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#### There is a growing cacophony of voices bringing attention to the deaths of civilians by drone strikes- from the reports by Human Rights Watch and Amnesty International to the UN special reports. But still, not enough Americans are listening. The Rehman family flew 7,000 miles to tell their story at a Congressional hearing and only 5 members of Congress showed up. We need a mobilized community to restrain future use of drones.

Madea Benjamin, founder of CODEPINK in 2013 Medea Benjamin is cofounder of CODEPINK and the human rights organization Global Exchange. She is the author of Drone Warfare: Killing by Remote Control. “Drone Victims Come Out of the Shadows” Nov 5 http://fpif.org/drone-victims-come-shadows/?utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+FPIF+%28Foreign+Policy+In+Focus+%28All+News%29%29

At each of the over 200 cities I’ve traveled to this past year with my book Drone Warfare: Killing by Remote Control, I ask the audience an easy question: Have they ever seen or heard from drone strike victims in the mainstream U.S. press? Not one hand has ever gone up. This is an obvious indication that the media has failed to do its job of humanizing the civilian casualties that accompany President Obama’s deadly drone program. This has started to change, with new films, reports, and media coverage finally giving the American public a taste of the personal tragedies involved. On October 29, the Rehman family—a father with his two children—came all the way from the Pakistani tribal territory of North Waziristan to the U.S. Capitol to tell the heart-wrenching story of the death of the children’s beloved 67-year-old grandmother. And while the briefing, organized by Congressman Alan Grayson, was only attended by four other congresspeople, it was packed with media. Watching the beautiful 9-year-old Nabila relate how her grandmother was blown to bits while outside picking okra softened the hearts of even the most hardened DC politicos. From the congressmen to the translator to the media, tears flowed. Even the satirical journalist Dana Milbank, who normally pokes fun at everything and everyone in his Washington Post column, covered the family’s tragedy with genuine sympathy. The visit by the Rehman family was timed for the release of the groundbreaking new documentary Unmanned: America’s Drone Wars by Robert Greenwald of Brave New Foundation. The emotion-packed film is filled with victims’ stories, including that of 16-year-old Tariq Aziz, a peace-loving, soccer-playing teenager obliterated three days after attending an anti-drone conference in Islamabad. Lawyers in the film pose the critical question: If Tariq was a threat, why didn’t they capture him at the meeting and give him the right to a fair trial? Another just released documentary is Wounds of Waziristan, a well-crafted, 20-minute piece by Pakistani filmmaker Madiha Tahir that explains how drone attacks rip apart communities and terrorize entire populations. Just as the visit and the films have put real faces on drone victims, a plethora of new reports by prestigious institutions—five in total—have exposed new dimensions of the drone wars. On October 22, Human Rights Watch issued a report on drone strikes in Yemen and Amnesty International issued another on drone strikes in Pakistan. While not calling for an end to all drone strikes, the reports detail cases of civilian casualties and criticize the U.S. government for considering itself above the rule of law and accountability. A third report, License to Kill, released by the Geneva-based group Al Karama, is much more damning of U.S. policy. While Amnesty and Human Rights Watch say drones are lawful under certain circumstances and mainly push for transparency, Al Karama asserts that the U.S. drone war is a clear violation of international law. It calls for an end to extrajudicial executions and targeted killings; complete reparations to victims; and a resolution by the UN Human Rights Council opposing the U.S. practice of extrajudicial executions. Adding to these well-researched reports by non-governmental organizations are two documents commissioned by the United Nations. One is by Christof Heyns, the UN’s special rapporteur on extrajudicial, summary, or arbitrary executions. The other is by Ben Emmerson, the special rapporteur on human rights and counter-terrorism. Heyns warns that while drones may be more targeted than other weapons, they are easier to use and may “lower social barriers against the use of lethal force.” He said that a “drones only” approach risks ignoring peaceful approaches such as individual arrests and trial, negotiations and building alliances. Emmerson said states have the obligation to capture terrorist suspects, when feasible, and should only use force as a last resort. He blasted the U.S. lack of transparency, calling it the single greatest obstacle to an evaluation of the civilian impact of drone strikes. He said states must be transparent about the acquisition and use of drones, the legal basis and criteria for targeting, and their impact. “National security does not justify keeping secret the statistical and methodological data about the use of drones,” he claimed. But perhaps more impactful than the UN reports themselves was the debate they engendered on the floor of the UN General Assembly. On October 26, for the first time ever, representatives from a broad swath of nations waited their turn to denounce the U.S. drone policy. Venezuela called drones “flagrantly illegal” and said they were a form of “collective punishment.” Brazil pushed the UN rapporteurs to take an even stronger stand. China called drones a “blank space in international law” and insisted that nations “respect the principles of UN charters, the sovereignty of states, and the legitimate rights of the citizens of all countries.” The representative of Pakistan tried to put to rest press reports that the Pakistani government secretly approved of the strikes. He stated that drones put all Pakistanis at risk and radicalize more people, and called for “an immediate cessation of drone strikes within the territorial boundaries of Pakistan.” This was the same sentiment expressed by Pakistani Prime Minister Nawaz Sharif in his October 23 meeting with President Obama. The U.S. government is feeling the pressure. It has taken steps to reduce civilian casualties and has reduced the actual number of strikes, but certainly not eliminated them. In fact, there was a drone strike in Somalia on October 28 and another one in Pakistan on October 31 that killed Taliban leader Hakimullah Mahsoud, who was about to engage in peace talks with the Pakistan government. While the reduction in the number of strikes is a partial victory, it cannot erase the hundreds of innocent lives lost over the years. Also, with the global proliferation of drones (thanks to the easing of restrictions on overseas sales and the introduction of domestic drones into U.S. skies by September 2015), their usage will inevitably increase. A mobilized global community is the only force that can serve as a restraining factor. It is also [the] best way to honor the Rehman family and other victims. As 13-year-old Zubair Rehman testified, “I hope that by telling you about my village and death of my grandmother, I can convince you that drones are not the answer. I hope I can return home to tell my community that Americans listened and are trying to help us solve the many problems we face. And maybe, just maybe, America may soon stop the drones.” Responding to this call is the Global Drone Summit November 16-17 in Washington DC, where hundreds of people from around the world will gather to strategize and to organize a global network. They will also announce campaigns to pressure the U.S. government to release the legal memos justifying drone strikes, and create a compensation fund for civilian victims. Check here to register for the summit or watch the livestream.

#### The current rhetoric about drone use focuses on the number of civilian versus militant deaths, but this distinction ignores the question of whether or not the drones were legal in the first place and allows the government to assert legal justifications to continue drone use.

Rona 13 Gabor, International Legal Director of Human Rights First, Gabor Rona advises Human Rights First programs on questions of international law, http://www.lawfareblog.com/2013/10/gabor-rona-of-human-rights-first-responds/

But I wish Ritika had put a bit more underlying law into her analysis, starting with the legal significance of the word civilian. She notes that ‘civilian’ is not the same as ‘protected from targeting under the law,’ since “a civilian directly participating in hostilities can be lawfully targeted under the laws of war.” That statement perhaps assumes, but is missing a critical element: “in an armed conflict.” And that raises the most basic question of all about the context of a drone attack: “is it war?” Because if it isn’t, the contradistinction between “civilian” and “combatant” (or militant) simply doesn’t apply; nor does the concept of “direct participation in hostilities.” Nor, for that matter, does the acceptability of “proportionate collateral damage.” Instead, outside of war extrajudicial killing is permitted only if the target poses an imminent threat to American lives that cannot be ameliorated through non-lethal means. In other words, whether or not in armed conflict, being a “militant,” “terrorist,” “insurgent” or the like does not necessarily make someone targetable. And no number of unintended casualties is acceptable. (Therefore, the President’s suggestion that outside of zones of active hostilities the risk of civilian casualties must be close to zero before an attack is authorized, while welcome, embraces terminology that elides the distinction between war and its absence). The “Is it war?” question isn’t answered by reference to, or even correct application of, the authorization for use of military force (AUMF) passed by Congress in the wake of 9/11. The debate about whether a new AUMF is needed may have constitutional significance, but is irrelevant to the satisfaction of international law. The question “Is it war?” isn’t answered merely by one or more authorities “declaring” or otherwise asserting that it’s war. And it isn’t settled by the use of military, rather than other means. It’s answered by reference to two international law criteria: one, are there at least two “parties” to the armed conflict with sufficient command structure to exercise the rights and responsibilities of international humanitarian law?; and two, are the hostilities attributable to those parties sufficiently frequent and/or severe to exceed the realm of mere law enforcement? Studies that distinguish between militants, etc. on one hand, and “civilians” on the other, suffer from two types of flaw. The first and most evident flaw that Ritika’s analysis exposes is the reliance on media accounts that a target was a militant, etc. where such accounts merely repeat government allegations. Accounts that a target was not a militant may also be suspect, but less significant because neither a wrongful designation of “civilian,” nor an accurate designation of “terrorist,” “militant,” “insurgent,” etc., necessarily means the target was ”targetable.” The second, less evident and possibly more significant flaw is the omission of the entire category of unlawful killings in which the wrong legal paradigm is applied, or the right paradigm is incorrectly applied. While the failure of the studies to note their limitations is regrettable, the greater source of error is government’s inability or refusal to answer the following questions: Where are we at war? Against whom? Who is targetable in that war? Where are we not at war? Who is targetable there? And pursuant to what legal criteria are all these questions being answered? Ritika concludes that “the best methodology only serves to demonstrate how little we actually know about the civilian casualties from U.S. drone strikes.” True, and as long as we continue to accept the “civilian” vs. “other” distinction for targeting operations, we will continue to undercount the number of people illegally killed.

#### Six months after Obama’s promise of transparency, there is still too much we don’t know about the drone program. Additional oversight is insufficient to lead to public disclosure or accountability.

Currier 11/5 Cora Currier was previously on the editorial staff of the New Yorker. “6 Months After Obama Promised to Divulge More on Drones, Here’s What We Still Don’t Know” Nov 5 http://www.propublica.org/article/6-months-after-obama-promised-to-divulge-more-on-drones-heres-what-we-still

Nearly six months ago, President Obama promised more transparency and tighter policies around targeted killings. In a speech, Obama vowed that the U.S. would only use force against a “continuing and imminent threat to the American people.” It would fire only when there was “near-certainty” civilians would not be killed or injured, and when capture was not feasible. The number of drone strikes has dropped this year, but they’ve continued to make headlines. On Friday, a U.S. drone killed the head of the Pakistani Taliban. A few days earlier came the first drone strike in Somalia in nearly two years. How much has changed since the president’s speech? We don’t know the U.S. count of civilian deaths The administration says that it has a count of civilian deaths, and that there is a “wide gap” between U.S. and independent figures. But the administration won’t release its own figures. Outside estimates of total civilian deaths since 2002 range from just over 200 to more than 1,000. The Pakistani government has given three different numbers: 400, 147, and 67. McClatchy and the Washington Post obtained intelligence documents showing that for long stretches of time, the CIA estimated few or no civilian deaths. The documents also confirmed the use of signature strikes, in which the U.S. targets people without knowing their identity. The CIA categorized many of those killed as simply “other militants” or “foreign fighters.” The Post wrote that the agency sometimes designated “militants” with what seemed like circumstantial or vague evidence, such as “men who were ‘probably’ involved in cross-border attacks” in Afghanistan. The administration reportedly curtailed signature strikes this year, though the new guidelines don’t necessarily preclude them. A White House factsheet released around Obama’s speech said that “it is not the case that all military-aged males in the vicinity of a target are deemed to be combatants.” It did not say that people must be identified. (In any case, the U.S. has not officially acknowledged the policy of signature strikes.) Attorney General Eric Holder confirmed only that four Americans have been killed by drone strikes since 2009: Anwar al Awlaki and his sixteen-year-old son, Abdulrahman, Samir Khan, and Jude Kenan Mohammed. Holder said that only the elder Awlaki was “specifically targeted,” but did not explain how the others came to be killed. Although Obama said that this disclosure was intended to “facilitate transparency and debate,” since then, the administration has not commented on specific allegations of civilian deaths. We don’t know exactly who can be targeted The list of groups that the military considers “associated forces” of Al Qaeda is classified. The administration has declared that it targets members of Al Qaeda in the Arabian Peninsula, and “elements” of Al Shabaab, but there are still questions about how the U.S. determines that an individual belonging to those groups is in fact a “continuing and imminent threat.” (After the terror alarm that led to the closing of U.S. embassies this summer, officials told the New York Times they had “expanded the scope of people [they] could go after” in Yemen.) This ties into the debate over civilian casualties: The government would seem to consider some people legitimate targets that others don’t. Amnesty International and Human Rights Watch conducted in-depth studies of particular strikes in Pakistan and Yemen, respectively. They include eyewitness reports of civilian deaths. (Most of the deaths investigated happened before the Obama administration’s new policies were announced, although the administration has not said when those guidelines went into effect.) The reports also raised questions of the legality of specific strikes, questioning whether the deaths were all unavoidable casualties of legitimate attacks. It does not appear that the U.S. plans to expand strikes against Al Qaeda to other countries – officials have reportedly told Iraq, for example, it won’t send drones there. But the U.S. has established a surveillance drone base in Niger, and fed information from drones to French forces fighting in Mali. We don’t know if the U.S. compensates civilian casualties CIA director John Brennan suggested during his confirmation hearing that the U.S. made condolence payments to harmed families. But there is little evidence of it happening. U.S. Central Command told ProPublica that it had 33 pages related to condolence payments – but wouldn’t release any of them to us. We don’t always know which strikes are American While unnamed officials sometimes confirm that strikes came from U.S. drones, other attacks may be from Pakistani, Yemeni, or even Saudi planes. (It’s also worth noting that the U.S. has also used cruise missiles and Special Forces raids. But the bulk of U.S. counterterrorism actions outside Afghanistan in recent years appear to rely on drones.) We don’t know the precise legal rationale behind the strikes Some members of Congress have seen the legal memos behind targeted killing of U.S. citizens. But lawmakers were not granted access to all memos on the program. Legislation pending in the Senate would require the administration to give the Intelligence Committees a list of such legal opinions. Other congressmen have introduced bills with more reporting requirements for targeted killings. (Proposals for a “drone court” for oversight have not gotten very far.) It’s far from clear that any of that additional oversight would lead to public disclosure. The government and the American Civil Liberties Union and the New York Times are still locked in court battles over requests for drone documents. While a judge has ruled the CIA can no longer assert the “fiction” that it can’t reveal if it has any interest in drones, the agency hasn’t been compelled to release any information yet. The government has also so far fought off disclosure of legal memos underpinning targeted killings.

