# 1AC

## Wake 1.1

### Norms

#### Countries are modeling CIA drone policy

Betty McCollum, 2013- Congressional Record. June 14, 2013. Betty Louise McCollum is the U.S. Representative for Minnesota's 4th congressional district, serving since 2001. http://www.gpo.gov/fdsys/pkg/CREC-2013-06-14/pdf/CREC-2013-06-14-pt1-PgE861-2.pdf#page=1

Ms. MCCOLLUM. Mr. Speaker, yesterday in the House Appropriations Committee I offered an amendment to the fiscal year 2014 defense appropriations bill regarding lethal drone strikes. The amendment stated: None of the funds made available by this Act may be used for weapons strikes or lethal action using unmanned aerial vehicles unless conducted by a member of the Armed Forces under the authority provided pursuant to Title 10, United States Code. The amendment was defeated in committee on a voice vote and my request for a recorded vote was denied by the committee. It is my intention to offer this same amendment on the floor of the House in the coming weeks when the defense appropriations bill is debated by the full House. My statement (as prepared for delivery in committee) is as follows: Full Appropriations Committee Statement on the McCollum Amendment: Mr. Chairman, within the classified portion of this bill hundreds of millions of dollars, perhaps billions, are appropriated for a targeted killing program operated by the Central Intelligence Agency. The CIA operates a fleet of weaponized drones armed with laser guided Hellfire missiles. They conduct lethal air strikes against targets in Pakistan, Yemen and Somalia. The program’s targets are identified terrorists or they are unidentified individuals targeted and killed based on a pattern of behavior. My amendment places sole responsibility for conducting lethal military action using weaponized drones in the hands of the Department of Defense conducted by members of the Armed Forces under the authority of Title 10 of the U.S. Code. The CIA’s use of drones to conduct surveillance and intelligence gathering in support of Defense Department lethal action continues under my amendment. Some of our colleagues do not believe that the Pentagon is not up to the task of carrying out this responsibility. I disagree with that. The Joint Special Operations Command (JSOC) is conducting drone strikes now. The Air Force and the Army possess and operate weaponized drones. They operate within a clear chain of command and legal accountability. Lethal military operations using sophisticated weapons systems should be in the hands of the Secretary of Defense and military commanders who are accountable to Congress. CIA strikes have been effective. Terrorists have been killed. But they are not secret. The whole world knows these are CIA strikes operating on behalf of the American people, without transparency, accountability or oversight. In fact, CIA Director John Brennan may actually agree with this amendment. During his Senate confirmation hearing he stated, ‘‘The CIA should not be doing traditional military activities and operations.’’ There are costs associated with these targeted killings. Hundreds of innocent civilians have been killed. There are legal questions, human rights concerns, foreign policy implications and ultimately moral issues. You could dismiss all of these concerns because the program is killing terrorists. But in the near future, as armed drone technology proliferates, if we dismiss these concerns I can guarantee you that China, Iran, Russia and other nations will also dismiss these concerns when they are capable of conducting targeted killings. Why, because we are setting the example. If we want other countries to use these technologies responsibly, then we must use them responsibly. What’s at stake is our country’s moral authority. The Obama Administration is not leading on this issue of ensuring transparency, accountability and oversight. The president claims these CIA strikes are within ‘‘clear guidelines, oversight and accountability’’ that his administration determined all by itself—without input or even the consideration of Congress. And Congress has done less. In fact Congress has done nothing except write a black check that allows a paramilitary force of CIA officers and civilian contractors to kill suspected terrorists and anyone else unlucky enough to be in the vicinity—including women and children—using one of the most sophisticated weapons platforms in our military arsenal. For this Congress and this committee to passively allow the CIA to fire laser guided missiles at human targets in countries in which we are not at war without demanding oversight or accountability is a complete abdication of our sworn obligation to the Constitution and our citizens. This is not intelligence gathering, these are military operations that should be conducted by our Armed Forces and with direct oversight by Congress. Our country is at war with AI-Qaeda and its terrorist affiliates. I trust the members of our Armed Forces to do their job, defeat the enemy, and protect our nation. The drone strike program is a military program and Congress should demand that it be conducted within the same legal framework as any other military operation during a time of war. McCollum statement at the close of debate on the amendment: It is no surprise the White House opposes this amendment. The executive branch wants to maintain its CIA drone program and its target list without congressional oversight, without transparency or accountability. It is absolutely appropriate and responsible for this committee to make the Department of Defense solely responsible for military operations using armed drone program. Doing so does not diminish our military capacity, it in fact it strengthens the program with regard to international law and accountability to Congress and the American people. Right now the CIA is running an assassination program and the world is watching. Soon China, Russia and Iran will have the same capability and will use the CIA’s standard of killing anyone profiled as an enemy. It is time Congress demands transparency, accountability, and oversight to a program that has killed thousands of people—including innocent civilians.

#### Drone strike accountability crucial to US credibility on drones and sets a model for checks and balances.

Peter J **Fusco 12**, McGill University, http://archive.atlantic-community.org/index/articles/view/America's\_Drone\_Strikes\_Setting\_Dangerous\_Precedent\_

The **Obama** administration **is setting a very dangerous global precedence for sending drones** over borders to kill enemies (sometimes innocents). **These drone strikes lack the congressional oversight of the executive branch while Congress does little to oppose it**. At the same time, **employing drones qualifies as a "moral hazard." Drone warfare**, like all developments of new military technologies, **require close examination of their ethical, legal, and political implications.** **The world's first encounter with the use of drones in warfare by** the **Obama** Administration **has set a dangerous precedent for two reasons**. **First, because of the questionable ethics of drone warfare itself and second, because the administration has sidestepped federal checks and balances**. In the coming decades, **this tech**nology **will inevitably diffuse into other nation's military arsenals**, **American policy in the use of drones must change and the model set by** the **Obama** administration **must not be followed**. A recent New York Times blog post co-written by John Kaagand & Sarah Kreps, argues that **drone warfare checks all the boxes to qualify as a "moral hazard."** A moral hazard is an ethical situation in which costs incurred by risks are barely felt, if at all, by those taking the risk. **Drones**, accordingly, minimize or **eliminate government's incentive to prudently exercise lethal force**. **Greater and greater risks are taken,** as the risk taker is able to avoid or minimize taking-on costs. The **Obama** administration**'s** **use of drones is a moral hazard because it allows an unchecked branch of government to wage a counter-terrorism war** **without** the risk of American casualties and limited economic **costs.** **Moral hazards are at the root of many foreign and military policy decisions but they must be subject to checks and balances to prevent gross abuses of executive power**. The Obama Administration fails to acknowledge this and offers a bunk ethical justification instead: drones have the capacity to kill much more efficiently and with less collateral damage. This is not truly a justification because it fails to make a fact-value distinction. Just because we can easily and cheaply carry out targeted killings by the use of drones does not mean we ought to. But, neither the moral hazard created by the use of drones nor the lack official justifications categorically damns drones as unethical. With it's ethical status in limbo, it illustrates the caution with which this new type of weapon must be treated and the need for new policy controlling its usage**. The discourse surrounding the use of drones shows that** our administration and **our society have not engaged with the ethical subject matter sufficiently to warrant the prolif**eration **of drone warfare**. Furthermore, the Obama administration has not used caution nor even followed existing policy. In June 2011, **the Administration released a statement to Congress offering legal justification for sidestepping the** 1973 War Powers Resolution. **This resolution states that in order to maintain the spirit of Constitutional checks and balances, military operations initiated by the executive branch must be disclosed and justified to the Congress** within 48 hours. Operations lasting beyond 60 days require congressional approval. **The administration's statement, outlining the use of drones in Libya, stated that because the drones does not "involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof" their use does not fall under the War Powers Resolution's jurisdiction.** Thus, **the executive branch has complete control over these classified operations without Congressional oversight.** **As political scientist** Peter W. **Singer** in a recent New York Times Magazine article rightly **points out, this is entirely undemocratic.** **Congress has been circumvented and with the public burden of warfare removed there is almost no public stake in drone military action**. **The dangerous precedent set by** the **Obama** administration **is to ignore the ethical hazards of drone warfare, which demand governmental and public checks, balances, and scrutiny.** In the near future, **drone tech**nology **will cheapen and diffuse into the arsenals of other nations.** The ability to kill more precisely and more cheaply will become widespread**. Other nations must ignore the way in which the Obama Administration first used drones in order to prevent concentrations of power, uphold democratic procedures, preserve the whole idea of taking costly measures to avoid war and protect international diplomacy**.

**Absent a model drone proliferation continues** – it will escalate existing conflicts and erode global deterrence without strong norms. This risks multiple scenarios for international conflict.

Boyle 13. Michael J. Boyle. January 15th, 2013. (Michael Boyle is an Assistant Professor of Political Science at La Salle University in Philadelphia. He was previously a Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence (CSTPV) at the University of St. Andrews. He is also an alumnus of the Political Science Department at La Salle. ) <http://onlinelibrary.wiley.com/doi/10.1111/1468-2346.12002/abstract>

An important, but overlooked, strategic consequence of the [Obama’s] administration’s embrace of drones is that it has generated a new and dangerous arms race for this technology. At present, the use of lethal drones is seen as acceptable to US policy-makers because no other state possesses the ability to make highly sophisticated drones with the range, surveillance capability and lethality of those currently manufactured by the United States. Yet the rest of the world is not far behind. At least 76 countries have acquired UAV technology, including Russia, China, Pakistan and India.120 China is reported to have at least 25 separate drone systems currently in development.121 At present, there are 680 drone programmes in the world, an increase of over 400 since 2005.122 Many states and non-state actors hostile to the United States have begun to dabble in drone technology. Iran has created its own drone, dubbed the ‘Ambassador of Death’, which has a range of up to 600 miles.123 Iran has also allegedly supplied the Assad regime in Syria with drone technology.124 Hezbollah launched an Iranian-made drone into Israeli territory, where it was shot down by the Israeli air force in October 2012.125 A global arms race for drone technology is already under way. According to one estimate, global spending on drones is likely to be more than US$94 billion by 2021.126 One factor that is facilitating the spread of drones (particularly non-lethal drones) is their cost relative to other military purchases. The top-of-the line Predator or Reaper model costs approximately US$10.5 million each, compared to the US$150 million price tag of a single F-22 fighter jet.127 At that price, drone technology is already within the reach of most developed militaries, many of which will seek to buy drones from the US or another supplier. With demand growing, a number of states, including China and Israel, have begun the aggressive selling of drones, including attack drones, and Russia may also be moving into this market.128 Because of concerns that export restrictions are harming US competitiveness in the drones market, the Pentagon has granted approval for drone exports to 66 governments and is currently being lobbied to authorize sales to even more.129 The Obama administration has already authorized the sale of drones to the UK and Italy, but Pakistan, the UAE and Saudi Arabia have been refused drone technology by congressional restrictions.130 It is only a matter of time before another supplier steps in to offer the drone technology to countries prohibited by export controls from buying US drones. According to a study by the Teal Group, the US will account for 62 per cent of research and development spending and 55 per cent of procurement spending on drones by 2022.131 As the market expands, with new buyers and sellers, America’s ability to control the sale of drone technology will be diminished. It is likely that the US will retain a substantial qualitative advantage in drone technology for some time, but even that will fade as more suppliers offer drones that can match US capabilities. The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, such as Russia and China, are beginning rapidly to develop and deploy drones for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own. A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them. Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144 Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 Given this precedent, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government. One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147 Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them. Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus tilting the balance of power in authoritarian regimes even more decisively towards those who wield the coercive instruments of power and against those who dare to challenge them.

**These conflicts go nuclear.**

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**Where do you see the main challenges for the international community regarding the use of armed un~~man~~ned systems by the military**. What are the specific challenges of autonomous systems as compared to current telerobotic systems? **The main challenge is in deciding whether the present trend should continue and expand to many more countries and to many more types of armed uninhabited vehicles** (in the air, on and under water, on the ground, also in outer space**), or whether efforts should be taken to constrain this arms race and limit the dangers connected to it**. Here not only governments, but non-governmental organisations and the general public should become active. **Autonomous systems obviously would open many new possibilities for war by accident** (possibly **escalating up to nuclear war) and for violations of the international laws of warfare**. A human decision in each single weapon use should be the minimum requirement.

#### Congress is essential -

#### a). Only congress can solve public trust

**Goldsmith 13** – (5/1, Jack, Henry L. Shattuck Professor at Harvard Law School, former Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled.

The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust.

A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. **The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war.** **The president** **cannot establish trust in the way of the knife through internal moves and more words.** Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

Administration officials resist this route because they worry about the outcome of the public debate, and because the president is, as The Washington Post recently reported, "seen as reluctant to have the legislative expansion of another [war] added to his legacy." But the administration can influence the outcome of the debate only by engaging it. And as Mazzetti makes plain, the president's legacy already includes the dramatic and unprecedented unilateral expansion of secret war. What the president should be worried about for legacy purposes is that this form of warfare, for which he alone is today responsible, is increasingly viewed as illegitimate.

#### B). Executive transparency fails – that destroys the sustainability of the drone program in the future

**Goldsmith 13** – (5/1, Jack, Henry L. Shattuck Professor at Harvard Law School, former Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003, member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. **But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms**. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges.

As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These **trust-destroying tendencies** are exacerbated by its persistent resistance to transparency **demands from Congress**, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.

A related sin is the Obama administration's surprising failure to secure **formal congressional support.** Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have **worked with Congress to update these laws**, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a **firmer political and legal foundation.** But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.

The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need **sustained domestic and international support."**

#### C). Congress is crucial to legal clarity because it provides statutory codification

Mark David Maxwell, Colonel, Judge Advocate with the U.S. Army, Winter 2012, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

The weakness of this theory is that **it is not codified in U.S. law**; it is merely the extrapolation of international theorists and organizations. The **only entity under the Constitution** that can frame and settle Presidential power regarding the enforcement of international norms is **Congress**. As the check on executive power, Congress must amend the AUMF to **give the executive a statutory roadmap that articulates when force is appropriate** and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, **statutory clarification** will **give other states a roadmap** for the contours of what constitutes anticipatory self-defense and the **proper conduct of the military** under the law of war.¶ Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74¶ The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order **targeted killing without congressional limits** means the President can manipulate force in the name of national security without **tethering it to** the law advanced by international **norms**. The potential consequence of such **unilateral executive action** is that it gives other states, such as **North Korea** and **Iran**, the **customary precedent to do the same**. Targeted killing **might be required in certain circumstances**, but if the guidelines are debated and understood, the decision can be executed **with** the full faith of the people’s representative, **Congress**. When the decision is made **without Congress**, the result might make the United States feel safer, but the process **eschews** what gives a state its greatest safety: the **rule of law**.

### 1AC Plan Text

**Plan: The Congress of the United States federal government should statutorily restrict funding for drone based targeted killing strikes carried out by the Central Intelligence Agency and enforce that restriction through budgetary watchdog organizations.**

### New Advantage

#### Even though negotiations are set to resume, Iran and the US will fail to come to an agreement to have Iran curtail its nuclear weapons development

Suzanne **Maloney**, Senior Fellow, Foreign Policy, Saban Center for Middle East Policy, “Washington And Tehran Find That A Nuclear Breakthrough Is Hard To Do

,” **November 11, 2013**, http://www.brookings.edu/blogs/iran-at-saban/posts/2013/11/11-iran-nuclear-negotiations-zarif-challenge)

The Unknowns The denouement of nuclear diplomacy has provoked much speculation over the causes. Some suggest that the [French balked at the specific provisions](http://thecable.foreignpolicy.com/posts/2013/11/10/how-france-scuttled-the-iran-deal-last-minute) surrounding Iran’s construction of a heavy-water reactor in Arak; others cite the Israeli leadership’s fierce, public denunciations of the agreement even before the specifics had been announced. Still more recent explanations have sought to pin responsibility for the inability to clinch a deal on Tehran — ["there was unity [among world powers], but Iran couldn't take it,"](http://www.nytimes.com/2013/11/12/world/middleeast/so-close-on-iran-kerry-defends-continued-talks.html?ref=world&_r=0) explained Secretary Kerry today — and reports have suggested that the unwavering Iranian demand for an [explicit acknowledgment of its right to enrich uranium](http://www.theguardian.com/world/2013/nov/11/iranium-uranium-enrichment-talks-geneva-fabius) stalled the progress toward a draft agreement. Absent confirmed details about the substance of the differences in Geneva, it is impossible to gauge which party, or what issue, proved the most formidable stumbling block. At the time, I have more questions than answers about what transpired, including the following: If the issue of construction at the Arak reactor was in fact a primary outstanding difference between the sides, it seems strange that this could scuttle an otherwise settled deal. Arak is a justifiably enormous concern for the West, in part because once it is loaded with fuel as Iran’s plans suggest will take place within the next year, any military action to remove it would threaten massive civilian casualties. Still, the timeline for the reactor, as [confirmed by the IAEA](http://armscontrolnow.org/2013/08/28/the-august-iaea-report-on-iran-key-takeaways/), appears to be sufficiently protracted to permit any irreversible decisions on this issue to be deferred to final stage of negotiations. Why did the question of Arak's final construction — not its commissioning or operation, which Iran had apparently already signaled it would continue to defer — loom so large for both sides that it could not be settled even in marathon talks? What should we make of the [reports from Israel that the terms regarding sanctions relief](http://www.brookings.edu/blogs/iran-at-saban/posts/2013/11/11-israel-alarm-iranian-nuclear-talks-natan-sachs)proposed as part of the interim agreement evolved significantly over the course of the Geneva talks, to the point that they presaged the unraveling of the sanctions regime? If true, this would contradict the repeated assurances of U.S. officials, who in the lead-up to the talks insisted that they would not permit any relaxation or reversal of the fundamental architecture of the multilateral sanctions regime. The bulk of the early sanctions relief was reported to be comprised of limited access to overseas foreign exchange accounts that are currently inaccessible due to U.S. sanctions. Estimates in the media for this range from as low as $3b to as high as $30b, and the package may have also included relaxation of additional measures that would have symbolic value for Iranians but relatively modest financial or strategic significance. None of that would seem to constitute a significant dismantling of sanctions. Finally, if language on the "right to enrich" was indeed the primary snag, why? The differences between Washington and Tehran on this issue have long been crystal clear, and it has always been just as obvious that those differences are emin[ently open to bridging through the creative use of diplomatic language](http://prospect.org/article/how-contain-nuclear-iran). Is it possible that such formulations had not been crafted and agreed upon in prior sessions? The Bad News Whatever the primary causes of the failure, I think the Geneva meltdown has unfortunate implications for getting to an eventual yes on the nuclear issue. The passing of time will contract political space and this in turn may erode whatever combination of political capital and courage both sides were willing to invest in this deal. As both Washington and Tehran rush to reassure their skeptical constituencies, umbrage over reported concessions will complicate later rounds of dialogue. Within Iran, any deal was always going to be sniped at and reinterpreted as circumstances required and/or allowed. Now there will be a draft to tinker with and undercut, and a renewed spate of aspersions from America to generate resistance. The tweets emanating from the[account of Iranian Foreign Minister Mohammad Javad Zarif](https://twitter.com/JZarif) are bristling with Persian pride; in one missive today, he noted that "no amount of spinning can change what happened within 5+1 in Geneva," adding "but it can further erode confidence." All this will make it harder for Iran to move significantly on terms before the next meeting on the 20th. The same holds true for the U.S. side. The lead American negotiator, Undersecretary of State for Political Affairs Wendy Sherman, was dispatched to Israel to debrief Washington's most anxious ally, and her reassurances on holding the line on sanctions are echoing in Iran as well. Secretary Kerry similarly rushed from Geneva to a dinner in Abu Dhabi, where he sought to cast Iran in the role of spoiler. The dramatic developments in Geneva sparked a renewed eruption of activity on Capitol Hill, where a new round of sanctions on Iran that would effectively embargo on Iranian crude exports awaits only a predictably overwhelming approval in the Senate.

#### Drones trade off with CIA’s intelligence agenda

Micah Zenko, 13- “Clip the Agency's Wings”. Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). http://www.foreignpolicy.com/articles/2013/04/16/clip\_the\_agencys\_ wings\_cia\_drones

Second, it would focus the finite resources and bandwidth of the CIA on its primary responsibilities of intelligence collection, analysis, and early warning. Last year, the President's Intelligence Advisory Board -- a semi-independent executive branch body, the findings of which rarely leak -- reportedly told Obama that "U.S. spy agencies were paying inadequate attention to China, the Middle East and other national security flash points because they had become too focused on military operations and drone strikes." This is not a new charge, since every few years an independent group or congressional report determines that "the CIA has been ignoring its core mission activities." But, as Mark Mazzetti shows in his indispensable CIA history, the agency has evolved from an organization once deeply divided at senior levels about using armed drones, to one that is a fully functioning paramilitary army. As former senior CIA official Ross Newland warns, the agency's armed drones program "ends up hurting the CIA. This just is not an intelligence mission." There is no longer any justification for the CIA to have its own redundant fleet of 30 to 35 armed drones. During White House debates of CIA requests in 2009, Gen. James Cartwright, the vice chairman of the Joint Chiefs of Staff, repeatedly asked: "Can you tell me why we are building a second Air Force?" Obama eventually granted every single request made by then-Director of Central Intelligence Leon Panetta, adding: "The CIA gets what it wants." With this year's proposed National Intelligence Program budget scheduled to fall by 8 percent, an open checkbook for Langley is not sustainable or strategically wise.

#### Intel key to maintaining efforts towards Iranian counter-prolif

James R. **Clapper**, Director of National Intelligence, “Worldwide Threat Assessment of the US Intelligence Community,” March 12, 20**13**, <http://www.intelligence.senate.gov/130312/clapper.pdf>)

WMD PROLIFERATION Nation-state efforts to develop or acquire weapons of mass destruction (WMD) and their delivery systems constitute a major threat to the security of our nation, deployed troops, and allies. The Intelligence Community is focused on the threat and destabilizing effects of nuclear proliferation, proliferation of chemical and biological warfare (CBW)-related materials, and development of WMD delivery systems. Traditionally, international agreements and diplomacy have deterred most nation-states from acquiring biological, chemical, or nuclear weapons, but these constraints may be of less utility in preventing terrorist groups from doing so. The time when only a few states had access to the most dangerous technologies is past. Biological and chemical materials and technologies, almost always dualuse, move easily in our globalized economy, as do the personnel with scientific expertise to design and use them. The latest discoveries in the life sciences also diffuse globally and rapidly. Iran and North Korea Developing WMD-Applicable Capabilities We assess Iran is developing nuclear capabilities to enhance its security, prestige, and regional influence and give it the ability to develop nuclear weapons, should a decision be made to do so. We do not know if Iran will eventually decide to build nuclear weapons.

#### We will strike their arsenal – locating them is key – stops war from going nuclear

**Lieber and Press 09** (Keir A.,  Associate Professor @ Georgetown University,  Daryl G., Associate Professor of Government, Dartmouth College, Foreign Affairs, Nov/Dec)

MODELING THE UNTHINKABLE To illustrate the growth in U.S. counterforce capabilities, we applied a set of simple formulas that analysts have used for decades to estimate the effectiveness of counterforce attacks. We modeled a U.S. strike on a small target set: 20 intercontinental ballistic missiles (ICBMs) in hardened silos, the approximate size of China's current long-range, silo-based missile force. The analysis compared the capabilities of a 1985 Minuteman ICBM to those of a modern Trident II submarine-launched ballistic missile. [The technical details of the analysis presented in this essay are available online [2].] In 1985, a single U.S. ICBM warhead had less than a 60 percent chance of destroying a typical silo. Even if four or five additional warheads were used, the cumulative odds of destroying the silo would never exceed 90 percent because of the problem of "fratricide," whereby incoming warheads destroy each other. Beyond five warheads, adding more does no good. A probability of 90 percent might sound high, but it falls far short if the goal is to completely disarm an enemy: with a 90 percent chance of destroying each target, the odds of destroying all 20 are roughly 12 percent. In 1985, then, a U.S. ICBM attack had little chance of destroying even a small enemy nuclear arsenal. Today, a multiple-warhead attack on a single silo using a Trident II missile would have a roughly 99 percent chance of destroying it, and the probability that a barrage would destroy all 20 targets is well above 95 percent. Given the accuracy of the U.S. military's current delivery systems, the only question is target identification: silos that can be found can be destroyed. During the Cold War, the United States worked hard to pinpoint Soviet nuclear forces, with great success. Locating potential adversaries' small nuclear arsenals is undoubtedly a top priority for U.S. intelligence today. The revolution in accuracy is producing an even more momentous change: it is becoming possible for the United States to conduct low-yield nuclear counterforce strikes that inflict relatively few casualties. A U.S. Department of Defense computer model, called the Hazard Prediction and Assessment Capability (HPAC), estimates the dispersion of deadly radioactive fallout in a given region after a nuclear detonation. The software uses the warhead's explosive power, the height of the burst, and data about local weather and demographics to estimate how much fallout would be generated, where it would blow, and how many people it would injure or kill. HPAC results can be chilling. In 2006, a team of nuclear weapons analysts from the Federation of American Scientists (FAS) and the Natural Resources Defense Council (NRDC) used HPAC to estimate the consequences of a U.S. nuclear attack using high-yield warheads against China's ICBM field. Even though China's silos are located in the countryside, the model predicted that the fallout would blow over a large area, killing 3-4 million people. U.S. counterforce capabilities were useless, the study implied, because even a limited strike would kill an unconscionable number of civilians. But the United States can already conduct nuclear counterforce strikes at a tiny fraction of the human devastation that the FAS/NRDC study predicted, and small additional improvements to the U.S. force could dramatically reduce the potential collateral damage even further. The United States' nuclear weapons are now so accurate that it can conduct successful counterforce attacks using the smallest-yield warheads in the arsenal, rather than the huge warheads that the FAS/NRDC simulation modeled. And to further reduce the fallout, the weapons can be set to detonate as airbursts, which would allow most of the radiation to dissipate in the upper atmosphere. We ran multiple HPAC scenarios against the identical target set used in the FAS/NRDC study but modeled low-yield airbursts rather than high-yield groundbursts. The fatality estimates plunged from 3-4 million to less than 700 -- a figure comparable to the number of civilians reportedly killed since 2006 in Pakistan by U.S. drone strikes. One should be skeptical about the results of any model that depends on unpredictable factors, such as wind speed and direction. But in the scenarios we modeled, the area of lethal fallout was so small that very few civilians would have become ill or died, regardless of which way the wind blew. Critics may cringe at this analysis. Many of them, understandably, say that nuclear weapons are -- and should remain -- unusable. But if the United States is to retain these weapons for the purpose of deterring nuclear attacks, it needs a force that gives U.S. leaders retaliatory options they might actually employ. If the only retaliatory option entails killing millions of civilians, then the U.S. deterrent will lack credibility. Giving U.S. leaders alternatives that do not target civilians is both wise and just. A counterforce attack -- whether using conventional munitions or low- or high-yield nuclear weapons -- would be fraught with peril. Even a small possibility of a single enemy warhead's surviving such a strike would undoubtedly give any U.S. leader great pause. But in the midst of a conventional war, if an enemy were using nuclear threats or limited nuclear attacks to try to coerce the United States or its allies, these would be the capabilities that would give a U.S. president real options.

#### Iran proliferation causes nuclear war

Edelman, distinguished fellow – Center for Strategic and Budgetary Assessments, ‘11

(Eric S, “The Dangers of a Nuclear Iran,” *Foreign Affairs*, January/February)

The reports of the Congressional Commission on the Strategic Posture of the United States and the Commission on the Prevention Of Weapons of Mass Destruction Proliferation and Terrorism, as well as other analyses, have highlighted the risk that a nuclear-armed Iran could trigger additional nuclear proliferation in the Middle East, even if Israel does not declare its own nuclear arsenal. Notably, Algeria, Bahrain, Egypt, Jordan, Saudi Arabia,Turkey, and the United Arab Emirates— all signatories to the Nuclear Nonproliferation Treaty (npt)—have recently announced or initiated nuclear energy programs. Although some of these states have legitimate economic rationales for pursuing nuclear power and although the low-enriched fuel used for power reactors cannot be used in nuclear weapons, these moves have been widely interpreted as hedges against a nuclear-armed Iran. The npt does not bar states from developing the sensitive technology required to produce nuclear fuel on their own, that is, the capability to enrich natural uranium and separate plutonium from spent nuclear fuel. Yet enrichment and reprocessing can also be used to accumulate weapons-grade enriched uranium and plutonium—the very loophole that Iran has apparently exploited in pursuing a nuclear weapons capability. Developing nuclear weapons remains a slow, expensive, and di⁄cult process, even for states with considerable economic resources, and especially if other nations try to constrain aspiring nuclear states’ access to critical materials and technology. Without external support, it is unlikely that any of these aspirants could develop a nuclear weapons capability within a decade. There is, however, at least one state that could receive significant outside support: Saudi Arabia. And if it did, proliferation could accelerate throughout the region. Iran and Saudi Arabia have long been geopolitical and ideological rivals. Riyadh would face tremendous pressure to respond in some form to a nuclear-armed Iran, not only to deter Iranian coercion and subversion but also to preserve its sense that Saudi Arabia is the leading nation in the Muslim world. The Saudi government is already pursuing a nuclear power capability, which could be the first step along a slow road to nuclear weapons development. And concerns persist that it might be able to accelerate its progress by exploiting its close ties to Pakistan. During the 1980s, in response to the use of missiles during the Iran-Iraq War and their growing proliferation throughout the region, Saudi Arabia acquired several dozen css-2 intermediate-range ballistic missiles from China. The Pakistani government reportedly brokered the deal, and it may have also oªered to sell Saudi Arabia nuclear warheads for the css-2s, which are not accurate enough to deliver conventional warheads eªectively. There are still rumors that Riyadh and Islamabad have had discussions involving nuclear weapons, nuclear technology, or security guarantees. This “Islamabad option” could develop in one of several diªerent ways. Pakistan could sell operational nuclear weapons and delivery systems to Saudi Arabia, or it could provide the Saudis with the infrastructure, material, and technical support they need to produce nuclear weapons themselves within a matter of years, as opposed to a decade or longer. Not only has Pakistan provided such support in the past, but it is currently building two more heavy-water reactors for plutonium production and a second chemical reprocessing facility to extract plutonium from spent nuclear fuel. In other words, it might accumulate more fissile material than it needs to maintain even a substantially expanded arsenal of its own. Alternatively, Pakistan might oªer an extended deterrent guarantee to Saudi Arabia and deploy nuclear weapons, delivery systems, and troops on Saudi territory, a practice that the United States has employed for decades with its allies. This arrangement could be particularly appealing to both Saudi Arabia and Pakistan. It would allow the Saudis to argue that they are not violating the npt since they would not be acquiring their own nuclear weapons. And an extended deterrent from Pakistan might be preferable to one from the United States because stationing foreign Muslim forces on Saudi territory would not trigger the kind of popular opposition that would accompany the deployment of U.S. troops. Pakistan, for its part, would gain financial benefits and international clout by deploying nuclear weapons in Saudi Arabia, as well as strategic depth against its chief rival, India. The Islamabad option raises a host of difficult issues, perhaps the most worrisome being how India would respond. Would it target Pakistan’s weapons in Saudi Arabia with its own conventional or nuclear weapons? How would this expanded nuclear competition influence stability during a crisis in either the Middle East or South Asia? Regardless of India’s reaction, any decision by the Saudi government to seek out nuclear weapons, by whatever means, would be highly destabilizing. It would increase the incentives of other nations in the Middle East to pursue nuclear weapons of their own. And it could increase their ability to do so by eroding the remaining barriers to nuclear proliferation: each additional state that acquires nuclear weapons weakens the nonproliferation regime, even if its particular method of acquisition only circumvents, rather than violates, the NPT. n-player competition Were Saudi Arabia to acquire nuclear weapons, the Middle East would count three nuclear-armed states, and perhaps more before long. It is unclear how such an n-player competition would unfold because most analyses of nuclear deterrence are based on the U.S.- Soviet rivalry during the Cold War. It seems likely, however, that the interaction among three or more nuclear-armed powers would be more prone to miscalculation and escalation than a bipolar competition. During the Cold War, the United States and the Soviet Union only needed to concern themselves with an attack from the other. Multipolar systems are generally considered to be less stable than bipolar systems because coalitions can shift quickly, upsetting the balance of power and creating incentives for an attack. More important, emerging nuclear powers in the Middle East might not take the costly steps necessary to preserve regional stability and avoid a nuclear exchange. For nuclear-armed states, the bedrock of deterrence is the knowledge that each side has a secure second-strike capability, so that no state can launch an attack with the expectation that it can wipe out its opponents’ forces and avoid a devastating retaliation. However, emerging nuclear powers might not invest in expensive but survivable capabilities such as hardened missile silos or submarinebased nuclear forces. Given this likely vulnerability, the close proximity of states in the Middle East, and the very short flight times of ballistic missiles in the region, any new nuclear powers might be compelled to “launch on warning” of an attack or even, during a crisis, to use their nuclear forces preemptively. Their governments might also delegate launch authority to lower-level commanders, heightening the possibility of miscalculation and escalation. Moreover, if early warning systems were not integrated into robust command-and-control systems, the risk of an unauthorized or accidental launch would increase further still. And without sophisticated early warning systems, a nuclear attack might be unattributable or attributed incorrectly. That is, assuming that the leadership of a targeted state survived a first strike, it might not be able to accurately determine which nation was responsible. And this uncertainty, when combined with the pressure to respond quickly,would create a significant risk that it would retaliate against the wrong party, potentially triggering a regional nuclear war.

**Saudi Arabia would proliferate leading to miscalc and accidental nuclear war**

**Edelman et al 2011,** Eric Edelman, Distinguished Fellow at the Center for Strategic and Budgetary Assessments, Andrew F Krepinevich, President of the Center for Strategic and Budgetary Assessments, Evan Braden Montgomery, Research Fellow at the Center for Strategic and Budgetary Assessments [“The Dangers of a Nuclear Iran: The Limits of Containment,” January/February edition of Foreign Policy]

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And this uncertainty, when combined with the pressure to respond quickly, would create a significant risk that it would retaliate against the wrong party, potentially triggering a regional nuclear war. Most existing nuclear powers have taken steps to protect their nuclear weapons from unauthorized use: from closely screening key personnel to developing technical safety measures, such as permissive action links, which require special codes before the weapons can be armed. Yet there is no guarantee that emerging nuclear powers would be willing or able to implement these measures, creating a significant risk that their governments might lose control over the weapons or nuclear material and that nonstate actors could gain access to these items. Some states might seek to mitigate threats to their nuclear arsenals; for instance, they might hide their weapons. In that case, however, a single intelligence compromise could leave their weapons vulnerable to attack or theft. Meanwhile, states outside the Middle East could also be a source of instability. Throughout the Cold War, the United States and the Soviet Union were engaged in a nuclear arms race that other nations were essentially powerless to influence. In a multipolar nuclear Middle East, other nuclear powers and states with advanced military technology could influence-for good or ill-the military competition within the region by selling or transferring technologies that most local actors lack today: solid-fuel rocket motors, enhanced missile-guidance systems, warhead miniaturization technology, early warning systems, air and missile defenses. Such transfers could stabilize a fragile nuclear balance if the emerging nuclear powers acquired more survivable arsenals as a result. But they could also be highly destabilizing. If, for example, an outside power sought to curry favor with a potential client state or gain influence with a prospective ally, it might share with that state the technology it needed to enhance the accuracy of its missiles and thereby increase its ability to launch a disarming first strike against any adversary. The ability of existing nuclear powers and other technically advanced military states to shape the emerging nuclear competition in the Middle East could lead to a new Great Game, with unpredictable consequences.

#### Independently, given the capability Iran would give nuclear weapons to Hezbollah – reprioritization of current CT practices is essential

[Clifford D. **May**](http://www.nationalreview.com/author/clifford-d-may), president of the Foundation for Defense of Democracies, a policy institute focusing on national security, “[Al-Qaeda vs. Hezbollah](http://www.nationalreview.com/article/350249/al-qaeda-vs-hezbollah-clifford-d-may),” JUNE 6, 20**13**, <http://www.nationalreview.com/article/350249/al-qaeda-vs-hezbollah-clifford-d-may>

Back during the Bush administration, Deputy Secretary of State Richard Armitage famously called Hezbollah the “A Team of terrorists,” adding, “al-Qaeda is actually the B Team.” How do these two organizations compare today? Last week, the State Department released the 2012 issue of its annual “Country Reports on Terrorism.”At a “[background briefing](http://www.state.gov/r/pa/prs/ps/2013/05/210145.htm),” a “senior administration official” highlighted an “alarming trend”: a “marked resurgence of terrorist activity by Iran and Hezbollah. The tempo of operational activity was something we haven’t seen since the 1990s. . . . We see no signs of this activity abating in 2013. In fact, our assessment is that Hezbollah and Iran will both continue to maintain a heightened level of terrorist activity and operations in the near future.” The State Department is right to see Hezbollah and Iran as joined at the hip: The former is financed and instructed by the latter. That has not always been understood, despite the fact that, prior to 9/11/01, Hezbollah was responsible for more American deaths than any other terrorist organization. And Hezbollah’s secretary general, Hassan Nasrallah, has proclaimed, “Death to America was, is, and will stay our slogan.” A pertinent question: If Iran’s rulers should obtain nuclear weapons, might they give one or two to Hezbollah to use for approved purposes? A plausible answer: Why not? It’s well known that Hezbollah has been sending combatants into Syria in support of Bashar Assad, the dictator and Iranian satrap. Less publicized are Hezbollah’s operations in other corners of the world. A Hezbollah attack on a bus in Bulgaria last July killed five Israelis and one Bulgarian. In Nigeria, authorities recently [broke up](http://www.longwarjournal.org/threat-matrix/archives/2013/05/hezbollah_members_arrested_in.php) a Hezbollah cell, seizing what one Nigerian official called “a large quantity of assorted weapons of different types and caliber.” The State Department report contains surprisingly little information about Hezbollah in Latin America. However, a 500-page report [issued](http://www.longwarjournal.org/archives/2013/05/argentine_prosecutor.php) last week by Argentine prosecutor Alberto Nisman reveals that Iran has established an archipelago of “clandestine intelligence stations and operative agents” in Latin America that are being used “to execute terrorist attacks when the Iranian regime decides so, both directly or through its proxy, the terrorist organization Hezbollah.” Among the South American countries in which Iran or Hezbollah has set up intelligence/terrorism bases: Argentina, Brazil, Paraguay, Uruguay, Chile, Colombia, Guyana, Trinidad and Tobago, and Suriname. Nisman provides additional evidence — not that more is needed — that Iranian officials and one Lebanese Hezbollah operative were responsible for two terrorist bombings in Argentina in the 1990s. There’s an American nexus too: Nisman charges that Mohsen Rabbani, Iran’s former cultural attaché in Buenos Aires — implicated in the 1994 attack on a Jewish center in Buenos Aires in which 85 people were killed — directed “Iranian agent” Abdul Kadir, now serving a life sentence in connection with the 2010 plot to bomb John F. Kennedy International Airport in New York. Connect the dots, Nisman argues, and they draw a picture of Iran “fomenting and fostering acts of international terrorism in concert with its goals of exporting the revolution.” All this considered, can al-Qaeda still be considered a serious competitor? Yes, it can! Last weekend, my colleague, über-researcher Tom Joscelyn, [pointed out](https://www.weeklystandard.com/print/articles/see-no-evil_732050.html?nopager=1) that AQ and its affiliates now “are fighting in more countries than ever.” In Afghanistan, AQ maintains safe havens in the provinces of Kunar and Nuristan. Its loyal ally, the Taliban, is responsible for a level of violence “higher than before the Obama-ordered surge of American forces in 2010,” according to NATO’s International Security Assistance Force. AQ and its affiliates have bases in northern Pakistan. The Pakistani government, Joscelyn notes, “continues to be a duplicitous ally, sponsoring and protecting various al Qaeda-allied groups. The Tehrik-e Taliban Pakistan (TTP), or Pakistani Taliban, remains a threat after orchestrating the failed May 2010 bombing in Times Square. The State Department announced in September 2010 that the TTP has “a ‘symbiotic relationship’ with al Qaeda.” The AQ-affiliated al-Nusrah Front may be the most effective force fighting against Assad’s troops, and againstHezbollah and Iranian combatants in Syria. AQ is resurgent in neighboring Iraq, with April 2013 the deadliest month in that country in nearly five years, according to the U.N. AQ has expanded operations in Yemen. In Somalia, Shabaab — which formally merged with AQ last year — is far from defeated and has managed to carry out attacks in neighboring Kenya and Uganda as well. In Nigeria, Boko Haram[continues to slaughter](http://defenddemocracy.org/media-hit/us-offers-rewards-for-boko-haram-african-al-qaeda-leaders/) Christians. In Egypt, al-Qaeda members and associates — including Mohammed al-Zawahiri, the brother of al-Qaeda leader Ayman al-Zawahiri — are operating more freely than ever. On 9/11/12 they hoisted an AQ flag above the U.S. embassy in Cairo. Libyan groups closely linked to al-Qaeda were responsible for the 9/11/12 attack that killed Ambassador J. Christopher Stevens and three other Americans. Al-Qaeda in the Islamic Maghreb easily took over northern Mali until French forces pushed them out of the population centers. Al-Qaeda affiliates are becoming more visible and perhaps viable in Tunisia, too. Despite all this, the State Department report asserts that “core” al-Qaeda “is on a path to defeat.” I am not convinced that there is sufficient evidence to substantiate that thesis. And even if it does prove to be accurate, who’s to say that a weakening core can’t be compensated for by a stronger periphery? In the final analysis, “Which is the A Team of terrorism?” is not the paramount question. What is: In the years ahead, does the U.S. have what it takes to be the A Team of counterterrorism?

#### Hezbollah can and will attack

Carafano 13June 7th, 2013. “Hezbollah Plays a Dangerous Game” James Jay Cafano <http://www.heritage.org/research/commentary/2013/6/james-jay-carafano-hezbollah-plays-a-dangerous-game> (James Jay Carafano, a leading expert in national security and foreign policy challenges, is The Heritage Foundation’s Vice President, Foreign and Defense Policy Studies, E. W. Richardson Fellow, and Director of the Kathryn and Shelby Cullom Davis Institute for International Studies)

"The system was blinking red." That's how the 9/11 Commission Report described the intelligence community's state of concern shortly before the 2001 terrorist attacks on New York and Washington.¶ "Counterterrorism officials were receiving frequent but fragmentary reports about threats," the commission reported, adding, "Indeed, there appeared to be possible threats almost everywhere the United States had interests--including at home."¶ But not until planes plowed into the Twin Towers did everyone understand what the chatter meant.¶ In a recent speech at The National Defense University, President Obama declared that the transnational terrorism threat is well in hand. But, plenty of signs indicate that's not the case.¶ **Consider Hezbollah. This multi-tentacle stooge of Iran is a Shi'a Islamist terrorist group. It is also a political party that operates a shadow government in Lebanon.¶** For more than a year, **Hezbollah has been increasing the tempo of its attacks on Western and Israeli targets in Asia and Europe**. The Bulgarian government, for example, has connected the group to a bus bombing that killed five Israeli tourists and their driver last year.¶ Most recently, **Hezbollah deployed "foreign fighters" to assist the Assad regime in beating back the opposition in Syria. This offensive further complicated an already complex crisis. It broadened the sectarian nature of the war, pitting Shi'a (Hezbollah, Iran, and the Syrian militias supporting Assad) against Sunni (the rebels).¶** **It has also pitted terrorists groups against one another. Hezbollah is battling Assad's opposition whether they are "freedom fighters" or al Qaeda. Jabhat al-Nusra, the al Qaeda affiliate in Syria, is now pretty much at war with Hezbollah**.¶ That may not sound like a bad thing, **but it means the war will surely spread to Lebanon**. Hezbollah has to expect payback. Car bombs will explode in Beirut, as Jabhat al-Nusra pays back Hezbollah. And, as terrorists kill terrorists, the people of Lebanon will be caught in the crossfire.¶ The Lebanese recognize this--and they are none too happy about it. Already some have expressed resentment over Hezbollah dragging the country into Syria's civil war. The people are seeing the group for what it is, a tool of Tehran.¶ That awareness may bring pain. **Hezbollah's impulse will likely be to turn up the violence even more--while directing as much blame and animosity as possible toward Israel. And that could spark another military confrontation.**¶ While Hezbollah sets the red lights blinking, the West mostly just blinks. The European Union remains bitterly divided over designating the terrorist organization as... a terrorist organization.¶ France, Britain and Germany are going halfsies--pressing the EU to label Hezbollah's armed-militia wing as a terrorist organization, while letting the political arm off the hook.¶ As long as the political arm is excluded, Europe won't be able to shut down terrorist fund-raising and recruiting in its own backyard.¶ The UN is not doing much to help either. Since 1978, the United Nations Interim Force in Lebanon (UNIFIL) has been charged with making sure the Lebanese-Israeli border region is free of any non-governmental armed personnel or weaponry. Clearly it has failed, in part because of self-imposed restrictions. For example, UNIFIL peacekeepers cannot even conduct regular building searches for arms!¶ Transnational terrorism is not in hand. **The U.S. desperately needs to shore up its position in the Middle East**. That means showing real leadership in dealing with Turkey, Israel, Iraq, Jordan and the six-nation Gulf Cooperation Council.¶ It means making clear that the "pivot to Asia" does not entail disengaging from the region. It means ramping up, not standing down, our global anti-terrorism initiative.¶ **And it means developing a real strategy to prevent** Islamist **extremists from hijacking the Arab Spring.**

THE A-TEAM OF ISLAMIC TERRORISTS

#### That causes a nuclear war

**Ayson 10**

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

A terrorist nuclear attack, and even the use of nuclear weapons in response by the country attacked in the first place, would not necessarily represent the worst of the nuclear worlds imaginable. Indeed, there are reasons to wonder whether nuclear terrorism should ever be regarded as belonging in the category of truly existential threats. A contrast can be drawn here with the global catastrophe that would come from a massive nuclear exchange between two or more of the sovereign states that possess these weapons in significant numbers. Even the worst terrorism that the twenty-first century might bring would fade into insignificance alongside considerations of what a general nuclear war would have wrought in the Cold War period. And it must be admitted that as long as the major nuclear weapons states have hundreds and even thousands of nuclear weapons at their disposal, there is always the possibility of a truly awful nuclear exchange taking place precipitated entirely by state possessors themselves. But these two nuclear worlds—a non-state actor nuclear attack and a catastrophic interstate nuclear exchange—are not necessarily separable. It is just possible that some sort of terrorist attack, and especially an act of nuclear terrorism, could precipitate a chain of events leading to a massive exchange of nuclear weapons between two or more of the states that possess them. In this context, today’s and tomorrow’s terrorist groups might assume the place allotted during the early Cold War years to new state possessors of small nuclear arsenals who were seen as raising the risks of a catalytic nuclear war between the superpowers started by third parties. These risks were considered in the late 1950s and early 1960s as concerns grew about nuclear proliferation, the so-called n+1 problem. t may require a considerable amount of imagination to depict an especially plausible situation where an act of nuclear terrorism could lead to such a massive inter-state nuclear war. For example, in the event of a terrorist nuclear attack on the United States, it might well be wondered just how Russia and/or China could plausibly be brought into the picture, not least because they seem unlikely to be fingered as the most obvious state sponsors or encouragers of terrorist groups. They would seem far too responsible to be involved in supporting that sort of terrorist behavior that could just as easily threaten them as well. Some possibilities, however remote, do suggest themselves. For example, how might the United States react if it was thought or discovered that the fissile material used in the act of nuclear terrorism had come from Russian stocks,40 and if for some reason Moscow denied any responsibility for nuclear laxity? The correct attribution of that nuclear material to a particular country might not be a case of science fiction given the observation by Michael May et al. that while the debris resulting from a nuclear explosion would be “spread over a wide area in tiny fragments, its radioactivity makes it detectable, identifiable and collectable, and a wealth of information can be obtained from its analysis: the efficiency of the explosion, the materials used and, most important … some indication of where the nuclear material came from.”41 Alternatively, if the act of nuclear terrorism came as a complete surprise, and American officials refused to believe that a terrorist group was fully responsible (or responsible at all) suspicion would shift immediately to state possessors. Ruling out Western ally countries like the United Kingdom and France, and probably Israel and India as well, authorities in Washington would be left with a very short list consisting of North Korea, perhaps Iran if its program continues, and possibly Pakistan. But at what stage would Russia and China be definitely ruled out in this high stakes game of nuclear Cluedo? In particular, if the act of nuclear terrorism occurred against a backdrop of existing tension in Washington’s relations with Russia and/or China, and at a time when threats had already been traded between these major powers, would officials and political leaders not be tempted to assume the worst? Of course, the chances of this occurring would only seem to increase if the United States was already involved in some sort of limited armed conflict with Russia and/or China, or if they were confronting each other from a distance in a proxy war, as unlikely as these developments may seem at the present time. The reverse might well apply too: should a nuclear terrorist attack occur in Russia or China during a period of heightened tension or even limited conflict with the United States, could Moscow and Beijing resist the pressures that might rise domestically to consider the United States as a possible perpetrator or encourager of the attack? Washington’s early response to a terrorist nuclear attack on its own soil might also raise the possibility of an unwanted (and nuclear aided) confrontation with Russia and/or China. For example, in the noise and confusion during the immediate aftermath of the terrorist nuclear attack, the U.S. president might be expected to place the country’s armed forces, including its nuclear arsenal, on a higher stage of alert. In such a tense environment, when careful planning runs up against the friction of reality, it is just possible that Moscow and/or China might mistakenly read this as a sign of U.S. intentions to use force (and possibly nuclear force) against **them**. In that situation, the temptations to preempt such actions might grow, although it must be admitted that any preemption would probably still meet with a devastating response.

#### Lack of GAO access stunts congressional capabilities to promote a revolution in intelligence

Nancy C. **Roberts et. al**. , Editor, Richard J. Harknett, associate professor of political science and chair of the University Faculty at the University of Cincinnati, James A. Stever, Professor at University of Cincinnati, The Struggle to Reform Intelligence after 9/11, Public Administration Review • September | October **2011** <http://onlinelibrary.wiley.com/store/10.1111/j.1540-6210.2011.02409.x/asset/j.1540-6210.2011.02409.x.pdf?v=1&t=hmr69l0i&s=e5ff970bfdd6af39edc4a3dbaa5e3c920f9f5339>

The schism between the executive and Congress has been exacer- bated by the CIA. The CIA refuses to supply information to the Government Accountability Office (GAO) and encourages other intelligence agencies to do the same (Donald-son 2010, 21–23). This controversial refusal is supported by the Justice Department Office of Counsel’s 1988 opinion that intelligence activities are exempt from GAO reviews.10 When the Senate in 2010 attempted to settle the issue and pass legislation granting the GAO the authority to review the full array of agencies in the intelligence community, Peter Orszag, director of the Office of Management and Budget, informed Senator Dianne Fein- stein that the president would veto the bill if it included that provision.11¶ This schism has reduced the scope of legisla- tive involvement in the intelligence commu- nity. Deprived of GAO analysis to inform and support its recommendations, the congres- sional impact on the budget, policy, and structure of intelligence agencies has been reduced. The secondary effect is that GAO analysis is not available to institutions outside the Congress and to the public. The Office ￼of Management and Budget, which has full access to intelligence community budgetary information, does not share and publish this information in the same manner as the GAO.¶ There are, of course, two separable points of contention here relating to congressional involvement. First is the potentially less controversial notion that more GAO access in evaluating budgets, policies, and structures of intelligence agencies would position congressional committees to more effectively conduct their oversight roles. In the particular area of how structural reforms are influencing function, the lack of GAO analysis likely handicaps informed congressional action. Second, and more to Senator Bond’s point, is the more con- troversial and problematic contention that greater access is needed so that analysis of the analysis could take place. Here, the point is that if committee staff had more access to the raw intelligence underlying finished intelligence products (judgments produced by the intelligence agencies), the committees could make their own analytic judgments and thus judge the professional assessments of the intelligence agencies. Of course, the inherent political nature of Congress raises the concern that legislative involvement in intelli- gence analysis would politicize the analysis.¶ Where the GAO should fit regarding these points of contention was not addressed in the IRTPA. The GAO has not been silent about¶ its marginal role. Four years after IRTPA, amid mounting congres- sional discontent, it argued before the Senate for a greater role in intelligence analysis (GAO 2008). In his testimony, Comptroller General David M. Walker stressed that management oversight could improve personnel management throughout the intelligence com- munity and the laborious security clearance process. Conclusions¶ It is still an open question whether the IRTPA’s vision of transform- ing agency-based intelligence into an integrated networked intelli- gence enterprise can succeed. The intelligence community confronts an old conundrum: revolution versus evolution. Reform in the latter mode defaults to the importance of the imme- diate and thus to a less disruptive incremental approach; reform in the former mode gives priority to the consequences of future failure and thus supports dramatic overhaul. As we noted earlier, the intelligence reforms of 9/11 created an office that could be visionary, but it did not empower an officer that could be transformational. If one accepts the premises of Vision 2015—that we face a threat envi- ronment that requires an intelligence structure that is agile, flexible, and adaptive—then the conclusion one must draw ten years out from 9/11 is that we have a vision of where we need to go, but not the legislative basis on which to move beyond the half measure of intelligence reform that is the IRTPA. Ten years after 9/11, it remains unclear whether the IRTPA and the documents that the act inspired rep- resent a road to reform that is potentially only half traveled or has run its course.

#### GAO enforcement is essential to intelligence quality – makes intel more effective and efficient

**Walker, 7** (David M. Walker, Comptroller of the United States Federal Government, GAO, <http://www.fas.org/irp/gao/walker030107.pdf>)

Finally, you asked us to address the benefits or drawbacks, if any, of obtaining the assistance of GAO, whether on the initiative of the Intelligence Community or either the House of Senate intelligence committee, in examining and reporting on the financial transactions, programs, and activities of the Intelligence Community. The benefits that GAO can provide the committee, the Congress, and the Intelligence Community would be significant. First, GAO efficiently uses its resources to meet the needs of the Congress and exercises the independence and objectivity necessary to ensure that its work and products not only conform to applicable professional standards, but that its work is professional, objective, fact-based, nonpartisan, nonideological, fair, and balanced. Second, GAO has the capability to form multidisciplinary teams, including accountants, analysts, program evaluators, cost analysts, attorneys, information technology specialists, economists, methodologists, engineers, and expert consultants to provide a total picture on a given issue. These multidisciplinary teams have experience in examining many other government agencies and programs, such as strategic planning, organizational alignment, human capital management, information technology architectures and systems, knowledge management, and specific program and activity knowledge across most key government functions. In addition, GAO has long-standing and ongoing work in the national security, homeland security, and international affairs issues. Each year, GAO’s work results in major improvements and efficiencies in government operations and billions of dollars in financial benefits. Third, GAO has a broad perspective through preforming extensive domestic and overseas fieldwork across the entire spectrum of federal departments and agencies, providing an in-depth, “end-to-end” perspective on crosscutting government programs and actives, such as multiple agencies’ actives abroad and the coordination challenges they face. Fourth, GAO operates with agreed-upon rules of engagement and agency protocols, including formal entrance and exit conferences with agency officials. For example, at an exist conference, GAO provides the agency with a statement of fact to confirm that the critical facts and key information used to formulate GAO’s analyses and findings are current, correct, and complete. Agency issues and additional information can be incorporated into GAO’s analysis and observations, and agency comments on draft reports are included in GAO products so clients can see the agency’s views. Fifth, GAO provides its clients with the information they need- when they need it. GAO uses a wide variety of products to meet its clients’ information needs and time frames, including briefings, congressional testimony, reports and legal opinions. Finally, unlike individual inspectors general, GAO can reach across multiple agencies govermentwide in crosscutting reviews to examine and identify challenges and ways to improve Intelligence Community management and business processes and results (much of which would not require getting sources and methods). For example, GAO can review the following types of transactions, programs, and activities: Intelligence Community transition initiatives, metrics, and results. Collection management, processing, exploitation, and dissemination. Budget scrubs, “quick looks,” and drill-down acquisition reviews of programs in the National Intelligence Program and Military Intelligence Program. Others have suggested some concerns related to GAO examining and reporting on the financial transactions, programs, and actives of the Intelligence Community. These concerns include (1) a limited number of personnel at GAO which proper sensitive compartmented information (SCI) access; (2) public or wide availability of GAO reports; (3) the lack of GAO facilities approved to store SCI material; (4) the lack of insight into unique Intelligence Community authorities, policies, and practices; and (5) potential duplication or overlap of GAO work with that of inspectors general and other audit organizations. We believe we can effectively address these potential concerns. First, GAO already has a number of personnel with SCI access, especially within our multidisciplinary teams, and GAO would work with the Intelligence Community to expand the number of analysts with the appropriate access. GAO has already embarked on that process. Second, GAO tightly controls and limits dissemination of the results of its classified work, both written and oral, which are tailored to the needs of its client (e.g., intelligence or other committees of jurisdiction and the intelligence agencies’ leadership). I am prepared to consider further restrictions, if necessary, on the dissemination of GAO’s work results relating to the Intelligence Community. Third, while GAO’s headquarters currently does not have facilities approved to store SCI material, GAO personal can conduct their reviews in an agency approved space. GAO currently is assessing the need to store SCI material at its headquarters. In addition, GAO’s Dayton Office has access to facilities approved to process and store SCI material at Wright-Patterson Air Force Base, Ohio. Forth, regarding a need for insight intro unique Intelligence Community authorities and policies, and practices, GAO’s work overall is deeply rooted in an understanding of authorities and policies when examining programs and actives. Although we have not formally been conducting reviews in the Intelligence Community, we regularly engage in discussions with officials, many of whom have dual-hatted responsibilities. Finally, inspectors general play a valuable and important role and we recognize that the Intelligence Community already has some degree of oversight through existing organizations. However, GAO already coordinates with inspectors general and other audit organizations to avoid overlap and duplication when reviewing other agencies’ programs and actives and would continue to do so for its work in the Intelligence Community.

#### Strong CIA intelligence checks conflict – reliable data is key to leverage that mitigates flashpoints

Human Rights First 2011, “Disrupting the Supply Chain for Mass Atrocities How to Stop Third-Party Enablers of Genocide and Other Crimes Against Humanity”

<http://www.humanrightsfirst.org/wp-content/uploads/pdf/Disrupting_the_Supply_Chain-July_2011.pdf>

**Intelligence collection and analysis are key to identifying threats of mass atrocities and developing responses. Better intelligence on third-party enablers of atrocities would reveal additional policy options to prevent or mitigate violence against civilians. Mapping the actors and dynamics in atrocity situations willclarify the identities of the enablers, their specific roles, and the actors or connections in the supply chain that may be particularly susceptible to pressure. The government alone can accomplish this work; no non-governmental entity, whether in journalism, research, or advocacy, has sufficient money, people, and networks to draw a complete picture.¶ In some cases, the enablers will be the very same actors that interest the United States for their role in other illicit transnational networks. By prioritizing a focus on enablers of atrocities in intelligence collection, and by sharing information and analysis across agencies,intelligence collection can yield high-value information on a broader set of national security challenges such as money laundering, terrorist financing, andnarcotics trafficking**.¶ Policy makers should ensure that the intelligence it routinely analyzes can be used to an even broader extent. For example, the CIA’s office on war crimes contributes to the twice-yearly Atrocities Watch List and supports war crimes tribunals; the information collection and analysis required for those functions, and the Watch List itself, should be expanded to include (if they do not already) not only perpetrators of ongoing atrocities and potential perpetrators in regions listed on the Watch List, but also the third-party actors that enable them. The intelligence community (IC) should also be charged with identifying and collecting intelligence on those enablers that have played roles in recent atrocities, since past behavior— such as the Government of Sudan’s in Darfur—may well continue even in other regions—such as South Kordofan or Abyei. Congress’s oversight function could be used more consistently to ensure that the IC maintains a focus on atrocities as a national security priority. In 2010, then- Director of National Intelligence Dennis Blair told Congress at a hearing on the ODNI’s Annual Threat Assessment that “over the next five years, a number of countries in Africa and Asia are at significant risk for a new outbreak of mass killing. . . . a new mass killing or genocide is most likely to occur in Southern Sudan.”18 DNI ames Clapper’s February 2011 testimony regarding the Annual Threat Assessment included no such attention to atrocities, despite the ongoing violence in Darfur, the absence of resolution of many problems in Southern Sudan, and violence against civilians in Côte d’Ivoire, Kyrgyzstan, and elsewhere in the previous nine months, as well as worries about violence around upcoming elections in Kenya.¶ While **intelligence on enablers can help policy makers target key actors or interruption points, the coordinated and committed use of the appropriate policy tools— political pressures, economic** sanctions, or even military actions—is also critical to effective action.

#### The plan shifts the CIA to focus to intel – key to drone effectiveness

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Washington Post national security reporter Greg Miller has an excellent story in Sunday’s paper on the operational role of the CIA in drone warfare. Back at the time of the Brennan confirmation hearings, and even before, there had been discussion that the CIA would be pulled – even if only gradually – out of drone warfare and this form of using lethal force would be turned over the military. The CIA would re-focus itself on intelligence gathering and analysis, which many commentators inside and outside government said had taken a backseat to operational roles. Brennan himself urged this re-configuring of CIA priorities – including a shift away from counterterrorism to re-emphasize other intelligence missions; and the administration has said similar things in recent weeks. Focusing on drone warfare in Yemen, however, Miller’s report suggests this is easier said than done – whether in Yemen (or, it might be added, in Pakistan). A fundamental reason seems to be something noted many times here at Lawfare – the firing of a missile from a drone is the last kinetic step in a long chain of intelligence-gathering that includes surveillance over time from drones, signals intelligence and, crucially, on-ground human intelligence networks that give the US reason to be focusing on certain people as possible targets. Whether in Pakistan or Yemen, the effectiveness of drone warfare has been a function of the quality of the front-end intelligence that finally might lead to a strike. The drone’s contribution to the intelligence is far from being entirely tactical, of course – the drone’s surveillance has far more utility than just the preparation of a strike and that surveillance is crucial for reducing collateral harm from the strike itself. But drones are not quite so useful if one has no prior idea who one is searching for or where he might be or even why him – and much of this intelligence is gathered at the front end of the process in reliance on human intelligence networks. Although in principle the functions of intelligence gathering at the front end might be separated out from the intelligence involved in the preparation of a strike and from the actual strike itself, with the CIA engaged in the intelligence side and the military serving as the trigger pullers, the experience in Yemen raises some cautions about how easy it is to create this division of labor.

#### Shifting authority to the DoD is the only way to enable Congressional oversight – that makes foreign policy objectives more clear

Zenko 13([Micah Zenko](http://www.cfr.org/experts/national-security-conflict-prevention/micah-zenko/b15139), Douglas Dillon Fellow, “Transferring CIA Drone Strikes to the Pentagon,” April 2013, <http://www.cfr.org/drones/transferring-cia-drone-strikes-pentagon/p30434>)

ONE MISSION, TWO PROGRAMS

U.S. targeted killings are needlessly made complex and opaque by their division between two separate entities: JSOC and the CIA. Although drone strikes carried out by the two organizations presumably target the same people, the organizations have different authorities, policies, accountability mechanisms, and oversight. Splitting the drone program between the JSOC and CIA is apparently intended to allow the plausible deniability of CIA strikes. Strikes by the CIA are classified as Title 50 covert actions, defined as “activities of the United States Government . . . where it is intended that the role . . . will not be apparent or acknowledged publicly, but does not include traditional . . . military activities.” As covert operations, the government cannot legally provide any information about how the CIA conducts targeted killings, while JSOC operations are guided by Title 10 “armed forces” operations and a publicly available military doctrine. Joint Publication 3-60, Joint Targeting, details steps in the joint targeting cycle, including the processes, responsibilities, and collateral damage estimations intended to reduce the likelihood of civilian casualties. Unlike strikes carried out by the CIA, JSOC operations can be (and are) acknowledged by the U.S. government. The different reporting requirements of JSOC and the CIA mean that congressional oversight of U.S. targeted killings is similarly murky. Sometimes oversight is duplicated among the committees; at other times, there is confusion over who is mandated to oversee which operations. CIA drone strikes are reported to the intelligence committees. Senator Dianne Feinstein (D-CA), chair of the Senate Select Committee on Intelligence (SSCI), has confirmed that the SSCI receives poststrike notifications, reviews video footage, and holds monthly meetings to “question every aspect of the program.” Representative Mike Rogers (R-MI), chair of the House Permanent Select Committee on Intelligence (HPSCI), has said that he reviews both CIA and JSOC counterterrorism airstrikes. JSOC does not report to the HPSCI. As of March 2012, all JSOC counterterrorism operations are reported quarterly to the armed services committees. Meanwhile, the foreign relations committees—tasked with overseeing all U.S. foreign policy and counterterrorism strategies—have formally requested briefings on drone strikes that have been repeatedly denied by the White House. However, oversight should not be limited to ensuring compliance with the law and preventing abuses, but rather expanded to ensure that policies are consistent with strategic objectives and aligned with other ongoing military and diplomatic activities. This can only be accomplished by DOD operations because the foreign relations committees cannot hold hearings on covert CIA drone strikes. CONSOLIDATING EXECUTIVE AUTHORITY In 2004, the 9/11 Commission recommended that the “lead responsibility for directing and executing paramilitary operations, whether clandestine or covert, should shift to the Defense Department” to avoid the “creation of redundant, overlapping capabilities and authorities in such sensitive work.” The recommendation was never seriously considered because the CIA wanted to retain its covert action authorities and, more important, it was generally believed such operations would remain a rarity. (At the time, there had been only one nonbattlefield targeted killing.) Nearly a decade later, there is increasing bipartisan consensus that consolidating lead executive authority for drone strikes would pave the way for broader strategic reforms, including declassifying the relevant legal memoranda, explicitly stating which international legal principles apply, and providing information to the public on existing procedures that prevent harm to civilians. During his February 2013 nomination hearing, CIA director John O. Brennan welcomed the transfer of targeted killings to the DOD: “The CIA should not be doing traditional military activities and operations.” The main objection to consolidating lead executive authority in DOD is that it would eliminate the possibility of deniability for U.S. covert operations. However, any diplomatic or public relations advantages from deniability that once existed are minimal or even nonexistent given the widely reported targeted killings in Pakistan and Yemen. For instance, because CIA drone strikes cannot be acknowledged, the United States has effectively ceded its strategic communications efforts to the Pakistani army and intelligence service, nongovernmental organizations, and the Taliban. Moreover, Pakistani and Yemeni militaries have often taken advantage of this communications vacuum by shifting the blame of civilian casualties caused by their own airstrikes (or others, like those reportedly conducted by Saudi Arabia in Yemen) to the U.S. government. This perpetuates and exacerbates animosity in civilian populations toward the United States. If the United States acknowledged its drone strikes and collateral damage—only possible under DOD Title 10 authorities—then it would not be held responsible for airstrikes conducted by other countries.

# 2AC

## 2ac: Top Line

#### 2. Obama will follow through- aligns himself with Congress

**Bellinger ’13** (John B. Bellinger III, Adjunct Senior Fellow for International and National Security Law, “Seeking Daylight on U.S. Drone Policy”, <http://www.cfr.org/drones/seeking-daylight-us-drone-policy/p30348>, March 29, 2013)

The president also has additional constitutional authority anytime to use force to protect the Unites States, either in self-defense or because he believes that it's in our national security interest. So if President Obama concludes that it's necessary to carry out a drone strike against a terror suspect, but that individual does not fall into the categories covered by the AUMF, he would have additional constitutional authority. But this administration has taken great pains to emphasize that it has been relying on congressional grant of authority rather than the president's own constitutional authority to conduct most of its counterterrorism operations. It has wanted to do that to contrast itself with the Bush administration, which had, at least early in its tenure, relied heavily on the president's constitutional authority. It's not clear though, at this point, given how old and somewhat limited the AUMF is, if the Obama administration has now been forced to rely on constitutional powers for certain drone strikes. It appears to many observers that the administration may be stretching the limits of the AUMF by targeting people who were not responsible for 9/11 or who were not affiliated or associated co-belligerents with those who carried out 9/11. In theory, could the president always claim constitutional authority with regard to these strikes? Although, as you pointed out, the administration is obviously loath to do that. This administration is already finding that 95 percent of its counterterrorism policies, and the legal basis therefore, are the same as the Bush administration's. Absolutely. I think the issue is, in this administration, political. This administration is already finding that 95 percent of its counterterrorism policies, and the legal basis therefore, are the same as the Bush administration's. It came into office with both domestic and international supporters expecting that it would change all of those policies. So one area where it really has been loath to act like the Bush administration is to rely heavily on the president's constitutional authority. We simply don't know whether they are doing it, but politically I'm sure that administration officials would be very reluctant to have to acknowledge that they are acting outside of the grant given to them by Congress.

## 2AC A/T: Circumvention – Purse

#### Congress would invoke the power of the purse- solves

**Elsea et al ’13** (Jennifer K. Elsea, Legislative Attorney; Michael John Garcia, Legislative Attorney; Thomas J. Nicola, Legislative Attorney; CRS Report for Congress, “Congressional Authority to Limit Military Operations”, <http://fpc.state.gov/documents/organization/206121.pdf>, February 19, 2013)

The Purpose Statute states that funds may be used only for purposes for which they have been appropriated; by implication it precludes using funds for purposes that Congress has prohibited. When Congress states that no funds may be used for a purpose, an agency would violate the Purpose Statute if it should use funds for that purpose; it also in some circumstances could contravene a provision of the Antideficiency Act, 31 U.S.C. Section 1341. Section 1341 prohibits entering into obligations or expending funds in advance of or in excess of an amount appropriated unless authorized by law. If Congress has barred using funds for a purpose, entering into an obligation or expending any amount for it would violate the act by exceeding the amount— zero—that Congress has appropriated for the prohibited purpose.

#### Congress exerting the power of the purse key to check presidential warfare

**Fisher ‘7** (Louis Fisher is a specialist in constitutional law with the Law Library of the Library of Congress, after working for the Congressional Research Service from 1970 to March 6, 2006. During his service with CRS he was research di rector of the House Iran-Contra Committee in 1987, writing major sections of the final report. Fish er received his doctorate in political science from the New School for Social Research and has taught at a number of universities and law schools, appearing before the Senate Committee on the Judiciary, loc.gov/law/help/usconlaw/pdf/Feingold2007rev.pdf, “Exercising Congress’s Constitutional Power to End a War”, January 30, 2007)

The framers carefully studied this monarchical model and repudiated it in its entirety. Not a single one of Blackstone’s prerogatives was granted to the President. They are either assigned entirely to Congress (declare war, issue letters of marque and reprisal, raise and regulate fleets and armies) or shared between the Senate and the President (appointing ambassadors and making treaties). The rejection of the British and monarchical models could not have been more sweeping. This explains what the framers did. The next question is why they did it. The framers gave Congress the power to initiate war because they concluded — based on the history of other nations — that Executives, in their quest for fame and personal glory, had too great an appetite for war and little care for their subjects or the long-term interests of their country. John Jay, whose experience in the Continental Congress and the early years of the Republic was generally in foreign affairs, warned in Federalist No. 4 that “absolute monarchs will often make war when their nations are to get nothing by it, but for purposes and objects merely personal, such as a thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans. These and a variety of other motives, which affect only the mind of the sovereign, often lead him to engage in wars not sanctified by justice or the voice and interests of his people.” Joseph Story, who served on the Supreme Court from 1811 to 1845, similarly wrote about the need to vest in the representative branch the decision to go to war. The power to declare war “is in its own nature and effects so critical and calamitous, that it requires the utmost deliberation, and the successive review of all the councils of the nations. War, in its best estate, never fails to impose upon the people the most burthensome taxes, and personal sufferings. It is always injurious, and sometime subversive of the great commercial, manufacturing, and agricultural interests.” Story found war as “sometimes fatal to public liberty itself, by introducing a spirit of military glory, which is ready to follow, wherever a successful commander will lead.” Through their study of history and political ambition, the framers came to fear the Executive appetite for war. Human nature has not changed over the years to justify trust in independent and unchecked presidential decisions in war. The record of two centuries in America teaches us that what Jay said in 1788 applies equally well to contemporary times. Offensive and Defensive Wars The debates at the Philadelphia Convention in 1787 underscore the framers’ intent to keep offensive wars in the hands of Congress while reserving to the President certain actions of a defensive nature. All three branches understood that distinction for 160 years, until President Truman went to war against North Korea by going to the UN Security Council for “authority” instead of to Congress. Review what the framers said in Philadelphia. On June 1, 1787, Charles Pinckney offered his support for “a vigorous Executive but was afraid the Executive powers of <the existing> Congress might extend to peace & war &c which would render the Executive a Monarchy, of the worst kind, towit an elective one.” 1 Farrand 64-65. John Rutledge wanted the executive power placed in a single person, “tho’ he was not for giving him the power of war and peace.” James Wilson, who also preferred a single executive, “did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of a Legislative nature. Among others that of war & peace &c.” Id. at 65-66. Edmund Randolph worried about executive power, calling it “the foetus of monarchy.” The delegates to the Philadelphia Convention, he said, had “no motive to be governed by the British Governmt. as our prototype.” Alexander Hamilton, in a lengthy speech on June 18, strongly supported a vigorous and independent President, but plainly jettisoned the British model of executive prerogatives in foreign affairs and the war power. In discarding the Lockean and Blackstonian doctrines of executive power, he proposed giving the Senate the “sole power of declaring war.” The President would be authorized to have “the direction of war when authorized or begun.” Id. at 292. In Federalist No. 69, Hamilton explained the break with English precedents. The power of the king “extends to the declaring of war and to the raising and regulating of fleets and armies.” The delegates decided to place those powers, he said, in Congress. At the constitutional convention, Charles Pinckney objected that legislative proceedings “were too slow” for the safety of the country in an emergency, since he expected Congress to meet but once a year. James Madison and Elbridge Gerry moved to amend the draft constitution, empowering Congress to “declare war” instead of to “make war.” This change in language would leave to the President “the power to repel sudden attacks.” Their motion carried. 2 Farrand 318-19. Reactions to the Madison-Gerry amendment reinforce the narrow grant of authority to the President. Pierce Butler wanted to give the President the power to make war, arguing that he “will have all the requisite qualities, and will not make war but when the Nation will support it.” Not a single delegate supported him. Roger Sherman objected: “The Executive shd. be able to repel and not to commence war.” Id. at 318. Gerry said he “never expected to hear in a republic a motion to empower the Executive alone to declare war.” George Mason spoke “agst giving the power of war to the Executive, because not <safely> to be trusted with it. . . . He was for clogging rather than facilitating war.” 2 Farrand 319. His remarks echo what Jay said in Federalist No. 4. At the Pennsylvania ratifying convention, James Wilson expressed the prevailing sentiment that the system of checks and balances “will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large.” 2 Elliot 528. The power of initiating war was vested in Congress. To the President was left certain defensive powers “to repel sudden attacks.” This distrust of presidential power in matters of war was expressed frequently after the Philadelphia convention. In 1793, Madison called war “the true nurse of executive aggrandizement. . . . In war, the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow they are to encircle. The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honourable or venial 4 love of fame, are all in conspiracy against the desire and duty of peace.” Five years later, in a letter to Thomas Jefferson, Madison said that the Constitution “supposes, what the History of all Govts demonstrates, that the Ex. is the branch of power most interested in war, & most prone to 5 it. It has accordingly with studied care, vested the question of war in the Legisl.” The need to keep the purse and the sword in separate hands was a bedrock principle for the framers. They recalled the efforts of English kings who, denied funds from Parliament, decided to rely on outside sources of revenue for their military expeditions. The result was civil war and the loss of Charles I of both his office and his head. The growth of democratic government is directly tied to legislative control over all expenditures, including those for fo and military affairs. reign The U.S. Constitution attempted to avoid the British history of civil war and bloodshed by vesting the power of the purse wholly in Congress. Under Article I, Section 9, “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” In Federalist No. 48, Madison explained that “the legislative department alone has access to the pockets of the people.” The President gained the title of Commander in Chief but Congress retained the power to finance military operations. For Madison, it was a fundamental principle of democratic government that “[t]hose who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.” This understanding of the war power was widely understood. Jefferson praised the transfer of the war power “from the executive to the Legislative body, from those who are to spend to those who are to pay.”

## T

#### Funding restrictions are restrictions on authority , rooted in U.S. code

Richard F. Grimmett, Specialist in National Defense Foreign Affairs, Defense, and Trade Division, 2007 CRS, Congressional Use of Funding Cutoffs Since 1970 Involving U.S. Military Forces and Overseas Deployments

Uses by Congress of Funding Restrictions to Affect Presidential Policy Toward Foreign Military/Paramilitary Operations

Although not directly analogous to efforts to seek withdrawal of American military forces from abroad by use of funding cutoffs, Congress has used funding restrictions to limit or prevent foreign activities of a military or paramilitary nature. As such, these actions represent alternative methods to affect elements of presidentially sanctioned foreign military operations. Representative examples of these actions are in legislation relating to Angola and Nicaragua, which are summarized below. In 1976, controversy over U.S. covert assistance to paramilitary forces in Angola led to legislative bans on such action. These legislative restrictions are summarized below. ! The Defense Department Appropriations Act for FY1976, P.L. 94-212, signed February 9, 1976, provided that none of the funds “appropriated in this Act may be used for any activities involving Angola other than intelligence gathering....” This funding limitation would expire at the end of this fiscal year. Consequently, Congress provided for a ban in permanent law, which embraced both authorization and appropriations acts, in the International Security Assistance and Arms Export Control Act of 1976. ! Section 404 of the International Security Assistance and Arms Export Control Act of 1976, P.L. 94-329, signed June 30, 1976, stated that “Notwithstanding any other provision of law, no assistance of any kind may be provided for the purpose, or which would have the effect, of promoting, augmenting, directly or indirectly, the capacity of any nation, group, organization, movement, or individual to conduct military or paramilitary operations in Angola, unless and until Congress expressly authorizes such assistance by law enacted after the date of enactment of this section.” This section also permitted the President to provide the prohibited assistance to Angola if he made a detailed, unclassified report to Congress stating the specific amounts and categories of assistance to be provided and the proposed recipients of the aid. He also had to certify that furnishing such aid was “important to the national security interests of the United States.” ! Section 109 of the Foreign Assistance and Related Programs Appropriations Act for FY1976, P.L. 94-330, signed June 30, 1976, provided that “None of the funds appropriated or made available pursuant to this Act shall be obligated to finance directly or indirectly any type of military assistance to Angola.” In 1984, controversy over U.S. assistance to the opponents of the Nicaraguan government (the anti-Sandinista guerrillas known as the “contras”) led to a prohibition on such assistance in a continuing appropriations bill. This legislative ban is summarized below. ! The continuing appropriations resolution for FY1985, P.L. 98-473, 98 Stat. 1935-1937, signed October 12, 1984, provided that “During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.” This legislation also provided that after February 28, 1985, if the President made a report to Congress specifying certain criteria, including the need to provide further assistance for “military or paramilitary operations” prohibited by this statute, he could expend $14 million in funds if Congress passed a joint resolution approving such action.

## Extra T

1. We meet- its just an enforcement mechanism of the plan.

#### Restrictions must be enforceable- that is the plan

Elizabeth Boalt 5, Professor of Law Emeritus, University of California, Berkeley, University of Arkansas at Little Rock School of Law The Journal of Appellate Practice and Process Fall, 20035 J. App. Prac. & Process 473, lexis

Four questions follow: (1) Are discouraging words "restrictions" on citation under Rule 32.1? (2) What difference, if any, does it make? (3) What is the risk of judicial resistance to [\*493] no-citation rules, through discouraging words or other means? and (4) Should discouraging words be forbidden?

1. Are Discouraging Words "Restrictions" under Rule 32.1?

The committee's statement notwithstanding, it is not clear that discouraging words have to be considered "restrictions" on citation under the proposed Rule 32.1. These words may be wholly admonitory - and unenforceable. The Fourth Circuit's rule, for example, states that citing unpublished opinions is "disfavored," but that it may be done "if counsel believes, nevertheless, that [an unpublished opinion] has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well." n129 On the question of what counsel "believes," surely counsel should be taken at her word; counsel's asserted belief that an unpublished opinion has precedential or persuasive value should not be considered a falsifiable fact. Hence no sanction should be available for violating the Fourth Circuit's rule, and the rule's discouraging language in turn would not be a "prohibition or restriction" that was barred by Rule 32.1 as presently drafted.

In the rules of some other circuits, however, the language disfavoring citation of unpublished opinions is unmoored from anyone's "belief" and arguably does impose an objective "prohibition or restriction" determinable by a court. n130 A court might find, for example, that the required "persuasive value with respect to a material issue that has not been addressed in a published opinion" n131 was not present, and hence that the citation was not permitted by the circuit rule.

With what result? It would follow, paradoxically, that the opinion could be cited - because the circuit rule would be struck down under Rule 32.1 as a forbidden "restriction" on citation.

The committee's double-negative drafting thus creates a Hall of Mirrors in which citation of an unpublished opinion [\*494] would be allowed either way. If the local rule's discouraging language is merely hortatory, it is not a "restriction" forbidden by Rule 32.1; but that doesn't matter, because such a rule does not bar the citation in the first place. If, on the other hand, the local rule's language has bite and is a "restriction," then Rule 32.1 strikes it down, and again the citation is permitted.

We are the only topical aff- we garuntee that the plan will not be circumvented, meaning we are the only true restriction on war powers.

They limit out Core affs- all affs require some form of enforcement mechanism, even if it is not specificed in the plan text.

2. Extra T is good- they not only get ground off of the plan’s enactment, but also ground off of the continual enformcemnt of the plan.

3. Evaluate the plan text in a vacuum- it doesn’t matter if our advantages are topical, only the plan text.

We are key to beating the XO counterplan- enforcement mechianisms give us specific ground that the counterplan cannot capture.

Don’t vote on potential abuse- make them prove that we hurt their strategy

At worse reject the extra topical parts of the plan

#### We meet- plan places a statory restriction on funding for CIA drone usage.

#### And, Restrictions are legal limitations on activities

Law.Com 9

(“restriction”, The People's Law Dictionary by Gerald and Kathleen Hill (legal writers), <http://dictionary.law.com/Default.aspx?selected=1835&bold=restrict>, accessed 9-9-9)

restriction

n. any limitation on activity, by statute, regulation or contract provision. In multi-unit real estate developments, condominium and cooperative housing projects managed by homeowners' associations or similar organizations, such organizations are usually required by state law to impose restrictions on use. Thus, the restrictions are part of the "covenants, conditions and restrictions" intended to enhance the use of common facilities and property which are recorded and incorporated into the title of each owner.

#### 4.Prefer our interpretation

#### Topic Education— drone courts are heart of topic in targeted killing, it is the largest policy proposal for resolving presidential authority

#### Predictable ground—best to include largest cases in the literature because they are a locus for negative and affirmative research and preparation

#### 5. Prefer reasonability over competing interpretations if the aff doesn’t make debate impossible than you can’t vote against us

## Talks fail

#### No chance of a deal- Iran feels disrespected

Peng, 11/15 (Fu, “ Iran says "no chance of success" for nuclear talks if rights not recognized” http://news.xinhuanet.com/english/world/2013-11/15/c\_132891995.htm)

TEHRAN, Nov. 15 (Xinhua) -- Iranian foreign minister said Friday that if his country's nuclear rights are not recognized in the nuclear talks, there would be no chance of success for the negotiations, semi-official Mehr news agency reported. "Any agreement which does not satisfy Iran and does not recognize Iran's (nuclear) rights and is not based on mutual respect, has no chance for success," Foreign Minister Maohammad- Javad Zarif was quoted as saying. Officials from Iran and the P5+1 group, namely Britain, China, France, Russia and the United States plus Germany, will resume negotiations over Iran's disputed nuclear program in Geneva on Nov. 20 after an initial round of talks ended last week without an agreement. Iran insists on uranium enrichment activities on its soil, while the West and Israel push for a halt to them and oxidation or shipment of its high-grade stockpile of enriched uranium abroad.

## Top shelf

#### Doesn’t solve-

#### A. Doesn’t solve

Only congress can leverage the GAO

By Julian Sanchez, Julian Sanchez is a research fellow at the Cato Institute and a contributing editor for Reason magazine, Newsweek on July 29, 2010. “Why the Intelligence Community Needs GAO Oversight” http://www.cato.org/publications/commentary/why-intelligence-community-needs-gao-oversight?print

The shroud of secrecy that necessarily shields intelligence work has always made robust internal oversight especially vital, even while rendering it exponentially more difficult. As the Post notes, even the handful of Defense Department “Super Users” meant to have a bird’s-eye view of all classified intelligence programs can’t keep track of the sprawl, or as one put it, “I’m not going to live long enough to be briefed on everything.”¶ Harried legislators on oversight committees are in an even more hopeless position. The most sensitive programs — such as the warrantless wiretapping that President George W. Bush authorized the NSA to carry out in the wake of 9/11 — may be disclosed only to a “Gang of Eight” senior legislators, barred from taking notes or seeking expert advice. Even when full committees are briefed, the intelligence agencies are often delinquent with statutorily mandatory reporting, and in any event members of Congress have scant incentive to commit scarce time and staff to cracking down on intelligence waste or inefficiency. You can’t rally public outrage behind the cause of reforming wasteful secret intelligence programs, and if you do manage to fix a problem, you don’t get to issue a self-congratulatory press release. The result is a pattern scholars have dubbed the “fire alarm” model of oversight: a spike of intense scrutiny following a major intelligence scandal, followed by long stretches of relative congressional apathy.¶ As intelligence scholar Jennifer Kibbe notes in a recent paper, fragmented jurisdiction compounds the problem. During the ’90s, Congress failed to review the FBI’s attempts at counterterrorism reform because the intelligence and judiciary committees each considered it the other’s authority. In theory, the intelligence committees have primary oversight authority. But when they don’t manage to pass a formal intelligence authorization bill, as they failed to do from 2006 – 09, budgetary control effectively falls to the appropriations subcommittees, which have only a tiny fraction of the cleared staff needed to do serious scrutiny of intelligence budgets.¶ Meanwhile, those exploding budgets increasingly line the coffers of private firms who provide not only an arsenal of spy gadgets, but some 30 percent of the staff at the intelligence agencies. Assuming that private contracts continue to account for about 70 percent of the intelligence budget, the firms in the secret sector are competing for some $50 billion annually in tax money. (By way of comparison, the global movie industry pulled in a hair under $30 billion in 2009.)¶ In a few cases — such as the scandal that brought down disgraced Rep. Randy “Duke” Cunningham — that cash has found its way directly back to government in the form of bribes. More often it greases the perfectly legal revolving door between senior intelligence positions and executive suites. Lt. Gen. James Clapper, President Obama’s nominee for director of national intelligence (DNI), is a former chairman of the largest intel contractors’ trade association, the Intelligence and National Security Alliance. So was his Bush-era predecessor Mike McConnell, who has since rejoined many of his old governmental colleagues at behemoth contractor Booz Allen Hamilton.¶ Combine thick bankrolls and thick secrecy with thin walls between the public and for-profit sides of the intel world, and you’ve got a perfect incubator for bloat and waste, a sector “so massive,” the Post concluded, “that its effectiveness is impossible to determine.”¶ In the rest of the federal government, responsibility for checking such excesses falls primarily to the watchdog GAO. And it’s a natural fit for the job of holding intelligence to account as well.¶ The GAO has the capacity Congress lacks: as of last year, the office had 199 staffers cleared at the top-secret level, with 96 holding still more rarefied “sensitive compartmented information” clearances. And those cleared staff have a proven record of working to oversee highly classified Defense Department programs without generating leaks. Gen. Clapper, the prospective DNI, has testified that the GAO “held our feet to the fire” at the Pentagon with thorough analysis and constructive criticism.¶ Unlike the inspectors general at the various agencies — which also do vital oversight work — the GAO is directly answerable to Congress, not to the executive branch. And while it’s in a position to take a broad, pangovernmental view, the GAO also hosts analysts with highly specialized economic and management expertise the IG offices lack. Unleashing GAO would be the first step in discovering what the Post couldn’t: whether the billions we’re pouring into building a surveillance and national security state are really making us safer.

#### Counter plan doesn’t solve and links to politics- the president will overreach his power

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With discretion comes distrust. n2 Voters and legislators grant the executive discretion, through action or inaction, and increase executive discretion during emergencies, because they believe that the benefits of doing so outweigh the risks of executive abuse. n3 By the same token, political actors will attempt to constrain the executive, or will simply fail to grant powers they otherwise would have preferred to grant, where they believe that the risks and harms of abuses outweigh any benefits in security or other goods. The fear of executive abuse arises from many sources, but the basic problem is uncertainty about the executive's motivations. The executive may, for example, be a power maximizer, intent on using legal or factual discretion to harm political opponents and cement his political position, or that of his political party; or he may be an empire builder, interested in expanding his turf at the expense of other institutions.

