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# 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

#### The Executive Branch of the United States should create “executive v. executive” divisions as per our Katyal evidence to promote internal separation of powers via separate and overlapping cabinet offices, mandatory review of government action by different agencies, civil-service protections for agency workers, reporting requirements to Congress, and an impartial decision-maker to resolve inter-agency conflicts. The Executive should request Congressional authorization prior to initiating offensive use of military force.

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

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

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

#### Internal checks comparatively solve better and don’t link to politics

Metzger ‘9, Gillian E. Metzger, Professor of Law @ Columbia Law School, “The Interdependent Relationship Between Internal and External Separation of Powers” 59 Emory L.J. 423, Emory Law Journal, 2009

Several bases exist for thinking that internal separation of powers mechanisms may have a comparative advantage. First, internal mechanisms [\*440] operate ex ante, at the time when the Executive Branch is formulating and implementing policy, rather than ex post. As a result, they avoid the delay in application that can hamper both judicial and congressional oversight. 76 Second, internal mechanisms often operate continuously, rather than being limited to issues that generate congressional attention or arise in the form of a justiciable challenge. 77 Third, internal mechanisms operate not just at the points at which policy proposals originate and are implemented but also at higher managerial levels, thus addressing policy and administration in both a granular and systemic fashion. In addition, policy recommendations generated through internal checks may face less resistance than those offered externally because the latter frequently arise after executive officials have already decided upon a policy course and are more likely to take an adversarial form. 78 Internal mechanisms may also gain credibility with Executive Branch officials to the extent they are perceived as contributing to more fully informed and expertise-based decisionmaking. 79

# 3

#### Debt ceiling will pass but Obama needs PC

Grier, 10-4-’13 (Peter, “Has John Boehner surrendered on debt ceiling?” CS Monitor, http://www.csmonitor.com/USA/DC-Decoder/Decoder-Wire/2013/1004/Has-John-Boehner-surrendered-on-debt-ceiling)

There are numerous press reports Friday that Speaker John Boehner has told some Republican House members that he won’t hang tough on a debt ceiling fight. He’ll agree to use a combination of Democratic and establishment Republican votes to hike the ceiling so as to avoid damaging America’s credit and economy, according to these stories. Is this really the case? Because if it’s true, that means the worst-case scenario of the current Washington fiscal crisis – a US default on its debts in the midst of a government shutdown – won’t come to pass. We’ll get to our judgment in a second. First, a public-service reminder: The debt limit problem is separate from the fiscal dispute that’s shut down the government, strictly speaking. The government is shut down because the appropriations that pay for its activities expired at the end of the fiscal year (Sept. 30), and Congress hasn’t passed a funding bill to keep that money flowing. The debt limit arrives around Oct. 17, when the United States hits a legal limit on the amount of money it can borrow, meaning the Treasury can’t pay many debts already incurred. The government shutdown has closed national parks. A breach of the debt limit could stop the timely delivery of Social Security checks and Medicare reimbursements, and it could freak out world financial markets dependent on the dollar as a presumed currency of stability in a chaotic world. OK, back to Speaker Boehner. We’d say the stories that he’s soft on the debt limit are mostly true but have important holes, meaning some partisan fights on the issue might yet lie ahead.

#### **Having to defend authority against Congress derails the agenda**

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

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

#### 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.

# 4

Congressional limitations cause greater executive reliance on PMCs. The drug war in Columbia proves the link

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

But since the War Powers Resolution applies only to the deployment of U.S. Armed Forces 259 and, moreover, since anti-covert operations legislation requiring congressional notification and consultation [\*1077] applies only to members of the U.S. intelligence community, 260 there is room to maneuver unilaterally if the president were to use privateers. The drug war in Colombia provides an apt example. 261 Due to frustrations associated with Congress's stringent limitations on the number and responsibilities of American soldiers in Colombia in the 1990s, private military firms were utilized probably in no small part to circumvent these legislative restrictions. 262 According to P.W. Singer, the intent of privatized military assistance is to bypass Congressional oversight and provide political cover to the White House if something goes wrong... . [So,] the United States quietly arranged the hire of a slew of PMFs, whose operations in Colombia range far beyond the narrow restrictions placed on U.S. soldiers fighting the drug war. Rather, the firms' operations are intended to help the Colombian military finally end the decades-old [rebel] insurgency. 263 Again, the structural damage is clear: through bypassing Congress - and the American people - the Executive can initiate more conflict than the public might otherwise have been willing to support.

#### leads to quicker intervention and causes the President to not depend on coalitions – turns case

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

Hence with lower political opportunity costs for waging war, the president may be more apt to overcommit American capital - human, monetary, and diplomatic - in ways that would be less likely to occur were Congress and the American people (through their legislators) given a more direct say. One need not ponder hypotheticals to appreciate this potential for dangerous presidential unilateralism. If it were not for the tens of thousands of private troops supporting and serving alongside of U.S. soldiers in Iraq and Afghanistan, perhaps the President would not have been so eager to invade Iraq; 208 or, perhaps, the limited number of American troops available would have compelled him to seek a broader coalition of countries willing to commit their own personnel to these endeavors at the outset. 209 By relying on external, private sources for troops, the President has, perhaps, overextended American obligations abroad, turned his back on collective security measures, and in the process drawn the ire of a great many. (Hence, these "structural" harms are independent of any accountability-related transgressions that privateers might themselves perpetrate once deployed.) 210 Accordingly, tapping into an external, elastic supply of contract personnel could breach a tacit - and, no doubt, often hard fought - agreement between the Executive and Congress on the size of the military. This harm is, immediately, a fiscal one: it might be the case that Congress and the president agreed to keep the military comparatively small to reduce expenditures and reap peace dividends after, for example, the thawing of the very costly Cold War. 211 But, the harm is also a political [\*1065] and legal one: Perhaps Congress kept the military small to dissuade an overly interventionist president from participating in far-flung engagements. Moreover, Congress might have agreed to authorize specific war powers requests only with the knowledge that the engagement would be of a limited scope commensurate with the manpower resources it assumed were available. 212 Again, to the extent that the president could extend the duration and expand the magnitude of war by employing private contractors and to the extent that Congress had not been anticipating the wholesale reliance on military privateers, privatization provides opportunities to subvert these carefully arrived at arrangements.

# Solvency

#### Status quo solves and disproves their authors. Even though Obama claimed authority on Syria, the fact that he asked for authorization sets a sufficient precedent

Peter M. Shane 9-2-2013; Author, 'Connecting Democracy' and 'Madison's Nightmare'; Law professor, “Rebalancing War Powers: President Obama's Momentous Decision”

<http://www.huffingtonpost.com/peter-m-shane/rebalancing-war-powers-pr_b_3853232.html>  
But seeking authorization for a military strike against Syria marks the first time that a modern-day president has taken the initiative to elicit legislative approval for a military action that, by the President's own reckoning, will neither be a prolonged, nor a boots-on-the-ground operation. In announcing his decision, President Obama, like both Presidents Bush, declared that he possessed the constitutional authority to act unilaterally. He said he does not need Congress' approval in order to proceed. But historical precedents have consequences. Whatever their formal legal views, the Bushes' decisions helped cement a consistent pattern: With the exception of Korea, the United States has never engaged in a massive or prolonged military deployment without some form of explicit congressional sanction. A President acting unilaterally to start what is sometimes called "a real war" henceforth would probably be courting impeachment.

#### Congressional oversight means more secrecy

Greenwald 12THURSDAY, JUN 7, 2012 03:05 AM PDT Probing Obama’s secrecy games Will high-level Obama officials who leak for political gain be punished on equal terms with actual whistleblowers? BY GLENN GREENWALD

What all of this reflects is the wildly excessive, anti-democratic secrecy behind which the U.S. Government operates, and the solution in the face of this growing controversy ought to be serious attempts to increase transparency and dilute the wall of secrecy. But that’s highly unlikely to happen. When people like Dianne Feinstein, Carl Levin and John McCain start digging their hands into these controversies, they reflexively do the opposite: they are devoted to always-increasing levels of government secrecy. For Security State servants like these, secrecy is the currency on which their power, influence and self-importance depends: the more government actions which they know about but which are concealed from the citizenry, the more influential and unaccountable they are. So as is usually true when bipartisan groups of self-important Senators gather in common cause, they’re certain to make the core problem worse. In response to the genuine problem of selective leak-punishment by the Executive Branch, they will not try to increase transparency but will do the opposite: attempt to plug leaks, punish whistleblowers, and fortify U.S. Government secrecy powers even beyond where they are now.