### Plan

#### The United States Congress should create a statutory cause of action for damages for those unlawfully injured by targeted killing operations or their heirs that overrides the state secrets and official immunity doctrine and replaces them with carefully considered procedures for balancing the secrecy concerns.

### Solvency

#### The plan overcomes judicial deference and the government’s ability to assert state secret privileges.

Vladeck 13 Steve Vladeck 02/10/13 (Professor of Law and the Associate Dean for Scholarship at American University Washington College of Law. His teaching and research focus on federal jurisdiction, constitutional law, national security law, and international criminal law. “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might...”, LawFare, from a conference hosted by Columbia Law School on targeted killings.)

At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I actually think virtually all of these concerns could be mitigated. For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. Re: adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief (more on that below), it’s hard to see any pure Article III problem with such a suit for retrospective relief. As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what Tennessee v. Garner contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, it demonstrates that judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda orone of its affiliates), but to do so using highly classified information in a manner that balances–albeit not always ideally–the government’s interest in secrecy with the detainee’s ability to contest the evidence against him. Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures, so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. More to the point, it should also follow that courts would be far more able to review the questions that will necessary be at the core of these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight–removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc. And in addition to the substantive questions, it will also be much easier for courts to review the government’s own procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go along way toward proving the lawfulness vel non of an individual strike... To be sure, there are a host of legal doctrines that would get in the way of such suits–foremost among them, the present judicial hostility to causes of action under Bivens; the state secrets privilege; and official immunity doctrine. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that immunity is constitutionally grounded), each of these concerns can be overcome by statute–so long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and official immunity doctrine; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many–if not most–of these cases, these legal issues would be overcome.

#### Lawsuits are a visible platform advocates can use to generate media attention and public conversations. The conversations that result from the aff spillover to broader conversations about constitutional concerns and human rights issues.

Wexler 13 Lesley Wexler Professor of Law and Thomas A. Mengler Faculty Scholar, University of Illinois College of Law “The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests” May 8 http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2262412

This chapter suggests the judiciary may play an important role in the debate over the executive branch’s decisions regarding IHL even if it declines to speak to the substance of such cases. First, advocates may use courts as a visible platform in which to make their arguments and spur conversations about alternative, non-judicially mandated transparency and accountability measures. As they did with the trio of detention cases, advocates can leverage underlying constitutional concerns about the treatment of citizens to stimulate interest in the larger IHL issues. Second, litigants may use courts to publicize and pursue Freedom of Information (FOIA) requests and thus enhance transparency. Even if courts decline to grant FOIA requests, the lawsuits can generate media atten-tion about what remains undisclosed. Third, and most robustly, Congress may pass legislation that would facilitate either prospective review of kill lists through a so-called drone court or remove procedural barriers to retrospective damage suits for those unlawfully killed by a drone strike. Even the threat of such a judicial role may influence executive branch behavior.

#### Courts become rallying points to debate specific applications of broader issues.

Cole 11 David, Professor, Georgetown University Law Center. Where Liberty Lies: Civil Society and Individual Rights After 9/11 Wayne Law Review, Winter, 57 Wayne L. Rev. 1203, lexis

Learned Hand's assertion that as long as "liberty lies in the hearts of men and women . . . it needs no constitution, no law, no court to save it," simultaneously captures an essential truth and overstates its case. n330 It is true that without a culture that values constitutional rights, formal legal protections are likely to be largely unavailing. But it is not quite true that when such a culture exists, "it needs no constitution, no law, no court to save it." The Constitution and the courts play a critical role in inculcating, reinforcing, and implementing the culture of the rule of law. They remind us of the values we hold in highest esteem. Court cases can serve as focal points for debating the application of these enduring constitutional values to current conditions. And courts can and often do enforce constitutional rights where the political branches would not.

#### Lawyers will use the media to spread the stories of the victims.

Margulies 9 Peter, Professor of Law, Roger Williams University School of Law “The Detainees' Dilemma: The Virtues and Vices of Advocacy Strategies in the War on Terror” Buffalo Law Review 57 Buffalo L. Rev. 347 April, lexis

 [\*368] 3. Media Relations and Stories of Innocence and Abuse. Lawyers for detainees have also made extensive use of the media, including stories in papers and books about the innocence of particular detainees and the abuse they suffered, n67 and systemic studies about procedural problems at Guantanamo. n68 Stories of innocence have long been a central element in advocacy for individuals and groups detained by the state, including Sacco and Vanzetti, n69 convicted atom spies Ethel and Julius Rosenberg during the McCarthy era, n70 and the tens of thousands of Japanese-Americans detained during World War II. n71 In some detainee cases after September 11, advocates have recounted horrendous tales of abuse. n72 In other cases, lawyers have advanced claims of innocence on their client's behalf. These claims take two forms. One is a generic claim that virtually all detainees at Guantanamo are students, journalists, or relief workers scooped up by bounty hunters. n73 I call this generic claim the misadventure narrative. n74 Other innocence claims are more specific, telling stories that sometimes leave puzzling gaps n75 and sometimes offer clear and consistent details. n76 [\*369] 4. Advocacy on the Identity of the Legal Profession. Another brand of crossover advocacy has addressed the role of the legal profession itself n77 in championing the rule of law after September 11. Government restrictions in previous moments of American history, including World War I and the Cold War, inspired approval or equivocation from the organized bar. n78 After September 11, the organized bar initially stayed on the sidelines, and death penalty lawyers like Clive Stafford Smith and Joseph Margulies--accustomed to working with clients with nothing to lose--took the lead, along with the Center for Constitutional Rights (CCR), which had long specialized in "political litigation" involving foreign policy. However, the past six years have seen increasing involvement by the ABA and by mainstream law firms, particularly in representing detainees who have been through CSRTs at Guantanamo and are seeking habeas relief in the federal courts. n79 CCR is now in significant part a mainstream organization, not a fringe one. Its resources have increased substantially, as has its staff. In contrast, legal advice associated with the Bush administration has moved to the fringe, as the organized bar critiqued positions that argued for unilateral presidential power and the propriety of [\*370] coercive interrogation. n80 The Yale Project's lawsuit against John Yoo n81 is in some ways less about seeking relief for a client than it is advocacy directed at establishing that Yoo exceeded the role constraints that bind American lawyers. n82

#### Storytelling is critical to reverse the othering of drone victims and make them more than just a statistic.

Figueroa 13 Alyssa Figueroa is an associate editor at AlterNet “10 Ways You Can Join the Fight Against Drone Warfare” October 28 http://www.alternet.org/activism/10-ways-you-can-join-fight-against-drone-warfare

8. Bring drone victims alive through stories. Too often a drone victim’s life, and death, become just a number, a statistic in our fight against drone use. But it’s vital to humanize these victims and bring them to life. In attempt to reverse the “othering” of victims overseas, you can organize a storytelling session in your community. Each person signs up to research and learn about one drone victim’s life and death, and then plan a time to come together and share their stories.

The poorly informed public continues to prop up Obama’s drone policy. Current government justifications enable it to discount alternate media narratives and cast a fog over public debate about drones.

Naiman 11/15 Robert Naiman is Policy Director at Just Foreign Policy. Mr. Naiman edits the Just Foreign Policy daily news summary and writes on U.S. foreign policy at Huffington Post. Naiman has worked as a policy analyst and researcher at the Center for Economic and Policy Research and Public Citizen's Global Trade Watch. He has masters degrees in economics and mathematics from the University of Illinois and has studied and worked in the Middle East. “WikiLeaks and the Drone Strike Transparency Bill” http://www.huffingtonpost.com/robert-naiman/wikileaks-and-the-drone-s\_b\_4282595.html

The Senate Intelligence Committee recently took an important step by passing an intelligence authorization which would require for the first time -- if it became law -- that the administration publicly report on civilian casualties from U.S. drone strikes. Sarah Knuckey, Director of the Project on Extrajudicial Executions at New York University School of Law and a Special Advisor to the UN Special Rapporteur on extrajudicial executions, calls this provision "an important step toward improving transparency," and notes that "Various U.N. officials, foreign governments, a broad range of civil society, and many others, including former U.S. Department of State Legal Advisor Harold Koh ... have called for the publication of such basic information." This provision could be offered as an amendment in the Senate to the National Defense Authorization Act. It could be offered in the House as an amendment on the intelligence authorization, or as a freestanding bill. But it's not likely to become law unless there's some public agitation for it (you can participate in the public agitation here.) Forcing the administration to publish information is crucial, because in the court of poorly informed public opinion, the administration has gotten away with two key claims that the record of independent reporting strongly indicates are not true: 1) U.S. drone strikes are "narrowly targeted" on "top-level terrorist leaders," and 2) civilian casualties have been "extremely rare." Poll data shows that majority public support of the drone strike policy is significantly based on belief in these two false claims; if the public knew that either of these claims were not true, public support for the policy would fall below 50%. By keeping key information secret, the administration has been able to avoid having its two key claims in defense of the policy refuted in media that reach the broad public. You might think that if a key reason that it's been difficult to do anything politically in the U.S. about the drone strike policy has been the apparent public support for the policy among people who do not know that the strikes have not been "narrowly targeted" on "top-level terrorist leaders" and who do not know that civilian casualties have not been extremely rare, then if there were a proposed transparency reform that could force the administration to disclose information that would likely contribute greatly to knowledge among the general public that these two key claims are not true, it should be a no-brainer that critics of the policy should vigorously support this reform. Sadly, it is not, apparently, a no-brainer, because there are people who claim that transparency reforms are meaningless. And while it is tempting to try to ignore such people, they have a disproportionate impact to their numbers because most people don't have the life experience that would enable them to easily judge between the competing claims "transparency reforms are important" and "transparency reforms are meaningless." Our starting point is that many Americans, compared to Europeans, are politically disengaged, alienated from political engagement most of the time. So when you put out a call for people to engage Congress, you have a group of people who get it right away and take action, and a another group of people who think, "Engage Congress? Not that again," and treat it as a huge personal sacrifice to engage Congress, like you asked them to volunteer for a root canal. These people are looking for any excuse to not take action. So if someone pops up and says, "transparency reforms are meaningless," these people have an excuse not to take action. "Oh, this proposed reform is controversial, not everyone agrees, so I don't have to do anything." To people who want to claim that transparency reforms are meaningless, I want to say this: tell it to WikiLeaks. What was the fundamental strategic idea of WikiLeaks? What was the fundamental insight that Julian Assange deeply grasped that caused him to initiate this project, at great personal risk to himself and his close collaborators? It was that governments are hiding key information that the public has the right to know, that allowing governments to continue to hide this information fundamentally undermines democratic accountability, and that forcing this information into public debate fundamentally enables democratic accountability. Case in point: Just Foreign Policy issued a crowd-sourced reward for WikiLeaks to publish the secret negotiating text of the Trans Pacific Partnership agreement, which, among many other concerns, critics like the AARP have charged threatens the ability of the U.S. government to make medicines safe and affordable under the Affordable Care Act. This week, WikiLeaks delivered, publishing the negotiating text of the "intellectual property" chapter of the TPP, the most controversial part of the agreement, including the negotiating positions of different countries. (If you made a pledge to the reward, you can fulfill your pledge here. ) Publishing this information generated a lot of press. (Google "WikiLeaks and TPP.") It also allowed critics of the agreement, like Public Citizen, Doctors Without Borders, and the Electronic Frontier Foundation to respond directly to the TPP text in making their criticisms. Predictably, some journalists wrote what they often write about such disclosures: that there was nothing really shocking for insiders who were closely following the issue. And, in a narrow sense, that's not untrue. But it missed the point. In general, disclosing "secret" government policies mostly isn't about educating journalists and other insiders who are closely following the issues. It's about educating the broad public, which never saw this information clearly presented in major media. In a democracy, it's hard to keep the basics of important public policies secret from well-informed people who are following closely. Official secrecy is mainly about keeping them from the broad public, because official secrecy allows the government to keep the broad public in a fog of competing claims that can't be directly verified and are therefore never resolved in major media. Critics charge that X, but the government denies it. Who knows for sure? The New York Times recently had an editorial in favor of the TPP. Critics complained, saying: 1) either you're endorsing an agreement that you've never seen or 2) you have seen the agreement, and instead of doing journalism, you're collaborating in keeping the public in the dark. No, we haven't seen the agreement, the Times responded. We're just endorsing the idea of an agreement. Never mind what the actual agreement is. That's the kind of "public debate" you can have when the policy is secret - whether you like the official story about the policy, rather than the actual policy. (Now that part of the TPP text has been leaked, the Times is quiet.) This is the same problem we face with the drone strike policy: people like the official story about the drone strike policy, in which drones are a magic super-weapon that only kills terrorist leaders and not civilians, not the actual policy, about which they have no idea. When Edward Snowden leaked information about the NSA's blanket surveillance on Americans, many insiders said, "Yeah, we thought the NSA was doing that, we couldn't prove it, but no-one who follows the NSA was surprised." But the broad public had no clue, because it had never been clearly reported where most people could see it, because critics' claims couldn't be directly verified. When Snowden blew the whistle, the broad public found out, and that's why it's plausible that Congress will now force a change in policy. And that shows that transparency matters. Where we are now with the drone strike policy is where we were with the NSA before Snowden's revelations: insiders know what's going on, but the broad public doesn't. An illustration: earlier this week, I and others engaged in some "street lobbying" of Jeh Johnson, President Obama's nominee to head the Department of Homeland Security. When he was previously in government, Johnson was the Pentagon's top lawyer, and thus participated in constructing the administration's purported legal justifications for the drone strike policy (which still have not been fully disclosed to Congress and the public.) Now, as head of DHS, he's not going to play that role directly. But he's still going to have significant influence, because he'll be in the meeting of the national security department heads, because he's well-connected, and because, by his own account, he cares deeply about the rule of law and working to ensure that the drone strike policy transparently complies with the rule of law. I was lobbying Johnson to support the drone strike transparency bill, so that the administration would have to disclose information about civilian casualties. He said he would look into the bill and consider it. During the discussion, one of my colleagues challenged Johnson about a particular drone strike. Johnson gave the standard administration defense, about people who are planning to attack the United States. I interrupted him: "That's a small percentage of the people being killed by drone strikes." "That's true," Johnson said. That's true. When I called him on it, Johnson immediately conceded that the story that the drone strike policy is all about narrowly targeting people who are trying to attack the United States is basically not true. It's true that the U.S. has tried to target some people who have attacked or tried to attack the United States. But that's a small percentage of the people who have been killed. And so, in the main, that's not what the drone strike policy is about; in particular, the claim that drone strikes have been "narrowly targeted" on "top-level terrorist leaders" is not true. ("I believe it very likely that one of my enemies is standing in that crowd of 50 people, therefore I am going to blow up the crowd" does not constitute "narrow targeting.") Why would Johnson concede to me that a central administration claim in defense of its drone strike policy is basically not true? Because he wasn't giving an interview to a mainstream journalist. He was just talking to some guy on a street corner who wasn't recording what he was saying, a person who had little presumed ability to reach the broad American public, a person who could, at worst, tell some mainstream journalist what Johnson said, which Johnson could then promptly deny. He could say he was misquoted or misunderstood, and life would go on. And so we're left with the usual fog. Critics say X, U.S. officials deny it. Who really knows what the truth is? Johnson was having an insider conversation, conceding that which all insiders know, but which the broad public does not know: the drone strike policy is not narrowly targeted on people who are trying to attack the United States.

