# \*\*\*1NC

# 1

**Politics is schmittian---trying to fight the executive on their own battlefield is naïve---the aff is just a liberal knee-jerk reaction that swells executive power**

**Kinniburgh, 5/27 –** (Colin, Dissent, 5-27, <http://www.dissentmagazine.org/blog/partial-readings-the-rule-of-law>)

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

**Legality is what feeds a new form of muscular liberalism where these illusions cannot see how much they sustain it which legitimizes wars for democracies and doctrines of pre-emption**

Motha 8 \*Stewart, Senior Lecturer, Kent Law School, University of Kent, Canterbury, Kent, Journal of Law, Culture, and Humanities Forthcoming 2008, Liberal Cults, Suicide Bombers, and other Theological Dilemmas

A universalist liberal ideology has been re-asserted. It is not only neo-con hawks or Blairite opportunists that now legitimise wars for democracy. Alarmingly, it is a generation of political thinkers who opposed the Nixonian logic of war (wars to show that a country can ‘credibly’ fight a war to protect its interests1), and those humbled by the anticolonial struggles of liberation from previous incarnations of European superiority that are renewing spurious civilizational discourses. This ‘muscular liberalism’ has found its voice at the moment of a global political debate about the legality and effectiveness of ‘just wars’ – so called ‘wars for democracy’ or ‘humanitarian war’. The new political alignment of the liberal left emerged in the context of discussions about the ‘use of force’ irrespective of UN Security Council endorsement or the sovereign state’s territorial integrity, such as in Kosovo – but gained rapid momentum in response to attacks in New York City and Washington on September 11, 2001. Parts of the liberal left have now aligned themselves with neoconservative foreign policies, and have joined what they believe is a new anti-totalitarian global struggle – the ‘war on terror’ or the battle against Islamist fundamentalism. One task of this essay, then, is to identify this new formation of the liberal left. Much horror and suffering has been unleashed on the world in the name of the liberal society which must endure. However, when suicide bombing and state-terror are compared, the retort is that there is no moral equivalence between the two. Talal Asad in his evocative book, On Suicide Bombing, has probed the horror that is felt about suicide bombing in contrast to state violence and terror.2 What affective associations are formed in the reaction to suicide bombing? What does horror about suicide bombing tell us about the constitution of inter-subjective relations? In this essay I begin to probe these questions about the relation between death, subjectivity, and politics. I want to excavate below the surface oppositions of good deaths and bad, justifiable killing and barbarism, which have been so central to left liberal arguments. As so much is riding on the difference between ‘our good war’ and ‘their cult of death’, it seems apt to examine and undo the opposition. The muscular liberal left projects itself as embodying the values of the ‘West’, a geo-political convergence that is regularly opposed to the ‘East’, ‘Muslims’, or the ‘Islamic World’. I undo this opposition, arguing that thanatopolitics, a convergence of death, sacrifice, martyrdom and politics, is common to left liberal and Islamist political formations. How does death become political for left liberals and Islamist suicide bombers? In the case of the latter, what is most immediately apparent is how little is known about the politics and politicization of suicide bombers. Suicide bombers are represented as a near perfect contrast to the free, autonomous, self-legislating liberal subject – a person overdetermined by her backward culture, oppressive setting, and yet also empty of content, and whose death can have no temporal political purchase. The ‘suicide bomber’ tends to be treated by the liberal left as a trans-historical ‘figure’, usually represented as the ‘Islamo-fascist’ or the ‘irrational’ Muslim.3 The causes of suicide bombing are often implicitly placed on Islam itself – a religion that is represented as devoid of ‘scepticism, doubt, or rebellion’ and thus seen as a favourable setting for totalitarianism.4 The account of the suicide bomber as neo-fascist assassin supplements a lack – that is, that the association of suicide bombing with Islam explains very little. The suicide bomber is thus made completely familiar as totalitarian fascist, or wholly other as “[a] completely new kind of enemy, one for whom death is not death”.5 So much that is written about the suicide bomber glosses over the unknown with political subjectivities, figures, and paradigms (such as fascism) which are familiar enough to be vociferously opposed. By drawing the suicide bomber into a familiar moral register of ‘evil’, political and historical relations between victim and perpetrator are erased.6 In the place of ethnographically informed research the ‘theorist’ or ‘public intellectual’ erases the contingency of the suicide bomber and reduces her death to pure annihilation, or nothingness. The discussion concludes by undoing the notion of the ‘West’, the very ground that the liberal left assert they stand for. The ‘West’ is no longer a viable representation of a geo-political convergence, if it ever was. Liberal discourse has regarded itself as the projection of the ‘West’ and its enlightenment. But this ignores important continuities between Islam, Christianity, and contemporary secular formations. The current ‘clash of monotheisms’, I argue after J-L Nancy, reveals a crisis of sense, authority, and meaning which is inherent to the monotheistic form. An increasingly globalised world is made up of political communities and juridical orders that have been ‘emptied’ of authority and certainty. This crisis of sense conditions the horror felt by the supposedly rational liberal in the face of Islamist terrorism. Horror at terrorism is then the affective bond that sustains a grouping that otherwise suffers the loss of a political project with a definite end. The general objective of this essay is to challenge the unexamined assumptions about politics and death that circulate in liberal left denunciations of Islamic fascism. The horror and fascination with the figure of the suicide bomber reveals an unacknowledged affective bond that constitutes the muscular liberal left as a political formation. This relies on disavowing the sacrificial and theological underpinnings of political liberalism itself – and ignores the continuities between what is called the ‘West’ and the theologico-political enterprise of monotheism. Monotheism is not the preserve of something called the ‘West’, but rather an enterprise that is common to all three Religions of the Book. The article concludes by describing how the writings of Jean-Luc Nancy on monotheism offer liberal left thinkers insights for rethinking the crisis of value that resulted from the collapse of grand emancipatory enterprises as well as the fragmentation of politics resulting from a focus on political identification through difference. I opened with a reference to the ‘liberal left’. Of course the ‘liberal left’ signifies a vast and varied range of political thinking and activism – so I must clarify how I am deploying this term. In this essay the terms ‘liberal left’ or ‘muscular liberal’ are used interchangeably. Paul Berman and Nick Cohen, whose writing I will shortly refer to, are exemplars of the new political alignment who self-identify as ‘democrats and progressives’, but whose writings feature bellicose assertions about the superiority of western models of democracy, and universal human rights.7 Among this liberal left, democracy and freedom become hemispheric and come to stand for the West. More generally, now, the ‘liberal left’ can be distinguished from political movements and thinkers who draw inspiration from a Marxist tradition of thought with a socialist horizon. The liberal left I am referring to would view the Marxist tradition as undervaluing democratic freedoms and human rights. Left liberals also tend to dismiss the so called post-Marxist turn in European continental philosophy as ‘postmodern relativism’.8 PostMarxists confronted the problem of the ‘collective’ – addressing the problem of masses and classes as the universal category or agent of historical transformation. This was a necessary correction to all the disasters visited on the masses in the name of a universal working class. The liberal state exploited these divisions on the left. It is true that a left fragmented through identity politics or the politics of difference were reduced to group based claims on the state. However, liberal multiculturalism was critiqued by anti-racist and feminist thinkers as early as the 1970s for ignoring the structural problems of class or as yet another nation-building device. The new formation of the muscular liberal left have only just discovered the defects of multiculturalism. The dismissal of liberal multiculturalism is now code for ‘too much tolerance’ of ‘all that difference’. The liberal left, or muscular liberal, as I use these terms, should not be conflated with the way ‘liberal’ is generally used in North America to denote ‘progressive’, ‘pro-choice’, open to a multiplicity of forms of sexual expression, generally ‘tolerant’, or ‘left wing’ (meaning socialist). It might be objected that it is not the liberal left, but ‘right wing crazies’ driven by Christian evangelical zeal combined with neo-liberal economic strategies that have usurped a post-9/11 crime and security agenda to mount a global hegemonic enterprise in the name of a ‘war on terror’. It might also be said that this is nothing new – global expansionist enterprises such as 18th and 19th century colonialism mobilised religion, science, and theories of economic development to secure resources and justify extreme violence where necessary. Global domination, it might be argued, has always been a thanatopolitical enterprise. So what’s different now? What is crucial, now, is that the entire spectrum of liberalism, including the ‘rational centre’, is engaged in the kind of mindset whereby a destructive and deadly war is justified in the name of protecting or establishing democracy, the rule of law, and human rights. It might then be retorted that this ‘rational centre’ of liberalism have ‘always’ been oriented in this way. That is partly true, but it is worth recalling that the liberal left I have in mind is the generation that came of age with opposition to the war in Vietnam, other Indo-Chinese conflagrations, and the undoing of empire. This is a left that observed the Cold War conducted through various ‘hot wars’ in Africa, Central and Latin America, and South East Asia and thus at least hoped to build a ‘new world order’ of international law and multilateralism. This is a left that was resolved, by the 1970s, not to repeat the error of blindly following a scientific discourse that promised to produce a utopia – whether this was ‘actually existing socialism’ or the purity of ‘blood and soil’. But now, a deadly politics, a thanatopolitics, is drawn out of a liberal horror and struggle against a monolithically drawn enemy called Islamic fundamentalism. What is new is that Islam has replaced communism/fascism as the new ‘peril’ against which the full spectrum of liberalism is mobilized. Islamist terrorism and suicide bombers, a clash between an apparently Islamic ‘cult of death’ versus modern secular rationality has come to be a central preoccupation of the liberal left. In the process, as Talal Asad has eloquently pointed out, horror about terrorism has come to be revealed as one way in which liberal subjectivity and its relation to political community can be interrogated and understood.9 Moreover, the potential for liberal principles to be deployed in the service of legitimating a doctrine of pre-emption as the ‘new internationalism’ is significant. The first and second Gulf Wars, according to the liberal left, are then not wars to secure control over the supply of oil, or regional and global hegemony, as others on the left might argue, but anti-fascist, anti-totalitarian wars of liberation fought in the name of ‘democracy’. Backing ‘progressive wars’ for ‘freedom and democracy’, those who self-identify as a left which is reasserting liberal democratic principles start by asking questions such as: “Are western freedoms only for westerners?”.10 In the process, freedom becomes ‘western’, and its enemy an amorphous legion behind an unidentifiable line between ‘west’ and the rest (the ‘Muslim world’). The ‘war for democracy’ waged against ‘Islamist terrorism’ and Muslim fundamentalism is the crucible on which the new alignment of the liberal left is forged.

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

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

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

# 2

#### Obama has momentum for negotiations – GOP conditions failing - PC

Calmes and Weisman, 10-2-’13 (Jackie and Jonathan, “Obama Sets Conditions for Talks: Pass Funding and Raise Debt Ceiling” New York Times, http://www.nytimes.com/2013/10/03/us/politics/congress-budget-battle.html?\_r=0)

In their first meeting since a budget impasse shuttered many federal operations, President Obama told Republican leaders on Wednesday that he would negotiate with them only after they agreed to the funding needed to reopen the government and also to an essential increase in the nation’s debt limit, without add-ons. The president’s position reflected the White House view that the Republicans’ strategy is failing. His meeting with Congressional leaders, just over an hour long, ended without any resolution. As they left, Republican and Democratic leaders separately reiterated their contrary positions to waiting reporters. The House speaker, John A. Boehner, Republican of Ohio, said Mr. Obama “will not negotiate,” while the Senate majority leader, Harry Reid, Democrat of Nevada, said Democrats would agree to spending at levels already passed by the House. “My friend John Boehner cannot take ‘yes’ for an answer,” Mr. Reid said. The meeting was the first time that the president linked the two actions that he and a divided Congress are fighting over this month: a budget for the fiscal year that began on Tuesday and an increase in the debt ceiling by Oct. 17, when the Treasury Department will otherwise breach its authority to borrow the money necessary to cover the nation’s existing obligations to citizens, contractors and creditors. Only when those actions are taken, Mr. Obama said, will he agree to revive bipartisan talks toward a long-term budget deal addressing the growing costs of Medicare and Medicaid and the inadequacy of federal tax revenues. While the lack of a budget forced the government shutdown this week, failure to raise the debt limit would have worse repercussions, threatening America’s credit rating with a globe-shaking default and risking an economic relapse at home. Yet the refusal by the Republican-led House earlier this week to approve government funding until Mr. Obama agrees to delay his signature health care law — a nonnegotiable demand, he has said — raised fears from Washington to Wall Street that Republicans likewise would carry out their threat to withhold approval of an increase in the debt ceiling. In a meeting with Wall Street executives to enlist their help, and then in an interview with CNBC before his White House meeting with Congressional leaders, Mr. Obama said he needed to draw a firm line “to break that fever” in the House among hard-line conservatives who repeatedly issued fiscal ultimatums, resulting in government by crisis. “As soon as we get a clean piece of legislation that reopens the government — and there is a majority for that right now in the House of Representatives — until we get that done, until we make sure that Congress allows Treasury to pay for things that Congress itself already authorized, we are not going to engage in a series of negotiations,” Mr. Obama told CNBC, a cable business-news channel. Mr. Boehner, under pressure from Republican conservatives and outside Tea Party groups, has declined to bring a so-called clean continuing resolution to the House for a vote because it would pass mostly with Democrats’ votes and probably prompt a conservative backlash that could cost him his leadership office. Mr. Obama, in the interview, said he must resist the Republican demands this time because a precedent is at stake. “If we get in the habit where a few folks, an extremist wing of one party, whether it’s Democrat or Republican, are allowed to extort concessions based on a threat of undermining the full faith and credit of the United States, then any president who comes after me — not just me — will find themselves unable to govern effectively,” he said. Many Republicans concede that Mr. Obama has the political advantage in the current confrontation, so some in the House reacted hopefully to the president’s summons to Congressional leaders to meet late in the day. Representative Michael G. Grimm, Republican of New York, called the White House meeting “the beginning of the end of the government shutdown,” although others in Congress and the administration were less optimistic. Frustrations in Congress were mounting along with voters’ anger. Clusters of House Republicans filtered in and out of Mr. Boehner’s office, some pleading for him to stand firm, others seeking a face-saving end to the shutdown. Mr. Grimm said he was one of a half-dozen Republican pragmatists who urged the speaker to find a way to reopen the government. Lawmakers who spoke with the speaker said that Mr. Boehner broached the idea of a comprehensive deficit-reduction deal that could put to rest three years of gridlock and turmoil in the Republican-led House.

