust a well-motivated president is just as serious as the risk that they will trust an ill-motivated president, yet legal scholars have felled forests on the second topic while largely neglecting the first. n5¶ Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying [\*868] policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.¶ The discussion is structured as follows. Part I lays out examples of the credibility dilemma, both historical and recent. Part II analyzes the credibility dilemma through the lens of principal-agent theory. Part III examines the attempted Madisonian solution to the credibility dilemma and explains why it is a failure, for the most part. Part IV suggests a series of mechanisms for credibly demonstrating the executive's good intentions. These mechanisms include independent commissions within the executive branch; bipartisanship in appointments to the executive branch, or more broadly the creation of domestic coalitions of the willing; the related tactic of counterpartisanship, or choosing policies that run against the preferences of the president's own party; commitments to multilateral action in foreign policy; increasing the transparency of the executive's decisionmaking processes; and a regime of strict liability for executive abuses. Not all of these mechanisms succeed, and some of them succeed under some conditions but fail under others.¶ Credibility is but one good that trades off against other goods, even from the standpoint of the well-motivated executive. The main cost of credibility is that it diminishes the president's control over policymaking. In Part IV, we attempt to identify the conditions under which one or the other mechanism can produce credibility benefits greater than the resulting costs.¶ I. Examples¶ Presidents always have some credibility, at least at the start of their term. People do not vote for candidates whom they do not believe, and so the winning candidate brings to the office some amount of credibility, which he may further enhance over time by keeping his promises or making predictions that are proven correct by events. Having built up capital, some presidents find it useful to engage in deception, and some have gotten away with it, at least in the short term. Prominent examples include FDR's claim during the 1940 election that he was determined to keep the United States out of war; n6 Eisenhower's [\*869] denial that U-2 spy planes overflew the Soviet Union; n7 (probably) Johnson's description of the Gulf of Tonkin incident; n8 Nixon's statements about military action relating to Cambodia; n9 (probably) Reagan's claim that he was unaware of the arms-for-hostages scheme; n10 and Clinton's denial that he had had a sexual relationship with Monica Lewinsky. n11 But deception is potentially a costly strategy, because revelation of the deception damages the president's credibility, making it more difficult for him to achieve his next set of goals.¶ For this reason, we focus on historical cases where the president avoids deception, where in fact he makes a true or roughly true statement about circumstances that the public cannot directly evaluate, but has trouble persuading the public to believe him. In these cases, the president needs to use mechanisms that enhance his credibility or, if he cannot, finds himself unable to act. We offer examples to illustrate the credibility dilemma, to illustrate a range of solutions to the dilemma -- some successful, some otherwise -- and to show that the mechanisms we will propose in Part IV have historical analogues or precedents.¶ A. FDR: The Nazi Threat¶ Franklin Delano Roosevelt understood the threat posed by Nazi Germany to the United States' long-term interests long before the U.S. public did. The public was preoccupied with the Great Depression and had powerful isolationist representatives in Congress. Because of popular sentiment, FDR could not commit U.S. military assistance to Britain and France, even after Germany invaded France and began [\*870] bombing London. n12 Marginal economic and military assistance could take place only through complicated subterfuges and was in any event of minimal value.¶ Even after Japan bombed Pearl Harbor and Nazi Germany declared war on the U.S., FDR had to move cautiously. The public supported war, but sought war primarily with Japan, while FDR correctly believed that Germany posed a greater threat to the United States than Japan did. In FDR's view, Japan could be, and should be, dealt with after the Atlantic alliance against Germany was solidified. Thus, although FDR had popular support on one level, he needed to devise ways to ensure support for his particular war aims and strategies, whose particular justifications would always remain at least partially obscure to the public. One of FDR's tactics for generating support was to invite prominent Republicans into his cabinet. For example, Henry Stimson was given the post of Secretary of War, and Frank Knox was made the Secretary of the Navy. n13 Provided with inside information, they would be able to blow the whistle if U.S. war strategy departed too much from what they believed was the public interest. But, as internationalists, they would also support the war.¶ B. Truman: Scaring Hell out of the Country¶ The Soviet Union had been the United States' ally during World War II, and many people, including FDR, expected or hoped that it would cooperate with the United States after the war as well. That the Soviet Union would have aggressive rather than pacific designs only gradually dawned on U.S. elites. By 1946, skepticism about Soviet motives was widespread in the U.S. government, but the U.S. public still labored under more genial impressions fostered by wartime propaganda. To counter the growing Soviet threat, President Harry S. Truman resolved to expend U.S. treasure to rebuild the economies of France, West Germany, Britain, and other potential allies, and to bind them together in a military defense pact. The former would require a lot of money; the latter would require the stationing of U.S. troops abroad. The U.S. public, however, was traditionally isolationist, and wished to enjoy the victory and the peace. n14 How could Truman persuade [\*871] the public that further sacrifice and foreign entanglements would be necessary to defend U.S. interests against a former ally?¶ Truman apparently could not simply explain to the public that the Soviet threat justified the Marshall Plan and North Atlantic Treaty Organization, the United States' first permanent foreign military alliance. The problem was that the public had no way to evaluate the Soviet threat. The U.S.S.R. had not actually used military force against U.S. troops, as the Japanese had five years earlier at Pearl Harbor. The Soviet Union was instead supporting communist insurgencies in Greece and Turkey, interfering in politics in Italy, violating its promise to respect democratic processes in Poland, engaging in espionage, and so forth. Experienced and perceptive observers saw a threat, but, generally speaking, the public was in no position to do so.¶ To enhance the credibility of his claims about the Soviet threat, Truman did two things. First, he recast the threat as an ideological challenge. Truman gave the threat an ideological dimension, deliberately "scaring hell out of the country." n15 Second, he made an alliance with a powerful Republican senator, Arthur Vandenberg, who could assure Truman that the Republicans would not object to his policies as long as he consulted them and allowed them some influence. As a former isolationist, Vandenberg's endorsement of Truman's policy of engagement must have enhanced the credibility of Truman's claims about the Soviet threat. n16¶ Both of these strategies succeeded, but neither was costless. Truman's characterization of the Soviet threat as an ideological challenge may have led to the McCarthy era and suppressed public debate about foreign policy. Truman's alliance with the Republicans meant, of course, that he would have less freedom of action. n17 [\*872] ¶ C. Bush I versus Bush II: The Iraqi Threat¶ George H.W. Bush and George W. Bush both went to war with Iraq, but they faced different threats and chose different responses. George H.W. Bush sought to drive Iraqi military forces out of Kuwait. His problem was persuading the U.S. public that a U.S. military response was justified. In retrospect, it might seem that he was clearly right, but at the time most experts believed that that a great number of U.S. troops would be killed. n18 This was the expected cost of a military response. On the benefit side, Bush could appeal to the sanctity of sovereign borders, but public sympathy for the rich Kuwaitis was limited. The United States' real concern was that Iraq would, with Kuwait's oil fields, become wealthy and powerful enough to expand its control over the region, threaten Saudi Arabia, dominate the Persian Gulf's oil reserves, and pose a long-term threat to the Western economies and the United States' influence in the Middle East. But all of these concerns are rather abstract, and it was never obvious that the public would accept this case. Indeed, the congressional authorization to use military force was far from unanimous in the House of Representatives. n19¶ The credibility of Bush's claims, however, was greatly aided by international support. The public support of nations with divergent interests showed that Bush's claim about the internationally destabilizing effects of Saddam Hussein's invasion was real and not imagined. Thus any claim that a U.S. military invasion was solely in Bush's partisan political interests, or in the interests mainly of oil companies, was seriously weakened. Formal United Nations approval and the military assistance of foreign states -- which was of mainly political, not military significance -- further solidified Bush's credibility. n20¶ Surface similarities aside, George W. Bush faced a different kind of threat. He feared that Saddam Hussein had weapons of mass destruction (WMDs), which he would give or sell to terrorist groups like al Qaeda. It was more difficult for George W. Bush to prove that Saddam had WMDs than for his father to prove that Saddam was a threat to the region, because any WMDs were hidden on Saddam's territory [\*873] while the invasion of Kuwait could be observed by all. George W. Bush followed the same strategy that his father did, albeit somewhat less enthusiastically: to enlist international support in order to bolster the credibility of his claim that Saddam continued to pose a major threat to U.S. and Western interests. But George W. Bush failed to persuade foreign countries that Saddam posed a great enough threat to justify a military invasion (although they largely agreed that he either had or probably had WMDs), and he did not obtain significant international support. n21 Ironically, George W. Bush, unlike his father, had strong congressional support, in part because opposition to the first war turned out to be a political liability, and the costs of the first war (unlike the second war) turned out to be minimal.¶ D. Clinton: Wag the Dog¶ Long before the attacks of September 11, 2001, the U.S. government understood that al Qaeda posed a threat to U.S. interests. The CIA had established a bin Laden office in 1996, and the Clinton administration was trying to develop an effective counterterrorism strategy. n22 In 1998, al Qaeda blew up U.S. embassies in Kenya and Tanzania, whereupon Clinton ordered cruise missile strikes on targets in Afghanistan and Sudan. Just three days earlier, however, Clinton had announced on national television that he had had an affair with Monica Lewinsky. Opponents charged that he ordered the strikes in order to distract the public from his domestic problems. n23 This came to be known as the Wag the Dog strategy after a movie that featured a similar subterfuge. n24 [\*874] ¶ Clinton's credibility problem was more acute than that of earlier presidents. FDR, Truman, and George H.W. Bush (as well as, later, George W. Bush) might embark on foreign adventures in order to enhance their prestige or to pay off interest groups or to distract the public from domestic problems. George W. Bush, for example, has been repeatedly accused of manipulating terrorism warnings in order to improve poll results or electoral outcomes. n25 But only in Clinton's case was it necessary for him to make an important and visible decision about foreign policy in the midst of a personal scandal in which he admitted that he engaged in deceit, with the result that his ability to conduct an effective terrorism defense was hampered by doubts about his credibility. n26 A more aggressive response to al Qaeda would have to wait until after September 11, 2001.¶ II. Theory¶ A. The Problem¶ The examples we discussed have a common structure: a nation or group, like Nazi Germany, the Soviet Union, Iraq, or al Qaeda, poses a threat to U.S. interests. The threat is widely understood at a general level but the public does not understand important details: why the threat exists, its magnitude, what programs will best address it. The president believes that a particular program -- NSA surveillance, unlimited detention, military preparation -- is necessary and desirable for countering the threat, and let us assume that he is correct. At the same time, the program could be misused in various ways. It could be used to enhance the power of the president at the expense of legitimate political opponents; to pay off the president's supporters at the expense of the general public; or to spark an emotional but short-lived surge of patriotism that benefits the president during an important election but does not enhance security. The president can announce the [\*875] program and justify it in general terms, but he cannot design the program in such a way that its dangers to legitimate political opposition can be eliminated. n27 As a result, his claim that the program will be used only for national security, and not to enhance his power at the expense of political opponents, or to benefit allies, may not be believed.¶ Consider, for example, the policy of detaining suspected members of al Qaeda without charging them and without providing them with a trial. The public understands that al Qaeda poses a threat to national security but lacks the information necessary to evaluate the detention policy. The public does not know the magnitude of the continuing threat from al Qaeda: it might be the case that the group has focused its attention on foreign targets, that it no longer has the capacity to launch attacks on U.S. soil, that greater international cooperation and intelligence sharing has significantly reduced the threat, and so forth. The public also does not know whether the detainees are important members of al Qaeda, foot soldiers, or unconnected to al Qaeda; whether the dangerous detainees could be adequately incapacitated or deterred through regular criminal processes; whether the Bush administration obtains valuable intelligence from the detainees, as it claims, or not; whether the detainees are treated well or harshly; and numerous other relevant factors. Some of the relevant variables are public, but most are not; those that are public are nonetheless extremely difficult to evaluate. Consider the ambiguity over whether the suicides at Guantanamo Bay in June 2006 were driven by despair and harsh treatment, or were the result of a calculated effort by martyr-seeking Jihadists to score a propaganda coup. n28 As a general matter, the public does not even know whether the absence of major terrorist attacks on U.S. soil since September 11, 2001 resulted from the Bush administration's detention policy, at least partly resulted from this policy, occurred for reasons entirely independent of this policy such as (say) the military attack on Afghanistan, or occurred despite the detention policy, which, by alienating potential allies, perversely made a further attack more likely than it would otherwise have been.