#### 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.

#### Empirically, the executive will use covert operation to circumvent congressional control. Reagan tried to avoid the Boland amendment via covert arm sales

Peterson 9 \* Todd David, Professor of Law, The George Washington University Law School. Brigham Young University Law Review, 2009 B.Y.U.L. Rev. 327

In spite of this authority, or perhaps indeed because of Congress's great power, the executive branch has sought ways to circumvent congressional control over the federal purse and achieve its own ends outside of the will of Congress. Most famously in recent years, the Reagan Administration sought to avoid the Boland Amendment - a congressional restriction on aiding the Nicaraguan Contras - through the use of funds obtained from the covert sale of arms to Iran. 20 But executive efforts to evade congressional control over the appropriations process go back much further than the Iran-Contra affair. During the nineteenth century, executive agencies, particularly the War Department, routinely entered into contracts for which there were no appropriations and put Congress in the awkward position of having to fund the contract or tell government contractors that they were not going to be paid for material delivered to the federal government. In response, Congress enacted the Antideficiency Act to prohibit the obligation of federal funds for which there was no existing appropriation. 21 Executive branch contracting officials proved so adept at avoiding or just plain ignoring the Antideficiency Act, however, that Congress found it necessary to amend the Act multiple times. 22 Finally, Congress became so fed up with the evasion of its appropriations authority [\*331] that it amended the Act to provide criminal sanctions for the violation of its provisions. 23 Because that did not exhaust the ingenuity of executive officials in finding innovative ways around the appropriations process, Congress adopted other statutes to enforce its exclusive authority over the appropriations process. For example, the Miscellaneous Receipts Act requires executive branch agencies to deposit any monies collected by the agency in the general Treasury account, which prevents the agencies from supplementing their appropriations budget. 24

Emergency appropriations - The executive will bait and switch the Congress through emergency appropriations – Congress will fear appearing too soft

Ackerman & Hathaway 11 Bruce Ackerman\* Sterling Professor of Law and Political Science, Yale Law School. Oona Hathaway\*\* Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School. Michigan Law Review, Vol. 109:447, LIMITED WAR AND THE CONSTITUTION: IRAQ AND THE CRISIS OF PRESIDENTIAL LEGALITY, Faculty Scholarship Series. Paper 3690.

It has allowed the budgetary process to evolve in ways that make it extraordinarily difficult to act decisively. As our Iraq case study shows, the Bush Administration was in a position to pay for the initial invasion with money appropriated for other purposes. It then funded the war through a series of well-timed requests for "emergency" supplemental appropriations. By deferring these requests to the last minute, President Bush put Congress in an untenable position. If it refused funding to enforce its statutory limitations on the war, it would be accused of abandoning the troops in the field. This was too high a political price to pay to force the president to retreat from Iraq, as the initial congressional authorization required. The strategic use of emergency appropriations allowed the president to engage in "bait-and-switch" tactics that undermined effective democratic control over the use of military force. Following the Iraq precedent, future presidents will be able to "bait" Congress and the American people into approving a limited war, and then "switch" to a much longer war with more ambitious objectives. Serious congressional consideration of these escalating war aims will be short-circuited by the repeated use of the "emergency" appropriations device.

#### The executive will arbitrarily define words, they don’t care

Pollack, 13 -- MSU Guggenheim Fellow and professor of history emeritus [Norman, "Drones, Israel, and the Eclipse of Democracy," Counterpunch, 2-5-13, www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/, accessed 9-1-13, mss]

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to **remake the laws** of war by consciously violating them and then **creating new legal concepts to provide juridical cover** for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (**Obama is hardly a novice at** this game of **stretching the law to suit the convenience of**, shall we say, the **national interest**? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama **redefined the meaning** of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

Congressional limitations cause greater executive reliance on PMCs. The drug war in Columbia proves the link

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

But since the War Powers Resolution applies only to the deployment of U.S. Armed Forces 259 and, moreover, since anti-covert operations legislation requiring congressional notification and consultation [\*1077] applies only to members of the U.S. intelligence community, 260 there is room to maneuver unilaterally if the president were to use privateers. The drug war in Colombia provides an apt example. 261 Due to frustrations associated with Congress's stringent limitations on the number and responsibilities of American soldiers in Colombia in the 1990s, private military firms were utilized probably in no small part to circumvent these legislative restrictions. 262 According to P.W. Singer, the intent of privatized military assistance is to bypass Congressional oversight and provide political cover to the White House if something goes wrong... . [So,] the United States quietly arranged the hire of a slew of PMFs, whose operations in Colombia range far beyond the narrow restrictions placed on U.S. soldiers fighting the drug war. Rather, the firms' operations are intended to help the Colombian military finally end the decades-old [rebel] insurgency. 263 Again, the structural damage is clear: through bypassing Congress - and the American people - the Executive can initiate more conflict than the public might otherwise have been willing to support.

Stats prove no Congressional follow-through. There’s a 12 percent chance that Congress will even use their new power. 175 uses of armed forces without congressional authorization prove the aff’s restraint is meaningless

Weinberger 9 Seth is Assistant Professor in the Department of Politics and Government at the University of Puget Sound. Political Theory > The Good Society > Volume 18, Number 2

The key to developing a constitutionally, legally, and practically sound balanced theory of war powers rests on the rehabilitation of a congressional power that has fallen into disuse over time—the formal declaration of war. Despite the constitutional grant to Congress of the power to declare war, war has only been formally declared in 5 conflicts, even though U.S. armed forces have been involved in more than 200 conflicts.12 An additional 11 conflicts have been explicitly authorized by Congress by means short of a formal declaration of war.13 However, that still leaves more than 175 uses of American armed forces without express authorization from Congress, including the Korean War (1950–1953), the invasion of Panama (1989), the intervention in Somalia (1993), and the participation in the NATO operation against Kosovo (1999).14

Courts can overrule the Congress - empirically true Vietnam

Bejesky 12 \* Robert, Pf - international law - Cooley Law School and the Department of Political Science at the University of Michigan, Willamette Law Review, Fall, 49 Willamette L. Rev. 1

Nonetheless, prior to the end of the Vietnam War the U.S. executed bombing campaigns and launched a ground troop invasion into Cambodia in the spring of 1970. 78 When Nixon was later queried over his failure to apprise Congress of the bombing operations, he claimed Congress had no "right or need to know." 79 Assistant [\*14] Attorney General William Rehnquist wrote a memorandum to Nixon and opined that the Vietnam War could legally encroach into Cambodia as a means of self-defense for US troops. 80 Rehnquist explained that "by crossing the Cambodian border to attack sanctuaries used by the enemy, the United States has in no sense gone to war with Cambodia." 81 Congress disagreed after learning of incursions into contiguous countries and sought to prevent "the introduction of American ground combat troops into Laos or Thailand" in the Department of Defense Appropriations Act of 1970, 82 and to thwart incursions into Cambodia in the Special Foreign Assistance Act of 1971. 83 The 1971 Act stated that "none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of United States ground combat troops into Cambodia, or to provide United States advisors to or for Cambodian military forces in Cambodia." 84 In April 1973, members of Congress brought suit to discontinue bombing operations. The lower federal courts issued an injunction to halt the bombing, claiming Nixon acted unconstitutionally in expanding the Vietnam War, but four months later the U.S. Supreme Court held that the case involved an unreviewable political question. 85

The executive will give the Congress the finger – secrecy, media and lying

Branfman 13 Fred, Director of Project Air War, interviewed the first Lao refugees brought down to Vientiane from the Plain of Jars in northern Laos, visited U.S. airbases in Thailand and South Vietnam, talking with U.S. Embassy officials, Alternet, 6-9