#### The executive will fight the plan- doesn’t want the Courts involved

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

In addition, the SSPA would prescribe procedures for determining whether evidence is protected from disclosure by the SSP n171 and limits the ability of federal courts to dismiss a case to only situations where "continuing with litigation of the claim or counterclaim in the absence of the privileged material evidence would substantially impair the ability of a party to pursue a valid defense to the claim or counterclaim." n172 The SSPA adds a dose of adversarial confrontation into the SSP adjudication process by providing for attorney clearances, thereby attempting to ensure the parties' attorneys have some sort of interaction with the discovery process. n173 [\*366] The 2008 proposed reforms were met with immediate and strong opposition from the Bush administration. In a March 31, 2008 letter to the Senate Judiciary Committee, then-Attorney General Michael Mukasey offered numerous critiques, including arguing that the SSP is constitutionally rooted, as the Fourth Circuit in dicta held in El-Masri. n174 This line of reasoning asserts that courts are not the appropriate decision makers regarding national security matters, and that the disclosure procedures of classified information are constitutionally suspect. Muksaey asserted that the SSPA, if passed, would harm national security. n175 Mukasey concludes that courts "have neither the constitutional authority nor the institutional expertise to assume such functions [making national security judgments]." n176 Citing a D.C. Circuit opinion from 1978, Mukasey claims the only role courts have in State Secrets litigation is to afford the President "utmost deference." n177 Mukasey's reasoning is not persuasive for several reasons.

#### PC key to avoiding total economic collapse

Henninger, 10-2-’13 (Daniel, “Obama's Washington Colosseum” Wall Street Journal, http://online.wsj.com/article/SB10001424052702303722604579111492249901278.html)

Despite the institutional difficulties, one may still ask whether the responsibility of any president is to let this situation get worse, or to defuse it in the national interest? And it can get worse. The government shutdown may look relatively minor, but the political corrosion on view this week could drive the U.S. into a destructive debt default later this month. That catastrophe is predictable right now, but avoidable, if Mr. Obama will exercise the leadership he was elected to provide. The country Ronald Reagan "inherited" in 1981 was also beset with problems and divisions. The country he left behind after two terms was not. He "negotiated" with the opposition. The productive Ronald Reagan-Tip O'Neill relationship is now the stuff of legend and books. What counterpart has Barack Obama produced? Ted Cruz. With normal political outlets choked off for five years by Mr. Obama, Sen. Cruz and his supporters risk becoming one of the passion-driven, alienated groups that Madison and Hamilton, those famous surrender monkeys, warned against. There was a time when Washington reporters who got into this business for love of politics would have held a president to account for wrecking politics. And did. No more. Instead, they've become mostly thumb-waving spectators in the Roman Colosseum over which Barack Obama presides. Thumbs down any day now for the humiliated John Boehner. It is indeed a spectacle. Absent presidential leadership, it may engulf us all.

Collapses the global economy

VOA News, 10-3-’13 (“IMF: US Failure to Lift Debt Ceiling Could Damage World Economy” http://www.voanews.com/content/reu-us-failure-to-lift-debt-ceiling-could-damage-world-economy-says-imf-chief/1762364.html)

Failure to raise the U.S. debt ceiling could damage not only the United States but the rest of the global economy, International Monetary Fund chief Christine Lagarde said on Thursday. “It is 'mission-critical' that this be resolved as soon as possible,” she said in a speech in Washington, ahead of the IMF and World Bank annual meetings next week. Republican and Democratic leaders in the U.S. Congress so far remain at loggerheads over funding the government, keeping hundreds of thousands of federal employees off the job without pay for a third day on Thursday. Though a government shutdown would do relatively little damage to the world's largest economy in the short term, global markets could be roiled if Congress also fails to raise the United States' $16.7 trillion debt limit. The Treasury has said the United States will exhaust its borrowing authority no later than October 17. If no deal is reached in raising the debt ceiling, analysts expect the U.S. government to run out of cash to pay its bills within weeks of that date. Lagarde said growth in the United States has already been hurt by too much fiscal consolidation, and will be below two percent this year before rising by about one percentage point in 2014, assuming political standoffs are resolved. The U.S. Congress imposed a so-called sequester, or across the board government spending cuts, earlier this year after failing to agree on a broad budget package. Glimmers of optimism Turning to the rest of the world, Lagarde pointed to signs of progress in the eurozone and Japan, but said transitions to more stable growth may take a while. She said the eurozone “came up for air” in the spring after six quarters of recession, and the economy should grow almost one percent next year. The currency bloc must address debt-hobbled banks and a fragmented financial system to return to health, she said. Japan also seems to be having success with its massive monetary stimulus to boost the economy out of decades of deflation and lagging growth, boosting GDP by about one percent. “Deflation is coming to an end and a newfound optimism is in the air,” Lagarde said, adding that Japan must still implement a credible plan to bring down its debt and reform entitlements. She said emerging markets have suffered since the U.S. Federal Reserve announced plans to eventually scale back its own monetary stimulus, which prompted capital outflows as investors bet on higher rates in advanced economies. Lagarde said the turbulence could reduce GDP in major emerging markets by 0.5 to 1 percentage points. Monetary policy helped rescue the global economy after the global financial crisis. But as the United States prepares to decrease the pace of its massive bond-buying, it must be aware that its policies affect people and markets around the world, Lagarde said. ‘Special resposibility’ “The U.S. has a special responsibility: to implement [normalization] in an orderly way, linking it to the pace of recovery and employment; to communicate clearly; and to conduct a dialog with others,” she said. But Lagarde said the turmoil in the Middle East and North Africa may be the hardest to resolve, and take the most time. Syria is still in the midst of a civil war and Egypt struggles to address its fiscal deficit and structural reforms while dealing with a political transition. “To succeed, [this region] needs the unwavering support of the international community,” Lagarde said. Finally, she called on governments to better work together on reforming the financial sector, calling progress too slow, partly due to divergences among different countries. She pointed in particular to the “danger zone” of shadow banking, or the non-banking sector that can provide credit but is not under formal regulation. In the United States, shadow banking is twice the size of the banking sector, and in China half the credit given this year has come from shadow banking, she said. “Putting this all together in a globalized world is a headache,” Lagarde said about financial regulation. “And yet, it must be done - nothing less than global financial stability depends on it.”

#### Global nuclear war

Harris & Burrows 9 Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” http://www.ciaonet.org/journals/twq/v32i2/f\_0016178\_13952.pdf

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

# 3

**the affs not topical** --- **authority is the power to act**

**COURT OF APPEALS OF TENNESSEE**, EASTERN SECTION - October 31, **1925**, Decided, RACY CREAM COMPANY v. MARY BELLE WALDEN., 1 Tenn. App. 653; 1925 Tenn. App. LEXIS 85

While the circumstances in and of themselves do not necessarily show that the driver was the agent, employee or servant of the owner at the time of the accident, and if so that he was engaged in the master's business when the injury was effected, yet good reasons are shown justifying the purposes of the Legislature, if such justification was necessary, as to why these two essential facts should be presumed. The driver fled immediately after the accident, so that his name or identity was not known, and the difficulty of proving the same is therefore manifest, together with the necessity of indulging some such presumption, or else justice will be defeated in an ever increasing number of similar incidents. On the other hand, if in any case the presumption should be ill founded, it would be an easy matter to furnish facts to controvert [\*\*33] it, which are, or would be, more easily within the knowledge of the defendants, or at least much less difficult for them to establish, and thus the ends of justice be subserved. Besides, as it appears from the facts of this case, the proposition has attractions of original merit. When evidence has been furnished as to the negligent injury by one driving the defendants' truck, presumably from the name Racy Cream Company on the truck, engaged in the sale, distribution or transportation of cream or its products, and at a time of day, nine o'clock in the forenoon, in a city where such business might reasonably be pursued, and where just such an outfit so manned might reasonably have been employed, with a woman almost dead in the street from having been wantonly mowed down by its rapid and illegal operation, it furnishes a combination of facts and circumstances from which, it could be more reasonably inferred that the driver was the owner's servant rather than a thief, and that he was engaged in the owners business rather than his own, or that of someone else in which the truck was borrowed or hired. At least these first conceptions are less involved and more direct than the latter, and [\*\*34] are the most natural and legitimate to which the mind first gravitates, and why not indulge them? These first-hand legitimate inferences call for explanation rather than to be combatted by other circumstances neither ordinary nor proximate. It is not a case of draft without reason, but a case of the accusing finger pointing naturally sought to a conclusion which the Legislature in the act just mentioned sought to mature as a prima-facie case. Has the body of the act in the use of the terms employed sufficiently effectuated the purposes expressed in the title? Considered without reference to the amendment, we think it has. It is conceded that while under our constitution [\*669] the body of an act cannot be broader than the restrictions of the title, it may be less pretentious, and thus fall short of the purpose expressed; and in this case authority for the prima-facie case claimed to justify any personal judgment against the defendants must be found in the use of the word "authority," as the other words ("knowledge and consent") used express nothing more than the permissive authority necessary to effect a lien against the machine, if the negligence consists in willful violation [\*\*35] of the statute. It is true that in a certain sense the word "authority" has a meaning synonimous with the other terms, "knowledge and consent," but used as it is in the act, and in connection with the other terms mentioned, it may have another meaning implying direction or supervision, signifying control of subordinate agency. As expressed in 6th. Volume of C. J., page 864, **with reference to the term "authority," in defining same it is said:** "In another sense power delegated by a principal to his agent or attorney. . . . **Power to act, whether originally or delegated.** Control over. Jurisdiction. The word is generally used to express a derivative power."

#### Ex post review doesn’t change authority of the executive

Crandall 12 (Carla, Law Clerk – Supreme Court of Missouri, “Ready…Fire…Aim! A Case for Applying American Due Process Principles Before Engaging in Drone Strikes,” Florida Journal of International Law, April, 24 Fla. J. Int'l L. 55, Lexis)

Despite the expanded use of drones, however, the legitimacy of these attacks remains unclear. Most commentators who have addressed the legitimacy of more general targeted killings have examined the issue within the framework of either international humanitarian law (IHL) or international human rights law (IHRL). n6 Those limited few who have [\*57] analyzed the subject through the lens of American due process have limited their scrutiny to the absence of post-deprivation rights. n7 They suggest, for instance, that the United States should implement some sort of Bivens-type action as a remedy for the survivors of erroneous drone strikes. n8 As this Article explains, however, none of these approaches yield wholly satisfactory answers as to which framework should govern the use of drones within the context of the war on terror. And though the idea that American due process principles ought to be applied ex post represents a significant contribution to the debate, it too ultimately falls flat. Indeed, such an approach unduly narrows the obligation of U.S. officials to the standard of readying, firing, and then aiming- requiring them to perform a detailed review of the strikes only after the fact. Instead, this Article argues that the United States ought to be held to a higher, ex ante standard-that of "aiming" before firing-and posits that such a standard is practically attainable. In doing so, the Article proceeds as follows. Part II describes the capabilities and current employment of drones and explains why resolving the legitimacy of their use is so critical. Specifically, it highlights that, despite the unsettled nature of the law in this area, targeted killings by drone strikes have increased exponentially in recent years-in some instances against arguably questionable targets. Part III examines current attempts to address the legitimacy of drone assaults and explains why they fail to adequately govern the use of these weapons. While this Part explores the applicability of IHRL and IHL, it does not undertake to resolve the debate as to which regime does or ought to apply to these operations. To the contrary, it argues that limitations within each framework have prevented consensus from forming around the applicability of either. Accordingly, U.S. officials [\*58] must arguably look to other sources to find guiding principles to legitimize targeted killings via drones. Though it is admittedly not entirely clear whether constitutional guarantees apply in the foreign locales where these strikes occur-or to the foreign nationals who are often their target-this Part proposes that American due process principles nevertheless ought to be invoked before such strikes occur, because failing to do so allows the executive to act with impunity in a legal void. Part IV argues that, in Hamdi v. Rumsfeld n9 and Boumediene v. Bush, n10 the Supreme Court signaled the process that may be due before drones are used to eliminate known terrorist targets. In extending the Hamdi and Boumediene analysis to targeted killings by drones, this Part also begins the inquiry into the procedural protections that due process may demand before U.S. officials engage in such actions. Part V concludes.

**a restriction is a limitation on action**

**Schackleford 17** J. is a justice of the Supreme Court of Florida. “Atlantic Coast Line Railroad Company, a corporation, et al., Plaintiff in Error, v. The State of Florida, Defendant in Error,” 73 Fla. 609; 74 So. 595; 1917 Fla., Lexis