#### Mobilizing civil society organizations is the most effective way to restrain executive power.

Cole 11 David, Professor, Georgetown University Law Center. Where Liberty Lies: Civil Society and Individual Rights After 9/11 Wayne Law Review, Winter, 57 Wayne L. Rev. 1203, lexis

The force of ordinary electoral politics also cannot account for the shift in U.S. counterterrorism policy. None of the Bush administration's initial initiatives sparked majoritarian opposition. To the contrary, [\*1244] President Bush, who had very low approval ratings shortly before 9/11, shot up in popularity when he declared the "war on terror," and was reelected in 2004, in large measure on his promise to deliver security. n235 Apart from opposition to the war in Iraq, there was little widespread popular pressure on President Bush to rein in his security initiatives. Despite this evidence, Eric Posner and Adrian Vermeule have argued that in the modern era, political checks are all there are when it comes to restraining executive power. n236 They maintain that Congress, the courts, and the law itself cannot effectively constrain the executive, especially in emergencies, but that this need not concern us because the executive is adequately limited by political forces. At first blush, the past decade might appear to vindicate Posner and Vermeule's views, as political forces, broadly speaking, seem to have been at least as effective at checking the President as were Congress or the judiciary. n237 But there is in fact little evidence that electoral politics or majoritarian sentiment played much, if any, role in persuading President Bush to ratchet back his security initiatives. While formal judicial and legislative checks cannot tell the whole story, the alternative account is not "politics" as Posner and Vermeule define and describe it, but a much more complex interplay of civil society, law, politics, and culture: what I have called "civil society constitutionalism." Posner and Vermeule contend that the separation of powers is, for all practical purposes, defunct, as executive power has dramatically expanded relative to the other branches in the modern era. n238 Like many commentators before them, Posner and Vermeule attribute this development to the growth of the administrative state n239 and to the near-constant state of emergency in which modern American government now seems to operate. n240 But where other commentators view these developments as profound challenges to our constitutional order, Posner and Vermeule insist that ordinary political constraints on the executive are sufficient. n241 [\*1245] In my view, Posner and Vermeule simultaneously underestimate the constraining force of law and overestimate the influence of political limits on executive overreaching. Sounding like Critical Legal Studies adherents, they sweepingly claim that law is so indeterminate and manipulable as to constitute only a "façade of lawfulness." n242 But in assessing law's effect, they look almost exclusively to formal indicia--statutes and court decisions. n243 That approach disregards the role that law plays without coming to a head in a judicial decision or legislative act. As the post-9/11 period illustrates, when law is reinforced and defended by civil society institutions, it can have a disciplining function long before cases reach final judgment, and even when no case is ever filed, a reality to which anyone who has worked in the executive branch will attest. n244 Executive officials generally cannot know in advance whether their actions will attract the attention of civil society watchdogs, or lead to court review. They often cannot know whether such oversight--whether by a court, a legislative committee, or a nongovernmental organization--will be strict or deferential. As long as there is some risk of such oversight, the resultant uncertainty itself is likely to have a disciplining effect on the choices they make. There are, in short, plenty of reasons why executive lawyers generally take legal limits seriously. They take an oath and are acculturated to do so. They know that claims of illegality can undermine their objectives. And they cannot predict when a legal claim will be advanced against them. Similarly, in focusing exclusively on statutes and their enforcement by courts, Posner and Vermeule disregard the considerable checking function that Congress's legal oversight role plays through means short of formal statutes, such as by holding hearings, launching investigations, requesting information about doubtful executive practices, or restricting federal expenditures. The effectiveness of these checks, moreover, will often turn on the strength of civil society. If there are significant watchdogs in the nongovernmental sector and/or the media focused on executive actions, ready to bring allegedly illegal conduct to public attention, the law will have substantial deterrent effect, with or without actual court decisions.

#### Damages suits spillover– officials will try to demonstrate that they’re looking at other options.

Margulies 10 Peter, Professor of Law, Roger Williams University. Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law, 96 IOWA L. REV. 195

A carefully crafted damages remedy restrains official myopia and thereby curbs this counterproductive cycle. Viewed in that light, judicial solicitude for free speech is not only an expression of constitutional principle; it is also an institutional mechanism for safely containing the sometimes volatile "experiment" of popular governance. n16 Hindsight bias's role in the promotion of volatility compounds the challenges that judicial review must confront. Theorists have observed that subjects of regulation who fear regulators' hindsight bias become alienated [\*201] from the entire legal regime. n17 They view the status quo as intolerable and take unwise risks that undermine compliance. Since defendants in Bivens actions are subject to regulation by judges and juries, fear of hindsight bias can make them unduly risk-prone. Officials who fear future retaliation may cling stubbornly to power, doubling down on repressive measures because they view the status quo as trending in the wrong direction. n18 This risk-prone behavior exacerbates the cycling that the Boumediene v. Bush Court sought to curb. To reduce cycling and enhance deliberation, courts must strive for an equilibrium that corrects for both myopia and hindsight bias. Unfortunately, recent judicial decisions have abandoned this search for an equilibrium and embraced categorical deference or intervention. In Ashcroft v. Iqbal n19 and Arar v. Ashcroft, n20 categorical deference carried the day. Viewing qualified immunity as insufficient to protect against hindsight bias, Iqbal dismissed claims that senior officials turned a blind eye to the mistreatment of post-9/11 detainees. Arar precluded claims that defendants aided an "extraordinary rendition" to Syria. Neither decision discussed whether official myopia might have led to the brutal treatment that the plaintiffs alleged. Instead, these decisions viewed responses to risk as binary, requiring that officials choose between abusing detainees and abdication in the face of terror. n21 [\*202] The categorical-deference approach has an interventionist counterpart. n22 In al-Kidd v. Ashcroft n23 and Padilla v. Yoo, n24 courts evaluated officials' decisions from the cozy recliner of retrospect. Padilla, involving a formerly detained alleged enemy combatant's claim for damages, asked only whether the plaintiff's rights were violated. The court collapsed qualified immunity's core distinction between the present legal status of the plaintiff's rights and their status at the time of the official defendant's decision. The court in al-Kidd, a case involving a former material witness's claim that he was wrongly detained, insisted on a distinction between witness and target that would deprive officials of needed flexibility in transnational terrorism cases. Ironically, the interventionist decisions posit the same binary choice as the categorical-deference model: overreaching or abdication. Categorical deference and intervention thus undermine hopes for equilibrium between presentist and hindsight biases. To salvage that equilibrium, this Article proposes an innovation-eliciting approach to Bivens remedies in national security cases. Utilizing insights from literature on remedying cognitive biases n25 and regulatory failure, n26 it gives officials a stake in the development of a broader repertoire of national security strategies. Officials must show that in other cases they implemented alternatives to the conduct alleged in the lawsuit. When the alternative dispositions are congruent, proportional, and proximate in time to the actions at issue, the court rewards the official by dismissing the lawsuit prior to the qualified immunity phase. Put simply, the approach exchanges [\*203] officials' liability in a specific case for an overall increase in the cultivation of alternatives. Over time, the innovation-eliciting approach will yield an equilibrium between myopia and hindsight bias, limiting the "pendular swings" in policy that Justice Kennedy identified in Boumediene as a central threat to constitutionalism.

### Endless War

#### Current debate about drones focuses only on the number of casualties but ignores the context in which drone strikes take place- the act of drone strikes themselves cause more than just civilian casualties, they inflict psychological harm, spur revenge killings, and increase recruitment for terrorist organizations. A concern for those affected by drones is a necessary pre-requisite for ending the drone war.

Luban 12 Daniel Luban is a doctoral student in political science at the University of Chicago. He was formerly a correspondent for the Washington bureau of Inter Press Service. “An Important New Study of the Drone War” Sept 26 http://www.lobelog.com/an-important-new-study-of-the-drone-war/

As the report makes clear, however, the civilian death toll is only the most obvious human cost of the drone war. David Rohde, the New York Times journalist who spent months in captivity with the Taliban, has described life in the Pakistani tribal areas during the war on terror as “hell on earth,” and the accounts of the damage drones inflict on everyday life back up this assessment. Civilians living with the perpetual buzzing of drones overhead have been increasingly afraid to send their children to school, attend social gatherings, and even to provide first aid or burials for the victims of previous drone strikes. While the authors do not engage in diagnosis, their accounts suggest that an enormous chunk of the population of these areas must be living with something like PTSD. Finally, the much-touted strategic benefits of the drone war appear to be quite overblown. An extremely low percentage of the “militants” killed seem to have been significant operational leaders responsible for terrorist attacks, and the deep unpopularity of the drone strikes has further alienated the Pakistani public and raised the likelihood that the next government might swing in a sharply anti-American direction. As I’ve written before, there seems to be no major constituency at present pushing to hold the Obama administration accountable for its conduct of the drone war. Democrats have been more than happy to prove their toughness by claiming “terrorist” scalps — witness Osama bin Laden’s starring role at the Democratic convention earlier this month — while Republicans’ down-the-line opposition to the administration’s every move does not seem to extend to a concern for the rights of dark-skinned civilians in far-off Muslim countries. Until that changes, sad to say, the domestic political benefits of the drone war seem likely to ensure that it will continue.

#### Even if casualties are declining, we need to remain vigilant- when we see casualties as statistics or just a side effect of war, we lose restraint and our moral bearing to the world.

Sullivan 13 Andrew Sullivan he won a Harkness Fellowship to Harvard’s Kennedy School of Government, and earned a Masters degree in Public Administration, he was the editor of The New Republic, currently founding editor at The Dish “The Damage Done By Drones, Ctd “ Oct 23 http://dish.andrewsullivan.com/2013/10/23/the-damage-done-by-drones-ctd/

I agree. Unintended collateral civilian casualties are not war crimes, and never have been. But the moral equation shifts, it seems to me, when the belligerent stops truly seeing these casualties as morally deeply troubling. This is particularly true when it comes to the anti-septic feel of drone warfare, where human beings can be seen simply as distant statistics. There comes a point at which indifference to civilian casualties veers toward a war crime. That was my problem with the Israelis’ pulverization of Gaza in 2009. They did not seem particularly agonized by it at all, despite the huge imbalance of fatalities on each side of that conflict. With that kind of technological power, restraint is even more essential if we are not to lose our soul. The way in which the Obama administration began to scale down drone warfare in the growing evidence of such casualties suggests to me a mindset attempting to avoid the worst aspects of such a war – not surrendering to it. But it’s a blurry line, and we need to remain extremely vigilant about it for moral and strategic reasons. Multiple civilian deaths do not, after all, help the case against al Qaeda in Pakistan.

#### Dependence on drones perpetuates a binary way of thinking where we don’t consider other options. This has locked us into an endless war.

Bacevich 12 Andrew Bacevich, professor of history and international relations at Boston University, Interview wil Bill Moyers, March 23 http://billmoyers.com/wp-content/themes/billmoyers/transcript-print.php?post=5190

Again, one would refer to Afghan history here, that this is simply not a place that accommodates foreign invaders who think they know how to run the place better than the local population. But what I would want to emphasize, I think, is that by last year, I think Obama himself had given up on the notion that counterinsurgency provided a basis for U.S. strategy and had, indeed, begun to implement Plan C. And Plan C is targeted assassination. Plan C is relying on drones, unmanned aerial vehicles with missiles, and also commandos, special operation forces, in order to conduct military operations, in essence on a global basis, identifying those who could pose a threat to us. And without regard to congressional authority, without regard to considerations of national sovereignty, to go kill the people we think need to be killed. Plan C is already being implemented. BILL MOYERS: Most people seem to accept it as an alternative to failure in Afghanistan, and as a way of keeping American soldiers out of harm's way. ANDREW BACEVICH: Well, and also they accept it because of course, it doesn't cost us anything. We are not, the people are not engaged in any serious way. The people are not asked to sacrifice. The people are asked only to applaud when we are told after the fact that an attack has succeeded. For example, the raid into Pakistan that killed Osama bin Laden. And I would applaud, and do applaud, the raid that killed Osama bin Laden. But I also have this question to ask. And that is, what is the political objective of a strategy of targeted assassination? How many people do we think we're going to kill? How long are we going to kill people in Yemen or in Somalia or in Pakistan before we get to some point where we can say, “Yes, now our political purposes have been achieved, and therefore the war can end, that Plan C will have run its course?” And my fear is that we'll never, we'll never run out of targets. And that describes where we are. BILL MOYERS: That's Option C, right? ANDREW BACEVICH: Option C is where we are. And I think that the reason-- but the reason Option-- we should critically scrutinize Option C is that permanent, open-ended war cannot be good for the country. Permanent, open-ended war, in essence, is an abdication of strategic thought. Are we so unimaginative, are we so wedded to the reliance on military means, that we cannot conceive of any way to reconcile our differences with groups, nations, in the Islamic world, and therefore bring this conflict to an end? And there may be some people who would answer, “No, there is no way.” Well, I-- woe betide our nation, if indeed there is no alternative but endless war. BILL MOYERS: But being a realist, as you are, I'm confident that you think as I do that somewhere, even as we speak, there are terrorists plotting how they can inflict harm on the United States. ANDREW BACEVICH: Let me emphasize. There is some value, there is some utility in Plan C. That there are people out there who are plotting. Whose minds cannot be changed. And we do need to identify them and do whatever is necessary to ensure that they cannot harm us. But, those groups, those individuals exist within a milieu, a political context, a culture. And it seems to me that the strategic imperative is to understand that milieu, to understand the grievances that ultimately gave rise to this animosity expressing itself in terrorist activity. And as a realist, and somebody who's not given to optimism, it seems to me that there are indications that we can engage or have some hope in positive change.