Where the executive is indeed ill motivated in any of these ways, constraining his discretion (more than the voters would otherwise choose) may be sensible. But the executive may not be ill motivated at all. Where the executive is in fact a faithful agent, using his increased discretion to promote the public good according to whatever conception of the public good voters hold, then constraints on executive discretion are all cost and no benefit. Voters, legislators, and judges know that different executive officials have different motivations. Not all presidents are power maximizers or empire builders. n4 Of course, the executive need not be pure of heart; his devotion to the public interest may in turn be based on concern for the judgment of history. But so long as that motivation makes him a faithful agent of the principal(s), he counts as well motivated.¶ The problem, however, is that the public has no simple way to know which type of executive it is dealing with. An ill-motivated executive will just mimic the statements of a well-motivated one, saying [\*867] the right things and offering plausible rationales for policies that outsiders, lacking crucial information, find difficult to evaluate -- policies that turn out not to be in the public interest. The ability of the ill-motivated executive to mimic the public-spirited executive's statements gives rise to the executive's dilemma of credibility: the well-motivated executive has no simple way to identify himself as such. Distrust causes voters (and the legislators they elect) to withhold discretion that they would like to grant and that the well-motivated executive would like to receive. Of course, the ill-motivated executive might also want discretion. The problem is that voters who would want to give discretion (only) to the well-motivated executive may choose not to do so, because they are not sure what type he actually is. The risk that the public and legislators will fail to trust a well-motivated president is just as serious as the risk that they will trust an ill-motivated president, yet legal scholars have felled forests on the second topic while largely neglecting the first. n5¶ Our aim in this Article is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it. We focus on emergencies and national security but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contain resources to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying [\*868] policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the well-motivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.¶ The discussion is structured as follows. Part I lays out examples of the credibility dilemma, both historical and recent. Part II analyzes the credibility dilemma through the lens of principal-agent theory. Part III examines the attempted Madisonian solution to the credibility dilemma and explains why it is a failure, for the most part. Part IV suggests a series of mechanisms for credibly demonstrating the executive's good intentions. These mechanisms include independent commissions within the executive branch; bipartisanship in appointments to the executive branch, or more broadly the creation of domestic coalitions of the willing; the related tactic of counterpartisanship, or choosing policies that run against the preferences of the president's own party; commitments to multilateral action in foreign policy; increasing the transparency of the executive's decisionmaking processes; and a regime of strict liability for executive abuses. Not all of these mechanisms succeed, and some of them succeed under some conditions but fail under others.¶ Credibility is but one good that trades off against other goods, even from the standpoint of the well-motivated executive. The main cost of credibility is that it diminishes the president's control over policymaking. In Part IV, we attempt to identify the conditions under which one or the other mechanism can produce credibility benefits greater than the resulting costs.¶ I. Examples¶ Presidents always have some credibility, at least at the start of their term. People do not vote for candidates whom they do not believe, and so the winning candidate brings to the office some amount of credibility, which he may further enhance over time by keeping his promises or making predictions that are proven correct by events. Having built up capital, some presidents find it useful to engage in deception, and some have gotten away with it, at least in the short term. Prominent examples include FDR's claim during the 1940 election that he was determined to keep the United States out of war; n6 Eisenhower's [\*869] denial that U-2 spy planes overflew the Soviet Union; n7 (probably) Johnson's description of the Gulf of Tonkin incident; n8 Nixon's statements about military action relating to Cambodia; n9 (probably) Reagan's claim that he was unaware of the arms-for-hostages scheme; n10 and Clinton's denial that he had had a sexual relationship with Monica Lewinsky. n11 But deception is potentially a costly strategy, because revelation of the deception damages the president's credibility, making it more difficult for him to achieve his next set of goals.¶ For this reason, we focus on historical cases where the president avoids deception, where in fact he makes a true or roughly true statement about circumstances that the public cannot directly evaluate, but has trouble persuading the public to believe him. In these cases, the president needs to use mechanisms that enhance his credibility or, if he cannot, finds himself unable to act. We offer examples to illustrate the credibility dilemma, to illustrate a range of solutions to the dilemma -- some successful, some otherwise -- and to show that the mechanisms we will propose in Part IV have historical analogues or precedents.¶ A. FDR: The Nazi Threat¶ Franklin Delano Roosevelt understood the threat posed by Nazi Germany to the United States' long-term interests long before the U.S. public did. The public was preoccupied with the Great Depression and had powerful isolationist representatives in Congress. Because of popular sentiment, FDR could not commit U.S. military assistance to Britain and France, even after Germany invaded France and began [\*870] bombing London. n12 Marginal economic and military assistance could take place only through complicated subterfuges and was in any event of minimal value.¶ Even after Japan bombed Pearl Harbor and Nazi Germany declared war on the U.S., FDR had to move cautiously. The public supported war, but sought war primarily with Japan, while FDR correctly believed that Germany posed a greater threat to the United States than Japan did. In FDR's view, Japan could be, and should be, dealt with after the Atlantic alliance against Germany was solidified. Thus, although FDR had popular support on one level, he needed to devise ways to ensure support for his particular war aims and strategies, whose particular justifications would always remain at least partially obscure to the public. One of FDR's tactics for generating support was to invite prominent Republicans into his cabinet. For example, Henry Stimson was given the post of Secretary of War, and Frank Knox was made the Secretary of the Navy. n13 Provided with inside information, they would be able to blow the whistle if U.S. war strategy departed too much from what they believed was the public interest. But, as internationalists, they would also support the war.¶ B. Truman: Scaring Hell out of the Country¶ The Soviet Union had been the United States' ally during World War II, and many people, including FDR, expected or hoped that it would cooperate with the United States after the war as well. That the Soviet Union would have aggressive rather than pacific designs only gradually dawned on U.S. elites. By 1946, skepticism about Soviet motives was widespread in the U.S. government, but the U.S. public still labored under more genial impressions fostered by wartime propaganda. To counter the growing Soviet threat, President Harry S. Truman resolved to expend U.S. treasure to rebuild the economies of France, West Germany, Britain, and other potential allies, and to bind them together in a military defense pact. The former would require a lot of money; the latter would require the stationing of U.S. troops abroad. The U.S. public, however, was traditionally isolationist, and wished to enjoy the victory and the peace. n14 How could Truman persuade [\*871] the public that further sacrifice and foreign entanglements would be necessary to defend U.S. interests against a former ally?¶ Truman apparently could not simply explain to the public that the Soviet threat justified the Marshall Plan and North Atlantic Treaty Organization, the United States' first permanent foreign military alliance. The problem was that the public had no way to evaluate the Soviet threat. The U.S.S.R. had not actually used military force against U.S. troops, as the Japanese had five years earlier at Pearl Harbor. The Soviet Union was instead supporting communist insurgencies in Greece and Turkey, interfering in politics in Italy, violating its promise to respect democratic processes in Poland, engaging in espionage, and so forth. Experienced and perceptive observers saw a threat, but, generally speaking, the public was in no position to do so.¶ To enhance the credibility of his claims about the Soviet threat, Truman did two things. First, he recast the threat as an ideological challenge. Truman gave the threat an ideological dimension, deliberately "scaring hell out of the country." n15 Second, he made an alliance with a powerful Republican senator, Arthur Vandenberg, who could assure Truman that the Republicans would not object to his policies as long as he consulted them and allowed them some influence. As a former isolationist, Vandenberg's endorsement of Truman's policy of engagement must have enhanced the credibility of Truman's claims about the Soviet threat. n16¶ Both of these strategies succeeded, but neither was costless. Truman's characterization of the Soviet threat as an ideological challenge may have led to the McCarthy era and suppressed public debate about foreign policy. Truman's alliance with the Republicans meant, of course, that he would have less freedom of action. n17 [\*872] ¶ C. Bush I versus Bush II: The Iraqi Threat¶ George H.W. Bush and George W. Bush both went to war with Iraq, but they faced different threats and chose different responses. George H.W. Bush sought to drive Iraqi military forces out of Kuwait. His problem was persuading the U.S. public that a U.S. military response was justified. In retrospect, it might seem that he was clearly right, but at the time most experts believed that that a great number of U.S. troops would be killed. n18 This was the expected cost of a military response. On the benefit side, Bush could appeal to the sanctity of sovereign borders, but public sympathy for the rich Kuwaitis was limited. The United States' real concern was that Iraq would, with Kuwait's oil fields, become wealthy and powerful enough to expand its control over the region, threaten Saudi Arabia, dominate the Persian Gulf's oil reserves, and pose a long-term threat to the Western economies and the United States' influence in the Middle East. But all of these concerns are rather abstract, and it was never obvious that the public would accept this case. Indeed, the congressional authorization to use military force was far from unanimous in the House of Representatives. n19¶ The credibility of Bush's claims, however, was greatly aided by international support. The public support of nations with divergent interests showed that Bush's claim about the internationally destabilizing effects of Saddam Hussein's invasion was real and not imagined. Thus any claim that a U.S. military invasion was solely in Bush's partisan political interests, or in the interests mainly of oil companies, was seriously weakened. Formal United Nations approval and the military assistance of foreign states -- which was of mainly political, not military significance -- further solidified Bush's credibility. n20¶ Surface similarities aside, George W. Bush faced a different kind of threat. He feared that Saddam Hussein had weapons of mass destruction (WMDs), which he would give or sell to terrorist groups like al Qaeda. It was more difficult for George W. Bush to prove that Saddam had WMDs than for his father to prove that Saddam was a threat to the region, because any WMDs were hidden on Saddam's territory [\*873] while the invasion of Kuwait could be observed by all. George W. Bush followed the same strategy that his father did, albeit somewhat less enthusiastically: to enlist international support in order to bolster the credibility of his claim that Saddam continued to pose a major threat to U.S. and Western interests. But George W. Bush failed to persuade foreign countries that Saddam posed a great enough threat to justify a military invasion (although they largely agreed that he either had or probably had WMDs), and he did not obtain significant international support. n21 Ironically, George W. Bush, unlike his father, had strong congressional support, in part because opposition to the first war turned out to be a political liability, and the costs of the first war (unlike the second war) turned out to be minimal.¶ D. Clinton: Wag the Dog¶ Long before the attacks of September 11, 2001, the U.S. government understood that al Qaeda posed a threat to U.S. interests. The CIA had established a bin Laden office in 1996, and the Clinton administration was trying to develop an effective counterterrorism strategy. n22 In 1998, al Qaeda blew up U.S. embassies in Kenya and Tanzania, whereupon Clinton ordered cruise missile strikes on targets in Afghanistan and Sudan. Just three days earlier, however, Clinton had announced on national television that he had had an affair with Monica Lewinsky. Opponents charged that he ordered the strikes in order to distract the public from his domestic problems. n23 This came to be known as the Wag the Dog strategy after a movie that featured a similar subterfuge. n24 [\*874] ¶ Clinton's credibility problem was more acute than that of earlier presidents. FDR, Truman, and George H.W. Bush (as well as, later, George W. Bush) might embark on foreign adventures in order to enhance their prestige or to pay off interest groups or to distract the public from domestic problems. George W. Bush, for example, has been repeatedly accused of manipulating terrorism warnings in order to improve poll results or electoral outcomes. n25 But only in Clinton's case was it necessary for him to make an important and visible decision about foreign policy in the midst of a personal scandal in which he admitted that he engaged in deceit, with the result that his ability to conduct an effective terrorism defense was hampered by doubts about his credibility. n26 A more aggressive response to al Qaeda would have to wait until after September 11, 2001.¶ II. Theory¶ A. The Problem¶ The examples we discussed have a common structure: a nation or group, like Nazi Germany, the Soviet Union, Iraq, or al Qaeda, poses a threat to U.S. interests. The threat is widely understood at a general level but the public does not understand important details: why the threat exists, its magnitude, what programs will best address it. The president believes that a particular program -- NSA surveillance, unlimited detention, military preparation -- is necessary and desirable for countering the threat, and let us assume that he is correct. At the same time, the program could be misused in various ways. It could be used to enhance the power of the president at the expense of legitimate political opponents; to pay off the president's supporters at the expense of the general public; or to spark an emotional but short-lived surge of patriotism that benefits the president during an important election but does not enhance security. The president can announce the [\*875] program and justify it in general terms, but he cannot design the program in such a way that its dangers to legitimate political opposition can be eliminated. n27 As a result, his claim that the program will be used only for national security, and not to enhance his power at the expense of political opponents, or to benefit allies, may not be believed.¶ Consider, for example, the policy of detaining suspected members of al Qaeda without charging them and without providing them with a trial. The public understands that al Qaeda poses a threat to national security but lacks the information necessary to evaluate the detention policy. The public does not know the magnitude of the continuing threat from al Qaeda: it might be the case that the group has focused its attention on foreign targets, that it no longer has the capacity to launch attacks on U.S. soil, that greater international cooperation and intelligence sharing has significantly reduced the threat, and so forth. The public also does not know whether the detainees are important members of al Qaeda, foot soldiers, or unconnected to al Qaeda; whether the dangerous detainees could be adequately incapacitated or deterred through regular criminal processes; whether the Bush administration obtains valuable intelligence from the detainees, as it claims, or not; whether the detainees are treated well or harshly; and numerous other relevant factors. Some of the relevant variables are public, but most are not; those that are public are nonetheless extremely difficult to evaluate. Consider the ambiguity over whether the suicides at Guantanamo Bay in June 2006 were driven by despair and harsh treatment, or were the result of a calculated effort by martyr-seeking Jihadists to score a propaganda coup. n28 As a general matter, the public does not even know whether the absence of major terrorist attacks on U.S. soil since September 11, 2001 resulted from the Bush administration's detention policy, at least partly resulted from this policy, occurred for reasons entirely independent of this policy such as (say) the military attack on Afghanistan, or occurred despite the detention policy, which, by alienating potential allies, perversely made a further attack more likely than it would otherwise have been.¶ Described in this manner, the president's credibility problem is the result of an agency relationship, where the president is the agent and the public is the principal. In agency models, the agent has the power to engage in an action that benefits or harms a principal. In a [\*876] typical version of these models, the principal first hires the agent and instructs the agent to engage in high effort rather than shirk. The agent then chooses whether to engage in high effort or shirk. High effort by the agent increases the probability that the principal will receive a high payoff, but some randomness is involved, so that the link between the agent's effort and the principal's payoff is stochastic rather than certain. If the agent's behavior can be observed and proven before a court, then the simple solution is for the two parties to enter a contract requiring the agent to engage in high effort. If the agent's behavior cannot be observed, then a contract requiring high effort is unenforceable, and instead the principal and agent might enter a contract that makes the agent's compensation a function of the principal's payoff. This gives the agent an incentive to use high effort, though depending on various conditions, this incentive might be weak. n29¶ Less important than the details of the agency model, and its various solutions, is the way that it clarifies the basic problem. The president is the agent and the public is the principal (sometimes we will think of the legislature as the principal, bracketing questions of agency slack between voters and legislators). The public cares about national security but also cares about civil liberties and the well-being of potential targets of the war on terror; its optimal policy trades off these factors. However, the public cannot directly choose the policy; instead, it delegates that power to the government and, in particular, the president. The president knows the range of options available, their likely effects, their expected costs and benefits -- thanks to the resources and expertise of the executive branch -- and so, if he is well motivated, he will choose the best measures available.¶ Thus a well-motivated executive, in our sense, is an executive who chooses the policies that voters would choose if they knew what the executive knows. n30 This definition does not require that the president's deeper motives be pure. For our purposes, a well-motivated president may be concerned with his historical reputation in the long run, as many presidents are. Because presidents know that in the long run most or all of their currently private information will be revealed, n31 a [\*877] concern with the judgment of history pushes presidents to make the decisions that future generations, knowing what the president knows now, will approve. To be sure, the concern with historical reputation is not perfectly congruent with doing what the current generation would approve of (with full information), because different generations have different values, as in the case of civil rights. The convergence is substantial, however, compared to far more harmful motivations a president might have, such as short-term empire-building or partisan advantage. Presidents with a concern for their long-run reputation may not be disinterested leaders, but they approach the ideal of faithful agency more closely than do presidents with no such concern.¶ We also assume that the voters' ultimate preferences are fixed, so we put aside the possibility of presidential leadership that changes bedrock public values. However, voters' derived preferences may change as their information changes, and this further blurs the significance of changing public values over time. On this view, there is still scope for leadership, in the sense that a well-motivated president might choose a policy inconsistent with voters' current ill-informed preferences, but consistent with the new preferences voters will form as their information changes, perhaps as a result of the policy itself. FDR's behavior just before World War II is the model for presidential leadership in this sense. n32¶ As this discussion suggests, the well-motivated executive may or may not keep campaign promises, or adopt popular policies. All depends on circumstances -- on what the public would approve, if it knew what the president knows. A public that would condemn the president's policy P might, if it knew more, approve of P. The well-motivated president will want to adopt P in such circumstances, and will then face the problem of credibly signaling to the public that he favors the policy for good reasons that he cannot directly convey. Furthermore, we assume that the well-motivated executive will collect an optimal amount of information -- up to the point where the marginal benefits of further information gathering equal the marginal costs. n33 This does not mean [\*878] that the well-motivated executive always gets the facts right; he may turn out to be wrong. But it does mean that greater accuracy would not have been cost justified.¶ Against this benchmark of faithful agency, the problem is that a given president's motivations may or may not be faithful, and the public knows this. The public fears that, for various reasons, the president might choose policies that diverge from the public's optimal policies. These include:¶ 1. The president cares more about national security (or more about civil liberties, but we will, for simplicity, assume the former) than the public does. His "preferences" are different from those of the public.¶ 2. The president cares very little about national security and civil liberties; he mainly cares about maximizing his political power and, more broadly, political success -- success for himself, his party, or his chosen successor. With a view to political power and success, the president might maximize the probability of electoral success by favoring particular interest groups, voting blocs, or institutions at the expense of the public, or by adopting policies that are popular in the short term, as far as the next election cycle, but that are harmful in the long term, along with rhetoric that confuses and misleads.¶ The public knows that the president might have these or other harmful motivations, so when the president claims, for example, that a detention policy is essential to the war on terror but at the same time is not excessively harsh given its benefits, the public simply does not know whether to believe him.¶ Crucially, the risk that the public will fail to trust a well-motivated president is just as serious as the risk that it will trust an ill-motivated one. Imagine that a well-motivated president chooses the optimal policies. No terrorist attack occurs before the next election, but the public does not know whether this is because the president chose the optimal policies, the president chose bad policies and was merely lucky (as the terrorists for internal reasons chose to focus on foreign targets), or the president chose effective but excessively harsh policies. In the election, the public therefore has no particular reason to vote for this president and could easily vote him out of office and replace him with a worse president. A president who cares about electoral [\*879] success might therefore not choose the optimal policies, and even a well-motivated president might be reluctant to choose the optimal policies because of the risk that the public will misinterpret them and replace him with an ill-motivated president. Presidents need public support even when they do not face reelection; they need the public to prod Congress to provide the president with funds for his programs and statutory authorization when necessary. A well-motivated president will abandon optimal policies if he cannot persuade the public that they are warranted.¶ As we noted earlier, legal scholars rarely note the problem of executive credibility, preferring to dwell on the problem of aggrandizement by ill-motivated presidents. Ironically, this assumption that presidents seek to maximize power has obscured one of the greatest constraints on aggrandizement, namely, the president's own interest in maintaining his credibility. Neither a well-motivated nor an ill-motivated president can accomplish his goals if the public does not trust him. n34 This concern with reputation may put a far greater check on the president's actions than do the reactions of the other branches of the government.¶ B. Solutions¶ The literature on agency models and optimal contracting provides clues for solving the problem of executive credibility. This literature gives two basic pieces of advice. n35 The first piece of advice is to align preferences. An employer will do better if her employees obtain utility from doing whatever actions benefit the employer. Suppose, for example, an employer seeks to hire someone to build furniture in a factory. The pay is good enough to attract job candidates who do not enjoy building furniture, but clearly the employer does better by hiring people who like working with their hands, and take pleasure in constructing a high-quality product, than by hiring people who do not like working with their hands. We say that the first type of person has a preference for building high-quality furniture; this person is less likely to shirk than the other type of person.¶ In order to align preferences, employers can use various types of screening mechanisms or selection mechanisms that separate the good [\*880] types and the bad types. n36 An old idea is that job candidates who completed a training program -- here, in carpentry -- are more likely good types than job candidates who did not complete such a program. The reason is not that the training program improves skills, though it might, but that a person who enjoys carpentry is more likely to enter and complete such a program than a person who does not -- the program, in terms of time and effort, is less burdensome for the former type of person. The employer could use other mechanisms as well, of course. She could ask for evidence that the job candidate pursues woodworking as a hobby in his free time, or, simply, that he has held other jobs in similar factories, or jobs that involve carpentry or furniture construction. Another important screening mechanism is to compensate employees partly through in-kind components or earmarked funds that are worth more to good types than to bad types. In university settings, academic compensation is partly composed of research budgets that cannot be spent on personal consumption and that are worth more to good types (researchers) than to bad types (shirkers). n37¶ The second piece of advice is to reward and sanction. This is not as simple as giving the employee a bonus if she constructs good furniture and firing her if she does not; recall that we assume that the employer does not directly observe the quality of the agent's action. Consider the following version of our example. The employees both design and construct furniture; "high-quality" furniture is both made well and pleasing to the public, so that it sells well. The employer cannot tell by looking at a piece of furniture whether it is high quality, because she does not know the tastes of the public. An employee who uses a high level of effort is more likely to produce furniture that sells well, but an employee can in good faith misjudge public taste and produce furniture that sells poorly. Similarly, an employee who uses a low level of effort is less likely to produce furniture that sells well but nonetheless may succeed at times. Since the employer cannot observe the quality of the furniture, she cannot make the wage a function of its quality; if she pays a flat wage, then the employee does not have an incentive to engage in a high level of effort, because that involves more personal cost without producing any reward.¶ The main solution is to make the employee's compensation a function, in part, of the quantity of the sales of the goods that the employee [\*881] produces. The quantity of sales, unlike the quality of the furniture, is observable. If the pay is properly determined, then the employee will engage in a high level of effort because the expected gains from high sales exceed the cost of high effort. How closely pay should be correlated with sales depends on how risk averse the employee is, and it may be necessary, for ordinary people who are generally risk averse, to pay them at least a little even if sales are low, and somewhat more if sales are high.¶ An enormous literature develops and qualifies these results, and we will refer to relevant parts of it later as necessary rather than try to summarize it here. n38 For now, we want to briefly point out the relevance of these solutions to our problem of executive credibility.¶ The preference-alignment solution has clear applicability to the problem of executive credibility. To be sure, elections and other democratic institutions help ensure that the president's preferences are not too distant from those of the public, but they are clearly not sufficient to solve the executive credibility problem. Elections will never create perfect preference alignment, for well-known reasons, and in any event the well-motivated executive will do what the public would want were it fully informed, not what maximizes the chances of electoral success in the short run. Furthermore, we do not consider credibility-generating mechanisms that would require new constitutional or statutory provisions; of course, the president has little or no power to redesign electoral rules in order to enhance his credibility. We will instead focus, in Part IV, on how the president might use the existing electoral system to enhance his credibility in indirect ways -- by appointing subordinates, advisors, and commission members, and by supporting certain types of candidacies for electoral office.¶ The reward-and-sanction solution also is applicable to the problem of executive credibility, but we think it is of less importance and we will not address it in any detail. The problem that most concerns us -- threats to national security -- typically does not produce a clear outcome while the president is still in office. As noted above, Bush's war-on-terror policies might be optimal, insufficient, or excessive; we will not know for many years. And the public cannot enter a contract with the president that provides that he will receive a bonus if national security is enhanced and will be sanctioned if it is not enhanced. Consequently, Bush cannot enter a contract with the public that rewards him if his policies are good and punishes him if they are bad. [\*882] ¶ However, some signaling mechanisms have a reward-or-sanction component. A good job applicant can distinguish herself from a bad job applicant by agreeing to a compensation scheme that good types value and bad types disvalue. For example, if a good type of employee discounts future payoffs less than bad types, then good types will accept deferred compensation (such as pension contributions) that bad types reject. n39 Similarly, a well-motivated president can distinguish himself from an ill-motivated president by binding himself to a policy position that an ill-motivated president would reject -- for example, deficit reduction programs or Social Security reform that would mainly benefit future generations, long after the president leaves office. However, a president, unlike an ordinary employee, cannot bind himself by a judicially enforceable contract; therefore, this mechanism can work only if the president can engage in self-binding through informal means, as we will discuss below. n40¶ Note that either a well-motivated actor or an ill-motivated actor might use strategic devices to enhance her credibility. A bad actor might, for example, take actions to enhance the credibility of his threats. In a standard illustration, the "chicken" game occurs when two drivers race toward each other and the loser is the one who swerves to avoid death. In that game, each driver is threatening to drive straight, and the winner will be the one who can make his threat credible, because the other driver will then know that the only choice is to swerve or die. Credibility is a valuable adjunct to many different motivations, not just to socially beneficial ones.¶ But this is a different type of credibility problem than the one we are interested in. In the class of problems we address, the problem that faces the well-motivated actor is that others cannot distinguish or sort him at a glance from ill-motivated actors. "Bad types" can mimic "good types" through low-cost imitation and by saying all the right things. The good type needs some device whereby he can credibly signal that he is a good type. The only effective device, in general, is for the good type to undertake an action that imposes greater costs on bad types than on good types. If third parties understand the cost structure of the action, then this separates the two types, because the bad type's strategy of costlessly imitating the good type no longer works. In employment screening, for example, both the lazy worker and the hard worker will claim to be a hard worker. The employer might prefer candidates with good references, or an advanced degree, [\*883] on the theory that obtaining those things will be easier for the good type than the bad type.¶ Let us provide a little more structure to our analysis before describing our preferred mechanisms. Suppose that the president must choose a policy that will affect national security and civil liberties; this might include asking Congress to authorize him to engage in conduct like wiretapping or the use of military force. He makes this choice at the start of his first term, and the actual effect of his choice -- on national security and civil liberties -- will not be revealed to the public until after the next election. Terrorist attacks during the first term do not necessarily prove that he chose the wrong policies; nor does the absence of terrorist attacks during the first term prove that he chose the right policies. Only later will it become clear whether the president chose the optimal policies, perhaps many decades later. Thus, the public must vote for or against the president on the basis of the policy choice itself, not on the basis of its effect on their well-being. For expository convenience, we will assume that the president actually does make the optimal policy choice and that his problem is one of convincing the public that he has done so. Presidents who, for whatever reason, knowingly choose policies that the public would reject (if fully informed) obviously do not want to convince the public that this is what they are doing.¶ Our focus, then, is how the president who chooses the optimal policy, given the information available to him and the relevant institutional constraints, might use some additional mechanism to enhance the credibility of his claim that he chose the best policy. In the next Part, we will address why our current Madisonian system does not already solve the problem of executive credibility. In Part IV, we will analyze some mechanisms by which presidents can bootstrap themselves into credibility.¶ III. Madisonian Monitoring¶ In the standard separation of powers theory attributed to Madison, the executive's credibility dilemma is ameliorated by the separation of powers and institutional competition, which produce monitoring or oversight of executive discretion. Although the Madisonian system is not usually justified as a means of enhancing the executive's credibility, that is a byproduct of the system: if checks and balances discourage ill-motivated persons from running for office, or force them to adopt public-spirited policies once in office, then the executive's claims about his policies will be credible. Congressional and judicial oversight of executive action, on this account, will ensure that the executive exercises discretion only as directed by voter-principals, [\*884] acting through legislators who are simultaneously agents (of the voters) and principals (of the executive).¶ This account is no longer adequate, if it ever was. Legislators and judges are, for the most part, unable to effectively oversee or monitor the executive, especially in the domains of foreign policy and national security. As a result, they are forced to make the difficult choice of granting discretion that an ill-motivated executive would abuse, or withholding discretion that a well-motivated executive would use for good.¶ We do not suggest that the Madisonian system has entirely failed, only that it has partly failed, and that to the extent it has failed the executive's credibility dilemma becomes more acute. We will examine some of the principal institutional problems, beginning with legislative oversight and then turning to the courts.¶ A. Congress¶ In the Madisonian vision, legislators are simultaneously principals of the president, who is supposed to execute the statutes that legislators enact, and are also institutional competitors of the president, who has freestanding constitutional powers beyond the execution of statutes. Voters elect legislators, who either transmit voters' exogenously determined policy preferences to the executive through statutes or (in a deliberative conception of Madisonianism) refine public preferences through reasoned discussion and then instruct the executive accordingly. n41 We are agnostic on the question of whether the preference-based or deliberative version of the Madisonian vision is more persuasive, or exegetically more faithful to the Madison of the Federalist Papers. In either case, what matters here is that the combination of principal-agent relationships with institutional rivalry is supposed to produce valuable byproducts for the polity as a whole. Legislators have an interest in monitoring the president, not only to ensure that he faithfully executes the statutes they enact, but also to ensure that executive power does not swell beyond its constitutionally prescribed bounds and destroy the separation of legislative and executive powers.¶ Whether or not this picture was ever realistic, it is no longer so today. Many institutional factors hamper effective legislative monitoring of executive discretion. Consider the following problems. [\*885] ¶ 1. Information asymmetries.¶ Monitoring the executive requires expertise in the area being monitored. In many cases, Congress lacks the information necessary to monitor discretionary policy choices by the executive. Although the committee system has the effect, among others, of generating legislative information and expertise, n42 and although Congress has a large internal staff, there are domains in which no amount of legislative expertise suffices for effective oversight. Prime among these are areas of foreign policy and national security. Here legislative expertise is beside the point, because the legislature lacks the raw information that experts need to make assessments.¶ The problem would disappear if legislators could cheaply acquire information from the president, but they cannot. One obstacle is a suite of legal doctrines protecting executive secrecy and creating deliberative privileges n43 -- doctrines which may or may not be justified from some higher-order systemic point of view as means for producing optimal deliberation within the executive branch. Although such privileges are waivable, the executive often fears to set a bad institutional precedent. Another obstacle is the standard executive claim that Congress leaks like a sieve, so that sharing secret information with legislators will result in public disclosure. The credibility dilemma becomes most acute when, as in the recent controversy over surveillance by the National Security Agency, the executive claims that the very scope or rationale of a program cannot be discussed with Congress, because to do so would vitiate the very secrecy that makes the program possible and beneficial. In any particular case the claim might be right or wrong; legislators have no real way to judge, and they know that the claim might be made either by a well-motivated executive or an ill-motivated executive, albeit for very different reasons.¶ 2. Collective action problems.¶ Executive officials worry that, with many legislators on select intelligence committees, someone is bound to leak and it will be difficult to pinpoint the source. Aware of the relative safety that the numbers give them, leakers are all the more bold. This is an example of a larger problem, arising from the fact that there are many more legislators than top-level executive officials. Compared to the executive branch, [\*886] Congress finds it more costly to coordinate and to undertake collective action (such as the detection and punishment of leakers). To be sure, the executive too is a "they," not an "it." Much of what presidents do is to arbitrate internal conflicts among executive departments and to try to aggregate competing views into coherent policy over time. As a comparative matter, however, the contrast is striking: the executive can act with much greater unity, force, and dispatch than can Congress, which is chronically hampered by the need for debate and consensus among large numbers. This comparative advantage is a principal reason why Congress enacts broad delegating statutes in the first place, especially in domains touching on foreign policy and national security. In these domains, and elsewhere, the very conditions that make delegation attractive also hamper congressional monitoring of executive discretion under the delegation.