There would seem to be no occasion to discuss whether or not the Railroad Commissioners had the power and authority to make the order, requiring the three specified railroads running into the City of Tampa to erect a union passenger station in such city, which is set out in the declaration in the instant case and which we have copied above. [\*\*\*29] It is sufficient to say that under the reasoning and the authorities cited in State v. Atlantic Coast Line R. Co., 67 Fla. 441, 458, 63 South. Rep. 729, 65 South. Rep. 654, and State v. Jacksonville Terminal [\*631] Co., supra, it would seem that HN14the Commissioners had power and authority. The point which we are required to determine is whether or not the Commissioners were given the authority to impose the fine or penalty upon the three railroads for the recovery of which this action is brought. In order to decide this question we must examine Section 2908 of the General Statutes of 1906, which we have copied above, in the light of the authorities which we have cited and from some of which we have quoted. It will be observed that the declaration alleges that the penalty imposed upon the three railroads was for the violation of what is designated as "Order No. 282," which is set out and which required such railroads to erect and complete a union depot at Tampa within a certain specified time. If the Commissioners had the authority to make such order, it necessarily follows that they could enforce a compliance with the same by appropriate proceedings in the courts, but [\*\*\*30] it does not necessarily follow that they had the power and authority to penalize the roads for a failure to comply therewith. That is a different matter. HN15Section 2908 of the General Statutes of 1906, which originally formed Section 12 of Chapter 4700 of the Laws of Florida, (Acts of 1899, p. 86), expressly authorizes the imposition of a penalty by the Commissioners upon "any railroad, railroad company or other common carrier doing business in this State," for "a violation or disregard of any rate, schedule, rule or regulation, provided or prescribed by said commission," or for failure "to make any report required to be made under the provisions of this Chapter," or for the violation of "any provision of this Chapter." It will be observed that the word "Order" is not mentioned in such section. Are the other words used therein sufficiently comprehensive to embrace an order made by the Commissioners, such as the one now under consideration? [\*632] It could not successfully be contended, nor is such contention attempted, that this order is covered by or embraced within the words "rate," "schedule" or "any report,' therefore we may dismiss these terms from our consideration and [\*\*\*31] direct our attention to the words "rule or regulation." As is frankly stated in the brief filed by the defendant in error: "It is admitted that an order for the erection of a depot is not a 'rate' or 'schedule' and if it is not a 'rule' or 'regulation' then there is no power in the Commissioners to enforce it by the imposition of a penalty." It is earnestly insisted that the words "rule or regulation" are sufficiently comprehensive to embrace such an order and to authorize the penalty imposed, and in support of this contention the following authorities are cited: Black's Law Dictionary, defining regulation and order; Rapalje & Lawrence's Law Dictionary, defining rule; Abbott's Law Dictionary, defining rule; Bouvier's Law Dictionary, defining order and rule [\*\*602] of court; Webster's New International Dictionary, defining regulation; Curry v. Marvin, 2 Fla. 411, text 515; In re Leasing of State Lands, 18 Colo. 359, 32 Pac. Rep. 986; Betts v. Commissioners of the Land Office, 27 Okl. 64, 110 Pac. Rep. 766; Carter V. Louisiana Purchase Exposition Co., 124 Mo. App. 530, 102 S.W. Rep. 6, text 9; 34 Cyc. 1031. We have examined all of these authorities, as well as those cited by the [\*\*\*32] plaintiffs in error and a number of others, but shall not undertake an analysis and discussion of all of them. While it is undoubtedly true that the words, rule, regulation and order are frequently used as synonyms, as the dictionaries, both English and law, and the dictionaries of synonyms, such as Soule's show, it does not follow that these words always mean the same thing or are interchangeable at will. It is well known that the same word used in different contexts may mean a different thing by virtue of the coloring which the word [\*633] takes on both from what precedes it in the context and what follows after. Thus in discussing the proper constructions to be placed upon the words "restrictions and regulations" as used in the Constitution of this State, then in force, Chap. 4, Sec. 2, No. 1, of Thompson's Digest, page 50, this court in Curry v. Marvin, 2 Fla. 411, text 415, which case is cited to us and relied upon by both the parties litigant, makes the following statement: "The word restriction is defined by the best lexicographers to mean limitation, confinement within bounds, and would seem, as used in the constitution, to apply to the amount and to the time [\*\*\*33] within which an appeal might to be taken, or a writ of error sued out. The word regulation has a different signification -- it means method, and is defined by Webster in his Dictionary, folio 31, page 929, to be 'a rule or order prescribed by a superior for the management of some business, or for the government of a company or society.' This more properly perhaps applies to the mode and form of proceeding in taking and prosecuting appeals and writs of error. By the use of both of those terms, we think that something more was intended than merely regulating the mode and form of proceedings in such cases." Thus, in Carter v. Louisiana Purchase Exposition Co., 124 Mo. App. 530, text 538, 102 S.W. Rep. 6, text 9, it is said, "The definition of a rule or order, which are synonymous terms, include commands to lower courts or court officials to do ministerial acts." In support of this proposition is cited 24 Amer. & Eng. Ency. of Law 1016, which is evidently an erroneous citation, whether the first or second edition is meant. See the definition of regulate and rule, 24 amer. & Eng. Ency. of Law (2nd Ed.) pages 243 to 246 and 1010, and it will be seen that the two words are not always [\*\*\*34] synonymous, much necessarily depending upon the context and the sense in which the words are used. Also see the discussion [\*634] of the word regulation in 34 Cyc. 1031. We would call especial attention to Morris v. Board of Pilot Commissioners, 7 Del. chan. 136, 30 Atl. Rep. 667, text 669, wherein the following statement is made by the court: "These words 'rule' and the 'order,' when used in a statute, have a definite signification. They are different in their nature and extent. A rule, to be valid, must be general in its scope, and undiscriminating in its application; an order is specific and not limited in its application. The function of an order relates more particularly to the execution or enforcement of a rule previously made." Also see 7 Words & Phrases 6271 and 6272, and 4 Words & Phrases (2nd Ser.) 419, 420. As we held in City of Los Angeles v. Gager, 10 Cal. App. 378, 102 Pac. Rep. 17, "The meaning of the word 'rules' is of wide and varied significance, depending upon the context; in a legal sense it is synonymous with 'laws.'" If Section 2908 had contained the word order, or had authorized the Commissioners to impose a penalty for the violation of any order [\*\*\*35] made by them, there would be no room for construction. The Georgia statute, Acts of 1905, p. 120, generally known as the "Steed Bill," entitled "An act to further extend the powers of the Railroad Commission of this State, and to confer upon the commission the power to regulate the time and manner within which the several railroads in this State shall receive, receipt for, forward and deliver to its destination all freight of every character, which may be tendered or received by them for transportation; to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said commission in the execution of these powers, and for other purposes," expressly authorized the Railroad Commissioners "to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said Commision." [\*635] See Pennington v. Douglas, A. & G. Ry. Co., 3 Ga. App. 665, 60 S.E. Rep. 485, which we cited with approval in State v. Atlantic Coast Line R. Co., 56 fla. 617, text 651, 47 South. Rep. 969, 32 L.R.A. (N.S.) 639. Under the reasoning in the cited authorities, especially State v. Atlantic Coast Line R. Co., [\*\*\*36] supra, and Morris v. Board of Pilot Commissioners, we are constrained to hold that the fourth and eighth grounds of the demurrer are well founded and that HN16the Railroad Commissioners were not empowered or authorized to impose a penalty upon the three railroads for failure to comply with the order for the erection of a union depot.

**destroys predictable limits – infinite number of info requirements on various missions, military operations or one time missions destroys a well-prepared opponent which is key to advocacy**

**competing interpretations are inevitable and good and the only way to stop arbitrary judge intervention**

# 4

#### The United States Congress should:

#### -hold hearings on targeted killing policy and appropriate mechanisms for improving oversight, accountability and conformity to US rule of law values;

#### -require the executive branch to provide reports on any uses of force not authorized by Congress

#### -pass a resolution clarifying the international law of self-defense requires a rigorous imminence, necessity and proportionality analysis.

#### The Executive branch of the United States should establish a non-partisan blue ribbon commission to conduct a review of current and past targeted killing policy and publicly promise to follow the recommendations of the commission.

#### The CP is key to accountability

Brooks 13 The Constitutional and Counterterrorism Implications of Targeted Killing Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights April 23, 2013 Statement for the Record Submitted By Rosa Brooks Professor of Law, Georgetown University Law Center Bernard L. Schwartz Senior Fellow, New America Foundation http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

As I noted earlier, law is almost always out of date: legal rules are made based on the conditions and technologies existing at the time, and as societies and technologies change, law increasingly becomes an exercise in jamming square pegs into round holes. Up to a point, this works, but eventually, that process begins to do damage to existing law: it gets stretched out of shape, or broken. At that point, we need to update our laws and practices before too much damage is done. This is a daunting project, and I do not have any simple solutions to offer. In a sense, the struggle to adapt old legal frameworks and institutions to radically new situations will be the work of generations. But the complexity of the problem should not be an excuse for ignoring it. In that spirit, I will suggest several potential means to improve on the existing state of affairs and enhance oversight, transparency and accountability. Congress can implement some of these recommendations, while others would require Administration acquiescence. Fully evaluating the pros and cons of potential reforms is beyond the scope of this testimony, but I hope that this will be the subject of future hearings. 1. Congress should encourage Administration transparency and public debate by continuing to hold hearings on targeted killing policy, its relationship to (and impact on) broader US counterterrorism, national security and foreign policy goals, and appropriate mechanisms for improving oversight, accountability and conformity to US rule of law values. Congress should also consider hearings on the longer-term challenge of adapting the law of war and law of self-defense to 21st century threats. 2. Congress should also encourage Administration transparency through the imposition of reporting requirements. Congress could require that the executive branch provide thorough reports on any uses of force not expressly authorized by Congress and/or outside specified regions, and require that such reports contain both classified sections and unclassified sections in which the Administration provides a legal and policy analysis of any use of force in self-defense or other uses of force outside traditional battlefields. 3. Congress should consider repealing the 2001 AUMF. The Obama administration’s domestic legal justification for most drone strikes relies on the AUMF, which it interprets to authorize the use of force not only against those individuals and organizations with some real connection to the 9/11 attacks, but also against all “associates” of al Qaeda. This flexible interpretation of the AUMF creates few constraints, and has lowered the threshold for using force. Repealing the AUMF would not deprive the President of the ability to use force if necessary to prevent or respond to a serious armed attack: the president would retain his existing discretionary power, as chief executive and 17 commander in chief, to protect the nation in emergencies. Repealing the 2001 AUMF would, however, likely reduce the frequency with which the president resorts to targeted killings. 4. The Constitution gives Congress the power to “define and punish offenses against the law of nations.” Without tying the president’s hands, Congress can pass a resolution clarifying that the international law of self-defense requires a rigorous imminence, necessity and proportionality analysis, and that the use of cross-border military force should be reserved for situations in which there is concrete evidence of grave threats to the United States or our allies that cannot be addressed through other means. 5. Congress and/or the Executive branch should create a non-partisan blue ribbon commission made up of senior experts on international law, national security, human rights, foreign policy and counterterrorism. Commission members should have or receive the necessary clearances to review intelligence reports and conduct a thorough policy review of past and current targeted killing policy, evaluating the risk of setting international precedents, the impact of US targeted killing policy on allies, and the impact on broader US counterterrorism goals. In the absence of a judicial review mechanism, such a commission might also be tasked with reviewing particular strikes to determine whether any errors or abuses have taken place. The commission should release a public, unclassified report as well as a classified report made available to executive branch and congressional officials, and the report should continue detailed recommendations, including, if applicable, recommendations for changes in law and policy and recommendations for further action of any sort, including, potentially, compensation for civilians harmed by US drone strikes. The unclassified report should contain as few redactions as possible.

#### The net benefit is rule by lawyers. Judicial review translates political questions into legal questions, which is worse for public debate and accountability. The aff creates feedback loops where lawyers become the ultimate experts and questions of drones can’t be solved without legal expertise.

Cameron 13 Charles, Writer for Small Wars Journal, All Things Counterterrorism. Principal Researcher with Boston University’s Center for Millennial Studies and the Senior Analyst with the Arlington Institute. Zenpundit, 2-13, http://zenpundit.com/?page\_id=2

The proposal for judicial review of potential attacks during an armed conflict (not peacetime) is rife with a host of counterproductive second and third order constitutional and military effects. It represents a sweeping change in our political order by a technical legal fiat. It would also be an exceedingly dumb way to run a war. It might test our powers of imagination, but somehow, we faced down Hitler and the Imperial Japanese without Federal judges running our strategic bombing campaigns. . This preference for legalistic arguments is partly a product of over representation of lawyers among the American political elite. Highly competent attorneys are very skilled at framing arguments on behalf of clients so that they begin litigation not only from a favorable explicitly stated position but, where possible, with several layers of one-sided implicit premises built in that you accept uncritically only at your peril. When a lawyer comes into a public policy debate saying that a political question is a legal question, he is making a political argument to remove a political dispute in a democratic polity to the courts where the matter will be decided under very different procedures and will remain as a legal question thereafter. . Sometimes, this is the constitutionally correct thing to do; more often, it is simply an expedient thing to do that diminishes democratic accountability while rendering policy and process needlessly more complex and adversarial than even open public debate. It is also a self-aggrandizing feedback loop for lawyers as a class – when all political questions are legal questions, then should we not all defer to their superior expertise and training? It is the road to technocracy and the rule of law becoming “rule by lawyers”. . Does that mean the critics have no point whatsoever regarding the use of drones in “targeted killings”? No. The idea that targeting American citizens is bad \*policy\* because it might, for example, be poorly employed against innocent people by mistake or, in slippery slope fashion, lead to a normalization and extension of the practice of targeted killing outside of an officially recognized armed conflict is a completely valid \*political\* argument. It is even, in my view, a very wise caution. It just does not hold water as a legal argument on behalf American citizens who go overseas and pick up arms and wage war against the US by joining al Qaida. .

# 5

#### Shift of drones now from the DOD to CIA- that’s critical to enhance CIA and to prevent multiple threats

The Hill 13 “White House move to let Pentagon take over CIA armed drones sparks concern” By Carlo Muñoz 03/24/13 http://thehill.com/blogs/defcon-hill/policy-and-strategy/290049-white-house-plan-to-let-pentagon-take-over-cia-armed-drones-sparks-concern

Currently, the Pentagon and CIA operate their own armed drone programs, geared toward eliminating senior al Qaeda leaders or other high-level terror targets around the world. Under the Obama administration's proposal, the CIA would continue to supply targeting and other intelligence on possible targets, but operational control over the actual drone strikes would fall to the Pentagon, according to reports. Work is ongoing at the White House, Pentagon and CIA to shift the drone program to the military, but "it’s on a reasonably fast track,” one U.S. official told The Daily Beast. Current and former administration officials, though, are defending the proposed move amid lawmaker questions. Shifting control of the drone program to the Pentagon would allow U.S. officials to streamline drone operations "under normal procedures in the law of war" and sidestep a number of sticky legal situations stemming from the CIA portion of the program, former Director of National Intelligence Dennis Blair said in January. Use of drone strikes under Pentagon oversight, according to Blair, would be no different than more traditional weapons and tactics used by American forces in ongoing counterterrorism operations. "I don't think it [will be] any different with drones," according to Blair, who served as the White House's top intelligence official from 2009 to 2010. But Feinstein and some lawmakers are concerned that removing Pentagon control could distance the decision to authorize drone strikes from CIA intelligence and decision-making procedures. Moving the drone program to the Defense Department, though, could put some political distance between the CIA and the controversial counterterrorism tactic. The administration's legal justifications for the drone program, particularly the argument that U.S. citizens suspected of terrorism overseas could be targets, was a major roadblock in the eventually successful Senate confirmation of CIA Director John Brennan. If the Pentagon assumes control of the program, it could remove Langley from the political crosshairs of lawmakers such as Sens. Rand Paul (R-Ky.) and Ron Wyden (D-Ore.), among others, who have argued against the agency's expanding role in such operations. Paul famously filibustered Brennan's nomination for nearly 13 hours on the Senate floor, over concerns armed drones could be used against American citizens on U.S. soil. Wyden pressed Brennan, along with Director of National Intelligence James Clapper, on whether CIA drones could be used for surveillance stateside on U.S citizens, during a Senate Intelligence committee hearing in March. A transition to DOD could also help Brennan transition the agency back to its "traditional mission" of intelligence collection and analysis overseas, a direction CIA needed to move in to cope with a post-Iraq and post-Afghanistan world, according to former CIA Director Michael Hayden. The agency, under Brennan's leadership, has "got to get back to the traditional missions" of foreign espionage, surveillance and counterintelligence, Hayden told The Hill in January. Those types of missions have fallen by the wayside in the years since the terrorist attacks of Sept. 11, 2001, in favor of counterterrorism efforts — such as the armed drone program — aimed at hunting down top al Qaeda and Taliban leaders, as well as and other Islamic militant networks. A secret report from the President’s Intelligence Advisory Board last week said that the nation’s intelligence agencies were prioritizing supporting military operations over traditional intelligence gathering. The report cautioned that the post-9/11 focus could leave the country vulnerable to new threats.