#### When we see solutions only in terms of war it becomes to easy for the military industrial complex to perpetuate cycles of violence.

Lawrence 9 Grant, “Military Industrial "War" Consciousness Responsible for Economic and Social Collapse,” OEN—OpEdNews, March 27

As a presidential candidate, [Barack Obama](http://obama.senate.gov/) called [Afghanistan](http://en.wikipedia.org/wiki/War_in_Afghanistan_%282001%E2%80%93present%29) ''the war we must win.'' He was absolutely right. Now it is time to win it... Senators [John McCain](http://www.imdb.com/name/nm0564587/) and Joseph Lieberman [calling](http://www.miamiherald.com/opinion/inbox/story/960269.html) for an expanded war in Afghanistan "How true it is that war can destroy everything of value." Pope Benedict XVI [decrying](http://www.google.com/hostednews/afp/article/ALeqM5iuue8kE-e0lYZVFpt4RlbX4M_IEw) the suffering of Africa Where troops have been quartered, brambles and thorns spring up. In the track of great armies there must follow lean years. Lao Tzu on [War](http://www.sacred-texts.com/tao/salt/salt09.htm) As Americans we are raised on the utility of war to conquer every problem. We have a drug problem so we wage war on it. We have a cancer problem so we wage war on it. We have a crime problem so we wage war on it. Poverty cannot be dealt with but it has to be warred against. Terror is another problem that must be warred against. In the [United States](http://maps.google.com/maps?ll=38.8833333333,-77.0166666667&spn=10.0,10.0&q=38.8833333333,-77.0166666667%20%28United%20States%29&t=h), solutions can only be found in terms of wars. In a society that functions to support a massive military industrial war machine and empire, it is important that the terms promoted support the conditioning of its citizens. We are conditioned to see war as the solution to major social ills and major political disagreements. That way when we see so much of our resources devoted to war then we don't question the utility of it. The term "war" excites mind and body and creates a fear mentality that looks at life in terms of attack. In war, there has to be an attack and a must win attitude to carry us to victory. But is this war mentality working for us? In an age when nearly half of our tax money goes to support the war machine and a good deal of the rest is going to support the elite that control the war machine, we can see that our present war mentality is not working. Our values have been so perverted by our war mentality that we see sex as sinful but killing as entertainment. Our society is dripping violence. The violence is fed by poverty, social injustice, the break down of family and community that also arises from economic injustice, and by the managed media. The cycle of violence that exists in our society exists because it is useful to those that control society. It is easier to sell the war machine when your population is conditioned to violence. Our military industrial consciousness may not be working for nearly all of the life of the planet but it does work for the very few that are the master manipulators of our values and our consciousness. Rupert Murdoch, the media monopoly man that runs the "Fair and Balanced" [Fox Network](http://www.fox.com/), Sky Television, and [News Corp](http://www.newscorp.com/) just to name a few, [had](http://en.wikipedia.org/wiki/Rupert_Murdoch) all of his 175 newspapers editorialize in favor of the [Iraq war](http://en.wikipedia.org/wiki/Iraq_War). Murdoch snickers when [he says](http://www.newscorpse.com/ncWP/?p=341) "we tried" to manipulate public opinion." The Iraq war was a good war to Murdoch [because,](http://www.americanprogress.org/issues/2004/07/b122948.html) "The death toll, certainly of Americans there, by the terms of any previous war are quite minute." But, to the media manipulators, the phony politicos, the military industrial elite, a million dead Iraqis are not to be considered. War is big business and it is supported by a war consciousness that allows it to prosper. That is why more war in Afghanistan, the war on Palestinians, and the other wars around the planet in which the [military industrial complex](http://en.wikipedia.org/wiki/Military-industrial_complex) builds massive wealth and power will continue. The military industrial war mentality is not only killing, maiming, and destroying but it is also contributing to the present social and economic collapse. As mentioned previously, the massive wealth transfer that occurs when the American people give half of their money to support death and destruction is money that could have gone to support a just society. It is no accident that after years of war and preparing for war, our society is crumbling. Science and technological resources along with economic and natural resources have been squandered in the never-ending pursuit of enemies. All of that energy could have been utilized for the good of humanity, ¶ instead of maintaining the power positions of the very few super wealthy. So the suffering that we give is ultimately the suffering we get. Humans want to believe that they can escape the consciousness that they live in. But that consciousness determines what we experience and how we live. As long as we choose to live in "War" in our minds then we will continue to get "War" in our lives. When humanity chooses to wage peace on the world then there will be a flowering of life. But until then we will be forced to live the life our present war consciousness is creating.

#### Smarter publics are necessary to check government overreaching by exposing the illusions that keep certain institutions in power.

Williams 8 Daniel R, Associate Professor of Law, Northeastern University School of Law.Penn State Law Review, Summer, 113 Penn St. L. Rev. 55

The classic Frankfurt School diagnosis of American culture is grim and pessimistic. Jurgen Habermas rebels against the pessimism that pervades Dialectic of the Enlightenment, but he does not repudiate the essential diagnosis found there, though he surely seeks to deepen it with what he regards as a more nuanced investigation into the true roots of Enlightenment rationality. 157 For our purposes, to this observation of humanity's destructive fetish with means-ends rationality, we may add Habermas's emphasis on the public sphere as an optimistic source of rationality. 158 In the idealized vision that Habermas presents, the public sphere consists of voluntary associations dedicated to promoting unconstrained rational interchange among free and equal participants of good will. 159 It is in the public sphere, if truly healthy (free from the [\*93] distortions of domination), that the common good can be gleaned. 160 It is in the public sphere that government overreaching can be checked and averted. 161 On this view, world public opinion, cultivated within vibrant public spheres that somehow escape the distortions of governmental and corporate propaganda, may function, in this post-Cold War era that has bled into the Age of Terror, as the only potential countervailing force to the dominant super-power, the United States. What a vibrant public sphere provides are tools to resist naturalistic illusions undergirding social institutions and practices that preserve and promote spheres of inequality and regimes of domination, but that seem to be socially necessary. The idea here is well-rehearsed in the literature of critical theory: that which is socially constructed is made to appear fixed and natural; that which serves narrow interests of power and privilege is made to appear to serve everyone. 162 A culture beholden to means-ends thinking is a culture that has lost its capacity for critical theorizing, and such a culture is, as a result, at the mercy of its illusions. A vibrant public sphere that successfully exposes illusions, which conceal unhealthy conditions for society, is crucial to social change, for the exposing of such illusions is exactly what loosens the screws that keep unworthy social institutions intact. 163 A vibrant public sphere is the environment for rendering institutions malleable and open to change, which is why thinkers from Kant to Habermas regard "the public sphere as the definitive institution of democracy." 164

#### We need a sustained public debate challenging the validity of legal arrangements to question the broader assumptions about security decisions and expertise.

Rana 12 Aziz Assistant Professor of Law, Cornell University Law School; A.B., Harvard College; J.D., Yale Law School; PhD., Harvard University. Connecticut Law Review July, 2012 44 Conn. L. Rev. 1417 COMMENTARY: NATIONAL SECURITY: LEAD ARTICLE: Who Decides on Security?, lexis

If the 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 it remains unclear which popular base exists in society to raise these questions. Unless such a base fully emerges, we can expect our prevailing security arrangements to become ever more entrenched.

#### American political culture must be transformed through public debate- the executive’s ability to kill at will signals a decent into authoritarianism. Debate has atrophied to the point where the military industrial complex can wage an endless war where all violence can be justified.

Giroux 13 Henry A. | currently holds the Global TV Network Chair Professorship at McMaster University in the English and Cultural Studies Department and a Distinguished Visiting Professorship at Ryerson University. The Shooting Gallery: Obama and the Vanishing Point of Democracy, *Truthout*, 2-12

At a time in history when American society is overtly subject to the quasi militarization of everyday life and endlessly exposed to mass-produced spectacles of commodified and ritualized violence, a culture of cruelty and barbarism has become deeply entrenched and more easily tolerated. Beyond creating in this instance a moral and affective void in the collective consciousness - a refusal to recognize and rectify the illegal and morally repugnant violence, abuse and suffering imposed on those alleged to be dangerous and "disposable" others - such a culture contributes to the undoing of the very fabric of civilization and justice. The descent into barbarism can take many forms, but one version may be glimpsed when torture becomes a defining feature of what a country considers acceptable policy (to say nothing of riveting entertainment), or the majority of its inhabitants remain passive when the President of the United States claims he has the right to put together a kill list in order to assassinate American citizens. How else to explain the fact that 49 percent of the American public "consider torture justified at least some of the time [and] fully 71 [percent] refuse to rule it out entirely"?16 Frank Rich has suggested that the American public's indifference to national security issues is partly due to the massive hardships and suffering many Americans have endured as a result of the Great Recession.17 This may be true but what it overlooks are the ever-growing anti-democratic forces, or what might be called authoritarianism with a soft edge, which haunt American politics and the modern ideal of democracy. The civic imagination is in retreat in American society and the public spheres that make it possible are disappearing. Clearly, political and popular culture are in dire need of being condemned, interrogated, unlearned and transformed through modes of critical education and public debate, if American democracy is to survive as more than a distant and unfulfilled promise. Americans have lived too long with governments that use power to promote violent acts, conveniently hiding their guilt behind a notion of secrecy and silence that selectively punishes those considered expendable - in its prisons, public schools, foster care institutions and urban slums. As Tom Engelhardt points out, what has not sunk in for most Americans, including the mainstream media, is that the United States has become a lockdown state, or more appropriately an authoritarian state, as evidenced by the fact that the Obama administration can: torture at will; imprison at will, indefinitely and without trial; assassinate at will (including American citizens); kidnap at will anywhere in the world and 'render' the captive in the hands of allied torturers; turn any mundane government document (at least 92 million of them in 2011 alone) into a classified object and so help spread a penumbra of secrecy over the workings of the American government; surveil Americans in ways never before attempted (and only 'legalized' by Congress after the fact, the way you might back-date a check); make war perpetually on their own say-so; and transform whistleblowing - that is, revealing anything about the inner workings of the lockdown state to other Americans - into the only prosecutable crime that anyone in the complex can commit.18 The fateful consolidation of an authoritarian state reaches its tipping point when a government engages in these practices along with the claim that it can kill its own citizens anywhere in the world without recourse to due process or any moral qualms. Such policies point to more than an ethically empty space and the atrophy of democratic modes of governance, politics and culture, they point inexorably to the dark caverns of a society that has embraced the foundations of authoritarianism. Democracy has been hijacked in the United States by right-wing extremists, the financial elite, the military-industrial-academic complex and a demagogic cultural apparatus that has created a state of emergency that appears to "lack the kind of collective sense of urgency that would prompt us to fundamentally question our own ways of thinking and acting, and form new spaces of operation."19 All of us are now in the shooting gallery and we are all potentially the targets.

### Impact Framing

#### You should actively privilege probability in your decision calculus

#### The likelihood of a scenario should be the combination of the warrants debaters make, the probability their authors assign to a given scenario, and the defense from the other team.

#### Probability of the impact shouldn’t be evaluated in isolation- statistical analysis tells us that to calculate the final probability of a scenario, the individual probabilities of each internal link should be multiplied together. Each internal link makes the scenario less and less likely.

#### Any number of unlikely scenarios is conceivable, but that does not mean they enter the realm of probable. The probability of the disad or any other risk of attack will never be zero, but evaluating these scenarios becomes the equivalent of locking ourselves in our living room for fear of being struck by lightning.

Gartzke 13 Erik Gartzke is Associate Professor of Political Science at the University of California, San Diego, and Professor of Government at the University of Essex. “The Myth of Cyberwar Bringing War in Cyberspace Back Down to Earth” International Security, Vol. 38, No. 2 (Fall 2013)

Yet, it is far from clear that the internet is transformational in military terms, let alone revolutionary. Lacking information about whether developments are radical or merely incremental, it may make sense to adopt a few guidelines that will help to determine whether there is cause for panic. A reasonable level of caution is usually provided by our own common sense. Most readers will lock their doors at night, for example, and refrain from handling large sums of cash in a dark alley. Imagining what others could do to injure each of us, however, can quickly descend into paranoia. It is not reasonable to believe that someone is intent on mischief simply because it is possible for them to inºict harm. Even in the safest of societies, individuals, groups, and entire communities are subject to an enormous variety of potential hazards. Much could be done to impinge on each of us, even though few of these possibilities are ever exercised, or experienced, with any regularity. The physical world hosts a multitude of venues for extremely unlikely accident or disease. A small number of people prefer to remain indoors rather than risk being struck by lightning or struck down by botchulism. Still, individuals with these concerns may merit more attention from psychiatric professionals than from military planners. Being vulnerable will be novel to no one living in our modern, highly integrated world. Indeed, the capacity to hurt is so ubiquitous in densely populated portions of the globe that blood would coat the streets if it were not true that relatively little relationship exists between the capacity to attack and the actual prospect that one will be invaded, assaulted, or otherwise done in.37 Just about anything is possible. Someone may have put poison in your Corn ºakes at breakfast. Terrorists may have singled you out for vengeance, or you might just become one of the unlucky few who are in the wrong place at the wrong time. When a commuter steps outside to start her car or to catch the bus, it is impossible to be certain that no truck will jump the curb and that every asteroid will remain in its usual orbit. And yet, despite endless potential for injury or death, few of us have chosen to harden our living rooms against cruise missile attack or immersed ourselves in real-time plots from NASA charting the trajectories of space detritus. In dealing with known unknowns, we became comfortable with not being protected. California homeowners typically do not carry earthquake insurance, for example, even though “the big one” is an eventuality. We do so because security is expensive; being indemni ªed against unlikely events may literally not be worth the effort. One could buy that bulletproof vest listed on Ebay, but then how often would it prove fashionable at the ofªce or in the classroom? The probabilities of esoteric catastrophe are by their nature minute. Unlikely events are unlikely, and so most of us go about our business, paying little attention to the potential menace from the skies or, for that matter, from one another. Governments face similar realities. Many threats are conceivable, but relatively few actually materialize. A holistic approach to security involves assessing risks, and then allocating ªnite resources to address tractable threats, making the largest improvements in protection or, conversely, the greatest increases in inºuence.38 Every dollar spent on national defense must be taken from objectives such as improving education, building or repairing infrastructure, or paying down the debt. Only extremely afºuent (or paranoid) populations pay the price of pursuing protection from the most exotic hazards. More to the point, protection is inevitably incomplete, and comes with its own consequences, including other forms of insecurity. The risk of attack is never zero, given that a potent defense or deterrent endangers the security

of others.

