#### The Counsel to the President of the United States should request to the Office of Legal Counsel for legal counsel and coordination on the President’s war powers authority. The Office of Legal Counsel should advise the President that he should no longer detain individuals indefinitely.

#### CP is competitive and solves the case ---- Coordination with OLC can ensure executive action

BORRELLI et al 2000 - Professor of Government Chair of the Government and International Relations Department, Connecticut College (Maryanne Borrelli, Karen Hult, Nancy Kassop, “The White House Counsel’s Office”, http://whitehousetransitionproject.org/files/counsel/Counsel-OD.PDF)

The White House Counsel’s Office is at the hub of all presidential activity. Its mandate is to be watchful for and attentive to legal issues that may arise in policy and political contexts in which the president plays a role. To fulfill this responsibility, it monitors and coordinates the presidency’s interactions with other players in and out of government. Often called “the president’s lawyer,” the Counsel’s Office serves, more accurately, as the “presidency’s lawyer,” with tasks that extend well beyond exclusively legal ones. These have developed over time, depending on the needs of different presidents, on the relationship between a president and a Counsel, and on contemporary political conditions. The Office carries out many routine tasks, such as vetting all presidential appointments and advising on the application of ethics regulations to White House staff and executive branch officials, but it also operates as a “command center” when crises or scandals erupt. Thus, the more sharply polarized political atmosphere in recent years has led to greater responsibility and demands, as well as heightened political pressure and visibility, on the traditionally low-profile Counsel’s Office. The high-stakes quality of its work has led to a common sentiment among Counsels and their staff that there is “zero tolerance” for error in this office.

In sum, the Counsel’s Office might be characterized as a monitor, a coordinator, a negotiator, a recommender, and a translator: it monitors ethics matters, it coordinates the president’s message and agenda with other executive branch units, it negotiates with a whole host of actors on the president’s behalf (not the least of which is Congress), it recommends myriad actions to the president, and it translates or interprets the law (whether it is the Constitution, federal rules and regulations, treaties or legislation) for all executive branch officials. Past Counsels have lamented that there is no job description for this office, while the opening quote from Peter Wallison makes clear that even if there was, it would be all-consuming and all-inclusive of everything that goes in and out of the president’s office.

In simple terms, the Counsel’s Office performs five basic categories of functions: (1) advising on the exercise of presidential powers and defending the president’s constitutional prerogatives; (2) overseeing presidential nominations and appointments to the executive and judicial branches; (3) advising on presidential actions relating to the legislative process; (4) educating White House staffers about ethics rules and records management and monitoring adherence; and (5) handling department, agency and White House staff contacts with the Department of Justice (see Functions section). In undertaking these responsibilities, the Counsel’s Office interacts regularly with, among others, the president, the Chief of Staff, the White House Office of Personnel, the Press Secretary, the White House Office of Legislative Affairs, the Attorney General, the Office of Management and Budget (on the legislative process), the General Counsels of the departments and agencies, and most especially, the Office of Legal Counsel in the Department of Justice (see Relationships section). In addition to the Counsel, the Office usually consists of one or two Deputy Counsels, a varying number of Associate and Assistant Counsels, a Special Counsel when scandals arise, a Senior Counsel in some administrations, and support staff. Tasks are apportioned to these positions in various ways, depending on the Counsel’s choices, though most Counsels expect all Office members to share the ongoing vetting for presidential appointments (see Organization and Operations section).

Certain responsibilities within the Office are central at the very start of an administration (e.g., vetting for initial nominations and shepherding the appointment process through the Senate), while others have a cyclical nature to them (e.g., the annual budget, the State of the Union message), and still others follow an electoral cycle (e.g., determining whether presidential travel and other activities are partisan/electoral/campaign or governmental ones) (see Organization and Operations). There is, of course, the always unpredictable (but almost inevitable) flurry of scandals and crises, in which all eyes turn to the Counsel’s Office for guidance and answers. Watergate, Iran-contra, Whitewater, the Clinton impeachment, and the FBI files and White House Travel Office matters were all managed from the Counsel’s Office, in settings that usually separated scandal management from the routine work of the Office, so as to permit ongoing operations to continue with minimal distraction. Among the more regular tasks that occur throughout an administration are such jobs as directing the judicial nomination process, reviewing legislative proposals (the president’s, those from departments and agencies, and bills Congress has passed that need the Counsel’s recommendation for presidential signature or veto), editing and clearing presidential statements and speeches, writing executive orders, and determining the application of executive privilege (see both Relationships and Organization and Operations sections).

Perhaps, the most challenging task for the Counsel is being the one who has the duty to tell the president “no,” especially when it comes to defending the constitutional powers and prerogatives of the presidency. Lloyd Cutler, Counsel for both Presidents Carter and Clinton, noted that, in return for being “on the cutting edge of problems,” the Counsel needs to be someone who has his own established reputation…someone who is willing to stand up t o the President, to say, “No, Mr. President, you shouldn’t do that for these reasons.” There is a great tendency among all presidential staffs to be very sycophantic, very sycophantic. It’s almost impossible to avoid, “This man is the President of the United States and you want to stay in his good graces,” even when he is about to do something dumb; you don’t tell him that. You find some way to put it in a very diplomatic manner. (Cutler interview, pp. 3-4)

LAW, POLITICS AND POLICY

A helpful way to understand the Counsel’s Office is to see it as sitting at the intersection of law, politics and policy. Consequently, it confronts the difficult and delicate task of trying to reconcile all three of these without sacrificing too much of any one. It is the distinctive challenge of the Counsel’s Office to advise the president to take actions that are both legally sound and politically astute. A 1994 article in Legal Times warned of the pitfalls: Because a sound legal decision can be a political disaster, the presidential counsel constantly sacrifices legal ground for political advantage. (Bendavid, 1994, p. 13) For example, A.B. Culvahouse recalled his experience upon arriving at the White House as counsel and having to implement President Reagan’s earlier decision to turn over his personal diaries to investigators during the Iran-contra scandal.

Ronald Reagan’s decision to turn over his diary - that sits at the core of the presidency. …You’re setting up precedents and ceding a little power. But politically, President Reagan wanted to get it behind him. (Bendavid, 1994, p. 13)

Nonetheless, Culvahouse added, the Counsel is “the last and in some cases the only protector of the President’s constitutional privileges. Almost everyone else is willing to give those away in part inch by inch and bit by bit in order to win the issue of the day, to achieve compromise on today’s thorny issue. So a lot of what I did was stand in the way of that process...” (Culvahouse interview, p. 28)

Because of this blend of legal, political and policy elements, the most essential function a Counsel can perform for a president is to act as an “early warning system” for potential legal trouble spots before **(**and, ultimately, after) they erupt. For this role, a Counsel must keep his or her “antennae” constantly attuned. Being at the right meetings at the right time and knowing which people have information and/or the necessary technical knowledge and expertise in specific policy or legal areas are the keys to insuring the best service in this part of the position. C. Boyden Gray, Counsel for President Bush, commented: “As Culvahouse said -- I used to say that the meetings I was invited to, I shouldn’t go to. …It’s the meetings I wasn’t invited to that I’d go to.” (Gray interview, p. 26) Lloyd Cutler noted that

….the White House Counsel will learn by going to the staff meetings, et cetera, that something is about to be done that has buried within it a legal issue which the people who are advocating it either haven’t recognized or push under the rug. He says, “Wait a minute. We’ve got to check this out,” and goes to the Office of Legal Counsel and alerts them and gets their opinion. But for the existence of the White House Counsel, the Office of Legal Counsel would never have learned about the problem until it was too late. (Cutler interview, p. 4)

One other crucial part of the job where the legal overlaps with the policy and the political -- and which can spell disaster for Counsels who disregard this -- is knowing when to go to the Office of Legal Counsel for guidance on prevailing legal interpretations and opinions on the scope of presidential authority. It is then up to the White House Counsel to sift through these legal opinions, and to bring into play the operative policy and political considerations in order to offer the president his or her best recommendation on a course of presidential action. Lloyd Cutler described how this process works:

They [OLC staffers] are where the President has to go or the President’s counsel has to go to get an opinion on whether something may properly be done or not. For example, if you wish to invoke an executive privilege not to produce documents or something, the routine now is you go to the Office of Legal Counsel and you get their opinion that there is a valid basis for asserting executive privilege in this case. ...You’re able to say [to the judge who is going to examine these documents] the Office of Legal Counsel says we have a valid basis historically for asserting executive privilege here. (Cutler interview, p. 4)

C. Boyden Gray underscored the critical importance of OLC’s relationship to the Counsel’s Office: They [OLC] were the memory…We paid attention to what they did. [Vincent] Foster never conferred with them. When they [the Clinton Counsel’s Office] filed briefs on executive privilege, they had the criminal division, the civil division and some other division signing on the brief; OLC wasn’t on the brief… In some ways they [OLC] told us not to do things but that was helpful. They said no to us… I can give you a million examples. They would have said to Vince Foster, “Don’t go in and argue without thinking about it.” They would have prevented the whole healthcare debacle [referring to the Clinton Counsel’s Office’s position that Hillary Rodham Clinton was a government official for FACA purposes] …[T]he ripple effect of that one decision is hard to exaggerate: it’s hard to calculate. (Gray interview, pp. 18-19)

#### Abortion restrictions will happen during next Supreme Court Session – Kennedy is the swing vote

Toobin 5/28 (“The Abortion Issue Returns”, <http://www.newyorker.com/online/blogs/comment/2013/05/abortion-returns-to-the-supreme-court.html>, Jeffrey, accessed 9/1)