#### Empirically the executive wants to avoid liability and embarrassment

Weaver and Pallitto 5 William G. Weaver is associate professor of political science at the University of Texas at El Paso. Robert M. Pallitto is an assistant professor of political science at the University of Texas at El Paso. Political Science Quarterly Volume 120 Number 1 2005 State Secrets and Executive Power http://apps.law.georgetown.edu/state-secrets-archive/resourcedocuments/pallitto\_181.pdf

And as it turns out. Judge Maris's concerns were warranted, inasmuch as it is now known that the goal of the government in claiming the privilege in Reynolds was to avoid liability and embarrassment. The material originally requested by the plaintiffs in Reynolds has recently been made public through Freedom of Information Act requests, and it contained no classified or national security information. On the basis of these materials, the original plaintiffs and their relatives asked the U.S. Supreme Court to reverse its decision in Reynolds, at least on the question of governmental hability, because the government perpetrated a "fraud" upon the Court by asserting the state secrets privilege without justification. The Court refused to revisit the case, and the plaintiffs filed a new complaint in federal district court.

#### Shifting Drone strike authority to JSOC is key to CIA intelligence gathering—drone strikes have stretched the agencies bandwidth and budget to the breaking point

Micah **Zenko** Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). “[Clip the Agency's Wings](http://www.foreignpolicy.com/articles/2013/04/16/clip_the_agencys_wings_cia_drones)”, **13** <http://www.foreignpolicy.com/articles/2013/04/16/clip_the_agencys_wings_cia_drones>)

Second, it would focus the finite resources and bandwidth of the CIA on its primary responsibilities of intelligence collection, analysis, and early warning. Last year, the [President's Intelligence Advisory Board](http://www.whitehouse.gov/administration/eop/piab%22%20%5Ct%20%22_blank) -- a semi-independent executive branch body, the findings of which rarely leak -- [reportedly](http://www.washingtonpost.com/world/national-security/secret-report-raises-alarms-on-intelligence-blind-spots-because-of-aq-focus/2013/03/20/1f8f1834-90d6-11e2-9cfd-36d6c9b5d7ad_print.html%22%20%5Ct%20%22_blank) told Obama that "U.S. spy agencies were paying inadequate attention to China, the Middle East and other national security flash points because they had become too focused on military operations and drone strikes." This is not a new charge, since every few years an independent group or congressional [report](http://articles.latimes.com/2004/jun/24/nation/na-intel24%22%20%5Ct%20%22_blank) determines that "the CIA has been ignoring its core mission activities." But, as Mark Mazzetti shows in his indispensable CIA [history](http://www.us.penguingroup.com/nf/Book/BookDisplay/0%2C%2C9781594204807%2C00.html%22%20%5Ct%20%22_blank), the agency has evolved from an organization once deeply divided at senior levels about using armed drones, to one that is a fully functioning paramilitary army. As former senior CIA official Ross Newland warns, the agency's armed drones program "ends up hurting the CIA. This just is not an intelligence mission." There is no longer any justification for the CIA to have its own redundant fleet of [30 to 35](http://articles.washingtonpost.com/2012-10-18/world/35502344_1_qaeda-drone-fleet-cia-drones%22%20%5Ct%20%22_blank) armed drones. During White House debates of CIA requests in 2009, Gen. James Cartwright, the vice chairman of the Joint Chiefs of Staff, repeatedly [asked](http://www.us.penguingroup.com/nf/Book/BookDisplay/0%2C%2C9781594204807%2C00.html%22%20%5Ct%20%22_blank): "Can you tell me why we are building a second Air Force?" Obama eventually granted every single request made by then-Director of Central Intelligence Leon Panetta, [adding](http://blogs.cfr.org/zenko/2012/07/02/daniel-klaidmans-revelations/%22%20%5Ct%20%22_blank): "The CIA gets what it wants." **With this year's proposed National Intelligence Program budget scheduled to fall by** [8 percent](http://www.dni.gov/index.php/newsroom/press-releases/191-press-releases-2013/840-dni-releases-budget-figure-for-fy-2014-appropriations-requested-for-the-national-intelligence-program%22%20%5Ct%20%22_blank)**, an open checkbook for Langley is not sustainable or strategically wise.**

#### Overlapping authority makes it impossible for the CIA to get a real handle on intelligence coming in.—rice bowl issues mean the CIA and military can’t coordinate their activities

Andrew **Wall**, Senior Associate with Alston & Bird LLP; former senior legal advisor for U.S. Special Operations Command Central **13** (“Demystifying the Title 10 -Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action

http://harvardnsj.org/wp-content/uploads/2012/01/Vol.-3\_Wall1.pdf)

The related rice bowls concern of “lanes” raises actual operational issues. If the military’s human intelligence collection resources dramatically exceed the CIA’s resources, the CIA may find it difficult to execute its statutory role as lead agency for the coordination and deconfliction of U.S. government human intelligence collection. 13 A few hundred **CIA officers may find it impossible to coordinate and deconflict the human intelligence activities conducted by thousands of military personnel**, thereby de facto ceding the CIA’s statutory primacy. 14 In a worst case scenario, the failure to maintain clear operational lanes could lead **to operatives unintentionally impeding or even exposing each other’s human intelligence efforts**. The salient point, however, is not that the military is exceeding its statutory authority, but rather that both the military and intelligence agencies possess the statutory authority to conduct intelligence gathering activities that may be indistinguishable “to the naked eye.” 15 This is a valid operational concern and unremitting management challenge; intelligence agencies must strive to ensure the military’s intelligence collection activities are coordinated, deconflicted, and conducted according to established standards.

#### Effective CIA key to prevent proliferation of rouge actors like Iran---empirics prove they’re sick at derailing those activities

Sarah **Bulley**, CSIS **10** (“CIA to Create New Counterproliferation Center”, <http://csis.org/blog/cia-create-new-counterproliferation-center>)

The Central Intelligence Agency today announced plans to develop a new Counterproliferation Center (CPC). The mission of the new center will involve fighting the spread of nuclear weapons and the illicit trade of dual use technology. CIA Director Leon Panetta [said](http://www.google.com/hostednews/ap/article/ALeqM5gK3-O5mrPAJFD-kdkksES_87FvIQD9HM6P5O1) the new center will "confront the threat of weapons of mass destruction — nuclear, chemical and biological."   According to a [statement](https://www.cia.gov/news-information/press-releases-statements/press-release-2010/cia-launches-new-counterproliferation-center.html) released by the CIA, Director Panetta believes the new Center will   Combine operational and analytic specialists dedicated to combating the spread of dangerous weapons and technology, allowing for even greater collaboration and information sharing on a top intelligence priority.   The [CIA also indicated](https://www.cia.gov/news-information/press-releases-statements/press-release-2010/cia-launches-new-counterproliferation-center.html) that teams of analysts and intelligence officers will work together to achieve the new center’s counterproliferation goals.   Director Panetta said that more DI analysts and NCS officers will work side-by-side in the center, providing “precise, comprehensive” analytical support to operations. “As our nation continues to confront the threat of weapons of mass destruction—nuclear, chemical, and biological,” Director Panetta noted, “we must constantly strive for new ways to work across directorates, combining a diversity of expertise with a range of powerful capabilities to keep our nation safe. Our greatest achievements as an agency are the product of close collaboration among operations officers, analysts, targeters, technical specialists, and support officers.”    As to how analysts and operatives will work together, Paul Brennan of ISIS believes that targeted action to delay the development of Iran’s uranium enrichment facilities will continue to take place. Brennan [says that](http://thehill.com/blogs/blog-briefing-room/news/114943-new-cia-center-to-address-nuclear-wmd-threats) in an effort to slow enrichment operations at Natanz, the CIA fed “**faulty parts into Iran's nuclear supply chain.”** Such an operation could be an example of how future operations could play out   “[That] is an example of where you'd need both analysts to tell you what type of parts would Iran need that you could inject, and the operations side to work with trading companies to try to get the parts in there.”   Iran is not the only country where the new CPC could counter WMD activity. Reports published today indicate that North Korea is attempting to obtain materials for its missile program with falsified documents, [GSN reported](http://gsn.nti.org/gsn/nw_20100819_2801.php) today.   South Korea has learned that a Chinese firm forged documents for the sale of measuring technology to the North this spring, the Munhwa Ilbo reported. The technology can be employed for missile and long-range rocket firings.   […]   Additionally, two Japanese merchants were discovered in June trying to transport to North Korea digging equipment that could be put to use as a missile launch platform.   As North Korea, Iran, and several other countries become more innovative in the methods employed to evade detection by international authorities, the need for more oversight grows apparent.   However, the increased intelligence monitoring and operations undertaken by the new CPC will overlap with work already being done by the National Counterproliferation Center and other national intelligence agencies monitoring nuclear proliferation and WMD development. For example, Iran’s new Bushehr power plant, which is under IAEA supervision and does not allow reprocessing of spent nuclear fuel, will be monitored by several agencies that plan to share information. The [Associated Press](http://www.google.com/hostednews/ap/article/ALeqM5gK3-O5mrPAJFD-kdkksES_87FvIQD9HM6P5O1) quoted an unnamed senior intelligence official saying that various agencies will study different aspects of the Bushehr facility and its daily operations and then share the information.   These efforts to [create the](https://www.cia.gov/news-information/press-releases-statements/press-release-2010/cia-launches-new-counterproliferation-center.html) “strongest, most effective counterproliferation operations and analysis” in CIA history will establish a more integrated intelligence system in the IC.As the Defense Department seeks to cut costs and reduce the size of redundant offices, the Intelligence Community is doubling up on its counterproliferation programs. Concerns about Iran’s continued evasion of international calls to halt its domestic uranium enrichment and the alleged WMD activities of other rogue states are undoubtedly prompting calls for more action to subvert these programs.

#### Iranian nuclear capability results in extinction

Jerome R. **Corsi**, Ph.D. in political science from Harvard ‘72, **05**, Atomic Iran: How Iran Bought the Bomb and American Politicians, p. 218

Ironically, there is also a Samson Option calculated from Iran's perspective. (Nothing is ever easy or simple in the Middle East.) Allowing the mad mullahs in Iran to have a nuclear bomb might be the same as giving them a button with which they could blow up the world. The mullahs might just decide to push the End of the World button, acting as irrational terrorists unable to resist the temptation, or acting "rationally" in the calculation that they will soon be in heaven for their glorious deed. Even knowing that to launch a nuclear strike on Israel would result in a devastating nuclear retaliation being launched on them might not be enough deterrence for these radical clerics who have a history of embracing suicide as martyrdom. That the world would be destroyed because they pushed the button might per' versely be an inducement to the mad clerics in charge of a radical terror supporting theocracy.

# Solvency

#### No solvency—won’t even release info to prove wrongdoing

Hirsh and Roberts 13 [[MICHAEL HIRSH, chief correspondent for National Journal AND KRISTIN ROBERTS](http://www.theatlantic.com/michael-hirsh-and-kristin-roberts/), news editor for National Journal., Why the Drone Memos Are Still Secret, FEB 22 2013, <http://www.theatlantic.com/international/archive/2013/02/why-the-drone-memos-are-still-secret/273436/>]

Despite President Obama's pledge in his State of the Union address to make the drone program "even more transparent to the American people and to the world," his administration continues to resist efforts by Congress, even from fellow Democrats, to obtain the full range of classified legal memos justifying "targeted killing."¶ A key reason for that reticence, according to two sources who have read the memos or are aware of their contents, is that the documents contain secret protocols with foreign governments, including Pakistan and Yemen, as well as "case-specific" details of strikes.¶ A legal expert outside the government who is intimately familiar with the contents of the memos said the government-to-government accords on the conduct of drone strikes are an important element not contained in the Justice Department "white paper" [revealed recently by NBC News](http://openchannel.nbcnews.com/_news/2013/02/04/16843014-justice-department-memo-reveals-legal-case-for-drone-strikes-on-americans?lite). He said it is largely in order to protect this information that the targeted-killing memos drafted by Justice's Office of Legal Counsel are not being released, and that even the Senate and House Intelligence committees have been allowed to examine only four of the nine OLC memos. "That is what is missing from the white paper but forms a core part of the memos," the expert told National Journal, speaking on condition of anonymity because the information is classified. He said the administration believes that the protocols would almost certainly leak to the public if they were shared with Congress.

#### Executive lawyers will teach the Executive how to blow off the plan

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

Yet, the ideological prism of presidentialism can bend the light of the law so that nothing is seen other than the claimed prerogatives of the sitting chief executive. Champions of executive power - even skilled lawyers who should know better - wind up asserting that, to an extraordinary extent, the President as a matter of constitutional entitlement is simply not subject to legal regulation by either of the other two branches of government. [\*511] Government attorneys must understand their unique roles as both advisers and advocates. In adversarial proceedings before courts of law, it may be fine for each of two contesting sides, including the government, to have a zealous, and not wholly impartial, presentation, with the judge acting as a neutral decisionmaker. But in their advisory function, government lawyers must play a more objective, even quasi-adjudicative, role. They must give the law their most conscientious interpretation. If they fail in that task, frequently there will be no one else effectively situated to do the job of assuring diligence in legal compliance. Government lawyers imbued with the ideology of presidentialism too easily abandon their professional obligations as advisers and too readily become ethically blinkered advocates for unchecked executive power. Jack Goldsmith headed the Office of Legal Counsel (OLC) for a little less than ten months in 2003-2004. Of the work done by some government attorneys and top officials after 9/11, he said they dealt with FISA limitations on warrantless surveillance by the National Security Agency (NSA) "the way they dealt with other laws they didn't like: they blew through them in secret based on flimsy legal opinions that they guarded closely so no one could question the legal basis for the operations." 7 He describes a 2003 meeting with David Addington, who was Counsel and later Chief of Staff to Vice President Dick Cheney, in which Addington denied the NSA Inspector General's request to see a copy of OLC's legal analysis in support of the NSA surveillance program. Before Goldsmith arrived at OLC, "not even NSA lawyers were allowed to see the Justice Department's legal analysis of what NSA was doing." 8

#### The President can easily use the Covert Action Statute to justify any imminent threat

Lawfare 12 Legality of U.S. Government’s Targeted Killing Program under Domestic Law, http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/legality-of-targeted-killing-program-under-u-s-domestic-law/

Nevertheless, Bradley and Goldsmith explain, even if Congress did not authorize the U.S. government’s targeted killing program with the AUMF, the President could in theory act against terrorists presenting an imminent threat under the Covert Action Statute (CAS), 50 U.S.C. §413b. The CAS is potentially an important authorizing authority, as its scope extends beyond that of the AUMF, namely in that it is not limited to those terrorist groups linked to the September 11, 2001 attacks. In other ways, though, the CAS may be narrower than the AUMF. For instance, Robert Chesney sets forth the argument that the CAS merely authorizes that which is otherwise lawful under Article II, and thus does not expand the scope of the President’s authority.