#### We should actively transition away from the card=truth currency model of debate- debaters find any number of unreasonable and improbable scenarios and assert that since they read a card that impact is 100% likely. Debates should more heavily privilege a burden of proof, not a burden of rejoinder.

#### Debate’s current race to hyperbole reduces our ability to discuss and compare actual impacts that aren’t hyperbole. As a critic you must be more skeptical of “risk of a link” logic and more willing to dismiss ridiculously improbable scenarios.

Odekirk 10 Scott, debate coach 8/6/10, Impact Hyperbole: A Dilemma of Contemporary Debate Practice, http://puttingthekindebate.com/2010/08/26/impact-hyperbole-a-dilemma-of-contemporary-debate-practice/

It seems as though debate is stuck in a loop of nuclear wars and no value to life. We have a difficult time of conceiving of a terminal impact that doesn’t end in some ultimate destruction. Without terminal impacts such as nuclear war or the root of all claims, we have a tough time comparing and weighing impacts. Our arguments for spill over connect even the most improbable of scenarios. Take for example our Africa war arguments. Given that Africa, as a continent, largely lack nuclear capabilities the chances of a conflict escalating in this area of the world are slim at best, but still debate returns to evidence written by The Rabid Tiger Project. In fact if you google “http://www.rabidtigers.com/rtn/newsletterv2n9.html”, you will find the great majority of the hits are debate links. This particular scenario is largely a debate creation and the scholarly world around it seems to have largely dismissed this single article as lacking credibility. Even in a debate context, this particular evidence is difficult to take seriously with a big debate on the line. Beyond the most terrible of impact evidence though, a world of equally terrifying scenario’s exist. According to the debate community, we face nuclear war because of any of the following: economic collapse in any number of countries across the globe, a lack of US leadership, use of US hard power (pre-emption, imperialist expansion, etc), India-Pakistan conflict, Middle East escalation, Iran nuclearization, capitalism, the lack of capitalism, patriarchy, racism, nuclear terrorism, US response to a terrorist attack, Taiwan independence, Chinese collapse, Russian aggression, Russian collapse, or accidental launch of nuclear weapons. That’s a short list and I am certain it doesn’t contain all the ways a nuclear war could break out as described in debate scenarios. If one listened closely to the debate community, a sense of inevitable doom would most certainly replace any belief in a long life. As much as it would seem I am poking fun at the policy debate community, kritik debaters caught in the same loop. External impacts to our criticisms are often extinction claims. A great number of K’s end in root of all claims or no value to life claims. In a very similar pattern, our kritiky impacts reflect the same sense of terminal destruction we find in the policy community we often subject to kritik. Possibly living under the sword of Damocles has had more impact on our psyche than Americans give it credit. Possibly living in the information age has resulted in the ability to read any old nut as great impact evidence without the effective critical thinking skills to discern who or what qualifies as credible. Possibly debate as a community lacks a language by which to communicate the dangers of racism, sexism, homophobia, economic justice, poor foreign relations, or terrorism. Is this tumble into impact hyperbole a problem? Well, it definitely does not reflect the sort of care a scholar takes in his/her work. It lacks the humility of limited claims backed only with probable warrants. Although there are some scenarios which could escalate into extinction or which do explain important pre-conditions for violence or meaningful living, these scenarios are much more limited than the debate community gives credence. In theory, the repetition of these hyperboles naturalize them or, at least, make them appear natural/normal. Our community convinces itself the impacts we discuss are credible threats. We are a population believing in an exaggerated reality – a hyper real if you will. Before we give ourselves the credit of knowing that our impacts are exaggerated, let us consider those of us who move on to work in think tanks or write law reviews who assess the threats of nuclear wars to the United States. In fact, this honor, think tank writer, is given out at the NDT every year. Perhaps a better question is, what is the value of our current impact debate? We don’t really help avoid nuclear wars or prevent violence by making every possible interaction into a discussion of the potential for either. If all of these scenarios result in gruesome ending for life on Earth, then the issues become very muddled. The result may be a sort of nihilism which in its conclusion is more Darwinian than Nietzsche. If we decide there is a impact hyperbole problem, what then is the alternative? Of course, the literature is our guide to a sensible form of impact debate, but we wouldn’t be in this predicament without literature. No debater asserts these impacts; they read cards. Cards = Truth Currency. A solution is a better internal link debate. How do the scenarios unfold? To examine the internals means examining all the many different ways the world would intervene in order to prevent the terminal impact from occurring. Debate judges can only work with what debaters give them, but we too must be willing to tell a team their impacts are overblown when this argument is part of the debate. Giving a debate ballot to the team who finds a 1% risk of extinction is a silly judging paradigm at best. At worst, it reflects a lack of critical thinking on the part of a debate critic. I am most definitely not saying critics should intervene and make impact arguments that are not in the debate, but giving more weight to impact defense is an important start to reign in our impact hyperbole.

## 2AC

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#### We meet- by increasing the courts’ jurisdiction, the plan restricts the authority of the executive to circumvent questions of legality of targeted killings.

Chehab 11 Ahmad Georgetown University Law Center Spring, 2011 Wayne Law Review 57 Wayne L. Rev. 335 THE BUSH AND OBAMA ADMINISTRATIONS' INVOCATION OF THE STATE SECRET PRIVILEGE IN NATIONAL SECURITY LITIGATION: A PROPOSAL FOR ROBUST JUDICIAL REVIEW, lexis

The invocation of the SSP has operated as a form of Executive-style jurisdiction stripping, posing additional constitutional problems. n155 [\*363] Article III of the Constitution confers upon Congress the authority to regulate federal jurisdiction, not the President. The Framers granted Congress the authority to regulate appellate jurisdiction of the Supreme Court. n156 Since the SSP has basically prevented a range of lawsuits from proceeding down the normal track of litigation, the Bush and Obama administrations' conception of the SSP encroaches upon congressional powers to confer jurisdiction on the courts because it operates to basically preclude federal courts from adjudicating cases or controversies that would otherwise be within their judicial authority. Given this history of congressional inaction, and notwithstanding the initiatives set forth in the SSPA, there seems little hope for effective congressional regulation of the SSP. n157

#### Counter-interp- Restrictions can take two forms: prior restraint and subsequent action

Emerson 55 Thomas Emerson, 1955 (Professor of Law at Yale University) "The Doctrine of Prior Restraint," 20 Law & Contemp. Probs. 648, 648

In constitutional terms, the doctrine of prior restraint holds that the First Amendment forbids the Federal Government to impose any system of prior restraint, with certain limited exceptions, in any area of expression that is within the boundaries of that Amendment. By incorporating the First Amendment in the Fourteenth Amendment, the same limitations are applicable to the states. Several features of the doctrine should be observed at the outset. In the first place, the doctrine deals with limitations of form rather than of substance. The issue is not whether the government may impose a particular restriction of substance in an area of public expression, such as forbidding obscenity in newspapers, but whether it may do so by a particular method, such as advance screening of newspaper copy. In other words, restrictions which could be validly imposed when enforced by subsequent punishment are, nevertheless, forbidden if attempted by prior restraint. The major considerations underlying the doctrine of prior restraint, therefore, are matters of administration, techniques of enforcement, methods of operation, and their effect upon the basic objectives of the First Amendment.

#### Authority is the permission to act, not the ability

Taylor 96 Attorney at Gambrell & Stolz, LLP, Atlanta (Ellen, 21 Del. J. Corp. L. 870 (1996), Hein Online)

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### The plan is a restriction

Calabresi 13 2/14/13 (Massimo, Writer for Time, <http://swampland.time.com/2013/02/14/checking-obamas-assasination-power-a-drone-court-is-just-one-way/>)

The authority of the commander in chief to kill Americans who have joined an enemy in war is (nearly) undisputed. But Congress has ceased performing its constitutional duty as the only branch of government given the authority to declare war under the Constitution. A better guarantee of a protection of citizen’s rights in the war against al Qaeda might be for Congress to declare war under its constitutional authority (rather than issue a vague Authorization for the Use of Military Force, as it did in 2001); define the battlefield (downtown Karachi?); the nature of the organization against whom the commander in chief had the authority to wage war (a network, not a nation state); and conduct regular oversight. To restrain the executive branch, Congress could explicitly empower the courts to deliberate on damages for Americans hurt or killed by drone strikes in that war (as Stephen Vladeck argues here).¶ Another idea is to follow the precedent of executive branch courts (including military commissions) and establish a “court-like” process for adjudicating whom the president can put on the targeted killing list. That too could be subject to Congressional oversight. That approach has been advanced by former acting Solicitor General and the lead lawyer in the Hamdan case, Neal Katyal. “The notion that a generalist federal court is going to sit to review drone strikes is simply implausible and unwise,” Katyal says. “However, there are some very good reasons why the Executive Branch should employ an internal process that resembles a court in some ways, but that would be staffed by experts.”

### Terror da

#### No risk of nuclear terror – assumes every warrant

**Mueller 10** (John, professor of political science at Ohio State, Calming Our Nuclear Jitters, Issues in Science and Technology, Winter, <http://www.issues.org/26.2/mueller.html>)