¶ Described in this manner, the president's credibility problem is the result of an agency relationship, where the president is the agent and the public is the principal. In agency models, the agent has the power to engage in an action that benefits or harms a principal. In a [\*876] typical version of these models, the principal first hires the agent and instructs the agent to engage in high effort rather than shirk. The agent then chooses whether to engage in high effort or shirk. High effort by the agent increases the probability that the principal will receive a high payoff, but some randomness is involved, so that the link between the agent's effort and the principal's payoff is stochastic rather than certain. If the agent's behavior can be observed and proven before a court, then the simple solution is for the two parties to enter a contract requiring the agent to engage in high effort. If the agent's behavior cannot be observed, then a contract requiring high effort is unenforceable, and instead the principal and agent might enter a contract that makes the agent's compensation a function of the principal's payoff. This gives the agent an incentive to use high effort, though depending on various conditions, this incentive might be weak. n29¶ Less important than the details of the agency model, and its various solutions, is the way that it clarifies the basic problem. The president is the agent and the public is the principal (sometimes we will think of the legislature as the principal, bracketing questions of agency slack between voters and legislators). The public cares about national security but also cares about civil liberties and the well-being of potential targets of the war on terror; its optimal policy trades off these factors. However, the public cannot directly choose the policy; instead, it delegates that power to the government and, in particular, the president. The president knows the range of options available, their likely effects, their expected costs and benefits -- thanks to the resources and expertise of the executive branch -- and so, if he is well motivated, he will choose the best measures available.¶ Thus a well-motivated executive, in our sense, is an executive who chooses the policies that voters would choose if they knew what the executive knows. n30 This definition does not require that the president's deeper motives be pure. For our purposes, a well-motivated president may be concerned with his historical reputation in the long run, as many presidents are. Because presidents know that in the long run most or all of their currently private information will be revealed, n31 a [\*877] concern with the judgment of history pushes presidents to make the decisions that future generations, knowing what the president knows now, will approve. To be sure, the concern with historical reputation is not perfectly congruent with doing what the current generation would approve of (with full information), because different generations have different values, as in the case of civil rights. The convergence is substantial, however, compared to far more harmful motivations a president might have, such as short-term empire-building or partisan advantage. Presidents with a concern for their long-run reputation may not be disinterested leaders, but they approach the ideal of faithful agency more closely than do presidents with no such concern.¶ We also assume that the voters' ultimate preferences are fixed, so we put aside the possibility of presidential leadership that changes bedrock public values. However, voters' derived preferences may change as their information changes, and this further blurs the significance of changing public values over time. On this view, there is still scope for leadership, in the sense that a well-motivated president might choose a policy inconsistent with voters' current ill-informed preferences, but consistent with the new preferences voters will form as their information changes, perhaps as a result of the policy itself. FDR's behavior just before World War II is the model for presidential leadership in this sense. n32¶ As this discussion suggests, the well-motivated executive may or may not keep campaign promises, or adopt popular policies. All depends on circumstances -- on what the public would approve, if it knew what the president knows. A public that would condemn the president's policy P might, if it knew more, approve of P. The well-motivated president will want to adopt P in such circumstances, and will then face the problem of credibly signaling to the public that he favors the policy for good reasons that he cannot directly convey. Furthermore, we assume that the well-motivated executive will collect an optimal amount of information -- up to the point where the marginal benefits of further information gathering equal the marginal costs. n33 This does not mean [\*878] that the well-motivated executive always gets the facts right; he may turn out to be wrong. But it does mean that greater accuracy would not have been cost justified.¶ Against this benchmark of faithful agency, the problem is that a given president's motivations may or may not be faithful, and the public knows this. The public fears that, for various reasons, the president might choose policies that diverge from the public's optimal policies. These include:¶ 1. The president cares more about national security (or more about civil liberties, but we will, for simplicity, assume the former) than the public does. His "preferences" are different from those of the public.¶ 2. The president cares very little about national security and civil liberties; he mainly cares about maximizing his political power and, more broadly, political success -- success for himself, his party, or his chosen successor. With a view to political power and success, the president might maximize the probability of electoral success by favoring particular interest groups, voting blocs, or institutions at the expense of the public, or by adopting policies that are popular in the short term, as far as the next election cycle, but that are harmful in the long term, along with rhetoric that confuses and misleads.¶ The public knows that the president might have these or other harmful motivations, so when the president claims, for example, that a detention policy is essential to the war on terror but at the same time is not excessively harsh given its benefits, the public simply does not know whether to believe him.¶ Crucially, the risk that the public will fail to trust a well-motivated president is just as serious as the risk that it will trust an ill-motivated one. Imagine that a well-motivated president chooses the optimal policies. No terrorist attack occurs before the next election, but the public does not know whether this is because the president chose the optimal policies, the president chose bad policies and was merely lucky (as the terrorists for internal reasons chose to focus on foreign targets), or the president chose effective but excessively harsh policies. In the election, the public therefore has no particular reason to vote for this president and could easily vote him out of office and replace him with a worse president. A president who cares about electoral [\*879] success might therefore not choose the optimal policies, and even a well-motivated president might be reluctant to choose the optimal policies because of the risk that the public will misinterpret them and replace him with an ill-motivated president. Presidents need public support even when they do not face reelection; they need the public to prod Congress to provide the president with funds for his programs and statutory authorization when necessary. A well-motivated president will abandon optimal policies if he cannot persuade the public that they are warranted.¶ As we noted earlier, legal scholars rarely note the problem of executive credibility, preferring to dwell on the problem of aggrandizement by ill-motivated presidents. Ironically, this assumption that presidents seek to maximize power has obscured one of the greatest constraints on aggrandizement, namely, the president's own interest in maintaining his credibility. Neither a well-motivated nor an ill-motivated president can accomplish his goals if the public does not trust him. n34 This concern with reputation may put a far greater check on the president's actions than do the reactions of the other branches of the government.¶ B. Solutions¶ The literature on agency models and optimal contracting provides clues for solving the problem of executive credibility. This literature gives two basic pieces of advice. n35 The first piece of advice is to align preferences. An employer will do better if her employees obtain utility from doing whatever actions benefit the employer. Suppose, for example, an employer seeks to hire someone to build furniture in a factory. The pay is good enough to attract job candidates who do not enjoy building furniture, but clearly the employer does better by hiring people who like working with their hands, and take pleasure in constructing a high-quality product, than by hiring people who do not like working with their hands. We say that the first type of person has a preference for building high-quality furniture; this person is less likely to shirk than the other type of person.¶ In order to align preferences, employers can use various types of screening mechanisms or selection mechanisms that separate the good [\*880] types and the bad types. n36 An old idea is that job candidates who completed a training program -- here, in carpentry -- are more likely good types than job candidates who did not complete such a program. The reason is not that the training program improves skills, though it might, but that a person who enjoys carpentry is more likely to enter and complete such a program than a person who does not -- the program, in terms of time and effort, is less burdensome for the former type of person. The employer could use other mechanisms as well, of course. She could ask for evidence that the job candidate pursues woodworking as a hobby in his free time, or, simply, that he has held other jobs in similar factories, or jobs that involve carpentry or furniture construction. Another important screening mechanism is to compensate employees partly through in-kind components or earmarked funds that are worth more to good types than to bad types. In university settings, academic compensation is partly composed of research budgets that cannot be spent on personal consumption and that are worth more to good types (researchers) than to bad types (shirkers). n37¶ The second piece of advice is to reward and sanction. This is not as simple as giving the employee a bonus if she constructs good furniture and firing her if she does not; recall that we assume that the employer does not directly observe the quality of the agent's action. Consider the following version of our example. The employees both design and construct furniture; "high-quality" furniture is both made well and pleasing to the public, so that it sells well. The employer cannot tell by looking at a piece of furniture whether it is high quality, because she does not know the tastes of the public. An employee who uses a high level of effort is more likely to produce furniture that sells well, but an employee can in good faith misjudge public taste and produce furniture that sells poorly. Similarly, an employee who uses a low level of effort is less likely to produce furniture that sells well but nonetheless may succeed at times. Since the employer cannot observe the quality of the furniture, she cannot make the wage a function of its quality; if she pays a flat wage, then the employee does not have an incentive to engage in a high level of effort, because that involves more personal cost without producing any reward.¶ The main solution is to make the employee's compensation a function, in part, of the quantity of the sales of the goods that the employee [\*881] produces. The quantity of sales, unlike the quality of the furniture, is observable. If the pay is properly determined, then the employee will engage in a high level of effort because the expected gains from high sales exceed the cost of high effort. How closely pay should be correlated with sales depends on how risk averse the employee is, and it may be necessary, for ordinary people who are generally risk averse, to pay them at least a little even if sales are low, and somewhat more if sales are high.¶ An enormous literature develops and qualifies these results, and we will refer to relevant parts of it later as necessary rather than try to summarize it here. n38 For now, we want to briefly point out the relevance of these solutions to our problem of executive credibility.¶ The preference-alignment solution has clear applicability to the problem of executive credibility. To be sure, elections and other democratic institutions help ensure that the president's preferences are not too distant from those of the public, but they are clearly not sufficient to solve the executive credibility problem. Elections will never create perfect preference alignment, for well-known reasons, and in any event the well-motivated executive will do what the public would want were it fully informed, not what maximizes the chances of electoral success in the short run. Furthermore, we do not consider credibility-generating mechanisms that would require new constitutional or statutory provisions; of course, the president has little or no power to redesign electoral rules in order to enhance his credibility. We will instead focus, in Part IV, on how the president might use the existing electoral system to enhance his credibility in indirect ways -- by appointing subordinates, advisors, and commission members, and by supporting certain types of candidacies for electoral office.¶ The reward-and-sanction solution also is applicable to the problem of executive credibility, but we think it is of less importance and we will not address it in any detail. The problem that most concerns us -- threats to national security -- typically does not produce a clear outcome while the president is still in office. As noted above, Bush's war-on-terror policies might be optimal, insufficient, or excessive; we will not know for many years. And the public cannot enter a contract with the president that provides that he will receive a bonus if national security is enhanced and will be sanctioned if it is not enhanced. Consequently, Bush cannot enter a contract with the public that rewards him if his policies are good and punishes him if they are bad. [\*882] ¶ However, some signaling mechanisms have a reward-or-sanction component. A good job applicant can distinguish herself from a bad job applicant by agreeing to a compensation scheme that good types value and bad types disvalue. For example, if a good type of employee discounts future payoffs less than bad types, then good types will accept deferred compensation (such as pension contributions) that bad types reject. n39 Similarly, a well-motivated president can distinguish himself from an ill-motivated president by binding himself to a policy position that an ill-motivated president would reject -- for example, deficit reduction programs or Social Security reform that would mainly benefit future generations, long after the president leaves office. However, a president, unlike an ordinary employee, cannot bind himself by a judicially enforceable contract; therefore, this mechanism can work only if the president can engage in self-binding through informal means, as we will discuss below. n40¶ Note that either a well-motivated actor or an ill-motivated actor might use strategic devices to enhance her credibility. A bad actor might, for example, take actions to enhance the credibility of his threats. In a standard illustration, the "chicken" game occurs when two drivers race toward each other and the loser is the one who swerves to avoid death. In that game, each driver is threatening to drive straight, and the winner will be the one who can make his threat credible, because the other driver will then know that the only choice is to swerve or die. Credibility is a valuable adjunct to many different motivations, not just to socially beneficial ones.¶ But this is a different type of credibility problem than the one we are interested in. In the class of problems we address, the problem that faces the well-motivated actor is that others cannot distinguish or sort him at a glance from ill-motivated actors. "Bad types" can mimic "good types" through low-cost imitation and by saying all the right things. The good type needs some device whereby he can credibly signal that he is a good type. The only effective device, in general, is for the good type to undertake an action that imposes greater costs on bad types than on good types. If third parties understand the cost structure of the action, then this separates the two types, because the bad type's strategy of costlessly imitating the good type no longer works. In employment screening, for example, both the lazy worker and the hard worker will claim to be a hard worker. The employer might prefer candidates with good references, or an advanced degree, [\*883] on the theory that obtaining those things will be easier for the good type than the bad type.