#### Victims of drones don’t have access to the courts – the ACLU ain’t gonna go find villagers in the mountains of Afghanistan

Murphy and Radsan 9 Richard Murphy is the AT&T Professor of Law, Texas Tech University School of Law Afsheen John Radsan Prof William Mitchell College of Law Review 32 Cardozo L Rev

But as the dissenting judge in Arar noted, these special factors lose much of their force once one acknowledges that a Bivens style action needs to overcome formidable hurdles of fact and law. 210 As to practical hurdles, most people left alive by a Predator strike or other targeted killing would not turn to American courts for relief. Some would not sue because they are, in fact, the enemy - Osama bin Laden is not going to hire an American lawyer. 211 Others would not sue because doing so is beyond their means - a villager from the mountains of Afghanistan is not likely to hire an American lawyer either.

#### Turn – individualism. Accountability suits will be overly individualistic – patsies will dilute broader accountability

Osborn 8 Timothy Kaufman is the Baker Ferguson Professor of Politics and Leadership at Whitman College; from 2002-06 as president of the American Civil Liberties of Washington; and he recently completed a term on the Executive Council of the American Political Science Association. Theory & Event > Volume 11, Issue 2

These characterizations, as well as the judgments of accountability that derive from them, are unsurprising, but also quite inadequate. They are unsurprising insofar as they presuppose the methodological individualism that informs most liberal legalism, which, as a rule, defines punishable wrong-doing as the deliberately-willed acts of identifiable perpetrators. This, of course, is what one would anticipate in a political order where holistic affirmations of group liability are often countered by the claim that a collectivity is nothing more than an aggregate of the individuals comprising it, and that therefore culpability can only be assigned to those persons immediately and proximately implicated in a specific misdeed. (To see the point, think of neo-conservative critiques of arguments avowing collective white guilt for structural racism as well as of affirmative action programs aimed at alleviating such racism.) Leaving aside the question of whether "psychopaths" can be deemed fully competent and so liable for their conduct, these characterizations effectively dictate the appropriate response to what those at Abu Ghraib are alleged to have done. Construed as criminals suspects, the accused are to be charged, tried, and, if found guilty, punished for violations of specific provisions of the Uniform Code of Military Justice. The inadequacies of this way of resolving the issue of accountability are multiple. For present purposes, it suffices to note that this construction makes it far too easy to assign the role of patsy to Charles Graner, Lynndie England, and their ilk; and that in turn diverts attention from the larger chain of command of which they were severable links.4 The disingenuousness of this resolution, I suspect, at least partly explains why in 2005 the American Civil Liberties Union and Human Rights First filed four suits on behalf of eight and, later, nine plaintiffs who allegedly were tortured and subjected to cruel, inhuman, and degrading forms of treatment by U.S. military personnel at Abu Ghraib and elsewhere in Iraq as well as in Afghanistan. These suits, which were consolidated in 2006, named as defendants Janis Karpinski, commander of the U.S. Army unit responsible for detention facilities in Iraq from June, 2003 to May, 2004; Thomas Pappas, commander of the Army unit responsible for intelligence gathering operations, including those conducted at Abu Ghraib; Ricardo Sanchez, commander of the U.S.-led military coalition from June, 2003 to July, 2004; and, finally, Donald Rumsfeld, then the highest-ranking civilian in the U.S. Department of Defense. In Ali et al.v. Rumsfeld, the American Civil Liberties Union and Human Rights First contended that the defendants had violated the Fifth and Eighth Amendments to the U.S. Constitution, the Geneva Conventions, and the United Nations Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment insofar as they "1) formulated or implemented policies and practices that caused the torture and other cruel, inhuman or degrading treatment of plaintiffs; and 2) had effective command and control of U.S. military personnel in Iraq and/or Afghanistan and knew and had reason to know of torture and abuse by their subordinates and failed to promptly and effectively prohibit, prevent, and punish unlawful conduct."5 As the legal foundation for these charges, the complaint invoked the doctrine of command responsibility, which specifies the conditions under which officers and/or officials may be deemed liable for the acts of subordinates. Seeking thereby to expand the scope of accountability beyond those proximately and personally responsible for the harms inflicted at Abu Ghraib, this suit posed a host of potential conundrums for the law, including but not limited to the question of the appropriate remedy should the defendants be found legally liable.6 These questions were never given a full hearing because, in March, 2007, a federal judge dismissed the case, chiefly on the ground that government officers, when acting within the scope of their official duties, are either largely or entirely immune from lawsuits.7 This outcome, which surprised only the naïve, is not of primary concern to me in this context. What is of concern is the way in which the doctrine of command responsibility opens up the possibility of moving beyond the confines of a strict construction of legal liability, i.e., one that limits culpability to Charles Graner, Lynddie England, and others foolish enough to pose for the camera while inside the walls of Abu Ghraib. Once the possibility of such expansion is admitted, especially in a political order predicated on the subordination of military to civilian authority, there is no reason in principle why application of the doctrine of command responsibility should stop with Donald Rumsfeld. Consider, in this regard, a 2005 article written by former Congresswoman Elizabeth Holtzman and published in The Nation.

#### Courts will rule in favor of the gov, entrenching the norms of TK

Alston 11 President and Fellows of Harvard College. All Rights Reserved. Harvard National Security Journal 2011 Harvard National Security Journal 2 Harv. Nat'l Sec. J. 283 The CIA and Targeted Killings Beyond Borders Philip Alston John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. lexis

But if the Arar case seems to paint a discouraging picture of the prospects for judicial review in relation to national security issues, an even clearer indication of the effective non-justiciability of extraterritorial [\*394] targeted killings in United States courts came with the 2010 decision in Al-Aulaqi v. Obama. n398 The case involved the alleged inclusion of Anwar Al-Aulaqi on a CIA/JSOC kill list, a fact neither confirmed nor denied by the government. Al-Aulaqi is a joint United States-Yemeni citizen, residing in Yemen, who is alleged to have been playing "an increasingly operational role" in a designated terrorist group, al Qaeda in the Arabian Peninsula (AQAP). As a result of his statements calling for jihad against the West and other activities, the U.S. Treasury Department has listed him as a "Specially Designated Global Terrorist." The U.S. District Court for the District of Columbia dismissed the case primarily on the grounds that there was no convincing basis upon which Al-Aulaqi's father could establish standing to bring the case on behalf of his son. But perhaps out of concern that some future targeted individual might be able to establish standing in different circumstances, Judge Bates also adduced strong arguments as to why the political question doctrine would in any event prevent the consideration of such cases. While acknowledging powerful judicial and scholarly critiques of the way in which the doctrine has been interpreted and applied, Judge Bates nevertheless cited with approval earlier findings that the courts are ill-equipped "to assess the nature of battlefield decisions" n399 or "to define the standard for the government's use of covert operations in conjunction with political turmoil in another country." n400 In elaborating upon the reasons for the judiciary's lack of competence in such matters, he noted that judicially manageable standards are absent both in relation to an assessment of "the President's interpretation of military intelligence and his resulting decision--based on that intelligence--whether to use military force against a terrorist target overseas," and to a determination of "the nature and magnitude of the national security threat posed by a particular individual." n401 Turning to the case at hand, the judge asserted that responding to the plaintiff would require the court to decide: (1) the precise nature and extent of Anwar Al-Aulaqi's affiliation with AQAP; (2) whether AQAP and al Qaeda are so closely linked that the defendants' targeted killing of [\*395] Anwar Al-Aulaqi in Yemen would come within the United States's current armed conflict with al Qaeda; (3) whether . . . Al-Aulaqi's alleged terrorist activity renders him a "concrete, specific, and imminent threat to life or physical safety," . . .; and (4) whether there are "means short of lethal force" that the United States could "reasonably" employ to address any threat that Anwar Al-Aulaqi poses to U.S. national security interests. n402 But this already lengthy and intimidating list of issues on which he claimed the court would have to decide was not to be the end of the matter. Instead, Judge Bates further ratcheted up the stakes by implicitly endorsing the government's claim that seeking to answer these questions would, in turn, require the court to understand and assess: the capabilities of the [alleged] terrorist operative to carry out a threatened attack, what response would be sufficient to address that threat, possible diplomatic considerations that may bear on such responses, the vulnerability of potential targets that the [alleged] terrorist[] may strike, the availability of military and non-military options, and the risks to military and nonmilitary personnel in attempting application of non-lethal force. n403 But Judge Bates was still not quite finished. He went on to note that, in order to rule on the application, the court would also need "to elucidate the . . . standards that are to guide a President when he evaluates the veracity of military intelligence." n404 Any claim for judicial relief would surely stumble and collapse under the weight of such wide-ranging and demanding questions. If this case did not encapsulate judicial unmanageability, whatever could? The problem, however, is that the great majority of these questions were not [\*396] posed by the plaintiff n405 and nor would they need to be addressed, let alone resolved, if the court had been at all willing to engage with the core issue stated in the plaintiffs first prayer for relief, seeking a declaration that "outside of armed conflict, the Constitution prohibits Defendants from carrying out the targeted killing of U.S. citizens, . . . except in circumstances in which they present concrete, specific, and imminent threat to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threats." n406 It would have been entirely open to the court to take this question at face value which would, at a minimum, have required the Government to affirm that it considered Al-Aulaqi to be in a situation governed by IHL, thus rendering inapplicable the IHRL standard identified in the question posed to the court. Unsurprisingly, it seems that the two organizations behind the suit--the Center for Constitutional Rights and the American Civil Liberties Union--concluded that it would be unwise to appeal the decision and risk locking in an interpretation that they characterized as affirming "the government's claim of unreviewable authority to carry out the targeted killing of any American, anywhere, whom the president deems to be a threat to the nation." n407

#### Damages no solve- allows continued gov action

Parry 7 John T. Parry, Associate Professor, Lewis & Clark Law School William & Mary Bill of Rights Journal February, 2007 15 Wm. & Mary Bill of Rts. J. 765 TERRORISM AND THE NEW CRIMINAL PROCESS, lexis

Moving beyond these roadblocks, even in successful cases, damages are often an incomplete remedy. The Supreme Court has said that the primary purpose of damages in such cases is to compensate, not to deter. n339 The resulting possibility, that damages [\*822] awards will be inadequate to deter constitutional violations, only highlights the ex post nature of the remedy. As with prosecutions, damages do not prevent harm. Indeed, one could argue that damages liability merely establishes the non-prohibitive cost of particular kinds of government action.

# Accountability

#### Plan destroys the entire targeted killing program and operational chain of command—collapses military effectiveness

Richard Klingler, 7/25/12, Bivens and/as Immunity: Richard Klingler Responds on Al-Aulaqi–and I Reply, www.lawfareblog.com/2012/07/bivens-andas-immunity-richard-klingler-responds-on-al-aulaqi-and-i-reply/

Steve’s post arguing that courts should recognize Bivens actions seeking damages from military officials based on wartime operations, including the drone strikes at issue in al-Aulaqi v. Obama, seemed to omit some essential legal and policy points. The post leaves unexplained why any judge might decline to permit a Bivens action to proceed against military officials and policymakers, but a fuller account indicates that barring such Bivens actions is sensible as a matter of national security policy and the better view of the law. A Bivens action is a damages claim, directed against individual officials personally for an allegedly unconstitutional act, created by the judiciary rather than by Congress. The particular legal issue is whether a suit addressing military operations implicates “special factors” that “counsel hesitation” in recognizing such claims (injunctions and relief provided by statute or the Executive Branch are unaffected by this analysis). In arguing that the answer is ‘no,’ the post (i) bases its Bivens analysis on how the Supreme Court “has routinely relied on the existence of alternative remedial mechanisms” in limiting Bivens relief; (ii) argues that the Bivens Court “originally intended” that there be some remedy for all Constitutional wrongs in the absence of an express statutory bar to relief; (iii) invokes the policy interest in dissuading military officials from acting unlawfully, and (iv) argues that courts should ensure that a remedy exists if an officer has no defenses to liability (such as immunity). The post’s first point, which underpins the legal analysis, is simply not correct. United States v. Stanley, the Supreme Court’s most recent and important Bivens case in the military context, directly rejected that argument: “it is irrelevant to a ‘special factors’ analysis whether the laws currently on the books afford Stanley, or any other particular serviceman, an ‘adequate’ federal remedy for his injuries. The ‘special factor’ that ‘counsels hesitation’ is … the fact that congressionally uninvited intrusion into military affairs by the judiciary is inappropriate.” Wilkie v. Robbins, too, expressly indicated that consideration of ‘special factors’ is distinct from consideration of alternative remedies and may bar a Bivens claim even where no remedy exists (and that in a Souter opinion for eight Justices). Similarly, the Bivens Court’s original intention is a poor basis for implying a damages claim in the military context. Justice Brennan in 1971 no doubt would have resisted the separation of powers principles reflected in cases that have since limited Bivens relief, especially for military matters. Instead, the relevant inquiry needs to address either first principles (did Congress intend a remedy and personal liability in this particular context? should judges imply one?) or the line of Supreme Court cases beginning with, but also authoritatively limiting, Bivens. There’s considerable support for denying a Bivens remedy under either of those analyses: for the former, support in the form of the presumptions deeply rooted in precedent and constitutional law that disfavor implied causes of action, as well as the legal and policy reasons that have traditionally shielded military officials from suit or personal liability; for the latter, Stanley, Chappell v. Wallace, Wilkie, the last thirty years of Supreme Court decisions that have all limited and declined to find a Bivens remedy, and various separation of powers cases pointing to a limited judicial role in military affairs. The post’s policy point regarding incentives that should be created for military officers to do no wrong is hardly as self-evident as the post claims. Congress has never accepted it in the decades since Stanley and has instead generally shielded military officials from personal financial liability for their service. Supreme Court and other cases from Johnson v. Eisentrager to Stanley to Ali v. Rumsfeld have elaborated the strong policy interest in not having military officials weigh the costs and prospects of litigation and thus fail to act decisively in the national interest. Many other Supreme Court cases have emphasized the potential adverse security consequences and limited judicial capabilities when military matters are litigated. The post criticizes Judge Wilkinson’s view of the adverse incentives that Bivens liability would create. That view is, however, supported by decades of Supreme Court and other precedent (and strong national security considerations) and was joined in that particular case, as in certain others, by a liberal jurist — while the post’s view is, well, popular in faculty lounges and among advocacy groups that would relish the opportunities to seek damages against military officers and policymakers. As for the post’s proposed test, it fails to account for either the Bivens case law addressed above or the separation of powers principles and litigation interests identified in the cases. It would simply require courts to determine facts and defenses, often in conditions of great legal uncertainty and following discovery, which begs the question whether Congress intended such litigation to proceed at all and fails to account for the costs of litigating military issues — to the chain of command, confidentiality, and operational effectiveness. As noted in Stanley, those harms arise whether the officer is eventually found liable or prevails. Those costs and the appropriate limits on the judicial role are recognized, too, in the separation of powers principles that run throughout national security cases – principles that jurists, even jurists sympathetic to the post’s perspective, should and will weigh as they resolve cases brought against military officials and policymakers.