Whatever his personal beliefs prior to becoming President Mr. Obama, as the Executive's titular leader, has necessarily signed up to support the secrecy, lying, and disinformation it employs to enjoy maximum flexibility from democratic oversight in order to pursue its policies of overt and covert violence. Two important new books - Jeremy Scahill's Dirty Wars and Mark Mazzetti's The Way of the Knife - describe how, in near-total secrecy, the U.S. Executive is a world of its own. Over the last 12 years, Executive officials have unilaterally and secretly launched, escalated or deescalated wars; installed and supported massively corrupt governments, savage warlords, or local paramilitary forces, and overthrown leaders that have displeased it; created the first unit of global American assassins and fleets of machines waging automated war; engaged in vicious turf wars for more money and budget; spied on Americans including the media and activists on a scale unmatched in U.S. history; compiled 3 different sets of global "kill lists" independently operated by the White House, CIA and Pentagon/JSOC; used police-state tactics while claiming to support democracy, e.g. when it fed retina scans, facial recognition features and fingerprints of over 3 million Iraqi and Afghani males into a giant data base; incarcerated and tortured, either directly or indirectly, tens of thousands of people without evidence or trial; and much more. All of these major activities are conducted entirely by the Executive Branch, without meaningful Congressional oversight or the knowledge of the American people. The foundational principle of the U.S. Constitution is that governments can only rule with the "informed consent" of the people. But the U.S. Executive Branch has not only robbed its people of this fundamental right. It has prosecuted those courageous whistleblowers who have tried to inform them. The U.S. mass media, dependent upon the Executive for their information and careers, and run by corporate interests benefiting from Executive largesse, predominately convey Executive Branch perspectives on an hourly basis to the American people. Even on the relatively few occasions when they publish information the Executive wishes to keep secret, it has little impact on Executive policies while maintaining the illusion that the U.S. has a "free press". The U.S. Executive is essentially free to conduct its activities as it wishes. In future articles in this space we will explore three key features of the U.S. Executive Branch: (1) Evil - If evil consists of murdering, maiming, and making homeless the innocent, and/or waging the “aggressive war” judged the “supreme international crime” at Nuremberg, the U.S. Executive Branch is today clearly the world’s most evil institution. It has killed, wounded or made refugees of an officially-estimated 21 million people in Iraq and Indochina alone, far more than any other institution since the time of Stalin and Mao. President Obama is the first U.S. President to acknowledge, in his recent "counterterrorism" speech, that this number has included killing "hundreds of thousands" of civilians in Vietnam whom it officially claimed it was trying to protect. Former Secretary of Defense Robert McNamara put the total number of Vietnamese killed at 3.4 million. [38] (2) Lawlessness - If illegality consists of refusing to obey the law, the Executive is clearly the most lawless institution in the world. It routinely violates even timid legislative attempts to control its unilateral war-making. And no nation on earth has signed fewer international laws, and so failed to observe even those it has signed. These include measures like those intended to clean up the tens of millions of landmines and cluster bombs [39] with which it has littered the world, refused to clean up, and which continue to murder and maim tens of thousands of innocent people until today. (3) Authoritarianism - And if "authoritarianism" consists of a governing body acting unilaterally, regularly deceiving its own citizenry, neutering its legislature ,and prosecuting those who expose its lies, the U.S. Executive is clearly the most undemocratic institution in America. Indeed its deceiving its own people - keeping its activities secret and then lying about and covering them up when caught - throws its very legitimacy into question.

#### -- The plan creates the conditions for future Iran-Contra scandals. The stronger the limitations, the more the plan will cause covert operations to evade the limitation

Ackerman & Hathaway 11 Bruce Ackerman\* Sterling Professor of Law and Political Science, Yale Law School. Oona Hathaway\*\* Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School. Michigan Law Review, Vol. 109:447, LIMITED WAR AND THE CONSTITUTION: IRAQ AND THE CRISIS OF PRESIDENTIAL LEGALITY, Faculty Scholarship Series. Paper 3690.

The next great struggle displayed a very different pattern: Congress found it relatively easy to act decisively, but the White House refused to accept the authority of its statutory commands."' There were other-much less important--exercises of limitation during this period. In 1976, Congress put restrictions in the Defense Department Appropriations Act that prohibited the use of funds for activities involving Angola. Department of Defense Appropriation Act, 1976 Pub. L. No. 94-212, 90 Stat. 153, 165-66 (providing that no funds "appropriated in this Act may be used for any activities involving Angola," in response to public debate at the time over whether the United States should supply assistance to paramilitary forces in Angola); see also International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329, § 404, 90 Stat. 729, 757-58 ("Notwithstanding any other provision of law, no assistance of any kind may be provided for the purpose ... of promoting, or augmenting, directly or indirectly, the capacity of any nation, group, organization, movement, or individual to conduct military or paramilitary operations in Angola . . . ."). Both Pub. L. No. 94-212 and Pub. L. No. 94-329 were signed on the same day. ELSEA ET AL., supra note 27, at 30. Almost ten years later, Congress placed similar restrictions on appropriations to prohibit support for paramilitary operations in Nicaragua. Act of Oct. 12, 1984, Pub. L. No. 98-473, § 8066, 98 Stat. 1837, 1935-37 (providing that during fiscal year 1985 "no funds available to ... the Department of Defense, or any other agency or entity of the United States involved in intelligence activities" may be expended for supporting paramilitary operations in Nicaragua). The result was the IranContra scandal. In contrast to Vietnam, Congress never gave President Reagan a blank check for military support of the Contras, the rebel forces in Nicaragua fighting its leftist government. This made it politically easier for Congress to impose an increasingly stringent set of funding limitations, culminating in a comprehensive ban in 1984.180 The White House responded with covert evasions. Oliver North developed a "fallback plan" to sell arms to Iran in exchange for U.S. hostages held by a group closely associated with the Iranian regime.' 8' Once the swap occurred, North superintended the diversion of several million dollars from the arms sales to the Contras.'82 Once these facts came to light in 1987, the public and congressional reaction was swift and harsh. The public hearings held by Congress ranked as the top news story of the year."8 Press accounts emphasized violations of both reporting requirements and of the congressional funding cut-off.'M Public condemnation was overwhelming and near-universal.' From our perspective, the key feature of the episode was its emphatic reaffirmation of Congress's power over military spending. The fund cut-off was accepted as legitimate and nonnegotiable from the start. Even administration officials who wished to evade the statute recognized its constitutional legitimacy. This is why they went to such complex financial contortions to evade its effect. And once these secret evasions were uncovered, the overwhelming reaction of Congress, the public, and the press reaffirmed the essential principle: Congress has the power to cut off funds for military action and any effort to evade its control-no matter how creativeis unconstitutional.

#### SECRET WARS are the problem. The aff will create a shell game – causing JSOC expansion

Glaser 12 John, Editor at Antiwar.com. He has been published at The American Conservative Magazine, The Daily Caller, and Truthout, among other outlets. Anti-war, 2-14,

http://antiwar.com/blog/2012/02/14/jsoc-the-end-of-military-accountability/

But for the past decade, we’ve seen the rise of a secret, unaccountable U.S. military force with activities and implications far more pernicious than Obama’s criminal disregard for the rule of law for intervention in Libya. This rise has occurred without even a fraction of the feigned opposition to intervention in Libya. Joint Special Operations Command (JSOC) is an unwieldy private army at the command of the President, and him only. And they conduct military and spy missions all over the world, never receiving formal congressional approval and never garnering even the limited scrutiny applied to the U.S.-led no-fly zone in Libya. “Without the knowledge of the American public,” wrote Nick Turse back in August, “a secret force within the U.S. military is undertaking operations in a majority of the world’s countries. This new Pentagon power elite is waging a global war whose size and scope has never been revealed.” According to a recent Congressional Research Service report, JSOC forces “reportedly conduct highly sensitive combat and supporting operations against terrorists on a world-wide basis.” As the New York Times this week reported: The Special Operations Command now numbers just under 66,000 people — including both military personnel and Defense Department civilians — a doubling since 2001. Its budget has reached $10.5 billion, up from $4.2 billion in 2001 (after adjusting for inflation). Over the past decade, Special Operations Command personnel have been deployed for combat operations, exercises, training and other liaison missions in more than 70 countries. Since the invasion of Iraq in 2003, Special Operations Command sustained overseas deployments of more than 12,000 troops a day, with four-fifths committed to the broader Middle East.

