# R5--NEG v TEXAS ST

## 1NC

### OFF

#### The aff is a liberal knee jerk reaction to excess of power--Legal constraints misunderstand the how and where the formulation of executive power occurs. Battling the executive on its own terms is a dangerous game that merely swells executive power.

Kinniburgh 13 Colin, writer for Dissent magazine, Dissent, 5-27, http://www.dissentmagazine.org/blog/partial-readings-the-rule-of-law

The shamelessness of the endeavor is impressive—a far cry, in many ways, from the CIA’s secretive Cold War–era assassination plots. Obama has succeeded in anchoring a legal infrastructure for state-sponsored assassinations on foreign soil while trumpeting it, in broad daylight, as a framework for accountability. Peppered with allusions to the Constitution and to “the law” more generally, the call for transparency instead appears to provide an Orwellian foil for a remarkable expansion of executive powers. Existing laws, domestic or international, are proving a hopelessly inadequate framework with which to hold the Obama administration accountable for arbitrary assassinations abroad. No doubt it is tempting to turn to the Constitution, the Universal Declaration of Human Rights, and other relevant legal documents as a litmus test for the validity of government actions. Many progressive media outlets have a tendency to seize on international law, especially, as a straightforward barometer of injustice: this is particularly true in the case of the Israel-Palestine conflict, as an editorial in the current issue of Jacobin points out. Both domestic and international legal systems often do afford a certain clarity in diagnosing excesses of state power, as well as a certain amount of leverage with which to pressure the states committing the injustices. To hope, however, that legal systems alone can redress gross injustices is naive. Many leftists—and not just “bloodless liberals”—feel obliged to retain faith in laws and courts as a lifeline against oppression, rather than as mere instruments of that same oppression. Even Marx, when he was subjected, along with fellow Communist League exiles, to a mass show trial in Prussian courts in the 1850s, was convinced that providing sufficient evidence of his innocence would turn the case against his accuser, Wilhelm Stieber, a Prussian secret agent who reportedly forged his evidence against the communists. In his writings, Marx expressed his disillusionment with all bourgeois institutions, including the courts; in practice, he hoped that the law would serve him justice. Richard Evans highlights this tension in his insightful review of Jonathan Sperber’s Karl Marx: A Nineteenth-Century Life, published in the most recent London Review of Books. “Naively forgetting,” writes Evans, “what they had said in the Manifesto – that the law was just an instrument of class interests – Marx and Engels expected [their evidence against Stieber] to lead to an acquittal, but the jury found several of the defendants guilty, and Stieber went unpunished.” Marx’s disappointment is all too familiar. It is familiar from situations of international conflict, illustrated by Obama’s drone strikes justifications; it is evident, too, when a police officer shoots dead an unarmed Bronx teenager in his own bathroom, and the charge of manslaugher—not murder—brought against the officer is dropped for procedural reasons by the presiding judge. This is hardly the first such callous ruling by a New York court in police violence cases; the last time charges were brought against an NYPD officer relating to a fatal shooting on duty, in 2007, they were also dropped. Dozens of New Yorkers have died at the hands of the police since then, and Ramarley Graham’s case was the first that even came close to a criminal conviction—only to be dropped for ludicrous reasons. Yet New York’s stop-and-frisk opponents are still fighting their battle out in the courts. In recent months, many activists have invested their hopes for fairer policing in a civil class action suit, Floyd, et. al. vs. City of New York, which may just convict the NYPD of discrimination despite the odds. District court judge Shira Scheindlin, profiled in this week’s New Yorker, has gained a reputation for ruling against the NYPD in stop-and-frisk cases, even when it has meant letting apparently dangerous criminals off the hook. In coming weeks, she is likely to do the same for the landmark Floyd case, in what may be a rare affirmation of constitutional law as a bulwark against state violence and for civil liberties. Even if the city wins the case, the spotlight that stop-and-frisk opponents have shined on the NYPD has already led to a 51 percent drop in police stops in the first quarter of this year. Still, when the powerful choose the battlefield and write the laws of war, meeting them on their terms is a dangerous game.

#### This continues crumbling the distinction between democracy and totalitarianism and reinforces death-centered thanatopolitics causing genocide on the global scale.

Hall 7Lindsay Anne Hall [MA Political Science] “Death, Power, and the Body: A Bio-political Analysis of Death and Dying” May 7, 2007 (Research paper presented to faculty of the Virginia Polytechnic Institute and State University)¶ <http://scholar.lib.vt.edu/theses/available/etd-05152007-134833/unrestricted/etd.pdf>

Agamben, on the other hand, addresses the intertwinement of medicine, death, ¶ and power through his analysis of the modern individualís exposure to death. According ¶ to Agamben, Western culture has become “thanatopolitical,” which means that it is ¶ dominated by a politics of death that leaves us more and more exposed to both death and ¶ operations of power. For Agamben, death has become indistinct. It is both meaningful ¶ and meaningless, both individual and anonymous, both visible and invisible. Moreover, ¶ because modern society increasingly exposes individuals to death, liberal democracy ¶ becomes increasingly indistinguishable from totalitarian regimes, an issue I will explore ¶ in more detail in Chapter Three. While the issues that I am addressingólife sustaining ¶ technologiesóare merely one symptom of the greater problem that Agamben is himself ¶ concerned with, I hope that shedding more light on this particular space of power can ¶ allow us to think about and eventually challenge the greater politics of death operating in ¶ modern society.¶ In this study I will focus specifically on reconsidering the relations of power ¶ surrounding the decision to stop preserving life in the particular space of the hospital ¶ room. According to Foucaultís view, terminating life is nearly unthinkable in a biopolitical society. Thus, as Benjamin Noys elaborates, we ìtry so hard to preserve life, ¶ even at the cost of terrible suffering, because death is the limit to [bio-political] powerî ¶ (2005, 54). For Foucault, death has become ìshameful,î it is paramount to giving up, to ¶ letting go, or to admitting defeat (all things given a negative connotation in Western ¶ society) (2003c, 247). In this study I would like to reconsider these claims through ¶ Giorgio Agambenís argument that death has become more political as the boundary ¶ between life and death has become blurred. Such a state of being, he claims, exposes the ¶ body to death, and yetóas I am primarily concerned withóìsaturatesî the body with ¶ power (Agamben 1995, 164). ¶ As suggested by this synopsis, I am using Foucault as the starting point for my ¶ study. Though I ultimately bring in Agamben who question aspects of his analysis of ¶ power, I begin my first chapter with an in depth account of the ways in which Foucault ¶ believed power to be exercised upon the body. In this chapter I begin to hammer out the ¶ theoretical framework that I will then both use and challenge in order to analyze the ¶ space of the hospital room as a space of power. In The Birth of the ClinicóFoucaultís ¶ only sustained analysis of the medical disciplineóhe claimed that the body was suddenly ¶ made ìexhaustively legibleî with the birth of modern medicine. More precisely, he ¶ claims that it was ìfrom the integration of death into medicineÖthat Western man could ¶ [at last] constitute himself in his own eyes as an object of science,î grasping himself ¶ within his own language, and giving himself his own discursive existence (Foucault ¶ 1973, 197). In his later writings on power, however, Foucault gives this constitutive ¶ capacity of individuals to sexuality, not death, and as I have previously suggested, ¶ Foucault begins to look at death as a limit to power itself. Throughout this study I have ¶ attempted to reconcile this seeming contradiction in Foucaultís work through the work of ¶ Giorgio Agamben. ¶ My second chapter is an examination of what Agamben terms the ìzone of ¶ indistinctionî between life and death. For Agamben, the line between life and death has ¶ become increasingly blurred by a whole series of ìwaveringsî around both the time of¶ death and the question of who decides on this time. As Agamben claims, this decision is ¶ increasingly taken up by the medical profession, thus in the conclusion of this chapter I ¶ return to Foucaultís only sustained engagement with medical power, The Birth of the ¶ Clinic. In this section I argue that Agambenís analysis of the intertwinement between the ¶ medical discipline and power might benefit from some of the historical insights provided ¶ in Foucaultís analysis. While Agamben centers his analysis on post-World War II ¶ society, Foucaultís work demonstrates that the entanglement of medicine and sovereign ¶ power have a far longer history than perhaps Agamben realizes or is willing to engage ¶ with. ¶ In the third and final chapter of this study I examine how death is politicized. As ¶ Agamben argues, death is not a natural or biological moment but a political decision. In ¶ order to tackle the nature of this decision I look at the work of Peter Singer who ¶ compares two seemingly contradictory ethics, the ethics of the sanctity of life and the ¶ quality of life ethic. An Agambenean analysis of these ethics however, suggest some ¶ problems that Singer may have not been able to articulate because he fails to take into ¶ account the political nature of death. One of the criticisms that has been lodged against ¶ Singer is that his ethics closely parallels Nazi eugenics programs in which the medical ¶ establishment made decisions on whose life was worth living. This criticism bridges the ¶ gap between Singerís work and the point I have been making through this piece- biopower is intimately enmeshed with sovereignty. ¶ Foucault saw this combination at work primarily in totalitarian regimes. ¶ However, as Agamben argues, the distinctions between totalitarian regimes and ¶ democracies are crumbling. I argue in my Conclusion that modern power is increasingly ¶ an amalgamation between the bio-political and the thanatopolitical. For power can both ¶ manage life and expose us to death. What is crucial to take from this analysis is that we ¶ must formulate some sort of individual resistance to this power, even though techniques ¶ of modern bio-power (bureaucratic planning, statistical analysis, population control) may ¶ xpose us to death as a population rather than as individuals. This resistance must be ¶ something greater than simply a call for physician assisted suicide or an appeal for ¶ individual ownership of our bodies, it must first center on an engagement with what ¶ about life is really worth preserving.

#### The alternative is to reject the 1ac in favor of reconceptualizing where authority emanates from---we need to take a step outside the legal realm and build a culture of resilience against executive power

Connolly 13(William E, Pf – John Hopkins U, The Contemporary Condition, 5-20)

Nonetheless, the logic of the media-electoral-corporate system does spawn a restrictive grid of power and electoral intelligibility that makes it difficult to think, experiment, and organize outside its parameters. Think of how corporations and financial institutions initiate actions in the private sector and then use intensive lobbying to veto efforts to reverse those initiatives in Congress or the courts, just as financial elites invented derivatives and then lobbied intensively to stop their regulation; think of how media talking heads concentrate on candidates rather than fundamental issues; recall the central role of scandal in the media and electoral politics; consider the decisive electoral position of inattentive “undecided voters”; note how states under Republican rule work relentlessly to reduce the minority and poor vote; recall those billionaire super pacs; and so on. The electoral grid cannot be ignored or ceded to the right, but it also sucks experimental pursuits and bold ventures out of politics. Can we renegotiate the dilemma of electoral politics? That is the problematic within which I am working. I do not have a perfect response to it. Perfect answers are suspect. Perhaps it is wise to forge multimodal strategies that start outside the electoral grid and then return to it as one venue among others. Strategic role experimentations at multiple sites joined to the activation of new social movements provide possibilities. Indeed, these two modes are related. Consider merely a few examples of role experimentation tied to climate change and consumption available to many people in the shrinking middle class. We may support the farm-to-table movement in the restaurants we visit; we may participate in the slow food movement; we may frequent stores that offer food based on sustainable processes; we may buy hybrid cars, or, if feasible, join an urban zip-car collective, explaining to friends, family, and neighbors the effects such choices could have on late modern ecology if a majority of the populace did so; we may press our workplace to install solar panels and consider them ourselves if we can afford to do so; we may use writing and media skills to write graffiti, or produce provocative artistic installations, or write for a blog; we may shift a large portion of our retirement accounts into investments that support sustainable energy, withdrawing from aggressive investments that presuppose unsustainable growth or threaten economic collapse; we may bring new issues and visitors to our churches, temples, or mosques to support rethinking interdenominational issues and the contemporary fragility of things; we may found, join, or frequent repair clubs, at which volunteers collect and repair old appliances, furniture, and bikes to cut back on urban waste, to make them available to low income people and to increase the longevity of the items; we may probe and publicize the multimodal tactics by which twenty-four-hour news stations work on the visceral register of viewers, as we explain on blogs how to counter those techniques; we may travel to places where unconscious American assumptions about world entitlement are challenged on a regular basis; we may augment the pattern of films and artistic exhibits we visit to stretch our habitual powers of perception and to challenge some affect-imbued prejudgments embedded in them. A series of intercalated role experiments, often pursued by clusters of participants together. But don’t such activities merely make the participants “feel better”? Well, many who pursue such experiments do feel good about them, particularly those who accept a tragic image of possibility in which there is no inevitability that either large scale politics, God, or nature will come to our rescue. Also, could such role experiments ever make a sufficient difference on their own? No. These, however, may be the wrong questions to pose. What such experiments can do as they expand is to crack the ice in and around us. First, we may now find ourselves a bit less implicated in the practices and policies that are sources of the problems. Second, the shaky perceptions, feelings, and beliefs that authorized them may thus now become more entrenched as we act upon them. Third, we now find ourselves in more favorable positions to forge connections with larger constituencies pursuing similar experiments. Fourth, we may thus become more inspired to seed and join macropolitical movements that speak to these issues. Fifth, as we now participate in protests, slowdowns, work “according to rule” and more confrontational meetings with corporate managers, church leaders, union officials, university officers, and neighborhood leaders, we may become even more alert to the creeds, institutional pressures and options that propel these constituencies too. They, too, are both enmeshed in a web of roles and more than mere role bearers. Many will maintain an intransigence of viewpoint and insistence of interpretation that we may now be in a better position to counter by words and deeds with those outside or at the edge of the intransigent community. One advantage of forging links between role experimentations and social movements is that both speak to a time in which the drive to significant change must be pursued by a large, pluralist assemblage rather than by any single class or other core constituency. Such an assemblage must today be primed and loaded by several constituencies in diverse ways at numerous sites. It is necessary here to condense linkages that may unfold. But perhaps movement back and forth between role experiments, social movements, occasional shifts in the priorities of some strategic institutions, and a discernible shift in the contours of electoral politics will promote the emergence of a new, more activist pluralist assemblage. Now, say, a new, surprising event occurs. Some such event or crisis is surely bound to erupt: an urban uprising, a destructive storm, a wild executive overreach, a wide spread interruption in electrical service, a bank melt down, a crisis in oil supply, etc. Perhaps the conjunction of this new event with the preparatory actions that preceded it will prime a large constellation to resist the protofascist responses the intransigent Right will pursue at that very moment. Perhaps the event will now become an occasion to mobilize large scale, intensive support for progressive change on some of the fronts noted at the start of this piece. It is important to remember that the advent of a crisis does not alone determine the response to it. So waiting for the next one to occur is not enough. The Great Depression was followed by the intensification of fascist movements in several countries. Those with strong labor movements and progressive elected leaders proved best at resisting them. The most recent economic melt-down was met in many places by the self-defeating response of austerity, and worse. That is why the quality and depth of the political ethos preceding such events is important. The use of the “perhaps” in the above formulations suggests that there are no guarantees at any of these junctures. Uncertainties abound. These points, however, also apply to any radical perspective that counsels waiting for the revolution, as it surrounds its critiques of militant reform with an aura of certainty. Today the need is to curtail the aura of certainty of all perspectives on the Left. The examples posed here, of course, are focused on primarily one constituency. But others could be invoked. The larger idea is to draw energy from multiple sources and constituencies. The formula is to move back and forth between the proliferation of role experiments, forging social movements on several fronts, helping to shift the constituency weight of the heavy electoral machinery now in place, and participating in cross-country citizen movements that put pressure on states, corporations, churches, universities and unions from inside and outside simultaneously.

#### Only our alternative displaces the source of executive overreach. Legal restraint without conceptual change is futile.

Rana 11 Aziz Law at Cornell “Who Decides on Security?” Cornell Law Faculty Working Papers, Paper 87, http://scholarship.law.cornell.edu/clsops\_papers/87 p. 45-51

The prevalence of these continuities between Frankfurter’s vision and contemporary judicial arguments raise serious concerns with today’s conceptual framework. Certainly, Frankfurter’s role during World War II in defending and promoting a number of infamous judicial decisions highlights the potential abuses embedded in a legal discourse premised on the specially-situated knowledge of executive officials and military personnel. As the example of Japanese internment dramatizes, too strong an assumption of expert understanding can easily allow elite prejudices—and with it state violence—to run rampant and unconstrained. For the present, it hints at an obvious question: How skeptical should we be of current assertions of expertise and, indeed, of the dominant security framework itself? One claim, repeated especially in the wake of September 11, has been that regardless of normative legitimacy, the prevailing security concept—with its account of unique knowledge, insulation, and hierarchy—is simply an unavoidable consequence of existing global dangers. Even if Herring and Frankfurter may have been wrong in principle about their answer to the question “who decides in matters of security?” they nevertheless were right to believe that complexity and endemic threat make it impossible to defend the old Lockean sensibility. In the final pages of the article, I explore this basic question of the degree to which objective conditions justify the conceptual shifts and offer some initial reflections on what might be required to limit the government’s expansive security powers. VI. CONCLUSION: THE OPENNESS OF THREATS The ideological transformation in the meaning of security has helped to generate a massive and largely secret infrastructure of overlapping executive agencies, all tasked with gathering information and keeping the country safe from perceived threats. In 2010, The Washington Post produced a series of articles outlining the buildings, personnel, and companies that make up this hidden national security apparatus. According to journalists Dana Priest and William Arkin, there exist “some 1271 government organizations and 1931 private companies” across 10,000 locations in the United States, all working on “counterterrorism, homeland security, and intelligence.”180 This apparatus is especially concentrated in the Washington, D.C. area, which amounts to “the capital of an alternative geography of the United States.”181 Employed by these hidden agencies and bureaucratic entities are some 854,000 people (approximately 1.5 times as many people as live in Washington itself) who hold topsecret clearances.182 As Priest and Arkin make clear, the most elite of those with such clearance are highly trained experts, ranging from scientists and economists to regional specialists. “To do what it does, the NSA relies on the largest number of mathematicians in the world. It needs linguists and technology experts, as well as cryptologists, known as ‘crippies.’”183 These professionals cluster together in neighborhoods that are among the wealthiest in the country—six of the ten richest counties in the United States according to Census Bureau data.184 As the executive of Howard County, Virginia, one such community, declared, “These are some of the most brilliant people in the world. . . . They demand good schools and a high quality of life.”185 School excellence is particularly important, as education holds the key to sustaining elevated professional and financial status across generations. In fact, some schools are even “adopting a curriculum . . . that will teach students as young as 10 what kind of lifestyle it takes to get a security clearance and what kind of behavior would disqualify them.”186 The implicit aim of this curriculum is to ensure that the children of NSA mathematicians and Defense Department linguists can one day succeed their parents on the job. In effect, what Priest and Arkin detail is a striking illustration of how security has transformed from a matter of ordinary judgment into one of elite skill. They also underscore how this transformation is bound to a related set of developments regarding social privilege and status—developments that would have been welcome to Frankfurter but deeply disillusioning to Brownson, Lincoln, and Taney. Such changes highlight how one’s professional standing increasingly drives who has a right to make key institutional choices. Lost in the process, however, is the longstanding belief that issues of war and peace are fundamentally a domain of common care, marked by democratic intelligence and shared responsibility. Despite such democratic concerns, a large part of what makes today’s dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. Thus, the best response is the further entrenchment of Herring’s national security state, with the U.S. permanently mobilized militarily to gather intelligence and to combat enemies wherever they strike—at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs. Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are not objective empirical judgments but rather are socially complex and politically infused interpretations. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves riddled with ideological presuppositions and subjective biases. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that the question of who decides—and with it the issue of how democratic or insular our institutions should be—remains open as well. Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers.189 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view—such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy. In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have—at times unwittingly—reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, the American condition of permanent danger was itself deeply tied to political calculations about the importance of global primacy. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states. The key point is that regardless of whether one agrees with such an underlying project, the value of this project is ultimately an open political question. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers—which have been consistent in recent years—place the gravity of the threat in perspective. Rather than a condition of endemic danger—requiring everincreasing secrecy and centralization—such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling. It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions—like the centrality of global primacy or the view that instability abroad necessarily implicates security at home—shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge. If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit. If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars—emphasizing new statutory frameworks or greater judicial assertiveness—is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants—danger too complex for the average citizen to comprehend independently—it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