¶ Let us provide a little more structure to our analysis before describing our preferred mechanisms. Suppose that the president must choose a policy that will affect national security and civil liberties; this might include asking Congress to authorize him to engage in conduct like wiretapping or the use of military force. He makes this choice at the start of his first term, and the actual effect of his choice -- on national security and civil liberties -- will not be revealed to the public until after the next election. Terrorist attacks during the first term do not necessarily prove that he chose the wrong policies; nor does the absence of terrorist attacks during the first term prove that he chose the right policies. Only later will it become clear whether the president chose the optimal policies, perhaps many decades later. Thus, the public must vote for or against the president on the basis of the policy choice itself, not on the basis of its effect on their well-being. For expository convenience, we will assume that the president actually does make the optimal policy choice and that his problem is one of convincing the public that he has done so. Presidents who, for whatever reason, knowingly choose policies that the public would reject (if fully informed) obviously do not want to convince the public that this is what they are doing.¶ Our focus, then, is how the president who chooses the optimal policy, given the information available to him and the relevant institutional constraints, might use some additional mechanism to enhance the credibility of his claim that he chose the best policy. In the next Part, we will address why our current Madisonian system does not already solve the problem of executive credibility. In Part IV, we will analyze some mechanisms by which presidents can bootstrap themselves into credibility.¶ III. Madisonian Monitoring¶ In the standard separation of powers theory attributed to Madison, the executive's credibility dilemma is ameliorated by the separation of powers and institutional competition, which produce monitoring or oversight of executive discretion. Although the Madisonian system is not usually justified as a means of enhancing the executive's credibility, that is a byproduct of the system: if checks and balances discourage ill-motivated persons from running for office, or force them to adopt public-spirited policies once in office, then the executive's claims about his policies will be credible. Congressional and judicial oversight of executive action, on this account, will ensure that the executive exercises discretion only as directed by voter-principals, [\*884] acting through legislators who are simultaneously agents (of the voters) and principals (of the executive).¶ This account is no longer adequate, if it ever was. Legislators and judges are, for the most part, unable to effectively oversee or monitor the executive, especially in the domains of foreign policy and national security. As a result, they are forced to make the difficult choice of granting discretion that an ill-motivated executive would abuse, or withholding discretion that a well-motivated executive would use for good.¶ We do not suggest that the Madisonian system has entirely failed, only that it has partly failed, and that to the extent it has failed the executive's credibility dilemma becomes more acute. We will examine some of the principal institutional problems, beginning with legislative oversight and then turning to the courts.¶ A. Congress¶ In the Madisonian vision, legislators are simultaneously principals of the president, who is supposed to execute the statutes that legislators enact, and are also institutional competitors of the president, who has freestanding constitutional powers beyond the execution of statutes. Voters elect legislators, who either transmit voters' exogenously determined policy preferences to the executive through statutes or (in a deliberative conception of Madisonianism) refine public preferences through reasoned discussion and then instruct the executive accordingly. n41 We are agnostic on the question of whether the preference-based or deliberative version of the Madisonian vision is more persuasive, or exegetically more faithful to the Madison of the Federalist Papers. In either case, what matters here is that the combination of principal-agent relationships with institutional rivalry is supposed to produce valuable byproducts for the polity as a whole. Legislators have an interest in monitoring the president, not only to ensure that he faithfully executes the statutes they enact, but also to ensure that executive power does not swell beyond its constitutionally prescribed bounds and destroy the separation of legislative and executive powers.¶ Whether or not this picture was ever realistic, it is no longer so today. Many institutional factors hamper effective legislative monitoring of executive discretion. Consider the following problems. [\*885] ¶ 1. Information asymmetries.¶ Monitoring the executive requires expertise in the area being monitored. In many cases, Congress lacks the information necessary to monitor discretionary policy choices by the executive. Although the committee system has the effect, among others, of generating legislative information and expertise, n42 and although Congress has a large internal staff, there are domains in which no amount of legislative expertise suffices for effective oversight. Prime among these are areas of foreign policy and national security. Here legislative expertise is beside the point, because the legislature lacks the raw information that experts need to make assessments.¶ The problem would disappear if legislators could cheaply acquire information from the president, but they cannot. One obstacle is a suite of legal doctrines protecting executive secrecy and creating deliberative privileges n43 -- doctrines which may or may not be justified from some higher-order systemic point of view as means for producing optimal deliberation within the executive branch. Although such privileges are waivable, the executive often fears to set a bad institutional precedent. Another obstacle is the standard executive claim that Congress leaks like a sieve, so that sharing secret information with legislators will result in public disclosure. The credibility dilemma becomes most acute when, as in the recent controversy over surveillance by the National Security Agency, the executive claims that the very scope or rationale of a program cannot be discussed with Congress, because to do so would vitiate the very secrecy that makes the program possible and beneficial. In any particular case the claim might be right or wrong; legislators have no real way to judge, and they know that the claim might be made either by a well-motivated executive or an ill-motivated executive, albeit for very different reasons.¶ 2. Collective action problems.¶ Executive officials worry that, with many legislators on select intelligence committees, someone is bound to leak and it will be difficult to pinpoint the source. Aware of the relative safety that the numbers give them, leakers are all the more bold. This is an example of a larger problem, arising from the fact that there are many more legislators than top-level executive officials. Compared to the executive branch, [\*886] Congress finds it more costly to coordinate and to undertake collective action (such as the detection and punishment of leakers). To be sure, the executive too is a "they," not an "it." Much of what presidents do is to arbitrate internal conflicts among executive departments and to try to aggregate competing views into coherent policy over time. As a comparative matter, however, the contrast is striking: the executive can act with much greater unity, force, and dispatch than can Congress, which is chronically hampered by the need for debate and consensus among large numbers. This comparative advantage is a principal reason why Congress enacts broad delegating statutes in the first place, especially in domains touching on foreign policy and national security. In these domains, and elsewhere, the very conditions that make delegation attractive also hamper congressional monitoring of executive discretion under the delegation.¶ There may or may not be offsetting advantages to Congress's large numbers; perhaps the very size and heterogeneity of Congress make it a superior deliberator, whereas the executive branch is prone to suffer from various forms of groupthink. n44 But there are clear disadvantages to large numbers, insofar as monitoring executive discretion is at issue. From the standpoint of individual legislators, monitoring is a collective good. If rational and self-interested, each legislator will attempt to free-ride on the production of this good, and monitoring will be inefficiently underproduced. n45 More broadly, the institutional prerogatives of Congress are also a collective good. n46 Individual legislators may or may not be interested in protecting the institution of Congress or the separation of legislative from executive power; much depends on legislators' time horizons or discount rate, the expected longevity of a legislative career, and so forth. But it is clear that protection of legislative prerogatives will be much less in an institution composed of hundreds of legislators coming and going than if Congress were a single person. [\*887] ¶ 3. "Separation of parties, not powers." n47¶ Congress is, among other things, a partisan institution. Political scientists debate whether it is principally a partisan institution, or even exclusively so. n48 But Madison arguably did not envision partisanship in anything like its modern sense. n49 Partisanship undermines the separation of powers during periods of unified government. n50 Where the same party controls both the executive branch and Congress, real monitoring of executive discretion rarely occurs, at any rate far less than in an ideal Madisonian system. Partisanship may enhance monitoring during periods of divided government, as one house of Congress, say, investigates a president of the other party. However, monitoring is arguably most necessary during periods of unified government, because Congress is most likely to enact broad delegations when the President holds similar views; n51 and in such periods monitoring is least likely to occur. n52 The Congress of one period may partially compensate by creating institutions to ensure bipartisan oversight in future periods -- consider the statute that gives a partisan minority of certain congressional committees power to subpoena documents from the executive, albeit only nonprivileged documents n53 -- but these are palliatives. Under unified government, congressional leaders of the [\*888] same party as the president have tremendous power to frustrate effective oversight by the minority party.¶ 4. The limits of congressional organization.¶ Congress as a collective body has attempted, in part, to overcome these problems through internal institutional arrangements. Committees and subcommittees specialize in a portion of the policy space, such as the armed forces or homeland security, thereby relieving members of the costs of acquiring and processing information (at least if the committee itself maintains a reputation for credibility). n54 Intelligence committees hold closed sessions and police their members to deter leaks (although the sanctions that members of Congress can apply to one another are not as strong as the sanctions a president can apply to a leaker in the executive branch). Large staffs, both for committees and members, add expertise and monitoring capacity. And interest groups can sometimes be counted upon to sound an alarm when the executive harms their interests. n55¶ Overall, however, these arrangements are not fully adequate, especially in domains of foreign policy and national security, where the scale of executive operations is orders of magnitude larger than the scale of congressional operations. Congress's whole staff, which must (with the help of interest groups) monitor all issues, runs to some 30,000 persons. n56 As of 2005, the executive branch had some 2.6 million civilian employees, n57 in addition to almost 1.4 million in the active armed forces. n58 The sheer mismatch between the scale of executive operations and the congressional capacity for oversight, even aided by interest groups or by leakers within the bureaucracy, is daunting. Probably Congress is already at or near the limits of its monitoring capacity at its current size and budget. [\*889] ¶ 5. Congressional motivation and credibility.¶ Like the executive, Congress has a credibility problem. Members of Congress may be well motivated or ill motivated; the public does not know. Thus, when Congress passes a resolution criticizing presidential action or refuses to delegate power that he seeks, observers do not know whether Congress or the president is right. Ill-motivated members of Congress will constrain public-spirited presidents; thus the Madisonian cure for the problem of executive credibility could be worse than the disease.¶ Even if members of Congress are generally well motivated, Congress has a problem of institutional credibility that the president lacks. Although a voter might trust the member of Congress for whom she voted because she knows about his efforts on his district's behalf, she will usually know nothing about other members of Congress, so when her representative is outvoted, she might well believe that the other members are ill motivated. And, with respect to her own representative, he will often lack credibility compared to the president because he has much less information. Further, the reputation of congressional leaders is only very loosely tied to the reputation of the institution, while there is a closer tie between the president's reputation and the presidency. As a result, Congress is likely to act less consistently than the president, further reducing its relative credibility. Congressional lack of credibility undermines its ability to constrain the president: Congress can monitor the president and tell the public that the president has acted properly or improperly, but if the public does not believe Congress, then Congress's power to check the president is limited.¶ We neither make, nor need to make, any general empirical claim that Congress has no control over executive discretion. That is surely not the case; there is a large debate, or set of related debates, about the extent of congressional dominance. n59 We have reviewed the institutional problems piecemeal; perhaps some of them are mutually offsetting, although we do not see any concrete examples. Our assertion is just that there is at least a real gap, and during emergencies and wars [\*890] an even larger gap, between the extent of executive discretion and legislative capacity for monitoring. It is hard to say how great that gap is, but we know of no one who thinks it is nonexistent. Within that gap, the dilemma of executive credibility arises. To the extent that legislators cannot monitor the executive's exercise of discretion, they must either withhold discretion from an executive who might be well motivated, or grant discretion to an executive who might be ill motivated.¶ B. Courts¶ Similar problems afflict judicial oversight of the executive.¶ 1. Information asymmetries.¶ The gap between the executive and the judiciary, in information and expertise, is even wider than between the executive and Congress. Whereas many legislators have a narrowly defined field of policy expertise, particularly in the House, federal judges are mostly generalists, barring a few specialized courts. Furthermore, the partial insulation from current politics that federal judges enjoy, by virtue of life tenure and salary protection, brings with it a kind of informational impoverishment. n60 Legislators, who must please other people at least some of the time, interact with the outside world far more systematically than generalist judges, whose main source of information is the briefs and arguments of litigants. The credibility dilemma thus appears quite acutely in judicial proceedings. When the executive says that resolving a plaintiff's claim would require disclosure of "state secrets," n61 with dangerous consequences for national security, judges know that either an ill-motivated or a well-motivated executive might be making the claim and that they have no easy means to assess whether the claim is credible.