# Warfighting

#### Obama’s not Bush—no backlash to liberal order

Aziz 13 (Omer, graduate student at Cambridge University, is a researcher at the Center for International and Defense Policy at Queen’s University, “The Obama Doctrine's Second Term,” Project Syndicate, 2-5, <http://www.project-syndicate.org/blog/the-obama-doctrine-s-second-term--by-omer-aziz>)

The Obama Doctrine’s first term has been a remarkable success. After the $3 trillion boondoggle in Iraq, a failed nation-building mission in Afghanistan, and the incessant saber-rattling of the previous Administration, President Obama was able to reorient U.S. foreign policy in a more restrained and realistic direction. He did this in a number of ways. First, an end to large ground wars. As Defense Secretary Robert Gates put it in February 2011, anyone who advised future presidents to conduct massive ground operations ought “to have [their] head examined.” Second, a reliance on Secret Operations and drones to go after both members of al Qaeda and other terrorist outfits in Pakistan as well as East Africa. Third, a rebalancing of U.S. foreign policy towards the Asia-Pacific — a region neglected during George W. Bush's terms but one that possesses a majority of the world’s nuclear powers, half the world’s GDP, and tomorrow’s potential threats. Finally, under Obama's leadership, the United States has finally begun to ask allies to pick up the tab on some of their security costs. With the U.S. fiscal situation necessitating retrenchment, coupled with a lack of appetite on the part of the American public for foreign policy adventurism, Obama has begun the arduous process of burden-sharing necessary to maintain American strength at home and abroad. What this amounted to over the past four years was a vigorous and unilateral pursuit of narrow national interests and a multilateral pursuit of interests only indirectly affecting the United States. Turkey, a Western ally, is now leading the campaign against Bashar al-Assad’s regime in Syria. Japan, Korea, India, the Philippines, Myanmar, and Australia all now act as de facto balancers of an increasingly assertive China. With the withdrawal of two troop brigades from the continent, Europe is being asked to start looking after its own security. In other words, the days of free security and therefore, free riding, are now over. The results of a more restrained foreign policy are plentiful. Obama was able to assemble a diverse coalition of states to execute regime-change in Libya where there is now a moderate democratic government in place. Libya remains a democracy in transition, but the possibilities of self-government are ripe. What’s more, the United States was able to do it on the cheap. Iran’s enrichment program has been hampered by the clandestine cyber program codenamed Olympic Games. While Mullah Omar remains at large, al Qaeda’s leadership in Afghanistan and Pakistan has been virtually decimated. With China, the United States has maintained a policy of engagement and explicitly rejected a containment strategy, though there is now something resembling a cool war — not yet a cold war — as Noah Feldman of Harvard Law School puts it, between the two economic giants. The phrase that best describes the Obama Doctrine is one that was used by an anonymous Administration official during the Libya campaign and then picked up by Republicans as a talking point: Leading From Behind. The origin of the term dates not to weak-kneed Democratic orthodoxy but to Nelson Mandela, who wrote in his autobiography that true leadership often required navigating and dictating aims ‘from behind.’ The term, when applied to U.S. foreign policy, has a degree of metaphorical verity to it: Obama has led from behind the scenes in pursuing terrorists and militants, is shifting some of the prodigious expenses of international security to others, and has begun the U.S. pivot to the Asia-Pacific region. The Iraq War may seem to be a distant memory to many in North America, but its after-effects in the Middle East and Asia tarnished the United States' image abroad and rendered claims to moral superiority risible. Leading From Behind is the final nail in the coffin of the neoconservatives' failed imperial policies.

#### Soft power fails - empirics

Drezner 11

Daniel W. Drezner, Professor of International Politics at the Fletcher School of Law and Diplomacy at Tufts University, Foreign Affairs, July/August 2011, "Does Obama Have a Grand Strategy?", <http://www.foreignaffairs.com/print/67869>

What went wrong? The administration, and many others, erred in believing that improved standing would give the United States greater policy leverage. The United States' standing among foreign publics and elites did rebound. But this shift did not translate into an appreciable increase in the United States' soft power. Bargaining in the G-20 and the UN Security Council did not get any easier. Soft power, it turns out, cannot accomplish much in the absence of a willingness to use hard power. The other problem was that China, Russia, and other aspiring great powers did not view themselves as partners of the United States. Even allies saw the Obama administration's supposed modesty as a cover for shifting the burden of providing global public goods from the United States to the rest of the world. The administration's grand strategy was therefore perceived as promoting narrow U.S. interests rather than global public goods.

#### ANY alt cause takes out the aff

Gray ’11 [Colin S, Professor of International Politics and Strategic Studies at the University of Reading, England, and Founder of the National Institute for Public Policy, “Hard Power And Soft Power: The Utility Of Military Force as An Instrument Of Policy In The 21st Century,” April, http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1059]

It bears repeating because it passes unnoticed that culture, and indeed civilization itself, are dynamic, not static phenomena. They are what they are for good and sufficient local geographical and historical reasons, and cannot easily be adapted to fit changing political and strategic needs. For an obvious example, the dominant American strategic culture, though allowing exceptions, still retains its principal features, the exploitation of technology and mass.45 These features can be pathological when circumstances are not narrowly conducive to their exploitation. Much as it was feared only a very few years ago that, in reaction to the neglect of culture for decades previously, the cultural turn in strategic studies was too sharp, so today there is a danger that the critique of strategic culturalism is proceeding too far.46 The error lies in the search for, and inevitable finding of, “golden keys” and “silver bullets” to resolve current versions of enduring problems. Soft-power salesmen have a potent product-mix to sell, but they fail to appreciate the reality that American soft power is a product essentially **unalterable** over a short span of years. As a country with a cultural or civilizational brand that is unique and mainly rooted in deep historical, geographical, and ideational roots, America is not at liberty to emulate a major car manufacturer and advertise an extensive and varied model range of persuasive soft-power profiles. Of course, some elements of soft power can be emphasized purposefully in tailored word and deed. However, foreign perceptions of the United States are no more developed from a blank page than the American past can be retooled and fine-tuned for contemporary advantage. Frustrating though it may be, **a country cannot easily escape legacies from its past**.

#### Heg is unsustainable – rising challengers and erosion in political, military and economic cred

Layne ’12 Christopher Layne, Robert M. Gates Chair in Intelligence and National Security at the George Bush School of Government and Public Service at Texas A&M University, noted neorealist, “This Time It’s Real: The End of Unipolarity and the *Pax Americana*,” International Studies Quarterly (2012) 56, 203-213

Some twenty years after the Cold War’s end, it now is evident that both the 1980s declinists and the unipolar pessimists were right after all. The Unipolar Era has ended and the Unipolar Exit has begun. The Great Recession has underscored the reality of US decline, and only ‘‘denialists’’ can now bury their heads in the sand and maintain otherwise. To be sure, the Great Recession itself is not the cause either of American decline or the shift in global power, both of which are the culmination of decades-long processes driven by the big, impersonal forces of history. However, it is fair to say the Great Recession has both accelerated the causal forces driving these trends and magnified their impact. There are two drivers of American decline, one external and one domestic. The external driver of US decline is the emergence of new great powers in world politics and the unprecedented shift in the center of global economic power from the EuroAtlantic area to Asia. In this respect, the relative decline of the United States and the end of unipolarity are linked inextricably: the rise of new great powers—especially China—is in itself the most tangible evidence of the erosion of the United States’ power. China’s rise signals unipolarity’s end. Domestically, the driver of change is the relative—and in some ways absolute—decline in America’s economic power, the looming fiscal crisis confronting the United States, and increasing doubts about the dollar’s long-term hold on reserve currency status. Unipolarity’s demise marks the end of era of the post-World War II Pax Americana. When World War II ended, the United States, by virtue of its overwhelming military and economic supremacy, was incontestably the most powerful actor in the international system. Indeed, 1945 was the United States’ first unipolar moment. The United States used its commanding, hegemonic position to construct the postwar international order—the Pax Americana— which endured for more than six decades. During the Cold War, the Pax Americana reflected the fact that outside the Soviet sphere, the United States was the preponderant power in the three regions of the world it cared most about: Western Europe, East Asia, and the Persian Gulf. The Pax Americana rested on the foundational pillars of US military dominance and economic leadership and was buttressed by two supporting pillars: America’s ideological appeal (‘‘soft power’’) and the framework of international institutions that the United States built after 1945. Following the Cold War’s end, the United States used its second unipolar moment to consolidate the Pax Americana by expanding both its geopolitical and ideological ambitions. In the Great Recession’s aftermath, however, the economic foundation of the Pax Americana has crumbled, and its ideational and institutional pillars have been weakened. Although the United States remains preeminent militarily, the rise of new great powers like China, coupled with US fiscal and economic constraints, means that over the next decade or two the United States’ military dominance will be challenged. The decline of American power means the end of US dominance in world politics and a transition to a new constellation of world power. Without the ‘‘hard’’ power (military and economic) upon which it was built, the Pax Americana is doomed to wither in the early twenty-first century. Indeed, because of China’s great-power emergence, and the United States’ own domestic economic weaknesses, it already is withering.