#### It wrecks TK operations and broader military effectiveness

Stuart Delery, Principal Deputy Assistant Attorney General Civil Division, 12/14/12, DEFENDANTS’ MOTION TO DISMISS, http://www.lawfareblog.com/wp-content/uploads/2012/12/MTD-AAA.pdf

First, the D.C. Circuit has repeatedly held that where claims directly implicate matters involving national security and particularly war powers, special factors counsel hesitation. See Doe, 683 F.3d at 394-95 (discussing the “strength of the special factors of military and national security” in refusing to infer remedy for citizen detained by military in Iraq); Ali, 649 F.3d at 773 (explaining that “the danger of obstructing U.S. national security policy” is a special factor in refusing to infer remedy for aliens detained in Iraq and Afghanistan (internal quotation and citation omitted)); Rasul v. Myers, 563 F.3d 527, 532 n.5 (D.C. Cir. 2009) (same for aliens detained at Guantánamo Bay). These cases alone should control Plaintiffs’ claims here. Plaintiffs challenge the alleged targeting of and missile strikes against members of AQAP in Yemen. Few cases more clearly present “the danger of obstructing U.S. national security policy” than this one. Ali, 649 F.3d at 773. Accordingly, national security considerations bar inferring a remedy for Plaintiffs’ claims.19 Second, Plaintiffs’ claims implicate the effectiveness of the military. As with national security, the D.C. Circuit has consistently held that claims threatening to undermine the military’s command structure and effectiveness present special factors. See Doe, 683 F.3d at 396; Ali, 649 F.3d at 773. Allowing a damages suit brought by the estate of a leader of AQAP against officials who allegedly targeted and directed the strike against him would fly in the face of explicit circuit precedent. As the court in Ali explained: “It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home.” 649 F.3d at 773 (quoting Eisentrager, 339 U.S. at 779). Moreover, allowing such suits to proceed “would diminish the prestige of our commanders, not only with enemies but with wavering neutrals.” Id.; see also Vance, 2012 WL 5416500 at \*5 (“The Supreme Court’s principal point was that civilian courts should not interfere with the military chain of command . . . .”); Lebron, 670 F.3d at 553 (barring on special factors grounds Bivens claims by detained terrorist because suit would “require members of the Armed Services and their civilian superiors to testify in court as to each other’s decisions and actions” (citation and internal quotation omitted)). Creating a new damages remedy in the context of alleged missile strikes against enemy forces in Yemen would have the same, if not greater, negative outcome on the military as in the military detention context that is now well-trodden territory in this and other circuits. These suits “would disrupt and hinder the ability of our armed forces to act decisively and without hesitation in defense of our liberty and national interests.” Ali, 649 F.3d at 773 (citation and internal quotation omitted). To infuse such hesitation into the real-time, active-war decision-making of military officers absent authorization to do so from Congress would have profound implications on military effectiveness. This too warrants barring this new species of litigation.

#### Accountability suits will be overly individualistic – patsies will dilute broader accountability

Osborn 8 Timothy Kaufman is the Baker Ferguson Professor of Politics and Leadership at Whitman College; from 2002-06 as president of the American Civil Liberties of Washington; and he recently completed a term on the Executive Council of the American Political Science Association. Theory & Event > Volume 11, Issue 2

These characterizations, as well as the judgments of accountability that derive from them, are unsurprising, but also quite inadequate. They are unsurprising insofar as they presuppose the methodological individualism that informs most liberal legalism, which, as a rule, defines punishable wrong-doing as the deliberately-willed acts of identifiable perpetrators. This, of course, is what one would anticipate in a political order where holistic affirmations of group liability are often countered by the claim that a collectivity is nothing more than an aggregate of the individuals comprising it, and that therefore culpability can only be assigned to those persons immediately and proximately implicated in a specific misdeed. (To see the point, think of neo-conservative critiques of arguments avowing collective white guilt for structural racism as well as of affirmative action programs aimed at alleviating such racism.) Leaving aside the question of whether "psychopaths" can be deemed fully competent and so liable for their conduct, these characterizations effectively dictate the appropriate response to what those at Abu Ghraib are alleged to have done. Construed as criminals suspects, the accused are to be charged, tried, and, if found guilty, punished for violations of specific provisions of the Uniform Code of Military Justice. The inadequacies of this way of resolving the issue of accountability are multiple. For present purposes, it suffices to note that this construction makes it far too easy to assign the role of patsy to Charles Graner, Lynndie England, and their ilk; and that in turn diverts attention from the larger chain of command of which they were severable links.4 The disingenuousness of this resolution, I suspect, at least partly explains why in 2005 the American Civil Liberties Union and Human Rights First filed four suits on behalf of eight and, later, nine plaintiffs who allegedly were tortured and subjected to cruel, inhuman, and degrading forms of treatment by U.S. military personnel at Abu Ghraib and elsewhere in Iraq as well as in Afghanistan. These suits, which were consolidated in 2006, named as defendants Janis Karpinski, commander of the U.S. Army unit responsible for detention facilities in Iraq from June, 2003 to May, 2004; Thomas Pappas, commander of the Army unit responsible for intelligence gathering operations, including those conducted at Abu Ghraib; Ricardo Sanchez, commander of the U.S.-led military coalition from June, 2003 to July, 2004; and, finally, Donald Rumsfeld, then the highest-ranking civilian in the U.S. Department of Defense. In Ali et al.v. Rumsfeld, the American Civil Liberties Union and Human Rights First contended that the defendants had violated the Fifth and Eighth Amendments to the U.S. Constitution, the Geneva Conventions, and the United Nations Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment insofar as they "1) formulated or implemented policies and practices that caused the torture and other cruel, inhuman or degrading treatment of plaintiffs; and 2) had effective command and control of U.S. military personnel in Iraq and/or Afghanistan and knew and had reason to know of torture and abuse by their subordinates and failed to promptly and effectively prohibit, prevent, and punish unlawful conduct."5 As the legal foundation for these charges, the complaint invoked the doctrine of command responsibility, which specifies the conditions under which officers and/or officials may be deemed liable for the acts of subordinates. Seeking thereby to expand the scope of accountability beyond those proximately and personally responsible for the harms inflicted at Abu Ghraib, this suit posed a host of potential conundrums for the law, including but not limited to the question of the appropriate remedy should the defendants be found legally liable.6 These questions were never given a full hearing because, in March, 2007, a federal judge dismissed the case, chiefly on the ground that government officers, when acting within the scope of their official duties, are either largely or entirely immune from lawsuits.7 This outcome, which surprised only the naïve, is not of primary concern to me in this context. What is of concern is the way in which the doctrine of command responsibility opens up the possibility of moving beyond the confines of a strict construction of legal liability, i.e., one that limits culpability to Charles Graner, Lynddie England, and others foolish enough to pose for the camera while inside the walls of Abu Ghraib. Once the possibility of such expansion is admitted, especially in a political order predicated on the subordination of military to civilian authority, there is no reason in principle why application of the doctrine of command responsibility should stop with Donald Rumsfeld. Consider, in this regard, a 2005 article written by former Congresswoman Elizabeth Holtzman and published in The Nation.

# \*\*\*Solvency

# 2NC Secrecy DA

#### Executives will block information – preventing litigation. Courts will defer because of SSP and qualified immunity – only the most egregious cases will succeed

Murphy and Radsan 9 Richard Murphy is the AT&T Professor of Law, Texas Tech University School of Law. Afsheen John Radsan is a Professor, William Mitchell College of Law. Cardozo Law Review, 32 Cardozo L. Rev. 405

The state-secrets privilege poses another barrier to Bivens-style actions. This privilege allows the government to block the disclosure of information in court that would damage national security. 217 It could prevent a case from proceeding in any number of ways. For instance, the government could block plaintiffs from accessing or using information needed to determine whether a Predator attack had a sound basis through human or technical sources of intelligence. 218 By this trump card, the government could prevent litigation from seriously compromising intelligence sources and methods. 219 In addition, the doctrine of qualified immunity requires dismissal of actions against officials if a court determines they reasonably believed they were acting within the scope of their legal authority. 220 Defendants would satisfy this requirement so long as they reasonably [\*444] claimed they had authority under the laws of war (assuming their applicability). These standards are hazy, and a court applying them would tend to defer to the executive on matters of military judgment. 221 In view of so many practical and legal hurdles, some courts and commentators might be inclined to categorically reject all Bivens-style challenges to targeted killings. In essence, they might view lawsuits related to targeted killing as a political question left to the executive. 222 This view parallels Justice Thomas's that courts should not second-guess executive judgments as to who is an enemy combatant. 223 Contrary to Justice Thomas's view, the potency of the government's threshold defenses means that targeted-killing cases that make it to the merits would likely involve the most egregious conduct - for example, killing an unarmed Jose Padilla at O'Hare Airport on a shoot-to-kill order. For these egregious cases, a judicial check on executive authority is most necessary.

# 2NC Circumvent DA

#### OPEs. The DOD will define their activities as OPEs to escape oversight

Kibbe 12 \* Jennifer D. Associate Professor of Government, Franklin & Marshall College. Journal of National Security Law & Policy, 5 J. Nat'l Security L. & Pol'y 373

It was clear in June 2009 that some members of Congress sensed that SOF were conducting unacknowledged missions that were falling through the oversight cracks. In its report on the Intelligence Authorization Act for FY 2010, the HPSCI noted "with concern" that "in categorizing its clandestine activities, DOD frequently labels them as "Operational Preparation of the Environment' (OPE) to distinguish particular operations as traditional military activities and not as intelligence functions. The Committee observes, though, that overuse of this term has made the distinction all but meaningless." 49 HPSCI further complained that, "while the purpose of many such operations is to gather intelligence [which would mean they are not covert actions], DOD has shown a propensity to apply the OPE label where the slightest nexus of a theoretical, distant military operation might one day exist. Consequently, these activities often escape the scrutiny of the intelligence committees, and the congressional defense committees cannot be expected to exercise oversight outside of their jurisdiction." 50 Representative Rush Holt expressed similar concerns at a HPSCI Subcommittee hearing in October 2009: There is a lot that one could imagine that is going on in the world these days, whether it be remote killings or assassinations or intelligence collection that falls - or other kinds of actions - that fall somewhere between Title 10 [military authorities] and Title 50 [intelligence authorities], depending on who does them and how they are done. It has become practice here on the Hill not to brief some of these activities. It is not clear whether some of those activities are briefed to anyone. But, in any case, they are often not briefed to the Intelligence Committees when I think a reasonable person would say [those activities] are intelligence activities or [that] there are significant intelligence components of the activities. 51 One of the witnesses reinforced Holt's point that although certain operations may appear to be under the intelligence committees' jurisdiction, "because they are considered at least by the Defense Department to be a part of a military operation, they say jurisdiction belongs to the Armed Services Committee. And ... sometimes the Armed Services Committees get notice and sometimes they don't, of what is being done in preparation for a military operation ... ." 52

The executive will use PMCs to escape oversight

MICHAELS 4 \*Jon D. Assistant Professor of Law at the UCLA School of Law. Law Clerk to the Honorable Guido Calabresi, U.S. Court of Appeals for the Second Circuit; *Washington University Law Quarterly*, BEYOND ACCOUNTABILITY: THE CONSTITUTIONAL, DEMOCRATIC, AND STRATEGIC PROBLEMS WITH PRIVATIZING WAR, Fall, 82 Wash. U. L. Q. 1001

As will be explored at length in the course of the discussions in subsequent parts of this Article, privatization expands the horizon of executive policymaking discretion in the context of military affairs. Using privateers, whose legal status differentiates them from regular, U.S. soldiers, could help enable the president to bypass congressional oversight and even international collective security arrangements. Indeed, outsourcing may be undertaken to exploit this legal gap between what is the official state policy (say, non-intervention, limited involvement, or limited troop deployment) and what military goals can actually be accomplished through private channels. If contractors operate within these interstices, the president can presumably satisfy national security aims [\*1041] without expending the time and political capital to secure formal approval at home or internationally. First, pursuant to the U.S. Constitution, customary practice, and statutory framework laws such as the War Powers Resolution, the president shares many warmaking powers with Congress. While retaining exclusive jurisdiction over command decisionmaking, the president must nevertheless seek, inter alia, authorization and funding from Congress to deploy U.S. troops into zones of hostility. But, many of Congress's powers over military affairs are keyed to its Article I authority over the Armed Forces per se. Congress can, for instance, regulate the use and number of servicemen and women abroad, curtail funding for operations, and withhold support for a military engagement. Hence, as it stands, the president must often seek congressional approval in some form or another. If the Executive were, however, to deploy private troops in lieu of U.S. soldiers, it might be able to evade much of Congress's oversight jurisdiction - at least temporarily. Without having to seek authorization and funds from the national legislature, the president can more easily engage in unilateral policymaking and dispatch private contractors who are not part of the regular U.S. military. In so doing, objectives can perhaps be achieved more swiftly and with less political wrangling and opposition. This privatization agenda is discussed further in Part III.

# 2NC Coverts DA

**Coverts anyone?**

**Lorber, 13** – (Eric, J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University, “Executive Warmaking Authority And Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?”)