As the Supreme Court’s term winds to a close this month, the Justices will be addressing a series of issues that reflect a changing agenda—the country’s and their own. There are two major [same-sex-marriage](http://www.scotusblog.com/case-files/cases/windsor-v-united-states-2/?wpmp_switcher=desktop) [cases](http://www.scotusblog.com/case-files/cases/hollingsworth-v-perry/?wpmp_switcher=desktop), a [challenge to the Voting Rights Act](http://www.scotusblog.com/case-files/cases/shelby-county-v-holder/?wpmp_switcher=desktop) based on the changing politics of the South, and even a futuristic dispute about[the patenting of human genes](http://www.scotusblog.com/case-files/cases/association-for-molecular-pathology-v-myriad-genetics-inc/?wpmp_switcher=desktop). But before too long—indeed, probably next fall—the Court will have to return to one of its most enduring controversies: abortion.¶ The Court may agree to hear one or more abortion cases in its next term. For the most part, these cases have their roots in the Republican landslides in the 2010 midterm elections. At the time, those electoral victories were largely portrayed as being based on economics; the Tea Party was often described as almost libertarian in orientation. But soon after new state legislators took office it became clear that social issues, and especially abortion, were among their highest priorities. In state after state, those Tea Party lawmakers passed new restrictions on abortion, and as the restrictions have taken effect challenges to them have started to work their way through the courts.¶ [According to the Guttmacher Institute](http://www.guttmacher.org/media/inthenews/2013/01/02/index.html), nineteen states passed forty-three new restrictions on abortion in 2012—on top of ninety-two restrictions passed in 2011. The most recent changes came in Arizona, Kansas, Louisiana, Oklahoma, South Dakota, and Wisconsin. A Guttmacher report states that the restrictions were in four general areas:¶ Mandating unnecessary medical procedures. The best known of these practices is requiring an ultrasound before any abortion, so that the woman is compelled to listen to a fetal heartbeat. Eight states now require these ultrasounds.¶ Increased regulation of abortion providers. These rules, notably strict in Michigan and Virginia, require abortion providers to have hospital-like facilities, while leaving other, similar outpatient institutions untouched.¶ Hospital privileges. Three states—Arizona, Mississippi, and Tennessee—recently added requirements that abortion providers have admitting privileges at local hospitals.¶ Limits on later abortions. Louisiana and Arizona have banned abortion after twenty weeks, and other states are weighing similar restrictions. In a law scheduled to go into effect this summer, North Dakota effectively banned abortions after six weeks.¶ The motivations behind these new laws are not difficult to discern. The ultrasounds are supposed to shock women into giving up their plans for abortion; the regulations are designed to raise costs for abortion clinics and drive them out of business; the hospital-privileges rules are intended to limit the number of doctors who can perform abortions, or eliminate them altogether, especially in states with very few clinics to begin with. (Mississippi has only one.) The rules on later abortions are intended to build on the pro-life movement’s earlier success in banning so-called partial-birth abortions.¶ The question now is whether the Supreme Court will uphold any or all of these rules. Two Supreme Court cases are critical to post-Roe v. Wade abortion-rights jurisprudence. In 1992, in[Planned Parenthood of Southeastern Pennsylvania v. Casey](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0505_0833_ZS.html), a plurality opinion written jointly by Sandra Day O’Connor, Anthony Kennedy, and David Souter upheld the “central principle” of the 1973 decision in Roe. “It is a rule of law and a component of liberty we cannot renounce,” the three Justices wrote. Building on an idea that O’Connor had raised in earlier opinions, the trio said that abortion restrictions would be rejected “only where state regulation imposes an undue burden on a woman’s ability” to decide whether to have an abortion. What’s an “undue burden”? In 2007, in [Gonzales v. Carhart](http://www.law.cornell.edu/supremecourt/text/05-380#writing-ZO), Kennedy wrote an opinion upholding the federal law against late-term abortions. Reflecting a very different sensibility from his opinion in Casey, Kennedy appeared to give legislators broad latitude to regulate abortion. “The State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn,” he wrote. An “undue burden” in 1992 looked very different from an “undue burden” fifteen years later.¶ The lower courts have generally found that many of the new laws do indeed amount to undue burdens. Earlier this month, the Ninth Circuit Court of Appeals [struck down Arizona’s new, twenty-week limit](http://thehill.com/blogs/healthwatch/abortion/301029-appeals-court-strikes-down-arizona-abortion-law) on abortions on that ground. Similar legal challenges to the North Dakota law[began this month](http://news.yahoo.com/legal-challenges-begin-against-nd-abortion-laws-154919260.html). Last December, the Oklahoma Supreme Court [invalidated, as an undue burden](http://news.yahoo.com/okla-court-strikes-down-ultrasound-abortion-law-205615273.html), that state’s new ultrasound law, which requires placing the image in front of the woman.¶ But will the Supreme Court agree with the lower courts, or has the definition of an undue burden changed yet again? Kennedy is the only Justice from the team that wrote Casey left on the Court. It seems a safe assumption that Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas, and Samuel Alito will approve all the new restrictions, while Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan will reject them. As in 1992 and 2007, the decision will likely turn on Kennedy’s views.¶ Kennedy’s views on these specific issues seem difficult to predict, and thus the outcomes of the challenges to these laws are, too. The new cases will reveal whether his drift away from Casey continues, or whether he has a core commitment to abortion rights that the new restrictions will finally run up against. The only certainty is that abortion will soon return to a central place before the Justices, and in the political arena.

#### Judicial capital is key to uphold the ban – otherwise Kennedy will vote switch and stick with precedent to preserve Court legitimacy.

Smith, PoliSci @Akron, 1992
[Christopher E. Smith, Pol. Sci. @ Akron, Fall 1992 “SUPREME COURT SURPRISE: JUSTICE ANTHONY KENNEDY'S MOVE TOWARD MODERATION” 45 Okla. L. Rev. 459]

There is, of course, no way to know with certainty why Justice Kennedy made his dramatic move toward moderation in highly publicized cases during the 1991 Term. Because it is highly unlikely that Justice Kennedy will ever forthrightly discuss his changing views, scholars must rely on the available evidence to analyze the motivations for and consequences of his move away from the Court's conservative bloc. It is clear that Justice Kennedy, more than any other Justice, altered his decisions and contradicted his previously stated positions in order to preserve precedents in cases concerning abortion and the Establishment Clause. Although there might be various explanations for this switch, the emphasis in his opinions on preserving doctrinal stability and the Court's legitimacy in the eyes of the public provides the strongest plausible explanation for the change in his judicial behavior. It is difficult to predict how Justice Kennedy will vote in future cases or if his move toward moderation will have lasting impact, particularly because new ap- pointments in the next few years may further alter the ideological balance of power on the Court. In any event, Justice Kennedy's decisions during the 1991 Term seem to confirm two important observations. First, Justices' decisions are obviously affected by a set of factors more complex than the mere sum of their judicial philosophies and policy preferences. As Justice Kennedy's actions demonstrate, the factors motivating a Justice's decisions can change from Term to Term. Justice Kennedy's obvious concern for the Court's legitimacy with respect to the abortion issue did not emerge until Roe was actually threatened with reversal during the tumult of a presidential election year. Second, this relatively quiet and unassuming Justice, who'is nearly always overshadowed by his more controversial and outspoken col- leagues, deserves additional scrutiny from scholars as an emerging "power broker" in the middle of the Supreme Court who can determine the out- comes of cases when the Court is deeply divided.

#### Abortion is a KEY LITMUS test for states rights – Supreme Court actions shape the lanscape

Maharrey 11 (Roe v Wade a Nullification Issue, Mike, 7/11, Mike Maharrey is a writer/staff member of the 10th Amendment Center, <http://tenthamendmentcenter.com/2011/07/11/roe-v-wade-a-nullification-issue/#.UiO0HdJwrgc>)

“Abortion is murder.”¶ “A woman has a right to choose.”¶ Few issues divide a room, a city or a country faster than abortion.¶ The abortion issue creates a political and philosophical quagmire, pressing itself into the realm of science and religion, the right to life and of personal sovereignty.¶ In 1973, the U.S. Supreme Court interjected the federal government into the issue, ruling that a Constitutional right to privacy enforced through the due process clause of the 14th Amendment grants women the right to an abortion.¶ The decision makes mincemeat out of the Constitution. An enumerated right to privacy exists nowhere. One could argue that individuals possess a natural right to privacy, and further assert that the federal government has no authority to abridge that right under the Ninth Amendment. But the Bill of Rights was never intended to bind the states, and the Tenth Amendment leaves all power not delegated to the United States to the states and the people.¶ Abortion should never have become a federal issue.¶ Justice Byron White alluded to this in a blistering dissent.¶ I find nothing in the language or history of the Constitution to support the Court’s judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes. The upshot is that the people and the legislatures of the 50 States are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the mother, on the other hand. As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but, in my view, its judgment is an improvident and extravagant exercise of the power of judicial review that the Constitution extends to this Court.¶ One would expect those who support abortion rights to cling tenaciously to the Court’s decision. It enforces their view on every state and individual. But more surprisingly, many in the anti-abortion camp also prefer to fight the battle at the national level, resisting any proposal to throw the issue back to the states where it belongs.¶ A Tenth Amendment Center supporter sent a letter to Steven Ertelt, the editor Life News, a major pro-life publication. The TAC supporter suggested state nullification of the Supreme Court decision was the best way to fight the abortion battle.¶ “Work must shift to the individual States legislatures and their citizenry because we now know they have the authority to overrule unconstitutional laws and court decisions as protectors of the Constitution as intended by our Founding Fathers.”¶ Ertelt’s response illustrates a centralized, federal government oriented, mindset.¶ “We live in a Supreme Court dominated political culture now. That kind of vote won’t happen. So the goal is electing a pro-life president and getting the 5th justice we need to overturn the decision.”¶ How’s that approach working for you, 38 years later, Mr. Ertelt?¶ He apparently hasn’t really thought through the actual realities. The Supreme Court has no power to outlaw abortion. The federal government has no authority over life and death matters. That’s why federal laws against murder don’t exist – except in a few specific cases involving federally controlled lands, the military and other legitimate spheres of federal jurisdiction. It is a state issue. So at best, Ertelt and pro-life advocates can only hope for a decision overturning the ridiculous assertions of Roe, throwing the issue back to the states.¶ So here’s a question for pro-life advocates: why waste the time and energy battling at the federal level when the states rightfully hold the keys? Court rulings carry no weight when they defy the Constitution, and states should simply refuse to enforce them.¶ In fact, some states have already started to flex their muscles.¶ Last week, the Ohio House passed bill would that would make abortion illegal after the fetus has a detectable heartbeat. [HB 125](http://www.legislature.state.oh.us/bills.cfm?ID=129_HB_125) passed 54-44.¶ The law would not punish the woman who had the abortion, but instead targets abortion providers.¶ The Ohio bill does not rest on a constitutional argument, but instead asserts the “viability” of a fetus after the heart begins beating. Even many in the pro-life community oppose the bill, fearing the courts won’t buy the argument, and that it will simply strengthen Roe.¶ “Unfortunately, the court has ruled that states can place limitations on post-viability abortions, but pre-viability there can be zero restrictions,” executive director of Ohio Right to Life Mike Gonidakis told the Columbus Dispatch. “We certainly don’t want the courts to reaffirm Roe with a decision in Ohio.”¶ The fundamental question remains, why should five black-robed demi-Gods have the right to decide for the people of Ohio how they choose to define viability?¶ Answer: they shouldn’t.¶ And federal courts have no authority to do so under the Constitution.¶ Georgia Rep. Bobby Franklin (R – Marietta) filed [a bill](http://www.legis.ga.gov/legislation/en-US/display.aspx?BillType=HB&Legislation=1) during the 2011 legislative session that got more to the point. The legislation declared life begins at conception and went on to assert the state’s right and responsibility to protect the lives of its citizens.¶ (6) The United States Congress has reserved to itself ‘all legislative powers herein vested’ according to Article I, Section I of the Constitution of the United States;¶ (7) ‘Herein vested’ to the United States Congress applies to only five crimes: (1) counterfeiting, (2) piracy, (3) felonies on the high seas, (4) offenses against the law of nations, and (5) treason; according to Article I, Section VIII and Article III, Section III of the Constitution of the United States;¶ (8) Murder is not counterfeiting, piracy, felony on the high seas, an offense against the law of nations, or treason;¶ (9) Georgia has, therefore, reserved to itself exclusive jurisdiction over the definition and punishment of murder under Amendment X of the Constitution of the United States.¶ A [similar bill](http://www.scstatehouse.gov/cgi-bin/web_bh10.exe?bill1=245&session=119) was considered in the South Carolina legislature. [Proposed legislation](http://www.in.gov/apps/lsa/session/billwatch/billinfo?year=2011&session=1&request=getBill&doctype=SB&docno=0290) in Indiana would make abortion illegal in that state, “unless a physician determines, based on sound medical practice, that the abortion is necessary to save the life of a pregnant woman.”¶ Ultimately, abortion comes down to an individual’s views on life, morality and sovereignty. No law, made at any level, will ever really end abortion, nor will it change the minds of those convinced it is a life issue. But at the very least, lawmaking should devolve to the lowest level of power possible. Let the people of each state battle it out and decide for themselves what restrictions, if any, they choose to place on abortion.¶ The issue properly falls within the states’ sphere of power. SCOTUS had no authority to rule one way or another on abortion. But since the federal government insists on overreaching and sticking its supersized nose into areas it has no business, it’s up to the states to reach out and smack that nose and keep it in its proper place.

#### Federalism solves heg

Nivola 10 (Pietro, The American Interest, “Rebalancing American Federalism”, March/April, http://www.the-american-interest.com/article-bd.cfm?piece=787)

Thinking along those lines warrants renewed emphasis today. America’s national government has had its hands full coping with a deep and lingering economic crisis and onerous security challenges around the world. It cannot, or at any rate ought not, keep piling on top of those daunting tasks a second-tier agenda that injudiciously dabbles in too many decisions and duties best consigned to local entities. Turning every imaginable issue into a Federal case, so to speak, diverts and polarizes political leaders at the national level, and erodes recognition of local responsibilities. A kind of attention deficit disorder besets anybody who attempts to do a little of everything rather than a few important things well. Although not a root cause of catastrophes like the submersion of a historic American city by a hurricane in 2005, the terrorist attacks of September 11, 2001, the great financial bust of 2008 or the successful resurgence of the Taliban in Central Asia, an overstretched and distracted government stands less chance of mitigating such tragedies.

#### Heg solves war

Barnett 11 (Thomas P.M., Former Senior Strategic Researcher and Professor in the Warfare Analysis & Research Department, Center for Naval Warfare Studies, U.S. Naval War College American military geostrategist and Chief Analyst at Wikistrat., worked as the Assistant for Strategic Futures in the Office of Force Transformation in the Department of Defense, “The New Rules: Leadership Fatigue Puts U.S., and Globalization, at Crossroads,” March 7 <http://www.worldpoliticsreview.com/articles/8099/the-new-rules-leadership-fatigue-puts-u-s-and-globalization-at-crossroads>)

Events in Libya are a further reminder for Americans that we stand at a crossroads in our continuing evolution as the world's sole full-service superpower. Unfortunately, we are increasingly seeking change without cost, and shirking from risk because we are tired of the responsibility. We don't know who we are anymore, and our president is a big part of that problem. Instead of leading us, he explains to us. Barack Obama would have us believe that he is practicing strategic patience. But many experts and ordinary citizens alike have concluded that he is actually beset by strategic incoherence -- in effect, a man overmatched by the job. It is worth first examining the larger picture: We live in a time of arguably the greatest structural change in the global order yet endured, with this historical moment's most amazing feature being its relative and absolute lack of mass violence. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our stunningly successful stewardship of global order since World War II. Let me be more blunt: As the guardian of globalization, the U.S. military has been the greatest force for peace the world has ever known. Had America been removed from the global dynamics that governed the 20th century, the mass murder never would have ended. Indeed, it's entirely conceivable there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation. But the world did not keep sliding down that path of perpetual war. Instead, America stepped up and changed everything by ushering in our now-perpetual great-power peace. We introduced the international liberal trade order known as globalization and played loyal Leviathan over its spread. What resulted was the collapse of empires, an explosion of democracy, the persistent spread of human rights, the liberation of women, the doubling of life expectancy, a roughly 10-fold increase in adjusted global GDP and a profound and persistent reduction in battle deaths from state-based conflicts. That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world. While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. The last great period of global structural change was the first half of the 20th century, a period that saw a death toll of about 100 million across two world wars. That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude, these calculations suggest a 90 percent absolute drop and a 99 percent relative drop in deaths due to war. We are clearly headed for a world order characterized by multipolarity, something the American-birthed system was designed to both encourage and accommodate. But given how things turned out the last time we collectively faced such a fluid structure, we would do well to keep U.S. power, in all of its forms, deeply embedded in the geometry to come. To continue the historical survey, after salvaging Western Europe from its half-century of civil war, the U.S. emerged as the progenitor of a new, far more just form of globalization -- one based on actual free trade rather than colonialism. America then successfully replicated globalization further in East Asia over the second half of the 20th century, setting the stage for the Pacific Century now unfolding.

#### Chinese can effectively use soft power now, which is uniquely effective- US model fails

**Hölkemeyer 12-6**-13 [Patricia Rodríguez Hölkemeyer, research professor and deputy director of the School of Political Science at the University of Costa Rica, Honorary Member of the Academy Research Center of Central Private, “China's forthcoming soft power as a natural result of international events,” <http://www.china.org.cn/china/Chinese_dream_dialogue/2013-12/06/content_30822607.htm>]

On the other side, Deng'saphorism that China should never strive to attain global hegemony has been widely respected by its leaders and reformers. Nevertheless, today circumstances have changed. China's ancient thinkers rejected the idea of searching for hegemony through stratagems, and favored instead the accomplishment of what Mencius and Xuzi called humane authority. Nevertheless, at the present moment China does not need to strive for the attainment of a leading role because the present world circumstances are catapulting her to become a world superpower. What are the present world circumstances that have put China in the position to have a say in international affairs without having to strive for hegemony? Why is the Western 'presumptive paradigm' (Rodrik)for development failing contrastingly to the pragmatic and experimental learning paradigm of the Chinese reformers that Joshua Cooper Ramo dubbed the Beijing Consensus? The ex-ante presumption of knowledge, a characteristic of the Western countries and global institutions, very probably will be ceding its place to a Deweyian pragmatic change of paradigm, according to which, even the mere conception of what is the best form of democracy is fallible and contextual. ¶ Very probably, the paradigm of 'arrogance' will be giving place to a paradigm based on what the political scientist, Karl Deutsch, once called 'humility'. Deutsch defined its opposite "arrogance" as the posture of permitting oneself the luxury of not to learn (because it is supposed that one has already learned everything), while he defines 'humility' as the attitude of the political leader who is always open to learning from others. The West has forgotten that the concept of feedback (learning form the other) is the biggest bite to the tree of knowledge that humanity has undertaken in the last two thousand years (Bateson). A new concept of democracy has to take into consideration this advancement as the Chinese reform process has done. Western countries' presumptive frame of mind has been slowly losing momentum. The present circumstances provide a clear indication that one of the most cared institutions, the Western multiparty democracy system, has been losing its ability to learn, and thus, its capacity to offer creative solutions to its own and the world's problems. As a former US Ambassador to China said two years ago, the willingness of Chinese leaders to learn from their errors and adapt to new circumstances "differs sharply from what one encounters in Washington, where there's such concern over our inability to correct the problems that are making our political system — in the eyes of many Americans — increasingly dysfunctional."¶ The US has to enhance its learning capacity if it wants to lead in world affairs in cooperation with the newly emerging superpower. The West has to acknowledge that the so called American values are not universal, that harmony implies unity in diversity, that the concept of democracy is fallible and mutable, and that hegemony has to cede to a well gained humane authority, not only abroad but domestically.¶ Since W. W. II, the US attained the soft power that China lacked. Nevertheless, the US insistence in the maintenance of an hegemonic international order applying the smart power (a new concept of Joseph Nye) stratagems, has culminated in the observed failure of the misnamed Arab Spring, even if the application of smart power (instigation through political activism, and the posterior use of military power if necessary) was partially successful in the so called Color Revolutions (Rodríguez-Hölkemeyer, 2013).¶ Given the present circumstances (as the effects of 9/11, the global financial crisis, the formation of the G20, the global rejection of US espionage stratagems, the failure of the Pivot to the East policy due to the attention the US had to devote to the failed Arab Spring, to an ailing Europe, and to its own domestic financial and political problems) China's possibilities to acquire soft power and to exert its positive influence way the international governing institutions and in international relations, are now real. The world needs a new international relations paradigm, other than the Western style democracy promotion policy through political activism (see the book of the present US Ambassador to Russia, Michael McFaul, Advancing Democracy Abroad)orchestrated by organized minorities (NGOs) who want to impose the so called 'American values' in countries with different historical paths, culture and aspirations. The new paradigm will have to be founded in ethics, wisdom, cooperation, confidence-building, and on the recognition that knowledge is fallible and hypothetical, and that with globalization world circumstances and interactions are prone to change. This new paradigm has already been successfully tested in the 35 years of China's own economic and institutional reform process and diplomatic practice. This adaptive and learning-prone attitude of the Chinese leaders, even to the point of adapting (not adopting) western suggestions and institutions when necessary, is the underlying cause of the success of the admirable and unique Chinese development path. As Mencius and Xuzi's observations suggest that a country cannot exert international influence if its own house is not in order.¶ In sum, the present article states that now China possesses a substantive experiential wisdom to start a very productive dialogue with the World. Especially in a moment when it is beginning to be clear to many in the World, that to strive for maintaining a hegemonic world order (Mearsheimer) by means of dubious stratagemsis --according to Lao Tzu thought—the kind of response when intentions are going against the natural course of events.

#### US influence trades off with China’s- competing narratives

**Dynon ’13** [Nicholas, PhD candidate at Macquarie University and is coordinator of the Line 21 project, an online resource on Chinese public diplomacy, has served diplomatic postings in Shanghai, Beijing and the Fiji Islands, worked in Australia’s Parliament House as a departmental liaison officer to the Immigration Minister, holds postgraduate degrees from the ANU and the University of Sydney, “Soft Power: A U.S.-China Battleground?” June 19, <http://thediplomat.com/2013/06/soft-power-a-u-s-china-battleground/>]

Strip away the ostensibly benign surface of public diplomacy, cultural exchanges and language instruction, and it becomes clear that the U.S. and China are engaged in a soft power conflagration – a protracted cultural cold war. On one side bristles incumbent Western values hegemon, the U.S. On the other is China, one of the non-Western civilizations that Samuel Huntington noted back in 1993 “increasingly have the desire, the will and the resources to shape the world in non-Western ways.”¶ But to shape the world in non-Western ways means engaging in a soft power battlespace against an incumbent who already holds the high ground. Liu comments that in regions deeply influenced by Western cultures, political systems and values, the “latecomer” China is considered a “dissident force." Under such circumstances, “it is rather difficult for China to attract Western countries with its own political and cultural charisma, let alone to replace their positions.”¶ According to this and similar viewpoints, China’s difficulty in projecting soft power across the world is in part due to the way the U.S. leverages its own soft power. Wu Jianmin, the former president of China’s Foreign Affairs University, puts the point well when explaining that U.S. soft power is driven by the imperative of “maintaining US hegemony in changing the world, of letting the world listen to the United States.”¶ Thus, the state of global post-colonial, post-communist ideational hegemony is such that large swathes of the earth’s population see the world through lenses supplied by the West. Through these lenses, perceptions of China are dominated by such concepts as the “China threat theory,” which portrays China as a malevolent superpower upstart.¶ But it’s actually inside China’s borders where the soft power struggle between China and the U.S. is most prominent.¶ Official pronouncements from Chinese leaders have long played up the notion that Western culture is an aggressive threat to China’s own cultural sovereignty. It has thus taken myriad internal measures to ensure the country’s post-Mao reforms remain an exercise in modernization without “westernization.” Since the 1990s, for example, ideological doctrine has been increasingly infused with a new cultural nationalism, and the Party’s previously archaic propaganda system has been massively overhauled and working harder than ever.¶ Especially after the June 4th crackdown and the collapse of the Soviet Union, China’s leaders under Jiang Zemin began addressing the cultural battlespace with renewed vigor. Resolutions launched in 1996 called for the Party to “carry forward the cream of our traditional culture, prevent and eliminate the spread of cultural garbage, [and] resist the conspiracy by hostile forces to ‘Westernize’ and ‘split’ our country….” Hu Jintao trumpeted the same theme in early 2012 when he warned that international hostile forces are intensifying the strategic plot of Westernising and dividing China … Ideological and cultural fields are the focal areas of their long-term infiltration.”

#### Chinese soft power restrains aggression- solves regional stability

**Huang ’13** [Chin-Hao Huang, Ph.D. Candidate and a Russell Endowed Fellow in the Political Science and International Relations (POIR) Program at the University of Southern California (USC). Until 2009, he was a researcher at the Stockholm International Peace Research Institute (SIPRI) in Sweden. He specializes in international security and comparative politics, especially with regard to China and Asia, and he has testified before the Congressional U.S.-China Economic and Security Review Commission on Chinese foreign and security policy, “China’s Soft Power in East Asia,” <http://dornsife.usc.edu/assets/sites/451/docs/Huang_FINAL_China_Soft_Power_and_Status.pdf>]

China’s authoritarian regime is thus the biggest obstacle to its efforts to construct and project soft ¶ power. At the same time, if the government decides to take a different tack—a more constructive ¶ approach that embraces multilateralism—**Chinese soft power could be a positive force multiplier that contributes to peace and stability in the region**. A widely read and cited article published in ¶ Liaowang, a leading CCP publication on foreign affairs, reveals that there are prospects for China being socialized into a less disruptive power that complies with regional and global norms: ¶ Compared with past practices, China’s diplomacy has indeed displayed a new face. If China’s diplomacy before the 1980s stressed safeguarding of national ¶ security, and its emphasis from the 1980s to early this century is on the creation ¶ of an excellent environment for economic development, then the focus at ¶ present is to take a more active part in international affairs and play the role that a responsible power should on the basis of satisfying the security and ¶ development interests.47 The newly minted leadership in Beijing provides China with an opportunity to reset its soft-power approach and the direction of its foreign policy more generally. If the new leadership pursues a ¶ different course, Washington should seize on this opportunity to craft an effective response to ¶ better manage U.S.-China relations and provide for greater stability in the Asia-Pacific region. For example, strengthening regional alliances and existing security and economic architectures could help restrain China’s more bellicose tendencies. At the same time, Washington should be cognizant of the frustrations that are bound to occur in bilateral relations if Beijing continues to define national interest in narrow, self-interested terms. The U.S. should engage more deeply with regional partners to persuade and incentivize China to take on a responsible great-power role commensurate with regional expectations.¶ • The U.S. pivot to the region could be further complemented with an increase in soft-power promotion, including increasing the level of support for Fulbright and other educational exchanges that forge closer professional and interpersonal ties between the U.S. and the Asia-Pacific. Washington should also encourage philanthropy, development assistance, and intellectual engagement by think tanks and civil society organizations that address issues such as public health and facilitate capacity-building projects. China’s rising economic, political, and military power is the most geopolitically significant¶ development of this century. Yet while the breadth of China’s growing power is widely¶ understood, a fulsome understanding of the dynamics of this rise requires a more¶ systematic assessment of the depth of China’s power. Specifically, the strategic, economic,¶ and political implications of China’s soft-power efforts in the region require in-depth analysis.¶ The concept of “soft power” was originally developed by Harvard University professor Joseph Nye¶ to describe the ability of a state to attract and co-opt rather than to coerce, use force, or give money¶ as a means of persuasion.1 The term is now widely used by analysts and statesmen. As originally¶ defined by Nye, soft power involves the ability of an actor to set agendas and attract support on the¶ basis of its values, culture, policies, and institutions. In this sense, he considers soft power to often¶ be beyond the control of the state, and generally includes nonmilitary tools of national power—such¶ as diplomacy and state-led economic development programs—as examples of hard power.¶ Partially due to the obvious pull of China’s economic might, several analysts have broadened Nye’s¶ original definition of soft power to include, as Joshua Kurlantzick observes, “anything outside the¶ military and security realm, including not only popular culture and public diplomacy but also more¶ coercive economic and diplomatic levers like aid and investment and participation in multilateral¶ organizations.”2 This broader definition of soft power has been exhaustively discussed in China¶ as an element of a nation’s “comprehensive national power” (zonghe guoli), and some Chinese¶ commentators argue that it is an area where the People’s Republic of China (PRC) may enjoy some¶ advantages vis-à-vis the United States. These strategists advocate spreading appreciation of Chinese¶ culture and values through educational and exchange programs such as the Confucius Institutes.¶ This approach would draw on the attractiveness of China’s developmental model and assistance¶ programs (including economic aid and investment) in order to assuage neighboring countries’¶ concerns about China’s growing hard power.3 China’s soft-power efforts in East Asia—enabled by its active use of coercive economic and social¶ levers such as aid, investment, and public diplomacy—have already accrued numerous benefits for the PRC. Some view the failure of the United States to provide immediate assistance to East and¶ Southeast Asian states during the 1997 Asian financial crisis and China’s widely publicized refusal¶ to devalue its currency at the time (which would have forced other Asian states to follow suit) as a turning point, causing some in Asia to question which great power was more reliable.4 China also uses economic aid, and the withdrawal thereof, as a tool of national power, as seen in China’s considerable aid efforts in Southeast Asia, as well as in its suspension of $200 million in aid to¶ Vietnam in 2006 after Hanoi invited Taiwan to attend that year’s Asia-Pacific Economic Cooperation¶ (APEC) summit.5

#### Causes nuclear war- draws in the US

**Eland 12-10**-13 [Ivan Eland,PhD in Public Policy from George Washington University, Senior Fellow and Director of the Center on Peace & Liberty at The Independent Institute, has been Director of Defense Policy Studies at the Cato Institute, and he spent 15 years working for Congress on national security issues, including Principal Defense Analyst at the Congressional Budget Office, has served as Evaluator-in-Charge for the U.S. General Accounting Office, “Stay Out of Petty Island Disputes in East Asia,” <http://www.huffingtonpost.com/ivan-eland/stay-out-of-petty-island-_b_4414811.html>]

One of the most dangerous international disputes that the United States could get dragged into has little importance to U.S. security -- the disputes nations have over small islands (some really rocks rising out of the sea) in East Asia. Although any war over these islands would rank right up there with the absurd Falkland Islands war of 1982 between Britain and Argentina over remote, windswept sheep pastures near Antarctica, any conflict in East Asia always has the potential to escalate to nuclear war. And unlike the Falklands war, the United States might be right in the atomic crosshairs.¶ Of the two antagonists in the Falklands War, only Britain had nuclear weapons, thus limiting the possibility of nuclear escalation. And although it is true that of the more numerous East Asian contenders, only China has such weapons, the United States has formal alliance commitments to defend three of the countries in competition with China over the islands -- the Philippines, Japan, and South Korea -- and an informal alliance with Taiwan. Unbeknownst to most Americans, those outdated alliances left over from the Cold War implicitly still commit the United States to sacrifice Seattle or Los Angeles to save Manila, Tokyo, Seoul, or Taipei, should one of these countries get into a shooting war with China. Though a questionable tradeoff even during the Cold War, it is even less so today. The "security" for America in this implicit pledge has always rested on avoiding a faraway war in the first place using a tenuous nuclear deterrent against China or any other potentially aggressive power. The deterrent is tenuous, because friends and foes alike might wonder what rational set of U.S. leaders would make this ridiculously bad tradeoff if all else failed. ¶ Of course these East Asian nations are not quarreling because the islands or stone outcroppings are intrinsically valuable, but because primarily they, depending on the particular dispute involved, are in waters that have natural riches -- fisheries or oil or gas resources. ¶ In one dispute, the Senkaku or Diaoyu dispute -- depending on whether the Japanese or Chinese are describing it, respectively -- the United States just interjected itself, in response to the Chinese expansion of its air defense zone over the islands, by flying B-52 bombers through this air space to support its ally Japan. The United States is now taking the nonsensical position that it is neutral in the island kerfuffle, even though it took this bold action and pledged to defend Japan if a war ensues. Predictably and understandably, China believes that the United States has chosen sides in the quarrel.¶ Then to match China, South Korea extended its own air defense zone -- so that it now overlaps that of both China and Japan. But that said, as a legacy of World War II, South Korea seems to get along better with China, its largest trading partner, than it does with Japan. Also, South Korea and Japan have a dispute over the Dokdo or Takeshima Islands, depending on who is describing them, in the Sea of Japan. Because the United States has a formal defense alliance with each of those nations and stations forces in both, which would it support if Japan and South Korea went to war over the dispute? It's anyone's guess.

#### Legal solutions merely mask sovereign power and legitimatize exclusion

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[Margaret, "Bare Life and the Limits of the Law," Theory & Event, 9:2, 2006, muse.jhu.edu/journals/theory\_and\_event/v009/9.2kohn.html, accessed 9-12-13, mss]

Giorgio Agamben is best known for his provocative suggestion that the concentration camp – the spatial form of the state of exception - is not exceptional but rather the paradigmatic political space of modernity itself.  When Agamben first made this claim in Homo Sacer (1995), it may have seemed like rhetorical excess. But a decade later in the midst of a permanent war on terror, in which suspects can be tried by military tribunals, incarcerated without trial based on secret evidence, and consigned to extra-territorial penal colonies like Guantanamo Bay, his characterization seems prescient. The concepts of bare life, sovereignty, the ban, and the state of exception, which were introduced in Homo Sacer, have exerted enormous influence on theorists trying to make sense of contemporary politics. Agamben recently published a new book entitled State of Exception that elaborates on some of the core ideas from his earlier work. It is an impressive intellectual history of emergency power as a paradigm of government. The book traces the concept from the Roman notion of iustitium through the infamous Article 48 of the Weimar constitution to the USA Patriot Act. Agamben notes that people interned at Guantanamo Bay are neither recognized as prisoners of war under the Geneva Convention nor as criminals under American law; as such they occupy a zone of indeterminacy, both legally and territorially, which, according to Agamben, could only be compared to the Jews in the Nazi Lager (concentration camps) (4). Agamben's critique of the USA Patriot Act, at least initially seems to bare a certain resemblance to the position taken by ACLU-style liberals in the United States. When he notes that "detainees" in the war on terror are the object of pure de factorule and compares their legal status to that of Holocaust victims, he implicitly invokes a normative stance that is critical of the practice of turning juridical subjects into bare life, e.g. life that is banished to a realm of potential violence. For liberals, "the rule of law" involves judicial oversight, which they identify as one of the most appropriate weapons in the struggle against arbitrary power. Agamben makes it clear, however, that he does not endorse this solution. In order to understand the complex reasons for his rejection of the liberal call for more fairness and universalism we must first carefully reconstruct his argument. State of Exception begins with a brief history of the concept of the state of siege (France), martial law (England), and emergency powers (Germany). Although the terminology and the legal mechanisms differ slightly in each national context, they share an underlying conceptual similarity. The state of exception describes a situation in which a domestic or international crisis becomes the pretext for a suspension of some aspect of the juridical order. For most of the bellicose powers during World War I this involved government by executive decree rather than legislative decision. Alternately, the state of exception often implies a suspension of judicial oversight of civil liberties and the use of summary judgment against civilians by members of the military or executive. Legal scholars have differed about the theoretical and political significance of the state of exception. For some scholars, the state of exception is a legitimate part of positive law because it is based on necessity, which is itself a fundamental source of law. Similar to the individual's claim of self-defense in criminal law, the polity has a right to self-defense when its sovereignty is threatened; according to this position, exercising this right might involve a technical violation of existing statutes (legge) but does so in the name of upholding the juridical order (diritto). The alternative approach, which was explored most thoroughly by Carl Schmitt in his books Political Theology and Dictatorship, emphasizes that declaring the state of exception is the perogative of the sovereign and therefore essentially extra-juridical. For Schmitt, the state of exception always involves the suspension of the law, but it can serve two different purposes. A "commissarial dictatorship" aims at restoring the existing constitution and a "sovereign dictatorship" constitutes a new juridical order. Thus, the state of exception is a violation of law that expresses the more fundamental logic of politics itself. Following Derrida, Agamben calls this force-of-law. What exactly is the force-of-law? Agamben suggests that the appropriate signifier would be force-of-law, a graphic reminder of the fact that the concept emerges out of the suspension of law. He notes that it is a "mystical element, or rather a fictio by means of which law seeks to annex anomie itself." It expresses the fundamental paradox of law: the necessarily imperfect relationship between norm and rule. The state of exception is disturbing because it reveals the force-of-law, the remainder that becomes visible when the application of the norm, and even the norm itself, are suspended. At this point it should be clear that Agamben would be deeply skeptical of the liberal call for more vigorous enforcement of the rule of law as a means of combating cruelties and excesses carried out under emergency powers. His brief history of the state of exception establishes that the phenomenon is a political reality that has proven remarkably resistant to legal limitations. Critics might point out that this descriptive point, even if true, is no reason to jettison the ideal of the rule of law. For Agamben, however, the link between law and exception is more fundamental; it is intrinsic to politics itself. The sovereign power to declare the state of exception and exclude bare life is the same power that invests individuals as worthy of rights. The two are intrinsically linked. The disturbing implication of his argument is that we cannot preserve the things we value in the Western tradition (citizenship, rights, etc.) without preserving the perverse ones. Agamben presents four theses that summarize the results of his genealogical investigation. (1) The state of exception is a space devoid of law. It is not the logical consequence of the state's right to self-defense, nor is it (qua commissarial or sovereign dictatorship) a straightforward attempt to reestablish the norm by violating the law. (2) The space devoid of law has a "decisive strategic relevance" for the juridical order. (3) Acts committed during the state of exception (or in the space of exception) escape all legal definition. (4) The concept of the force-of-law is one of the many fictions, which function to reassert a relationship between law and exception, nomos andanomie. The core of Agamben's critique of liberal legalism is captured powerfully, albeit indirectly, in a quote from Benjamin's eighth thesis on the philosophy of history. According to Benjamin, (t)he tradition of the oppressed teaches us that the 'state of exception' in which we live is the rule. We must attain a concept of history that accords with this fact. Then we will clearly see that it is our task to bring about the real state of exception, and this will improve our position in the struggle against fascism. (57) Here Benjamin endorses the strategy of more radical resistance rather than stricter adherence to the law. He recognizes that legalism is an anemic strategy in combating the power of fascism. The problem is that conservative forces had been willing to ruthlessly invoke the state of exception in order to further their agenda while the moderate Weimar center-left was paralyzed; frightened of the militant left and unwilling to act decisively against the authoritarian right, partisans of the rule of law passively acquiesced to their own defeat. Furthermore, the rule of law, by incorporating the necessity of its own dissolution in times of crisis, proved itself an unreliable tool in the struggle against violence. From Agamben's perspective, the civil libertarians' call for uniform application of the law simply denies the nature of law itself. He insists, "From the real state of exception in which we live, it is not possible to return to the state of law. . ." (87) Moreover, by masking the logic of sovereignty, such an attempt could actually further obscure the zone of indistinction that allows the state of exception to operate. For Agamben, law serves to legitimize sovereign power. Since sovereign power is fundamentally the power to place people into the category of bare life, the law, in effect, both produces and legitimizes marginality and exclusion.

#### Sanitization of US policy leads to endless violence and imperialism – turns case

Bacevich, 5 -- Boston University international relations professor

[A. J., retired career officer in the United States Army, former director of Boston University's Center for International Relations (from 1998 to 2005), The New American Militarism: How Americans Are Seduced by War, 2005 accessed 9-4-13, mss]

Today as never before in their history Americans are enthralled with military power. The global military supremacy that the United States presently enjoys--and is bent on perpetuating-has become central to our national identity. More than America's matchless material abundance or even the effusions of its pop culture, the nation's arsenal of high-tech weaponry and the soldiers who employ that arsenal have come to signify who we are and what we stand for. When it comes to war, Americans have persuaded themselves that the United States possesses a peculiar genius. Writing in the spring of 2003, the journalist Gregg Easterbrook observed that "the extent of American military superiority has become almost impossible to overstate." During Operation Iraqi Freedom, U.S. forces had shown beyond the shadow of a doubt that they were "the strongest the world has ever known, . . . stronger than the Wehrmacht in r94o, stronger than the legions at the height of Roman power." Other nations trailed "so far behind they have no chance of catching up. ""˜ The commentator Max Boot scoffed at comparisons with the German army of World War II, hitherto "the gold standard of operational excellence." In Iraq, American military performance had been such as to make "fabled generals such as Erwin Rommel and Heinz Guderian seem positively incompetent by comparison." Easterbrook and Booz concurred on the central point: on the modern battlefield Americans had located an arena of human endeavor in which their flair for organizing and deploying technology offered an apparently decisive edge. As a consequence, the United States had (as many Americans have come to believe) become masters of all things military. Further, American political leaders have demonstrated their intention of tapping that mastery to reshape the world in accordance with American interests and American values. That the two are so closely intertwined as to be indistinguishable is, of course, a proposition to which the vast majority of Americans subscribe. Uniquely among the great powers in all of world history, ours (we insist) is an inherently values-based approach to policy. Furthermore, we have it on good authority that the ideals we espouse represent universal truths, valid for all times. American statesmen past and present have regularly affirmed that judgment. In doing so, they validate it and render it all but impervious to doubt. Whatever momentary setbacks the United States might encounter, whether a generation ago in Vietnam or more recently in Iraq, this certainty that American values are destined to prevail imbues U.S. policy with a distinctive grandeur. The preferred language of American statecraft is bold, ambitious, and confident. Reflecting such convictions, policymakers in Washington nurse (and the majority of citizens tacitly endorse) ever more grandiose expectations for how armed might can facilitate the inevitable triumph of those values. In that regard, George W. Bush's vow that the United States will "rid the world of evil" both echoes and amplifies the large claims of his predecessors going at least as far back as Woodrow Wilson. Coming from Bush the war- rior-president, the promise to make an end to evil is a promise to destroy, to demolish, and to obliterate it. One result of this belief that the fulfillment of America's historic mission begins with America's destruction of the old order has been to revive a phenomenon that C. Wright Mills in the early days of the Cold War described as a "military metaphysics"-a tendency to see international problems as military problems and to discount the likelihood of finding a solution except through military means. To state the matter bluntly, Americans in our own time have fallen prey to militarism, manifesting itself in a romanticized view of soldiers, a tendency to see military power as the truest measure of national greatness, and outsized expectations regarding the efficacy of force. To a degree without precedent in U.S. history, Americans have come to define the nation's strength and well-being in terms of military preparedness, military action, and the fostering of (or nostalgia for) military ideals? Already in the 19905 America's marriage of a militaristic cast of mind with utopian ends had established itself as the distinguishing element of contemporary U.S. policy. The Bush administrations response to the hor- rors of 9/11 served to reaffirm that marriage, as it committed the United States to waging an open-ended war on a global scale. Events since, notably the alarms, excursions, and full-fledged campaigns comprising the Global War on Terror, have fortified and perhaps even sanctified this marriage. Regrettably, those events, in particular the successive invasions of Afghanistan and Iraq, advertised as important milestones along the road to ultimate victory have further dulled the average Americans ability to grasp the significance of this union, which does not serve our interests and may yet prove our undoing. The New American Militarism examines the origins and implications of this union and proposes its annulment. Although by no means the first book to undertake such an examination, The New American Militarism does so from a distinctive perspective. The bellicose character of U.S. policy after 9/11, culminating with the American-led invasion of Iraq in March 2003, has, in fact, evoked charges of militarism from across the political spectrum. Prominent among the accounts advancing that charge are books such as The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic, by Chalmers Johnson; Hegemony or Survival: Americas Quest for Global Dominance, by Noam Chomsky; Masters of War; Militarism and Blowback in the Era of American Empire, edited by Carl Boggs; Rogue Nation: American Unilateralism and the Failure of Good Intentions, by Clyde Prestowitz; and Incoherent Empire, by Michael Mann, with its concluding chapter called "The New Militarism." Each of these books appeared in 2003 or 2004. Each was not only writ- ten in the aftermath of 9/11 but responded specifically to the policies of the Bush administration, above all to its determined efforts to promote and justify a war to overthrow Saddam Hussein. As the titles alone suggest and the contents amply demonstrate, they are for the most part angry books. They indict more than explain, and what- ever explanations they offer tend to be ad hominem. The authors of these books unite in heaping abuse on the head of George W Bush, said to combine in a single individual intractable provincialism, religious zealotry, and the reckless temperament of a gunslinger. Or if not Bush himself, they fin- ger his lieutenants, the cabal of warmongers, led by Vice President Dick Cheney and senior Defense Department officials, who whispered persua- sively in the president's ear and used him to do their bidding. Thus, accord- ing to Chalmers Johnson, ever since the Persian Gulf War of 1990-1991, Cheney and other key figures from that war had "Wanted to go back and finish what they started." Having lobbied unsuccessfully throughout the Clinton era "for aggression against Iraq and the remaking of the Middle East," they had returned to power on Bush's coattails. After they had "bided their time for nine months," they had seized upon the crisis of 9/1 1 "to put their theories and plans into action," pressing Bush to make Saddam Hussein number one on his hit list." By implication, militarism becomes something of a conspiracy foisted on a malleable president and an unsuspecting people by a handful of wild-eyed ideologues. By further implication, the remedy for American militarism is self-evi- dent: "Throw the new militarists out of office," as Michael Mann urges, and a more balanced attitude toward military power will presumably reassert itself? As a contribution to the ongoing debate about U.S. policy, The New American Militarism rejects such notions as simplistic. It refuses to lay the responsibility for American militarism at the feet of a particular president or a particular set of advisers and argues that no particular presidential election holds the promise of radically changing it. Charging George W. Bush with responsibility for the militaristic tendencies of present-day U.S. for- eign policy makes as much sense as holding Herbert Hoover culpable for the Great Depression: Whatever its psychic satisfactions, it is an exercise in scapegoating that lets too many others off the hook and allows society at large to abdicate responsibility for what has come to pass. The point is not to deprive George W. Bush or his advisers of whatever credit or blame they may deserve for conjuring up the several large-scale campaigns and myriad lesser military actions comprising their war on ter- ror. They have certainly taken up the mantle of this militarism with a verve not seen in years. Rather it is to suggest that well before September 11, 2001 , and before the younger Bush's ascent to the presidency a militaristic predisposition was already in place both in official circles and among Americans more generally. In this regard, 9/11 deserves to be seen as an event that gave added impetus to already existing tendencies rather than as a turning point. For his part, President Bush himself ought to be seen as a player reciting his lines rather than as a playwright drafting an entirely new script. In short, the argument offered here asserts that present-day American militarism has deep roots in the American past. It represents a bipartisan project. As a result, it is unlikely to disappear anytime soon, a point obscured by the myopia and personal animus tainting most accounts of how we have arrived at this point. The New American Militarism was conceived not only as a corrective to what has become the conventional critique of U.S. policies since 9/11 but as a challenge to the orthodox historical context employed to justify those policies. In this regard, although by no means comparable in scope and in richness of detail, it continues the story begun in Michael Sherry's masterful 1995 hook, In the Shadow of War an interpretive history of the United States in our times. In a narrative that begins with the Great Depression and spans six decades, Sherry reveals a pervasive American sense of anxiety and vulnerability. In an age during which War, actual as well as metaphorical, was a constant, either as ongoing reality or frightening prospect, national security became the axis around which the American enterprise turned. As a consequence, a relentless process of militarization "reshaped every realm of American life-politics and foreign policy, economics and technology, culture and social relations-making America a profoundly different nation." Yet Sherry concludes his account on a hopeful note. Surveying conditions midway through the post-Cold War era's first decade, he suggests in a chapter entitled "A Farewell to Militarization?" that America's preoccupation with War and military matters might at long last be waning. In the mid- 1995, a return to something resembling pre-1930s military normalcy, involving at least a partial liquidation of the national security state, appeared to be at hand. Events since In the Shadow of War appear to have swept away these expectations. The New American Militarism tries to explain why and by extension offers a different interpretation of America's immediate past. The upshot of that interpretation is that far from bidding farewell to militariza- tion, the United States has nestled more deeply into its embrace. f ~ Briefly told, the story that follows goes like this. The new American militarism made its appearance in reaction to the I96os and especially to Vietnam. It evolved over a period of decades, rather than being sponta- neously induced by a particular event such as the terrorist attack of Septem- ber 11, 2001. Nor, as mentioned above, is present-day American militarism the product of a conspiracy hatched by a small group of fanatics when the American people were distracted or otherwise engaged. Rather, it devel- oped in full view and with considerable popular approval. The new American militarism is the handiwork of several disparate groups that shared little in common apart from being intent on undoing the purportedly nefarious effects of the I96OS. Military officers intent on reha- bilitating their profession; intellectuals fearing that the loss of confidence at home was paving the way for the triumph of totalitarianism abroad; reli- gious leaders dismayed by the collapse of traditional moral standards; strategists wrestling with the implications of a humiliating defeat that had undermined their credibility; politicians on the make; purveyors of pop cul- turc looking to make a buck: as early as 1980, each saw military power as the apparent answer to any number of problems. The process giving rise to the new American militarism was not a neat one. Where collaboration made sense, the forces of reaction found the means to cooperate. But on many occasions-for example, on questions relating to women or to grand strategy-nominally "pro-military" groups worked at cross purposes. Confronting the thicket of unexpected developments that marked the decades after Vietnam, each tended to chart its own course. In many respects, the forces of reaction failed to achieve the specific objectives that first roused them to act. To the extent that the 19603 upended long-standing conventions relating to race, gender, and sexuality, efforts to mount a cultural counterrevolution failed miserably. Where the forces of reaction did achieve a modicum of success, moreover, their achievements often proved empty or gave rise to unintended and unwelcome conse- quences. Thus, as we shall see, military professionals did regain something approximating the standing that they had enjoyed in American society prior to Vietnam. But their efforts to reassert the autonomy of that profession backfired and left the military in the present century bereft of meaningful influence on basic questions relating to the uses of U.S. military power. Yet the reaction against the 1960s did give rise to one important by-prod: uct, namely, the militaristic tendencies that have of late come into full flower. In short, the story that follows consists of several narrative threads. No single thread can account for our current outsized ambitions and infatua- tion with military power. Together, however, they created conditions per- mitting a peculiarly American variant of militarism to emerge. As an antidote, the story concludes by offering specific remedies aimed at restor- ing a sense of realism and a sense of proportion to U.S. policy. It proposes thereby to bring American purposes and American methods-especially with regard to the role of military power-into closer harmony with the nation's founding ideals. The marriage of military metaphysics with eschatological ambition is a misbegotten one, contrary to the long-term interests of either the American people or the world beyond our borders. It invites endless war and the ever-deepening militarization of U.S. policy. As it subordinates concern for the common good to the paramount value of military effectiveness, it promises not to perfect but to distort American ideals. As it concentrates ever more authority in the hands of a few more concerned with order abroad rather than with justice at home, it will accelerate the hollowing out of American democracy. As it alienates peoples and nations around the world, it will leave the United States increasingly isolated. If history is any guide, it will end in bankruptcy, moral as well as economic, and in abject failure. "Of all the enemies of public liberty," wrote James Madison in 1795, "war is perhaps the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies. From these proceed debts and taxes. And armies, debts and taxes are the known instruments for bringing the many under the domination of the few .... No nation could preserve its freedom in the midst of continual Warfare." The purpose of this book is to invite Americans to consider the continued relevance of Madison's warning to our own time and circumstances.

#### The Alternative is to reject the 1AC and imagine Whatever Being--Any point of rejection of the sovereign state creates a non-state world made up of whatever life – that involves imagining a political body that is outside the sphere of sovereignty in that it defies traditional attempts to maintain a social identity

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(Anne, “Bio-Sovereignty and the Emergence of Humanity,” Theory & Event, Volume 7, Issue 2, Project Muse)

Can we imagine another form of humanity, and another form of power? The bio-sovereignty described by Agamben is so fluid as to appear irresistible. Yet Agamben never suggests this order is necessary. Bio-sovereignty results from a particular and contingent history, and it requires certain conditions. Sovereign power, as Agamben describes it, finds its grounds in specific coordinates of life, which it then places in a relation of indeterminacy. What defies sovereign power is a life that cannot be reduced to those determinations: a life "that can never be separated from its form, a life in which it is never possible to isolate something such as naked life. " (2.3). In his earlier Coming Community, Agamben describes this alternative life as "whatever being." More recently he has used the term "forms-of-life." These concepts come from the figure Benjamin proposed as a counter to homo sacer: the "total condition that is 'man'." For Benjamin and Agamben, mere life is the life which unites law and life. That tie permits law, in its endless cycle of violence, to reduce life an instrument of its own power. The total condition that is man refers to an alternative life incapable of serving as the ground of law. Such a life would exist outside sovereignty. Agamben's own concept of whatever being is extraordinarily dense. It is made up of varied concepts, including language and potentiality; it is also shaped by several particular dense thinkers, including Benjamin and Heidegger. What follows is only a brief consideration of whatever being, in its relation to sovereign power. / "Whatever being," as described by Agamben, lacks the features permitting the sovereign capture and regulation of life in our tradition. Sovereignty's capture of life has been conditional upon the separation of natural and political life. That separation has permitted the emergence of a sovereign power grounded in this distinction, and empowered to decide on the value, and non-value of life (1998: 142). Since then, every further politicization of life, in turn, calls for "a new decision concerning the threshold beyond which life ceases to be politically relevant, becomes only 'sacred life,' and can as such be eliminated without punishment" (p. 139). / This expansion of the range of life meriting protection does not limit sovereignty, but provides sites for its expansion. In recent decades, factors that once might have been indifferent to sovereignty become a field for its exercise. Attributes such as national status, economic status, color, race, sex, religion, geo-political position have become the subjects of rights declarations. From a liberal or cosmopolitan perspective, such enumerations expand the range of life protected from and serving as a limit upon sovereignty. Agamben's analysis suggests the contrary. If indeed sovereignty is bio-political before it is juridical, then juridical rights come into being only where life is incorporated within the field of bio-sovereignty. The language of rights, in other words, calls up and depends upon the life caught within sovereignty: homo sacer. / Agamben's alternative is therefore radical. He does not contest particular aspects of the tradition. He does not suggest we expand the range of rights available to life. He does not call us to deconstruct a tradition whose power lies in its indeterminate status.21 Instead, he suggests we take leave of the tradition and all its terms. Whatever being is a life that defies the classifications of the tradition, and its reduction of all forms of life to homo sacer. Whatever being therefore has no common ground, no presuppositions, and no particular attributes. It cannot be broken into discrete parts; it has no essence to be separated from its attributes; and it has no common substrate of existence defining its relation to others. Whatever being cannot then be broken down into some common element of life to which additive series of rights would then be attached. Whatever being retains all its properties, without any of them constituting a different valuation of life (1993: 18.9). As a result, whatever being is "reclaimed from its having this or that property, which identifies it as belonging to this or that set, to this or that class (the reds, the French, the Muslims) -- and it is reclaimed not for another class nor for the simple generic absence of any belonging, but for its being-such, for belonging itself." (0.1-1.2). / Indifferent to any distinction between a ground and added determinations of its essence, whatever being cannot be grasped by a power built upon the separation of a common natural life, and its political specification. Whatever being dissolves the material ground of the sovereign exception and cancels its terms. This form of life is less post-metaphysical or anti-sovereign, than a-metaphysical and a-sovereign. Whatever is indifferent not because its status does not matter, but because it has no particular attribute which gives it more value than another whatever being. As Agamben suggests, whatever being is akin to Heidegger's Dasein. Dasein, as Heidegger describes it, is that life which always has its own being as its concern -- regardless of the way any other power might determine its status. Whatever being, in the manner of Dasein, takes the form of an "indissoluble cohesion in which it is impossible to isolate something like a bare life. In the state of exception become the rule, the life of homo sacer, which was the correlate of sovereign power, turns into existence over which power no longer seems to have any hold" (Agamben 1998: 153). / We should pay attention to this comparison. For what Agamben suggests is that whatever being is not any abstract, inaccessible life, perhaps promised to us in the future. Whatever being, should we care to see it, is all around us, wherever we reject the criteria sovereign power would use to classify and value life. "In the final instance the State can recognize any claim for identity -- even that of a State identity within the State . . . What the State cannot tolerate in any way, however, is that the singularities form a community without affirming an identity, that humans co-belong without a representable condition of belonging" (Agamben 1993:85.6). At every point where we refuse the distinctions sovereignty and the state would demand of us, the possibility of a non-state world, made up of whatever life, appears.

#### Obama empirically exploits detention loopholes

Calabresi ’11 [Massimo Calabresi joined the Washington bureau of TIME in 1999 and has covered the CIA, State, Justice, Treasury, Congress and the White House. He covered the wars in Bosnia, Croatia and Kosovo as TIME's Central Europe bureau chief from 1995 to 1999 and the collapse of the Soviet Union as a freelancer in Moscow in 1991, “Why Obama Is Threatening to Veto a Defense Bill Over Detention Policy,” Nov. 18, <http://swampland.time.com/2011/11/18/why-obama-is-threatening-to-veto-a-defense-bill-over-detention-policy/>]

The White House is threatening to veto a long-awaited defense funding bill over a perennial policy dispute: whether the President can prosecute terrorists in civilian courts, or must transfer them to military custody. The battle has raged since the very first day of Barack Obama’s presidency, but this time Obama’s opponent is not the GOP. It’s the powerful Democratic chairman of the Senate Armed Services Committee, Carl Levin of Michigan.¶ Originally, Levin worked with the SASC’s conservative Democrats (like Joe Lieberman) and GOP members (like John McCain and Lindsey Graham) to produce a bill that would have mandated transfer of captured terrorists to military custody. The White House briefed wary liberals two weeks ago not to worry, though, that they were engaged in negotiations with Levin and the GOP to change the language. “They were very optimistic that they were going to get an agreement,” says one Senate aide.¶ But last Tuesday, Levin marked up the bill in private and moved it straight to the Senate floor, where Senate majority leader Harry Reid promptly scheduled it for debate. And while Levin had responded to some of the White House’s concerns, he didn’t give it much of what it wanted, and even hawkish national security lawyers are objecting.¶ Levin says he accepted White House changes to a section that for the first time gives legislative authority for the indefinite detention of Americans in the U.S. And he inserted several loopholes that he says soften the requirement that al-Qaeda terrorists arrested in the U.S. must be transferred to military custody.¶ The administration in response issued a four-page “Statement of Administration Policy” (pdf) Thursday, stating that the bill “would tie the hands of our intelligence and law enforcement professionals” and would be “inconsistent with the fundamental American principle that our military does not patrol our streets.” Further, the administration said, Levin’s loopholes—particularly a provision allowing the Administration to issue a waiver–“fails to address these concerns.”¶ Said the White House: “Any bill that challenges or constraines the President’s critical authorities to collect intelligence, incapacitate dangerous terrorists, and protect the Nation would prompt the President’s senior advisers to recommend a veto.”¶ On the floor of the Senate Friday, Levin said he’d accepted all of the Administration’s changes regarding indefinite detention, and that the requirement to transfer suspects to military detention “does not mandate military custody” because of the waiver. “Nothing is automatic,” Levin said.¶ “The White House got rolled,” says the Senate aide, who admits the bill is nevertheless likely to pass. “The votes don’t exist to change it,” the aide says. Moreover, the White House veto threat is significantly more vague than previous ones on the subject of detention, declining to refer specifically to the authorization bill itself, and leaving the Administration a way out if it decides it doesn’t want to continue this fight with a veto in an election year.

#### Civilian trials are rigged- the State gets the results it wants – due process won’t solve

Silverglate 10-6-13 [Harvey Silverglate, a Boston criminal defense and civil liberties lawyer, is the author, most recently, of "Three Felonies a Day: How the Feds Target the Innocent" (Encounter Books, updated second edition 2011), “How Prosecutors Rig Trials by Freezing Assets,” <http://online.wsj.com/article/SB10001424127887324110404578630561814823892.html>]

On Oct. 16, the Supreme Court will hear oral arguments on a claim brought by husband and wife Brian and Kerri Kaley. The Kaleys are asking the high court to answer a serious and hotly contested question in the federal criminal justice system: Does the Constitution allow federal prosecutors to seize or freeze a defendant's assets before the prosecution has shown at a pretrial hearing that those assets were illegally obtained?¶ Such asset freezes often prevent a defendant from hiring the trial counsel of his choice to mount a vigorous defense, thus increasing the likelihood of the government extracting a guilty plea or verdict. Because asset forfeiture almost automatically follows conviction, a pretrial freeze ultimately enables the Justice Department to grab the frozen assets for use by executive-branch law enforcement agencies. It is a neat, vicious circle. What crimes are the Kaleys charged with? Kerri Kaley was a sales representative for a subsidiary of Johnson & Johnson JNJ +1.90% . Beginning in 2005, the fedsin Florida investigated her, her husband Brian, and other sales reps for reselling medical devices given to them by hospitals. The hospitals had previously bought and stocked the devices but no longer needed or wanted the overstock since the company was offering new products. Knowing that the J&J subsidiary had already been paid for the now-obsolete products and was focused instead on selling new models, the sales reps resold the old devices and kept the proceeds.¶ The feds had various theories for why this "gray market" activity was a crime, even though prosecutors could not agree on who owned the overstocked devices and, by extension, who were the supposed victims of the Kaleys' alleged thefts. The J&J subsidiary never claimed to be a victim.¶ The Kaleys were confident that they would prevail at trial if they could retain their preferred lawyers. A third defendant did go to trial with her counsel of choice and was acquitted. But the Justice Department made it impossible for the Kaleys to pay their chosen lawyers for trial.¶ The government insisted that as long as the Kaleys' assets—including bank accounts and their home—could be traced to the sale of the medical devices, all of those assets could be frozen. The Kaleys were not allowed to go a step further and show that their activities were in no way criminal, since this would be determined by a trial. But the Kaleys insisted that if the government wanted to freeze their funds, the court had to hold a pretrial hearing on the question of the legality of how the funds were earned.¶ The Kaleys complained that the asset freeze effectively deprived them of their Sixth Amendment right to the counsel of their choice—the couple couldn't afford to hire the defense that they wanted. Prosecutors and the trial judge responded that the Kaleys could proceed with a public defender. This wouldn't have been an encouraging prospect for them, for while public counsel is often quite skilled, such legal aid wouldn't meet the requirements the Kaleys believed they needed for this complex defense. Choice of counsel in a free society, one would think, lies with the defendant, not with the prosecutor or the judge. (The Kaleys' chosen trial lawyers have agreed to stick with the case during the pretrial tussling over the asset-freeze question, but trying the case before a jury would be much more expensive and would require the frozen funds.)¶ Federal asset-forfeiture statutes like the one the Kaleys are fighting are actually a relatively recent invention. Before 1970, when Congress adopted the first provisions seeking to strip organized-crime figures of ill-gotten racketeering gains, there were no such laws (with the exception of the Civil War-era Confiscation Acts providing for the forfeiture of property of Confederate soldiers).¶ Since 1970, however, such federal statutes have expanded to cover a breathtaking number of crimes, from the sale of fraudulent passports and contraband cigarettes right up to murder and drug trafficking. An authoritative treatise, the 4th edition of the encyclopedia "Federal Practice & Procedure," asserts that federal forfeiture is now available "for almost every crime." In January, the New York Times quoted Manhattan U.S. Attorney Preet Bharara as saying that asset forfeiture is "an important part of the culture" and "an example of the government being efficient and bringing home the bacon." In 2012 alone, federal prosecutors seized more than $4 billion in assets. The Justice Department is allowed by law to put that bacon to use however prosecutors wish—to pay informants, provide snazzy cars to cooperating witnesses, whatever.¶ The Kaleys are hardly alone. The recently completed prosecution of Conrad Black indicates starkly how such seizures can torpedo a defendant's chance of getting a fair trial. In his 2007 high-profile case, Mr. Black, a former newspaper publisher indicted for alleged fraud and related crimes in the sale of Hollinger International, endured a federal freeze of his major unencumbered asset, the cash proceeds from the sale of his New York City apartment. That freeze prevented him from being able to retain the legal counsel upon whom he had relied before the asset freeze.¶ Mr. Black ultimately was convicted on two counts, winning on all the others in a shifting array of counts that numbered more than a dozen. Last year, having served his 42-month prison sentence, he filed a petition in federal court seeking to vacate his convictions on the ground that the government's asset-forfeiture tactics had deprived him of his counsel of choice. That effort foundered when the judge concluded that Mr. Black's trial counsel—not his counsel of choice, it must be noted, but rather the counsel he could afford after the asset freeze—had failed to properly raise and hence preserve the issue for later appellate review.¶ The Supreme Court has now threatened to upset the game that is so lucrative for the government and disabling for defendants. On March 18, the court agreed to consider the Kaleys' claim that the asset freeze without a hearing on the merits of the underlying criminal charge violated their constitutional rights. At oral argument in mid-October, the broader question will be whether, after four decades of federal asset seizures, the high court will put a freeze on the Justice Department.

#### Backlash to drone strikes is undermining international credibility in the squo – Alt cause to allied backlash

**Zenko ’13** (Micah Zenko, Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR), Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department’s Office of Policy Planning, “Reforming U.S. Drone Strike Policies,” January, Council Special Report No. 65, Online, 2013)

In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 Under President Obama drone strikes have expanded and intensified, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 But much as the Bush administration was compelled to reform its controversial counterterrorism practices, it is likely that the United States will ultimately be forced by domestic and international pressure to scale back its drone strike policies. The Obama administration can preempt this pressure by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and international humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy by limiting drone strikes to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below. The United States will inevitably improve and enhance the lethal capabilities of its drones. Although many of its plans are classified, the U.S. military has nonspecific objectives to replace the Predators and Reapers with the Next-Generation Remotely Piloted Aircraft (RPA) sometime in the early-to-mid 2020s. Though they are only in the early stages of development, the next generation of armed drones will almost certainly have more missiles of varying types, enhanced guidance and navigation systems, greater durability in the face of hostile air defense environments, and increased maximum loiter time—and even the capability to be refueled in the air by unmanned tankers.69 Currently, a senior official from the lead executive authority approves U.S. drone strikes in nonbattlefield settings. Several U.S. military and civilian officials claim that there are no plans to develop autonomous drones that can use lethal force. Nevertheless, armed drones will incrementally integrate varying degrees of operational autonomy to overcome their most limiting and costly factor—the human being.70 Beyond the United States, drones are proliferating even as they are becoming increasingly sophisticated, lethal, stealthy, resilient, and autonomous. At least a dozen other states and nonstate actors could possess armed drones within the next ten years and leverage the technology in unforeseen and harmful ways. It is the stated position of the Obama administration that its strategy toward drones will be emulated by other states and nonstate actors. In an interview, President Obama revealed, “I think creating a legal structure, processes, with oversight checks on how we use unmanned weapons is going to be a challenge for me and for my successors for some time to come—partly because technology may evolve fairly rapidly for other countries as well.”71 History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space. In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies.

#### Even if terrorists have fissile material, they can’t build the bomb and transport it

Mueller 2012 (John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute. Mark G. Stewart is Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia, The Terrorism Delusion, International Security, Vol. 37, No. 1 (Summer 2012), pp. 81–110)

Over the course of time, such essentially delusionary thinking has been internalized and institutionalized in a great many ways. For example, an extrapolation of delusionary proportions is evident in the common observation that, because terrorists were able, mostly by thuggish means, to crash airplanes into buildings, they might therefore be able to construct a nuclear bomb. In 2005 an FBI report found that, despite years of well-funded sleuthing, the Bureau had yet to uncover a single true al-Qaida sleeper cell in the United States. The report was secret but managed to be leaked. Brian Ross, “Secret FBI Report Questions Al Qaeda Capabilities: No ‘True’ Al Qaeda Sleeper Agents Have Been Found in U.S.,” ABC News, March 9, 2005. Fox News reported that the FBI, however, observed that “just because there’s no concrete evidence of sleeper cells now, doesn’t mean they don’t exist.” “FBI Can’t Find Sleeper Cells,” Fox News, March 10, 2005. Jenkins has run an internet search to discover how often variants of the term “al-Qaida” appeared within ten words of “nuclear.” There were only seven hits in 1999 and eleven in 2000, but the number soared to 1,742 in 2001 and to 2,931 in 2002. 47 By 2008, Defense Secretary Robert Gates was assuring a congressional committee that what keeps every senior government leader awake at night is “the thought of a terrorist ending up with a weapon of mass destruction, especially nuclear.” 48 Few of the sleepless, it seems, found much solace in the fact that an al-Qaida computer seized in Afghanistan in 2001 indicated that the group’s budget for research on weapons of mass destruction (almost all of it focused on primitive chemical weapons work) was $2,000 to $4,000. 49 In the wake of the killing of Osama bin Laden, officials now have many more al-Qaida computers, and nothing in their content appears to suggest that the group had the time or inclination, let alone the money, to set up and staff a uranium-seizing operation, as well as a fancy, super-high-technology facility to fabricate a bomb. This is a process that requires trusting corrupted foreign collaborators and other criminals, obtaining and transporting highly guarded material, setting up a machine shop staffed with top scientists and technicians, and rolling the heavy, cumbersome, and untested finished product into position to be detonated by a skilled crew—all while attracting no attention from outsiders. 50 If the miscreants in the American cases have been unable to create and set off even the simplest conventional bombs, it stands to reason that none of them were very close to creating, or having anything to do with, nuclear weapons—or for that matter biological, radiological, or chemical ones. In fact, with perhaps one exception, none seems to have even dreamed of the prospect; and the exception is José Padilla (case 2), who apparently mused at one point about creating a dirty bomb—a device that would disperse radiation—or even possibly an atomic one. His idea about isotope separation was to put uranium into a pail and then to make himself into a human centrifuge by swinging the pail around in great arcs. Even if a weapon were made abroad and then brought into the United States, its detonation would require individuals in-country with the capacity to receive and handle the complicated weapons and then to set them off. Thus far, the talent pool appears, to put mildly, very thin. There is delusion, as well, in the legal expansion of the concept of “weapons of mass destruction.” The concept had once been taken as a synonym for nuclear weapons or was meant to include nuclear weapons as well as weapons yet to be developed that might have similar destructive capacity. After the Cold War, it was expanded to embrace chemical, biological, and radiological weapons even though those weapons for the most part are incapable of committing destruction that could reasonably be considered “massive,” particularly in comparison with nuclear ones. 52

#### No WMD terror- recruitment/lethality tradeoff

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In addition to being a ruthless jihadist, Ayman al-Zawahiri long ago earned a reputation for being a terrible boss. When he took over al Qaeda in 2011, senior U.S. intelligence officials were already pointing out his penchant for micro-management. (In one instance in the 1990s, he reached out to operatives in Yemen to castigate them for buying a new fax machine when their old one was working just fine.) Reports that last week’s terror alert was triggered when Zawahiri reached out to Nasir al-Wuhayshi, his second-in-command and the leader of al Qaeda in the Arabian Peninsula -- a communication that Washington predictably managed to intercept -- only hardened the impression that he lacks the savvy to run a global terror organization. But few of Zawahiri’s many critics have paused to consider what the task of leading a terror organization actually entails. It is true that Zawahiri’s management style has made his organization vulnerable to foreign intelligence agencies and provoked disgruntlement among the terrorist rank and file, not to mention drawing last week’s drone strikes. But it is equally true that Zawahiri had few other options. Given that terrorists are, by definition, engaged in criminal activity, you would think that they would place a premium on secrecy. But historically, many terrorist groups have been meticulous record keepers. Members of the Red Brigades, an Italian terrorist group active in the 1970s and early 1980s, report having spent more time accounting for their activities than actually training or preparing attacks. From 2005 through at least 2010, senior leaders of al Qaeda in Iraq kept spreadsheets detailing salary payments to hundreds of fighters, among many other forms of written records. And when the former military al Qaeda military commander Mohammed Atef had a dispute with Midhat Mursi al-Sayid Umar, an explosives expert for the Egyptian Islamic Jihad, in the 1990s, one of his complaints was that Umar failed to turn in his receipts for a trip he took with his family. Such bureaucracy makes terrorists vulnerable to their enemies. But terrorists do it anyway. In part, that is because large-scale terror plots and extended terror campaigns require so much coordination that they cannot be carried out without detailed communication among the relevant actors and written records to help leaders track what is going on. Gerry Bradley, a former terrorist with the Provisional Irish Republican Army, for example, describes in his memoir how he required his subordinates in Belfast in 1973 to provide daily reports on their proposed operations so that he could ensure that the activities of subunits did not conflict. Several leaders of the Kenyan Mau Mau insurgency report that, as their movement grew in the early 1950s, they needed to start maintaining written accounting records and fighter registries to monitor their finances and personnel. But the deeper part of the answer is that the managers of terrorist organizations face the same basic challenges as the managers of any large organization. What is true for Walmart is true for al Qaeda: Managers need to keep tabs on what their people are doing and devote resources to motivate their underlings to pursue the organization’s aims. In fact, terrorist managers face a much tougher challenge. Whereas most businesses have the blunt goal of maximizing profits, terrorists’ aims are more precisely calibrated: An attack that is too violent can be just as damaging to the cause as an attack that is not violent enough. Al Qaeda in Iraq learned this lesson in Anbar Province in 2006, when the local population turned against them, partly in response to the group’s violence against civilians who disagreed with it. Terrorist leaders also face a stubborn human resources problem: Their talent pool is inherently unstable. Terrorists are obliged to seek out recruits who are predisposed to violence -- that is to say, young men with a chip on their shoulder. Unsurprisingly, these recruits are not usually disposed to following orders or recognizing authority figures. Terrorist managers can craft meticulous long-term strategies, but those are of little use if the people tasked with carrying them out want to make a name for themselves right now. Terrorist managers are also obliged to place a premium on bureaucratic control, because they lack other channels to discipline the ranks. When Walmart managers want to deal with an unruly employee or a supplier who is defaulting on a contract, they can turn to formal legal procedures. Terrorists have no such option. David Ervine, a deceased Irish Unionist politician and onetime bomb maker for the Ulster Volunteer Force (UVF), neatly described this dilemma to me in 2006. “We had some very heinous and counterproductive activities being carried out that the leadership didn’t punish because they had to maintain the hearts and minds within the organization,” he said, referring to a period in the late 1980s when he and the other leaders had made a strategic calculation that the Unionist cause was best served by focusing on nonviolent political competition. In Ervine’s (admittedly self-interested) telling, the UVF’s senior leaders would have ceased violence much earlier than the eventual 1994 cease-fire, but they could not do so because the rank and file would have turned on them. For terrorist managers, the only way to combat those “counterproductive activities” is to keep a tight rein on the organization. Recruiting only the most zealous will not do the trick, because, as the alleged chief of the Palestinian group Black September wrote in his memoir, “diehard extremists are either imbeciles or traitors.” So someone in Zawahiri’s position has his hands full: To pull off a major attack, [they need]~~he needs~~ to coordinate among multiple terrorists, track what his operatives are doing regardless of their intentions, and motivate them to follow orders against their own maverick instincts. Fortunately for the rest of us, the things terrorists do to achieve these tasks **sow the seeds of their undoing**. Placing calls, sending e-mails, keeping spreadsheets, and having members request reimbursements all create opportunities for intelligence agencies to learn what terrorists are up to and then disrupt them. In that way, Zawahiri’s failures are not just a reflection of his personal weaknesses but a case study in the inherent limits that all terror groups face. That is good news, of course, for potential terror targets: As long as our intelligence and law enforcement agencies remain vigilant, **there is no way terrorist** organization**s** **will ever rise above the level of** the **tolerable nuisance**, which is what they have been for the last decade. But for aspiring terror managers, it is a dispiriting reminder that **there is no escape from the red tape that** ultimately **dooms their cause**.

[Matt note: gender-modified]

#### Latin America is empirically denied—no escalation

Hartzell 2k (Caroline A, Middle Atlantic Council of Latin American Studies Latin American Essays, “Latin America's civil wars: conflict resolution and institutional change.” http://www.accessmylibrary.com/coms2/summary\_0286-28765765\_ITM, 2000)

Latin America has been the site of fourteen civil wars during the post-World War II era, thirteen of which now have ended. Although not as civil war-prone as some other areas of the world, Latin America has endured some extremely violent and destabilizing intrastate conflicts. (2) The region's experiences with civil wars and their resolution thus may prove instructive for other parts of the world in which such conflicts continue to rage. By examining Latin America's civil wars in some depth not only might we better understand the circumstances under which such conflicts are ended but also the institutional outcomes to which they give rise. More specifically, this paper focuses on the following central questions regarding Latin America's civil wars: Has the resolution of these conflicts produced significant institutional change in the countries in which they were fought? What is the nature of the institutional change that has taken place in the wake of these civil wars? What are the factors that are responsible for shaping post-war institutional change?

#### No impact to disease

Posner ‘5 (Richard A, judge on the U.S. Court of Appeals, Seventh Circuit, and senior lecturer at the University of Chicago Law School, Winter. “Catastrophe: the dozen most significant catastrophic risks and what we can do about them.” http://findarticles.com/p/articles/mi\_kmske/is\_3\_11/ai\_n29167514/pg\_2?tag=content;col1, March 11, 2005)

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extiinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a lust time.