#### No causality between hegemony and peace

-this card is really good

Fettweis 11 Christopher, Professor of Political Science @ Tulane, Dangerous Times?: The International Politics of Great Power Peace, pg. 172-174

The primary attack on restraint, or justification of internationalism, posits that if the United States were to withdraw from the world, a variety of ills would sweep over key regions and eventually pose threats to U.S. security and/or prosperity. These problems might take three forms (besides the obvious if remarkably unlikely, direct threats to the homeland.). generalized chaos, hostile imbalances in Eurasia, and/or failed states. Historian Arthur Schlesinger was typical when he worried that restraint would mean "a chaotic, violent, and ever more dangerous planet." All of these concerns either implicitly or explicitly assume that the presence of the United States is the primary reason for international stability, and if that presence were withdrawn chaos would ensue. In other words, they depend upon hegemonic-stability logic. Simply stated, the hegemonic stability theory proposes that international peace is only possible when there is one country strong enough to make and enforce a set of rules. At the height of Pax Romana between 27 BC and 180 AD, for example, Rome was able to bring unprecedented peace and security to the Mediterranean. The Pax Britannica of the nineteenth century brought a level of stability to the high seas. Perhaps the current era is peaceful because the United States has established a de facto Pax Americana where no power is strong enough to challenge its dominance, and because it has established a set of rules that are generally in the interests of all countries to follow. Without a benevolent hegemon, some strategists fear, instability may break out around the globe.."'. Unchecked conflicts could cause humanitarian disaster and, in today's interconnected world, economic turmoil that would ripple throughout global financial markets. If the United States were to abandon its commitments abroad, argued Art, the world would "become a more dangerous place' and, sooner or later, that would 'redound to America's detriment."' If the massive spending that the United States engages in actually provides stability in the international political and economic systems, then perhaps internationalism is worthwhile. There are good theoretical and empirical reasons, however, to believe that U.S hegemony is not the primary cause of the current era of stability. First of all, the hegemonic-stability argument overstates the role that the United States plays in the system. No country is strong enough to police the world on its own. The only way there can he stability in the community of great powers is if self-policing occurs, if states have decided that their interests are served by peace. if no pacific normative shift had occurred among the great powers that was filtering down through the system, then no amount of international constabulary work by the United States could maintain stability. Likewise, if it is true that such a shift has occurred, then most of what the hegemon spends to bring stability would be wasted. The 5 percent of the world's population that live in the United States simply could not force peace upon an unwilling 95. At the risk of beating the metaphor to death, the United States maybe patrolling a neighborhood that has already rid itself of crime. Stability and unipolarity may be simply coincidental. In order for U.S. hegemony to he the reason for global stability, the rest of the world would have to expect reward for good behavior and fear punishment for bad. Since the end of the Cold War, the United States has not always proven to he especially eager to engage in humanitarian interventions abroad. Even rather incontrovertible evidence of genocide has not been sufficient to inspire action. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. Ethiopia and Eritrea are hardly the only states that could go to war without the slightest threat of U.S. intervention. Since most of the world today is free to fight without U.S. involvement, something else must be at work. Stability exists in many places where no hegemony is present. Second, the limited empirical evidence we have suggests that there is little connection between the relative level of U.S. activism and international stability. During the 1990s the United States cut back on its defense spending fairly substantially. By 1998 the United States was spending $100 billion less on defense in real terms than it had in 1990,72 To internationalists, defense hawks, and other believers in hegemonic stability, this irresponsible peace dividend" endangered both national and global security. "No serious analyst of American military capabilities;' argued Kristol and Kagan, 'doubts that the defense budget has been cut much too far to meet America's responsibilities to itself and to world peac&'73 If the pacific trends were due not to U.S. hegemony but a strengthening norm against interstate war, however, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew' more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable Pentagon, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums; no security dilemmas drove mistrust and arms races; no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and it kept declining as the Bush Administration ramped spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. It is also worth noting for our purposes that the United States was no less safe.

# SOP

#### Can’t solve – detention, drones, and other WOT policies are all alt causes

#### SOP resilient

Rosman 96 [Michael E. Rosman (General Counsel @ Center for Individual Rights; JD from Yale); Review of “FIGHTING WORDS: INDIVIDUALS, COMMUNITIES AND LIBERTIES OF SPEECH”; Constitutional Commentary 96 (Winter, p. 343-345)]

Of course, the other branches also shove at the boundaries of branch power--FDR's Court-packing plan being one notable example of this practice. Sometimes the law of unintended consequences grabs hold. Perhaps the Court-packing plan concentrated the Justices' minds on finding ways to hold New Deal legislation constitutional, but it also blew up in FDR's face politically. At least for the last two hundred years, however, no branch has managed to expand its power to the point of delivering an obvious knock-out blow to another branch. Seen from this broader perspective, cases such as Morrison,(33) Bowsher v. Synar,(34) and Mistretta v. United States(35) surely alter the balance of branch power at a given historical moment, but do not change the fundamental and brute fact that the Constitution puts three institutional heavyweights into a ring where they are free to bash each other. Judicialocentrism tends to obscure this obvious point because it causes people to dwell on the hard cases that reach the Supreme Court. The power of separation of powers, however, largely resides in its ability to keep the easy cases from ever occurring. For instance, Congress, although it tries to weaken the President from time to time, has not tried to reduce the President to a ceremonial figurehead a la the Queen of England. Similarly, Congress does not make a habit of trying cases that have been heard by the courts. This list could be continued indefinitely. The Supreme Court has had two hundred years to muck about with separation-of-powers doctrine. Over that time, scores of Justices--each with his or her own somewhat idiosyncratic view of the law--have sat on the bench. Scholars have denounced separation-of-powers jurisprudence as a mess. But the Republic endures, at least more or less. These historical facts tend to indicate that the Court need not rush to change its approach to separation of powers to prevent a slide into tyranny.

#### No reverse causal—countries won’t magically clean up their act

**Chodosh 03** (Hiram, Professor of Law, Director of the Frederick K. Cox International Law Center, Case Western Reserve University School of Law, 38 Tex. Int'l L.J. 587, lexis)

Exposure to foreign systems is helpful but seldom sufficient for effective reform design. Reform models are more likely to be successful if they are not merely copied or transplanted into the system. The argument that transplants are easy and common (though based on substantial historical evidence) profoundly undervalues the relationship between law and external social objectives. 103 Furthermore, reforms conceived as blunt negations of [\*606] the status quo are not likely to be successful. 104 Reform proposals based on foreign systems or in reaction to (or as a negation of) recent domestic experience require careful adaptation to local circumstances and conditions. However, most communities are not familiar with the tools of adaptation and tend to think of foreign models as package deals to accept or reject (but rarely to alter), and alterations tend to graft one institution onto another without comprehensive consideration of the system as a whole. 105

# R2P

**Congess always efers to the executive**

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

Monitoring the executive requires expertise in the area being monitored. In many cases, Congress lacks the information necessary to monitor dis­cretionary’ policy choices by the executive. Although the committee system has the effect, among others, of generating legislative information and expertise,18 and although Congress has a large internal staff, there are domains in which no amount of legislative expertise suffices for effective oversight. Prime among these are areas of foreign policy and national secu­rity. Here the relative lack of legislative expertise is only part of the prob­lem; what makes it worse is that the legislature lacks the raw information that experts need to make assessments. The problem would disappear if legislators could cheaply acquire infor­mation from the president, but they cannot. One obstacle is a suite of legal doctrines protecting executive secrecy and creating deliberative privileges—- doctrines that may or may not be justified from some higher-order systemic point of view as means for producing optimal deliberation within the exec­utive branch. Although such privileges are waivable, the executive often fears to set a bad institutional precedent. Another obstacle is the standard executive claim that Congress leaks like a sieve, so that sharing secret information with legislators will result in public disclosure. The problem becomes most acute when, as in the recent controversy over surveillance by the National Security Agency, the executive claims that the very scope or rationale of a program cannot be discussed with Congress, because to do so would vitiate the very sec­recy that makes the program possible and beneficial. In any particular case the claim might be right or wrong; legislators have no real way to judge, and they know that the claim might be made either by a well- motivated executive or by an ill-motivated executive, albeit for very different reasons.

**Innovation solves**

**Chang 11 –** Graduated Cornell Law School (Gordon G., Feb 21**, “**Global Food Wars” http://blogs.forbes.com/gordonchang/2011/02/21/global-food-wars/)

In any event, food-price increases have apparently been factors in the unrest now sweeping North Africa and the Middle East. The poor spend up to half their disposable income on edibles, making rapid food inflation a cause of concern for dictators, strongmen, and assorted autocrats everywhere. So even if humankind does not go to war over bad harvests, Paskal may be right when she contends that climate change may end up altering the global map. This is not the first time in human history that food shortages looked like they would be the motor of violent geopolitical change. Yet amazing agronomic advances, especially Norman Borlaug’s Green Revolution in the middle of the 20th century, have consistently proved the pessimists wrong. In these days when capitalism is being blamed for most everything, it’s important to remember the power of human innovation in free societies—and the efficiency of free markets.

# \*\*\*2NC

# 2NC Case

**---all of our solvency arguments are *net offense*---legalism creates the façade that the executive is being constrained but allowing the government to do as it pleases under the guise of constraint---this swells executive power and turns the case**

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

The examples cited in this section suggest not the formation of an utterly lawless regime, but, rather, within an order that continues to understand itself in terms of the categories provided by liberal contractarianism, the more insidious creation, multiplication, and institutionalization of what David Dyzenhaus calls "grey holes." Such holes are "spaces in which there are some legal constraints on executive action...but the constraints are so insubstantial that they pretty well permit government to do as it pleases."40 As such, they are more harmful to the rule of law than are outright dictatorial usurpations, first, because the provision of limited procedural protections masks the absence of any real constraint on executive power; and, second, because location of the authority to create such spaces within the Constitution implies that, in the last analysis, they bear ex ante authorization by the people. When created, in other words, they may receive but they do not require ratification, whether by Congress or by those whom its members are said to represent. What this means in effect is that the second Bush administration has dispensed with Jefferson's stipulation that extra-constitutional executive acts (or, rather, acts that Jefferson deemed to be outside those constitutionally permitted) require ex post facto ratification; and, in addition, that it has dispensed with Locke's contention that, however unlikely, at least in principle, specific exercises of extra-legal prerogative power (or, rather, acts that Locke deemed to be outside those legally permitted) are properly subject to revolutionary rejection. What one finds in the second Bush administration, then, is a denial of both models of accountability, combined with an aggressive commitment to the constitution of a security state that is liberal only in name. As it extends its reach, perfection of that state renders the prospect of popular repudiation of prerogative power ever more chimerical, and, indeed, renders recognition of the problematic character of its exercise ever less likely.

#### Punish them for reading a really general plan text

Sitkowski 6 (Andrzej, Independent Researcher and Consultant – United Nations, UN Peacekeeping: Myth and Reality, p. 14)

Non-use of force except in self-defense is the sole principle directly related to armed contingents and is the most ambiguous. According to the UN interpretation, self-defense includes armed response to forceful actions of the warring parties preventing the peacekeepers from discharging their mandate. It boils down to nothing less than a blanket authorization to use force in defense of the mandates, thus. But as if an effort to offset such a conclusion, the Secretariat pronounces every use of force other than in self-defense to constitute peace enforcement which is inconsistent with peacekeeping and should be avoided at any costs: "The logic of peacekeeping Hows from premises that are quite distinct from enforcement and the dynamics of the latter are incompatible with the political process that peacekeeping is intended to facilitate. To blur the distinction between the two can undermine the viability of peacekeeping operation and endanger its personnel."4 The distinction looks good as long it is not exposed to the logic of war, the only logic to which the warring parties normally subscribe. Is removing by force of an illegal roadblock to enable the progress of a UN convoy an act of self-defense against an obstruction in discharging a peacekeeping mandate or an offensive action in peace enforcement? The UN distinction between the defensive and offensive use of force is blurred at the outset.

#### The US will act on this ambiguity

Neack 7 (Laura, Professor of Political Science – Miami University (Ohio), *Security: States First, People Last*, p. 106)

Although our discussion has been about the use of military force, we still are on the topic of defense and deterrence rather than on the offensive use of force. It is, though, in some sense hard to dispute the old axiom that what appear as defensive measures to some appear as offensive and therefore threatening measures to others. This is part of the dilemma in the security dilemma. Sometimes countries embrace this ambiguity to enhance the danger of underestimating them, and sometimes countries attempt to dispel this ambiguity by adopting policies that are overtly transparent and nonthreatening.

The president can easily bend the light of the law so you aff has ZERO chance of solving on the ground. Government attorneys can easily bend the law 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

**national emergencies---laws are riddled with them intentionally**

Vermeule 9 \*Adrian, John H. Watson, Jr. Professor of Law, Harvard Law School. Harvard Law Review, 122 Harv. L. Rev. 1095, February

In the modest version, once the layers of interpretive dross and continental conceptualisms are cleaned off of Schmitt's thinking, what remains are several important mid-sized and largely institutional or [\*1101] empirical insights. Emergencies cannot realistically be governed by ex ante, highly specified rules, but at most by vague ex post standards; it is beyond the institutional capacity of lawmakers to specify and allocate emergency powers in all future contingencies; practically speaking, legislators in particular will feel enormous pressure to create vague standards and escape hatches - for emergencies and otherwise - in the code of legal procedure that governs the mine run of ordinary cases in the administrative state, because legislators know they cannot subject the massively diverse body of administrative entities to tightly specified rules, and because they fear the consequences of lashing the executive too tightly to the mast in future emergencies. As we will see, all of these institutional features are central to our administrative law, and they create the preconditions for the emergence of the legal black holes and legal grey holes that are integral to its structure.

**deference – courts defer to executive and create a rubber stamp model that would just rule in favor of the executive if they violated the law or dismiss it on procedural grounds---this is empirically true for the 3 times the executive has been sued for violating the WPR**

Driesen 9 \* David M. University Professor, Syracuse University; Fordham Law Review, October, 78 Fordham L. Rev. 71

The executive branch often interprets the vast body of law it administers unilaterally. In some areas, courts have no opportunity to review its decisions. 217 Even when reviewable, the courts usually approach executive branch decisions deferentially and often correct errors in ways that leave continuing latitude for executive branch shaping of the law. 218 Because of the awkwardness of impeachment and funding cutoffs, congressional oversight provides only a very limited remedy for executive excess, and executive decisions to withhold information can further weaken oversight's effectiveness. 219 Because modern Presidents are so profoundly political, a danger exists that they will interpret the law opportunistically, to increase their own power and advance their faction's political agenda, rather than faithfully execute the laws Congress has publicly passed. 220 The opportunities for abuse have recently multiplied, because of the specter of terrorism, which tends to drive the executive toward secret policy making of his own largely unrestrained by law. 221

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.

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**---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.

**bad for the left DA---as progressives stay focused on the law, conservatives chalk up more wins. We need to get our attention out of the law and law reviews. Our incessant fidelity to the constitutional scholarship is WORSE than doing nothing---links to the motha impact**

WEST 6, Pf Law @ Georgetown, (Robin, *Harvard Journal of Law & Gender*, Winter, lexis)

And law is indeed a strikingly conservative and conserving set of institutions and practices. I argued in the book that legal critics, feminist and otherwise, should elevate the concept of harm in our thinking about law. And when we do so, we should think much more than we currently do about the harms sustained by various subordinated groups, including women. All I want to add here in response to some of Halley's remarks is that harm- and **law-focused inquiries** with respect to gender or otherwise that come from such a focus are indeed reformist projects. They are projects about how law could do better, instrumentally, what it claims to do, and what it does do some of the time, what it does not do at all well most of the time, and often does not do at all, period. However, while it is important to get judge-made law to do better what it already does, it is even more important. I think, **to put law in its place**. Law--meaning here, adjudicative law--is (lo and behold) not politics. It cannot do what politics might be able to do. It has been a tragic mistake, I think, of liberals, radicals, identitarian theorists, critical legal scholars, and progressives of all stripes involved in law, legal theory, and legalism of the past half century, to assert, and so repetitively and confidently, the contrary. The domain of adjudicative law has **its own ethics**. It is for the most part **deeply moored in conservative values**. It has some redemptive potential and therefore some play for progressive gains, but really **not much.** More important, it has the potential, all in the name of justice, to further aggravate the harms **it manages to so successfully avoid.** *Caring for Justice* was an attempt to expose the aggravation of harm done by law in the name of justice, exploit its redemptive potential, and argue that others should do this also. But completely aside from the arguments of that book, I think this is still a very important and very much under-examined question for progressive lawyers to ask: how much can be asked of adjudicative law? Again, my answer is "not much." Others disagree. My current retrospective on the place of Catharine MacKinnon's jurisprudence in our law and letters, for example, argues that a part of the brilliance of her labors over the last thirty years has been her quite conscious embrace of law and legalism, rather than the domain of politics, culture, or education, to achieve evolutionary changes in our understanding of both sexual injury and sexual justice. [**97**](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n97) She has been phenomenally successful in pushing law to become a **[\*48]** vehicle for that evolutionary change. By contrast, I think, the benighted attempt over the last half century of progressive constitutional lawyers and theorists to employ the stratagems and ethics of legalism so as to refigure our fundamental politics, to achieve substantive equality, expand liberty, and the like--and to do so by urging on courts the development of progressive interpretations of their constitutional corollaries--has been a pretty striking failure, and not only because of the current Republican staffing of the courts. Obviously, the arguments put forward by progressives, radicals, and liberals in their thousands upon thousands of pages of briefs--arguments about what equality should look like, about what freedoms we all should or should not have, about democracy, about speech, about reproduction, about race, about sex, and so on and so on and so on, as well as their constitutional corollaries, from *Brown* [98](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n98) to *Roe* [99](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n99) to *Casey* [100](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n100) to *Lawrence* [101-](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n101-)-are vital arguments with which to engage. The problem is that these arguments should be--and are not--the bread and butter of very ordinary politics, completely traditionally understood. The repeated insistence by liberal legalists over the last half-century that these arguments are, in fact, in law's domain has not secured progressive victories and has had the **perverse effect instead of** impoverishing our politics. [**102**](http://www.lexis.com/research/retrieve?_m=39680407fb828dfdd157d657f657a888&docnum=53&_fmtstr=FULL&_startdoc=51&wchp=dGLbVtz-zSkAt&_md5=4f80854bd4621b982f860148cd3f92b3&focBudTerms=casey%20and%20foucault%20and%20abortion&focBudSel=all#n102) The repeated insistence by critical legal scholars over the last thirty years that, contra liberalism, there is no difference between law and politics--and that what follows is simply that all those legal arguments in all of those endless Supreme Court opinions pontificating over the meaning of liberty and equality are in fact political arguments--has not changed this dynamic one bit. It has not only underscored the total absence of any coherent progressive instrumentalism from left understandings of the potential of law. Of greater consequence, it has also even **further emasculated and eviscerated** our politics, worse than liberalism could have done if it had tried, and it did not. The critical insistence on the deconstruction of the differences between law and politics has only **reinforced**, rather than challenged in any meaningful way, **the liberal legalist conceit that law**, rather than politics ordinarily understood, is **the domain of radical and liberal political thought. We have no political "left"** in this country, in part, because those who would otherwise be inclined to make one have **instead poured their thought, their passion, and their commitments** into litigation [\*49] strategies or **into the project of pointing out over and over the politics of those projects.** The result of this has been an entrenched conservatism across the board**-**-the board, that is, of both law and politics. Progressives need to re-direct their political arguments, including the radical arguments, out of law and law reviews and into the domain of politics. We first have to get over the lazy assumption that there is no need to do so--either because law is much loftier than ordinary politics, such that ennobling political arguments *ought* to be made in judicial fora (liberalism); or because there's no difference between law and politics, so that pointing out that legal arguments are through and through political is the beginning and end of political thought (critical). There are alternatives to both, and we ought to start figuring out what they are.

**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.

Privateers undercut the credibility of the US – nations believe the US is not to be trusted

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Let us also not forget that American military personnel are, increasingly, serving as diplomats, humanitarian providers, political consultants, and "liberators." 405 Their conduct on such missions could leave as large of an impression on their hosts as would any tangible project or aid package they deliver. Therefore, if the United States is dispatching private actors, who are not comporting themselves well, the conduct of these privateers will inevitably be imputed to all soldiers, if not all Americans, and the goods and services they provide will be, in the long run, devalued. As P.W. Singer notes, a "key realization of contracting is that a firm becomes an extension of government policy and, when operating in foreign lands, its diplomat on the ground. As such, the firm's reputation can ... implicate the government['s] as well." 406

#### Quicker intervention and causes the President to not depend on coalitions – Iraq proves

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Hence with lower political opportunity costs for waging war, the president may be more apt to overcommit American capital - human, monetary, and diplomatic - in ways that would be less likely to occur were Congress and the American people (through their legislators) given a more direct say. One need not ponder hypotheticals to appreciate this potential for dangerous presidential unilateralism. If it were not for the tens of thousands of private troops supporting and serving alongside of U.S. soldiers in Iraq and Afghanistan, perhaps the President would not have been so eager to invade Iraq; 208 or, perhaps, the limited number of American troops available would have compelled him to seek a broader coalition of countries willing to commit their own personnel to these endeavors at the outset. 209 By relying on external, private sources for troops, the President has, perhaps, overextended American obligations abroad, turned his back on collective security measures, and in the process drawn the ire of a great many. (Hence, these "structural" harms are independent of any accountability-related transgressions that privateers might themselves perpetrate once deployed.) 210 Accordingly, tapping into an external, elastic supply of contract personnel could breach a tacit - and, no doubt, often hard fought - agreement between the Executive and Congress on the size of the military. This harm is, immediately, a fiscal one: it might be the case that Congress and the president agreed to keep the military comparatively small to reduce expenditures and reap peace dividends after, for example, the thawing of the very costly Cold War. 211 But, the harm is also a political [\*1065] and legal one: Perhaps Congress kept the military small to dissuade an overly interventionist president from participating in far-flung engagements. Moreover, Congress might have agreed to authorize specific war powers requests only with the knowledge that the engagement would be of a limited scope commensurate with the manpower resources it assumed were available. 212 Again, to the extent that the president could extend the duration and expand the magnitude of war by employing private contractors and to the extent that Congress had not been anticipating the wholesale reliance on military privateers, privatization provides opportunities to subvert these carefully arrived at arrangements.

privatization saps public support for war

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The damage here could run beyond morale concerns just on the frontlines; Americans' pride in their "boys and girls" may be dampened not just by the dismay felt at the appalling acts of brutality perpetrated under the American flag (by soldiers and contractors alike), but also by what they may view as the commodification of war, killing for money. 390 In large part, the laurels bestowed on soldiers are premised on their endangering their lives to promote an ideal, preserve justice, or introduce freedom. 391 Even knowing that, for many, their service is economically driven, i.e., performed with an eye toward learning trade skills or seeking the military's help to pay for further education, we still consider today's soldiers to be citizen-patriots. But we do not as readily reconcile economic self-interest and public service when it comes to contractors. 392 If soldiers serve as liberators while incurring great personal sacrifices, then they are heroic; if they instead do so for profit, then they might tarnish the entire enterprise. 393 Moreover, if the country's pride and respect for its military [\*1110] wanes, perhaps more than the stature of GIs will fade. Perhaps veterans' benefits will be cut - justified by the somewhat cynical expectation that those who serve in the armed forces are likely to find gainful employment afterwards as military contractors (even if many veterans consider the idea of private combat anathema). 394 Thus, strangely, a public disillusioned by military privatization might end up forcing citizen-soldiers into post-military careers as privateers. 395 Even more significantly, American support for idealistic military endeavors, if those endeavors are perceived as being "corrupted" by the presence of profiteers, might similarly wane - and the notion of American intervention, humanitarian or otherwise, would then become less popular domestically as the public takes stock of who is fighting and for what reasons. 396

#### Troop morale

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Moreover, even if the contractors do not appreciably undermine a campaign, regular U.S. troops' misgivings may not subside - and for a justifiable reason: there's always the threat that the contractors will walk out during the next siege. For the reason expressed above, the mere belief that contractors may flee is enough to introduce uncertainty and distrust among the U.S. troops - which is probably already high given the host of other existing morale problems currently plaguing the service ranks. 326 And, the soldiers' insecurity and their misgivings about privateers must be treated seriously; the military goes to such extensive lengths to engender the appropriate level of cohesion, discipline, and camaraderie 327 that it seems inexplicable why the Pentagon would sacrifice those goals in the name of outsourcing. 328 Parenthetically speaking, there is, of course, a real irony here regarding military morale. For years, while the Pentagon has been consumed with the fear that the presence of gay soldiers might destroy morale, 329 perhaps it has failed to consider the negative ramifications of engaging non-U.S. [\*1096] military personnel in essential positions alongside regular troops when those private actors have not labored through basic training nor spent years drilling and dwelling with their military counterparts. 330 Soldiers are aware that not only do privateers often get compensated at a higher rate, but that they also can leave if the fighting gets too intense - hardly factors working in favor of community-building. 331

Hurts military strength: Maintenance, unpaid contracts, sketchy mercenaries

MINOW 5 Martha, Jeremiah Smith, Jr. Professor, Harvard Law School. *Boston College Law Review,* 46 B.C. L. Rev 989, September

Reliance on private sources for important tasks, such as logistics and maintenance of advanced technological weapons, may in addition relieve the military of developing those capacities internally -- to the long-term detriment of military strength. 203 Similarly, depending upon contracts for the leases of trucks and equipment without ensuring appropriate maintenance plans can leave the military vulnerable at crucial movements to failures beyond their control to remedy. 204 If the contractor in turn does not pay subcontractors -- as was the case apparently with Halliburton -- vendors may grow resentful or even collapse under bankruptcy. 205 Alternatively, the military also may compromise its strength by relying through layers of subcontracts on people it would never use directly, or by relying on individuals from third-country nations who are paid little and shift loyalties based on who pays them. 206 Global military companies have recruited members of defeated armed groups and militias as mercenaries. 207 Some of the companies do little to screen employees. 208 One contract employee turned out to be a fugitive charged with embezzlement and previously convicted of assault in the United States. 209 The work can attract volatile individuals. Mercenary involvement in the Congo over decades is a notable dimension of the area's violence and instability. 210

#### Guts our credibility and causes PMC prolif

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Having canvassed the constitutional, legal, and democratic harms in Parts III and IV, I turn now to the international/diplomatic harms privatization may cause. These harms pose considerable consequences for American foreign policy, for American credibility abroad, and for the interests of containing the proliferation of even less well-regulated military profiteering practices around the world. A. Alienating Friends and Foes Alike Contracting out allows the U.S. government to purchase strategic outcomes at a much lower political cost than if the boys and girls of America's volunteer army were dispatched. Indeed, an overseas engagement involving contractors might, accordingly, produce neither an official body count nor much political opposition. 398 But, the security and flexibility the United States gains without expending domestic political capital and/or the lives of servicemen and women may, however, serve to validate the perception that the American agenda is driven by dollars rather than ideals; that decisions are made in private, smoke-filled backrooms rather than openly on the floors of Congress. It also invites concerns that the United States is represented in zones of hostilities by individuals who are not subject to the same standards of legal conduct and ethical restraint that this nation and the international community expects of the U.S. Armed Forces.

#### PMC’s reinforce the image of the US as a global policeman and encourages unilaterlaism – this turns their credibility advantages

**Isenberg** 20**09** [David; analyst and writer on military, foreign policy, national and international security issues; Private Military Contractors and U.S. Grand Strategy; January]

One can argue for and against such contractors but what nobody wants to discuss is that the U.S. government’s huge and growing reliance on private contractors constitutes an attempt to circumvent or evade public skepticism about the United States’ self-appointed role as global policeman. The U.S. government has assumed the role of guarantor of global stability at a time when the American public is unwilling to provide the resources necessary to support this strategy. Private contractors fill the gap between geopolitical goals and public means.

The low visibility and presumed low cost of private contractors appeals to those who favor a global U.S. military presence, but fear that such a strategy cannot command public support. And by using contractors the United States also shift responsibility and blame for its actions.

As the United States relies more heavily upon military contractors to support its role as world hegemon, it reinforces the tendency to approach global crises in a unilateral, as opposed to multilateral manner, further ensuring that the burdens will be carried disproportionately by U.S. taxpayers. U.S. use of PMCs is inevitable until people grasp the key point, which is that that contracting is both part of war and part of maintaining a global military hegemonic presence.

#### PMC’s wreck US credibility – seen as evasion of responsibility

Angela **Snell**, 20**11** (JD Candidate, University of Illinois College of Law, University of Illinois Law Review, 11 U. Ill. L. Rev. 1125, lexis)

PMCs are seen as a convenient way for the U.S. government to evade its legal obligations, including the responsibility to protect the human rights of civilians in war and peace, by allowing private individuals, rather than official state actors, to perform services on behalf of the U.S. military. n257 This Note seeks to prevent this evasion by placing responsibility for crimes committed by PMCs abroad on the U.S. government because of its persistent failure to punish and prohibit sex crimes that violate the human rights of women.

#### PMC’s gut US credibility – PMC’s are enemy combatants engaged in direct hostilities.

Joseph **Hansen** 20**12** (Law Clerk for the US Court of Appeals for the Third Circuit, Fordham International Law Journal, 35 Fordham Int'l L.J. 698, March, lexis

Less formally, there is also a striking subcurrent of double standards. The United States has taken the position in its military commissions system at Guantánamo Bay that any act taken by an "unlawful combatant" can violate the law of war. A civilian contractor directly participating in hostilities, however, would also be an unlawful combatant. Yet-to indulge a little hyperbole-civilian contractors employed by the United States who have directly participated in hostilities do not number among the ranks of the detainees at Guantánamo. As one commentator diplomatically observed, "voluntarily creating a pool of 'good' but potentially 'unlawful combatants' while simultaneously condemning other (non-private sector) civilian participants in hostilities verges on hypocrisy." n117 International humanitarian law provides a framework designed to regulate the conduct of all involved in armed conflict; it is therefore an untenable position to condemn (and even criminalize) the direct participation of certain civilian actors while condoning (and even contracting) the participation of others. There is, therefore, a glaring problem. PMSCs now figure prominently in the landscape of armed conflict. The broad consensus is that the majority of their personnel have civilian status. This assessment of their formal status is undoubtedly correct under international humanitarian law. Yet this status is plagued by practical problems: many PMSC personnel directly participate in hostilities (some continuously, others frequently, and some occasionally), which is unlawful behavior for civilians. Rather than enjoy the benefits of civilian status, PMSC personnel who directly participate will suffer the perverse result of engaging in unlawful behavior. Even if they seek to comply with the strictures of IHL, they may not be able to, as determining direct participation is decidedly difficult. The same goes for other parties who may be unable to distinguish PMSC personnel from soldiers.

SOP - Privatization destroys it – distorting the process

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Privatization, accordingly, creates unprecedented opportunities for the Executive to circumvent Congress and act unilaterally in military affairs. By opting to employ private contractors - rather than members of the U.S. Armed Forces - the president can avoid triggering many of Congress's commonly exercised war powers, which are by-and-large specifically linked to constitutional authority over America's military branches. 202 Hence, the utilization of private agents has led scholars such as Professor Jules Lobel to suggest engagement without U.S. troops could be a shortcut around "democratic decisionmaking that distorts the democratic process and is fundamentally incompatible with the demands of our constitutional system." 203 Whether bypassing Congress is an intentional aim of privatization or an inadvertent byproduct (perhaps, the Executive sought to reap cost-efficiencies), this damage to the tenets of separation of powers, even if temporary - until Congress can revise its background assumptions and seek to establish formal authority over privateers - could compromise the strategic and physical security of the nation, the well-being of individuals inappropriately endangered, and the confidence of the People in the democratic practices and institutions of this nation. Below, I describe how privatization enables the Executive to bypass many of the avenues through which Congress typically exercises its constitutional authority over military affairs.

#### 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