### OFF

#### CIR will pass SOON Obama’s continued push is key

Matthews 10/16

Laura Matthews, MA Columbia, International Business Times “2013 Immigration Reform Bill: 'I'm Going To Push To Call A Vote,' Says Obama” October 16 2013 http://www.ibtimes.com/2013-immigration-reform-bill-im-going-push-call-vote-says-obama-1429220

When Congress finally passes a bipartisan bill that kicks the fiscal battles over to early next year, the spotlight could return to comprehensive immigration reform before 2013 ends.¶ At least that’s the hope of President Barack Obama and his fellow Chicagoan Rep. Luis Gutierrez, D-Ill., chairman of the Immigration Task Force of the Congressional Hispanic Caucus and one of the most vocal advocates for immigration reform in the House of Representatives.¶ “When we emerge from this crazy partisan eruption from the Republicans, there will be a huge incentive for sensible Republicans who want to repair some of the damage they have done to themselves,” Gutierrez said in a statement. “Immigration reform remains the one issue popular with both Democratic and Republican voters on which the two parties can work together to deliver real, substantive solutions in the Congress this year.”¶ Reforming the status quo has consistently been favored by a majority of Americans. Earlier this year, at least two-thirds of Americans supported several major steps to make the system work better, according to a Gallup poll. Those steps include implementing an E-verify system for employers to check electronically the immigration status of would-be employees (85 percent), a path to citizenship for undocumented immigrants, (72 percent), an entry-exit check system to make sure people who enter the country then leave it (71 percent), more high-skilled visas (71 percent) and increased border security (68 percent).¶ The Senate passed its version of a 2013 immigration reform bill in June that includes, but is not limited to, a pathway to citizenship for immigrants without documentation and doubling security on the southern border. But that measure has stalled in the House, where Republicans are adamant they will take a piecemeal approach.¶ The momentum that lawmakers showed for reform has been sapped by the stalemate that that has shut down the government for 16 days and brought the U.S. to the brink of default. The Senate has agreed on Wednesday to a bipartisan solution to break the gridlock.¶ When the shutdown and default threat is resolved (for a time), that’s when Obama will renew his push to get Congress to move on immigration reform. On Tuesday the president said reform will become his top priority.¶ “Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform,” Obama told Univision affiliate KMEX-TV in Los Angeles. “And if I have to join with other advocates and continue to speak out on that, and keep pushing, I’m going to do so because I think it’s really important for the country. And now is the time to do it.”¶ The president pointed the finger at House Speaker John Boehner, R-Ohio, for not allowing the bill to be brought to the floor for a vote. Boehner had promised that the Senate’s bill would not be voted on unless a majority of the majority in the House supports it -- the same principle he was holding out for on the government shutdown before he gave in.¶ “We had a very strong Democratic and Republican vote in the Senate,” Obama said. “The only thing right now that’s holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives. So we’re going to have to get through this crisis that was unnecessary, that was created because of the obsession of a small faction of the Republican Party on the Affordable Care Act.”¶ Republicans are opposing the Democratic view of immigration reform because of its inclusion of a 13-year path to citizenship for undocumented immigrants. They said this amounted to “amnesty.” Some Republicans prefer to give them legal resident status instead.¶ Immigration advocates have also been urging Obama to use his executive authority to halt the more than 1,000 deportations taking place daily. Like the activists, Gutierrez said the government shutdown didn’t do anything to slow the number of daily deportations.¶ Some Republicans who welcomed Sen. Ted Cruz’s filibuster over Obamacare because it shifted the focus from immigration.¶ “If Ted [didn’t] spin the filibuster, if we don’t make this the focus, we had already heard what was coming,” Rep. Louie Gohmert, R-Texas, told Fox News on Tuesday. “As soon as we got beyond this summer, we were going to have an amnesty bill come to the floor. That’s what we would have been talking about. And that’s where the pivot would have been if we had not focused America on Obamacare.”¶ Still, pro-immigration advocates are hopeful they can attain their goal soon. “With more prodding from the president and the American people,” Gutierrez said, “we can get immigration reform legislation passed in the House and signed into law.”

#### Plan tanks capital and derails the agenda – empirics prove

Kriner ’10 Douglas L. Kriner, assistant professor of political science at Boston University, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Immigration reform is key to the agriculture industry and the economy

Fitz, 12

(Marshall, Director of Immigration Policy at the Center for American Progress, 11-14-12, “Time to Legalize Our 11 Million Undocumented Immigrants,” <http://www.americanprogress.org/wp-content/uploads/2012/11/FitzLegalizationBrief-1.pdf>, accessed: 2-6-13, LLL)

Nowhere is the tension between immigrant labor and the economy more obvious than in agriculture. By most estimates, undocumented immigrants make up more than half of the workers in the agriculture industry.59 Likewise the U.S. Department of Agriculture has estimated that each farm job creates three “upstream” jobs in professions such as packaging, transporting, and selling the produce, meaning that what happens in the agricultural sector affects the economy as a whole.60

Agriculture is particularly susceptible to the whims of the labor market, since crops become ripe at a fixed time and must be picked quickly before they rot. Migrant laborers often travel a set route, following the growing season as it begins in places such as Florida and works its way north.61 Disrupting this flow of pickers can be devastating to local economies and the nation’s food security.¶ After the passage of Georgia’s anti-immigrant law, H.B. 87, for example, the Georgia Agribusiness Council estimated that the state could lose up to $1 billion in produce from a lack of immigrant labor.62 A survey of farmers conducted by the Georgia Department of Agriculture found 56 percent of those surveyed were experiencing difficulty finding workers—a devastating blow to the state.63 Even a program by Gov. Nathan Deal (D-GA) to use prison parolees to fill the worker shortage quickly fell apart, with most walking off the job after just a few hours.64¶ Creating a process for legalizing these undocumented workers would help stabilize the agricultural workforce and enhance our nation’s food security.65 It would also diminish the incentive of states to go down the economically self-destructive path that Georgia,66 Alabama,67 Arizona,68 and others have pursued.

#### Ag collapse causes extinction

Lugar, 2000

[Richard, Senate foreign relations committee former member, former senator from Indiana, “Calls for a new green revolution to combat global warming and reduce world instability” <http://www.unep.org/OurPlanet/imgversn/143/lugar.html>, accessed 1-17-13, TAP]

In a world confronted by global terrorism, turmoil in the Middle East, burgeoning nuclear threats and other crises, it is easy to lose sight of the long-range challenges. But we do so at our peril. One of the most daunting of them is meeting the world’s need for food and energy in this century. At stake is not only preventing starvation and saving the environment, but also world peace and security. History tells us that states may go to war over access to resources, and that poverty and famine have often bred fanaticism and terrorism. Working to feed the world will minimize factors that contribute to global instability and the proliferation of [WMDs] weapons of mass destruction. With the world population expected to grow from 6 billion people today to 9 billion by mid-century, the demand for affordable food will increase well beyond current international production levels. People in rapidly developing nations will have the means greatly to improve their standard of living and caloric intake. Inevitably, that means eating more meat. This will raise demand for feed grain at the same time that the growing world population will need vastly more basic food to eat. Complicating a solution to this problem is a dynamic that must be better understood in the West: developing countries often use limited arable land to expand cities to house their growing populations. As good land disappears, people destroy timber resources and even rainforests as they try to create more arable land to feed themselves. The long-term environmental consequences could be disastrous for the entire globe. Productivity revolution To meet the expected demand for food over the next 50 years, we in the United States will have to grow roughly three times more food on the land we have. That’s a tall order. My farm in Marion County, Indiana, for example, yields on average 8.3 to 8.6 tonnes of corn per hectare – typical for a farm in central Indiana. To triple our production by 2050, we will have to produce an annual average of 25 tonnes per hectare. Can we possibly boost output that much? Well, it’s been done before. Advances in the use of fertilizer and water, improved machinery and better tilling techniques combined to generate a threefold increase in yields since 1935 – on our farm back then, my dad produced 2.8 to 3 tonnes per hectare. Much US agriculture has seen similar increases. But of course there is no guarantee that we can achieve those results again. Given the urgency of expanding food production to meet world demand, we must invest much more in scientific research and target that money toward projects that promise to have significant national and global impact. For the United States, that will mean a major shift in the way we conduct and fund agricultural science. Fundamental research will generate the innovations that will be necessary to feed the world. The United States can take a leading position in a productivity revolution. And our success at increasing food production may play a decisive humanitarian role in the survival of billions of people and the health of our planet.

### OFF

#### The Executive Branch of the United States should report relevant executive documents outlining the legal basis and justifications for drone strikes to Congress and create “executive v. executive” divisions as per our Katyal evidence to promote internal separation of powers via separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts.

#### Presidential veto power and executive deference mean external restraints fail – internal separation of powers constrains the president and leads to better decision making

Katyal ’6 Neal Katyal, Professor of Law @ Georgetown, The Yale Law Journal, “Internal Separation of Powers: Checking Today’s Most Dangerous Branch from Within” 115 Yale L.J. 2314, 2006

After all, Publius's view of separation of powers presumes three branches with equivalent ambitions of maximizing their powers, yet legislative abdication is the reigning modus operandi. It is often remarked that "9/11 changed everything"; 2 particularly so in the war on terror, in which Congress has been absent or content to pass vague, open-ended statutes. The result is an executive that subsumes much of the tripartite structure of government. Many commentators have bemoaned this state of affairs. This Essay will not pile on to those complaints. Rather, it begins where others have left off. If major decisions are going to be made by the President, then how might separation of powers be reflected within the executive branch? The first-best concept of "legislature v. executive" checks and balances must be updated to contemplate second-best "executive v. executive" divisions. And this Essay proposes doing so in perhaps the most controversial area: foreign policy. It is widely thought that the President's power is at its apogee in this arena. By explaining the virtues of internal divisions in the realm of foreign policy, this Essay sparks conversation on whether checks are necessary in other, domestic realms. That conversation desperately needs to center on how best to structure the ever-expanding modern executive branch. From 608,915 employees working in agencies in 1930, 3 to 2,649,319 individuals in 2004, 4 the growth of the executive has not generated a systematic focus on internal checks. We are all fond of analyzing checks on judicial activism in the post-Brown, post-Roe era. So too we think of checks on legislatures, from the filibuster to judicial review. But [\*2317] there is a paucity of thought regarding checks on the President beyond banal wishful thinking about congressional and judicial activity. This Essay aims to fill that gap. A critical mechanism to promote internal separation of powers is bureaucracy. Much maligned by both the political left and right, bureaucracy creates a civil service not beholden to any particular administration and a cadre of experts with a long-term institutional worldview. These benefits have been obscured by the now-dominant, caricatured view of agencies as simple anti-change agents. This Essay celebrates the potential of bureaucracy and explains how legal institutions can better tap its powers. A well-functioning bureaucracy contains agencies with differing missions and objectives that intentionally overlap to create friction. Just as the standard separation-of-powers paradigms (legislature v. courts, executive v. courts, legislature v. executive) overlap to produce friction, so too do their internal variants. When the State and Defense Departments have to convince each other of why their view is right, for example, better decision-making results. And when there is no neutral decision-maker within the government in cases of disagreement, the system risks breaking down. In short, the executive is the home of two different sorts of legitimacy: political (democratic will) and bureaucratic (expertise). A chief aim of this Essay's proposal is to allow each to function without undermining the other. This goal can be met without agency competition - overlapping jurisdiction is simply one catalyzing agent. Other ideas deserve consideration, alongside or independent of such competition, such as developing career protections for the civil service modeled more on the Foreign Service. Executives of all stripes offer the same rationale for forgoing bureaucracy-executive energy and dispatch. 5 Yet the Founders assumed that massive changes to the status quo required legislative enactments, not executive decrees. As that concept has broken down, the risks of unchecked executive power have grown to the point where dispatch has become a worn-out excuse for capricious activity. Such claims of executive power are not limited to the current administration, nor are they limited to politicians. Take, for example, Dean Elena Kagan's rich celebration of presidential administration. 6 Kagan, herself a former political appointee, lauded the President's ability to trump bureaucracy. Anticipating the claims of the current administration, Kagan argued that the [\*2318] President's ability to overrule bureaucrats "energizes regulatory policy" because only "the President has the ability to effect comprehensive, coherent change in administrative policymaking." 7 Yet it becomes clear that the Kagan thesis depends crucially on oversight by the coordinate legislative branch (typically controlled by a party in opposition to the President). Without that checking function, presidential administration can become an engine of concentrated power. This Essay therefore outlines a set of mechanisms that create checks and balances within the executive branch. The apparatuses are familiar - separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts. But these restraints have been informally laid down and inconsistently applied, and in the wake of September 11 they have been decimated. 8 A general framework statute is needed to codify a set of practices. In many ways, the status quo is the worst of all worlds because it creates the facade of external and internal checks when both have withered. I. THE NEED FOR INTERNAL SEPARATION OF POWERS The treacherous attacks of September 11 gave Congress and the President a unique opportunity to work together. Within a week, both houses of Congress passed an Authorization for Use of Military Force (AUMF); 10 two months later they enacted the USA PATRIOT Act to further expand intelligence and law enforcement powers. 11 But Congress did no more. It passed no laws authorizing or regulating detentions for U.S. citizens. It did not affirm or regulate President Bush's decision to use military commissions to try unlawful belligerents. 12 It stood silent when President Bush accepted thinly reasoned legal views of the Geneva Conventions. 13 The administration was content to rely on vague legislation, and Congress was content to enact little else. 14 There is much to be said about the violation of separation of powers engendered by these executive decisions, but for purposes of this Essay, I want [\*2320] to concede the executive's claim - that the AUMF gave the President the raw authority to make these decisions. A democratic deficit still exists; the values of divided government and popular accountability are not being preserved. Even if the President did have the power to carry out the above acts, it would surely have been wiser if Congress had specifically authorized them. Congress's imprimatur would have ensured that the people's representatives concurred, would have aided the government's defense of these actions in courts, and would have signaled to the world a broader American commitment to these decisions than one man's pen stroke. Of course, Congress has not passed legislation to denounce these presidential actions either. And here we come to a subtle change in the legal landscape with broad ramifications: the demise of the congressional checking function. The story begins with the collapse of the nondelegation doctrine in the 1930s, which enabled broad areas of policymaking authority to be given to the President and to agencies under his control. That collapse, however, was tempered by the legislative veto; in practical terms, when Congress did not approve of a particular agency action, it could correct the problem. But after INS v. Chadha, 15 which declared the legislative veto unconstitutional, that checking function, too, disappeared. In most instances today, the only way for Congress to disapprove of a presidential decree, even one chock full of rampant lawmaking, is to pass a bill with a solid enough majority to override a presidential veto. The veto power thus becomes a tool to entrench presidential decrees, rather than one that blocks congressional misadventures. And because Congress ex ante appreciates the supermajority-override rule, its members do not even bother to try to check the President, knowing that a small cadre of loyalists in either House can block a bill. 16 For example, when some of the Senate's most powerful Republicans (John McCain, Lindsay Graham, and John Warner) tried to regulate detentions and trials at Guantanamo Bay, they were told that the President would veto any attempt to modify the AUMF. 17 The result is that once a court [\*2321] interprets a congressional act, such as the AUMF, to give the President broad powers, Congress often cannot reverse the interpretation, even if Congress never intended to give the President those powers in the first place. Senator McCain might persuade every one of the other ninety-nine Senators to vote for his bill, but that is of no moment without a supermajority in the House of Representatives as well. 18 At the same time, the executive branch has gained power from deference doctrines that induce courts to leave much conduct untouched - particularly in foreign affairs. 19 The combination of deference and the veto is especially insidious - it means that a President can interpret a vague statute to give himself additional powers, receive deference in that interpretation from courts, and then lock that decision into place by brandishing the veto. This ratchet-and-lock scheme makes it almost impossible to rein in executive power. All legislative action is therefore dangerous. Any bill, like Senator McCain's torture bill, can be derailed through compromise. A rational legislator, fearing this cascading cycle, is likely to do nothing at all. This expansion of presidential power is reinforced by the party system. When the political branches are controlled by the same party, loyalty, discipline, and self-interest generally preclude interbranch checking. That reluctance is exacerbated by a paucity of weapons that check the President. Post-Chadha, Congress only has weapons that cause extensive collateral damage. The fear of that damage becomes yet another reason why Congress is plagued with inertia. And the filibuster, the last big check in periods of single-party government, is useless against the host of problems caused by Presidents who take expansive views of their powers under existing laws (such as the AUMF). Instead of preserving bicameralism, Chadha has led to its subversion and "no-cameralism." A Congress that conducts little oversight provides a veneer of legitimacy to an adventurist President. The President can appeal to the historic sense of checks and balances, even if those checks are entirely compromised by modern political dynamics. With this system in place, it is no surprise that recent calls [\*2322] for legislative revitalization have failed. No successful action-forcing mechanisms have been developed; instead we are still in John Hart Ely's world of giving a "halftime pep-talk imploring that body to pull up its socks and reclaim its rightful authority." 20 It is time to consider second-best solutions to bring separation of powers into the executive. Bureaucracy can be reformed and celebrated (instead of purged and maligned), and neutral conflict-decision mechanisms can be introduced. Design choices such as these can help bring our government back in line with the principles envisioned by our Founders. 21

### SOLVO

#### Obama would issue a signing statement to circumvent the aff.

McLeod 8 Jason Mcleod, Masters in Science in Nature, Science and Environmental Policy at Oxford’s School of Geography and the Environment at the University of Oxford, JD from the Seattle University School of Law in May 2012 specializing in Critical Race Theory along with Environmental, international, and IP law, The Law of Displacement, 3/14/08, http://www.jasondmacleod.com/legal-articles-2/law-displacement/

Another tool of the Executive branch, which subordinates constitutional and international law, is the signing statement. The use of signing statements is not a new phenomenon. The first President on record issuing a singing statement was James Monroe in the early 1800‟s. They were used primarily for public record until Reagan‟s presidency in the 1980‟s. A legal theory was developed which asserted signing statements could be used as a tool of the Executive branch. Instead of vetoing a law passed through the senate, the President can claim the law is unconstitutional and his branch is not bound to obey. Since President Bush II came into office in 2001, he has signed 157 statements challenging 1,100 provisions of federal law –more than any previous President in history (Green, 2008).¶ The use of signing statements by President Bush allows for new and broad interpretations of law and Executive power. Signing statements have three significant functions: to notify the public on how the President views the legislation and how it relates to the administration‟s policy views; to guide and direct the organizations which fall under the Executive branch; and, most importantly, announces the Presidents‟ view on the constitutionality of the legislation (Dellinger, 1993). The President has in effect, acquired the role of the judiciary and the legislative; he can now create laws and interpret them. Signing statements are important because, currently, our legal system does not know how to deal with them. They are inherently outside the sphere of law. When a law is passed by congress, it is sent to the President and then signed into law. When he signs the law is the moment he issues the signing statement. In relation to the Supreme Court, signing statements are beyond judicial review because, “a specific victim of a law or policy, over whom courts have jurisdiction, must file a lawsuit for a question to get before the Supreme Court. But nobody has legal standing to sue over most of the important laws Bush challenged” (Savage, 2007; 241). The Executive is no longer fixed in the system of checks and balances. The Executive body has moved above the other branches because the President believes he has the power.