Stemming from similar tension noted in the constitutional division of war-making authority noted above, congressional oversight of covert actions beyond intelligence collection has often proved a point of contention between the executive and legislative branches. n195 Presidents have "inferred authority [to conduct covert actions] from such places as the Vesting Clause, the Commander-in-Chief Clause, the Treaty Clause, and from an implied executive privilege." n196¶ [\*993] Likewise, Congress attempted to rein in the President's ability to conduct covert operations without oversight by implementing a series of laws that required the President to get approval before undertaking such activities. n197 If the President did not provide such notification, Congress could decline to fund that particular covert activity. n198 Following the revelation that widespread, unreported covert actions were undertaken during the Vietnam War, Congress moved for stricter control of executive power, both by forcing the executive to account for the money it was spending as part of annual authorization bills n199 and by streamlining its own oversight capability by tasking two primary committees, the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, with oversight. n200¶ While Congress designed this legislation to rein in the President's power to conduct covert activities without oversight, events in the 1980s clearly showed that its efforts had been ineffective. n201 In particular, the Iran-Contra affair illustrated that Congress needed to substantially reform oversight legislation to ensure that it could properly monitor executive covert action. n202 As a result, in 1990, Congress began drafting a new oversight bill, [\*994] the Intelligence Authorization Act of 1991, which grants Congress oversight of covert activities. n203 Section 413b of the Intelligence Authorization Act provides,

# 2NC Turns Norms

. No international solvency. Verification will be impossible

Alston 11 (Philip, John Norton Pomeroy Professor of Law, New York University School of Law, Harvard National Security Journal, “The CIA and Targeted Killings Beyond Borders”, 2 Harv. Nat'l Sec. J. 283, Lexis Law)

The combination of high levels of secrecy, combined with poor accountability, mean that it is impossible to verify the extent to which applicable international standards are respected in practice. Because these covert forces often operate as self-described killing machines, n4 their existence and continuing rapid expansion have grave consequences for the twin regimes of international human rights law ("IHRL") and international humanitarian law ("IHL") which aim to uphold the value of human life and minimize the brutalities of warfare.

Talk is cheap. The international community won’t just believe the plan. The plan isn’t enough to solve absent proof

Alston 11 (Philip, John Norton Pomeroy Professor of Law, New York University School of Law, Harvard National Security Journal, “The CIA and Targeted Killings Beyond Borders”, 2 Harv. Nat'l Sec. J. 283, Lexis Law)

Before moving to consider the Obama administration's approach to these issues, it is important to underscore the fact that we are talking about two different levels of accountability. The first is that national procedures must meet certain standards of transparency and accountability in order to meet existing international obligations. The second is that the national procedures must themselves be sufficiently transparent to international bodies as to permit the latter to make their own assessment of the extent to which the state concerned is in compliance with its obligations. In other words, even in situations in which states argue that they put in place highly impartial and reliable accountability mechanisms, the international community cannot be expected to take such assurances on the basis of faith rather than of convincing information. Assurances offered by other states accused of transgressing international standards would not be accepted by the United States in the absence of sufficient information upon the basis of which some form of verification is feasible. Since the 1980s, the phrase "trust but verify" n104 has been something of a mantra in the arms control field, but it is equally applicable in relation to IHL and IHRL. The United States has consistently demanded of other states that they demonstrate to the international community the extent of their compliance with international standards. A great many examples could be cited, not only from the annual State Department reports on the human rights practices of other states, but also from a range of statements by the President and the Secretary of State in relation to countries like Egypt, Libya, and Syria in the context of the Arab Spring of 2011. [\*318] Since I began this section of the Article by citing the emphasis on accountability adopted by the UN report on Sri Lanka, it is appropriate to conclude by reference to the position taken by the United States in that regard. Sri Lanka argued that it had undertaken its own national inquiry into alleged violations of international law committed in the final phases of its civil war and that such an inquiry satisfied whatever accountability obligations the government had. In August 2011, however, the United States called upon Sri Lanka to submit the report of that national inquiry directly to the UN Human Rights Council so that it could be scrutinized by the international community and demonstrate that it "meets international standards." n105 In other words, the two levels of accountability are ultimately separate, and national insistence on the adequacy of domestic procedures can never be considered a substitute for the degree of transparency required to enable the international community to discharge its separate monitoring obligations. We turn now to take note of the position taken in terms of the applicable international law by the Obama administration. C. The Obama Administration and International Law The United States has consistently affirmed its commitment to the general principles of transparency and accountability and its broader commitment to comply with all of its international obligations. The Army Field Manual, for example, highlights the need for the United States to respect the rule of law in its military activities: Law and policy govern the actions of the U.S. forces in all military operations, including counterinsurgency. For U.S. forces to conduct operations, a legal basis must exist. This legal basis profoundly influences many aspects of the operation.

# 2NC Turns Drones

#### The executive will fight back – doubling down on drones

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

While judicial correctives for both myopia and hindsight bias vindicate values like due process and the separation of powers, they also reduce volatility. Myopia and hindsight bias hold the rule of law hostage to wide political oscillations. These occur because people facing losses are risk-prone. n12 Behavioral substitutions that adjust to changes in the law n13 may [\*200] entail risk-seeking that undermines the potential for deliberation among divergent stakeholders. For example, when political dissenters lose faith in the prospects for a peaceful transition from myopic policies, they may substitute revolutionary action for reformist speech. n14 Having staged a revolution, some erstwhile rebels learn the wrong lesson, using the machinery of the state to police the purity of adherents. n15 Remnants of the former regime recoup, citing the rebels' excesses. In each phase of the cycle, differentiation from the previous phase becomes a proxy for soundness on the merits. 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.

# \*\*\*K

# 2NC TK Overview

**---national security utilitarianism---the public has been subdued into believing the government overreach and means-end rationality logic that seeks to control and dominate the world around us is pushing us on the brink of extinction---syria is the most recent example, instead of engaging in diplomacy which would have been the better option we were on the brink of initiating a nuclear war in the region**

Williams 8 \*Daniel R, Associate Professor of Law, Northeastern University School of Law.

Penn State Law Review, Summer, 113 Penn St. L. Rev. 55

B. The Underbelly of the Enlightenment Heritage - the Weberian Nightmare What has heretofore given a patina of acceptability to this modern-day Foucauldian "political dream of the plague" is the narrative idea of a wounded and vulnerable nation gripped in an existential crisis, seeking to protect itself against human "missiles of destruction." The descriptive (a threatened wounded nation) produces in this story the normative (the adjudicative assembly line for enemy combatants). The Foucauldian "political dream of the plague" is the Weberian nightmare. In Dialectic of the Enlightenment, Frankfurt School theorists Horkheimer and Adorno identify the Weberian nightmare of obsessive instrumental rationality as the dominant cognitive orientation in Western culture. 147 Whereas most Americans see as features of this means-ends orientation the awesome feats of science (the amazing technological prosthetics that drives humanity closer to becoming a God, as Freud observed), critical theorists like Horkheimer and Adorno saw what Weber saw 148 - a cognitive orientation that feeds into and fuels our obsessive drive to dominate and control all that surrounds us. 149 The salient point in the Dialectic of the Enlightenment, for our purposes, is that the instrumentalist orientation has been unleashed to devour the very idea of the "sacred" in life. 150 September 11th and the war on terror has only hastened a movement along an already existing trajectory. What we experience in our alienated, gadget-filled, but spiritually vacant existence - what Max Weber termed our "disenchantment with the world" 151 - is a reflection of what Horkheimer and Adorno diagnosed, and of how badly our capacity for reason has been corrupted by a fetish for means-ends rationality. 152 That corruption, which is on [\*91] full display in the overt means-ends reasoning of Hamdi itself, has led to what philosopher Albert Borgmann calls a "crucial debility" in our culture, characterized by the "expatriate quality of public life" where we "live in self-imposed exile from communal conversation and action." 153 There is, then, a certain blowback effect, where a mode of thinking that was supposed to lead to humanity's flourishing has been whipsawed back upon us as a powerful corrupting, even imprisoning, force. Whereas the Enlightenment, as exemplified by Rousseau, Voltaire, and Kant, promised freedom from irrationality and darkness, it has instead denuded the public sphere and bequeathed to us a technocratic language that debilitates the ability to conceptualize our way out of a disastrous course (ecologically and otherwise) on which our technocratic means-ends orientation has put us. 154 The quest for domination and control immanent within Enlightenment's fetish for means-ends reasoning, which supposedly promised a world of flourishing human rights (though pursued through the blood of ancient cultures, such as the native peoples in the Americas), drained modernity of the very vitality that modernist thinkers insisted [\*92] was distinctive about Enlightenment society. 155 It has instead taken us to the brink of annihilation in a world where the disparities of wealth are grossly appalling and human behavior slides so easily into barbarism and violence, usually in the service of preserving or further deepening those disparities. Whereas the Enlightenment broke the bondage of atrophied tradition, it has wrought a world where little is sacred, and what little remains is rapidly dwindling, where "what holds us all together is a cold and impersonal design." 156 We slaughtered cultures within our own country - Native American cultures that we still do not fully appreciate and comprehend - with the quintessential Enlightenment slogan, Manifest Destiny, only to bring about an ennui and despair that produces a nostalgic yearning for the sacred upon which those slaughtered cultures built their now-defunct way of life.

# 2NC Framework

**there is no benefit in voting negative**

**Schlag, 90 –**  (Pierre, professor of law at the University of Colorado, Stanford Law Review, lexis)

In fact, normative legal thought is so much in a hurry that it will tell you what to do even though there is not **the slightest chance** that you might actually be in a position to do it. For instance, when was the last time you were in a position to put the difference principle n31 into effect, or to restructure [\*179] the doctrinal corpus of the first amendment? "In the future**, we should.** . . ." When was the last time you were in a position to rule whether judges should become pragmatists, efficiency purveyors, civic republicans, or Hercules surrogates? Normative legal thought doesn't seem overly concerned with such worldly questions about the character and the effectiveness of its own discourse. It just goes along and proposes, recommends, prescribes, solves, and resolves. Yet despite its obvious desire to have worldly effects, worldly consequences, normative legal thought remains seemingly unconcerned that for all **practical purposes,** its only consumers are legal academics and perhaps a few law students -- persons who are virtually never in a position to put any of its wonderful normative advice into effect.

# 2NC AT: Permutation

**(3) sequencing disad---alt key to come before the plan otherwise movements get *sapped***

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

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

**(4) lost in the details disad---they zero in on certain aspects of executive power which stop broader systemic criticisms which is necessary to check executive power**

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

How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current political climate, in which the President enjoys minimal resistance to his most egregious uses of violence? How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current political situation, are best won through the broad strokes of what Slavoj Žižek calls "systemic" critique. For Žižek, looking squarely at interpersonal or subjective violences (e.g., torture, drone strikes), drawn as we may be by their gruesome and immediate appeal, distorts the critic's broader field of vision. For a fuller picture, one must pull one's critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek's mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique? For practical purposes, this essay leaves off discussion of neoliberal economic domination, vital as it may be to a full accounting for the U.S.' latest and most desperate expressions of state solvency.

**(6) complacency DA--- relying on the law create psychological cooption and satisfaction with what he we have done**

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

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

**(8) hijacking disad---the state is hijacked by the military industrial complex-and elites who control the process of decision-making that normalizes and cements in an authoritarian state that wages war on its populations and populations around the world---working through these institutions means they get crushed---only the public sphere can solve**

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

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

# 2NC Alternative

#### Damages no solve- allows continued gov action

Parry 7 John T. Parry, Associate Professor, Lewis & Clark Law School William & Mary Bill of Rights Journal February, 2007 15 Wm. & Mary Bill of Rts. J. 765 TERRORISM AND THE NEW CRIMINAL PROCESS, lexis

Moving beyond these roadblocks, even in successful cases, damages are often an incomplete remedy. The Supreme Court has said that the primary purpose of damages in such cases is to compensate, not to deter. n339 The resulting possibility, that damages [\*822] awards will be inadequate to deter constitutional violations, only highlights the ex post nature of the remedy. As with prosecutions, damages do not prevent harm. Indeed, one could argue that damages liability merely establishes the non-prohibitive cost of particular kinds of government action.

**Alt solves**

**Huq 12** + Aziz Z. Assistant Professor of Law, University of Chicago Law School. University of Chicago Law Review, Spring, 79 U. Chi. L. Rev. 777

Credibility is the main mechanism of political control analyzed in The Executive Unbound. But PV hint at others. They point briefly to "a wealthy and highly educated population, whose elites continually scrutinize executive action and tighten the constraints of popularity and credibility" (p 14). Publicity is said to work through a "complex process by which the views of elites, interest groups, ordinary citizens, and others ultimately determine the de facto lines of political authority" (p 78). 47 To be sure, elections rely on informed voters (who may not always be available) and can be used only periodically (pp 114-16). And since the enactment of the Twenty-Second Amendment in 1947, 48 second-term Presidents have not faced reelection. Nevertheless, PV propose, even second-term Presidents worry about their "policy legacy and their place in history" (p 13). As a consequence, there is a public-regarding friction on even final-period Presidents' decisions. [\*789] To summarize, the strong law/politics dichotomy at the heart of The Executive Unbound rests on twin claims of law's fragility and the effective force of politics. Rejecting traditional legal scholarship's narrow focus on doctrine, PV's theory predicts that Presidents can and do act forcefully except to the extent they perceive a credibility or publicity benefit from holding back. 49 Congress, the courts, and ex ante legal constraints, by contrast, are epiphenomenal and play little or no role. The account also has a normative sheen. By implication, executive dominance is not merely inevitable but to be welcomed given the presidency's comparative advantage in policy making and in credibility-induced fidelity to democratic wishes.