¶ There may or may not be offsetting advantages to Congress's large numbers; perhaps the very size and heterogeneity of Congress make it a superior deliberator, whereas the executive branch is prone to suffer from various forms of groupthink. n44 But there are clear disadvantages to large numbers, insofar as monitoring executive discretion is at issue. From the standpoint of individual legislators, monitoring is a collective good. If rational and self-interested, each legislator will attempt to free-ride on the production of this good, and monitoring will be inefficiently underproduced. n45 More broadly, the institutional prerogatives of Congress are also a collective good. n46 Individual legislators may or may not be interested in protecting the institution of Congress or the separation of legislative from executive power; much depends on legislators' time horizons or discount rate, the expected longevity of a legislative career, and so forth. But it is clear that protection of legislative prerogatives will be much less in an institution composed of hundreds of legislators coming and going than if Congress were a single person. [\*887] ¶ 3. "Separation of parties, not powers." n47¶ Congress is, among other things, a partisan institution. Political scientists debate whether it is principally a partisan institution, or even exclusively so. n48 But Madison arguably did not envision partisanship in anything like its modern sense. n49 Partisanship undermines the separation of powers during periods of unified government. n50 Where the same party controls both the executive branch and Congress, real monitoring of executive discretion rarely occurs, at any rate far less than in an ideal Madisonian system. Partisanship may enhance monitoring during periods of divided government, as one house of Congress, say, investigates a president of the other party. However, monitoring is arguably most necessary during periods of unified government, because Congress is most likely to enact broad delegations when the President holds similar views; n51 and in such periods monitoring is least likely to occur. n52 The Congress of one period may partially compensate by creating institutions to ensure bipartisan oversight in future periods -- consider the statute that gives a partisan minority of certain congressional committees power to subpoena documents from the executive, albeit only nonprivileged documents n53 -- but these are palliatives. Under unified government, congressional leaders of the [\*888] same party as the president have tremendous power to frustrate effective oversight by the minority party.¶ 4. The limits of congressional organization.¶ Congress as a collective body has attempted, in part, to overcome these problems through internal institutional arrangements. Committees and subcommittees specialize in a portion of the policy space, such as the armed forces or homeland security, thereby relieving members of the costs of acquiring and processing information (at least if the committee itself maintains a reputation for credibility). n54 Intelligence committees hold closed sessions and police their members to deter leaks (although the sanctions that members of Congress can apply to one another are not as strong as the sanctions a president can apply to a leaker in the executive branch). Large staffs, both for committees and members, add expertise and monitoring capacity. And interest groups can sometimes be counted upon to sound an alarm when the executive harms their interests. n55¶ Overall, however, these arrangements are not fully adequate, especially in domains of foreign policy and national security, where the scale of executive operations is orders of magnitude larger than the scale of congressional operations. Congress's whole staff, which must (with the help of interest groups) monitor all issues, runs to some 30,000 persons. n56 As of 2005, the executive branch had some 2.6 million civilian employees, n57 in addition to almost 1.4 million in the active armed forces. n58 The sheer mismatch between the scale of executive operations and the congressional capacity for oversight, even aided by interest groups or by leakers within the bureaucracy, is daunting. Probably Congress is already at or near the limits of its monitoring capacity at its current size and budget. [\*889] ¶ 5. Congressional motivation and credibility.¶ Like the executive, Congress has a credibility problem. Members of Congress may be well motivated or ill motivated; the public does not know. Thus, when Congress passes a resolution criticizing presidential action or refuses to delegate power that he seeks, observers do not know whether Congress or the president is right. Ill-motivated members of Congress will constrain public-spirited presidents; thus the Madisonian cure for the problem of executive credibility could be worse than the disease.¶ Even if members of Congress are generally well motivated, Congress has a problem of institutional credibility that the president lacks. Although a voter might trust the member of Congress for whom she voted because she knows about his efforts on his district's behalf, she will usually know nothing about other members of Congress, so when her representative is outvoted, she might well believe that the other members are ill motivated. And, with respect to her own representative, he will often lack credibility compared to the president because he has much less information. Further, the reputation of congressional leaders is only very loosely tied to the reputation of the institution, while there is a closer tie between the president's reputation and the presidency. As a result, Congress is likely to act less consistently than the president, further reducing its relative credibility. Congressional lack of credibility undermines its ability to constrain the president: Congress can monitor the president and tell the public that the president has acted properly or improperly, but if the public does not believe Congress, then Congress's power to check the president is limited.¶ We neither make, nor need to make, any general empirical claim that Congress has no control over executive discretion. That is surely not the case; there is a large debate, or set of related debates, about the extent of congressional dominance. n59 We have reviewed the institutional problems piecemeal; perhaps some of them are mutually offsetting, although we do not see any concrete examples. Our assertion is just that there is at least a real gap, and during emergencies and wars [\*890] an even larger gap, between the extent of executive discretion and legislative capacity for monitoring. It is hard to say how great that gap is, but we know of no one who thinks it is nonexistent. Within that gap, the dilemma of executive credibility arises. To the extent that legislators cannot monitor the executive's exercise of discretion, they must either withhold discretion from an executive who might be well motivated, or grant discretion to an executive who might be ill motivated.¶ B. Courts¶ Similar problems afflict judicial oversight of the executive.¶ 1. Information asymmetries.¶ The gap between the executive and the judiciary, in information and expertise, is even wider than between the executive and Congress. Whereas many legislators have a narrowly defined field of policy expertise, particularly in the House, federal judges are mostly generalists, barring a few specialized courts. Furthermore, the partial insulation from current politics that federal judges enjoy, by virtue of life tenure and salary protection, brings with it a kind of informational impoverishment. n60 Legislators, who must please other people at least some of the time, interact with the outside world far more systematically than generalist judges, whose main source of information is the briefs and arguments of litigants. The credibility dilemma thus appears quite acutely in judicial proceedings. When the executive says that resolving a plaintiff's claim would require disclosure of "state secrets," n61 with dangerous consequences for national security, judges know that either an ill-motivated or a well-motivated executive might be making the claim and that they have no easy means to assess whether the claim is credible.¶ 2. Collective action problems and decentralization.¶ If congressional monitoring of executive discretion is hampered by collective action problems, judicial monitoring is hampered by a [\*891] similar condition, the decentralized character of the federal judiciary. The judiciary really is a "they," not an "it," and is decentralized along mainly geographic lines. Different judges on different courts will have different prior estimates of the executive's credibility, and hence different views of the costs and benefits of oversight and of the appropriate level of monitoring. The Supreme Court is incapable of fully resolving these structural conflicts. Because the Court presides over a large institutional system and lacks the capacity to review more than a fraction of cases submitted to it, its role is restricted by necessity to the declaration of general principles of law and episodic, ad hoc intervention in the system. n62¶ 3. The legitimacy deficit.¶ In the federal system, appointed judges are not overtly partisan, though they are sometimes covertly so. n63 The very condition that enables this relative lack of overt politicization -- that federal judges are, at least in one familiar conception, legal technocrats appointed for their expertise rather than elected on a partisan basis -- also creates a serious legitimacy deficit for the judiciary, understanding legitimacy in a strictly sociological sense. n64 Aroused publics concerned about issues such as national security sometimes have little tolerance for robust judicial oversight of executive discretion, which can always be condemned as "activism" by "unelected judges." This charge sometimes succeeds and sometimes fails, but for the judges it is always a concern that acts as a drag on attempts to monitor executive behavior.¶ 4. Judicial credibility.¶ Judges rely on executive officials to carry out their orders and Congress to fund them, and thus ultimately rely on the public to impose sanctions on the political branches when the political branches do not obey a court order. But the public will support the judiciary [\*892] only if the public believes that the judiciary is well motivated rather than ill motivated. Such is often the case, but the credibility of judges is not infinite. n65 Lingering public suspicion of elite decisionmaking places a cap on judicial credibility, and indeed the evidence suggests that judges are often motivated by ideology, at least when it comes to opinion assignment. n66 Thus, in extreme cases, as between a presidential determination that an emergency requires a course of action and a judge's claim to the contrary, the public might well believe the president. n67¶ Here too, we do not claim that judicial oversight is a total failure. Doctrinal lawyers focus, sometimes to excess, on a handful of great cases in which judges have checked or constrained discretionary executive action, even in domains involving foreign policy or national security. Cases such as Youngstown, n68 the Pentagon Papers case, n69 and recently Hamdan n70 head this list. Undoubtedly, however, there is a [\*893] large gap between executive discretion and judicial capacities, or even between executive discretion and the sum of congressional and judicial capacities working in tandem. In times of emergency, especially, both Congress and the judiciary defer to the executive. n71 Legislators and judges understand that the executive's comparative institutional advantages in secrecy, force, and unitariness are all the more useful during emergencies, so that it is worthwhile transferring more discretion to the executive even if it results in an increased risk of executive abuse. The result is that cases such as the ones we have listed are the exception, not the rule, at least during the heat of the emergency.¶ C. The Madisonian System and the Well-Motivated Executive¶ The Madisonian system of oversight has not totally failed. Sometimes legislators overcome the temptation to free ride; sometimes they invest in protecting the separation of powers or legislative prerogatives. Sometimes judges review exercises of executive discretion, even during emergencies. But often enough, legislators and judges have no real alternative to letting executive officials exercise discretion unchecked. The Madisonian system is a partial failure; compensating mechanisms must be adopted to fill the area of slack, the institutional gap between executive discretion and the oversight capacities of other institutions. Again, the magnitude of this gap is unclear, but plausibly it is quite large; we will assume that it is.¶ It is often assumed that this partial failure of the Madisonian system unshackles and therefore benefits ill-motivated executives. This is grievously incomplete. The failure of the Madisonian system harms the well-motivated executive as much as it benefits the ill-motivated one. Where Madisonian oversight fails, the well-motivated executive is a victim of his own power. Voters, legislators, and judges will be wary of granting further discretion to an executive whose motivations are uncertain and possibly nefarious. The partial failure of Madisonian oversight thus threatens a form of inefficiency, a kind of contracting failure that makes potentially everyone, including the voters, worse off.¶ Our central question, then, is what the well-motivated executive can do to solve or at least ameliorate the problem. The solution is for the executive to complement his (well-motivated) first-order policy goals with second-order mechanisms for demonstrating credibility to other actors. We thus do not address the different question of what voters, legislators, judges, and other actors should do about an execu [\*894] tive who is ill motivated and known to be so. That project involves shoring up or replacing the Madisonian system to block executive dictatorship. Our project is the converse of this, and involves finding new mechanisms to help the well-motivated executive credibly distinguish himself as such.¶ IV. Executive Signaling: Law and Mechanisms¶ We suggest that the executive's credibility problem can be solved by second-order mechanisms of executive signaling. In the general case, well-motivated executives send credible signals by taking actions that are more costly for ill-motivated actors than for well-motivated ones, thus distinguishing themselves from their ill-motivated mimics. Among the specific mechanisms we discuss, an important subset involves executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors. Commitments themselves have value as signals of benign motivations.¶ This departs from the usual approach in legal scholarship. Legal theory has often discussed self-binding by "government" or government officials. In constitutional theory, it is often suggested that constitutions represent an attempt by "the people" to bind "themselves" against their own future decisionmaking pathologies, or relatedly, that constitutional prohibitions represent mechanisms by which governments commit themselves not to expropriate investments or to exploit their populations. n72 Whether or not this picture is coherent, n73 it is not the question we examine here, although some of the relevant considerations are similar. n74 We are not concerned with binding the president so that he cannot abuse his powers, but with how he might bind himself or take other actions that enhance his credibility, so that he can generate support from the public and other members of the government. [\*895] ¶ Furthermore, our question is subconstitutional: it is whether a well-motivated executive, acting within an established set of constitutional and statutory rules, can use signaling mechanisms to generate public trust. Accordingly, we proceed by assuming that no constitutional amendments or new statutes will be enacted. Within these constraints, what can a well-motivated executive do to bootstrap himself to credibility? The problem for the well-motivated executive is to credibly signal his benign motivations. In general, the solution is to engage in actions that are less costly for good types than for bad types.¶ We begin with some relevant law, then examine a set of possible mechanisms -- emphasizing both the conditions under which they might succeed and the conditions under which they might not -- and conclude by examining the costs of credibility.¶ A. A Preliminary Note on Law and Self-Binding¶ Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding. n75 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is yes, at least to the same extent that a legislature can. Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo. n76 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A [\*896] president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies.¶ More schematically, we may speak of formal and informal means of self-binding:¶ 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so.¶ 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding. n77 However, there may be large political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so, too, the executive's issuance of a self-binding order can trigger reputational costs. In such cases, repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it.¶ In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president's own future choices in ways that impose greater costs on ill-motivated [\*897] presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.¶ B. Mechanisms¶ What signaling mechanisms might a well-motivated executive adopt to credibly assure voters, legislators, and judges that his policies rest on judgments about the public interest, rather than on power maximization, partisanship, or other nefarious motives?¶ 1. Intrabranch separation of powers.¶ In an interesting treatment of related problems, Neal Katyal suggests that the failure of the Madisonian system counsels "internal separation of powers" within the executive branch. n78 Abdication by Congress means that there are few effective checks on executive power; second-best substitutes are necessary. Katyal proposes some mechanisms that would be adopted by Congress, such as oversight hearings by the minority party, but his most creative proposals are for arrangements internal to the executive branch, such as redundancy and competition among agencies, stronger employment protections for civil servants, and internal adjudication of executive controversies by insulated "executive" decisionmakers who resemble judges in many ways. n79¶ Katyal's argument is relevant because the mechanisms he discusses might be understood as signaling devices, but his overall approach is conceptually flawed on two grounds. First, the assumption that second-best constraints on the executive should reproduce the Madisonian separation of powers within the executive branch is never defended. The idea seems to be that this is as close as we can get to the first-best, while holding constant everything else in our constitutional order. But the general theory of second-best states that approaching as closely as possible to the first-best will not necessarily be the preferred strategy; n80 the best approach may be to adjust matters on other margins as well, in potentially unpredictable ways. If the Madisonian system has failed in the ways Katyal suggests, the best compensating [\*898] adjustment might be, for all we know, to switch to a parliamentary system. (We assume that no large scale changes of this sort are possible, whereas Katyal seemingly assumes that they are, or at least does not make clear his assumptions in this regard.) Overall, Katyal's view has a kind of fractal quality; each branch should reproduce within itself the very same separation of powers structure that also describes the whole system, but it is not explained why the constitutional order should be fractal.¶ Second, Katyal's proposals for internal separation of powers are self-defeating: the motivations that Katyal ascribes to the executive are inconsistent with the executive adopting or respecting the prescriptions Katyal recommends. n81 Katyal never quite says so explicitly, but he clearly envisions the executive as a power-maximizing actor, in the sense that the president seeks to remove all constraints on his current choices. n82 Such an executive would not adopt or enforce the internal separation of powers to check himself. Executive signaling is not, even in principle, a solution to the lack of constraints on a power-maximizing executive in the sense Katyal implicitly intends. Although an ill-motivated executive might bind himself to enhance his strategic credibility, as explained above, he would not do so in order to restore the balance of powers. Nor is it possible, given Katyal's premise of legislative passivity or abdication, that Congress would force the internal separation of powers on the executive. In what follows, we limit ourselves to proposals that are consistent with the motivations, beliefs, and political opportunities that we ascribe to the well-motivated executive, to whom the proposals are addressed. This limitation ensures that the proposals are not self-defeating, whatever their other drawbacks.¶ The contrast here must not be drawn too simply. A well-motivated executive, in our sense, would attempt to increase his power if fully informed voters would want him to do so. The very point of demonstrating credibility is to allow voters and legislators to increase the discretionary authority of the executive, where all will be made better off by doing so. Scholars such as Katyal, who implicitly distrust the executive, however, do not subscribe to this picture of executive motivations. Rather, they see the executive as an unfaithful agent of the voters; the executive attempts to maximize his power even where fully informed [\*899] voters would prefer otherwise. An actor of that sort will have no incentive to adopt proposals intended to constrain that sort of actor.¶ 2. Independent commissions.¶ We now turn to some conceptually coherent mechanisms of executive signaling. Somewhat analogously to Katyal's idea of the internal separation of powers, a well-motivated executive might establish independent commissions to review policy decisions, either before or after the fact. Presidents do this routinely, especially after a policy has had disastrous outcomes, but sometimes beforehand as well. Independent commissions are typically blue-ribbon and bipartisan. n83¶ We add to this familiar process the idea that the President might gain credibility by publicly committing or binding himself to give the commission authority on some dimension. For example, the president might publicly promise to follow the recommendations of such a commission, or to allow the commission to exercise de facto veto power over a policy decision before it is made, or might promise before the policy is chosen that the commission will be given power to review its success after the fact. To be sure, there will always be some wiggle room in the terms of the promise, but that is true of almost all commitments, which raise the costs of wiggling out even if they do not completely prevent it.¶ Consider whether George W. Bush's credibility would have been enhanced had he appointed a blue-ribbon commission to examine the evidence for weapons of mass destruction in Iraq before the 2003 invasion, and publicly promised not to invade unless the commission found substantial evidence of their existence. Bush would have retained his preexisting legal authority to order the invasion even if the commission found the evidence inadequate, but the political costs of doing so would have been large. Knowing this, and knowing that Bush [\*900] shared that knowledge, the public could have inferred that Bush's professed motive -- elimination of weapons of mass destruction -- was also his real motive. Public promises that inflict reputational costs on badly motivated behavior help the well-motivated executive to credibly distinguish himself from the ill-motivated one.¶ The more common version of this tactic is to appoint commissions after the relevant event, as George W. Bush did to investigate the faulty reports by intelligence agencies that Iraq possessed weapons of mass destruction. n84 If the president appoints after-the-fact commissions, the commissions can enhance his credibility for the next event -- by showing that he will be willing, after that event, to subject his statements to scrutiny by public experts. Here, however, the demonstration of credibility is weaker, because there is no commitment to appoint any after-the-fact commissions in the future, but merely a plausible inference that the president's future behavior will track his past behavior.¶ 3. Bipartisan appointments.¶ In examples of the sort just mentioned, the signaling arises from public position-taking. The well-motivated executive might produce similar effects through appointments to office. n85 A number of statutes require partisan balance on multimember commissions; presidents might approve them because they allow the president to commit to a policy that legislators favor, thus encouraging legislators to increase the scope of the delegation in the first place. n86 For similar reasons, presidents may consent to restrictions on the removal of agency officials, [\*901] because the restriction enables the president to commit to giving the agency some autonomy from the president's preferences. n87¶ Similar mechanisms can work even where no statutes are in the picture. As previously mentioned, during World War II, FDR appointed Republicans to important cabinet positions, making Stimson his Secretary of War. n88 Clinton appointed William Cohen, a moderate Republican, as Secretary of Defense in order to shore up his credibility on security issues. Bipartisanship of this sort might improve the deliberation that precedes decisions, by impeding various forms of herding, cascades, and groupthink; n89 however, we focus on its credibility-generating effects. By (1) expanding the circle of those who share the president's privileged access to information, (2) ensuring that policy is partly controlled by officials whose preferences differ from the president's, and (3) inviting a potential whistleblower into the tent, bipartisanship helps to dispel the suspicion that policy decisions rest on partisan motives or extreme preferences, which in turn encourages broader delegations of discretion from the public and Congress.¶ A commitment to bipartisanship is only one way in which appointments can generate credibility. Presidents might simply appoint a person with a reputation for integrity, as when President Nixon appointed Archibald Cox as special prosecutor (although plausibly Nixon did so because he was forced to do so by political constraints, rather than as a tactic for generating credibility). A person with well-known preferences on a particular issue, even if not of the other party or widely respected for impartiality, can serve as a credible whistleblower on that issue. Thus presidents routinely award cabinet posts to leaders of subsets of the president's own party, leaders whose preferences are known to diverge from the president's on the subject. One point of this is to credibly assure the relevant interest groups that the president will not deviate (too far) from their preferences.¶ More generally, the decision by presidents to bring into their administrations members of other parties, or persons with a reputation for bipartisanship and integrity, illustrates the formation of domestic [\*902] coalitions of the willing. Presidents can informally bargain around the formal separation of powers n90 by employing subsets of Congress, or of the opposing party, to generate credibility while maintaining a measure of institutional control. FDR was willing to appoint Knox and Stimson, but not to give the Republicans in Congress a veto. Truman was willing to ally with Arthur Vandenberg but not with all the Republicans; Clinton was willing to appoint William Cohen but not Newt Gingrich. George W. Bush likewise made a gesture towards credibility by briefing members of the Senate Intelligence Committee -- including Democrats -- on the administration's secret surveillance program(s), which provided a useful talking point when the existence of the program(s) was revealed to the public.¶ 4. Counter-partisanship.¶ Related to bipartisanship is what might be called counter-partisanship: presidents have greater credibility when they choose policies that cut against the grain of their party's platform or their own presumed preferences. n91 Only Nixon could go to China, and only Clinton could engineer welfare reform. Voters and publics rationally employ a political heuristic: the relevant policy, which voters are incapable of directly assessing, must be highly beneficial if it is chosen by a president who is predisposed against it by convictions or partisan loyalty. n92 Accordingly, those who wish to move U.S. terrorism policy towards greater security and less liberty might do well to support the election of a Democrat. n93 By the same logic, George W. Bush is widely suspected [\*903] of nefarious motives when he rounds up alleged enemy combatants, but not when he creates a massive prescription drug benefit.¶ Counter-partisanship can powerfully enhance the president's credibility, but it depends heavily on a lucky alignment of political stars. A peace-loving president has credibility when he declares a military emergency but not when he appeases; a belligerent president has credibility when he offers peace but not when he advocates military solutions. A lucky nation has a well-motivated president with a belligerent reputation when international tensions diminish (Ronald Reagan) and a president with a pacific reputation when they grow (Abraham Lincoln, who opposed the Mexican War). But a nation is not always lucky.¶ 5. Transparency.¶ The well-motivated executive might commit to transparency as a way to reduce the costs to outsiders of monitoring his actions. n94 The FDR strategy of inviting potential whistleblowers from the opposite party into government is a special case of this; the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive's decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will tend to exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.¶ Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political [\*904] preferences opposite to those of the president. Thus, George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking and perhaps even to classified intelligence, n95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency -- no one expects meetings of the National Security Council to appear on C-SPAN -- but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.¶ There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong. n96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts -- especially journalists who might reward sources who give them access by portraying their decisionmaking in a favorable light. n97¶ We will take up the costs of credibility shortly. n98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well motivated, precisely because the existence [\*905] of costs would have given an ill-motivated executive an excuse not to use those mechanisms.¶ 6. Multilateralism.¶ Another credibility-generating mechanism for the executive is to enter into alliances or international institutions that subject foreign policy decisions to multilateral oversight. Because the information gap between voters and legislators, on the one hand, and the executive on the other, is especially wide in foreign affairs, there is also wide scope for suspicion and conspiracy theories. If the president undertakes a unilateral foreign policy, some sectors of the domestic public will be suspicious of his motives. All recent presidents have faced this problem. In the case of George W. Bush, as we suggested, many have questioned whether the invasion of Iraq was undertaken to eliminate weapons of mass destruction, or to protect human rights, or instead to safeguard the oil supply, or because the president has (it is alleged) always wanted to invade Iraq because Saddam Hussein attempted to assassinate his father. n99 In the case of Bill Clinton, some said that the cruise missile attack on Osama bin Laden's training camp in Afghanistan was a "wag the dog" tactic intended to distract attention from Clinton's impeachment. n100¶ A public commitment to multilateralism can close or narrow the credibility gap. Suppose that a group of nations have common interests on one dimension -- say, security from terrorism or from proliferation of nuclear weapons -- but disparate interests on other dimensions -- say, conflicting commercial or political interests. Multilateralism can be understood as a policy that in effect requires a supermajority vote -- or even a unanimous vote -- of the group to license intervention. The supermajority requirement ensures that only interventions promoting the security interest common to the group will be approved, while interventions that promote some political agenda not shared by the requisite supermajority will be rejected. Knowing this, domestic audiences can infer that interventions that gain multilateral approval do not rest on disreputable motives.¶ It follows that multilateralism can be either formal or informal. Action by the United Nations Security Council can be taken only under formal voting rules that require unanimous agreement of the permanent members. n101 Informally, in the face of increasing tensions [\*906] with Iran, George W. Bush's policy has included extensive multilateral consultations and a quasicommitment not to intervene unilaterally. Knowing that his credibility is thin after Iraq, Bush has presumably adopted this course in part to reassure domestic audiences that there is no nefarious motive behind an intervention, should one occur.¶ It also follows that multilateralism and bipartisan congressional authorization may be substitutes, in terms of generating credibility. In both cases the public knows that the cooperators -- partisan opponents or other nations, as the case may be -- are unlikely to share any secret agenda the president may have. The substitution, however, is only partial; as we suggested in Part III, the Madisonian emphasis on bipartisan authorization has proven insufficient. The interests of parties within Congress diverge less than do the interests of different nations, which makes the credibility gain greater under multilateralism. In eras of unified government, the ability of the president's party to put a policy through Congress without the cooperation of the other party (ignoring the threat of a Senate filibuster, a weapon that the minority party often hesitates to wield) often undermines the policy's credibility even if members of the minority go along. After all, the minority members may be going along precisely because they anticipate that opposition is fruitless, in which case no inference about the policy's merits should be drawn from their approval. Moreover, even a well-motivated president may prefer, all else equal, to generate credibility through mechanisms that do not involve Congress, if concerned about delay, leaks, or obstruction by small legislative minorities. Thus Truman relied on a resolution of the United Nations Security Council n102 rather than congressional authorization to prosecute the Korean War.¶ The costs of multilateralism are straightforward. Multilateralism increases the costs of reaching decisions, because a larger group must coordinate its actions, and increases the risks of false negatives -- failure to undertake justified interventions. A president who declines to bind himself through multilateralism may thus be either ill motivated and desirous of pursuing an agenda not based on genuine security [\*907] goals, or well motivated and worried about the genuine costs of multilateralism. As usual, however, the credibility-generating inference holds asymmetrically: precisely because an ill-motivated president may use the costs of multilateralism as a plausible pretext, a president who does pursue multilateralism is more likely to be well motivated.¶ 7. Legal liability.¶ For completeness, we mention that the well-motivated executive might in principle subject himself to legal liability for actions or outcomes that only an ill-motivated executive would undertake. Consider the controversy surrounding George W. Bush's telecommunications surveillance program, which the president has claimed covers only communications in which one of the parties is overseas, not domestic-to-domestic calls. n103 There is widespread suspicion that this claim is false. n104 In a recent poll, 26 percent of respondents believed that the National Security Agency listens to their calls. n105 The credibility gap arises because it is difficult in the extreme to know what exactly the Agency is doing, and what the costs and benefits of the alternatives are.¶ Here the credibility gap might be narrowed by creating a cause of action, for damages, on behalf of anyone who can show that domestic-to-domestic calls were examined. n106 Liability would be strict, because a negligence rule -- whether the Agency exerted reasonable efforts to avoid examining the communication -- requires too much information for judges, jurors, and voters to evaluate, and would just reproduce the monitoring problems that gave rise to the credibility gap in the first place. Strict liability, by contrast, would require a much narrower factual inquiry. Crucially, a commitment to strict liability would only be made by an executive who intended to minimize the incidence of (even unintentional and nonnegligent) surveillance of purely domestic communications. [\*908] ¶ However, there are legal and practical problems here, perhaps insuperable ones. Legally, it is hardly clear that the president could, on his own authority, create a cause of action against himself or his agents to be brought in federal court. It is well within presidential authority to create executive commissions for hearing claims against the United States, for disbursing funds under benefit programs, and so on; but the problem here is that there might be no pot of money from which to fund damages. The so-called Judgment Fund, out of which damages against the executive are usually paid, is restricted to statutorily specified lawsuits. n107 Even so, statutory authorization for the president to create the strict liability cause of action would be necessary, n108 as we discuss shortly. n109 Practically, it is unclear whether government agents can be forced to "internalize costs" through money damages in the way that private parties can, at least if the treasury is paying those damages. n110 And if it is, voters may not perceive the connection between governmental action and subsequent payouts in any event.¶ 8. The news conference.¶ Presidents use news conferences to demonstrate their mastery of the details of policy. Many successful presidents, like FDR, conducted numerous such conferences. n111 Ill-motivated presidents will not care [\*909] about policy if their interest is just holding power for its own sake. Thus, they would regard news conferences as burdensome and risky chores. The problem is that a well-motivated president does not necessarily care about details of policy, as opposed to its broad direction, and journalists might benefit by tripping up a president in order to score points. Reagan, for example, did not care about policy details, but is generally regarded as a successful president. n112 To make Reagan look good, his handlers devoted considerable resources trying to prepare him for news conferences, resources that might have been better used in other ways. n113¶ 9. "Precommitment politics." n114¶ We have been surveying mechanisms that the well-motivated executive can employ once in office. However, in every case the analysis can be driven back one stage to the electoral campaign for executive office. During electoral campaigns, candidates for the presidency take public positions that partially commit them to subsequent policies, by raising the reputational costs of subsequent policy changes. Under current law, campaign promises are very difficult to enforce in the courts. n115 But even without legal enforcement, position-taking helps to separate the well-motivated from the ill-motivated candidate, because the costs to the former of making promises of this sort are higher. To be sure, many such promises are vacuous, meaning that voters will not sanction a president who violates them, but some turn out to have real [\*910] force, as George H.W. Bush discovered when he broke his clear pledge not to raise taxes. n116¶ 10. The possibility of statutory commitments.¶ So far, we have proceeded on the austere assumption that no constitutional or statutory changes are allowed. We have confined ourselves to credibility-generating mechanisms that arise by executive signaling -- commitments that the executive could initiate by legal order or by public position-taking, without the permission of other institutions.¶ However, this restriction may stack the deck too heavily against the solutions we suggest. A central example of the credibility problem, after all, arises when voters and legislators want to enact statutes transferring further discretion to a well-motivated executive, but are not sure that that is the sort of executive they are dealing with. In such cases, there is no reason to exclude the possibility that the executive might ask Congress to provide him with statutory signaling mechanisms that he would otherwise lack. In the surveillance example, Congress is currently considering amendments to relevant statutes. n117 It is easy to imagine a well-motivated executive proposing that Congress explicitly ratify his authority to examine overseas communications, while also proposing -- as a demonstration of credibility -- that the ratification be bundled with oversight mechanisms, review by an independent agency or special court, or a statutory cause of action imposing strict liability for prohibited forms of surveillance.¶ C. The Costs of Credibility¶ The mechanisms we have discussed generate credibility, which is a benefit for voters and legislators who would like to increase the discretion of the well-motivated executive. What of the cost side? In each case, there are costs to generating credibility, although the character and magnitude of the costs differ across mechanisms.¶ Signaling is by definition costly. The presence of a cost is what distinguishes ill-motivated mimics, who are unwilling to incur the cost, from genuine good types. In this context, the inherent costliness of signaling means that the president must use time or resources to establish credibility with the public when, if voters were perfectly informed, that time and those resources could be expended directly on [\*911] determining and implementing policy. But costs can be reflected in more subtle ways as well. Many of these mechanisms rely on the participation of agents who themselves may be ill motivated. Whistleblowers can leak information in order to damage the administration or cry wolf when there is no partisanship, merely substantive disagreement. Journalists might produce images distorted by their own biases and strategic agendas. Miscellaneous costs arise in other ways as well. Multilateralism raises decision costs, transparency can harm deliberation, and so on. n118¶ Often the basic tradeoff facing presidents is that credibility is gained at the expense of control. Mechanisms such as creating independent commissions and pursuing multilateralism illustrate that to gain credibility, presidents must surrender part of their control over policy choices, partially constraining executive discretion in the present in return for more trust, which will then translate into more discretion in the future. The loss of control is a cost, even to the well-motivated executive. To be sure, the well-motivated executive may be more willing than the ill-motivated one to trade some loss of present control for increased future discretion, if the ill-motivated executive tends to be myopic or to discount the future more heavily. However, it is not clear that is so -- many terrifying dictators have been quite far-sighted -- and in any event everything depends upon the particulars of the case.

#### Exec fiat is a voter--- limits out core affs, scews 2ac strat because moots 1ac and cant read addons --avoids the core topic question by fiating away Obama’s behavior in the squo---no comparative lit means the neg wins every debate

Victor Hansen 12, Professor of Law, New England Law, New England Law Review, Vol. 46, pp. 27-36, 2011, “Predator Drone Attacks”, February 22, 2012, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2009313>, PDF

Any checks on the President’s use of drone attacks must come domestically. In the domestic arena the two options are either the courts or Congress. As discussed above, the courts are institutionally unsuited and incapable of providing appropriate oversight. Congress is the branch with the constitutional authority, historical precedent, and institutional capacity to exercise meaningful and effective oversight of the President’s actions.

Reject the team – at very least reject durable fiat and grant rollback args and justifices timeframe perms.

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for **it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

## Norms

#### Perm - do both: The CP is implementation of plan's statute otherwise the CP doesn't solve legal signal

Gitterman 13

Daniel Gitterman is associate professor of Public Policy at UNC-Chapel Hill, Presidential Studies Quarterly, June 2013, "The American Presidency and the Power of the Purchaser", Vol. 43, No. 2, Ebsco

Presidents and their staffs consider executive orders an indispensable policy and political tool (Mayer 2001). Executive orders and presidential policy directives to the bureaucracy are instruments of political control and inﬂuence. Formally, an executive order is a directive that draws on the president’s unique legal authority to require or authorize some action within the administrative state (Mayer 1999). The ability to issue and to enforce an executive order is based on statutory authority, an act of Congress, or the Constitution.1 Executive orders are not deﬁned in the Constitution, and there are no speciﬁc provisions in the Constitution authorizing the president to issue them.2 These orders are used to direct agencies and ofﬁcials in their execution of congressionally established policies. In many instances, they have been used to guide federal administrative agencies in directions contrary to congressional intent. Political scientists recognize executive orders as an important policy tool, however constrained by legal and political considerations its use may be (Deering and Maltzman 1999; Krause and D. Cohen 1997; Mayer 1999, 2001; Moe and Howell 1999a). Presidents have used executive orders to reorganize executive branch agencies, to alter administrative and regulatory processes, to shape legislative interpretation and implementation, and to make public policy.3 In a study of the history of executive branch practice, Calabresi and Yoo (2008) conclude that since the days of George Washington, presidents have consistently asserted their power to execute law.4 To have the full force of law, executive orders must be “derived from the statutory or constitutional authority cited by the president in issuing the decree” (Cooper 2002, 21). However, courts have allowed the president to claim implied statutory authority when Congress has not opposed the president on the public record. In staying out of separationof-powers issues, the courts have left it up to Congress to protect its own interests against the expansion of executive power. More broadly, executive orders have continued to grow in importance, and overly deferential court decisions have laid the foundation for further expansion. Congress has had a difﬁcult time enacting laws that amend or overturn orders issued by presidents, though efforts to either codify in law or fund an executive order enjoy higher success rates. While judges and justices have appeared willing to strike down executive orders, the majority of such orders are never challenged, and for those that are, presidents win more than 80% of the cases that go to trial (Howell 2005).

## 2AC Obama War Powers

#### Obamas war powers low

**Henniger 10/25**, Daniel Henninger is deputy editor of The Wall Street Journal's editorial page. His weekly column, “Wonder Land,” appears in The Wall Street Journal each Thursday. Mr. Henninger was a finalist for a Pulitzer Prize in editorial writing in 1987 and 1996, and shared in the Journal's Pulitzer Prize in 2002 for the paper's coverage of the attacks on September 11. In 2004, he won the Eric Breindel Journalism Award for his weekly column. He has won the Gerald Loeb Award for commentary, the Scripps Howard Foundation's Walker Stone Award for editorial writing and the American Society of Newspaper Editors' Distinguished Writing Award for editorial writing. A native of Cleveland, Mr. Henninger is a graduate of Georgetown University’s School of Foreign Service. Follow him @danhenninger.

Opinion: Henninger: Obama's Credibility Is Melting 25 October 2013 03:20 AM Dow Jones Newswires Chinese (English) RTNW English Copyright © 2013, Dow Jones & Company, Inc.

What is at issue here is not some sacred moral value, such as "In God We Trust." Domestic politics or the affairs of nations are not an avocation for angels. But the coin of this imperfect realm is credibility. Sydney Greenstreet's Kasper Gutman explained the terms of trade in "The Maltese Falcon": "I must tell you what I know, but you won't tell me what you know. That is hardly equitable, sir. I don't think we can do business along those lines." Bluntly, Mr. **Obama's partners are concluding that they cannot do business with him. They don't trust him. Whether it's the Saudis, the Syrian rebels, the French, the Iraqis, the unpivoted Asians or the congressional Republicans, they've all had their fill of coming up on the short end with so mercurial a U.S. president. And when that happens, the world's important business doesn't get done. It sits in a dangerous and volatile vacuum.** **The next major political event in Washington is the negotiation over spending**, entitlements and taxes between House budget chairman Paul Ryan and his Senate partner, Patty Murray. The **bad air over this effort is the same as that Marco Rubio says is choking immigration reform: the fear** that Mr. **Obama will urge the process forward in public and then blow up any Ryan-Murray agreement at the 11th hour with deal-killing demands for greater tax revenue.** Then **there is Mr. Obama's bond with the American people, which is diminishing with the failed rollout of the Affordable Care Act. ObamaCare is the central processing unit of the Obama presidency's belief system. Now the believers are wondering why the administration suppressed knowledge of the huge program's problems when hundreds of tech workers for the project had to know this mess would happen Oct. 1.** Rather than level with the public, the government's most senior health-care official, Kathleen Sebelius, spent days spewing ludicrous and incredible happy talk about the failure, while refusing to provide basic information about its cause. Voters don't normally accord politicians unworldly levels of belief, but **it has been Barack Obama's gift to transform mere support into victorious credulousness. Now that is crumbling, at great cost. If here and abroad, politicians, the public and the press conclude that Mr. Obama can't play it straight, his second-term accomplishments will lie only in doing business with the world's most cynical, untrustworthy partners. The American people are the ones who will end up on the short end of those deals**.

#### Restrictions inevitable---the aff prevents haphazard ones which are worse

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several years.

#### Obama’s decisions are hurting presidential powers now, even setting the precedent for lower powers in the future.

**Yoo 2013**

[-John, WSJ**,**  John Yoo: Diminishing the Presidency online.wsj.com/article/SB10001424127887323375204578271681410646810.html]

A year ago this month, President Obama bypassed the Senate's advice-and-consent power by naming three new members to the National Labor Relations Board and appointing Richard Cordray to head the Consumer Financial Protection Bureau. Mr. Obama declared that these were "recess" appointments even though the Senate—by its own definition—remained in session. The D.C. Circuit Court of Appeals on Friday unanimously struck down these unilateral appointments, but the three-judge panel's decision in Noel Canning v. NLRB did more than knock a few people out of work and effectively nullify a year's worth of rules that eased union organizing and regulated mortgages and credit cards. Judge David Sentelle, given an opening by the unprecedented White House power grab, issued a ruling that has profound ramifications for the office of the presidency. He and judge Karen Henderson rejected the very idea of "intra-session recess appointments." Mr. Obama thus has jeopardized a vital executive power for all future presidents. Senate advice and consent serves as an important counterweight in the unending struggle between the president and Congress. The Constitution, however, allows presidents to temporarily fill "vacancies that may happen during the recess of the Senate," because in the late 18th century legislative sessions were short and breaks could last as long as nine months. Enlarge Image image Chad Crowe Since 1823, presidents have filled offices that opened even while Congress was in session, on the legal fiction that the vacancies continue to "happen" when the recess came. In the early 20th century, presidents also claimed that, in addition to the official break between a Congress's first and second years, a short Senate adjournment constituted a recess when unilateral appointments could be made. Mr. Obama's defenders may claim that his exercise of appointment power differed little from that of his predecessors. President George W. Bush, for example, appointed William Pryor in 2004 as a federal judge practice. Though the Senate remained in session last January and even passed major legislation during that time, Mr. Obama went ahead and appointed the NLRB and CFPB officials anyway. The Justice Department argued that the president could decide for himself whether the Senate was really in session and whether it was "genuinely capable of exercising its constitutional function." Under the Constitution's separation of powers, each branch of government sets its own internal rules. Only the Senate can decide to allow a filibuster. Only justices decide and John Bolton as U.N. ambassador in 2005 during Senate adjournments. President Bush acted after he became frustrated with Senate inaction on his nominees. He was also frustrated by Majority Leader Harry Reid's maneuver, beginning in 2007, to keep the body in "pro forma" session where it continued to meet but no important business was conducted. But Mr. Bush respected the Senate's authority over its own rules, and he declined to unilaterally select officials in violation of the Appointments Clause. Not so Mr. Obama, whose unwarranted use of executive authority has provoked the D.C. Circuit to reverse 190 years of constitutionalto issue written opinions, or decide cases by majority vote. The president chooses to whom he listens, with whom he discusses, and through whom he transmits his decisions. Mr. Obama, however, claimed the right to judge the legitimacy of the other branches' proceedings—a seizure of power unheard of in American history. A future president employing this power could ignore legislation that he thought insufficiently debated, recognize laws that had not met the filibuster's 60-vote requirement, or only enforce unanimous Supreme Court decisions. In Noel Canning, Judge Sentelle confronted more than one instance of executive overreach. Mr. Obama has also distorted the Framers' presidency into an instigator of domestic revolution, rather than as the protector of the national security and the enforcer of the laws. As Alexander Hamilton explained in Federalist 70, an energetic executive "is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws." The Bush administration made decisions that risked conflict with congressional policy. They were made during the 9/11 attacks to protect national security against an unforeseen enemy who refused to fight according to the rules of civilized warfare. This was in keeping with the Constitution's design. Only the president can respond with the"decision, activity, secrecy, and dispatch," in the words of Federalist 70, to confront an immediate emergency. Mr. Bush made grave choices—on Guantanamo Bay, war in Afghanistan, tough interrogation and aggressive wiretapping of terrorist communications—not for narrow partisan advantage or to improve his re-election chances. He defended the president's constitutional authority over what the Federalist calls "the direction of war" to stop future terror attacks. A glance at the extensive listing of Congress's prerogatives in Article I, Section 8 of the Constitution makes clear that the Framers had no such expectations of the president at home. They understood that Congress would exercise the primary power to legislate with regard to domestic affairs, and the president's main power to restrain the legislature was with a veto. Mr. Obama, however, has wasted his office's constitutional capital for domestic advantage. He did not fill a vital office during a time of crisis; instead his appointments to the NLRB rewarded constituencies vital to his re-election and burnished his populist credentials. This is of a piece with another unprecedented exercise of executive power: Mr. Obama's refusal to enforce laws that he dislikes. His Justice Department, for instance, will not deport illegal immigrants as required by law. Mr. Obama's abdication of a core constitutional responsibility as a way of advancing his political fortunes is a remarkable and troubling turn in the history of the presidency. Judge Sentelle's opinion best captures the Framers' original understanding of the Appointments Clause, but the case will almost certainly be appealed to the Supreme Court. The ruling is in conflict with the decisions of other federal courts, offers a broad holding on when a vacancy "may happen," and has significant regulatory impact. The justices could avoid a broader confrontation with the president—this is the court, after all, that shied away from striking down ObamaCare—by finding that the Senate was in session and dispatching the NLRB's rump officers in short order. The administration, however, is not helping itself: The NLRB officials are openly disobeying the D.C. Circuit's ruling by continuing to stay in their posts and conduct business, one must assume with the White House's approval. (See Notable & Quotable nearby.) Every president should seek to leave the office stronger than when he found it. The Framers understood that the future's challenges could not be anticipated, and so the executive's powers should not be wasted for short-term political advantage. Mr. Obama holds the prospect of leaving a diminished presidency that will put his successors in a far worse position than the one he inherited. That, unfortunately, will prove to be his historical legacy unless he changes course.