¶ 2. Collective action problems and decentralization.¶ If congressional monitoring of executive discretion is hampered by collective action problems, judicial monitoring is hampered by a [\*891] similar condition, the decentralized character of the federal judiciary. The judiciary really is a "they," not an "it," and is decentralized along mainly geographic lines. Different judges on different courts will have different prior estimates of the executive's credibility, and hence different views of the costs and benefits of oversight and of the appropriate level of monitoring. The Supreme Court is incapable of fully resolving these structural conflicts. Because the Court presides over a large institutional system and lacks the capacity to review more than a fraction of cases submitted to it, its role is restricted by necessity to the declaration of general principles of law and episodic, ad hoc intervention in the system. n62¶ 3. The legitimacy deficit.¶ In the federal system, appointed judges are not overtly partisan, though they are sometimes covertly so. n63 The very condition that enables this relative lack of overt politicization -- that federal judges are, at least in one familiar conception, legal technocrats appointed for their expertise rather than elected on a partisan basis -- also creates a serious legitimacy deficit for the judiciary, understanding legitimacy in a strictly sociological sense. n64 Aroused publics concerned about issues such as national security sometimes have little tolerance for robust judicial oversight of executive discretion, which can always be condemned as "activism" by "unelected judges." This charge sometimes succeeds and sometimes fails, but for the judges it is always a concern that acts as a drag on attempts to monitor executive behavior.¶ 4. Judicial credibility.¶ Judges rely on executive officials to carry out their orders and Congress to fund them, and thus ultimately rely on the public to impose sanctions on the political branches when the political branches do not obey a court order. But the public will support the judiciary [\*892] only if the public believes that the judiciary is well motivated rather than ill motivated. Such is often the case, but the credibility of judges is not infinite. n65 Lingering public suspicion of elite decisionmaking places a cap on judicial credibility, and indeed the evidence suggests that judges are often motivated by ideology, at least when it comes to opinion assignment. n66 Thus, in extreme cases, as between a presidential determination that an emergency requires a course of action and a judge's claim to the contrary, the public might well believe the president. n67¶ Here too, we do not claim that judicial oversight is a total failure. Doctrinal lawyers focus, sometimes to excess, on a handful of great cases in which judges have checked or constrained discretionary executive action, even in domains involving foreign policy or national security. Cases such as Youngstown, n68 the Pentagon Papers case, n69 and recently Hamdan n70 head this list. Undoubtedly, however, there is a [\*893] large gap between executive discretion and judicial capacities, or even between executive discretion and the sum of congressional and judicial capacities working in tandem. In times of emergency, especially, both Congress and the judiciary defer to the executive. n71 Legislators and judges understand that the executive's comparative institutional advantages in secrecy, force, and unitariness are all the more useful during emergencies, so that it is worthwhile transferring more discretion to the executive even if it results in an increased risk of executive abuse. The result is that cases such as the ones we have listed are the exception, not the rule, at least during the heat of the emergency.¶ C. The Madisonian System and the Well-Motivated Executive¶ The Madisonian system of oversight has not totally failed. Sometimes legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative prerogatives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion unchecked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is.¶ It is often assumed that this partial failure of the Madisonian system unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are uncertain and possibly nefarious. The partial failure of Madisonian oversight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off.¶ Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an execu [\*894] tive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such.¶ IV. Executive Signaling: Law and Mechanisms¶ We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.¶ This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations. n72 Whether or not this picture is coherent, n73 it is not the question we examine here, although some of the relevant considerations are similar. n74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. [\*895] ¶ Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types.¶ We begin with some relevant law, then examine a set of possible mechanisms -- emphasizing both the conditions under which they might succeed and the conditions under which they might not -- and conclude by examining the costs of credibility.¶ A. A Preliminary Note on Law and Self-Binding¶ Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding. n75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. n76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A [\*896] president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies.¶ More schematically, we may speak of formal and informal means of self-binding:¶ 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.¶ 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. n77 However, there may be large political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive's issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.¶ In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president's own future choices in ways that impose greater costs on ill-motivated [\*897] presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.¶ B. Mechanisms¶ What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators, and judges that his policies rest on judgments about the public interest, rather than on power maximization, partisanship, or other nefarious motives?¶ 1. Intrabranch separation of powers.¶ In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels "internal separation of powers" within the executive branch. n78 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger employment protections for civil servants, and internal adjudication of executive controversies by insulated "executive" decisionmakers who resemble judges in many ways. n79¶ Katyal's argument is relevant because the mechanisms he discusses might be understood as signaling devices, but his overall approach is conceptually flawed on two grounds. First, the assumption that second-best constraints on the executive should reproduce the Madisonian separation of powers within the executive branch is never defended. The idea seems to be that this is as close as we can get to the first-best, while holding constant everything else in our constitutional order. But the general theory of second-best states that approaching as closely as possible to the first-best will not necessarily be the preferred strategy; n80 the best approach may be to adjust matters on other margins as well, in potentially unpredictable ways. If the Madisonian system has failed in the ways Katyal suggests, the best compensating [\*898] adjustment might be, for all we know, to switch to a parliamentary system. (We assume that no large scale changes of this sort are possible, whereas Katyal seemingly assumes that they are, or at least does not make clear his assumptions in this regard.) Overall, Katyal's view has a kind of fractal quality; each branch should reproduce within itself the very same separation of powers structure that also describes the whole system, but it is not explained why the constitutional order should be fractal.¶ Second, Katyal's proposals for internal separation of powers are self-defeating: the motivations that Katyal ascribes to the executive are inconsistent with the executive adopting or respecting the prescriptions Katyal recommends. n81 Katyal never quite says so explicitly, but he clearly envisions the executive as a power-maximizing actor, in the sense that the president seeks to remove all constraints on his current choices. n82 Such an executive would not adopt or enforce the internal separation of powers to check himself. Executive signaling is not, even in principle, a solution to the lack of constraints on a power-maximizing executive in the sense Katyal implicitly intends. Although an ill-motivated executive might bind himself to enhance his strategic credibility, as explained above, he would not do so in order to restore the balance of powers. Nor is it possible, given Katyal's premise of legislative passivity or abdication, that Congress would force the internal separation of powers on the executive. In what follows, we limit ourselves to proposals that are consistent with the motivations, beliefs, and political opportunities that we ascribe to the well-motivated executive, to whom the proposals are addressed. This limitation ensures that the proposals are not self-defeating, whatever their other drawbacks.¶ The contrast here must not be drawn too simply. A well-motivated executive, in our sense, would attempt to increase his power if fully informed voters would want him to do so. The very point of demonstrating credibility is to allow voters and legislators to increase the discretionary authority of the executive, where all will be made better off by doing so. Scholars such as Katyal, who implicitly distrust the executive, however, do not subscribe to this picture of executive motivations. Rather, they see the executive as an unfaithful agent of the voters; the executive attempts to maximize his power even where fully informed [\*899] voters would prefer otherwise. An actor of that sort will have no incentive to adopt proposals intended to constrain that sort of actor.¶ 2. Independent commissions.¶ We now turn to some conceptually coherent mechanisms of executive signaling. Somewhat analogously to Katyal's idea of the internal separation of powers, a well-motivated executive might establish independent commissions to review policy decisions, either before or after the fact. Presidents do this routinely, especially after a policy has had disastrous outcomes, but sometimes beforehand as well. Independent commissions are typically blue-ribbon and bipartisan. n83¶ We add to this familiar process the idea that the President might gain credibility by publicly committing or binding himself to give the commission authority on some dimension. For example, the president might publicly promise to follow the recommendations of such a commission, or to allow the commission to exercise de facto veto power over a policy decision before it is made, or might promise before the policy is chosen that the commission will be given power to review its success after the fact. To be sure, there will always be some wiggle room in the terms of the promise, but that is true of almost all commitments, which raise the costs of wiggling out even if they do not completely prevent it.¶ Consider whether George W. Bush's credibility would have been enhanced had he appointed a blue-ribbon commission to examine the evidence for weapons of mass destruction in Iraq before the 2003 invasion, and publicly promised not to invade unless the commission found substantial evidence of their existence. Bush would have retained his preexisting legal authority to order the invasion even if the commission found the evidence inadequate, but the political costs of doing so would have been large. Knowing this, and knowing that Bush [\*900] shared that knowledge, the public could have inferred that Bush's professed motive -- elimination of weapons of mass destruction -- was also his real motive. Public promises that inflict reputational costs on badly motivated behavior help the well-motivated executive to credibly distinguish himself from the ill-motivated one.¶ The more common version of this tactic is to appoint commissions after the relevant event, as George W. Bush did to investigate the faulty reports by intelligence agencies that Iraq possessed weapons of mass destruction. n84 If the president appoints after-the-fact commissions, the commissions can enhance his credibility for the next event -- by showing that he will be willing, after that event, to subject his statements to scrutiny by public experts. Here, however, the demonstration of credibility is weaker, because there is no commitment to appoint any after-the-fact commissions in the future, but merely a plausible inference that the president's future behavior will track his past behavior.¶ 3. Bipartisan appointments.¶ In examples of the sort just mentioned, the signaling arises from public position-taking. The well-motivated executive might produce similar effects through appointments to office. n85 A number of statutes require partisan balance on multimember commissions; presidents might approve them because they allow the president to commit to a policy that legislators favor, thus encouraging legislators to increase the scope of the delegation in the first place. n86 For similar reasons, presidents may consent to restrictions on the removal of agency officials, [\*901] because the restriction enables the president to commit to giving the agency some autonomy from the president's preferences. n87¶ Similar mechanisms can work even where no statutes are in the picture. As previously mentioned, during World War II, FDR appointed Republicans to important cabinet positions, making Stimson his Secretary of War. n88 Clinton appointed William Cohen, a moderate Republican, as Secretary of Defense in order to shore up his credibility on security issues. Bipartisanship of this sort might improve the deliberation that precedes decisions, by impeding various forms of herding, cascades, and groupthink; n89 however, we focus on its credibility-generating effects. By (1) expanding the circle of those who share the president's privileged access to information, (2) ensuring that policy is partly controlled by officials whose preferences differ from the president's, and (3) inviting a potential whistleblower into the tent, bipartisanship helps to dispel the suspicion that policy decisions rest on partisan motives or extreme preferences, which in turn encourages broader delegations of discretion from the public and Congress.¶ A commitment to bipartisanship is only one way in which appointments can generate credibility. Presidents might simply appoint a person with a reputation for integrity, as when President Nixon appointed Archibald Cox as special prosecutor (although plausibly Nixon did so because he was forced to do so by political constraints, rather than as a tactic for generating credibility). A person with well-known preferences on a particular issue, even if not of the other party or widely respected for impartiality, can serve as a credible whistleblower on that issue. Thus presidents routinely award cabinet posts to leaders of subsets of the president's own party, leaders whose preferences are known to diverge from the president's on the subject. One point of this is to credibly assure the relevant interest groups that the president will not deviate (too far) from their preferences.