Politicians of all stripes preach to an anxious, appreciative, and very numerous choir when they, like President Obama, proclaim atomic terrorism to be “the most immediate and extreme threat to global security.” It is the problem that, according to Defense Secretary Robert Gates, currently keeps every senior leader awake at night. This is hardly a new anxiety. In 1946, atomic bomb maker J. Robert Oppenheimer ominously warned that if three or four men could smuggle in units for an atomic bomb, they could blow up New York. This was an early expression of a pattern of dramatic risk inflation that has persisted throughout the nuclear age. In fact, although expanding fires and fallout might increase the effective destructive radius, the blast of a Hiroshima-size device would “blow up” about 1% of the city’s area—a tragedy, of course, but not the same as one 100 times greater. In the early 1970s, nuclear physicist Theodore Taylor proclaimed the atomic terrorist problem to be “immediate,” explaining at length “how comparatively easy it would be to steal nuclear material and step by step make it into a bomb.” At the time he thought it was already too late to “prevent the making of a few bombs, here and there, now and then,” or “in another ten or fifteen years, it will be too late.” Three decades after Taylor, we continue to wait for terrorists to carry out their “easy” task. In contrast to these predictions, terrorist groups seem to have exhibited only limited desire and even less progress in going atomic. This may be because, after brief exploration of the possible routes, they, unlike generations of alarmists, have discovered that the tremendous effort required is scarcely likely to be successful. The most plausible route for terrorists, according to most experts, would be to manufacture an atomic device themselves from purloined fissile material (plutonium or, more likely, highly enriched uranium). This task, however, remains a daunting one, requiring that a considerable series of difficult hurdles be conquered and in sequence. Outright armed theft of fissile material is exceedingly unlikely not only because of the resistance of guards, but because chase would be immediate. A more promising approach would be to corrupt insiders to smuggle out the required substances. However, this requires the terrorists to pay off a host of greedy confederates, including brokers and money-transmitters, any one of whom could turn on them or, either out of guile or incompetence, furnish them with stuff that is useless. Insiders might also consider the possibility that once the heist was accomplished, the terrorists would, as analyst Brian Jenkins none too delicately puts it, “have every incentive to cover their trail, beginning with eliminating their confederates.” If terrorists were somehow successful at obtaining a sufficient mass of relevant material, they would then probably have to transport it a long distance over unfamiliar terrain and probably while being pursued by security forces. Crossing international borders would be facilitated by following established smuggling routes, but these are not as chaotic as they appear and are often under the watch of suspicious and careful criminal regulators. If border personnel became suspicious of the commodity being smuggled, some of them might find it in their interest to disrupt passage, perhaps to collect the bounteous reward money that would probably be offered by alarmed governments once the uranium theft had been discovered. Once outside the country with their precious booty, terrorists would need to set up a large and well-equipped machine shop to manufacture a bomb and then to populate it with a very select team of highly skilled scientists, technicians, machinists, and administrators. The group would have to be assembled and retained for the monumental task while no consequential suspicions were generated among friends, family, and police about their curious and sudden absence from normal pursuits back home. Members of the bomb-building team would also have to be utterly devoted to the cause, of course, and they would have to be willing to put their lives and certainly their careers at high risk, because after their bomb was discovered or exploded they would probably become the targets of an intense worldwide dragnet operation. Some observers have insisted that it would be easy for terrorists to assemble a crude bomb if they could get enough fissile material. But Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland‘s Spiez Laboratory, bluntly conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint the terrorist group would most certainly be forced to redesign. They also stress that the work is difficult, dangerous, and extremely exacting, and that the technical requirements in several fields verge on the unfeasible. Stephen Younger, former director of nuclear weapons research at Los Alamos Laboratories, has made a similar argument, pointing out that uranium is “exceptionally difficult to machine” whereas “plutonium is one of the most complex metals ever discovered, a material whose basic properties are sensitive to exactly how it is processed.“ Stressing the “daunting problems associated with material purity, machining, and a host of other issues,” Younger concludes, “to think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is farfetched at best.” Under the best circumstances, the process of making a bomb could take months or even a year or more, which would, of course, have to be carried out in utter secrecy. In addition, people in the area, including criminals, may observe with increasing curiosity and puzzlement the constant coming and going of technicians unlikely to be locals. If the effort to build a bomb was successful, the finished product, weighing a ton or more, would then have to be transported to and smuggled into the relevant target country where it would have to be received by collaborators who are at once totally dedicated and technically proficient at handling, maintaining, detonating, and perhaps assembling the weapon after it arrives. The financial costs of this extensive and extended operation could easily become monumental. There would be expensive equipment to buy, smuggle, and set up and people to pay or pay off. Some operatives might work for free out of utter dedication to the cause, but the vast conspiracy also requires the subversion of a considerable array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals competent and capable enough to be effective allies are also likely to be both smart enough to see boundless opportunities for extortion and psychologically equipped by their profession to be willing to exploit them. Those who warn about the likelihood of a terrorist bomb contend that a terrorist group could, if with great difficulty, overcome each obstacle and that doing so in each case is “not impossible.” But although it may not be impossible to surmount each individual step, **the likelihood that a group could surmount a series of them quickly becomes vanishingly small**. Table 1 attempts to catalogue the barriers that must be overcome under the scenario considered most likely to be successful. In contemplating the task before them, would-be atomic terrorists would effectively be required to go though an exercise that looks much like this. If and when they do, they will undoubtedly conclude that their prospects are daunting and accordingly uninspiring or even terminally dispiriting. It is possible to calculate the chances for success. Adopting probability estimates that purposely and heavily bias the case in the terrorists’ favor—for example, assuming the terrorists have a 50% chance of overcoming each of the 20 obstacles—the chances that a concerted effort would be successful comes out to be less than one in a million. If one assumes, somewhat more realistically, that their chances at each barrier are one in three, the cumulative odds that they will be able to pull off the deed drop to one in well over three billion. Other routes would-be terrorists might take to acquire a bomb are even more problematic. They are unlikely to be given or sold a bomb by a generous like-minded nuclear state for delivery abroad because the risk would be high, even for a country led by extremists, that the bomb (and its source) would be discovered even before delivery or that it would be exploded in a manner and on a target the donor would not approve, including on the donor itself. Another concern would be that the terrorist group might be infiltrated by foreign intelligence. The terrorist group might also seek to steal or illicitly purchase a “loose nuke“ somewhere. However, it seems probable that **none exist**. All governments have an intense interest in controlling any weapons on their territory because of fears that they might become the primary target. Moreover, as technology has developed, finished bombs have been out-fitted with devices that trigger a non-nuclear explosion that destroys the bomb if it is tampered with. And there are other security techniques: Bombs can be kept disassembled with the component parts stored in separate high-security vaults, and a process can be set up in which two people and multiple codes are required not only to use the bomb but to store, maintain, and deploy it. As Younger points out, “only a few people in the world have the knowledge to cause an unauthorized detonation of a nuclear weapon.” There could be dangers in the chaos that would emerge if a nuclear state were to utterly collapse; Pakistan is frequently cited in this context and sometimes North Korea as well. However, even under such conditions, nuclear weapons would probably remain under heavy guard by people who know that a purloined bomb might be used in their own territory. They would still have locks and, in the case of Pakistan, the weapons would be disassembled. The al Qaeda factor The degree to which al Qaeda, the only terrorist group that seems to want to target the United States, has pursued or even has much interest in a nuclear weapon may have been exaggerated. The 9/11 Commission stated that “al Qaeda has tried to acquire or make nuclear weapons for at least ten years,” but the only substantial evidence it supplies comes from an episode that is supposed to have taken place about 1993 in Sudan, when al Qaeda members may have sought to purchase some uranium that turned out to be bogus. Information about this supposed venture apparently comes entirely from Jamal al Fadl, who defected from al Qaeda in 1996 after being caught stealing $110,000 from the organization. Others, including the man who allegedly purchased the uranium, assert that although there were various other scams taking place at the time that may have served as grist for Fadl, the uranium episode never happened. As a key indication of al Qaeda’s desire to obtain atomic weapons, many have focused on a set of conversations in Afghanistan in August 2001 that two Pakistani nuclear scientists reportedly had with Osama bin Laden and three other al Qaeda officials. Pakistani intelligence officers characterize the discussions as “academic” in nature. It seems that the discussion was wide-ranging and rudimentary and that the scientists provided no material or specific plans. Moreover, the scientists probably were incapable of providing truly helpful information because their expertise was not in bomb design but in the processing of fissile material, which is almost certainly beyond the capacities of a nonstate group. Kalid Sheikh Mohammed, the apparent planner of the 9/11 attacks, reportedly says that al Qaeda’s bomb efforts never went beyond searching the Internet. After the fall of the Taliban in 2001, technical experts from the CIA and the Department of Energy examined documents and other information that were uncovered by intelligence agencies and the media in Afghanistan. They uncovered no credible information that al Qaeda had obtained fissile material or acquired a nuclear weapon. Moreover, they found no evidence of any radioactive material suitable for weapons. They did uncover, however, a “nuclear-related” document discussing “openly available concepts about the nuclear fuel cycle and some weapons-related issues.” Just a day or two before al Qaeda was to flee from Afghanistan in 2001, bin Laden supposedly told a Pakistani journalist, “If the United States uses chemical or nuclear weapons against us, we might respond with chemical and nuclear weapons. We possess these weapons as a deterrent.” Given the military pressure that they were then under and taking into account the evidence of the primitive or more probably nonexistent nature of al Qaeda’s nuclear program, the reported assertions, although unsettling, appear at best to be a desperate bluff. Bin Laden has made statements about nuclear weapons a few other times. Some of these pronouncements can be seen to be threatening, but they are rather coy and indirect, indicating perhaps something of an interest, but not acknowledging a capability. And as terrorism specialist Louise Richardson observes, “Statements claiming a right to possess nuclear weapons have been misinterpreted as expressing a determination to use them. This in turn has fed the exaggeration of the threat we face.” Norwegian researcher Anne Stenersen concluded after an exhaustive study of available materials that, although “it is likely that al Qaeda central has considered the option of using non-conventional weapons,” there is “little evidence that such ideas ever developed into actual plans, or that they were given any kind of priority at the expense of more traditional types of terrorist attacks.” She also notes that information on an al Qaeda computer left behind in Afghanistan in 2001 indicates that only $2,000 to $4,000 was earmarked for weapons of mass destruction research and that the money was mainly for very crude work on chemical weapons. Today, the key portions of al Qaeda central may well total only a few hundred people, apparently assisting the Taliban’s distinctly separate, far larger, and very troublesome insurgency in Afghanistan. Beyond this tiny band, there are thousands of sympathizers and would-be jihadists spread around the globe. They mainly connect in Internet chat rooms, engage in radicalizing conversations, and variously dare each other to actually do something. Any “threat,” particularly to the West, appears, then, principally to derive from self-selected people, often isolated from each other, who fantasize about performing dire deeds. From time to time some of these people, or ones closer to al Qaeda central, actually manage to do some harm. And occasionally, they may even be able to pull off something large, such as 9/11. But in most cases, their capacities and schemes, or alleged schemes, seem to be far less dangerous than initial press reports vividly, even hysterically, suggest. Most important for present purposes, however, is that any notion that al Qaeda has the capacity to acquire nuclear weapons, even if it wanted to, looks farfetched in the extreme. It is also noteworthy that, although there have been plenty of terrorist attacks in the world since 2001, all have relied on conventional destructive methods. For the most part, terrorists seem to be heeding the advice found in a memo on an al Qaeda laptop seized in Pakistan in 2004: “Make use of that which is available … rather than waste valuable time becoming despondent over that which is not within your reach.” In fact, history consistently demonstrates that terrorists prefer weapons that they know and understand, not new, exotic ones. Glenn Carle, a 23-year CIA veteran and once its deputy intelligence officer for transnational threats, warns, “We must not take fright at the specter our leaders have exaggerated. In fact, we must see jihadists for the small, lethal, disjointed, and miserable opponents that they are.” al Qaeda, he says, has only a handful of individuals capable of planning, organizing, and leading a terrorist organization, and although the group has threatened attacks with nuclear weapons, “its capabilities are far inferior to its desires.” Policy alternatives The purpose here has not been to argue that policies designed to inconvenience the atomic terrorist are necessarily unneeded or unwise. Rather, in contrast with the many who insist that atomic terrorism under current conditions is rather likely— indeed, exceedingly likely—to come about, I have contended that it is hugely unlikely. However, it is important to consider not only the likelihood that an event will take place, but also its consequences. Therefore, one must be concerned about catastrophic events even if their probability is small, and efforts to reduce that likelihood even further may well be justified. At some point, however, probabilities become so low that, even for catastrophic events, **it may make sense to ignore them** or at least put them on the back burner; in short, the risk becomes acceptable. For example, the British could at any time attack the United States with their submarine-launched missiles and kill millions of Americans, far more than even the most monumentally gifted and lucky terrorist group. Yet the risk that this potential calamity might take place evokes little concern; essentially it is an acceptable risk. Meanwhile, Russia, with whom the United States has a rather strained relationship, could at any time do vastly more damage with its nuclear weapons, a fully imaginable calamity that is substantially ignored. In constructing what he calls “a case for fear,” Cass Sunstein, a scholar and current Obama administration official, has pointed out that if there is a yearly probability of 1 in 100,000 that terrorists could launch a nuclear or massive biological attack, the risk would cumulate to 1 in 10,000 over 10 years and to 1 in 5,000 over 20. These odds, he suggests, are “not the most comforting.” Comfort, of course, lies in the viscera of those to be comforted, and, as he suggests, many would probably have difficulty settling down with odds like that. But there must be some point at which the concerns even of these people would ease. Just perhaps it is at one of the levels suggested above: one in a million or one in three billion per attempt.

#### Ex post is the Goldilocks of judicial checks- it doesn’t limit flexibility too much

Vladeck 13 Steve Vladeck 02/10/13 (Professor of Law and the Associate Dean for Scholarship at American University Washington College of Law. His teaching and research focus on federal jurisdiction, constitutional law, national security law, and international criminal law. “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might...”, LawFare, from a conference hosted by Columbia Law School on targeted killings.)

In my view, the adversity issue is the deepest legal flaw in “drone court” proposals. But the idea of an ex ante judicial process for signing off on targeted killing operations may also raise some serious separation of powers concerns insofar as such review could directly interfere with the Executive’s ability to carry out ongoing military operations… First, and most significantly, even though I am not a particularly strong defender of unilateral (and indefeasible) presidential war powers, I do think that, if the Constitution protects any such authority on the part of the President (another big “if”), it includes at least some discretion when it comes to the “defensive” war power, i.e., the President’s power to use military force to defend U.S. persons and territory, whether as part of an ongoing international or non-international armed conflict or not. And although the Constitution certainly constrains how the President may use that power, it’s a different issue altogether to suggest that the Constitution might forbid him for acting at all without prior judicial approval–especially in cases where the President otherwise would have the power to use lethal force. This ties together with the related point of just how difficult it would be to actually have meaningful ex ante review in a context in which time is so often of the essence. If, as I have to think is true, many of the opportunities for these kinds of operations are fleeting–and often open and close within a short window–then a requirement of judicial review in all cases might actually prevent the government from otherwise carrying out authority that most would agree it has (at least in the appropriate circumstances). This possibility is exactly why FISA itself was enacted with a pair of emergency provisions (one for specific emergencies; one for the beginning of a declared war), and comparable emergency exceptions in this context would almost necessarily swallow the rule. Indeed, the narrower a definition of imminence that we accept, the more this becomes a problem, since the time frame in which the government could simultaneously demonstrate that a target (1) poses such a threat to the United States; and (2) cannot be captured through less lethal measures will necessarily be a vanishing one. Even if judicial review were possible in that context, it’s hard to imagine that it would produce wise, just, or remotely reliable decisions. That’s why, even though I disagree with the DOJ white paper that ex ante review would present a nonjusticiable political question, I actually agree that courts are ill-suited to hear such cases–not because, as the white paper suggests, they lack the power to do so, but because, in most such cases, they would lack the competence to do so. III. Drone Courts and the Legitimacy Problem That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante revew in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea. IV. Why Damages Actions Don’t Raise the Same Legal Concerns At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I actually think virtually all of these concerns could be mitigated.

#### Prevents Congressional interference in the future

Chesney et al 13 Robert, Task Force on National Security and Law, National Security and law, A Statutory Framework for Next-Generation Terrorist Threats, 2-25, [www.hoover.org/taskforces/national-security](http://www.hoover.org/taskforces/national-security)

While we believe there will be a need for a new AUMF, and while we discuss options for such a new statute in Parts II and III, we first pause to note the general downsides of a new AUMF. As the discussion of inherent presidential power implies, a new statutory framework for presidential uses of force against newly developing terrorist threats might diminish presidential flexibility and discretion at the margins. At the same time, of course, it enhances the legitimacy of presidential action in domestic courts and with domestic public opinion. This constraint-legitimacy tradeoff is commonplace. And to the extent that the constraint achieves legitimacy it promotes sustainable counterterrorism policy, politically and legally, over the long term. A strong statutory basis makes it less likely that Congress or courts will intervene later with constraints that dangerously hamper the president’s agility to respond to threats.