#### Statutes are dead letters and grey holes.

Vermeule and Posner 11 Adrian Vermeule, prof of Law at Harvard University Law School, Eric A Posner., prof of Law at the University of Chicago Law School, *Executive Unbound: After the Madisonian Republic*, Oxford University Press 2011

If the constitutional framework of liberal legalism is too rickety to con­tain executive power, perhaps statutes can substitute new legal con­straints. A principal hope of liberal legal theory is that the deficiencies of the constitutional framework can be patched up by framework statutes that will channel and constrain executive power. The executive comprises the president and (various types of) agencies, and liberal legalism tries to constrain both, through different statutes. As to the agencies, liberal legal­ists hope that general procedural statutes such as the Administrative Proce­dure Act (APA) can “translate” the principles and values underlying the separation of powers into a world in which agencies routinely hold consol­idated powers of lawmaking, law-execution, and law-interpretation.1 As to the president, Congress has enacted many subject-specific framework stat­utes that attempt to constrain executive power, especially with regard to warmaking, foreign policy, and emergencies. And liberal legal theorists often propose new statutes of this sort—for example, a statute that would confine presidential emergency powers in the aftermath of a terrorist attack.2

These efforts all fall short of the aspirations of liberal legalism, in greater or lesser degree. The subject-specific framework statutes that attempt to constrain presidential power are the most conspicuous failure; most are dead letters. Seemingly more successful is the APA, which remains the cen­tral framework for the administrative state. We will suggest that this is something of an illusion; the greater specificity of the subject-specific stat­utes, and the greater plasticity and ambiguity of the APA, make the failure of the former group more conspicuous, while giving the latter a misleading appearance of constraining force.

The secret of the APAs “success”—its ability to endure in a nominal sense-—is that it contains a series of adjustable parameters that the courts use to dial up and down, the intensity of their scrutiny over time. The APA’s basic flexibility allows courts to allow government to do what government needs to do when it needs to do it. The result is a series of legal “black holes” and “grey holes”—the latter being standards of reasonableness that have the appearance of legality, but not the substance, at least not when pressing interests suggest otherwise. This regime is a triumph for the nom­inal supremacy of the APA, but not for any genuine version of the rule of law. Liberal legalisms basic aspiration, that statutes (if not the Constitu­tion) will subject the administrative state to the rule of law, is far less suc­cessful than it appears.

#### Congress will defer--Self-fulfilling crises of authority.

Vermeule and Posner 11 Adrian Vermeule, prof of Law at Harvard University Law School, Eric A Posner., prof of Law at the University of Chicago Law School, *Executive Unbound: After the Madisonian Republic*, Oxford University Press 2011

Finally, we mention a dynamic that further tightens the political constraints on legislatures and courts in times of crisis. Precisely because markets expected the House to pass the EESA, its initial failure to do so created a perceived “crisis of authority,”87 suggesting a risk that dysfunctional political institutions would not be able to coordinate on any economic policy at all. That second-order crisis supervened on the underlying economic crisis, but acquired force independent of it. The Senate had to scramble to undo the damage and did so in world-record time. The House quickly fell into line.

In this way, measures urged by the executive to cope with a crisis of unclear magnitude acquired a kind of self-created momentum. Rejection of those measures would themselves create a political crisis that might, in turn, reduce confidence and thus trigger or exacerbate the underlying financial crisis. A similar process occurred in the debates over the AUMF and the Patriot Act, where proponents of the bills urged that their rejection would send terrorist groups a devastating signal about American political willpower and unity, thereby encouraging more attacks. These political dynamics, in short, create a self-fulfilling crisis of authority that puts legis­lative institutions under tremendous pressure to accede to executive demands, at least where a crisis is even plausibly alleged.

Critics of executive power contend that the executive exploits its focal role during crises in order to bully and manipulate Congress, defeating Madisonian deliberation when it is most needed. On an alternative account, the legislature rationally submits to executive leadership because a crisis can be addressed only by a leader. Enemies are emboldened by institutional conflict or a divided government; financial markets are spooked by it. A government riven by internal conflict will produce policy that varies as political coalitions rise and fall. Inconsistent policies can be exploited by enemies, and they generate uncertainty at a time that financial markets are especially sensitive to agents’ predictions of future govern­ment action. It is a peculiar feature of the 2008 financial crises that a dam­aged president could not fulfill the necessary leadership role, but that role quickly devolved to the Treasury secretary and Fed chair who, acting in tandem, did not once express disagreement publicly.

#### Legislative monitoring and checks fail.

Vermeule and Posner 11 Adrian Vermeule, prof of Law at Harvard University Law School, Eric A Posner., prof of Law at the University of Chicago Law School, *Executive Unbound: After the Madisonian Republic*, Oxford University Press 2011

American government in the period 2001 to 2008 bears little resemblance to the constitutional framework erected, or wished for, by liberal legalism. In the liberal-legalist view, legislatures are said or at least hoped to be the primary actors, with executive and judicial power following suit—through law-execution and law-interpretation respectively. Both legislatures and courts are supposed to check and monitor the executive, keeping its power tightly cabined. In these episodes, however, executive officials take center stage, setting the agenda and determining the main lines of the gov­ernment’s response, with legislatures and courts offering second-decimal modifications. Legislative and judicial monitoring and checking is largely hopeless, in part because of the necessarily ad hoc character of the government’s initial reaction (“regulation by deal”),88 in part because legislatures and courts come too late to the scene. The overall impression is that the constitutional framework of liberal legalism has collapsed under the pressure of fact, especially the brute fact that the rate of change in the , policy environment is too great for traditional modes of lawmaking and policymaking to keep pace. Although crises demonstrate the problem with particular clarity, it is embedded in the structure of the administrative state. None of this means that the president is all-powerful; that is not our .As political science assessments of executive power show,89 the pres­ident does face some checks even from a generally supine Congress and even in the domains of war and foreign affairs where presidential power reaches its zenith.90 However, these checks are not primarily legal. Even Congress’s main weapon for affecting presidential behavior is not the cumbersome and costly legal mechanism of legislation. Rather legislators ap­peal to the court of public opinion, which in turn constrains the president.

Oversight and various forms of‘‘soft law”91—congressional statements and resolutions short of legally binding legislation—affect public support for presidential action in the realm of foreign policy, and in many other domains as well. There are real constraints on executive government, but formal constitutional procedures are not their source.

### DRONE PROLIF

#### No drone arms race – multiple checks

Singh 12 (Joseph Singh is a researcher at the Center for a New American Security. “Betting Against a Drone Arms Race,” http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/)

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones. As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, the narrow applications of current drone technology coupled with what we know about state behavior in the international system lend no credence to these ominous warnings. Indeed, critics seem overly-focused on the domestic implications of drone use. In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.” Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, there remain equally serious diplomatic and political costs that emanate from beyond a fickle electorate, which will prevent the likes of the increased drone aggression predicted by both Ignatieff and Sharkey. Most recently, the serious diplomatic scuffle instigated by Syria’s downing a Turkish reconnaissance plane in June illustrated the very serious risks of operating any aircraft in foreign territory. States launching drones must still weigh the diplomatic and political costs of their actions, which make the calculation surrounding their use no fundamentally different to any other aerial engagement. This recent bout also illustrated a salient point regarding drone technology: most states maintain at least minimal air defenses that can quickly detect and take down drones, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active. What the U.S. also learned, however, was that drones constitute an effective military tool in an extremely narrow strategic context. They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations against a technologically unsophisticated enemy. In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region. Non-state actors, on the other hand, have even more reasons to steer clear of drones: – First, they are wildly expensive. At $15 million, the average weaponized drone is less costly than an F-16 fighter jet, yet much pricier than the significantly cheaper, yet equally damaging options terrorist groups could pursue. – Those alternatives would also be relatively more difficult to trace back to an organization than an unmanned aerial vehicle, with all the technical and logistical planning its operation would pose. – Weaponized drones are not easily deployable. Most require runways in order to be launched, which means that any non-state actor would likely require state sponsorship to operate a drone. Such sponsorship is unlikely given the political and diplomatic consequences the sponsoring state would certainly face. – Finally, drones require an extensive team of on-the-ground experts to ensure their successful operation. According to the U.S. Air Force, 168 individuals are needed to operate a Predator drone, including a pilot, maintenance personnel and surveillance analysts. In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology. Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team. Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones. What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use. Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best. Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations. Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### U.S. drone use doesn’t cause prolif – no international precedent.

Etzioni 13, Professor of International Relations @ George Washington University (Aimtai Etzioni, adviser to the Carter administration, “The Great Drone Debate”, Military Review, 4/2013, http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview\_20130430\_art004.pdf)

Other critics contend that by the United States ¶ using drones, it leads other countries into making and ¶ using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK ¶ and author of a book about drones argues that, “The ¶ proliferation of drones should evoke reﬂection on the ¶ precedent that the United States is setting by killing ¶ anyone it wants, anywhere it wants, on the basis of ¶ secret information. Other nations and non-state entities are watching—and are bound to start acting in ¶ a similar fashion.”60 Indeed scores of countries are ¶ now manufacturing or purchasing drones. There can ¶ be little doubt that the fact that drones have served ¶ the United States well has helped to popularize them. ¶ However, it does not follow that United States ¶ should not have employed drones in the hope that such a show of restraint would deter others. First ¶ of all, this would have meant that either the United ¶ States would have had to allow terrorists in hard-to-reach places, say North Waziristan, to either ¶ roam and rest freely—or it would have had to use ¶ bombs that would have caused much greater collateral damage. ¶ Further, the record shows that even when the ¶ United States did not develop a particular weapon, ¶ others did. Thus, China has taken the lead in the ¶ development of anti-ship missiles and seemingly ¶ cyber weapons as well. One must keep in mind ¶ that the international environment is a hostile ¶ one. Countries—and especially non-state actors—¶ most of the time do not play by some set of selfconstraining rules. Rather, they tend to employ ¶ whatever weapons they can obtain that will further ¶ their interests. The United States correctly does ¶ not assume that it can rely on some non-existent ¶ implicit gentleman’s agreements that call for the ¶ avoidance of new military technology by nation X ¶ or terrorist group Y—if the United States refrains ¶ from employing that technology. I am not arguing that there are no natural norms ¶ that restrain behavior. There are certainly some ¶ that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of ¶ diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of ¶ mass destruction). However drones are but one ¶ step—following bombers and missiles—in the ¶ development of distant battleﬁeld technologies. ¶ (Robotic soldiers—or future ﬁghting machines—¶ are next in line). In such circumstances, the role ¶ of norms is much more limited.

#### No reverse casual modeling internal link --- we can’t reverse the precedent that has already been set

**Boot 11** (Max Boot, Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations in New York, leading military historian and foreign-policy analyst, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, October 9, 2011, http://www.commentarymagazine.com/2011/10/09/drone-arms-race/)

The New York Times engages in some scare-mongering today about a drone arms race. Scott Shane notes correctly other nations such as China are building their own drones and in the future U.S. forces could be attacked by them–our forces will not have a monopoly on their use forever. Fair enough, but he goes further, suggesting our current use of drones to target terrorists will backfire:

If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them.

“The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the University of Pittsburgh and author of Missile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.”

This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.

**The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example.** In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.

Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected assassination of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone?

While a decision on our part to stop drone strikes would be unlikely to alter Russian or Chinese thinking, it would have one immediate consequence: al-Qaeda would be strengthened and could regenerate the ability to attack our homeland. Drone strikes are the only effective weapon we have to combat terrorist groups in places like Pakistan or Yemen where we don’t have a lot of boots on the ground or a lot of cooperation from local authorities. We cannot afford to give them up in the vain hope it will encourage disarmament on the part of dictatorial states.

#### Norms don’t solve — Azerbaijan’s set on drones — your article

Global Post 12, “Drone violence along Armenian-Azerbaijani border could lead to war,” Global Post, Oct 23rd, 2012, <http://www.globalpost.com/dispatch/news/regions/europe/121022/drone-violence-along-armenian-azerbaijani-border-could-lead-war?page=0>,1

Richard Giragosian, director of the Regional Studies Center in Yerevan, said in a briefing that **attacks this summer show**ed that Azerbaijan is eager to “play with its new toys” and its forces showed “impressive tactical and operational improvement.” The **I**nternational **C**risis **G**roup **warned** that **as the tit-for-tat incidents become more deadly, “there is a growing risk** that the increasing frontline **tensions** could **lead to** an accidental **war**.”

#### Plan’s modeling restricts Chinese strikes on Uighur separatists

**Bergen and Rowland 12** (Peter Bergen, CNN National Security Analyst, Jennifer Rowland, Special to CNN, “A Dangerous New World of Drones,” CNN News, October 8, 2012, http://www.cnn.com/2012/10/01/opinion/bergen-world-of-drones)

But without an international framework governing the use of drone attacks, the United States is **setting a** dangerous **precedent** for other nations with its aggressive and secretive drone programs in Pakistan and Yemen, which are aimed at suspected members of al Qaeda and their allies.

Just as the U.S. government justifies its drone strikes with the argument that it is at war with al Qaeda and its affiliates, one could imagine that India in the not too distant future might launch such attacks against suspected terrorists in Kashmir, or **China might strike Uighur separatists** in western China, or Iran might attack Baluchi nationalists along its border with Pakistan.

#### Drone strikes are key --- suppresses Xinjiang separatist violence and instability

**Erickson and Strange 13** (Andrew Erickson, associate professor at the Naval War College, Associate in Research at Harvard University's Fairbank Centre, Austin Strange, researcher at the Naval War College's China Maritime Studies Institute, graduate student at Zhejiang University, “China Has Drones. Now How Will it Use Them?” Foreign Affairs, May 29, 2013, http://www.nationmultimedia.com/opinion/China-has-drones-Now-how-will-it-use-them-30207095.html)

Yet there is a reason why the United States has employed drones extensively despite domestic and international criticism: it is much easier and cheaper to kill terrorists from above than to try to root them out through long and expensive counterinsurgency campaigns. Some similar challenges loom on China's horizon. Within China, Beijing often considers protests and **violence** **in** the restive border regions, such as **Xinjiang** and Tibet, to constitute terrorism. It would presumably consider ordering precision strikes to **suppress** any **future violenc**e there. Even if such strikes are operationally prudent, China's leaders understand that they would damage the country's image abroad, but they prioritise internal stability above all else. Domestic surveillance by drones is a different issue; there should be few barriers to its application in what is already one of the world's most heavily policed societies. China might also be willing to use stealth drones in foreign airspace without authorisation if the risk of detection were low enough; it already deploys intelligence-gathering ships in the exclusive economic zones of Japan and the United States, as well as in the Indian Ocean.

#### The impact is Chinese nuclear terrorism

**Ferguson and Potter, 4** — president of the Federation of American Scientists, former project director of the Independent Task Force on U.S. Nuclear Weapons Policy at the Council on Foreign Relations, adjunct professor in the security studies program at Georgetown University, former scientist-in-residence at the Monterey Institute’s Center for Nonproliferation Studies, winner of the 2003 Robert S. Landauer Lecture Award from the Health Physics Society, consultant for Oak Ridge National Laboratory, Sandia National Laboratories, and the National Nuclear Security Administration, former physical scientist in the Office of the Senior Coordinator for Nuclear Safety at the U.S. Department of State, co-chairman of the U.S.-Japan Nuclear Working Group, M.A. and Ph.D. in physics from Boston University, AND, Sam Nunn and Richard Lugar Professor of Nonproliferation Studies and Founding Director of the James Martin Center for Nonproliferation Studies at the Monterey Institute of International Studies, member of the Council on Foreign Relations, member of the International Advisory Board of the Center for Policy Studies in Russia (Charles D. and William C., “The Four Faces of Nuclear Terrorism”, Nuclear Threat Initiative, Monterey Institute, Center for Nonproliferation Studies, 2004, http://jeffreyfields.net/427/Site/Blog/30F67A03-182C-4FC7-9EFD-A7C321F6DC8D\_files/analysis\_4faces.pdf)

China has been gradually modernizing its nuclear arsenal. However, at this time, it is unclear whether this modernization program will in- crease or decrease security risks that terrorists might exploit. While more Chinese nuclear weapons might mean more opportunities for theft, a modernized force might incorporate more up-to-date security proce- dures. Isolated storage and transportation links could pose increased risks for any nation’s nuclear weapons security program. China is be- lieved to assemble nuclear warheads at a number of nuclear facilities, and the Lop Nur test site may contain a storage facility for Chinese nuclear weapons (although it is probably unused, since China has not tested a nuclear weapon since 1996).56 Lop Nur is remotely located in northwest Xinjiang province, where nationalist/separatist organizations have been campaigning for autonomy from Beijing. Although Xinjiang separatist groups have not openly expressed interest in acquiring nuclear weapons, some reports have alleged that Uighur separatists may have stolen radioactive sources from Lop Nur in 1993.57 It is difficult to offer an overall assessment of the security of China’s nuclear arms against terrorists because Beijing has a long-standing prac- tice of not publishing sensitive information. In addition, China shows little concern (at least openly) that nuclear terrorism can occur on Chinese soil. While this lack of concern may be justified, the Chinese government still has to factor in security threats posed by Xinjiang separatists and other groups that may engage in terrorism in China. Nonetheless, the dominant role of the Chinese Communist Party and its security ap- paratus in Chinese society, and the limited presence of terrorist groups in China, appear to reduce substantially the danger that a terrorist or- ganization might gain control of an intact nuclear weapon in that country.

### HEGEMONY

#### No foreign backlash

Byman 13 (Daniel, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, Foreign Affairs, “Why Drones Work: The Case for Washington’s Weapon of Choice”, July/August 2013)

FOREIGN FRIENDS It is also telling that drones have earned the backing, albeit secret, of foreign governments. In order to maintain popular support, politicians in Pakistan and Yemen routinely rail against the U.S. drone campaign. In reality, however, the governments of both countries have supported it. During the Bush and Obama administrations, Pakistan has even periodically hosted U.S. drone facilities and has been told about strikes in advance. Pervez Musharraf, president of Pakistan until 2008, was not worried about the drone program’s negative publicity: “In Pakistan, things fall out of the sky all the time,” he reportedly remarked. Yemen’s former president, Ali Abdullah Saleh, also at times allowed drone strikes in his country and even covered for them by telling the public that they were conducted by the Yemeni air force. When the United States’ involvement was leaked in 2002, however, relations between the two countries soured. Still, Saleh later let the drone program resume in Yemen, and his replacement, Abdu Rabbu Mansour Hadi, has publicly praised drones, saying that “they pinpoint the target and have zero margin of error, if you know what target you’re aiming at.” As officials in both Pakistan and Yemen realize, U.S. drone strikes help their governments by targeting common enemies. A memo released by the antisecrecy website WikiLeaks revealed that Pakistan’s army chief, Ashfaq Parvez Kayani, privately asked U.S. military leaders in 2008 for “continuous Predator coverage” over antigovernment militants, and the journalist Mark Mazzetti has reported that the United States has conducted “goodwill kills” against Pakistani militants who threatened Pakistan far more than the United States. Thus, in private, Pakistan supports the drone program. As then Prime Minister Yousaf Raza Gilani told Anne Patterson, then the U.S. ambassador to Pakistan, in 2008, “We’ll protest [against the drone program] in the National Assembly and then ignore it.” Such concerns are valid, but the level of local anger over drones is often lower than commonly portrayed. Many surveys of public opinion related to drones are conducted by anti-drone organizations, which results in biased samples. Other surveys exclude those who are unaware of the drone program and thus overstate the importance of those who are angered by it. In addition, many Pakistanis do not realize that the drones often target the very militants who are wreaking havoc on their country. And for most Pakistanis and Yemenis, the most important problems they struggle with are corruption, weak representative institutions, and poor economic growth; the drone program is only a small part of their overall anger, most of which is directed toward their own governments. A poll conducted in 2007, well before the drone campaign had expanded to its current scope, found that only 15 percent of Pakistanis had a favorable opinion of the United States. It is hard to imagine that alternatives to drone strikes, such as seal team raids or cruise missile strikes, would make the United States more popular.

#### Wiretapping tanks soft power

Arkedis 2013

(Jim Arkedis, Senior Fellow at the Progressive Policy Institute and was a DOD counter-terrorism analyst, “PRISM Is Bad for American Soft Power”, Jun 19 2013, The Atlantic, http://www.theatlantic.com/international/archive/2013/06/prism-is-bad-for-american-soft-power/277015/)

The lack of public debate, shifting attitudes towards civil liberties, insufficient disclosure, and a decreasing terrorist threat demands that collecting Americans' phone and Internet records must meet the absolute highest bar of public consent. It's a test the Obama administration is failing. This brings us back to Harry Truman and Jim Crow. Even though PRISM is technically legal, the lack of recent public debate and support for aggressive domestic collection is hurting America's soft power. The evidence is rolling in. The China Daily, an English-language mouthpiece for the Communist Party, is having a field day, pointing out America's hypocrisy as the Soviet Union did with Jim Crow. Chinese dissident artist Ai Wei Wei made the link explicitly, saying "In the Soviet Union before, in China today, and even in the U.S., officials always think what they do is necessary... but the lesson that people should learn from history is the need to limit state power." Even America's allies are uneasy, at best. German Chancellor Angela Merkel grew up in the East German police state and expressed diplomatic "surprise" at the NSA's activities. She vowed to raise the issue with Obama at this week's G8 meetings. The Italian data protection commissioner said the program would "not be legal" in his country. British Foreign Minister William Hague came under fire in Parliament for his government's participation. If Americans supported these programs, our adversaries and allies would have no argument. As it is, the next time the United States asks others for help in tracking terrorists, it's more likely than not that they will question Washington's motives.

#### Soft power is a false concept—only wealth and power affect influence

Doctorow 2013

(Gilbert, Research Fellow of the American University in Moscow, May 20, "Soft power is largely an American PR gimmick", http://english.ruvr.ru/2013\_05\_20/Soft-power-is-largely-an-American-PR-gimmick/)

There is not much in all of this for the Kremlin to use in furtherance of its foreign policy objectives. But then the fact that Hilary Clinton chose Nye as the State Department’s house philosopher during her tenure did not change the substance of Obama’s foreign policy even if it may have influenced the sound bites. And it could not be otherwise, because soft power is largely a public relations gimmick.¶ Since Nye is an idealist rather than a realist, he systematically fails to understand that soft power is above all a by-product of wealth and success. America’s undisputed power of attraction to peoples around the world (when it is not invading hapless countries) has more to do with its per capita GDP than with any other factor. This explains the passion of ambitious people everywhere to send their children to American colleges, whatever their ratings. It explains the popularity of Hollywood and pop culture and much more. There is nothing wrong with this; it is all understandable in human terms. But it has relatively little to do with vibrant civil society or any beacon of human rights radiating from Washington, D.C. In this respect, the best thing that Russia or China can do to further their soft power is to get richer quick.

#### Hegemony isn’t key to peace

Fettweis, 11   
Christopher J. Fettweis, Department of Political Science, Tulane University, 9/26/11, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the U**nited** S**tates** cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

### TERRORISM

#### No internal link – Ayson’s about terror from Southeast Asia

#### Very low probability

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, 2010 Available Online to Subscribing Institutions via InformaWorld) There is also the question of how other nuclear-armed states respond to the act of nuclear terrorism on another member of that special club. It could reasonably be expected that following a nuclear terrorist attack on the United States, both Russia and China would extend immediate sympathy and support to Washington and would work alongside the United States in the Security Council. But there is just a chance, albeit a slim one, where the support of Russia and/or China is less automatic in some cases than in others. For example, what would happen if the United States wished to discuss its right to retaliate against groups based in their territory? If, for some reason, Washington found the responses of Russia and China deeply underwhelming, (neither “for us or against us”) might it also suspect that they secretly were in cahoots with the group, increasing (again perhaps ever so slightly) the chances of a major exchange. If the terrorist group had some connections to groups in Russia and China, or existed in areas of the world over which Russia and China held sway, and if Washington felt that Moscow or Beijing were placing a curiously modest level of pressure on them, what conclusions might it then draw about their culpability?

#### US won't blame Russia or China.

Ayson 10 (Robert, Professor of Strategic Studies and Director of the Centre for Strategic Studies: New Zealand at the Victoria University of Wellington, “After a Terrorist Nuclear Attack: Envisaging Catalytic Effects,” Studies in Conflict & Terrorism, Volume 33, Issue 7, July, 2010 Available Online to Subscribing Institutions via InformaWorld)

It 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 befingered 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.

#### No correlation between drone use and recruitment levels

Etzioni 13, Professor of International Relations @ George Washington University (Aimtai Etzioni, senior adviser to the Carter administration, “Everything Libertarians and Liberals Get Wrong About Drones”, The Atlantic, 4/30/13, http://www.theatlantic.com/politics/archive/2013/04/everything-libertarians-and-liberals-get-wrong-about-drones/275356/)

Some critics worry that relying upon drones will engender significant resentment and potentially aid terrorist recruitment efforts. However, those who are inclined towards terrorism already loathe the United States for a thousand other reasons. Pew surveys show that anti-Americanism thrives in regions where there have been no drone strikes (for example, in Egypt) and, where drones have been active, high levels of anti-Americanism predated their arrival (for instance in Pakistan).

#### Targeted killings destroy operational effectiveness of terror groups---they can’t recruit new operatives fast enough to keep pace with losses

Alex Young 13, Associate Staff, Harvard International Review, 2/25/13, “A Defense of Drones,” Harvard International Review, http://hir.harvard.edu/a-defense-of-drones

Moreover, drone strikes have disrupted al Qaeda’s system for training new recruits. The Times of London reports that in 2009, Al Qaeda leaders decided to abandon their traditional training camps because bringing new members to a central location offered too easy a target for drone strikes. Foreign Policy emphasized this trend on November 2nd, 2012, arguing that, “destroying communication centers, training camps and vehicles undermines the operational effectiveness of al-Qaeda and the Taliban, and quotes from operatives of the Pakistan-based Haqqani Network reveal that drones have forced them into a ‘jungle existence’ where they fear for the lives on a daily basis.” The threat of death from the skies has forced extremist organizations to become more scattered.

More importantly, though, drone strikes do not only kill top leaders; they target their militant followers as well. The New America Foundation, a think tank that maintains a database of statistics on drone strikes, reports that between 2004 and 2012, drones killed between 1,489 and 2,605 enemy combatants in Pakistan. Given that Al Qaeda, the Pakistani Taliban, and the various other organizations operating in the region combined do not possibly have more than 1,500 senior leaders, it follows that many, if not most, of those killed were low-level or mid-level members – in many cases, individuals who would have carried out attacks. The Los Angeles Times explains that, “the Predator campaign has depleted [Al Qaeda’s] operational tier. Many of the dead are longtime loyalists who had worked alongside Bin Laden […] They are being replaced by less experienced recruits.” Drones decimate terrorist organizations at all levels; the idea that these strikes only kill senior officials is a myth.

#### Drones destroy terror groups’ ability to train new recruits

Daniel Byman 13, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution, July/August 2013, “Why Drones Work,” Foreign Affairs, Vol. 92, No. 4

Drones have also undercut terrorists' ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to "maintain complete silence of all wireless contacts" and "avoid gathering in open areas." Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda's command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders.

#### Targeted killing’s vital to counterterrorism---disrupts leadership and makes carrying out attacks impossible

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities -- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties. Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership. If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature. Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

#### Constraining targeted killing’s role in the war on terror causes extinction

Louis Rene Beres 11, Professor of Political Science and International Law at Purdue, 2011, “After Osama bin Laden: Assassination, Terrorism, War, and International Law,” Case Western Reserve Journal of International Law, 44 Case W. Res. J. Int'l L. 93

Even after the U.S. assassination of Osama bin Laden, we are still left with the problem of demonstrating that assassination can be construed, at least under certain very limited circumstances, as an appropriate instance of anticipatory self-defense. Arguably, the enhanced permissibility of anticipatory self-defense that follows generally from the growing destructiveness of current weapons technologies in rogue hands may be paralleled by the enhanced permissibility of assassination as a particular strategy of preemption. Indeed, where assassination as anticipatory self-defense may actually prevent a nuclear or other highly destructive form of warfare, reasonableness dictates that it could represent distinctly, even especially, law-enforcing behavior. For this to be the case, a number of particular conditions would need to be satisfied. First, the assassination itself would have to be limited to the greatest extent possible to those authoritative persons in the prospective attacking state. Second, the assassination would have to conform to all of the settled rules of warfare as they concern discrimination, proportionality, and military necessity. Third, the assassination would need to follow intelligence assessments that point, beyond a reasonable doubt, to preparations for unconventional or other forms of highly destructive warfare within the intended victim's state. Fourth, the assassination would need to be founded upon carefully calculated judgments that it would, in fact, prevent the intended aggression, and that it would do so with substantially less harm [\*114] to civilian populations than would all of the alternative forms of anticipatory self-defense. Such an argument may appear manipulative and dangerous; permitting states to engage in what is normally illegal behavior under the convenient pretext of anticipatory self-defense. Yet, any blanket prohibition of assassination under international law could produce even greater harm, compelling threatened states to resort to large-scale warfare that could otherwise be avoided. Although it would surely be the best of all possible worlds if international legal norms could always be upheld without resort to assassination as anticipatory self-defense, the persisting dynamics of a decentralized system of international law may sometimes still require extraordinary methods of law-enforcement. n71 Let us suppose, for example, that a particular state determines that another state is planning a nuclear or chemical surprise attack upon its population centers. We may suppose, also, that carefully constructed intelligence assessments reveal that the assassination of selected key figures (or, perhaps, just one leadership figure) could prevent such an attack altogether. Balancing the expected harms of the principal alternative courses of action (assassination/no surprise attack v. no assassination/surprise attack), the selection of preemptive assassination could prove reasonable, life-saving, and cost-effective. What of another, more common form of anticipatory self-defense? Might a conventional military strike against the prospective attacker's nuclear, biological or chemical weapons launchers and/or storage sites prove even more reasonable and cost-effective? A persuasive answer inevitably depends upon the particular tactical and strategic circumstances of the moment, and on the precise way in which these particular circumstances are configured. But it is entirely conceivable that conventional military forms of preemption would generate tangibly greater harms than assassination, and possibly with no greater defensive benefit. This suggests that assassination should not be dismissed out of hand in all circumstances as a permissible form of anticipatory self-defense under international law. [\*115] What of those circumstances in which the threat to particular states would not involve higher-order (WMD) n72 military attacks? Could assassination also represent a permissible form of anticipatory self-defense under these circumstances? Subject to the above-stated conditions, the answer might still be "yes." The threat of chemical, biological or nuclear attack may surely enhance the legality of assassination as preemption, but it is by no means an essential precondition. A conventional military attack might still, after all, be enormously, even existentially, destructive. n73 Moreover, it could be followed, in certain circumstances, by unconventional attacks.

## 2NC

### K

#### The impact is serial policy failure – view their impact scenarios as suspect because they operate under a problematic legalist framework.

Michael Dillon [Professor of Politics at the University of Lancaster, UK]AND Julian Reid [Lecturer in International Relations at Kings College London, UK, and Professor of International Relations at the University of Lapland, Finland] 2000, “Global Governance, Liberal Peace, and Complex Emergency,” Alternatives: Social Transformation & Humane Governance, Jan-Mar 2000, Vol. 25, Issue 1, [Ebsco Host]

As a precursor to global governance, governmentality, according to Foucault's initial account, poses the question of order not in terms of the origin of the law and the location of sovereignty, as do traditional accounts of power, but in terms instead of the management of population. The management of population is further refined in terms of specific problematics to which population management may be reduced. These typically include but are not necessarily exhausted by the following topoi of governmental power: economy, health, welfare, poverty, security, sexuality, demographics, resources, skills, culture, and so on. Now, where there is an operation of power there is knowledge, and where there is knowledge there is an operation of power. Here discursive formations emerge and, as Foucault noted, in every society the production of discourse is at once controlled, selected, organised and redistributed by a certain number of procedures whose role is to ward off its powers and dangers, to gain mastery over its chance events, to evade its ponderous, formidable materiality. More specifically, where there is a policy problematic there is expertise, and where there is expertise there, too, a policy problematic will emerge. Such problematics are detailed and elaborated in terms of discrete forms of knowledge as well as interlocking policy domains. Policy domains reify the problematization of life in certain ways by turning these epistemically and politically contestable orderings of life into "problems" that require the continuous attention of policy science and the continuous resolutions of policymakers. Policy "actors" develop and compete on the basis of the expertise that grows up around such problems or clusters of problems and their client populations. Here, too, we may also discover what might be called "epistemic entrepreneurs." Albeit the market for discourse is prescribed and policed in ways that Foucault indicated, bidding to formulate novel problematizations they seek to "sell" these, or otherwise have them officially adopted. In principle, there is no limit to the ways in which the management of population may be problematized. All aspects of human conduct, any encounter with life, is problematizable. Any problematization is capable of becoming a policy problem. Governmentality thereby creates a market for policy, for science and for policy science, in which problematizations go looking for policy sponsors while policy sponsors fiercely compete on behalf of their favored problematizations. Reproblematization of problems is constrained by the institutional and ideological investments surrounding accepted "problems," and by the sheer difficulty of challenging the inescapable ontological and epistemological assumptions that go into their very formation. There is nothing so fiercely contested as an epistemological or ontological assumption. And there is nothing so fiercely ridiculed as the suggestion that the real problem with problematizations exists precisely at the level of such assumptions. Such "paralysis of analysis" is precisely what policymakers seek to avoid since they are compelled constantly to respond to circumstances over which they ordinarily have in fact both more and less control than they proclaim. What they do not have is precisely the control that they want. Yet serial policy failure--the fate and the fuel of all policy--compels them into a continuous search for the new analysis that will extract them from the aporias in which they constantly find themselves enmeshed. Serial policy failure is no simple shortcoming that science and policy--and policy science--will ultimately overcome. Serial policy failure is rooted in the ontological and epistemological assumptions that fashion the ways in which global governance encounters and problematizes life as a process of emergence through fitness landscapes that constantly adaptive and changing ensembles have continuously to negotiate. As a particular kind of intervention into life, global governance promotes the very changes and unintended outcomes that it then serially reproblematizes in terms of policy failure. Thus, global liberal governance is not a linear problem-solving process committed to the resolution of objective policy problems simply by bringing better information and knowledge to bear upon them. A nonlinear economy of power/knowledge, it deliberately installs socially specific and radically inequitable distributions of wealth, opportunity, and mortal danger both locally and globally through the very detailed ways in which life is variously (policy) problematized by it. In consequence, thinking and acting politically is displaced by the institutional and epistemic rivalries that infuse its power/ knowledge networks, and by the local conditions of application that govern the introduction of their policies. These now threaten to exhaust what "politics," locally as well as globally, is about.[36] It is here that the "emergence" characteristic of governance begins to make its appearance. For it is increasingly recognized that there are no definitive policy solutions to objective, neat, discrete policy problems. The "subjects" of policy increasingly also become a matter of definition as well, since the concept population does not have a stable referent either and has itself also evolved in biophilosophical and biomolecular as well as Foucauldian "biopower" ways.

#### Legitimacy is a weapon for the national-security apparatus. Legal restrictions enable the U.S. to wage more precisely regulated and brutal forms of war.

Francisco J. CONTRERAS Prf. Philosophy of Law @ Seville AND Ignacio de la RASILLA Ph.D. candidate in international law, Graduate Institute of International Studies, Geneva, 8 [“On War as Law and Law as War” Leiden Journal of International Law Vol. 21 Issue 3 p. 770-773]

Kennedy begins by coldly contradicting those opponents of the Bush administration ‘that have routinely claimed that the United States has disregarded these rules’ (p. 40) by pointing out that both opponents and supporters of the Iraq war as well as both opponents and supporters of the great panoply of US legal measures related to the war on terror ‘were playing with the same deck’ (p. 40) in presenting ‘professional arguments about how recognised rules and standards, as well as recognised exceptions and jurisdictional limitations, should be interpreted’ (p. 40). The author’s only concession with reference to the Bush administration’s legal advisers is to point out that ‘as professionals, these lawyers failed to advise their client adequately about the consequences of the interpretations they proposed, and about the way others would read the same texts – and their memoranda’ (p. 39).Thus Kennedy does not adopt any legal position to the detriment of any other, as his assessment does not seemingly pretend to persuade his reader at the level of the world of legal validity presented in the vocabulary of the UN Charter. The extent to which that excludes the author from the category of being a ‘true jus-internationalist’, according to A. Canc¸ado Trindade’s understanding of those who actually ‘comply with the ineluctable duty to stand against the apology of the use of force which is manifested in our days through distinct “doctrinal” elaborations’,42 is not for us to judge. Suffice it to note that the starting point of Kennedy’s convoluted perspective on the matter is that ‘the law of force’ is a form of ‘vocabulary for assessing the legitimacy’ (p. 41) of a form of conduct (e.g. amilitary campaign) or ‘for defending as well as attacking the “legality”’ (p. 41) of an act (e.g. distinguishing legitimate from illegitimate targets) in which the same law of force becomes a two-edged sword, everybody’s and no one’s strategic partner in a contemporary world where ‘legitimacy has become the currency of power’ (p. 45). For the author, in today’s age of ‘lawfare’ (p. 12), ‘to resist war in the name of law . . . is to misunderstand the delicate partnership of war and law’ (p. 167). In Kennedy’s view, therefore, ‘there is little comfort in knowing that law has become the vernacular for evaluating the legitimacy of war and politics where it has done so by itself becoming a strategic instrument of war and the continuation of politics by similar means’ (p. 132). 3. LAW AS A MODERN LEGAL INSTITUTION Of War and Law seems, indeed, to be animated by a certain philosophical perplexity regarding the ambiguous relation between the apparently antithetical nature of the terms appearing in its title. Since antiquity both jurists and philosophers have taught that the law’s raison d’eˆ tre is that of making social peace possible, of overcoming what would later be commonly known as the Hobbesian state of nature: bellum omnium contra omnes. Kant noted that law should be perceived first and foremost as a pacifying tool – in other words, ‘the establishment of peace constitutes, not a part of, but the whole purpose of the doctrine of law’43 – and Lauterpacht projected that same principle onto the international sphere: ‘the primordial duty’ of international law is to ensure that ‘there shall be no violence among states’.44 The paradox lies, of course, in that law performs its pacifying function not by means of edifying advice, but by the threat of the use of force. In this sense, as Kennedy points out, ‘to use law is also to invoke violence, at least the violence that stands behind legal authority’ (p. 22). Hobbes himself never concealed the fact that the state, ‘that mortal god, to which we owe under the immortal God our peace and defence’,would succeed in eradicating inter-individual violence precisely due to its ability to ‘inspire terror’;45 but Weber – ‘the State is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory’46 – Godwin,47 and Kelsen48 have also provided support for the same proposition. This ambivalent and paradoxical relationship between law and violence,which is obvious in the domestic or intra-state realm, becomes even more obvious in the interstate domain with its classical twin antinomy of ubi jus, ibi pax and inter arma leges silent until the law in war emerges as a bold normative sector which dares to defy this conceptual incompatibility; even war can be regulated, be submitted to conditions and limitations. The hesitations of Kant in addressing jus in bello49 or the very fact that the Latin terms jus ad bellum and jus in bello were coined, as R. Kolb has pointed out,50 at relatively recent dates, seem to confirm that this has never been per se an evident aspiration.51 Kennedy explains his own calling as international lawyer as being partly inspired by his will to participate in the law’s civilizing mission (p. 29)52 as something utterly distinct from war: We think of these rules [law in war] as coming from ‘outside’ war, limiting and restricting the military. We think of international law as a broadly humanist and civilizing force, standing back from war, judging it as just or unjust, while offering itself as a code of conduct to limit violence on the battlefield. (p. 167) The author notes how this virginal confidence in the pacifying efficiency of international law – its presumed ability to forbid, limit, humanize war ‘from outside’ – becomes progressively nuanced, eroded, almost discredited by a series of considerations. The disquieting image of the ‘delicate partnership of war and law’ becomes more and more evidenced; the lawyer who attempts to regulate warfare inevitably also becomes its accomplice. As Kennedy puts it, The laws of force provide the vocabulary not only for restraining the violence and incidence of war – but also for waging war and deciding to go to war. . . . [L]aw no longer stands outside violence, silent or prohibitive. Law also permits injury, as it privileges, channels, structures, legitimates, and facilitates acts of war. (p. 167) Unable to suppress all violence, law typifies certain forms of violence as legally admissible, thus ‘privileging’ them with regard to others and investing some agents with a ‘privilege to kill’ (p. 115). Law thereby becomes, in Kennedy’s view, a tool not so much for the restriction of war as for the legal construction of war.53 Elsewhere we have labeled Kennedy ‘a relative outsider’54 who, peering from the edge of the vocabulary of international law, tries to ‘highlight its inherent structural limits, gaps, dogmas, blind spots and biases’, as someone ‘specialised in speaking the unspeakable, disclosing ambivalences and asking awkward questions’.55 The ‘unspeakable’, in the case of the ‘law of force’, is precisely, in Kennedy’s view, this process of involuntary complicity with the very phenomenon one supposedly wants to prohibit. Prepared to ‘stain his hands’ a` la Sartre, in his attempt to humanize the military machine from within, to walk one step behind the soldier reminding him constantly, as an imaginary CNN camera, of the legal limits of the legitimate use of force, the lawyer starts to realize, in the author’s view, that he is becoming but an accessory to the war machine. Kennedy maintains that law, in its attempt to subject war to its rule, has been absorbed by it and has now become but another war instrument (p. 32);56 law has been weaponized (p. 37).57 Contemporary war is by definition a legally organized war: ‘no ship moves, no weapon is fired, no target selected without some review for compliance with regulation – not because the military has gone soft, but because there is simply no other way to make modern warfare work. Warfare has become rule and regulation’ (p. 33).War ‘has become a modern legal institution’ (p. 5), with the result that the international lawyer finds himself before an evident instance of Marxian reification, in other words ‘the consolidation of our own products as a material power erected above us beyond our control that raises a wall in front of our expectations and destroys our calculations’.58 Ideas and institutions develop ‘a life of their own’, an autonomous, perverted dynamism.

#### The aff serves to normalize the war on terror--pinpointing individual problems serves to distort, provide cover for and dress up the current legal system and executive practices.

Saas 12 \*\*William O. Pf Department of Communication Arts and Sciences at the Pennsylvania State University. symploke > Volume 20, Numbers 1-2

How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current political climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current political situation, are best won through the broad strokes of what Slavoj Žižek calls "systemic" critique. For Žižek, looking squarely at interpersonal or subjective violences (e.g., torture, drone strikes), drawn as we may be by their gruesome and immediate appeal, distorts the critic's broader field of vision. For a fuller picture, one must pull one's critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek's mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique? For practical purposes, this essay leaves off discussion of neoliberal economic domination, vital as it may be to a full accounting for the U.S.' latest and most desperate expressions of state solvency. Offered instead is a critique of the organizational violence of the U.S.' executive bureaucratic apparatus, an apparatus called into being by charismatic decree, made banal through quasi-legal codification, and guaranteed by popular disinterest. Considered also will be the peculiar, if also somewhat inevitable, continuity of the apparatus's growth under the Obama administration. Candidate Obama's pledge to transparency may now seem an example of truly "mere" [End Page 66] campaign rhetoric, but the extent to which his presidency has exceeded that of George W. Bush in terms of exceptional violence bears some attention. The central difference between the presidencies of Bush and Obama, I suggest, has been the discursive means by which their respective administrations have cultivated an image of charismatic rule. This essay proceeds in three steps. I begin by outlining a recent case of subjective violence, the assassination of Anwar al-Awlaki by drone strike, and then pull back to reveal the structural support for that strike. In the second section, taking Max Weber as my guide, I argue that bureaucratic domination is both the derivative speech act of, and the logic that underwrites, the violence of the modern liberal-democratic state. Under stable conditions, the state bureaucracy facilitates the hegemony of abstract, depersonalized, and mechanical Enlightenment legal-rationalism—what Foucault called liberal "governmentality"—by maintaining relative equilibrium between liberal autonomy and distributive justice among the citizenry. In other words, modern bureaucracy effectively mediates the two poles, "liberty" and "equality," that comprise what political theorists have called the liberal-democratic paradox (Mouffe 2009). When an event is framed as threatening to strip the state of its rhetorical power, however, the bureaucratic apparatus becomes the crucible for what I identify in the third section, with additional help from Carl Schmitt and Giorgio Agamben, as charismatic domination, or the rhetorical exploitation of a vulnerable population by a sovereign decider. Under these conditions, the state bureaucracy becomes a kind of "vanishing mediator" (Jameson 1988, 25-27), its energies redirected for exclusive and singular usage by the exceptional-charismatic sovereign. In the perpetual state of exception, the democratic paradox becomes subordinate to sovereign claims to total and indivisible control over the legitimate use of force. I conclude by outlining what I perceive as the best chances for stemming the growth of the national security bureaucracy, namely, relentless publicity.

#### The problem is beyond the law--The President is already required – BY LAW - to keep committees FULLY INFORMED and yet the committee complains about lack of access and the executive CONCEALS deaths

Ross 13 Alice K, The Bureau of Investigative Journalism, 8-1, http://www.thebureauinvestigates.com/2013/08/01/is-congressional-oversight-tough-enough-on-drones/

By law, the President is required to ensure that the committee is kept “fully and currently informed” of intelligence activities.’ Senate intelligence committee But committee members have complained about being denied information – and a source with knowledge of the committees’ functioning told the Bureau: ‘It’s a serious question as to how much any elected official could possibly understand about what’s going on inside’ the intelligence agencies. In 2012 the Los Angeles Times published what it said was a detailed account of these meetings – based on anonymous briefings – outlining how committee members and aides from the House and Senate committees go to the CIA headquarters each month to watch video footage of recent drone strikes. But new findings from the Bureau’s field research differ sharply from the account of what was reportedly shown to the committees on one occasion. The LA Times reported that anonymous aides described seeing footage of a strike that took place on June 4 2012. The attack represented a major success for the agency, killing Yahya al-Libi, al Qaeda’s second-in-command. Aides reported seeing footage showing al-Libi alone being killed by a missile. But Bureau field research and multiple credible reports tell a different story, in which the day’s events appear to be significantly more complex. The BBC, CNN and other international news outlets were among those reporting that the missile that killed al-Libi was the final part of a sequence of attacks that killed between 14 and 18 people. Sources including the Washington Post reported that after an initial strike, drones returned to attack those carrying out rescue work. Related story - Bureau investigation finds fresh evidence of CIA drone strikes on rescuers If the report of what was shown to the oversight committees is accurate – and if the Bureau and other news agencies are correct – then it appears that committee members were only shown video covering the final part of the incident, giving a misleading impression that concealed over a dozen deaths. The SSCI’s website states: ‘By law, the President is required to ensure that the committee is kept “fully and currently informed” of intelligence activities.’ CIA spokesman Edward Price told the Bureau: ‘The CIA takes its commitment to Congressional oversight with the utmost seriousness. The Agency provides accurate and timely information consistent with our obligation to the oversight Committees. Any accusation alleging otherwise is baseless.’ Neither the House nor the Senate committee would comment, despite repeated requests from the Bureau. But Feinstein’s office did point the Bureau towards a five-month-old statement by the senator on oversight of the drone campaign, made shortly after the public nomination hearings for CIA director John Brennan, of which drones were a major focus. The statement briefly outlined the review process for drone strikes. But it added the Obama administration had refused to provide the committee with memos outlining the legal justifications for drone strikes, despite repeated requests from senior committee members. I’ve been on this Committee for more than 10 years, and with the exception of Mr. Panetta, I feel I’ve been jerked around by every CIA Director’ Senator Barbara Mikulski ‘I have sent three letters [between 2010 and 2013]… requesting these opinions,’ Feinstein said. ‘Last week, senators on the committee were finally allowed to review two OLC [Office of Legal Counsel] opinions on the legal authority to strike US citizens. We have reiterated our request for all nine OLC opinions – and any other relevant documents – in order to fully evaluate the executive branch’s legal reasoning, and to broaden access to the opinions to appropriate members of the committee staff.’ The challenges of oversight The Bureau has previously questioned the effectiveness of the intelligence committees’ oversight of drone strikes. In February 2013. Feinstein used opening remarks at John Brennan’s nomination hearings to claim her committee had done its ‘utmost to confirm’ low civilian casualties in CIA drone strikes. The Bureau contacted four fellow independent organisations which had carried out field investigations looking at civilian casualties in Pakistan. Each had published evidence of civilian casualties – yet none had ever been contacted by committee members or their staff in response to their findings, raising concerns the committee is too dependent on the intelligence community’s assessments. Related story – No evidence Congress does ‘utmost’ to follow up drone civilian death claims Current committee members have complained about being blocked from robust scrutiny. At Brennan’s nomination hearings, Senator Barbara Mikulski said: ‘I’ve been on this Committee for more than 10 years, and with the exception of Mr. Panetta, I feel I’ve been jerked around by every CIA Director. I’ve either been misled, misrepresented, had to pull information out – often at the most minimal kind of way… And quite frankly, during those questions, they were evaded; they were distorted, et cetera.’

#### Legalism is epistemologically flawed and violent--they can weigh the aff if they justify legalism.

Dossa 99 Shiraz, Department of Political Science, St. Francis Xavier University, Antigonish, Nova Scotia, “Liberal Legalism: Law, Culture and Identity,” The European Legacy, Vol. 4, No. 3, pp. 73-87,1

Law's imperial reach, it massive authority, in liberal politics is a **brute**, recurring **fact**. In Law's Empire, Dworkin attests to its scope and power with candour: "We live in and by the law. It makes us what we are" (vii). But he fails to appreciate that law equally traduces others, it systematically unmakes them. For Dworkin, a militant liberal legalist, law is the insiders' domain: legal argument has to be understood internally from the "judge's point of view"; sociological or historical readings are irrelevant and "perverse".2 Praising the decencies of liberal law is necessary in this world: rule of law, judicial integrity, fairness, justice are integral facets of tolerable human life. Lawfulness is and ought to be part of any decent regime of politics. But **law's rhetoric on its own behalf** systematically scants law's violent, dark underside, it skillfully masks law's commerce with **destruction and death.** None of this is visible from the internalist standpoint, and Dworkin's liberal apologia serves to mystify the gross reality of law's empire. In liberal political science, law's presumed, Olympian impartiality, is thus not a contested notion. Liberals still presuppose as a matter of course the juristic community's impartiality and neutrality, **despite empirical evidence to the contrary**.3 One consequence of the assumed sanctity of the judicial torso within the body politic, has been that law's genealogy, law's chronological disposition towards political and cultural questions, have simply not been of interest or concern to most liberal scholars. A further result of this attitude is the political science community's nearly total ignorance of liberal law's complicity in western imperialism, and in shaping western attitudes to the lands and cultures of the conquered natives. Liberal jurisprudence's subterranean life, its invidious consciousness is, however, not an archaic, intermittent annoyance as sensitive liberals are inclined to think: **indeed law is as potent now as it has been in last two centuries in articulating a dismissive image of the native Other**.

#### Their method is bad--the state has been coopted by specialized interests--the focus on debate should be how culture elements can create change to combat normalization of violence caused by the military-industrial-state. The criticism is a prior question.

Giroux 13 Henry A. is a social critic and educator, and the author of many books. He currently holds the Global Television Network Chair in English and Cultural Studies at McMaster University, Ontario, Monthly Review, Volume 65, Issue 01 (May)

In addition, as the state is hijacked by the financial-military-industrial complex, the “most crucial decisions regarding national policy are not made by representatives, but by the financial and military elites.”53 Such massive inequality and the suffering and political corruption it produces point to the need for critical analysis in which the separation of power and politics can be understood. This means developing terms that clarify how power becomes global even as politics continues to function largely at the national level, with the effect of reducing the state primarily to custodial, policing, and punishing functions—at least for those populations considered disposable. The state exercises its slavish role in the form of lowering taxes for the rich, deregulating corporations, funding wars for the benefit of the defense industries, and devising other welfare services for the ultra-rich. There is no escaping the global politics of finance capital and the global network of violence it has produced. Resistance must be mobilized globally and politics restored to a level where it can make a difference in fulfilling the promises of a global democracy. But such a challenge can only take place if the political is made more pedagogical and matters of education take center stage in the struggle for desires, subjectivities, and social relations that refuse the normalizing of violence as a source of gratification, entertainment, identity, and honor. War in its expanded incarnation works in tandem with a state organized around the production of widespread violence. Such a state is necessarily divorced from public values and the formative cultures that make a democracy possible. The result is a weakened civic culture that allows violence and punishment to circulate as part of a culture of commodification, entertainment, distraction, and exclusion. In opposing the emergence of the United States as both a warfare and a punishing state, I am not appealing to a form of left moralism meant simply to mobilize outrage and condemnation. These are not unimportant registers, but they do not constitute an adequate form of resistance .What is needed are modes of analysis that do the hard work of uncovering the effects of the merging of institutions of capital, wealth, and power, and how this merger has extended the reach of a military-industrial-carceral and academic complex, especially since the 1980s. This complex of ideological and institutional elements designed for the production of violence must be addressed by making visible its vast national and global interests and militarized networks, as indicated by the fact that the United States has over 1,000 military bases abroad.54 Equally important is the need to highlight how this military-industrial-carceral and academic complex uses punishment as a structuring force to shape national policy and everyday life. Challenging the warfare state also has an important educational component. C. Wright Mills was right in arguing that it is impossible to separate the violence of an authoritarian social order from the cultural apparatuses that nourish it. As Mills put it, the major cultural apparatuses not only “guide experience, they also expropriate the very chance to have an experience rightly called ‘our own.’”55 This narrowing of experience shorn of public values locks people into private interests and the hyper-individualized orbits in which they live. Experience itself is now privatized, instrumentalized, commodified, and increasingly militarized. Social responsibility gives way to organized infantilization and a flight from responsibility. Crucial here is the need to develop new cultural and political vocabularies that can foster an engaged mode of citizenship capable of naming the corporate and academic interests that support the warfare state and its apparatuses of violence, while simultaneously mobilizing social movements to challenge and dismantle its vast networks of power. One central pedagogical and political task in dismantling the warfare state is, therefore, the challenge of creating the cultural conditions and public spheres that would enable the U.S. public to move from being spectators of war and everyday violence to being informed and engaged citizens.Unfortunately, major cultural apparatuses like public and higher education, which have been historically responsible for educating the public, are becoming little more than market-driven and militarized knowledge factories. In this particularly insidious role, educational institutions deprive students of the capacities that would enable them not only to assume public responsibilities, but also to actively participate in the process of governing. Without the public spheres for creating a formative culture equipped to challenge the educational, military, market, and religious fundamentalisms that dominate U.S. society, it will be virtually impossible to resist the normalization of war as a matter of domestic and foreign policy. Any viable notion of resistance to the current authoritarian order must also address the issue of what it means pedagogically to imagine a more democratically oriented notion of knowledge, subjectivity, and agency and what it might mean to bring such notions into the public sphere. This is more than what Bernard Harcourt calls “a new grammar of political disobedience.”56 It is a reconfiguring of the nature and substance of the political so that matters of pedagogy become central to the very definition of what constitutes the political and the practices that make it meaningful. Critical understanding motivates transformative action, and the affective investments it demands can only be brought about by breaking into the hardwired forms of common sense that give war and state-supported violence their legitimacy. War does not have to be a permanent social relation, nor the primary organizing principle of everyday life, society, and foreign policy. The war of all-against-all and the social Darwinian imperative to respond positively only to one’s own self-interest represent the death of politics, civic responsibility, and ethics, and set the stage for a dysfunctional democracy, if not an emergent authoritarianism. The existing neoliberal social order produces individuals who have no commitment, except to profit, disdain social responsibility, and loosen all ties to any viable notion of the public good. This regime of punishment and privatization is organized around the structuring forces of violence and militarization, which produce a surplus of fear, insecurity, and a weakened culture of civic engagement—one in which there is little room for reasoned debate, critical dialogue, and informed intellectual exchange. Patricia Clough and Craig Willse are right in arguing that we live in a society “in which the production and circulation of death functions as political and economic recovery.”57 The United States understood as a warfare state prompts a new urgency for a collective politics and a social movement capable of negating the current regimes of political and economic power, while imagining a different and more democratic social order. Until the ideological and structural foundations of violence that are pushing U.S. society over the abyss are addressed, the current warfare state will be transformed into a full-blown authoritarian state that will shut down any vestige of democratic values, social relations, and public spheres. At the very least, the U.S. public owes it to its children and future generations, if not the future of democracy itself, to make visible and dismantle this machinery of violence while also reclaiming the spirit of a future that works for life rather than death—the future of the current authoritarianism, however dressed up they appear in the spectacles of consumerism and celebrity culture. It is time for educators, unions, young people, liberals, religious organizations, and other groups to connect the dots, educate themselves, and develop powerful social movements that can restructure the fundamental values and social relations of democracy while establishing the institutions and formative cultures that make it possible. Stanley Aronowitz is right in arguing that: the system survives on the eclipse of the radical imagination, the absence of a viable political opposition with roots in the general population, and the conformity of its intellectuals who, to a large extent, are subjugated by their secure berths in the academy [and though] we can take some solace in 2011, the year of the protester…it would be premature to predict that decades of retreat, defeat and silence can be reversed overnight without a commitment to what may be termed “a long march” through the institutions, the workplaces and the streets of the capitalist metropoles.58 The current protests among young people, workers, the unemployed, students, and others are making clear that this is not—indeed, cannot be—only a short-term project for reform, but must constitute a political and social movement of sustained growth, accompanied by the reclaiming of public spaces, the progressive use of digital technologies, the development of democratic public spheres, new modes of education, and the safeguarding of places where democratic expression, new identities, and collective hope can be nurtured and mobilized. Without broad political and social movements standing behind and uniting the call on the part of young people for democratic transformations, any attempt at radical change will more than likely be cosmetic.

#### Perm guarantees legal norms serve national security. Their framing treats law as an *instrument*. That undermines restraint.

Krasmann 12 Susanne Institute for Criminological Research, University of Hamburg [“Law’s knowledge: On the susceptibility and resistance of legal practices to security matters” *Theoretical Criminology* 16 (4) p. 380-382]

In the face of these developments, a new debate on how to contain governmental interference in the name of security has emerged. What is remarkable about this debate is that, on the one hand, it aims at establishing more civil and human rights and attendant procedural safeguards that allow for systematically calling into question the derogation of laws and the implementation of new laws in the name of security. On the other hand, it recognizes the existence of a new dimension of threats, particularly in the aftermath of the terror attacks of 11 September 2001. As John Ferejohn and Pasquale Pasquino (2004: 228), for instance, contend: We are faced, nowadays, with serious threats to the public safety that can occur anywhere and that cannot terminate definitively. … If we think that the capacity to deal effectively with emergencies is a precondition for republican government, then it is necessary to ask how emergency powers can be controlled in modern circumstances. Adequate legal frameworks and institutional designs are required that would enable us to ‘reconcile’ security with (human) rights, as Goold and Lazarus (2007b: 15) propose, and enduring emergency situations with the rule of law. Traditional problems in the relationship between law and security government within this debate form a point of departure of critical considerations:2 emergency government today, rather than facing the problem of gross abuses of power, has to deal with the persistent danger of the exceptional becoming normal (see Poole, 2008: 8). Law gradually adjusts to what is regarded as ‘necessary’.3 Hence, law not only constrains, but at the same time also authorizes governmental interference. Furthermore, mainstream approaches that try to balance security and liberty are rarely able, or willing, to expose fully the trade-offs of their normative presuppositions: ‘[T]he metaphor of balance is used as often to justify and defend changes as to challenge them’ (Zedner, 2005: 510). Finally, political responses to threats never overcome the uncertainty that necessarily accompanies any decision addressing future events. To ignore this uncertainty, in other words, is to ignore the political moment any such decision entails, thus exempting it from the possibility of dissent. Institutional arrangements that enforce legislative control and enable citizens to claim their rights are certainly the appropriate responses to the concern in question, namely that security gradually seizes political space and transforms the rule of law in an inconspicuous manner. They establish political spaces of dispute and provide sticking points against all too rapidly launched security legislation, and thus may foster a ‘culture of justification’, as David Dyzenhaus (2007) has it: political decisions and the exercise of state power are to be ‘justified by law’, in a fundamental sense of a commitment to ‘the principles of legality and respect for human rights’ (2007: 137). Nonetheless, most of these accounts, in a way, simply add more of the same legal principles and institutional arrangements that are well known to us. To frame security as a public good and ensure that it is a subject of democratic debate, as Ian Loader and Neil Walker (2007) for example demand, is a promising alternative to denying its social relevance. The call for security to be ‘civilized’, though, once again echoes the truly modern project of dealing with its inherent discontents. The limits of such a commitment to legality and a political ‘culture of justification’ (so termed for brevity) will be illustrated in the following section. Those normative endeavours will be challenged subsequently by a Foucauldian account of law as practice. Contrary to the idea that law can be addressed as an isolated, ideal body and thus treated like an instrument according to normative aspirations, the present account renders law’s reliance on forms of knowledge more discernable. Law is susceptible, in particular to security matters. As a practice, it constantly transforms itself and, notably, articulates its normative claims depending upon the forms of knowledge brought into play. Contrary to the prevailing debate on emergency government, this perspective enables us, on the one hand, to capture how certain forms of knowledge become inscribed into the law in a way that goes largely unnoticed. This point will be discussed on the example of automated surveillance technologies, which facilitate a particular rationality of pre-emptive action. The conception of law as a practice, on the other hand, may also be understood as a tool of critique and dissent. The recent torture debate is an extreme example of this, whereby torture can be regarded as a touchstone of law’s resistance to its own abrogation. Law and reasoning The idea that a political and juridical ‘culture of justification’ would be able to bring about the desired results should be treated with caution—for one thing, with regard to the particular logic of legal reasoning and justification and, for another thing, because of at least two empirical observations that shed light on law’s limitations vis-a-vis the governance of security. First of all, the establishment of a ‘culture of justification’ itself presupposes what has yet to arise, namely a common concern about governmental encroachment in the name of security and a willingness of all parties to join in that discourse, if not share in its related arguments. This presupposition, to be sure, is indispensable for inspiring communication and facilitating the exchange of arguments. Moreover, in order to take effect the tried and true liberal legal principles, like that of proportionality and necessity, clearly need to be concretized by reasoning about actual cases. Yet, the assumption of a common concern goes hand in hand with a general trust in a form of communicative reason that will allow for transparency eventually on the matters at stake. Reason and to reason within ‘a transparent, structured process of analysis to determine what degree of erosion is justifiable, by what measure, in what circumstances, and for how long’ (Zedner, 2005: 522), is considered basic to the solution. However, just as legal norms and principles are open to interpretation, they do not determine any normative orientations underlying the interpretative process. As Benjamin Goold and Liorna Lazarus (2007b: 11; see also Poole, 2008: 16) observe: ‘[P]re-emptive measures designed to increase security can never be truly objective or divorced from our political concerns and values.’ Typical for the acknowledgement of competing claims still to be weighed (Zedner, 2005: 508), therefore, is that they end up being couched in a rather appealing rhetoric (‘we should’, ‘judges should’). In a liberal vein, this requires a resorting to the least intrusive measures. Competing claims are thus relegated to the normative framework of balance (see Waldron, 2003; Zedner, 2005: 528). As regards the empirical observations, there is, first, a move in security legislation that is noticeable in western countries in which the threshold of governmental intervention has been gradually disposed in order to forestall actual offences, concrete suspicion and danger. 9/11 may be regarded as a catalyst here, as well as the fight against terrorism in general. But rather than being recent phenomena, these transformations in fact represent a continuity over decades in the identification of ever new dimensions of threats, from sexual offenders and organized crime right up to transnational terrorism.4 Although a tendency can be discerned, this is not to suggest that there have not been any disruptions to it. Civil and human rights organizations have time and again countered these developments, and so have higher-court rulings. Even new basic rights have been established.5 Though successful, these processes were unable to thwart the general trend of making private space accessible to surveillance in a way that would have been unimaginable decades ago. In this sense, paradoxically, new basic rights are rather indicators of new spaces of vulnerability. A closer look at higher courts’ decisions on security legislation and additional recommendations by human rights bodies suggests that these lead to the amendment of the laws in question but not necessarily to a change in practice. ‘For, as law becomes ever more closely intertwined with a proliferating assemblage of expertise, risk consulting, administration, and discretion, it inhabits an inescapable paradox’, as Louise Amoore (2008: 849) neatly put it. Law for civil and human rights activists and lawyers is the very medium for challenging governmental encroachment, and, notably, the ‘rule of law’ represents the very principle to be defended. Under review, however, law encounters its own legislation—the modes of risk management it once itself authorized, and that will now have to be amended in accordance not only with the principles of the rule of law but also with the identified necessities of security government.

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

Margulies and Metcalf 11 Joseph Margulies is a Clinical Professor, Northwestern University School of Law. counsel of record for the petitioners in Rasul v. Bush and Munaf v. Geren, Hope Metcalf is a Lecturer, Yale Law School, co-counsel for the plaintiffs/petitioners in Padilla v. Rumsfeld, Padilla v. Yoo, Jeppesen v. Mohammed, and Maqaleh v. Obama. “Terrorizing Academia,” http://www.swlaw.edu/pdfs/jle/jle603jmarguilies.pdf

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

#### Reliance on these legal structures in hope for change is flawed-- law legitimates and naturalizes injustices and blindness to root causes.

Lobel 7 Orly, Assistant Professor of Law, University of San Diego, Harvard Law Review, 120 Harv. L. Rev. 937

Psychological cooptation is produced by the law precisely because law promises more than it can and will deliver. At the same time, law is unlike other sets of rules or systems in which we feel as though we have more choice about whether to participate. As described earlier, law presents itself simultaneously as the exclusive source of authority in a society and as the only engine for social change. It further presents itself as objective, situated outside and above politics. Thus, social actors who enter into formal channels of the state **risk transformation into a particular hegemonic consciousness.** Relying upon the language of law and legal rights to bring change legitimates an ideological system that masks inequality. [95](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n95) When social demands are fused into legal action and the outcomes are only moderate adjustments of existing social arrangements, the process in effect **naturalizes systemic injustice.** The legal process reinforces, rather than resists, the dominant ideologies, institutions, and social hierarchies of the time. For example, when a court decision declares the end of racial segregation but de facto segregation persists, individuals become blind to the root causes of injustice and begin to view continued inequalities as inevitable and irresolvable. Similarly, **rights-based discourse has a legitimation effect, since rights mythically present themselves as outside and above politics.** [96](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n96) Meanwhile, the legal framework allows the courts to implement a color blindness ideology and grant only symbolic victories rather than promote meaningful progress. [97](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n97) As such, the role of law is one that in fact ensures the [\*958] "continued subordination of racial and other minority interests," while **pacifying the disadvantaged who rely on it.** [98](http://www.lexis.com/research/retrieve?_m=b7d531dcca7209b987833602ed6fbb4e&docnum=23&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzb-zSkAt&_md5=3f8bfd4662cb01d0d1bf9f28a63e1155&focBudTerms=lobel%20and%20harvard&focBudSel=all#n98) Social movements **seduced by the "myth of rights" assume** a false sequence, namely "that litigation can evoke a declaration of rights from courts; that it can, further, be used to assure the realization of these rights; and, finally, that realization is tantamount to meaningful change."

#### Sequencing is critical – we need non-institutional struggle first if legal solutions will have any chance of success

Nagin 5 Tomiko Brown, Visiting Associate Professor, University of Virginia School of Law, “ELITES, SOCIAL MOVEMENTS, AND THE LAW: THE CASE OF AFFIRMATIVE ACTION,” Columbia Law Review, 105 Colum. L. Rev. 1436

Those seeking to have an impact on the political and legal orders should not root a mass movement in the courts;instead, affirmative litigation about constitutional rights should be anchored upon and preceded by a mass movement.Efforts to achieve fundamental change **should** begin with the target constituency and be waged initially outside of the confines of institutionalized politics.Law should be understood as a tactic in an ongoing political struggle, where the struggle is the main event and favorable legal outcomes are its byproducts. There is **a crucially important temporal component** to this view. Legal claims can be tactically useful in a political strategy for achieving change - **but** only after social movements lay the groundwork **for legal change**. Social movements **must first create political pressure that frames issues in a favorable manner**, creates cultural norm shifts, and affects public opinion; these norm shifts then increase the likelihood that courts will reach outcomes favored by lawyers. [437](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n437) Again, my claims find support in the history of the mid-twentieth-century civil rights movement. This narrative posits an intimate relationship between the sociopolitical dynamics within black client communities and the success (or failure) of civil rights lawyers' litigation campaigns for rights. The postwar civil rights movement confirms that the moral suasion of participatory democratic groups of nonlawyers, and typically nonelites, was integral to law's movement from a Jim Crow regime to a [\*1523] constitutional order in which formal equality was the norm. During the past three decades, historians who have analyzed social change have discovered that small groups of inexpert individuals can be the leading edge of a social movement, especially when they work in coalition with those who traditionally wield influence in society. [438](http://www.lexis.com/research/retrieve?_m=b1b76c3bff33e7c7527182cc42568c87&docnum=11&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzz-zSkAl&_md5=b4841fe459fa752b47486b13d84385b6&focBudTerms=milliken%20w/150%20hispanic%20or%20latino&focBudSel=all#n438)Through their commitment to a social cause, ordinary people with no insider knowledge of the technical aspects of the broad issue on which they are mobilizing can create circumstances in which those with actual power (political, economic, and, ultimately, legal power) are persuaded to act in their favor.

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

Goldsmith 12

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

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

#### The instrumental framing of legal restriction *enables* the very violence it attempts to prevent.

Francisco J. CONTRERAS Prf. Philosophy of Law @ Seville AND Ignacio de la RASILLA Ph.D. candidate in international law, Graduate Institute of International Studies, Geneva, 8 [“On War as Law and Law as War” Leiden Journal of International Law Vol. 21 Issue 3 p. 770-773]

Kennedy begins by coldly contradicting those opponents of the Bush administration ‘that have routinely claimed that the United States has disregarded these rules’ (p. 40) by pointing out that both opponents and supporters of the Iraq war as well as both opponents and supporters of the great panoply of US legal measures related to the war on terror ‘were playing with the same deck’ (p. 40) in presenting ‘professional arguments about how recognised rules and standards, as well as recognised exceptions and jurisdictional limitations, should be interpreted’ (p. 40). The author’s only concession with reference to the Bush administration’s legal advisers is to point out that ‘as professionals, these lawyers failed to advise their client adequately about the consequences of the interpretations they proposed, and about the way others would read the same texts – and their memoranda’ (p. 39).Thus Kennedy does not adopt any legal position to the detriment of any other, as his assessment does not seemingly pretend to persuade his reader at the level of the world of legal validity presented in the vocabulary of the UN Charter. The extent to which that excludes the author from the category of being a ‘true jus-internationalist’, according to A. Canc¸ado Trindade’s understanding of those who actually ‘comply with the ineluctable duty to stand against the apology of the use of force which is manifested in our days through distinct “doctrinal” elaborations’,42 is not for us to judge. Suffice it to note that the starting point of Kennedy’s convoluted perspective on the matter is that ‘the law of force’ is a form of ‘vocabulary for assessing the legitimacy’ (p. 41) of a form of conduct (e.g. amilitary campaign) or ‘for defending as well as attacking the “legality”’ (p. 41) of an act (e.g. distinguishing legitimate from illegitimate targets) in which the same law of force becomes a two-edged sword, everybody’s and no one’s strategic partner in a contemporary world where ‘legitimacy has become the currency of power’ (p. 45). For the author, in today’s age of ‘lawfare’ (p. 12), ‘to resist war in the name of law . . . is to misunderstand the delicate partnership of war and law’ (p. 167). In Kennedy’s view, therefore, ‘there is little comfort in knowing that law has become the vernacular for evaluating the legitimacy of war and politics where it has done so by itself becoming a strategic instrument of war and the continuation of politics by similar means’ (p. 132). 3. LAW AS A MODERN LEGAL INSTITUTION Of War and Law seems, indeed, to be animated by a certain philosophical perplexity regarding the ambiguous relation between the apparently antithetical nature of the terms appearing in its title. Since antiquity both jurists and philosophers have taught that the law’s raison d’eˆ tre is that of making social peace possible, of overcoming what would later be commonly known as the Hobbesian state of nature: bellum omnium contra omnes. Kant noted that law should be perceived first and foremost as a pacifying tool – in other words, ‘the establishment of peace constitutes, not a part of, but the whole purpose of the doctrine of law’43 – and Lauterpacht projected that same principle onto the international sphere: ‘the primordial duty’ of international law is to ensure that ‘there shall be no violence among states’.44 The paradox lies, of course, in that law performs its pacifying function not by means of edifying advice, but by the threat of the use of force. In this sense, as Kennedy points out, ‘to use law is also to invoke violence, at least the violence that stands behind legal authority’ (p. 22). Hobbes himself never concealed the fact that the state, ‘that mortal god, to which we owe under the immortal God our peace and defence’,would succeed in eradicating inter-individual violence precisely due to its ability to ‘inspire terror’;45 but Weber – ‘the State is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory’46 – Godwin,47 and Kelsen48 have also provided support for the same proposition. This ambivalent and paradoxical relationship between law and violence,which is obvious in the domestic or intra-state realm, becomes even more obvious in the interstate domain with its classical twin antinomy of ubi jus, ibi pax and inter arma leges silent until the law in war emerges as a bold normative sector which dares to defy this conceptual incompatibility; even war can be regulated, be submitted to conditions and limitations. The hesitations of Kant in addressing jus in bello49 or the very fact that the Latin terms jus ad bellum and jus in bello were coined, as R. Kolb has pointed out,50 at relatively recent dates, seem to confirm that this has never been per se an evident aspiration.51 Kennedy explains his own calling as international lawyer as being partly inspired by his will to participate in the law’s civilizing mission (p. 29)52 as something utterly distinct from war: We think of these rules [law in war] as coming from ‘outside’ war, limiting and restricting the military. We think of international law as a broadly humanist and civilizing force, standing back from war, judging it as just or unjust, while offering itself as a code of conduct to limit violence on the battlefield. (p. 167) The author notes how this virginal confidence in the pacifying efficiency of international law – its presumed ability to forbid, limit, humanize war ‘from outside’ – becomes progressively nuanced, eroded, almost discredited by a series of considerations. The disquieting image of the ‘delicate partnership of war and law’ becomes more and more evidenced; the lawyer who attempts to regulate warfare inevitably also becomes its accomplice. As Kennedy puts it, The laws of force provide the vocabulary not only for restraining the violence and incidence of war – but also for waging war and deciding to go to war. . . . [L]aw no longer stands outside violence, silent or prohibitive. Law also permits injury, as it privileges, channels, structures, legitimates, and facilitates acts of war. (p. 167) Unable to suppress all violence, law typifies certain forms of violence as legally admissible, thus ‘privileging’ them with regard to others and investing some agents with a ‘privilege to kill’ (p. 115). Law thereby becomes, in Kennedy’s view, a tool not so much for the restriction of war as for the legal construction of war.53 Elsewhere we have labeled Kennedy ‘a relative outsider’54 who, peering from the edge of the vocabulary of international law, tries to ‘highlight its inherent structural limits, gaps, dogmas, blind spots and biases’, as someone ‘specialised in speaking the unspeakable, disclosing ambivalences and asking awkward questions’.55 The ‘unspeakable’, in the case of the ‘law of force’, is precisely, in Kennedy’s view, this process of involuntary complicity with the very phenomenon one supposedly wants to prohibit. Prepared to ‘stain his hands’ a` la Sartre, in his attempt to humanize the military machine from within, to walk one step behind the soldier reminding him constantly, as an imaginary CNN camera, of the legal limits of the legitimate use of force, the lawyer starts to realize, in the author’s view, that he is becoming but an accessory to the war machine. Kennedy maintains that law, in its attempt to subject war to its rule, has been absorbed by it and has now become but another war instrument (p. 32);56 law has been weaponized (p. 37).57 Contemporary war is by definition a legally organized war: ‘no ship moves, no weapon is fired, no target selected without some review for compliance with regulation – not because the military has gone soft, but because there is simply no other way to make modern warfare work. Warfare has become rule and regulation’ (p. 33).War ‘has become a modern legal institution’ (p. 5), with the result that the international lawyer finds himself before an evident instance of Marxian reification, in other words ‘the consolidation of our own products as a material power erected above us beyond our control that raises a wall in front of our expectations and destroys our calculations’.58 Ideas and institutions develop ‘a life of their own’, an autonomous, perverted dynamism.