¶ More generally, the decision by presidents to bring into their administrations members of other parties, or persons with a reputation for bipartisanship and integrity, illustrates the formation of domestic [\*902] coalitions of the willing. Presidents can informally bargain around the formal separation of powers n90 by employing subsets of Congress, or of the opposing party, to generate credibility while maintaining a measure of institutional control. FDR was willing to appoint Knox and Stimson, but not to give the Republicans in Congress a veto. Truman was willing to ally with Arthur Vandenberg but not with all the Republicans; Clinton was willing to appoint William Cohen but not Newt Gingrich. George W. Bush likewise made a gesture towards credibility by briefing members of the Senate Intelligence Committee -- including Democrats -- on the administration's secret surveillance program(s), which provided a useful talking point when the existence of the program(s) was revealed to the public.¶ 4. Counter-partisanship.¶ Related to bipartisanship is what might be called counter-partisanship: presidents have greater credibility when they choose policies that cut against the grain of their party's platform or their own presumed preferences. n91 Only Nixon could go to China, and only Clinton could engineer welfare reform. Voters and publics rationally employ a political heuristic: the relevant policy, which voters are incapable of directly assessing, must be highly beneficial if it is chosen by a president who is predisposed against it by convictions or partisan loyalty. n92 Accordingly, those who wish to move U.S. terrorism policy towards greater security and less liberty might do well to support the election of a Democrat. n93 By the same logic, George W. Bush is widely suspected [\*903] of nefarious motives when he rounds up alleged enemy combatants, but not when he creates a massive prescription drug benefit.¶ Counter-partisanship can powerfully enhance the president's credibility, but it depends heavily on a lucky alignment of political stars. A peace-loving president has credibility when he declares a military emergency but not when he appeases; a belligerent president has credibility when he offers peace but not when he advocates military solutions. A lucky nation has a well-motivated president with a belligerent reputation when international tensions diminish (Ronald Reagan) and a president with a pacific reputation when they grow (Abraham Lincoln, who opposed the Mexican War). But a nation is not always lucky.¶ 5. Transparency.¶ The well-motivated executive might commit to transparency as a way to reduce the costs to outsiders of monitoring his actions. n94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive's decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will tend to exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.¶ Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political [\*904] preferences opposite to those of the president. Thus, George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking and perhaps even to classified intelligence, n95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency -- no one expects meetings of the National Security Council to appear on C-SPAN -- but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.¶ There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong. n96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts -- especially journalists who might reward sources who give them access by portraying their decisionmaking in a favorable light. n97¶ We will take up the costs of credibility shortly. n98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well motivated, precisely because the existence [\*905] of costs would have given an ill-motivated executive an excuse not to use those mechanisms.¶ 6. Multilateralism.¶ Another credibility-generating mechanism for the executive is to enter into alliances or international institutions that subject foreign policy decisions to multilateral oversight. Because the information gap between voters and legislators, on the one hand, and the executive on the other, is especially wide in foreign affairs, there is also wide scope for suspicion and conspiracy theories. If the president undertakes a unilateral foreign policy, some sectors of the domestic public will be suspicious of his motives. All recent presidents have faced this problem. In the case of George W. Bush, as we suggested, many have questioned whether the invasion of Iraq was undertaken to eliminate weapons of mass destruction, or to protect human rights, or instead to safeguard the oil supply, or because the president has (it is alleged) always wanted to invade Iraq because Saddam Hussein attempted to assassinate his father. n99 In the case of Bill Clinton, some said that the cruise missile attack on Osama bin Laden's training camp in Afghanistan was a "wag the dog" tactic intended to distract attention from Clinton's impeachment. n100¶ A public commitment to multilateralism can close or narrow the credibility gap. Suppose that a group of nations have common interests on one dimension -- say, security from terrorism or from proliferation of nuclear weapons -- but disparate interests on other dimensions -- say, conflicting commercial or political interests. Multilateralism can be understood as a policy that in effect requires a supermajority vote -- or even a unanimous vote -- of the group to license intervention. The supermajority requirement ensures that only interventions promoting the security interest common to the group will be approved, while interventions that promote some political agenda not shared by the requisite supermajority will be rejected. Knowing this, domestic audiences can infer that interventions that gain multilateral approval do not rest on disreputable motives.¶ It follows that multilateralism can be either formal or informal. Action by the United Nations Security Council can be taken only under formal voting rules that require unanimous agreement of the permanent members. n101 Informally, in the face of increasing tensions [\*906] with Iran, George W. Bush's policy has included extensive multilateral consultations and a quasicommitment not to intervene unilaterally. Knowing that his credibility is thin after Iraq, Bush has presumably adopted this course in part to reassure domestic audiences that there is no nefarious motive behind an intervention, should one occur.¶ It also follows that multilateralism and bipartisan congressional authorization may be substitutes, in terms of generating credibility. In both cases the public knows that the cooperators -- partisan opponents or other nations, as the case may be -- are unlikely to share any secret agenda the president may have. The substitution, however, is only partial; as we suggested in Part III, the Madisonian emphasis on bipartisan authorization has proven insufficient. The interests of parties within Congress diverge less than do the interests of different nations, which makes the credibility gain greater under multilateralism. In eras of unified government, the ability of the president's party to put a policy through Congress without the cooperation of the other party (ignoring the threat of a Senate filibuster, a weapon that the minority party often hesitates to wield) often undermines the policy's credibility even if members of the minority go along. After all, the minority members may be going along precisely because they anticipate that opposition is fruitless, in which case no inference about the policy's merits should be drawn from their approval. Moreover, even a well-motivated president may prefer, all else equal, to generate credibility through mechanisms that do not involve Congress, if concerned about delay, leaks, or obstruction by small legislative minorities. Thus Truman relied on a resolution of the United Nations Security Council n102 rather than congressional authorization to prosecute the Korean War.¶ The costs of multilateralism are straightforward. Multilateralism increases the costs of reaching decisions, because a larger group must coordinate its actions, and increases the risks of false negatives -- failure to undertake justified interventions. A president who declines to bind himself through multilateralism may thus be either ill motivated and desirous of pursuing an agenda not based on genuine security [\*907] goals, or well motivated and worried about the genuine costs of multilateralism. As usual, however, the credibility-generating inference holds asymmetrically: precisely because an ill-motivated president may use the costs of multilateralism as a plausible pretext, a president who does pursue multilateralism is more likely to be well motivated.¶ 7. Legal liability.¶ For completeness, we mention that the well-motivated executive might in principle subject himself to legal liability for actions or outcomes that only an ill-motivated executive would undertake. Consider the controversy surrounding George W. Bush's telecommunications surveillance program, which the president has claimed covers only communications in which one of the parties is overseas, not domestic-to-domestic calls. n103 There is widespread suspicion that this claim is false. n104 In a recent poll, 26 percent of respondents believed that the National Security Agency listens to their calls. n105 The credibility gap arises because it is difficult in the extreme to know what exactly the Agency is doing, and what the costs and benefits of the alternatives are.¶ Here the credibility gap might be narrowed by creating a cause of action, for damages, on behalf of anyone who can show that domestic-to-domestic calls were examined. n106 Liability would be strict, because a negligence rule -- whether the Agency exerted reasonable efforts to avoid examining the communication -- requires too much information for judges, jurors, and voters to evaluate, and would just reproduce the monitoring problems that gave rise to the credibility gap in the first place. Strict liability, by contrast, would require a much narrower factual inquiry. Crucially, a commitment to strict liability would only be made by an executive who intended to minimize the incidence of (even unintentional and nonnegligent) surveillance of purely domestic communications. [\*908] ¶ However, there are legal and practical problems here, perhaps insuperable ones. Legally, it is hardly clear that the president could, on his own authority, create a cause of action against himself or his agents to be brought in federal court. It is well within presidential authority to create executive commissions for hearing claims against the United States, for disbursing funds under benefit programs, and so on; but the problem here is that there might be no pot of money from which to fund damages. The so-called Judgment Fund, out of which damages against the executive are usually paid, is restricted to statutorily specified lawsuits. n107 Even so, statutory authorization for the president to create the strict liability cause of action would be necessary, n108 as we discuss shortly. n109 Practically, it is unclear whether government agents can be forced to "internalize costs" through money damages in the way that private parties can, at least if the treasury is paying those damages. n110 And if it is, voters may not perceive the connection between governmental action and subsequent payouts in any event.¶ 8. The news conference.¶ Presidents use news conferences to demonstrate their mastery of the details of policy. Many successful presidents, like FDR, conducted numerous such conferences. n111 Ill-motivated presidents will not care [\*909] about policy if their interest is just holding power for its own sake. Thus, they would regard news conferences as burdensome and risky chores. The problem is that a well-motivated president does not necessarily care about details of policy, as opposed to its broad direction, and journalists might benefit by tripping up a president in order to score points. Reagan, for example, did not care about policy details, but is generally regarded as a successful president. n112 To make Reagan look good, his handlers devoted considerable resources trying to prepare him for news conferences, resources that might have been better used in other ways. n113¶ 9. "Precommitment politics." n114¶ We have been surveying mechanisms that the well-motivated executive can employ once in office. However, in every case the analysis can be driven back one stage to the electoral campaign for executive office. During electoral campaigns, candidates for the presidency take public positions that partially commit them to subsequent policies, by raising the reputational costs of subsequent policy changes. Under current law, campaign promises are very difficult to enforce in the courts. n115 But even without legal enforcement, position-taking helps to separate the well-motivated from the ill-motivated candidate, because the costs to the former of making promises of this sort are higher. To be sure, many such promises are vacuous, meaning that voters will not sanction a president who violates them, but some turn out to have real [\*910] force, as George H.W. Bush discovered when he broke his clear pledge not to raise taxes. n116¶ 10. The possibility of statutory commitments.¶ So far, we have proceeded on the austere assumption that no constitutional or statutory changes are allowed. We have confined ourselves to credibility-generating mechanisms that arise by executive signaling -- commitments that the executive could initiate by legal order or by public position-taking, without the permission of other institutions.¶ However, this restriction may stack the deck too heavily against the solutions we suggest. A central example of the credibility problem, after all, arises when voters and legislators want to enact statutes transferring further discretion to a well-motivated executive, but are not sure that that is the sort of executive they are dealing with. In such cases, there is no reason to exclude the possibility that the executive might ask Congress to provide him with statutory signaling mechanisms that he would otherwise lack. In the surveillance example, Congress is currently considering amendments to relevant statutes. n117 It is easy to imagine a well-motivated executive proposing that Congress explicitly ratify his authority to examine overseas communications, while also proposing -- as a demonstration of credibility -- that the ratification be bundled with oversight mechanisms, review by an independent agency or special court, or a statutory cause of action imposing strict liability for prohibited forms of surveillance.¶ C. The Costs of Credibility¶ The mechanisms we have discussed generate credibility, which is a benefit for voters and legislators who would like to increase the discretion of the well-motivated executive. What of the cost side? In each case, there are costs to generating credibility, although the character and magnitude of the costs differ across mechanisms.¶ Signaling is by definition costly. The presence of a cost is what distinguishes ill-motivated mimics, who are unwilling to incur the cost, from genuine good types. In this context, the inherent costliness of signaling means that the president must use time or resources to establish credibility with the public when, if voters were perfectly informed, that time and those resources could be expended directly on [\*911] determining and implementing policy. But costs can be reflected in more subtle ways as well. Many of these mechanisms rely on the participation of agents who themselves may be ill motivated. Whistleblowers can leak information in order to damage the administration or cry wolf when there is no partisanship, merely substantive disagreement. Journalists might produce images distorted by their own biases and strategic agendas. Miscellaneous costs arise in other ways as well. Multilateralism raises decision costs, transparency can harm deliberation, and so on. n118¶ Often the basic tradeoff facing presidents is that credibility is gained at the expense of control. Mechanisms such as creating independent commissions and pursuing multilateralism illustrate that to gain credibility, presidents must surrender part of their control over policy choices, partially constraining executive discretion in the present in return for more trust, which will then translate into more discretion in the future. The loss of control is a cost, even to the well-motivated executive. To be sure, the well-motivated executive may be more willing than the ill-motivated one to trade some loss of present control for increased future discretion, if the ill-motivated executive tends to be myopic or to discount the future more heavily. However, it is not clear that is so -- many terrifying dictators have been quite far-sighted -- and in any event everything depends upon the particulars of the case.