**Syria triggers the DA**

Rothkopf, 9/1**/13** – editor of Foreign Policy (David, “Rothkopf: 5 consequences of President Obama's Syria decision” <http://www.newsday.com/opinion/oped/rothkopf-5-consequences-of-president-obama-s-syria-decision-1.5993890>)

3. He's now boxed in for the rest of his term. Whatever happens with regard to Syria, the larger consequence of the president's action will **resonate for years**. The president has made it highly unlikely that at any time during the remainder of his term he will be able to begin military action **without** seeking **congress**ional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary. But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of **precedent** -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way. 4. This president just dialed back the power of his own office. **Obama has reversed decades of precedent regarding the nature of presidential war powers** -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship. The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider House Speaker John Boehner's statement that Congress will not reconvene before its scheduled Sept. 9 return to Washington. Perhaps more important, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to dial back the imperial presidency **than anything his predecessors** or Congress have done **for decades**. 5. America's international standing will likely suffer. As a consequence of all of the above, even if the president "wins" and persuades Congress to support his extremely limited action in Syria, the perception of America as a nimble, forceful actor on the world stage and that its president is a man whose word carries great weight is **likely to be diminished**. Again, like the shift or hate it, foreign leaders can do the math. Not only is post-Iraq, post-Afghanistan America less inclined to get involved anywhere, but when it comes to the use of U.S. military force (our one indisputable source of superpower strength) we just became a whole lot less likely to act or, in any event, act quickly. Again, good or bad, that is a stance that is likely to figure into the calculus of those who once feared provoking the United States.

#### Counter-terrorism experts agree- Overreliance on drones comes at the expense of more successful counter-terrorism strategies.

Brooks 13 Rosa is a Bernard L. Schwartz senior fellow at the New America Foundation, a tenured law professor at the Georgetown University Law Center, From 2009-2011, Brooks served as Counselor to Undersecretary of Defense for Policy. Founded DoD’s Office for Rule of Law and International Humanitarian Policy and led a major overhaul of the Defense Department's strategic communication and information operations efforts. In July 2011, she received the Secretary of Defense Medal for Outstanding Public Service, “The Constitutional and Counterterrorism Implications of Targeted Killing” held by the Senate Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Human Rights. 4-23

When we come to rely excessively on drone strikes as a counterterrorism tool, this has potential costs of its own. Drones strikes enable a "short-term fix" approach to counterterrorism, one that relies excessively on eliminating specific individuals deemed to be a threat, without much discussion of whether this strategy is likely to produce long-term security gains. Most counter-terrorism experts agree that in the long-term, terrorist organizations are rarely defeated militarily. Instead, terrorist groups fade away when they lose the support of the populations within which they work. They die out when their ideological underpinnings come undone – when new recruits stop appearing—when the communities in which they work stop providing active or passive forms of assistance—when local leaders speak out against them and residents report their activities and identities to the authorities. A comprehensive counterterrorist strategy recognizes this, and therefore relies heavily on activities intended to undermine terrorist credibility within populations, as well as on activities designed to disrupt terrorist communications and financing. Much of the time, these are the traditional tools of intelligence and law enforcement. Kinetic force undeniably has a role to play in counterterrorism in certain circumstances, but it is rarely a magic bullet. In addition, overreliance on kinetic tools at the expense of other approaches can be dangerous. Drone strikes -- lawful or not, justifiable or not – can have the unintended consequence of increasing both regional instability and anti-American sentiment. Drone strikes sow fear among the "guilty" and the innocent alike,61 and the use of drones in Pakistan and Yemen has increasingly been met with both popular and diplomatic protests. Indeed, drone strikes are increasingly causing dismay and concern within the U.S. population. As the Obama administration increases its reliance on drone strikes as the counterterrorism tool of choice, it is hard not to wonder whether we have begun to trade tactical gains for strategic losses. What impact will U.S. drone strikes ultimately have on the stability of Pakistan, Yemen, or Somalia?62 To what degree -- especially as we reach further and further down the terrorist food chain, killing small fish who may be motivated less by ideology than economic desperation -- are we actually creating new grievances within the local population – or even within diaspora populations here in the United States?63 As Defense Secretary Donald Rumsfeld asked during the Iraq war, are we creating terrorists faster than we kill them?64

#### The aff forces the military to get better info before a strike

Taylor 13 Paul is a Senior Fellow at the Center for Policy & Research and an alumnus of Seton Hall Law School and the Whitehead School of Diplomacy and International Relations. Veteran of the Army’s 82nd Airborne Division, with deployments to both Afghanistan and to Iraq, and has worked at the International Criminal Tribunal for Rwanda and Global Action to Prevent War. Transparent Policy, http://transparentpolicy.org/2013/03/former-dod-lawyer-frowns-on-drone-court/

Lastly, there is the concern of creating perverse incentives: whether a person’s name or identity is known has never been a factor in determining the legality of targeting an otherwise-lawful military target. But by creating a separate legal regime for known targets, we could create a disincentive to collect information about a target. We do not want a military or intelligence agency that keeps itself intentionally uninformed. Nor do we want to halt a military operation in progress simply because one of the targets is recognized late. Conducting the review ex post would not eliminate these issues, but it would substantially mitigate them. The military (or CIA, if it keeps its program), would not fear an interruption of its operations, and could even have an incentive to collect more information in order to later please a court that has plenty of time to look back at the past operations and question whether an individual was in fact targeted.

**That’s key to solve binary thinking and terror.**

Aydinli, 10 – (Ersel, Executive Director of the Turkish Fulbright Commission and Associate Professor in the Department of International Relations at Bilkent University “Emerging Transnational (In)security Governance,” <http://www.politicalscience.uncc.edu/jwalsh/bilkent.pdf>)

Accurate intelligence allows the government to bring to bear its police, military, and other resources to disrupt a terrorist group's activities. As Derek Reveron puts it, "the war on terror requires high levels of intelligence to identify a threat relative to the amount of force required to neutralize it. This fact elevates intelligence in importance and places it on the frontline against terrorism."1 Intelligence is most useful for elements of counter-terrorism policy that aim to disrupt such groups' recruitment, financing, security of operations, bases, movement of personnel, and so on, through actions of military, police, intelligence, and judicial arms of the state. Intelligence is also very useful for internal or homeland security if it can identify likely targets that should be better protected against attack. Operational intelligence is less important for policies aimed at reducing support for terrorist groups by, for example, promoting economic development or democracy. However, analysis that draws on secret intelligence might assist policymakers in better implementing such policies by, for example, accurately specifying the grievances that motivate terrorist groups and their supporters.

### Heg da

#### Syria proves the entire world already views Obama as weak.

Forbes 13 “Weak On Syria, Weak In The World” http://www.forbes.com/sites/dougschoen/2013/09/01/weak-on-syria-weak-in-the-world/

I am sure they are breathing a sigh of relief – if not celebrating – in Damascus, Tehran and Moscow. By that I mean that it looks like, at least for the short term, that President Assad has gotten away with using chemical weapons on his civilian population. The President’s announcement that notwithstanding Secretary Kerry’s speech on Friday, he was deferring military action until Congress gives authorization strikes me as far more a political speech designed to get him off the hook than it does principled policy making. Put another way, the President made it clear a year ago that there was a red line that the Syrians should not cross. All evidence suggests that they have surely crossed it and instead of striking, the President lectures the American people, and indeed the world, on American democracy. Indeed, just this morning, a Syrian state state-run newspaper called Obama’s decision to seek Congressional approval before taking military action “the start of the historic American retreat.” It doesn’t get clearer than that. This is not a president who shies away from using his executive power. He has altered ObamaCare, pushed his gun control agenda to strengthen national background checks, delayed the deportation of illegal immigrants when Congress wouldn’t agree amongst many other examples. But he has now suddenly decided that before he takes action, action that is within his purview, he is going to seek Congressional approval that is almost impossible to predict as to whether it will be granted or not. If Obama really wanted to go ahead he would have brought congress back into session immediately and not waited more than 10 days thereby giving the Syrians time to plan for an attack – should one ultimately come. And even then, Obama has made it clear any such attack will be limited in nature and scope and will not involve regime change. It follows that the message Obama’s speech yesterday sends is a muddled one at best. It said to the mullahs in Iran and their Supreme Leader Ali Khamenei that they can continue to pursue their nuclear program by enriching uranium and refining plutonium without having to fear that they will be precipitously attacked by the US. And to Russia’s President Putin, who has been an unbendable ally of Assad, providing him with arms and anti-aircraft weaponry, Obama has shown that the balance of power in the Middle East has almost certainly shifted away from the US. This is all the more alarming as Putin said just yesterday that the idea that the Syrian regime used chemical weapons is “absolute nonsense.” What’s more, with a totally incoherent American policy on Egypt wherein it is unclear who and what we support, the US’s approach to the Syria further paints a bleak picture of American power and potency. Indeed, with our only real achievement in the region being the recent appearance of convincing the Arabs and Israelis to come to the peace table, an image of American uncertainty is radiating across the globe. And although this would be a serious accomplishment if progress is made, our inaction on Syria signals to Israel, one of our strongest allies, that we are not willing to stick our neck out for them, their safety and way of life. To our allies around the world who have said that if we do not stand firm we will send the wrong message to the Syrians, Obama offered not much of a response other than to tell them, in so many words, that they may well have to go it alone. The US has not been sending clear messages. And though it may be apparent to me that the President’s move was calculated to force responsibility on a reluctant Congress and to play to 80% of the American people who have said in polls that they are against intervention in Syria, that does not mean that the US is offering anything but a confused image of our mission in the world to both our allies and foes. Thus, in the short term the President may have managed to escape from the political quandary he faces. But in the longer term, America looks weaker, feckless and more uncertain. President Obama has, if nothing else, compounded the view of a weak leader heading an unsure nation. This is an image we can ill afford to project. And, more to the point, the President’s speech showed that we are now a nation so far from the one Madeleine Albright described as indispensable that it is altogether difficult to recognize both our mission and our national ethos.

#### Squo kills allies support and turns WoT

Kronin 13 Audrey Kurth, Public Policy Prof @ George Mason (“Why Drones Fail”, July-August, Foreign Affairs, Academic OneFile)

But no counterterrorism strategy can succeed over time without public support. That is because a crucial element in the success of U.S. counterterrorism has been close collaboration with allies on issues of terrorist financing, the extradition of terrorist suspects, and, most important, the sharing of vital intelligence. Obama ran for office in 2008 on the promise that he would restore the United States' reputation abroad. But his administration's unilateralism and lack of transparency on targeted killings are undermining the connections that were painstakingly built over the past decade, particularly with Pakistan and Yemen. This decreases the likelihood that allies will cooperate with Washington and increases the chances of terrorist attacks against Americans.

#### The credibility imperative causes threat inflation and shuts down deliberation --- only the alt can solve policy overstretch

Fettweis August 2010 (Christopher J. Fettweis, Assistant Professor of National Security Affairs in the National Security Decision Making Department at the U.S. Naval War College, holds a Ph.D. in International Relations and Comparative Politics from the University of Maryland-College Park, Associate Professor of Political Science at Tulane University, “The Remnants of Honor: Pathology, Credibility and U.S. Foreign Policy”, SSRN)

Hyperbole The credibility imperative often produces rather gaudy hyperbole, or at least underexplained dangers, even in otherwise sober analysts. If the United States were to lose credibility, hawks warn that the floodgates would open to a variety of catastrophes, setting off dominoes that would eventually not only threaten vital interests and make war necessary, but might somehow lead to the end of the republic itself (or to the death of freedom, or to the destruction of civilization, or other horrific disaster). The credibility imperative warns that momentum toward the abyss can begin with the smallest demonstration of irresolution, thus sustaining the vision of an interdependent system where there are no inconsequential events. Snowballs are be easier to stop at the top of the hill, before they have gained momentum.43 Therefore, even tiny slips can begin the United States down the slope toward unmitigated disaster. Once issues are framed in such terms, belligerence becomes understandable. Foreign policy is by necessity a worst-case-scenario business, and decision makers are always wise to hedge against negative outcomes.44 Since a loss of credibility offers a plausible-sounding route to national ruin, it seems logical for policymakers to pay limited costs in the present if by doing so they can avoid unlimited disasters in the future. After all, while incorrect academics face virtually no consequences, missteps by leaders can often be catastrophic. The desire to prevent negative outcomes is prudent; the fear of triggering impossible outcomes is pathological. The credibility imperative inspires decision makers to cross the line between the two time and time again. It never seems necessary to explain precisely how these catastrophes could occur. The mere suggestion that inaction could lead to ruin is often sufficient to shout down those who object to demonstrations of resolution in minor crises. Once leaders internalize the belief that threats are interdependent, it seems to logically follow that the loss of credibility anywhere would be disastrous for U.S. interests everywhere. The costs of tomorrow’s catastrophe will always outweigh those of today’s minor display of resolution. George Ball stood little chance against Robert McNamara. Quemoy and Matsu might not have not seemed to be terribly important to U.S national security in 1955, for example, but if they fell to the Chinese without response the resulting loss of credibility would enable the communists “to begin their objective of driving us out of the western Pacific, right back to Hawaii and even to the United States,” according to John Foster Dulles.45 In 1983, President Reagan told Congress that if the United States failed in Central America, “our credibility would collapse, our alliances would crumble, and the safety of our homeland would be put at jeopardy.”46 Michael Ledeen of the American Enterprise Institute argued that the negotiations with China over the return of the crew during the EP-3A mini-crisis with China in 2001 were “part of an enormously important process, in which the survival of the United States may very well be at stake.”47 Former Secretary of Defense Melvin Laird warned that the stakes in Iraq “could not be higher for the continued existence of our own democracy.”48 The hyperbole produced by the war in Vietnam deserves special mention, since it was in a class by itself. Vice President Johnson worried in 1961 that if South Vietnam were to fall, “the United States must inevitably surrender the Pacific…and pull back our defenses to San Francisco.”49 Secretary of State Dean Rusk wrote that if U.S. commitments became discredited through defeat, “the communist world would draw conclusions that would lead to our ruin and almost certainly to a catastrophic war.”50 As President, Johnson warned his cabinet that “if we run out on Southeast Asia, there will be trouble ahead in every part of the globe – not just in Asia, but in the Middle East and in Europe, in Africa and Latin America. I am convinced that our retreat from this challenge will open the path to World War III.”51 His successor argued that defeat “would spark violence wherever our commitments help maintain the peace – in the Middle East, in Berlin, eventually even in the Western Hemisphere.”52 And Henry Kissinger felt that if South Vietnam were allowed to fall, it would represent a “fundamental threat, over a period of time, to the security of the United States.”53 Somehow “untold millions would be in jeopardy.”54 Audiences often seem distressingly willing to accept projections of catastrophe at face value. Rarely are policymakers or analysts asked to justify these visions, or pressed to examine the logic connecting the present decisions to such catastrophic future consequences. Could interdependence alone set off such enormous strings of disasters? Why should anyone believe that the loss of credibility would result in an unprecedented, unimaginable outcomes? When the United States did not respond belligerently to the seizure of the Pueblo in 1968, Kissinger believed that “we paid for it in many intangible ways, in demoralized friends and emboldened adversaries.”55 No one seemed to ask him in what ways, or which friends, or which adversaries, or if in general one should allow such imprecise, borderline delusional beliefs to drive policy. In this case and others, the shadow of the future blinded the policymakers of the present. During debates, establishing logical connections is never as important as establishing the potential, however slim, for catastrophe. The public is meant to accept these warnings on faith alone, with the understanding that the trusted elite have more experience and expertise in these matters. Few would oppose the defense of Quemoy and Matsu once it was explained that belligerence would prevent a “catastrophic war.” Similarly, it was difficult to argue that aid to the Contras was not in the national interest once it became linked to the survival of NATO and the safety of “our homeland.” Once policymakers internalize the imperative to remain credible, logic and reason can become casualties of fear. It is tempting to doubt the sincerity of those employing hyperbole. It is possible that these decision makers did not really believe what they are saying, and were instead attempting to instill fear in the public for political purposes. Divining the “true motivation” behind the statements and actions of political leaders is a popular cottage industry; it is also necessarily speculative and tendentious. There is little reason to doubt that those under the spell of the credibility imperative mean exactly what they say. After all, it is not only leaders who are guilty – analysts and scholars with little political pressure often reach much the same conclusions. Ultimately, whether statements like these are expressions of actual belief or merely attempts to sell what might be unpopular policies to a skeptical public is not as important as the recognition of the hyperbole, understanding of the origins and minimization of its effects.