#### A multitude of other actors hamper presidential flexibility—thumps the disad

Rozell 12

(Mark Rozell, Professor of Public Policy, George Mason University, “From Idealism to Power: The Presidency in the Age of Obama” 2012, <http://www.libertylawsite.org/book-review/from-idealism-to-power-the-presidency-in-the-age-of-obama/>)

A substantial portion of Goldsmith’s book presents in detail his case that various forces outside of government, and some within, are responsible for hamstringing the president in unprecedented fashion: Aggressive, often intrusive, journalism, that at times endangers national security; human rights and other advocacy groups, some domestic and other cross-national, teamed with big resources and talented, aggressive lawyers, using every legal category and technicality possible to complicate executive action; courts thrust into the mix, having to decide critical national security law controversies, even when the judges themselves have little direct knowledge or expertise on the topics brought before them; attorneys within the executive branch itself advising against actions based on often narrow legal interpretations and with little understanding of the broader implications of tying down the president with legalisms.

#### Unitary executive weakens the presidency

John W. Dean 9, former Counsel to the President, Chief Minority Counsel to the Judiciary Committee of the United States House of Representatives, the Associate Director of a law reform commission, and Associate Deputy Attorney General of the United States, graduate fellowship from American University to study government and the presidency, before entering Georgetown University Law Center, 1/9/09, <http://writ.news.findlaw.com/dean/20090109.html>

During the past eight years, President Bush has asserted presidential power in a singular fashion, drawing on the concept of a “unitary executive” who has unquestioned authority in times of war and is not beholden to international laws or treaties. This unusually broad interpretation of the Constitution provided the rationale for actions after the Sept. 11 terrorist attacks, including the establishment of military tribunals to try enemy combatants, the authorization of warrantless electronic surveillance of Americans and the assertion that the president may use any interrogation technique he deems necessary to protect national security. There is a widespread perception that Bush’s actions have collectively strengthened the presidency and fundamentally altered the balance of power between the executive and legislative branches. Bush, in many ways, embodies the concept of an “imperial presidency” as sketched by historian Arthur M. Schlesinger Jr. in the 1970s to describe chief executives who push their power to the absolute limit. But many experts believe Bush’s assertions of power have left the presidency fundamentally weaker, both for legal and political reasons. His boldest step, the order to convene military tribunals, was declared unconstitutional by the Supreme Court in 2006. The warrantless surveillance program triggered a host of as-yet-unresolved legal challenges and antagonized Congress, making it unlikely that Obama, for pragmatic reasons, would risk a similarly daring policy without sensitivity to legal precedents or clear-cut authorization by the legislative branch. In general, the experts predict, Obama will derive more clout and influence by dialing back Bush’s conception of executive power and taking a more circumscribed view of the presidency. Bush’s actions “made the institution of the presidency more suspect in the eyes of Congress,” said Stephen J. Wayne, a presidential scholar at Georgetown University. “I think it’s generated a lot of resentment that will result in Congress demanding more collaboration from the president. Obama knows how the Senate works and understands the needs of members. His thinking is based on bringing groups together and unity, and that means give and take, not just pronouncing.”

**The aff is key middle ground---total flex causes worse decision-making in crises**

Deborah N. **Pearlstein 9**, lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs, July 2009, "Form and Function in the National Security Constitution," Connecticut Law Review, 41 Conn. L. Rev. 1549, lexis nexis

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disaster [sic] response." n198 In this sense, **a decisionmaker with absolute flex**ibility **in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance**.¶ **Examples of excessive flexibility producing adverse consequences are ample**. Following Hurricane **Katrina**, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors **replacing those rules with more than the most general guidance about custodial intelligence collection.** available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200¶ Or **consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib**. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.¶ In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, **investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without** n205 As one Army General later investigating the abuses noted: "**By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved**." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The **uncertain effect of broad, general guidance**, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208¶ Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But **such findings should at least call into question the inclination to simply maximize flex**ibility **and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise**. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are **nuclear and biological terrorism**, involving highly technical information about weapons acquisition and deployment, a security policy **structure based on nothing more than general popular mandate and political instincts is unlikely to suffice**; **a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement**. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such **structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.**

## 2AC Iran DA

#### Congress makes deterrence credible

Matthew C. **Waxman 8/25**, Professor of Law, Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations, “The Constitutional Power to Threaten War”, Forthcoming in Yale Law Journal, vol. 123 (2014), 2013, PDF

A second argument, this one advanced by some congressionalists, is that stronger legislative checks on presidential uses of force would improve deterrent and coercive strategies by making them more selective and credible. The most credible U.S. threats, this argument holds, are those that carry formal approval by Congress, which reflects strong public support and willingness to bear the costs of war; requiring express legislative backing to make good on threats might therefore be thought to enhance the potency of threats by encouraging the President to seek congressional authorization before acting.181 A frequently cited instance is President Eisenhower’s request (soon granted) for standing congressional authorization to use force in the Taiwan Straits crises of the mid- and late-1950s – an authorization he claimed at the time was important to bolstering the credibility of U.S. threats to protect Formosa from Chinese aggression.182 (Eisenhower did not go so far as to suggest that congressional authorization ought to be legally required, however.) “It was [Eisenhower’s] seasoned judgment … that a commitment the United States would have much greater impact on allies and enemies alike because it would represent the collective judgment of the President and Congress,” concludes Louis Fisher. “Single-handed actions taken by a President, without the support of Congress and the people, can threaten national prestige and undermine the presidency. Eisenhower’s position was sound then. It is sound now.”183 A critical assumption here is that legal requirements of congressional participation in decisions to use force filters out unpopular uses of force, the threats of which are unlikely to be credible and which, if unsuccessful, undermine the credibility of future U.S. threats.¶ A third view is that legal clarity is important to U.S. coercive and deterrent strategies; that ambiguity as to the President’s powers to use force undermines the credibility of threats. Michael Reisman observed, for example, in 1989: “Lack of clarity in the allocation of competence and the uncertain congressional role will sow uncertainty among those who depend on U.S. effectiveness for security and the maintenance of world order. Some reduction in U.S. credibility and diplomatic effectiveness may result.”184 Such stress on legal clarity is common among lawyers, who usually regard it as important to planning, whereas strategists tend to see possible value in “constructive ambiguity”, or deliberate fudging of drawn lines as a negotiating tactic or for domestic political purposes.185 A critical assumption here is that clarity of constitutional or statutory design with respect to decisions about force exerts significant effects on foreign perceptions of U.S. resolve to make good on threats, if not by affecting the substance of U.S. policy commitments with regard to force then by pointing foreign actors to the appropriate institution or process for reading them.

#### The “Obama power” thesis is totally wrong---nothing about a President’s relative resolve matters

James Kitfield 11, Senior Correspondent for The National Journal, three-time winner of the Gerald R. Ford Award for Distinguished Reporting on National Defense, November 18, 2011, “Power Down,” The National Journal, online: http://www.nationaljournal.com/magazine/an-indispensible-nation-no-more--20111117

For generations reared on the mother’s milk of “American exceptionalism,” each day brings a new affront. China, on the rise, stubbornly refuses to end its currency manipulation, distorting Beijing’s advantage in an international system of our making. Close allies in Europe and Japan slash defense budgets, further burdening Washington with the role of global police officer. In the face of repeated threats and sanctions, Iran still dares to build nuclear weapons and plot terrorist attacks on U.S. soil. Syria’s despotic president lingers in power. Israelis and Palestinians blithely ignore presidential exhortations to make concessions for peace. A costly war in Afghanistan drags on toward … what, exactly?

Republicans lay the blame for those international woes on President Obama’s doorstep. They object to his squishy multilateralism, his willingness to engage odious adversaries in diplomacy, and his apologies for past American mistakes. They see insufficient fealty to Israel, indecision in Afghanistan, and a refusal to lead—out front, the way they’re accustomed to seeing—on Libya. They doubt Obama’s conviction that America is a “shining city upon a hill” and a beacon to all free peoples. “As president of the United States, I will devote myself to an American Century, and I will never, ever apologize for America,” Republican presidential candidate Mitt Romney said during a recent foreign-policy speech. In it, he advanced the notion of America’s singularity, its role as a bulwark against tyranny, and its leadership of the free (and, by extension, the entire) world. “America’s strength rises from a strong economy, a strong defense, and the enduring strength of our values,” he said. “Unfortunately, under this president, all three of those elements have been weakened.”

Wait just a minute. Only three years ago, Obama and the Democrats blamed President Bush and his administration for failing to check China and deter Iran. They objected to Bush’s swashbuckling unilateralism, his decision to ignore diplomacy with disagreeable countries, and his with-us-or-against-us triumphalism that alienated even close allies. They questioned his one-sided fealty to Israel and blamed him for a war in Iraq that was dragging toward … what, exactly? They charged that he tarnished the American beacon by endorsing torture and conflating the spread of democracy with regime change at the point of a gun.

Why did two presidents with such different foreign-policy instincts run up against—and, in many cases, get foiled by—the same international challenges? In “George W. Bush, Barack Obama, and the Future of U.S. Global Leadership,” a recent article in International Affairs, James Lindsay wrote that presidents today, no matter their styles, must manage friends and foes who feel increasingly empowered to ignore or contest American dominance. “Americans have this ingrained notion that U.S. leadership and predominance is the natural state of world affairs, with Democrats thus concluding that gentle engagement will automatically cause countries to rally to our banner, and Republicans believing that firmness and consistency will have the same effect,” Lindsay said in an interview. “They are both fundamentally misreading the geostrategic environment.” The post-Cold War period was an era of victory that left the United States standing atop the global order—a superpower with unmatched military, economic, social, and diplomatic might. No wonder expectations are so high.

But things have changed. Brazil, India, Indonesia, Turkey, and especially China are clawing their way to the top of the international system, “insisting on all the privileges that come with their newly elevated status,” as Lindsay puts it. Revolution is sweeping the Middle East, the world’s energy basket. Revisionist powers (Russia) and perennial outliers (Iran, North Korea) sense opportunity and new room to maneuver. “If a unipolar moment ever really existed, it’s not just passed, it’s gone permanently,” says Richard Haass, the former senior official in the first Bush White House who now runs the Council on Foreign Relations. Partly, that follows from two costly wars, a recession, and political dysfunction that blocks a long-term debt solution or a bipartisan foreign-policy consensus. More than that, though, it flows from globalization. “Power is simply too diffuse now, and the challenges we confront are complex, transnational, and they defy the efforts of any one nation,” Haass says.

# 1AR

## Solvency

### Yes Drone Strikes

#### CIA drone strikes in Pakistan and Yemen are continuing to increase – there is no end in sight

Mark Mazzetti and Mark Landler, 13- “Despite Administration Promises, Few Signs of Change in Drone Wars”. New York Times. http://www.nytimes.com/2013/08/03/us/politics/drone-war-rages-on-even-as-administration-talks-about-ending-it.html?pagewanted=all&\_r=0

WASHINGTON — There were more drone strikes in Pakistan last month than any month since January. Three missile strikes were carried out in Yemen in the last week alone. And after Secretary of State John Kerry told Pakistanis on Thursday that the United States was winding down the drone wars there, officials back in Washington quickly contradicted him. More than two months after President Obama signaled a sharp shift in America’s targeted-killing operations, there is little public evidence of change in a strategy that has come to define the administration’s approach to combating terrorism. Most elements of the drone program remain in place, including a base in the southern desert of Saudi Arabia that the Central Intelligence Agency continues to use to carry out drone strikes in Yemen. In late May, administration officials said that the bulk of drone operations would shift to the Pentagon from the C.I.A. But the C.I.A. continues to run America’s secret air war in Pakistan, where Mr. Kerry’s comments underscored the administration’s haphazard approach to discussing these issues publicly. During a television interview in Pakistan on Thursday, Mr. Kerry said the United States had a “timeline” to end drone strikes in that country’s western mountains, adding, “We hope it’s going to be very, very soon.” But the Obama administration is expected to carry out drone strikes in Pakistan well into the future. Hours after Mr. Kerry’s interview, the State Department issued a statement saying there was no definite timetable to end the targeted killing program in Pakistan, and a department spokeswoman, Marie Harf, said, “In no way would we ever deprive ourselves of a tool to fight a threat if it arises.” Micah Zenko, a fellow with the Council on Foreign Relations, who closely follows American drone operations, said Mr. Kerry seemed to have been out of sync with the rest of the Obama administration in talking about the drone program. “There’s nothing that indicates this administration is going to unilaterally end drone strikes in Pakistan,” Mr. Zenko said, “or Yemen for that matter.” The mixed messages of the past week reveal a deep-seated ambivalence inside the administration about just how much light ought to shine on America’s shadow wars. Even though Mr. Obama pledged a greater transparency and public accountability for drone operations, he and other officials still refuse to discuss specific strikes in public, relying instead on vague statements about “ongoing counterterrorism operations.” Some of those operations originate from a C.I.A. drone base in the southern desert of Saudi Arabia — the continued existence of which encapsulates the hurdles to changing how the United States carries out targeted-killing operations. The Saudi government allowed the C.I.A. to build the base on the condition that the Obama administration not acknowledge that it was in Saudi Arabia. The base was completed in 2011, and it was first used for the operation that killed Anwar al-Awlaki, a radical preacher based in Yemen who was an American citizen. Given longstanding sensitivities about American troops operating from Saudi Arabia, American and Middle Eastern officials say that the Saudi government is unlikely to allow the Pentagon to take over operations at the base — or for the United States to speak openly about the base. Spokesmen for the White House and the C.I.A. declined to comment. Similarly, military and intelligence officials in Pakistan initially consented to American drone strikes on the condition that Washington not discuss them publicly — a bargain that became ever harder to honor when the United States significantly expanded American drone operations in the country. There were three drone strikes in Pakistan last month, the most since January, according to the Bureau of Investigative Journalism, which monitors such strikes. At the same time, the number of strikes has declined in each of the last four years, so in that sense Mr. Kerry’s broader characterization of the program was accurate. But because the drone program remains classified, administration officials are loath to discuss it in any detail, even when it is at the center of policy discussions, as it was during Mr. Obama’s meeting in the Oval Office on Thursday with President Abdu Rabbu Mansour Hadi of Yemen. After their meeting, Mr. Obama and Mr. Hadi heaped praise on each other for cooperating on counterterrorism, though neither described the nature of that cooperation. Mr. Obama credited the setbacks of Al Qaeda in the Arabian Peninsula, or A.Q.A.P., the terrorist network’s affiliate in Yemen, not to the drone strikes, but to reforms of the Yemeni military that Mr. Hadi undertook after he took office in February 2012. And Mr. Hadi twice stressed that Yemen was acting in its own interests in working with the United States to root out Al Qaeda, since the group’s terrorist attacks had badly damaged Yemen’s economy. “Yemen’s development basically came to a halt whereby there is no tourism, and the oil companies, the oil-exploring companies, had to leave the country as a result of the presence of Al Qaeda,” Mr. Hadi said. Asked specifically about the recent increase in drone strikes in Yemen, the White House spokesman, Jay Carney, said: “I can tell you that we do cooperate with Yemen in our counterterrorism efforts. And it is an important relationship, an important connection, given what we know about A.Q.A.P. and the danger it represents to the United States and our allies.” Analysts said the administration was still grappling with the fact that drones remained the crucial instrument for going after terrorists in Yemen and Pakistan — yet speaking about them publicly could generate a backlash in those countries because of issues like civilian casualties. That fear is especially pronounced in Pakistan, where C.I.A. drones have become a toxic issue domestically and have provoked anti-American fervor. Mr. Kerry’s remarks seemed to reflect those sensitivities. “Pakistan’s leaders often say things for public consumption which they don’t mean,” said Husain Haqqani, Pakistan’s former ambassador to the United States. “It seems that this was one of those moments where Secretary Kerry got influenced by his Pakistani hosts.” Congressional pressure for a public accounting of the drone wars has largely receded, another factor allowing the Obama administration to carry out operations from behind a veil of secrecy. This year, several senators held up the nomination of John O. Brennan as C.I.A. director to get access to Justice Department legal opinions justifying drone operations. During that session, Senator Rand Paul, Republican of Kentucky, delivered a nearly 13-hour filibuster, railing against the Obama administration for killing American citizens overseas without trial. For all that, though, the White House was able to get Mr. Brennan confirmed by the Senate without having to give lawmakers all the legal memos. And, in the months since, there has been little public debate on Capitol Hill about drones, targeted killing and the new American way of war.

## Counterplan

### CP Links to Politics

#### CP links to politics more

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

## Iran DA

### Talks Will Fail

#### Talks will fail- Kerry involvement

**Mullins, 11/15** (Michael Mullins, McCain: Kerry's a 'Human Wrecking Ball' in Iran Negotiations, News max, http://www.newsmax.com/TheWire/mccain-kerry-human-wrecking/2013/11/15/id/536808)

Senator John McCain called Secretary of State John Kerry "a human wrecking ball" in his nuclear negotiations with Iran and on other Middle East policies. In an interview at Aspen Institute’s fifth annual Washington Ideas Forum on Thursday, McCain blasted President Barack Obama's administration for its handling of the ongoing nuclear negotiations with Iran, targeting much of his criticism toward his "good friend," the former senator from Massachusetts. "Look, this guy has been a human wrecking ball," McCain told the forum's moderator Jeffrey Goldberg, a columnist for the Atlantic.

#### Negotiations will collapse now because of the flexible threat of U.S. use of force and the lack of a norm against targeted killings

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"Americans are untrustworthy and illogical. They are not honest in their dealings." So said Iran's Supreme Leader Ayatollah Ali Khamenei at a ceremony in July following the presidential election of the moderate reformist candidate Hassan Rouhani. Western analysts from across the spectrum took note of Rouhani's sweeping victory this past June, almost universally describing it as a promising opening for detente, unprecedented in the sordid history between the US and Iran. “This is a moment of tremendous opportunity for Washington,” writes Suzanne Maloney, a senior fellow with the Saban Center for Middle East Policy at the Brookings Institute. The National Iranian American Council dubbed it “a major potential opportunity to reinvigorate diplomatic efforts to resolve the standoff over Iran's nuclear program.” There are a multitude of outstanding issues and grievances beyond the nuclear matter that have great potential to spoil this window for peaceful reconciliation. But the greatest spoiler of all lies in the fact that Ayatollah Khamenei, who holds ultimate control no matter who is president, is convinced Washington is out to overthrow his government. Worse still, he has good reason to believe it. Regime change? Khamenei “believes that the US government is bent on regime change in Iran”, explains Iranian journalist and political dissident Akbar Ganji in the latest issue of Foreign Affairs, “whether through internal collapse, democratic revolution, economic pressure, or military invasion". The US “say[s] that they are not after a regime change,” Khamenei said in a speech to Iranian judiciary officials in late June. “However, they clearly show the opposite in their statements and actions.” To many, this may seem like extreme paranoia, if not dishonest regime propaganda meant to sow hatred against the West. But the Supreme Leader's hunch is not so divorced from reality. The heart of Iran's national identity is born out of American-led regime change. Iran's current government, after all, came about in a popular revolution that overthrew the ruthless tyranny of Shah Mohammad Reza Pahlavi, restored to power in 1953 following a coup secretly fomented by the US and Britain that toppled Iran's democratically-elected government. Ever since the 1979 Iranian Revolution and the cutting off of diplomatic ties following the hostage crisis at the besieged US embassy, hostility and isolation have been the rule between Washington and Tehran. And lest Americans think regime change is a retired foreign policy tool of a bygone Cold War era - when Washington overthrew governments in Nicaragua, Honduras, Guatemala, Congo, Dominican Republic, South Vietnam, Brazil, Chile, and Panama, among others - the last time the US seriously considered regime change in Iran was during the very recent administration of George W Bush. David Crist, a former U.S. Marine and currently a senior historian for the Defense Department, writes in his 2012 book Twilight War: The Secret History of America's Thirty-Year Conflict with Iran, that high level Bush administration officials strongly advocated another covert effort to overthrow the Iranian regime. Bush's failed covert plans “In a January 2002 NSC briefing led by Donald Rumsfeld entitled ‘Global War on Terrorism: The Way Ahead,' the secretary stridently recommended supporting internal democratic opposition movements [in Iran],” Crist recounts. Rumsfeld expressed confidence that “Iranian opposition groups inside and outside would bring the government down.” “Over the next few months,” Crist adds, “[Bush's National Security Advisor Condoleezza] Rice tried to shepherd the national security planning document through the government and get it in front of the president.” A Pentagon memo, backed by Vice President Dick Cheney, stated "OSD [Office of the Secretary of Defense] takes a strong position on regime change and sees very little value in continuing any engagement with Iran.” Luckily, cooler heads prevailed as the administration prepared instead for regime change and military quagmire in Iraq, a moral, legal, and strategic fiasco that would ironically strengthen Iran's position in the broader Middle East. In seeming contrast to the Bush administration's belligerent axis-of-evil diplomacy, Barack Obama came into office in 2009 declaring his willingness to negotiate with Iran without preconditions in order to peacefully settle the issue of its nuclear enrichment program. Contrary to virtually all of the rhetoric coming out of Washington, the current consensus in the US intelligence community is that Iran has no active nuclear weapons program and has made no decision as to whether to pursue the bomb. “Recent assessments by American spy agencies,” the New York Times reported last year, “are broadly consistent with a 2007 intelligence finding that concluded that Iran had abandoned its nuclear weapons program years earlier” and this “remains the consensus view of America's 16 intelligence agencies.” More of the same Instead of an honest give and take, Obama's so-called diplomacy with Iran has been “predicated on intimidation, illegal threats of military action, unilateral ‘crippling' sanctions, sabotage, and extrajudicial killings of Iran's brightest minds,” writes Reza Nasri at PBS Frontline's Tehran Bureau. The latter policy refers to Israeli covert actions to assassinate civilian Iranian nuclear scientists, a policy Obama may not have helped carry out but did nothing to stop.