#### Exec fiat is a voter--- limits out core affs, scews 2ac strat because moots 1ac and cant read addons --avoids the core topic question by fiating away Obama’s behavior in the squo---no comparative lit means the neg wins every debate

Victor Hansen 12, Professor of Law, New England Law, New England Law Review, Vol. 46, pp. 27-36, 2011, “Predator Drone Attacks”, February 22, 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009313>, PDF

Any checks on the President’s use of drone attacks must come domestically. In the domestic arena the two options are either the courts or Congress. As discussed above, the courts are institutionally unsuited and incapable of providing appropriate oversight. Congress is the branch with the constitutional authority, historical precedent, and institutional capacity to exercise meaningful and effective oversight of the President’s actions.

Reject the team – at very least reject durable fiat and grant rollback args and justifices timeframe perms.

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for **it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

## Links to politics

#### CP links to politics more

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

## Legal liberalism

#### We get to weigh the impacts of the 1ac - This is good -

#### A. Plan focus – otherwise discussion gets shifted away from the topic

#### B. Ground – They moot 9 minutes of 1AC offense – makes debate lop sided and unproductive

#### C. Vague alts and floating piks are a reason to reject the critique – make the neg a moving target and lets them coopt aff offense

#### Util first

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.

#### Case is a disad - conflict and terrorism are inevitable – even if it was due to representations it’s too late to solve root cause - only way is directly through the plan – and that outweighs – default to our specific extinction level scenarios

#### Cant solve the aff- only statorty restrictions on the presidents power is able to reduce drone strikes and stop the wars we isolate

#### No alternative to the law/legal system---other ideas bring more inequality and abuse

Jerold S. Auerbach 83, Professor of History at Wellesley, “Justice Without Law?”, 1983, p. 144-146

As cynicism about the legal system increases, so does enthusiasm for alternative dispute-settlement institutions. The search for alternatives accelerates, as Richard Abel has suggested, "when some fairly powerful interest is threatened by an increase in the number or magnitude of legal rights.\*'6 Alternatives are designed to provide a safety valve, to siphon discontent from courts. With the danger of political confrontation reduced, the ruling power of legal institutions is preserved, and the stability of the social system reinforced. Not incidentally, alternatives prevent the use of courts for redistributive purposes in the interest of equality, by consigning the rights of disadvantaged citizens to institutions with minimal power to enforce or protect them. It is, therefore, necessary to beware of the seductive appeal of alternative institutions. They may deflect energy from political organization by groups of people with common grievances; or discourage effective litigation strategies that could provide substantial benefits. They may, in the end, create a two-track justice system that dispenses informal "justice" to poor people with "small" claims and "minor" disputes, who cannot afford legal services, and who are denied access to courts. (Bar associations do not recommend that corporate law firms divert their clients to mediation, or that business deductions for legal expenses—a gigantic government subsidy for litigation—be eliminated.) Justice according to law will be reserved for the affluent, hardly a novel development in American history but one that needs little encouragement from the spread of alternative dispute-settlement institutions.¶ It is social context and political choice that determine whether courts, or alternative institutions, can render justice more or less accessible—and to whom. Both can be discretionary, arbitrary, domineering—and unjust. Law can symbolize justice, or conceal repression. It can reduce exploitation, or facilitate it. It can prohibit the abuse of power, or disguise abuse in procedural forms. It can promote equality, or sustain inequality. Despite the resiliency and power of law, it seems unable to eradicate the tension between legality and justice: even in a society of (legal) equals, some still remain more equal than others. But diversion from the legal system is likely to accentuate that inequality. Without legal power the imbalance between aggrieved individuals and corporations, or government agencies, cannot be redressed. In American society, as Laura Nader has observed, "disputing without the force of law ... [is| doomed to fail."./////

7 Instructive examples document the deleterious effect of coerced informality (even if others demonstrate the creative possibilities of indigenous experimentation). Freed slaves after the Civil War and factory workers at the turn of the century, like inner-city poor people now, have all been assigned places in informal proceedings that offer substantially weaker safeguards than law can provide. Legal institutions may not provide equal justice under law, but in a society ruled by law it is their responsibility.¶ It is chimerical to believe that mediation or arbitration can now accomplish what law seems powerless to achieve. The American deification of individual rights requires an accessible legal system for their protection. Understandably, diminished faith in its capacities will encourage the yearning for alternatives. But the rhetoric of "community" and "justice" should not be permitted to conceal the deterioration of community life and the unraveling of substantive notions of justice that has accompanied its demise. There is every reason why the values that historically are associated with informal justice should remain compelling: especially the preference for trust, harmony, and reciprocity within a communal setting. These are not, however, the values that American society encourages or sustains; in their absence there is no effective alternative to legal institutions.¶ The quest for community may indeed be "timeless and universal."8 In this century, however, the communitarian search for justice without law has deteriorated beyond recognition into a stunted off-shoot of the legal system. The historical progression is clear: from community justice without formal legal institutions to the rule of law, all too often without justice. But injustice without law is an even worse possibility, which misguided enthusiasm for alternative dispute settlement now seems likely to encourage. Our legal culture too accurately expresses the individualistic and materialistic values that most Americans deeply cherish to inspire optimism about the imminent restoration of communitarian purpose. For law to be less conspicuous Americans would have to moderate their expansive freedom to compete, to acquire, and to possess, while simultaneously elevating shared responsibilities above individual rights. That is an unlikely prospect unless Americans become, in effect, un-American. Until then, the pursuit of justice without law does incalculable harm to the prospect of equal justice.

#### Restrictions on war powers effecitive- the 1ac has a specific enfocrment menchanism, garunteeing Obama cant circuvmnet the plan

## 2ac- CIR- wake

#### Won’t pass --- Boehner

**Sargent 11-13** (Greg,- politics writer for the Washington Post “John Boehner just put immigration reform on life support”)

John Boehner, at a presser just now, just said something that pushed immigration reform closer to death than anything he has said thus far: House Speaker John Boehner says he will not allow any House-passed immigration legislation to be blended with the Senate’s sweeping reform bill, further quashing the chances of comprehensive immigration reform legislation being signed into law anytime soon. “We have no intention of ever going to conference on the Senate bill,” Boehner told reporters Wednesday. At the presser, Boehner also refused to say whether any of the piecemeal proposals reportedly being developed by House Republicans will get a vote this year, which means they almost certainly won’t. He did say that GOP Rep Bob Goodlatte, the chair of the House Judiciary Committee, “is working with our members and across the aisle on developing a set of principles for us to deal with this issue.” But if Boehner really means that Republicans will not “ever” go to conference on the Senate bill, it’s very hard to see a path to comprehensive reform. Frank Sharry, the executive director of America’s Voice, emails me this: “If Boehner kills off immigration reform, he’s going to go down as the Speaker who helped kill off the GOP. If he doesn’t promise to go to conference, he won’t be able to get Democrats to vote for *any* immigration measures, and he won’t be able to pass them with just Republican votes. He’s painting himself into a corner with procedural concessions to the far right, where failure is the only possible outcome. If he keeps to this, he’s dooming reform. Let’s hope he wants a legacy that includes growing the economy and saving his party.” The point here is this. The House GOP leadership will never hold a vote on any comprehensive reform package that includes legalization or citizenship. So the only way forward is if House Republicans pass piecemeal provisions — border security measures, plus some sort of legalization proposal for the 11 million, or barring that, the Kids Act (which gives citizenship only to the DREAMers). That would be a route to comprehensive reform if it provided a way to get to conference. Boehner doesn’t want anything the House passes to be seen as a vehicle for going to conference, because conservatives will revolt. But here is the rub: House Republicans, on their own, probably can’t pass anything that addresses the 11 million — and may not even be able to pass the KIDS Act — if it is seen as a vehicle for going to conference, since conservatives would resist at all costs. So Democrats would be needed to pass any such proposals. But Democrats will only vote for such proposals with an assurance that we would then go to conference. And so, by ruling out conference, Boehner may have just closed off the last remaining route to getting reform done. There has been a lot of talk lately about how the GOP establishment is going to wage war on the hard-liners inside the GOP that are forcing unelectable candidates and deeply unpopular positions on the party. Immigration reform, however, is a clear cut case where this vow isn’t mattering in the slightest. Many of the same constituencies within the GOP who are warning against letting the hard liners’ demand for a Total War against Obamacare drag the party into situations like the recent shutdown debacle – the business community, the professional consultant establishment, etc. — are the same ones who are urging the party to adopt immigration reform, for the long term good of the GOP. But it isn’t happening. We are not getting immigration reform if House GOP leaders are not willing to get the anti-amnesty-at-all-costs crowd a bit riled up at some point in the process. Boehner’s quotes today suggest they just aren’t willing to do that, whatever the long term costs to the party.

#### Won’t pass --- not enough time, Obamacare and midterms thump

**Nowicki 11-15** (Dan,- Arizona Republic's national political reporter “Migrant reform all but dead”)

Immigration reform appears to be dead for 2013, or at least in critical condition. House Speaker John Boehner, R-Ohio, said as much when he announced Wednesday that the House won’t consider negotiating over the comprehensive immigration package that the Senate passed in June. But even before Boehner’s statement, there were increasing signs that immigration-reform hopes were fading fast. House Majority Whip Kevin McCarthy, R-Calif., reportedly told immigration activists last week that the tight schedule meant lawmakers probably wouldn’t get to immigration reform until next year at the earliest, when partisan gridlock will start to intensify in advance of the 2014 congressional midterm elections. There are just 13 legislative days to pull off an immigration-reform deal this year. That seems nearly impossible considering how splintered the House GOP conference is over immigration reform and other potential obstacles that would have to be overcome quickly after months of inaction. There is one group of roughly 30 House Republicans — informally dubbed the “Hell No!” caucus by some reform backers — who can be counted on to vote against any effort, such as the Senate-passed pathway to citizenship, to legalize the status of the estimated 11 million undocumented immigrants who are already settled in the country. And many more likely would resist any attempt to combine a House bill with the Senate bill, which included a massive investment in border security and new visa systems for future foreign workers. On the other end of the spectrum, at least 28 House GOP members publicly have voiced support for some sort of reform with a path to citizenship. Add the prospect of legalization short of citizenship, and that number grows to at least 84, according to a Sept. 30 survey of public statements compiled by the conservative Weekly Standard. And in the middle are lawmakers who have been more coy about their position on immigration. They include many Republicans who likely lean against reform, but there is a pool of 70 to 100 Republicans who are seen by reform backers as potentially “gettable” under certain circumstances. “I don’t think (the numbers are) hard and fast, and they haven’t had to be, because the House hasn’t moved close enough to a bill where people have actually had to state their positions publicly,” said Louis DeSipio, a professor of political science and Chicano/Latino studies at the University of California-Irvine. Speculation about the numbers gives reform supporters some hope that a deal is still doable, but at the same time, it increases their frustration about the House’s slow pace and seeming lack of direction on the issue. Boehner and other House Republican leaders earlier this year flatly rejected the bipartisan Senate legislation. Instead, they signaled their intent to deal with immigration through a series of smaller, piecemeal bills that could take on topics such as border security, workplace enforcement or, possibly, citizenship for the young undocumented immigrants known as “dreamers” and certain categories of agricultural workers. More recently, Rep. Paul Ryan, R-Wis., and others have been exploring a broader legalization program without a Senate-style “special pathway” to citizenship. Five House bills have cleared committees, but so far, none has come to the floor. Anticipated bills dealing with dreamers and, possibly, a legalization program that would not preclude citizenship through the existing system, have yet to emerge. Boehner told reporters Wednesday that he wants to deal with immigration “in a commonsense, step-by-step way” and that House Judiciary Committee Chairman Bob Goodlatte, R-Va., “is working with our members and, frankly, across the aisle to develop a set of principles that will help guide us as we deal with this issue.” Complicating the calculus is Boehner’s previous decision to require that any immigration-related bills secure the support of a majority of Republicans in the GOP-controlled chamber before he allows the legislation to proceed to a full House vote. With the fractured caucus unlikely to deliver enough Republican votes to pass most bills, Democratic help likely still would be needed. Frank Sharry, executive director of the pro-reform America’s Voice, said that legalization with no “special pathway” to citizenship could attract as many as 120 to 150 House Republicans, providing that a proposal ever turns up. Generally, 218 votes are needed to pass a bill when there are no vacancies in the 435-member House, so some votes would have to come from the 200 House Democrats. “There’so definitely lots of back-and-forth and discussions going on, but there’s no commitment from leadership as far as we can tell that says, ‘Let’s move something by the end of the year,’ ” Sharry said prior to Boehner’s latest comments. “If somehow, magically, the right combination of people did come forward with the right idea and can show that there are probably enough votes, then they might take a chance on it.” If the current effort fails, as serious tries in 2006 and 2007 did, Congress might not return to immigration reform until after the 2016 presidential election. Hopes were high that a bipartisan accord might be possible this year because Republicans had indicated a desire to resolve the issue as part of a national effort to improve their party’s image with Hispanic voters following President Barack Obama’s convincing 2012 re-election. For his part, Obama reiterated Thursday that “there is no reason for us not to do immigration reform,” which remains a top domestic priority of his second term. “So, if people are looking for an excuse not to do the right thing on immigration reform, they can always find an excuse,” Obama said during a White House news conference. “You know, we’ve run out of time or, you know, this is hard or, you know, the list goes on and on. But my working assumption is people should want to do the right thing.” With time slipping away, even die-hard reform champions are starting to doubt that the House Republicans who are supportive of their cause can get their act together on any sort of a legalization proposal. Republicans would not only have to come to a tentative agreement on a plan but build a bipartisan coalition that would meet Boehner’s “majority of the majority” requirement and persuade enough Democrats to buy into it. That’s tough to do when *there’s not even a bill yet*. “There are a million different theories on how it gets done, and there are a million different theories about how you build up the right number of Republican votes,” said Rebecca Tallent, a former chief of staff to Sen. John McCain, R-Ariz., who now is director of immigration policy at the Bipartisan Policy Center. “But, frankly, it doesn’t matter how many Republican votes you can get if you’re always going to lose (immigration hard-liners like) the Steve Kings and quite possibly the Tom Cottons. You’re going to have to get the stuff off the floor with Democratic votes.” Immigration-reform critics say dissecting the viewpoints within the House GOP caucus is interesting but misses the bigger picture. Namely, that many rank-and-file Republicans in general simply are not sold on either the policy or the politics of immigration reform and are conflicted about moving forward. They are skeptical of the argument that they would be able to win over many Hispanic voters, who they see as instinctively trending toward the Democratic Party regardless of what Republicans do, said Steven Camarota, director of research for the Center for Immigration Studies, a Washington, D.C., organization that supports more immigration enforcement and overall reductions in immigration. Pressure from business allies, who support immigration reform, is at odds with pressure from the grass-roots conservative base, which hates it, and that adds to the GOP anxiety. “Their general sense is that immigration works against them,” Camarota said. “They’re torn. They just don’t know. They look at unemployment and say, ‘Oh, gosh, the economy’s bad,’ and then they hear from employers that they don’t have enough workers, and so that creates a lot of confusion.” That makes it easy for Republicans to just try to avoid the issue and return to more comfortable territory, Camarota said, as they already have done somewhat by turning to exploiting controversies related to the Obama administration’s rollout of the new health-care law. Sen. Jeff Flake, R-Ariz., who with McCain was a member of the bipartisan “Gang of Eight” that wrote the Senate immigration bill, has been among the most optimistic that the House could work things out, but this week, he grudgingly conceded it probably won’t happen in 2013. The recent GOP fixation on problems surrounding the Affordable Care Act also doesn’t help immigration reform’s prospects, he said. “My worry lately has been that some Republicans will say, ‘Well, we’ve got the Democrats on the ropes on “Obamacare,” so why change the subject?’ ” Flake said. McCain and Flake are trying to keep the conversation going. The two senators met Thursday with Republican Reps. Paul Gosar and Matt Salmon of Arizona to discuss the outlook for House action and possible ideas about how to move forward. After the meeting, Flake said he remains confident a deal can be struck next year that would address the status of the 11 million undocumented immigrants without a special pathway to citizenship. Although there is no firm deadline and the 113th Congress technically would have all of 2014 to work on immigration reform, most observers agree that action becomes less likely as an election year progresses. Lawmakers become preoccupied with their re-election fundraising and campaign jockeying and are less inclined to reach across the aisle to work on controversial issues, particularly one as potentially explosive as immigration. Partisan tensions exposed during the recent standoff over the government shutdown and health-care funding will only worsen.