#### Unchecked executive warmaking power is worse for national interests- no guarantee that flexibility causes better decision-making

Shane 12 Peter M. Jacob E. Davis and Jacob E. Davis II Chair in Law, The Ohio State University Moritz School of Law. From 1978 to 1981, served in the Office of Legal Counsel, U.S. Department of Justice. Journal of National Security Law & Policy, 5 J. Nat'l Security L. & Pol'y 507

The theory that the President is accountable to no one invites a style of decisionmaking in which any dissent from the expansion of executive power is regarded not merely as wrong, but disloyal. Dissenters do not just lose arguments; they are punished. The tension between presidentialism and the rule of law is not just a matter of principle. Presidentialism licenses a style of executive policy making that, in utterly foreseeable ways, makes certain types of violations of law more likely. Aggressive presidentialism does not produce superior decisions in terms of wisdom or attractiveness as public policy. Instead, the pattern we have seen with regard to previous [\*517] administrations - constricted debate among the like-minded - produces decisions at odds with even the executive branch's professed vision of the national interest.

### Politics

#### No risk of unilateral Israel strikes on Iran – media bias

Lindorff, 11-13-’11 (Dave, “Washington’s Fake ‘Concern’ About a Possible Israeli Attack on Iran” https://www.commondreams.org/view/2011/11/13-8)

When it comes to mainstream press reports about a possible Israeli attack on Iran’s nuclear facilities, it’s time to check the bullshit detector. Corporate media reports are claiming that the Pentagon and the White House are “worried” or “concerned” that the Israeli government may decide to attack Iran, and that the US is “trying to learn” what Israel’s real intentions are: is there a serious plan to attack or is this all just an effort to blackmail the US into taking stronger measures against Iran? As CNN put it in a Nov. 4 report: The United States has become increasingly concerned Israel could be preparing to strike Iran's nuclear program, a senior U.S. military official told CNN on Friday. The U.S. military and intelligence community in recent weeks have stepped up "watchfulness" of both Iran and Israel, according to the senior U.S. military official and a second military official familiar with the U.S. actions. Asked if the Pentagon was concerned about an attack, the senior military official replied "absolutely." Both officials declined to be identified because of the extreme sensitivity of the matter. Bzzzzzzzzzzz Oops! The Bullshit detector just went off. Missing from all these reports about Washington “concern,” and from statements being leaked by Pentagon and White House “sources,” is any mention of the fact that Israel’s entire air force consists of planes built in and funded by the United States. The F-15s and F-16s and the specially designed F-16I and F-15I, manufactured by Lockheed Martin and Boeing to Israeli Air Force specifications, are the planes that would have the job of delivering bombs to Iranian targets and providing cover against Iranian fighter defenses. One word from the US and those weapons systems would be grounded. After all, without US spare parts and US financing, Israel’s air force ceases to exist. So the claim that Washington is “worried” about Israel going it alone in a strike on Iran is, to put it bluntly, a lie. Now you could get deeper into it and speculate if you like that both the Israeli government and the Obama Administration want to promote media speculation that Israel may be planning an attack, and for the same reason: to allow, or to pressure, Washington to tighten the economic screws on Iran and perhaps to step up covert attacks on Iran. Or alternatively, Washington wants Israel to attack Iran, but wants to be able to claim that the US isn’t behind it. I tend to lean towards the first theory, because I don’t think that the US really wants the kind of explosion in the Middle East which would surely happen if Israel were to attack Iran. But then, who knows? The Neo-Cons have considerable sway in Washington, and these psychopaths do want such a conflict. Whatever the truth of what’s going on, let’s at least clear away the Big Lie. With the Israeli Air Force almost totally dependent upon the largesse of the United States, Israel is not going to do anything to Iran that is not 100 percent approved in advance by Washington.

#### Farm bill is Obama’s top priority.

Hopkinson 11-11. [Jenny, Ag & food reporter, "COOL rules under fire in farm bill — Obama names farm bill as top priority, again — Pew delivers report on GRAS" Politico -- www.politico.com/morningagriculture/1113/morningagriculture12187.html]

OBAMA: FARM BILL TOP PRIORITY: President Obama on Friday, in a speech on exports at the Port of the New Orleans, reiterated his calls for the farm bill to be Congress’ number one priority now. “Congress needs to pass a farm bill that helps rural communities grow and protects vulnerable Americans,” Obama said. “For decades, Congress found a way to compromise and pass farm bills without fuss. For some reason, now Congress can't even get that done. Now, this is not something that just benefits farmers. Ports like this one depend on all the products coming down the Mississippi. So let’s do the right thing, pass a farm bill. We can start selling more products. That's more business for this port. And that means more jobs right here.”

#### No Iran votes – Vitter amendment.

Everett 11-14. [Burgess, congressional reporter, "David Vitter amendment could delay Iran sanctions" Politico -- www.politico.com/story/2013/11/david-vitter-amendment-senate-iran-sanctions-delay-99898.html]

In its quest to keep Congress from enacting new sanctions on Iran, President Barack Obama may have found an unlikely ally: Sen. David Vitter.¶ The Louisiana Republican’s insistence that he receive a vote on his Obamacare amendment on pharmaceutical safety legislation looks likely to have the unintended consequence of delaying until December votes on the defense authorization bill. That includes amendments desired by some senators to impose harsher sanctions on Iran for its nuclear program.

#### Their link is Non-unique – Johnson’s confirmation hearing will FORCE the administration to defend its drone policy to the Senate. The debate will feature the constitutionality of a “Drone Court.”

ARIT **JOHN** **10/18**/13 (Staff Writer for The Atlantic, “Obama's New Homeland Security Nominee Will Spark More Drone Debate,” http://www.theatlanticwire.com/politics/2013/10/jeh-johnsons-drone-stance-might-be-tough-sell/70696/)

On Friday, President Obama nominated Jeh Johnson, formerly the Defense Department's general counsel, as the head of the Department of Homeland Security. If approved by the Senate he'd be taking over for Janet Napolitano, who stepped down earlier this summer. He's well liked and respected in Washington, but his allegiance to Obama — and, specifically, his statements on drones — might make him a hard sell to some. Johnson worked with the administration during Obama's first term, when he was heavily involved in controversial decisions regarding increased use of military commissions to try suspected terrorists (as opposed to civilian courts), the repeal of Don't Ask, Don't Tell, attempts to close Guantanamo Bay, and the escalation of the drone program. In March**, he shot down the suggestion of a "Drone Court"** that would regulate the targeted-killing program. "The idea is motivated by a desire to rein in the president’s constitutional authority to engage in armed conflict and protect the nation, which is the very reason it has constitutional problems," Johnson said to an audience at a Center on National Security conference. But in a speech in March, Johnson called for more openness on the strikes, arguing that "in the absence of an official picture of what our government is doing... many in the public fill the void by imagining the worst." In May, while a guest on Rachel Maddow's MSNBC show, he admitted that a drone strike in Yemen that killed a 16-year-old American citizen was effectively an accident. Beyond drones, the same people who'll be happy that he was involved in the decision to move WikiLeaks leaker Chelsea Manning from Quantico to Fort Leavenworth (where conditions are less harsh) might be upset about his crackdown on unauthorized leaking. Others have been upset by his comments on war. Last November, while speaking at Oxford University, Johnson said that the U.S. war against al Qaeda would soon shift from combat to intelligence and law enforcement. "War must be regarded as a finite, extraordinary and unnatural state of affairs," Johnson said. "In its 12th year, we must not accept the current conflict, and all that it entails, as the new normal." In his remarks that day he also implied that we would soon reach a point when all of al Qaeda's chief operatives are dead, which might worry some Senate Republicans concerned with growing extremism in Africa, wrote the conservative Washington Times. Then there's just plain old politics. Johnson is described as a "well-known and trusted figure in the Obama White House," according to The Daily Beast, and that's enough reason to dislike him for some. Johnson was one of Obama's earliest supporters when he ran for office in 2008, and he campaigned and fundraised extensively for him. "The president is selecting Johnson because he is one the most highly qualified and respected national security leaders," an anonymous senior administration official told The Washington Post. "During his tenure at the Department of Defense, he was known for his sound judgment and counsel." We'll see if the Senate agrees.

#### Plan is a concession- Congress wants to stand up to Obama on TK- both sides want transparency

Serwer 12 Adam Serwer is a former reporter at Mother Jones. Prior to working at Mother Jones, he was a staff writer at the American Prospect. Adam has written for the Washington Post, the Root, the Village Voice, and the New York Daily News. “Congress Wants to See Obama's "License to Kill"” July 31 2012 http://www.motherjones.com/politics/2012/07/congress-disclose-obama-targeted-killing-memos

Congress is finally standing up to President Barack Obama on targeted killing. Almost a year after three American citizens were killed in US drone strikes, legislators are pushing the administration to explain why it believes it's legal to kill American terror suspects overseas. Congress is considering two measures that would compel the Obama administration to show members of Congress what Sen. Chuck Grassley (R-Iowa) calls Obama's "license to kill": internal memos outlining the legal justification for killing Americans overseas without charge or trial. Legislators have been asking administration officials to release the documents for nearly a year, raising the issue multiple times in hearings and letters. But the new proposals, including one from Sen. John Cornyn (R-Texas) first flagged by blogger Marcy Wheeler and another in a separate intelligence bill, aren't requests—they would mandate disclosure. That shift shows both Republicans and Democrats are growing impatient with the lack of transparency on targeted killings. After radical American-born cleric Anwar al-Awlaki, alleged American Al Qaeda propagandist Samir Khan, and Awlaki's 16-year-old son, Abdulrahman, were killed by drone strikes in Yemen in September and October of last year, Republican and Democratic members of Congress sent letters asking the Obama administration to explain the legal justification for targeted killing of American citizens. "We got a license to kill Americans, and we don't know the legal basis for the license to kill Americans…because our letters haven't been answered," Grassley complained during a Senate Judiciary Committee hearing last week. The New York Times has confirmed the existence of a secret memo from the Justice Department's Office of Legal Counsel (OLC)—the branch of the government that tells the president whether what he wants to do is legal—outlining the legal basis for the targeted killing program. But the Obama administration has yet to acknowledge that any such memo exists, despite defending the targeted killing policy in speeches and public appearances, and is currently fighting an American Civil Liberties Union lawsuit that seeks to force the government to reveal the legal justification for targeted killing. Now Congress seems to be moving towards the ACLU's position.

#### Obama won’t get involved- he’ll make someone else talk to Congress

WSJ 13 “White House Aims to Make Case to War-Weary Public” 8/27 http://online.wsj.com/article/SB10001424127887324906304579039340954396628.html?KEYWORDS=obama+syria+congress

At the same time, Mr. Obama doesn't want to ignite a fight with Capitol Hill, given the stiff resistance facing his agenda there already and the lack of support among Americans for military intervention. Mr. Obama came under criticism from some lawmakers for his 2011 decision to join the military mission in Libya without congressional approval. Now, the White House is stepping up its engagement with lawmakers in an attempt to blunt criticism that it is contemplating action against Syria without legislative consent. House Republican aides said senior administration officials have been more proactive in keeping Congress informed about developments on Syria than they had been in the lead-up to U.S. involvement in Libya. On Monday, White House Chief of Staff Denis McDonough called House Speaker John Boehner (R., Ohio) to smooth any potential tensions, people familiar with the call said. A few hours earlier, Mr. Boehner's office publicly called on the president to do a better job keeping congressional leaders apprised of his deliberations. Senate Minority Leader Mitch McConnell (R., Ky.) was also briefed by the White House this week, as was Senate Majority Leader Harry Reid (D., Nev.). House Minority Leader Nancy Pelosi (D., Calif.) was briefed on Monday evening by Susan Rice, Mr. Obama's national-security adviser, an aide to the Democratic leader said. Senior Pentagon officials spoke on Monday to Rep. Howard "Buck" McKeon (R., Calif.), who leads the House Armed Services Committee, an aide to the lawmaker said. A House Democratic aide said Rep. Eliot Engel (D., N.Y.), the top Democrat on the House Foreign Affairs Committee, spoke to Secretary of State John Kerry.

1. Political capital is fabricated- you can’t predict momentum or uplanned events. There’s only a risk the plan is a win.

Hirsh, Chief Correspondent National Journal, 2-7-’13 (Michael, “There’s No Such Thing as Political Capital” National Journal, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207)

On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through.¶ Most of this talk will have no bearing on what actually happens over the next four years.¶ Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen.¶ What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.”¶ As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The political tectonics have shifted dramatically in very little time. Whole new possibilities exist now that didn’t a few weeks ago.¶ Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all.¶ The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.”¶ The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything.