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#### Patent reform will pass, but PC’s key and it’s a fight

**Meyers, 3/5/14** (Jessica, “Lawmakers: Patent reform will advance” Politico, <http://www.politico.com/story/2014/03/patent-reform-104278.html>)

Two lawmakers immersed in patent reform efforts suggested Wednesday that the president could see a bill on his desk in coming months.

“It’s a pretty good bet you could see something on this, this year,” Sen. Mike Lee (R-Utah), who is co-sponsoring the Senate’s main patent reform bill with Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.), said at a POLITICO event. The committee plans to mark up the bill by mid-April. Rep. Jared Polis (D-Colo.), a champion of patent reform in the House, pointed to broad support in the lower chamber but warned that Congress should “make sure it is a substantial bill that actually deals with patent trolls.” The issue has drawn the attention of numerous industries, from tech to retail, who say they face frivolous litigation from trolls. Benjamin Berman, the deputy general counsel at KAYAK.com, likened such firms to “today’s mafia “ and “extortion at its finest.” Congress needs to pass legislation “that addresses the need to make money off patents,” he said at the event. Other companies, along with some universities, argue reforms could go too far and weaken legitimate intellectual property rights. Anything too broad “will cripple the system and we will pay a heavy price,” said John Vaughn, executive vice president of the Association of American Universities. The House passed a patent reform bill, known as the Innovation Act, in December. The Senate has held four briefings on Leahy’s bill, but reform advocates want to speed up the pace. The White House has pushed hard on the issue, announcing a series of executive actions and urging lawmakers to work through legislation this year. Polis applauded the administration’s focus and said it gave momentum to a wonky topic. “When it comes to a patent bill, people say, ‘OK, the president likes it so I’m going to give it a look,’” he said. “It opened the bill on the Democratic side.” The Leahy-Lee bill is expected to serve as the Senate’s main patent vehicle, and currently does not include controversial proposals such as expanding a review program for “business method” patents. Leahy said Tuesday that he is “working closely with members of the Committee to incorporate their ideas into a bipartisan compromise.” Lee said he and Leahy want to find a way to incorporate an amendment from Sen. John Cornyn (R-Tex.) that would force the loser to pay the winner’s fees in patent lawsuits. This “could produce something that ends up being pretty close to what passed in the House,” he said. Not everyone wants it that way. Russ Merbeth, chief policy council for Intellectual Ventures, said such fee shifting could “chill” the ability of businesses to enforce their patent rights. “It’s one of the tougher nuts to crack in this whole debate,” he said. The company, which holds a vast array of patents, is often criticized as one of the biggest trolls. KAYAK’s Berman, attacked Intellectual Ventures as the real problem. “It’s about him,” he said. The last patent overhaul, the America Invents Act, took place only three years ago. But supporters of reform don’t believe it resolved the troll issue. Even if a new bill moves forward in the Senate, the two chambers must settle on a compromise in the midst of an election year. That timing, Berman said, “concerns me greatly.”

#### Plan kills capital

O’Neil 7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### That closes the window and alienates Dems

**Wild, 14** (2/23, Joff, “Concerns in Senate and approaching election could stymie patent litigation reform moves” Intellectual Asset Management Magazine, <http://www.iam-magazine.com/Blog/Detail.aspx?g=0fe92d4e-915d-4f15-925e-60b452f2e093>)

The window of opportunity for the passing of a federal patent litigation reform law in the US is slowly **beginning to close** and could soon be shut tight, according to sources that IAM has spoken to over the last few days. The head of steam for change that culminated in the House of Representatives’ overwhelming, bipartisan approval of the Goodlatte Innovation Act has now begun to dissipate in the face of growing concerns among some senators that there is not enough evidence to justify wide-ranging reforms and that the potential for unintended harms has not been properly explored. What’s more, in what is an election year, plans for much wider application of loser pays are beginning to cause significant concerns among Democrat lawmakers, who have traditionally raised significant amounts of campaign money from trial lawyers, a constituency that is overwhelmingly opposed to the move. If the legislation is not agreed during the 113th Congress, the whole process will have to start from scratch during the 114th Congress, which begins sitting in January 2015. Over the last week, IAM has had a number of conversations with very well-informed individuals about where things stand. While not everyone agrees that getting a new law before the mid-term elections is out of the question, there is a widespread recognition that the clock is ticking. All seats in the House of Representatives are up for grabs on 4th November, as well as 33 of the 100 Senate seats. At some stage pretty soon, that is going to become everyone’s primary focus on Capitol Hill.