# \*\*\*Shift

## 1NR

### TC

#### Squo solves the aff but the disad turns it

Zenko 13 POLICY INNOVATION MEMORANDUM NO. 31 Date: April 16, 2013 Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action at the Council on Foreign Relations Re: Transferring CIA Drone Strikes to the Pentagon

In 2004, the 9/11 Commission recommended that the “lead responsibility for directing and executing paramilitary operations, whether clandestine or covert, should shift to the Defense Department” to avoid the “creation of redundant, overlapping capabilities and authorities in such sensitive work.” The recommendation was never seriously considered because the CIA wanted to retain its covert action authorities and, more important, it was generally believed such operations would remain a rarity. (At the time, there had been only one nonbattlefield targeted killing.) Nearly a decade later, there is increasing bipartisan consensus that consolidating lead executive authority for drone strikes would pave the way for broader strategic reforms, including declassifying the relevant legal memoranda, explicitly stating which international legal principles apply, and providing information to the public on existing procedures that prevent harm to civilians. During his February 2013 nomination hearing, CIA director John O. Brennan welcomed the transfer of targeted killings to the DOD: “The CIA should not be doing traditional military activities and operations.” The main objection to consolidating lead executive authority in DOD is that it would eliminate the possibility of deniability for U.S. covert operations. However, any diplomatic or public relations advantages from deniability that once existed are minimal or even nonexistent given the widely reported targeted killings in Pakistan and Yemen. For instance, because CIA drone strikes cannot be acknowledged, the United States has effectively ceded its strategic communications efforts to the Pakistani army and intelligence service, nongovernmental organizations, and the Taliban. Moreover, Pakistani and Yemeni militaries have often taken advantage of this communications vacuum by shifting the blame of civilian casualties caused by their own airstrikes (or others, like those reportedly conducted by Saudi Arabia in Yemen) to the U.S. government. This perpetuates and exacerbates animosity in civilian populations toward the United States. If the United States acknowledged its drone strikes and collateral damage—only possible under DOD Title 10 authorities—then it would not be held responsible for airstrikes conducted by other countries. The CIA should, however, retain the ability it has had since 9/11 to conduct lethal covert actions in extremely rare circumstances, such as against immediate threats to the U.S. homeland or diplomatic outposts. Each would require a separate presidential finding, and should be fully and currently informed to the intelligence committees. Of the roughly 420 nonbattlefield targeted killings that the United States has conducted, very few would have met this criteria. The president should direct that U.S. drone strikes be conducted as DOD Title 10 operations. That decision would enhance U.S. national security in the following ways: 3  Improve the transparency and legitimacy of targeted killings, including what methods are used to prevent civilian harm.  Focus the finite resources of the CIA on its original core missions of intelligence collection, analysis, and early warning. (There is no reason for the CIA to maintain a redundant fleet of armed drones, or to conduct military operations that are inherently better suited to JSOC, the premier specialized military organization. As “traditional military activities” under U.S. law, these belong under Title 10 operations.)  Place all drone strikes under a single international legal framework, which would be clearly delineated for military operations and can therefore be articulated publicly.  Unify congressional oversight of specific operations under the armed services committee, which would end the current situation whereby there is confusion over who has oversight responsibility.  Allow U.S. government officials to counter myths and misinformation about targeted killings at home and abroad by acknowledging responsibility for its own strikes.  Increase pressure on other states to be more transparent in their own conduct of military and paramilitary operations in nonbattlefield settings by establishing the precedent that the Obama administration claims can have a normative influence on how others use drones.

#### Turns the norms advantage- continuing CIA drones makes it impossible for any accountability or transparency

Zenko 13 POLICY INNOVATION MEMORANDUM NO. 31 Date: April 16, 2013 Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action at the Council on Foreign Relations Re: Transferring CIA Drone Strikes to the Pentagon

In an interview, President Obama revealed, "I think creating a legal structure, processes, with oversight checks on how we use unmanned weapons is going to be a challenge for me and for my successors for some time to come—partly because technology may evolve fairly rapidly for other countries as well." The Obama administration has two central objectives for its targeted killing reforms: preventing constraints on its ability to conduct lethal operations and setting precedents for the use of armed drones by other states. By law, institutional culture, and customary practice, drone strikes conducted by the CIA cannot reach the minimum thresholds of transparency and accountability required to achieve either objective. JSOC is also a highly secretive organization, but the United States could provide a much clearer and more detailed explanation of the outstanding issues regarding targeted killing without compromising the military's sources and methods—should the president prioritize such change. Moreover, according to a February 2013 poll, U.S. public support for military drone strikes (75 percent) was higher than for those conducted by the CIA (65 percent). Without ending CIA targeted killings, the Obama administration cannot undertake any of the reforms that it has stated are necessary both to ensure drone strikes do not go the way of third-country renditions and enhanced interrogation techniques, but also to establish the precedents of greater openness in how such operations are conducted by others

#### Turns the aff- would establish a norm of covert TK

Alston 11 President and Fellows of Harvard College. All Rights Reserved. Harvard National Security Journal 2011 Harvard National Security Journal 2 Harv. Nat'l Sec. J. 283 The CIA and Targeted Killings Beyond Borders Philip Alston John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. lexis

In terms of the de jure legal situation, one can begin with the proposition that the CIA is obligated to respect United States law, and thus to comply with international law to the extent that it is reflected in the former. But various authors, especially those with links to the government, have also noted that there are no statutory requirements in U.S. law requiring the CIA to comply with international law, n291 and international law does not explicitly prohibit covert operations. n292 In an oft-quoted anecdote, a former CIA Director, Admiral Stansfield Turner, remarked that, "The FBI agent's first reaction when given a job is, 'How do I do this within the law?' The CIA agent's first reaction when given a job is, 'How do I do this regardless of the law of the country in which I am operating?'" n293 Others have noted, albeit not in relation to targeted killings, that "[b]y definition, it is the job of [the CIA] to break the laws of other countries." n294 It can reasonably be inferred that international law is not going to provide any significant constraint upon the Agency's determination to do its job unless two conditions are satisfied. The first is that the relevant international law standard is clearly and explicitly part of domestic United States law. And the second is that there is a system of domestic oversight ensuring that such international norms are factored into the overall equation of domestic accountability. We will consider that second element below. Perhaps the most interesting question about the CIA and international law concerns the de facto legal situation, or the actual practice. The reality, of course, is that the foreign operations of the intelligence agencies of all countries by definition take place below the radar screen, and many, if not most, of their activities will violate the laws of the third [\*369] countries in which they operate, as well as perhaps violating international law norms. This applies as much to Russian agents operating in the United States as it does to U.S. intelligence operatives in Pakistan. n295 But if this is the case and if there seem to be very few instances in which states make a fuss about the activities of foreign intelligence agencies, does it really matter if they are de jure illegal? As Michael Reisman has noted, covert action takes place under "a much more complex operational code than formal statements of prohibition would lead one to anticipate." n296 Thus even verbal condemnation on the part of an affected government will often cloak de facto acquiescence. This proposition has been taken even further by Colonel Kathryn Stone with her assertion that "[m]ost of the world has come to look at CIA de facto wars as a way of life because most powers benefit from their own CIA-equivalents operating in foreign countries . . . ." n297 The question then is what limits apply. Intelligence gathering is apparently very widely tolerated, economic espionage perhaps less so, but what about targeted killings by intelligence agents? Because of the clandestine and sometimes covert nature of intelligence activities, and the responses to them, relatively little is publicly known in terms of state practice. But four variables would seem to be of particular importance in predicting when a passive or restrained response will be forthcoming from an affected state. They are the status of the individual agent, the nature of the covert action, power relations, and the independence of the judicial system.

### Aff no solve CIA

#### CIA will deny a drone program even exists.

Greenwald 13 Glenn, American journalist, political commentator, lawyer, columnist, blogger, and author, JD NYU law “Obama DOJ again refuses to tell a court whether CIA drone program even exists” http://www.theguardian.com/commentisfree/2013/feb/14/cia-aclu-drone-secrecy

It is not news that the US government systematically abuses its secrecy powers to shield its actions from public scrutiny, democratic accountability, and judicial review. But sometimes that abuse is so extreme, so glaring, that it is worth taking note of, as it reveals its purported concern over national security to be a complete sham. Such is the case with the Obama DOJ's behavior in the lawsuit brought by the ACLU against the CIA to compel a response to the ACLU's Freedom of Information Act (FOIA) request about Obama's CIA assassination program. That FOIA request seeks nothing sensitive, but rather only the most basic and benign information about the "targeted killing" program: such as "the putative legal basis for carrying out targeted killings; any restrictions on those who may be targeted; any civilian casualties; any geographic limits on the program; the number of targeted killings that the agency has carried out." Everyone in the world knows that the CIA has a targeted killing program whereby it uses drones to bomb and shoot missiles at those it wants dead, including US citizens. This is all openly discussed in every media outlet. Key Obama officials, including the president himself, not only make selective disclosures about this program but openly boast about its alleged successes. Leon Panetta, then the CIA Director, publicly said all the way back in 2009 when asked about the CIA drone program: "I think it does suffice to say that these operations have been very effective because they have been very precise." In 2010, Panetta, speaking to the Washington Post, hailed the CIA drone program in Pakistan as "the most aggressive operation that CIA has been involved in in our history". This is just a partial sample of Obama official boasts about this very program (for more, see pages 15 to 28 here). Despite all that, the Obama DOJ from the start has refused not only to provide the requested documents about the CIA drone program, but they refuse to say whether such documents even exist. They do so by insisting that whether there even exists such a thing as a "CIA drone program" is itself classified, and therefore, they can neither admit nor deny whether they possess any of the documents sought by the FOIA request: "the very fact of the existence or nonexistence of such documents is itself classified," repeats the Obama DOJ over and over like some hypnotic Kafkaesque mantra. DOJ secrecy Even in the face of the endless stream of public statements from the president on down discussing and boasting about the drone program, the federal judge presiding over the lawsuit last September meekly deferred (as usual) to the DOJ's secrecy claims and dismissed the ACLU's lawsuit. The judge, Rosemary Collyer, ruled that all of the public statements cited by the ACLU whereby Obama officials boasted of the drone program do not constitute official acknowledgment that the CIA (as opposed to some other government generally) has a drone program. The ACLU has appealed this decision.

### Links

#### Shift to CIA to avoid accountability

Alston 11 President and Fellows of Harvard College. All Rights Reserved. Harvard National Security Journal 2011 Harvard National Security Journal 2 Harv. Nat'l Sec. J. 283 The CIA and Targeted Killings Beyond Borders Philip Alston John Norton Pomeroy Professor of Law, New York University School of Law. The author was UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010. lexis

But the most significant problem by far with double-hatting is its impact in terms of accountability. Already in 2003, Colonel Kathryn Stone had noted that "[w]hen the CIA and SOF operate together on the battlefield, the legal distinctions regarding operating authorities and procedures, and accountability, can become blurred." n247 In Singer's view one of the motivations for the practice was to avoid accountability. He argues that the CIA was given operational responsibilities because "no one wanted to have a public debate about the use of force in a third country" and this could be avoided by secretly using the CIA instead. The result, he says, is to flout "the intent, if not the letter, of the most important legal codes that originally divided out roles in realms of policy and war." n248 A recent Congressional study also concludes that one of the actual objectives of the "unprecedented use of U.S. SOF in clandestine and covert roles as well as being assigned to the CIA" is precisely to blur the boundaries of responsibility and accountability. n249 This deliberate undermining of the distinction between intelligence gathering and operational activities has grave implications in terms of both domestic and international accountability. Domestically, DOD and especially JSOC foreign killing operations are subject to virtually no meaningful accountability, and the same applies to the CIA.

#### Aff no solvo and drives more operations underground

Michaels 8 Jon Acting Professor, UCLA School of Law “All the President's Spies: Private-Public Intelligence Partnerships in the War on Terror” California Law Review August, 2008 96 Calif. L. Rev. 901 lexis

The most obvious solution to this problem of extra-legality and the concomitant accountability gap (that may contribute to a state of underregulation) is to insist on greater compliance with the extant legal regime. 184 This straightforward prescription has two problems. The first complication is that the current legal framework substantively covers only some subset of possible operations; and, even where collaborations fall squarely within well-regulated domains, the oversight mechanisms are quite weak. 185 Accordingly, any isolated attempt to strengthen compliance and enforcement obligations placed on intelligence agents, without also expanding [\*943] the regulatory terrain, would be a half-hearted gesture. The second complication involves the Executive's institutional predisposition to act informally. Attempting to increase the rigor and scope of the laws regulating intelligence operations, such that the framework would be more robust, is likely to drive an even greater percentage of operations underground, precisely because the benefits of skirting regulations would be that much greater for an Executive now required to comply with more demanding accountability standards.

#### Executive prefers informality- flexibility, avoiding authorization and secrecy

Michaels 8 Jon Acting Professor, UCLA School of Law “All the President's Spies: Private-Public Intelligence Partnerships in the War on Terror” California Law Review August, 2008 96 Calif. L. Rev. 901 lexis

Singularly tasked with protecting American lives and interests, the Executive is institutionally committed to facilitating the activities of its national-security and intelligence agencies. 87 This is not to say that officials within the Executive Branch do not take oversight by the congressional and judicial branches seriously. 88 But given the ever-present threat of terrorist attacks, the intelligence community's history of conducting extra-legal covert operations, 89 the Bush Administration's assertion that the President's Article II constitutional authority and Congress's 2001 Authorization for Use of Military Force 90 endow the Executive with sweeping national-security powers, 91 and the real-world examples discussed in this Article, there is not strong support for the more neutral premise that the Executive, irrespective of who is President, is particularly adept at balancing strategic needs with legal imperatives. 92 Beyond the functional explanation that some of today's intelligence operations simply do not fall within already regulated categories (and thus cannot proceed any other way but, for lack of a better term, informally), 93 there [\*923] are a range of benefits that the Executive may want to capture by choosing to proceed informally, even when that means bypassing the prescribed regulatory procedures. First, informality increases operational flexibility and thus gives the intelligence agencies greater discretion to counteract would-be terrorist threats. A legalistic, transactional relationship with a corporation, in which the firm cooperates only to the extent a court order or subpoena specifies, is likely to inhibit the type of open-ended, fast-moving collaboration that the intelligence agencies prefer. That is, the more arm's-length "law" that exists between the private and public partners, the less likely it is that the corporations will support sudden decisions by the Executive to broaden a given operation, or to countenance "mission creep," such as when an operation drifts, expands, or devolves from investigating only pressing questions of national security to probing ordinary criminal activity. 94 Second, informality and consensual cooperation enable intelligence agents to avoid having to secure authorization from the FISA Court or from a ranking agency head. More than just a time-and labor-saving hurdle, 95 the agents might also be seeking what then-Deputy National Intelligence Director Michael Hayden called "a subtly softer trigger" than the laws actually permit, 96 - that is, greater discretion to act quickly, over a broader range of targets, and on the basis of "thinner evidence." 97 Or, they might be trying to evade the various minimization requirements included in many of the foreign-intelligence search and surveillance statutes. 98 Third, under an informal scheme, secrecy is at its apex: technically, no one outside of the bilateral relationship needs to be told about the arrangement. [\*924] This secrecy is very important to the intelligence agencies, which often claim that even modest policy discussions by Congress could compromise operations and endanger American lives. 99 As such, endeavoring to minimize the chance of leaks, the Executive might conclude that, independent of any operational advantage, informal collaboration with minimal-to-no reporting to Congress or the courts is the better option. 100