#### Immigration reform is dead – Boehner won’t allow a vote and HC pounds the bill

Paul Roderick **Gregory**, Contributor, “President Obama's Loss Of Trust Over Obamacare Imperils Immigration Reform,” **11/06**/2013, http://www.forbes.com/sites/paulroderickgregory/2013/11/06/veracity-and-lost-presidencies/

The President’s “misspeaking” on his Obama Care pledges have doomed any chance of immigration reform, or any other major reform, for that matter. Obama may go into campaign mode on immigration reform to gain Hispanic votes, but it will be only talk. There can be no comprehensive reform of anything – immigration, entitlements, or the national debt — if legislators and, more importantly, the voters do not trust the President’s word. Obama has declared immigration reform his top legislative priority for the rest of his term. In June of 2012, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act, which spends more on border security, provides provisional legal status and eventual pathway to citizenship for people living in the country illegally, and outlines reforms for the existing visa programs for immediate relatives and skilled workers. House Speaker John Boehner declared the Senate bill a nonstarter and expressed hope that the House would produce its own bill. A House bi-partisan group of four Republicans and four Democrats began drafting such a plan but has subsequently fallen apart with only one Republican remaining. The chances of passage of any comprehensive immigration reform during the Obama years are about zero. Irrespective of your views, comprehensive immigration reform requires a high degree of trust. Under the Senate bill, the president must enforce border security, decide the disposition of criminal undocumented workers, and set visa regulations, among other things. The Republican s in Congress cannot take the political risk of passing immigration reform to see parts of it enforced, other parts ignored, and yet other parts made unrecognizable by executive order. One Republican member of the collapsed bi-partisan House team put it this way (House immigration group collapses): “If past actions are the best indicators of future behavior; we know that any measure depending on the president’s enforcement will not be faithfully executed,…It would be gravely irresponsible to further empower this administration by granting them additional authority or discretion with a new immigration system.” The Obama administration has made a practice of not enforcing legislation it does not like (DOMA, no child left behind, medical marijuana, gay spousal benefits, to name a few) and by executing other initiatives by executive action (de facto execution of the Dream act). Added to this history of selective enforcement, we have the problem of the President’s veracity. Can we take the President’s solemn pledge to raise border security to legislated levels seriously after he broke an even more solemn promise to the American people on his legacy Obama Care legislation (If you like your policy or your doctor you can keep them). After George W. Bush was reelected, he declared he would use his political capital to reform social security. He failed because of deep rooted opposition to change but also because his credibility had been damaged by the oft-repeated charge: “Bush lied.” Unless Obama restores his credibility with the American people, he must forego any major initiatives. Major changes come about only when there is trust in the nation’s chief executive. Stated one Republican House member after he resigned from the bi-partisan immigration drafting group: “The American people do not trust the president to enforce laws, and we don’t either.” The mainstream media could not ignore Obama’s two Obama Care “misspokes.” The legitimate public outrage was too great. Will media awareness that Obama has been untrue on Obama Care raise their curiosity about earlier incidents – the millions of stimulus jobs, the Benghazi video, no-tax-increase pledges, and so on – and cause them to see the pattern? Obama has gone to the well too often. He has three years to restore a modicum of credibility. If We the People can no longer believe what he says, his will be a lost presidency.

#### Your pol cap key ev is a joke

**Politico 11-10** (“White House seeks Republican immigration help”)

White House press secretary Jay Carney said recently that it’s *long been established* that the president cannot move House GOP votes. “This is something that House Republicans need to work out,” Carney said. “They control the keys to the car in that house right now of Congress, and they need to decide how they move forward and what legislation they can move forward. And we’re going to work as best we can to move this process forward.” Sen. Marco Rubio (R-Fla.), who distanced himself from his own Senate Gang of Eight bill after seeing his influence diminish following his work to shepherd the legislation through the chamber, also said the president isn’t going to move House Republicans *no matter what he does*. “I think the distrust of this administration is deep, but he’s the president, he’s allowed to speak on whatever he wants,” Rubio said. “Ultimately, this issue needs to be decided first in the Congress, and I’m not sure how much influence he’s going to have on the House.” The government shutdown fight and Obama’s failure to establish relationships with Republicans haven’t helped either. “This whole fight we had in the … past few weeks over Obamacare and the government shutdown and everything really affected relationships with members and the White House,” Valadao said. “That, I think, had a huge impact on members who were on the fence on immigration.” Meanwhile, the conservative groups working to pass immigration reform are happy working without substantial coordination from the White House. Being seen as too close to Obama would sap their credibility with House Republicans, even as they parrot the White House talking points. “We’re keeping the White House at arms length and the White House is not really engaging with folks directly and they’re really paying heed to the *reality* that this has to be owned lock, stock and barrel by the House Republicans,” said Ali Noorani, executive director of the National Immigration Forum. Tamar Jacoby, president and CEO of the pro-reform business group ImmigrationWorks USA, said the *biggest current obstacle* of immigration reform in the House is that Republicans *“don’t want to do Obama any favors*” after the toxic shutdown and debt limit battles. “When Obama’s out there saying, ‘I just won a big battle … and I’m demanding you do this,’ no one’s going to want to do it on those terms,” Jacoby said. “My fear is that Obama’s not really helping [reform] when he’s sort of scolding them about it all the time.”

#### Political capital theory is wrong, winners win

**Hirsch ‘2-7-13** (“There’s No Such Thing as Political Capital”, Michael Hirsh February 7, 2013, former foreign editor and chief diplomatic correspondent for Newsweek. He is currently a senior editor in the magazine's Washington bureau. He is a lecturer and has appeared numerous times as a commentator on Fox News, CNN, MSNBC, National Public Radio,. Hirsh was co-winner of the Overseas Press Club award for best magazine reporting from abroad in 2001 for "prescience in identifying the al Qaeda threat half a year before September 11 and for Newsweek's coverage of the war on terror, which also won a National Magazine Award, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

**There’s No Such Thing as Political Capital**

The idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get itwrong. On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through. Most of **this** talk **will have no bearing on what actually happens** over the next four years. Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen. What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.” As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The political tectonics have shifted dramatically in very little time. Whole new possibilities exist now that didn’t a few weeks ago. Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very **little to do with Obama’s personal influence**—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the **Hispanic vote** in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all. The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history. Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger. But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, **the pseudo-concept of political capital masks a larger truth** about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or **as Ornstein himself once wrote years ago**, “**Winning wins.”** In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote. Some **political scientists** **who study** the elusive calculus of **how to pass legislation** and run successful presidencies **say** that **political capital is**, at best, **an empty concept**, and that **almost nothing in** the **academic literature** **successfully quantifies** or even defines **it**. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of **useless**,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. **Winning** on one issue often **changes the** **calculation** for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where **the conventional wisdom is that president is not going to get what he wants**, and [they]he gets it, then each time that happens, it **changes the calculus** of the **other actors**” Ornstein says. “If they think he’s going to win, they may **change positions to get on the winning side**. **It’s a bandwagon effect**.” ALL THE WAY WITH LBJ Sometimes, a clever practitioner of power can get more done just because [they’re]he’s aggressive and knows the hallways of Congress well. Texas A&M’s Edwards is right to say that the outcome of the 1964 election, Lyndon Johnson’s landslide victory over Barry Goldwater, was one of the few that conveyed a mandate. But one of the main reasons for that mandate (in addition to Goldwater’s ineptitude as a candidate) was President Johnson’s masterful use of power leading up to that election, and his ability to get far more done than anyone thought possible, given his limited political capital. In the newest volume in his exhaustive study of LBJ, The Passage of Power, historian Robert Caro recalls Johnson getting cautionary advice after he assumed the presidency from the assassinated John F. Kennedy in late 1963. Don’t focus on a long-stalled civil-rights bill, advisers told him, because it might jeopardize Southern lawmakers’ support for a tax cut and appropriations bills the president needed. “One of the wise, practical people around the table [said that] the presidency has only a certain amount of coinage to expend, and you oughtn’t to expend it on this,” Caro writes. (Coinage, of course, was what political capital was called in those days.) Johnson replied, “Well, what the hell’s the presidency for?” Johnson didn’t worry about coinage, and he got the Civil Rights Act enacted, along with much else: Medicare, a tax cut, antipoverty programs. He appeared to understand not just the ways of Congress but also the way to maximize the momentum he possessed in the lingering mood of national grief and determination by picking the right issues, as Caro records. “Momentum is not a mysterious mistress,” LBJ said. “It is a controllable fact of political life.” Johnson had the skill and wherewithal to realize that, at that moment of history, he could have unlimited coinage if he handled the politics right. He did. (At least until Vietnam, that is.)

#### Reform fails---changes cause backlog

**Murthy 9** Law Firm, “What if CIR Passes? Can USCIS Handle the Increased Workload?”, NewsBrief, 10-30, http://www.murthy.com/news/n\_cirwkl.html

Any type of legalization program will face significant opposition, particularly during an economic downturn. However, given the numbers of individuals possibly eligible, even under a less expansive program, ////

the USCIS must prepare for a potential onslaught of applications if any type of CIR passes and becomes the law. As many MurthyDotCom and MurthyBulletin readers know from personal experience, the USCIS has historically suffered from backlogs and capacity issues. Were such a measure to pass, absent substantial changes, a flood of new applications could pose a significant challenge to the processing capacity of the USCIS. *USCIS Preparing to Expand Rapidly, Should Need Arise* A Reuters blog quoted USCIS spokesman, Bill Wright, as saying, “The agency has been preparing for the advent of any kind of a comprehensive immigration reform, and if that means a surge of applications and operations, we have been working toward that.” USCIS Director, Alejandro Mayorkas, has stated that the goal of the USCIS is to be ready to expand rapidly to handle the increase in applications that would result from CIR. In the past, opponents have used lack of capacity and preparation as an argument against CIR and expansion of eligibility for immigration benefits. *Will CIR Result in Increased or Reduced Backlogs for Others?* Legal immigrants and their employers have concerns about being disadvantaged by any CIR legislation that would provide benefits to undocumented workers. However, true CIR is not limited to these provisions, and would be expected to contain provisions regarding various aspects of legal immigration. CIR certainly will be hotly debated and any proposed legislation will be modified throughout the debate process. As part of the preparations of the USCIS, and in order not to harm those who have already initiated cases under existing law, the USCIS needs to continue to work on backlogs. While significant progress has been made in many areas, and case processing times have been improved greatly, there are still case backlogs that need to be addressed.

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### Effective

#### 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.

## Politics

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**No impact to economic collapse – u.s. isn’t key**

Robert **Jervis 11**, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.