#### Transparency within the current ideological coordinates of liberalism isn’t liberating – it becomes co-opted by liberalism. We should support the SQ leaks which challenge the formal functioning of power instead of liberal-democratic framing of transprency

Žižek 11 Slavoj, a Slovenian philosopher and psychoanalyst, is a senior researcher at the Institute for Advanced Study in the Humanities, in Essen, Germany. The London Review of Books. Vol. 33 No. 2 · 20 January, pages 9-10

The conspiratorial mode is supplemented by its apparent opposite, the liberal appropriation of WikiLeaks as another chapter in the glorious history of the struggle for the ‘free flow of information’ and the ‘citizens’ right to know’. This view reduces WikiLeaks to a radical case of ‘investigative journalism’. Here, we are only a small step away from the ideology of such Hollywood blockbusters as All the President’s Men and The Pelican Brief, in which a couple of ordinary guys discover a scandal which reaches up to the president, forcing him to step down. Corruption is shown to reach the very top, yet the ideology of such works resides in their upbeat final message: what a great country ours must be, when a couple of ordinary guys like you and me can bring down the president, the mightiest man on Earth! The ultimate show of power on the part of the ruling ideology is to allow what appears to be powerful criticism. There is no lack of anti-capitalism today. We are overloaded with critiques of the horrors of capitalism: books, in-depth investigative journalism and TV documentaries expose the companies that are ruthlessly polluting our environment, the corrupt bankers who continue to receive fat bonuses while their banks are rescued by public money, the sweatshops in which children work as slaves etc. However, there is a catch: what isn’t questioned in these critiques is the democratic-liberal framing of the fight against these excesses. The (explicit or implied) goal is to democratise capitalism, to extend democratic control to the economy by means of media pressure, parliamentary inquiries, harsher laws, honest police investigations and so on. But the institutional set-up of the (bourgeois) democratic state is never questioned. This remains sacrosanct even to the most radical forms of ‘ethical anti-capitalism’ (the Porto Allegre forum, the Seattle movement etc). WikiLeaks cannot be seen in the same way. There has been, from the outset, something about its activities that goes way beyond liberal conceptions of the free flow of information. We shouldn’t look for this excess at the level of content. The only surprising thing about the WikiLeaks revelations is that they contain no surprises. Didn’t we learn exactly what we expected to learn? The real disturbance was at the level of appearances: we can no longer pretend we don’t know what everyone knows we know. This is the paradox of public space: even if everyone knows an unpleasant fact, saying it in public changes everything. One of the first measures taken by the new Bolshevik government in 1918 was to make public the entire corpus of tsarist secret diplomacy, all the secret agreements, the secret clauses of public agreements etc. There too the target was the entire functioning of the state apparatuses of power. What WikiLeaks threatens is the formal functioning of power. The true targets here weren’t the dirty details and the individuals responsible for them; not those in power, in other words, so much as power itself, its structure. We shouldn’t forget that power comprises not only institutions and their rules, but also legitimate (‘normal’) ways of challenging it (an independent press, NGOs etc) – as the Indian academic Saroj Giri put it, WikiLeaks ‘challenged power by challenging the normal channels of challenging power and revealing the truth’.​＊ The aim of the WikiLeaks revelations was not just to embarrass those in power but to lead us to mobilise ourselves to bring about a different functioning of power that might reach beyond the limits of representative democracy. However, it is a mistake to assume that revealing the entirety of what has been secret will liberate us. The premise is wrong. Truth liberates, yes, but not this truth. Of course one cannot trust the façade, the official documents, but neither do we find truth in the gossip shared behind that façade. Appearance, the public face, is never a simple hypocrisy.

## 1NR

### HEG

#### Allies are coming around – they’re expanding their support for broadened notions of imminent attacks

Gray 13 Christine Gray, Professor of International Law, University of Cambridge. *Current Legal Problems*, Targeted Killings: Recent US Attempts to Create a Legal Framework (2013), pp. 1–32

Brennan claimed that there is ‘increasing recognition that a more flexible understanding of imminence may be appropriate when dealing with terrorist groups’. Over time an increasing number of our counterterrorism partners have begun to recognize that the traditional conception of what constitutes an ‘imminent’ attack should be broadened in light of the modern day capabilities, techniques, and technological innovations of terrorist organizations. This approach resembles that of President GeorgeW Bush who had said that the scope of self-defence must be widened, given the goals of terrorists and rogue states; it was necessary to adapt the concept of imminent attack to allow pre-emptive action. In his 2002 USNSS his focus was on the threat he saw of Iraq developing weapons of mass destruction, and then in the 2006 USNSS his major concern was with Iran. The Bush claim of preemptive self-defence proved very controversial, but in substance the Obama administration’s position is essentially the same, even though they do not use the language of pre-emption.43 They seek to expand the notion of ‘imminence’ to allow a wide right of self-defence including targeted killing.44 Brennan’s claim that US allies have also taken a flexible view of the requirement that there should be an imminent armed attack, in order to justify the use of force in self-defence does have some apparent support in the position of the UK Attorney-General that the concept of imminence may depend on circumstances.45

#### Too many alt causes - Egypt, Syria, Russia, China and Benghazi

Boyer 13 Dave is a White House correspondent for The Washington Times. The Washington Times, Obama’s ‘soft power’ policy in a world of hurt, 8-13, http://www.washingtontimes.com/news/2013/aug/13/obamas-soft-power-policy-in-a-world-of-hurt/#ixzz2eML6VOHr

The Obama Doctrine is looking more like a leaky rowboat than an unwavering ship of state in the president’s second term. Mr. Obama’s foreign policy strategy of “soft power” and reliance on international organizations is suffering setbacks around the globe this year, including from Egypt, Syria, Russia and China. The most obvious failure was on display last week when Mr. Obama canceled a planned summit with Russian President Vladimir Putin and likened his adversary to a slouching, bored child after Russia granted asylum to fugitive National Security Agency leaker Edward Snowden. But the inability of the Obama administration to capture Mr. Snowden is only the latest in a string of unresolved foreign policy challenges since Mr. Obama won re-election. Some specialists in foreign affairs say it’s symptomatic of a president who isn’t devoting much time to hot spots overseas. “He’s one of only 17 presidents elected to a second term, and he’s clearly trying to figure out where he wants to put the majority of his time,” said Aaron David Miller, a vice president at the Woodrow Wilson International Center for Scholars in Washington. “He’s much more focused on the middle class than he is on the Middle East.” In April, the White House revealed reports of chemical weapons use in Syria’s civil war, which Mr. Obama deemed a “game-changer.” Four months later, the civil war rages on, with fresh reports this week that an al Qaeda affiliate is infiltrating Syrian territory that was seized by rebel groups. In Egypt, the military in early July ousted President Mohammed Morsi, who was elected after Mr. Obama encouraged democratic reforms in that country. Mr. Obama had major disagreements with Mr. Morsi, but the military’s action left the White House in the awkward public position of denying that it met the legal definition of a “coup.” European allies such as Germany and France have blistered Mr. Obama with criticism over surveillance programs revealed by Mr. Snowden. At a Group of Eight summit in June in Northern Ireland, the news was Mr. Putin’s refusal to sign a communique calling for the ouster of Syrian President Bashar Assad, another setback for Mr. Obama. A summit between Mr. Obama and Chinese President Xi Jinping in June was overshadowed by the breaking news of Mr. Snowden’s revelations and by the Chinese leader’s ability to turn the tables on Mr. Obama and claim that China was a “victim” of U.S. cyberattacks. As the summer progresses, Mr. Obama has parsed earlier statements that the U.S. has “decimated” al Qaeda. The administration closed 20 diplomatic facilities overseas because of threatened attacks by al Qaeda and its affiliates. James Jay Carafano, an analyst on national security and foreign affairs at the conservative Heritage Foundation, said Mr. Obama’s second-term problems internationally can be traced to the terrorist attack in September that killed four Americans, including Ambassador J. Christopher Stevens, at the U.S. diplomatic post in Benghazi, Libya. “Benghazi, I think, is a signature moment for the president,” Mr. Carafano said. “If there were three [foreign policy successes] he could point to, they were winning the war with al Qaeda, resetting with the Russians and not being George Bush doing everything with a heavy hand. Benghazi really kind of destroyed that mythology.

### POLITICS

#### Will pass – moderate GOP

Hodor-Lee 10/18

Alex Hodor-Lee Op-Ed Editor “With Fiscal Crisis End in Sight, White House, Advocates Gear Up for Renewed Immigration Battle”

http://www.skidmorenews.com/news/with-fiscal-crisis-end-in-sight-white-house-advocates-gear-up-for-renewed-immigration-battle-1.3096933#.UmFoMRZN3A4

As congress moves towards a vote on a new budget deal to end the government shutdown, President Barack Obama plans to tackle the nation's broken immigration policies.¶ After being reelected in 2012, the President announced that immigration reform would be one of the administration's top legislative priorities, but assiduous efforts from determined House Republicans to deny funding to the Affordable Care Act--President Obama's signature achievement--has stalled any talks of immigration reform.¶ Once Capitol Hill sources revealed that Senate Democrats and Republicans struck a deal to end the shutdown, the President declared that White House efforts would be refocused on reforming immigration, telling Latino media outlet, Univision, "Once that's done, you know, the day after, I'm going to be pushing to say, call a vote on immigration reform."¶ Washington's top immigration reform advocates believe that the government shutdown may have created an opening to advance the discussion on immigration reform and push forward on progressive policies.¶ Frank Sharry, executive director of America's Voice told Buzzfeed, "It’s at least possible with sinking poll numbers for the Republicans, with a [GOP] brand that is badly damaged as the party that can’t govern responsibly and is reckless that they’re going to say, ‘All right, what can we do that will be in our political interest and also do tough things?’ That's where immigration could fill the bill."¶ Sharry is one of the Districts's most active immigration reform advocates. He still has scars from the 2007 immigration reform efforts, when the Senate voted down a bipartisan bill that would have provided legal status and a path to citizenship for the 12 million undocumented immigrants residing in the United States.¶ This time around, reform advocates are hoping for comprehensive reform. They have found support from some unlikely places, including moderate House Republicans, business interests such as Facebook CEO Mark Zuckerberg --who has already contributed $50 million dollars to the cause-- and Evangelical groups outraged at US deportation policies that have, in many cases, torn families apart.

#### Will pass has the votes – no thumpers it’s everyone’s TOA

Rojas 10/17

Nicole Rojas editor for @LatinosPost, proud Boston University alum, world traveller, believer in women's rights “Congressman Luis Gutierrez: 'Votes Exist for Comprehensive Immigration Reform'” Oct 17, 2013

http://www.latinospost.com/articles/29855/20131017/congressman-luis-gutierrez-votes-exist-comprehensive-immigration-reform-exclusive-video.htm

It comes as little surprise that immigration reform has taken a backseat to the government shutdown that began on October 1. But while the White House and Congress have devoted the last 16 days to the fiscal cliff and debt ceiling, all signs indicate that immigration reform will be the next issue on the docket.¶ In an exclusive interview with Latinos Post at the onset of the government shutdown, Rep. Luis Gutierrez, D- Ill., discussed the “detrimental effect” the shutdown had on immigration reform talks. Gutierrez, who has made immigration reform one of his top priorities, also discussed what he expects will happen to the immigration reform debate in the future.¶ “I think that if we didn’t have the government shutdown, if we didn’t have this looming fiscal cliff because of the debt ceiling, I think there’d be more of an appetite to take [it] up,” Gutierrez told Latinos Post. “We’re not going to take up immigration reform while we’re dealing with the fiscal cliff. Absolutely, it’s taking a detrimental effect.”¶ “That doesn’t mean we can’t do it,” the congressman added. “It’s just we’re going to have to get this [the government shutdown] done first.”¶ Gutierrez, who spoke at the Congressional Hispanic Caucus Institute’s Public Policy Conference earlier this month, has special interest in immigration reform through his participation in the House of Representative’s “Gang of Seven.” The “Gang of Seven,” which is the House’s bipartisan team currently working on overhauling the country’s immigration laws, saw the departure of two Republican members in late September, including Reps. John Carter, R-Texas, and Sam Johnson, R-Texas.¶ Despite their departures, Gutierrez assured that the group is committed to bringing about immigration reform. “The votes exist for comprehensive immigration reform,” he said. “The fact that Johnson and Carter have left does not change that.”¶ Gutierrez added, “Never before have we seen such broad based support for it. And because that broad based support for it exists, sooner or later we’re going to get a vote.”¶ According to a recent report by Buzzfeed, advocates for immigration reform contest that immigration reform could be the next issue the House tackles once the government shutdown comes to an end. Frank Sharry, the executive director of the immigration reform group America’s Voice, told Buzzfeed that “sinking poll numbers for Republican” and a “badly damaged” GOP image could be enough to address immigration reform.¶ It appears that the White House is also eager to have immigration reform as their top priority once the fiscal crisis is resolved, Reuters reported. During an interview with Univision, President Barack Obama said, “Once that’s down, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform.”¶ On Tuesday, Obama blamed House Speaker John Boehner for preventing immigration reform from going to a vote, Reuters reported. “We had a very strong Democratic and Republican vote in the Senate,” he said. “The only thing right now that’s holding it back is, again, Speaker Boehner now willing to call the bill on the floor of the House of Representatives.”¶ Despite the House’s inability to call the bill to a vote, Gutierrez seemed confident that it would before the end of the year. “I can see the House of Representatives passing the bill,” he said. “I can see the House of Representatives passing the bill and going to conference by the end of the year.”

#### Obama extending olive branch to GOP to get CIR passed

Miller 10/17

Zeke Miller is a political reporter for TIME. He previously was the first White House correspondent at BuzzFeed and extensively covered the 2012 presidential campaign. Prior to that, he covered politics for Business Insider. A New York native, he graduated from Yale University where he was an editor and reporter at the Yale Daily News. http://swampland.time.com/2013/10/17/obama-pivots-to-reclaim-reputation-as-negotiator-in-chief/#ixzz2i1KQMgQBhttp://swampland.time.com/2013/10/17/obama-pivots-to-reclaim-reputation-as-negotiator-in-chief/

President Barack Obama has a new message for congressional Republicans today: let’s talk.¶ “I will look for willing partners wherever I can to get important work done,” the president said Thursday morning, announcing he intends to work with Congress to pass an annual budget, comprehensive immigration reform, and a farm bill.¶ Fresh off his victory over House Republicans in twin fiscal crises, the president is preparing an about-face after weeks of swearing off any negotiations with the GOP to fund the government and raise the debt limit. Not only that, but he is also setting the stage to criticize the opposition if they decline to put everything on the table.¶ It’s the completion of a months-long White House strategy on the debt limit that whittled away at the president’s preferred public image as moderate dealmaker. After getting rolled in 2011, Obama swore to his staff that he wouldn’t again get held hostage over the debt limit. Earlier this year, Obama laid down that no-negotiation promise in a statement on the New Year’s fiscal cliff deal, and he stood by it. There were no serious talks. No secret back-channel negotiations. No Joe Biden. Aides on both sides of Pennsylvania Ave. described meetings with congressional leaders last week as more to please the media than a reflection of any attempt to make progress.¶ Aides admit they were wary of the impact of Obama’s hardline position during the shutdown, especially as Republicans passed piecemeal bills to reopen slices of the federal government last week. Business leaders called on the president to throw Republicans a lifeline. Senate Democrats instinctively rushed to cut rogue deals. They fretted the rebuke from the “David Gergen caucus” of beltway pundits. But more than anything, it posed a danger to the Obama brand. He ran for office in 2008 insisting that he was open to negotiating with Iran without preconditions. He had pledged to change the way business is done in Washington and bridge the partisan divides.¶ As the afterglow of an end to the shutdown quickly faded, Obama turned his focus to the next crisis in a morning address at the White House, taking a swing at the tea party and extending an olive branch to moderate Republicans.