#### The impact is clean tech and innovation

**Gerschel-Clarke, 13** – independent design strategist specialising in the societal aspects of design and a contributing writer at Sustainable Brands (Adam, The Guardian, “Are patent trolls strangling sustainable innovation?” 11/14, <http://www.theguardian.com/sustainable-business/patent-trolls-sustainable-innovation>)

Disputes over intellectual property have risen dramatically over the last few years and, despite the global advantage green technologies offer, they have not been immune from these battles over ownership. According to the latest figures published by the World Intellectual Property Organisation, applications to patent greentech have risen by over 6% since 2011, making it one of the leading growth areas for IP. Over the same period we've seen increasingly urgent global efforts to preserve the environment and avert lasting impact on society. So how is the **volatile IP climate** affecting the development of green technologies and the pace of progress towards a sustainable future? Patents were originally conceived as temporary defensive measures to protect and promote innovation. They grant the holder exclusive rights to make, use or sell an invention for up to 20 years. The aim was to ensure businesses investing time and effort into developing technology have the opportunity to commercialise it without competition from firms that haven't made the same commitment. Trolling However, the ability to sell or licence patents for a fee has led to a slow proliferation of patent 'trolling' which is now threatening the creation of new sustainable systems and products. Patent trolls are non-manufacturing companies which acquire and exploit libraries of patents to extract licensing fees from creative firms. Small entities, such as entrepreneurs, are particularly at risk from trolling, as their limited budgets often prevent them from contesting spurious claims. Although multi-million pound battles between wealthy technology firms may dominate media coverage, recent figures suggest that 60% of patent litigation is now brought by patent trolls mostly against firms with low annual incomes. For sustainable development, the danger is that trolling replaces the financial protection that patents offer with financial encumbrance. This reduces the incentive to turn green ideas into green technology and impairs the creativity that is at the core of sustainable progress. Stifling green growth But there are even greater risks with the patent system. By using patents on essential components and concepts, established manufacturers can keep a tight grip on emerging new technology as well as on creative talent in the field. Potential innovators and entrepreneurs – the driving force behind economic progress - are faced with the choice of either starting a business at the risk of being crushed by patent litigation, or going to work for one of the same companies that would have sued them. And to add insult to injury, the price of choosing the latter often includes complete surrender of those ideas - Matt Stanford, 2012 Often it is not in the interests of incumbent firms to develop new technology. This is especially true of sustainable development, where progress can involve the retirement of serviceable and profitable technology, in favour of alternatives that may threaten existing revenue streams or that cannot yet offer the same economies of scale. This conflict of interest between progress and profit can mean that socially and environmentally beneficial technology is shelved. Worse, it can also provide a temptation to strategically purchase sustainable innovation **purely to obstruct** its development. In 1989, for example, innovator Stanford Ovshinsky invented a new nickel-based battery that was cheaper, safer and more powerful than contemporary battery technology. In 1994 he sold the patent to General Motors, to help develop the world's first mass-produced electric car, the EV1. After testing the technology GM opted to stick with their conventionally powered vehicles and sold the battery patent to Texaco, an oil retailer. Ovshinsky's battery technology has since been licensed by a succession of petrochemical companies. The licence conditions for his batteries limit their application in hybrid vehicles and effectively prohibit use in fully electric vehicles. The effect of this restriction can be seen in the pace of EV development today. Lithium-based batteries, used in contemporary vehicles such as the Nissan Leaf and Mitsubishi i-MiEV, are only just approaching the range and performance of the original EV1 technology and they cost considerably more to produce. Even though it seems the patents are failing to promote and protect sustainable innovation, arguably sustainable development would be worse off without them. The system includes an obligation to publish details of protected technology. Without patents, manufacturers may keep valuable scientific and technological knowledge secret, starving the global community of the building blocks of future innovation. Future of sustainable technology We need to update the existing patent system to reflect the changing face of innovation. The process of finding solutions and meeting societal needs has become a community undertaking, increasingly motivated by concerns over human and environmental welfare, alongside potential profit. The traditional influence of financiers on the innovation process is diminishing as crowdfunding platforms enable communities to develop products and services without banks and loans. Similarly in business, social enterprises have grown in strength and look set to play a significant role in our future economy. An effective system to promote and protect innovation must recognise the complete spectrum of stakeholders in technological development, valuing innovation for environmental and social benefit as highly as for financial gain. We need a better regulation of the patent system, to restore the protection and incentives that patents were intended to offer all innovation. This means **reducing the influence** of incumbent manufacturers and trolls on emerging green technologies by limiting the breadth of patents and regulating licences on basic technologies.

#### Extinction

**Klarevas 9** – Professor of Global Affairs

Louis, Professor at the Center for Global Affairs – New York University, “[Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony](http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy_b_393223.html)”, Huffington Post, 12-15, <http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy_b_393223.html>

By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to **secure its global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will save the planet from global warming will allow the U.S. to **outmaneuver potential great power rivals** seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. Liberals, on the other hand, have recognized that global warming might very well become the greatest challenge ever faced by mankind. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a nasty zero-sum contest could be looming on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and **global stability**. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not undermine international security, global warming will. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a tremendous economic boom, while simultaneously **providing it with** means of **leverage that can** be employed to **keep potential foes in check.**

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#### Authority is the power that an agent has been delegated

Kelly, 2003 (judge for the State of Michigan, JOSEPH ELEZOVIC, Plaintiff, and LULA ELEZOVIC, Plaintiff-Appellant/Cross-Appellee, v. FORD MOTOR COMPANY and DANIEL P. BENNETT, Defendants-Appellees/Cross-Appellants., No. 236749, COURT OF APPEALS OF MICHIGAN, 259 Mich. App. 187; 673 N.W.2d 776; 2003 Mich. App. LEXIS 2649; 93 Fair Empl. Prac. Cas. (BNA) 244; 92 Fair Empl. Prac. Cas. (BNA) 1557, lexis)

Applying agency principles, a principal is responsible for the acts of its agents done within the scope of the agent's authority, "even though acting contrary to instructions." [Dick Loehr's, Inc v Secretary of State, 180 Mich. App. 165, 168; 446 N.W.2d 624 (1989)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=115&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b180%20Mich.%20App.%20165%2cat%20168%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=708331d40466e4347936b73e103c82fb). This is because, in part, an agency relationship arises where the principal [\*\*\*36]  has the right to control the conduct of the agent. [St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n, 458 Mich. 540, 558 n 18; 581 N.W.2d 707 (1998)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=116&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b458%20Mich.%20540%2cat%20558%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=c0a63a81a484a6ce53be229bc2290a07) (citations omitted). The employer is also liable for the torts of his employee if "'the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation,'" [McCann v Michigan, 398 Mich. 65, 71; 247 N.W.2d 521 (1976)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=117&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b398%20Mich.%2065%2cat%2071%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=5219d53b6a7119254f8041c911d87fd2), quoting [Restatement of Agency, 2d § 219(2)(d)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_origin=TOASHLX&_butNum=118&_butInline=1&_butinfo=AGENCY%20SECOND%20219&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=71c1bf8c001fe5ae1153be4268b8e9e9), p 481; see also [Champion v Nation Wide Security, Inc, 450 Mich. 702, 704, 712; 545 N.W.2d 596 (1996)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=119&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b450%20Mich.%20702%2cat%20704%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=3d1841dc7f4fb90804d8adb6349a6fae), citing [Restatement of Agency, 2d § 219(2)(d)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_origin=TOASHLX&_butNum=120&_butInline=1&_butinfo=AGENCY%20SECOND%20219&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=c1927abf5bf3954a85d211c044ada141), p 481 ("the master is liable for the tort of his servant if the servant 'was aided in accomplishing the tort by the existence of the agency relation'"). In [Backus v  [\*213]  Kauffman (On Rehearing), 238 Mich. App. 402, 409; 605 N.W.2d 690 (1999)](https://www.lexis.com/research/buttonTFLink?_m=6cbcd97524abff5644c0987b135f7517&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b259%20Mich.%20App.%20187%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_origin=TOASHLX&_butNum=121&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b238%20Mich.%20App.%20402%2cat%20409%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=136&_startdoc=101&wchp=dGLbVtb-zSkAk&_md5=d9947545fee151274d489cbc14123160), this Court stated: The term "authority" is defined by Black's Law Dictionary to include "the power delegated by a principal to an agent." Black's Law Dictionary (7th ed), p [\*\*\*37]  127. "Scope of authority" is defined in the following manner: "The reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business." Id. at 1348.

#### Restriction means prohibition of action

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, <http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf>

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. ¶ In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. ¶ Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### The AUMF only authorized force against those involved in the 9/11 attacks

Cronogue 12, JD Duke Law

(Graham, A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil)

The AUMF authorized the President to use “all necessary and appropriate force” against all actors that he determined were involved in the 9/11 attacks. The nexus requirement tethered military action to this specific event and those involved in the attacks. In 2001, this hastily passed statute adequately addressed America’s principal security concerns, namely al-Qaeda, the Taliban and Osama bin Laden. However, as time passes and the war on terror expands to new groups and regions, the connection to these attacks is becoming more and more tenuous. The United States faces threats not just from al-Qaeda, but also from its allies and cobelligerents, many of whom seemingly have no relation to 9/11. Moreover, the exact scope and appropriate use of this force remains undefined. Though the President has interpreted “force” to include detention and targeted killings and has applied it to American citizens at home and abroad, these actions are immensely controversial.88 The AUMF does little to help clear up these problems. America’s chief security threats used to come from the Taliban and al-Qaeda. The Taliban harbored the perpetrators of the 9/11 attacks, al-Qaeda, and fell squarely under the AUMF’s nexus requirement. Now, al-Qaeda has many allies and cobelligerents; these groups employ similar tactics, share comparable ideologies, and present significant threats to American lives.89 But does the AUMF authorize force against these groups? Are groups such as al-Shabaab,90 AQAP,91 and the Pakistani Taliban92 sufficiently tied to 9/11 or al-Qaeda? These groups are violent, dangerous, and opposed to the United States. In many ways, they are just as dangerous as al-Qaeda. However, many of these groups did not even exist on September 11, 2001, and the ones that did were not directly involved in the attacks. Thus, they could not possibly have a strong relationship to the attacks themselves, nor did they harbor those who did. Since the AUMF’s text only authorizes force against those actors the President deems were involved in the 9/11 attacks, these groups are necessarily outside of Congress’s authorization

#### The 1ac author proves they expand authority

Cronogue 12, JD Duke Law

(Graham, A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR, scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil)

My proposal for the new AUMF would appear as follows: AFFIRMATION OF ARMED CONFLICT WITH AL-QAEDA, THE TALIBAN, AND ASSOCIATED FORCES Congress affirms that— (1) the United States is engaged in an armed conflict with al-Qaeda, the Taliban, and associated forces and that those entities continue to pose a threat to the United States and its citizens, both domestically and abroad; a. for the purposes of this statute, an associated force is a nation, organization, or person who enjoys close and well established collaboration with al-Qaeda or the Taliban and as part of this relationship has either engaged in or has intentionally provided direct tactical or logistical support for armed conflict against the United States or coalition partners. (2) the President has the authority to use all necessary and appropriate force during the current armed conflict with al-Qaeda, the Taliban, and associated forces pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541); (3) the current armed conflict includes nations, organization, and persons who— a. are part of al-Qaeda, the Taliban, or associated forces; or b. engaged in hostilities or have directly supported hostilities in aid of a nation, organization or person described in subparagraph (A); c. or harbored a nation, organization, or person described in subparagraph (A); and (4) the President’s authority pursuant to the Authorization for Use of Military Force includes the authority to detain belligerents, including persons described in paragraph (3), until the termination of hostilities. (5) Nothing in this authorization should be construed to limit the President’s ability to respond to new and emerging threats or engage in appropriate and calculated actions of self-defense. The definition of “associated forces” will add much needed clarity and provide congressional guidance in determining what groups actually fall under this provision. Rather than putting faith in the President not to abuse his discretion, Congress should simply clarify what it means and limit his discretion to acceptable amounts. The “close and well-established collaboration” ensures that only groups with very close and observable ties to al-Qaeda and the Taliban are designated as “associated forces.” While the requirement that part of their collaboration involve some kind of tactical or logistical support ensures that those classified as enemy combatants are actually engaged, or part of an organization that is engaged, in violence against the United States. Also, requiring that the associated force’s violence be directed at the United States or a coalition partner and that this violence is part of its relationship with al-Qaeda or the Taliban is another important limitation. First, requiring the associated force to engage in violence that is directed at these nations ensures that “associated force” does not include countries such as Iran that might have a relationship with al-Qaeda and give it financial support but are not actually in violent conflict with the United States. Second, requiring that this violence is made in furtherance of its relationship with al-Qaeda and the Taliban ensures that the violence that makes a group an “associated force” is actually related to its collaboration with al-Qaeda and the Taliban. Without this second provision, a group that supports al-Qaeda would be elevated to an “associated force” if it engaged in violence with, for instance, Australia over a completely unrelated issue. While some groups that work closely with and support al-Qaeda would not be considered associated forces, it is important to limit the scope of this term. This label effectively elevates the group to the same status as al-Qaeda and the Taliban and attaches authorization for force against any group that supports or harbors it. Furthermore, there is little real harm by narrowly defining associated forces because the groups that do support al- Qaeda will still be subject to the authorization under the “support” or “harbor” prongs. Narrowly defining “associated forces” simply prevents the problem of authorization spreading to supporters of those who are merely supporters of al-Qaeda. Compared to Representative McKeon’s proposal, these new provisions would narrow the scope of authorization. The President would not be able to use this authorization to attack new groups that both spring up outside our current theater and have no relation to al-Qaeda, the Taliban or the newly defined associated forces. However, part (5) of my authorization would ensure that the President is not unnecessarily restricted in responding to new and emergent threats from organizations that do not collaborate and support al-Qaeda. In this way, the proposal incorporates Robert Chesney’s suggestion, “[i]t may be that it [is] better to draw the statutory circle narrowly, with language making clear that the narrow framing does not signify an intent to try and restrict the President’s authority to act when necessary against other groups in the exercise of lawful self-defense.” The purpose of the new AUMF should not be to give the President a carte blanche to attack any terrorist or extremist group all over the world. The purpose of this authorization is to provide clear authorization for the use of force against al-Qaeda and its allies. Moreover, if a new group is created that has no relation to any of the relevant actors defined in this statute, Congress can pass another authorization that addresses this reality. The purpose of congressional authorization should not be to authorize the President to act against every conceivable threat to American interests. In fact, such an authorization would effectively strip Congress of its constitutional war making powers. Instead, the new proposal should provide clear domestic authorization for the use of force against those nations that present the greatest threat to the United States today. CONCLUSION The original AUMF was hastily passed during a time of crisis to address America’s most pressing security threats and concerns. Over time these threats and concerns have changed and grown. Our law on conflict should evolve with these changes. The best way to bring about this change is to update the AUMF. This update should reflect the present reality of the conflict by expanding the authorization to use force beyond simply those involved in 9/11. This authorization should expand to include groups such as AQAP who work closely with and fight alongside al-Qaeda. However, we should not expand the scope of the statute as far as Congress has proposed. Representative McKeon’s legislation would effectively give the President a carte blanche to decide who and what to attack and detain. Such a broad grant of authority would effectively allow the President to use force whenever and wherever he wanted. Instead, the new legislation should balance the need for decisive presidential action against the very real concern of adding too much gloss to the Executive power. My proposal attempts to find such a balance by clearly defining the groups of combatants, ensuring that the President has clear and significant authority to act against those organizations. It also limits his discretion in deciding what groups fit this description and prevents him from starting a global and perpetual war on terror, while ensuring that he is not completely barred from responding to new threats as they arise. Undoubtedly, my proposal has flaws and loopholes and cannot be used to authorize force against all future threats, but it does a better job than Representative McKeon’s of heeding President Lincoln’s warning.