#### Immigration reform is TOA and will pass – GOP vulnerable, advocates mobilized, and Obama aggressively pushing

Salamanca 10/16

Jean-Paul Salamanca Latino Post “Immigration Reform 2013 News: President Obama Looks to Push for Vote on Immigration Bill Post-Fiscal Crisis”Oct 16, 2013 http://www.latinospost.com/articles/29856/20131016/immigration-reform-2013-news-president-obama-looks-push-vote-bill.htm

Even with the nation still gripped in a fiscal crisis with Congress still arguing over the debt ceiling, President Obama told the nation Tuesday that he would push for a vote on immigration reform.¶ In a sit-down interview with Spanish-language network Univision, President Obama said that the stalled issue of immigration reform, which currently remains frozen in the Republican-controlled U.S. House of Representatives, would become a top priority for him once Congress can agree on a deal regarding the debt limit.¶ "Once that's done, you know, the day after, I'm going to be pushing to say, call a vote on immigration reform," he told Univision, as noted by Reuters.¶ As the current political climate indicates, President Obama faces an intimidating battle to successfully pass immigration reform. While the issue gathered support from Democrats and even several top Republicans--the GOP looking to rebound after suffering stinging defeats at the polls in the November 2013 presidential election--the bill has encountered resistance as it passed to the House.¶ The Democrat-controlled Senate passed a bill in June from the bipartisan "Gang of Eight" Senate panel that would have created a pathway to citizenship for millions of undocumented immigrants living in the U.S. However, Republicans in the House, some of which are denouncing the bill as offering "amnesty" to immigrants who came into the country without authorization, have stalled the bill on the floor, refusing to put it to a vote.¶ President Obama laid the blame at the feet of House Speaker John Boehner for the bill's delay.¶ "We had a very strong Democratic and Republican vote in the Senate," he said. "The only thing right now that's holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives."¶ Boehner has indicated that the House would not consider a dramatic immigration overhaul, and would pass immigration issues in smaller bills, including tighter border security measures. Immigration advocates, however, have opposed such a measure, as it means there would be little chance of legally giving undocumented immigrants a chance to become U.S. citizens via a "pathway," such as the one offered in the Senate proposal, which includes a decade-plus long waiting period along with the payment of back taxes and fines for time said immigrants have lived in the country unauthorized.¶ Several late year issues -- the crisis in Syria and now, the debt limit debacle -- have occupied much of Washington legislators' time. However, it appears the White House and Democrats on Capitol Hill may be ready to head back into the battle for immigration reform after the fiscal crisis is over.¶ Frank Sharry, executive director of the immigration reform group America's Voice, told Buzzfeed that with the GOP's public opinion numbers plummeting, it is possible that the Republicans could be open to discussing immigration reform more easily if Congress can work together to solve the fiscal crisis.¶ "It's at least possible with sinking poll numbers for the Republicans, with a [GOP] brand that is badly damaged as the party that can't govern responsibly and is reckless that they're going to say, 'Alright, what can we do that will be in our political interest and also do tough things?'" said Sharry. "That's where immigration could fill the bill."¶ A recent poll from the Public Religion Research Institute indicated that Hispanics in the U.S. are three times more likely to identify with Democrats than they would Republicans, with 50 percent of Latinos identifying with Democrats while only 15 percent of those Hispanics polled identify with the GOP.¶ Meanwhile, advocates for immigration reform appear to be gearing up for another fight on that front.¶ "We're talking about it. We want to be next up and we're going to position ourselves that way," Sharry said. "There are different people doing different things, and our movement will be increasingly confrontational with Republicans, including civil disobedience. A lot of people are going to say, 'we're not going to wait.'"

#### Evangelical push

UPI 10/17

“Evangelicals for immigration reform considerable force in House” http://www.upi.com/Top\_News/US/2013/10/17/Evangelicals-for-immigration-reform-considerable-force-in-House/7441381955719/

WASHINGTON -- Evangelical Christians are pulling together to advocate for action on immigration reform by the end of the year -- and their influence could be substantial.¶ The Evangelical Immigration Table's “Pray4Reform: Gathered Together in Jesus' Name” campaign running from Oct. 12 through Oct. 20. includes more than 300 events in 40 states where members of the faith are praying for reform. The Evangelical Immigration Table is a coalition of evangelical Christian groups including World Relief, Bread for the World, and the National Latino Evangelical Coalition.¶ While many Americans who back changes in the immigration law do so for economic or political reasons, the Evangelical Immigration Table does not support any specific legislation or political party. Rather the group favors a pathway to citizenship for undocumented workers for moral reasons.¶ “There is overwhelming evidence in scripture for hospitality and for welcoming the stranger,” said the Rev. Gabriel Salguero who leads the National Latino Evangelical Coalition, a moderate-to-progressive evangelical organization. “The word stranger appears 92 times in the Old Testament and states 'Welcome the stranger because you were once a stranger.'”¶ A Senate-approved immigration bill stalled in House of Representatives passage earlier this year. Unrest in Syria, the roll out of Obamacare and the partial government shutdown have all overshadowed immigration reform efforts.¶ But in light of the renewed push for reform in 2013 the personal is becoming political for some Christians. Many Evangelical church members and leaders plan to come to Washington for a two-day event on Oct 28-29 to lobby lawmakers and hold a news conference.¶ Jenny Yang, vice president of World Relief, said Evangelicals have come out of the woodwork because they don't want to miss an opportunity at a time when urgent change is needed.¶ “We've never advocated to a specific bill, but there are basic principles that we support,” Yang said.¶ Those principles include offering aid to people in need, keeping families together and welcoming those who are new to the county. But both Yang and Rev. Salguero understand that merging political and personal beliefs is unusual evangelicals.¶ While not every evangelical in the United States supports immigration reform, a CBS poll conducted in July showed that three out of four evangelicals favor reform efforts.¶ “We know it's a win-win,” Salguero said. “Ours in the moral argument, but we know there is overwhelmingly evidence that there is an economic need for it”¶ The Senate-passed bill would overhaul the immigration system, allowing some of the nearly 12 million undocumented immigrants in the United States to eventually achieve citizenship, provided they pay taxes and learn English. Many economists argue this will boost the U.S. economy and add jobs.¶ William Galston, a senior fellow at the Brookings Institution thinks Evangelical backing for support for immigration reform is important. Galston reasoned that the mainly Republican group in the House -- those most resistant to changes benefiting the undocumented -- might also be the most responsive to the Evangelical movement.¶ “If Evangelical leaders walked the halls of Congress and knocked on the doors of Southern Republicans, they won't be turned away,” Galston said.¶ Yang said Evangelicals held over 100 meetings with members of both parties during reform-related events this past summer. October's events in Washington will focus on meeting with even more members of Congress.¶ “For members who do take their faith very seriously, we are trying to reach out to them, and say have you considered this issue through the lens of your faith?” Yang questioned.¶ The role of faith in legislative matters is woven into the history of the United States.¶ “The separation of church and state is one thing, but the separation of religion and politics is another," Galston said. “This is nothing new.”¶ While the push for immigration reform is intensifying, time is dwindling to get it passed by the end of the calendar year.¶ “Every day that we don't see legislation, there is a cost to an action,” Yang said.¶ While the question of when immigration reform will pass lingers, Brookings senior fellow Galston says the Evangelicals are showing a real sign of commitment.¶ “They are not going to give this up without a fight,” he said. “These are some tough, experienced people, so stay tuned.”

#### Will Pass – shutdown empirics

Gomez 10/17

Alan Gomez, USA TODAY, “Shutdown over, Democrats say immigration is next”

http://www.usatoday.com/story/news/politics/2013/10/17/government-shutdown-shift-immigration-reform/3000575/

Rep. Luis Gutierrez, D-Ill., one of the main proponents of getting an immigration bill through Congress, is looking to history for signs of optimism that the House can pass something.¶ Gutierrez was in the House during the last government shutdown in 1996, and he says Republicans emerged from the damaging closure scurrying to pass "big things" to show the country they could get things done. In the aftermath of that shutdown, the government passed welfare reform, the sweeping Kennedy-Kassebaum health care law and an increase in the minimum wage. "It was in people's self-interest to pass some good stuff," Gutierrez said. "That's what's going to drive a lot of what goes on around here."

#### Bipartisan support – Senate vote proves

Reuters 10/16

“Obama plans immigration push after fiscal crisis ends” Oct 16, 2013 http://www.reuters.com/article/2013/10/16/us-usa-obama-immigration-idUSBRE99F01Q20131016

(Reuters) - President Barack Obama said on Tuesday that stalled immigration reform would be a top priority once the fiscal crisis has been resolved.¶ "Once that's done, you know, the day after, I'm going to be pushing to say, call a vote on immigration reform," he told the Los Angeles affiliate of Spanish-language television network Univision.¶ The president's domestic agenda has been sidetracked in his second term by one problem after another. As he coped with the revelation of domestic surveillance programs, chemical weapons in Syria, and a fiscal battle that has shut down the U.S. government and threatens a debt default, immigration has been relegated to the back burner.¶ But Obama, who won re-election with overwhelming Hispanic backing, had hoped to make reforms easing the plight of the 11 million immigrants who are in the United States illegally.¶ In June, the Senate passed an immigration overhaul, but House of Representatives Republicans are divided over the granting of legal status to those in the country illegally, a step many see as rewarding lawbreakers.¶ Although the president had sought comprehensive reform, he said last month he would be open to the House taking a piece-by-piece approach if that would get the job done.¶ Obama on Tuesday blamed House Speaker John Boehner for preventing immigration from coming up for a vote.¶ "We had a very strong Democratic and Republican vote in the Senate," he said. "The only thing right now that's holding it back is, again, Speaker Boehner not willing to call the bill on the floor of the House of Representatives."

#### Drones restrictions are a loss – Obama will fight back.

The Plain Dealer 13. ["Battle brewing over Obama administration's use of deadly drones" February 13 -- www.cleveland.com/nation/index.ssf/2013/02/battle\_brewing\_over\_obama\_admi.html]

As some in Congress are looking to limit America's authority to kill suspected terrorists, the White House and Justice Department on Tuesday adamantly defended the administration's authority to use unmanned drones following the release of a controversial memo on the program.¶ Fox News reports that President Obama's advisers are also trying to tamp down concerns about the targeted killings ahead of the confirmation hearing Thursday for CIA director nominee John Brennan -- the counterterrorism adviser and drone-program supporter who has come under criticism from Democrats.¶ The furor is heating up after a white paper, leaked on Monday night and dating from 2011, justifies the killing of United States citizens who hold senior positions in al-Qaida and pose an "imminent threat of violent attack" against America. ¶ The white paper provides some detail of the legal framework under United States and international law for the drones policy, including that the United States is at war with al-Qaida. But it has come under criticism from human rights groups for making too broad a case for killing, rather than capturing, suspected American and foreign terrorists. ¶ The report was shown to senators several weeks ago, but failed to allay their concerns. It was made public by NBC News.¶ Pressed repeatedly about the complicated constitutional and legal questions raised by the targeted killing of Americans, White House Press Secretary Jay Carney said Tuesday that the president takes those issues "very seriously."¶ Senators angered by the lack of transparency over the legal basis for targeting Americans are planning to demand more details from Brennan, currently the White House counter-terrorism chief and a key architect of Obama's drones policy, the Guardian said.¶ The administration's refusal to provide details about one of the most controversial aspects of its drone campaign -- strikes on U.S. citizens abroad -- has emerged as a potential source of opposition to Brennan, the Washington Post reports.¶ The central aspect of the memo that critics find troubling is its vagueness, according to the Christian Science Monitor. The document outlines loose definitions of which citizens qualify as top terrorists, the circumstances under which they pose an "imminent" threat to the US, and when it's not feasible to simply capture them.¶ "The takeaway is that the Obama administration took a process that is supposed to constrain the president within the law's confines ... and then qualified those constraints so drastically that it would be more honest to acknowledge that neither imminence nor infeasible capture are really required," writes Conor Friedersdorf of the Atlantic, a longtime opponent of the secret drone program.¶ Legal experts expressed grave reservations about the memo concluding that the United States can order the killing of American citizens believed to be affiliated with al-Qaida -- with one saying the White House was acting as "judge, jury and executioner."¶ The experts said that the memo threatened constitutional rights and dangerously expanded the definition of national self-defense and of what constitutes an imminent attack.¶ "Anyone should be concerned when the president and his lawyers make up their own interpretation of the law or their own rules," said Mary Ellen O'Connell, a law professor at the University of Notre Dame and an authority on international law and the use of force.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.

#### Plan is a huge fight – Obama will reject restrictions.

Weber 13. [Peter, senior editor, "Will Congress curb Obama's drone strikes?" The Week -- February 6 -- theweek.com/article/index/239716/will-congress-curb-obamas-drone-strikes,]

One problem for lawmakers, says The New York Times in an editorial, is that when it comes to drone strikes, the Obama team "utterly rejects the idea that Congress or the courts have any right to review such a decision in advance, or even after the fact." Along with citing the law authorizing broad use of force against al Qaeda, the white paper also "argues that judges and Congress don't have the right to rule on or interfere with decisions made in the heat of combat." And most troublingly, Obama won't give Congress the classified document detailing the legal justification used to kill American al Qaeda operative Anwar al-Awlaki.

#### Obama fights the plan and sparks controversial battles in Congress – targeted killing is heavily criticized

Radsan and Murphy 12 (Afsheen John – Professor, William Mitchell College of Law; Assistant General Counsel at the Central Intelligence Agency from 2002 to 2004, and Richard – AT&T Professor of Law, Texas Tech University School of Law, “The Evolution of Law and Policy for CIA Targeted Killing”, 2012, 5 J. Nat'l Security L. & Pol'y 439, lexis)

This scenario emphasizes a simple point: President Obama, a Harvard Law School graduate, a former teacher of constitutional law at the University of Chicago and a Nobel Peace Laureate, must believe that he has the authority to order the CIA to fire missiles from drones to kill suspected terrorists. Not everyone agrees with him, though. For almost a decade now, the United States has been firing missiles from unmanned drones to kill people identified as leaders of al Qaeda and the Taliban. This "targeted killing" has engendered controversy in policymaking and legal circles, spilling into law review articles, op-ed pieces, congressional hearings, and television programs. n2 On one level, this [\*441] controversy is curious. A state has considerable authority in war to kill enemy combatants - whether by gun, bomb, or cruise missile - so long as those attacks obey basic, often vague, rules (e.g., avoidance of "disproportionate" collateral damage). So what is so different about targeted killing by drone? Some of the concerns about a CIA drone campaign relate to the personalized nature of targeted killing. All attacks in an armed conflict must, as a matter of basic law and common sense, be targeted. To attack something, whether by shooting a gun at a person or dropping a bomb on a building, is to target it. "Targeted killing," however, refers to a premeditated attack on a specific person. President Franklin D. Roosevelt, for instance, ordered Admiral Yamamoto killed not because he was any Japanese sailor, but because he was the author of "tora, tora, tora" on Pearl Harbor. President Obama, more recently, ordered Osama bin Laden killed not because the Saudi was any member of al Qaeda, but because he was the author of 9/11 who continued to command the terrorist organization. Targeted killing is psychologically disturbing because it is individualized. It is easier for a U.S. operator to kill a faceless soldier in a uniform than someone whom the operator has been tracking with photographs, videos, voice samples, and biographical information in an intelligence file. There is also concern that drones will attack improperly identified targets or cause excessive collateral damage. Targets who hide among peaceful civilians heighten these dangers. Of course, drone strikes should be far more precise than bombs dropped from a piloted aircraft. The lower [\*442] "costs" of drone strikes, however, encourage governments to resort to deadly force more quickly - a trend that may accelerate as drone technology rapidly improves and perhaps becomes fully automated through advances in artificial intelligence. Paradoxically, improved precision could lead to an increase in deadly mistakes. Another concern relates to granting an intelligence agency trigger authority. Entrusting drones to the CIA, an intelligence agency with a checkered history as to the use of force whose activities are largely conducted in secret, heightens concerns in some quarters that strikes may sometimes kill the wrong people for the wrong reasons. If applied sloppily or maliciously, targeted killing by drones could amount to nothing more than advanced death squads. For these and related reasons, the use of killer drones merits serious thought and criticism. Along these lines, many opponents of the reported CIA program have decried it as illegal. Without questioning their sincerity, one can acknowledge the soundness of their tactics. "Law talk" offers them a strong weapon. How could anyone, without shame or worse, support an illegal killing campaign? Illegality is for gangsters, drug dealers, and other outlaws - not the Oval Office.

#### Dickinson concludes neg – prefer this evidence because it’s from a peer review journal and not just a random blog post

Dickinson, yes the same damn one, 09 (Matthew, professor of political science at Middlebury College. He taught previously at Harvard University, where he also received his Ph.D., working under the supervision of presidential scholar Richard Neustadt, We All Want a Revolution: Neustadt, New Institutionalism, and the Future of Presidency Research, Presidential Studies Quarterly 39 no4 736-70 D 2009)

Small wonder, then, that initial efforts to find evidence of presidential power centered on explaining legislative outcomes in Congress. Because scholars found it difficult to directly and systematically measure presidential influence or "skill," however, they often tried to estimate it indirectly, after first establishing a baseline model that explained these outcomes on other factors, including party strength in Congress, members of Congress's ideology, the president's electoral support and/or popular approval, and various control variables related to time in office and political and economic context. With the baseline established, one could then presumably see how much of the unexplained variance might be attributed to presidents, and whether individual presidents did better or worse than the model predicted. Despite differences in modeling assumptions and measurements, however, these studies came to remarkably similar conclusions: individual presidents did not seem to matter very much in explaining legislators' voting behavior or lawmaking outcomes (but see Lockerbie and Borrelli 1989, 97-106). As Richard Fleisher, Jon Bond, and B. Dan Wood summarized, "[S]tudies that compare presidential success to some baseline fail to find evidence that perceptions of skill have systematic effects" (2008, 197; see also Bond, Fleisher, and Krutz 1996, 127; Edwards 1989, 212). **To some scholars, these results indicate that Neustadt's "president-centered" perspective is incorrect** (Bond and Fleisher 1990, 221-23). In fact, the aggregate results reinforce Neustadt's recurring refrain that presidents are weak and that, when dealing with Congress, a president's power is "comparably limited" (Neustadt 1990, 184). **The misinterpretation of the findings** as they relate to PP **stems** in part **from scholars' difficulty in defining and operationalizing presidential influence** (Cameron 2000b; Dietz 2002, 105-6; Edwards 2000, 12; Shull and Shaw 1999). But it is also that case that scholars often misconstrue Neustadt's analytic perspective; his description of what presidents must do to influence policy making does not mean that he believes presidents are the dominant influence on that process. Neustadt writes from the president's perspective, but without adopting a president-centered explanation of power. Nonetheless, if Neustadt clearly recognizes that a president's influence in Congress is exercised mostly, as George Edwards (1989) puts it, "at the margins," his case studies in PP also suggest that, within this limited bound, presidents do strive to influence legislative outcomes. But how? **Scholars often argue that a president's most direct means of influence is to directly lobby certain members of Congress, often through quid pro quo exchanges, at critical junctures during the lawmaking sequence. Spatial models of legislative voting suggest that these lobbying efforts are most effective when presidents target the median, veto, and filibuster "pivots" within Congress. This logic finds empirical support in vote-switching studies that indicate that presidents do direct lobbying efforts at these pivotal voters, and with positive legislative results.** Keith **Krehbiel** analyzes successive votes by legislators in the context of a presidential veto and **finds** "modest **support for the** sometimes doubted stylized **fact of presidential power as persuasion**" (1998,153-54). Similarly, David **Brady and** Craig **Volden look at vote switching by members of Congress in successive Congresses on nearly identical legislation and also conclude that presidents do influence the votes** of at least some legislators (1998, 125-36). In his study of presidential lobbying on key votes on important domestic legislation during the 83rd (1953-54) through 108th (2003-04) Congresses, Matthew **Beckman shows that in addition to these pivotal voters, presidents also lobby leaders in both congressional parties in order to control what legislative alternatives make it onto the congressional agenda** (more on this later). **These lobbying efforts are correlated with a greater likelihood that a president's legislative preferences will come to a vote** (Beckmann 2008, n.d.).