#### Vote Neg

#### Limits – Their aff justifies any aff that has the judiciary or Congress clarify in ways that expand war powers - 1000s of ways to do that

#### Ground – Increasing restrictions is key to stable neg link and cp ground – clarifications to authority make all DA links non-unique – bidirectional affs are especially bad because they are reading neg ground on the aff

### 1nc k

#### The aff is an instrument of neoliberal lawfare—cements violent grand strategy and disdain for democracy

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A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially ‘exceptional’ in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in ‘spaces of exceptions’ or are they, in fact, simply contemporary examples of Foucault’s ‘spaces of security’ that are **neither exceptional nor indeed a departure from**, or perversion of, **liberal democracy**? As Mark Neocleous so aptly puts it, has the “liberal project of ‘liberty”’ not always been, in fact, a “project of security”?116 This ‘project of security’ has long invoked a powerful political dispositif of ‘executive powers’, typically registered as ‘emergency powers’, but, as Neocleous makes clear, of the permanent kind.117 For Neocleous, the pursuit of ‘security’ – and more specifically ‘capitalist security’ – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the ‘rule of law’, but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the **ultimate safeguard of democracy** is simply false – a key point affirmed by considering the US military’s extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who “carries **the briefcase of rules and restrictions”** has long been replaced by the lawyer who “participate[s] in discussions of strategy and tactics”.118

The US military’s liberal lawfare reveals how the rule of law is simply another securitization tactic in liberalism’s ‘pursuit of security’; a pursuit that paradoxically eliminates fundamental rights and freedoms in the ‘name of security’.119 This is a ‘liberalism’ defined by what Michael Dillon and Julian Reid see as a commitment to waging ‘biopolitical war’ for the securitization of life – ‘killing to make live’.120 And for Mark Neocleous, (neo)liberalism’s fetishisation of ‘security’ – as both a discourse and a technique of government – has **resulted in a world defined by anti-democratic** technologies of **power**.121 In the case of the US military’s forward deployment on the frontiers of the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been made possible by constant reference to a neoliberal ‘project of security’ registered in a language of ‘endless emergency’ to ‘secure’ the geopolitical and geoeconomic goals of US foreign policy.122 The US military’s continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a ‘permanent emergency’,123 the new ‘normal’ in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic ‘need’ to securitize volatility and threat.

CONCLUSION: ENABLING BIOPOLITICAL POWER IN THE AGE OF SECURITIZATION

Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force.

— David Kennedy, Of War and Law 124

Can a focus on lawfare and biopolitics help us to critique our contemporary moment’s proliferation of practices of securitization – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of the US military’s war on terror, I have argued above that it can. If, as David Kennedy points out, the “emergence of a global economic and commercial order has **amplified the role of background legal regulations** as the strategic terrain for transnational activities of all sorts”, this also includes, of course, ‘warfare’; and for some time, the US military has recognised the “opportunities for creative strategy” made possible by proactively waging lawfare beyond the battlefield.125 As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a “lawmaking character”.126 And it is this ‘lawmaking character’ that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. **US lawfare** **focuses “the attention of the world on this or that excess”** whilst simultaneously arming “the most **heinous human suffering in legal privilege”,** **redefining horrific violence** as “collateral damage, self-defense, proportionality, or necessity”.127 It involves a mobilisation of the law that is precisely channelled towards “evasion”, securing classified Status of Forces Agreements and “**offering at once the experience of safe ethical distance and careful pragmatic assessment**, while parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war”.128

Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its ‘operational capacities’ in its multiples ‘spaces of security’ across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American ‘leasehold empire’. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and legally condition the ‘milieux’ of military commanders; and in so doing they render operational the pivotal spaces of overseas intervention of contemporary US national security conceived in terms of ‘global governmentality’.129 In the US global war on terror, it is lawfare that facilitates what Foucault calls the “biopolitics of security” – when life itself becomes the “object of security”.130 For the US military, this involves the eliminating of threats to ‘life’, the creating of operational capabilities to ‘make live’ and the anticipating and management of life’s uncertain ‘future’.

Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of ‘security’, ‘precarity’ and ‘risk’ function centrally in the governing dispositifs of our contemporary world.131 In a society of (in)security, such discourses have a **profound power to invoke danger** as “requiring extraordinary action”.132 In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where ‘risk’, it seems, has become permanently binded to ‘securitization’. As Claudia Aradau and Rens Van Munster point out, the “perspective of risk management” seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.133 US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing 24 of international law, and the securing of SOFAs – are vital security dispositifs of a broader ‘risk- securitization’ strategy involving the deployment of liberal technologies of biopower to “manage dangerous irruptions in the future”.134 It may well be fought beyond the battlefield in “a war of the pentagon rather than a war of the spear”,135 but it is lawfare that **ultimately enables the ‘toxic combination’** of US geopolitics and biopolitics defining the current age of securitization.

#### The impact is extinction

Tamás Szentes 8, Professor Emeritus at the Corvinus University of Budapest. “Globalisation and prospects of the world society” 4/22/08 http://www.eadi.org/fileadmin/Documents/Events/exco/Glob.\_\_\_prospects\_-\_jav..pdf

It’ s a common place that human society can survive and develop only in a lasting real peace. Without peace countries cannot develop. Although since 1945 there has been no world war, but --numerous local wars took place, --terrorism has spread all over the world, undermining security even in the most developed and powerful countries, --arms race and **militarisation** have not ended with the collapse of the Soviet bloc, but escalated and continued, extending also to weapons of mass destruction and misusing enormous resources badly needed for development, --many “invisible wars” are suffered by the poor and oppressed people, manifested in mass misery, poverty, unemployment, homelessness, starvation and malnutrition, epidemics and poor health conditions, exploitation and oppression, racial and other discrimination, physical terror, organised injustice, disguised forms of violence, the denial or regular infringement of the democratic rights of citizens, women, youth, ethnic or religious minorities, etc., and last but not least, in the degradation of human environment, which means that --the “war against Nature”, i.e. the disturbance of ecological balance, wasteful management of natural resources, and large-scale pollution of our environment, is still going on, causing also losses and fatal dangers for human life. Behind global terrorism and “invisible wars” we find striking international and intrasociety inequities and distorted development patterns , which tend to generate social as well as international tensions, thus **paving the way** for unrest and “visible” wars. It is a commonplace now that peace is not merely the absence of war. The prerequisites of a lasting peace between and within societies involve not only - though, of course, necessarily - demilitarisation, but also a systematic and gradual elimination of the **roots of violence**, of the causes of “invisible wars”, of the structural and institutional bases of large-scale international and intra-society inequalities, exploitation and oppression. Peace requires a process of social and national emancipation, a progressive, democratic transformation of societies and the world bringing about equal rights and opportunities for all people, sovereign participation and mutually advantageous co-operation among nations. It further requires a pluralistic democracy on global level with an appropriate system of proportional representation of the world society, articulation of diverse interests and their peaceful reconciliation, by non-violent conflict management, and thus also a global governance with a really global institutional system. Under the contemporary conditions of accelerating globalisation and deepening global interdependencies in our world, peace is indivisible in both time and space. It cannot exist if reduced to a period only after or before war, and cannot be **safeguarded in one part of the world** when some others suffer visible or invisible wars. Thus, peace requires, indeed, a new, demilitarised and democratic world order, which can provide equal opportunities for sustainable development. “Sustainability of development” (both on national and world level) is often interpreted as an issue of environmental protection only and reduced to the need for preserving the ecological balance and delivering the next generations not a destroyed Nature with overexhausted resources and polluted environment. However, no ecological balance can be ensured, unless the deep international development gap and intra-society inequalities are substantially reduced. Owing to global interdependencies there may exist hardly any “zero-sum-games”, in which one can gain at the expense of others, but, instead, the “negative-sum-games” tend to predominate, in which everybody must suffer, later or sooner, directly or indirectly, losses. Therefore, the actual question is not about “sustainability of development” but rather about the “sustainability of human life”, i.e. **survival of [hu]mankind** – because of ecological imbalance and globalised terrorism. When Professor Louk de la Rive Box was the president of EADI, one day we had an exchange of views on the state and future of development studies. We agreed that development studies are not any more restricted to the case of underdeveloped countries, as the developed ones (as well as the former “socialist” countries) are also facing development problems, such as those of structural and institutional (and even system-) transformation, requirements of changes in development patterns, and concerns about natural environment. While all these are true, today I would dare say that besides (or even instead of) “development studies” we must speak about and make “survival studies”. While the monetary, financial, and debt crises are cyclical, we live in an almost permanent crisis of the world society, which is multidimensional in nature, involving not only economic but also socio-psychological, behavioural, cultural and political aspects. The narrow-minded, election-oriented, selfish behaviour motivated by thirst for power and wealth, which still characterise the political leadership almost all over the world, paves the way for the final, last catastrophe. One cannot doubt, of course, that great many positive historical changes have **also taken place** in the world in the last century. Such as decolonisation, transformation of socio-economic systems, democratisation of political life in some former fascist or authoritarian states, institutionalisation of welfare policies in several countries, rise of international organisations and new forums for negotiations, conflict management and cooperation, institutionalisation of international assistance programmes by multilateral agencies, codification of human rights, and rights of sovereignty and democracy also on international level, collapse of the militarised Soviet bloc and system-change3 in the countries concerned, the end of cold war, etc., to mention only a few. Nevertheless, the crisis of the world society has extended and deepened, approaching to a point of bifurcation that necessarily puts an end to the present tendencies, either by the final catastrophe or a common solution. Under the circumstances provided by rapidly progressing science and technological revolutions, human society cannot survive unless such profound intra-society and international inequalities prevailing today are soon eliminated. Like a single spacecraft, the Earth can no longer afford to have a 'crew' divided into two parts: the rich, privileged, wellfed, well-educated, on the one hand, and the poor, deprived, starving, sick and uneducated, on the other. Dangerous 'zero-sum-games' (which mostly prove to be “negative-sum-games”) can hardly be played any more by visible or invisible wars in the world society. Because of global interdependencies, the apparent winner becomes also a loser. The real choice for the world society is between negative- and positive-sum-games: i.e. between, on the one hand, continuation of visible and “invisible wars”, as long as this is possible at all, and, on the other, transformation of the world order by demilitarisation and democratization. No ideological or terminological camouflage can conceal this real dilemma any more, which is to be faced not in the distant future, by the next generations, but in the coming years, because of global terrorism soon having nuclear and other mass destructive weapons, and also due to irreversible changes in natural environment.

#### The alternative is to look beyond law for solutions to complex problems

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Constitutional space is envisaged to be a linear multidimensional space99 in which the distance between the information set'00 and the solution set'0' is constructed via the Euclidean geometric' set of straight lines. The contours of this constitutional space is created by the statutes and texts created under the assumption by the Framers that all possible abuses of power at the highest level had been considered with due incorporation of relevant checks and balances. That the Framers envisioned a constitutional space containing Newtonian references of physical characteristics is evident in their exclusive invocation of forces and counter forces.' Under this Newtonian framework, the Constitution ought to be assumed as a discrete multi-dimensional space, providing the necessary checks and balances under a linearly applicable force in nature. Within this framework, the forces and counter forces would be applied" 4 to the **presidential** exertion of **war power**, and the operating control requirement would be applied to Congressional oversight.'05 Reminding ourselves that the shortest distance between two points is assumed to be a straight line, the controlling assumption is that, the existing legal paradigm can fully evaluate the outcome of a legal scenario. The legal reasoning proceeds by constructing a set of linearly placed stimuli or sources of information along the constitutional space. The determinacy of the Newtonian framework can be tested if a legal outcome could be determined with reasonable certainty under the shared power doctrine of concurrent authority. Setting aside the subjectivity inherent within the legal paradigm, the concept of false consciousness and **presidential manipulation introduces sufficient distortion** in the constitutional space, causing us to question the sustainability of the Newtonian framework envisioned by the Framers.1 °6 In the Newtonian framework, the constitutional space is envisioned as empty, unstructured, and physically disconnected from the objects acting within that space. Whereas, a parallel framework in the legal universe would hold the law to untangle itself from the environment in which it is to unfold. Applying this principle to the Supreme Court jurisprudence of presidential power would hold that the laws surrounding presidential assertion of war power can step back and operate in an environment without meddling itself with issues emerging from false consciousness or presidential manipulation. What the legal universe requires is that the legal reasoning process take a determining role **in** the process without being shaped **by** the process. While, this may be a viable process, clearly, as the legal consequences of Iraq War has proven, 10 7 merely being viable is neither satisfactory legal outcome nor logically acceptable. Here, I am not challenging the existing modalities of law on grounds of inadequacy. Rather, I am questioning whether some aspects of jurisprudence have lagged behind in their ability to incorporate the shared wisdom of other disciplines. However, as I believe that through every legal consequence, we must question the outcome. We must verify whether the law is operating within perceptible bounds of logical certainty, as the law must reinvent itself with every significant change that society goes through. Therefore, in light of our enhanced understanding of the relationship between law and the society within which it operates, jurisprudence may be slow in reacting to the change in pace. This was echoed by Professor Tribe: "[L]egal problems in general, and constitutional problems in particular, have not always kept pace with widely shared perceptions of what makes sense in thinking and talking about the state, about courts, and about the role of both in society." 08 I do not hold the view that the legal universe is parallel to the Newtonian framework premised on checks and balances on every conceivable action that is untenable. I do, however, reject the framework that rests on the static assumption0 9 of conceiving an exhaustive set of actions within the changing dynamics of the society, and **expecting legal solutions for all such actions**." 0 The assumption that every legal question can be answered within a legal environment, in which counter balancing forces provide adequate checks and balances, fails to address some particularized conflicting situations and is too farfetched. For example, the existing constitutional space is not able to devise an appropriate solution for the proper allocation of war power between Congress and the President in a concurrent authority scenario, nor does it properly identify limits of presidential power under exigent scenarios. This is because the existing constitutional grants were devised in accordance with a static conception, under the assumption that legal formalism can be separated from the background of society, much like the Newtonian framework. In this framework the space is extracted from the forces and objects playing within. The existing jurisprudence refuses to entangle itself in the learning process and refuses to recreate itself like the society in operates within. On the contrary, if laws were to follow the parallel universe of Einstein, in which the space could not be detached from the objects,"' we would not suffer the constitutional inaction of legal consequences that the law cannot interpret.112 In the post-Newtonian physical world of Einstein, space cannot be detached from the objects that are undergoing motions inside of it. The characteristics and actions of these objects under the application of force are primarily manifested by their relative distances and flight times of traversals within that space. The distances and times, however, are shaped by the construction of the space, more specifically by the curved nature of it. As a result, the space in the universe of Einstein is a continuum composed of both space and time, continually being altered amongst one another objects inside that space. The enquiry therefore shifts to whether the constitutional space can be characterized by some other form than linear discrete multidimensional space. Perhaps, it is time to lend credence to the concept of curved space of the Constitution as proposed by Professor Laurence Tribe.'13 Does the Constitution have curvature where the shortest distance between two stimuli may not be arrived by traversing a straight line? Should we incorporate a different notion of the Constitution itself? I am referring to the very nature of the Constitution itself here, as opposed to the interpretive technique of static versus dynamic. While static constitutionalism is frozen in the eighteenth century meaning of the text and statutes, dynamic constitutionalism traces its meaning with the evolving context of the current times. I have dissected this issue in greater detail in an earlier work. 114 F. Definitional difficulties in Euclidean Constitutional Geometry If the constitutional space is thought to be composed of texts, statutes, supporting historical documents and jurisprudential opinions, then the confluence of events that could potentially trigger the determination of an outcome may not always travel in a straight line. This is because the events or stimuli might be hidden relative to another stimuli or event. This can be explained by referring back to the various scenarios depicted in Section IV. In the first scenario, all the information available as the set of preconditions for going to war has responses that can be either constitutional or unconstitutional. Thus, the scenario can be properly handled within the existing legal paradigm. In contrast, let us take a look at both scenarios 3 and 4. Scenario 3 brings in a rather undefined conception of presidential excesses, and the legal reasoning yields an indeterminate solution to this particularized conflict. Similarly, scenario 4 presents the ideas of false consciousness and presidential excesses, both of which are difficult to incorporate for yielding a legitimate legal consequence. Without actually engaging in the dialectic process of how false consciousness lowers the probative value of imminent danger for application of presidential authority, it is clearly not feasible to engage in constitutional analysis of the limits of presidential war power. However, if the process of legal reasoning does not get embroiled in the subjective discussion of executive excesses, the existing paradigm remains impotent to determine the legitimacy of presidential action of imposing war. These two scenarios reveal situations in which the needed information remains occluded from view. It appears there is an information barrier preventing it from coming within the purview of legal reasoning. This is because the existing legal paradigm did not consider the information relevant for determination purposes, which would have required the legal reasoning process to engage laws with the actual environment. Similarly, in the parallel invocation in the physical universe, Newtonian conception of space could occlude objects that do not fall along the straight path between two objects." 5 On the contrary, in the curved space of Einsteinian framework, the objects could traverse the space along the curvature. 116 As a result, any object, anywhere along the path between two other objects, can be both connected and viewed from any vantage point. In addition, as the objects operate within a space-time continuum, 17 in which both the space and time move relative to each other, the exact location of each object can be determined in relation to any other object. Similarly, in the legal paradigm of curved constitutional space, laws become part of the changing societal structure and as such, are better equipped to deal with uncertainties of changing socio-legal environment. When complex reasoning structures, borne out of diverging and continually expanding set of social circumstances, suffers from inadequacy from a static view of an indeterminate legal paradigm, while failing to become subsumed within the limited set of legal reasoning available, they can easily find their legitimate place within the confines of this new legal paradigm. If we take out the detached neutrality of Archimedean indeterminacy from the legal process, it becomes more efficient to handle particularized conflicts like the preconditions for the Iraq War. Therefore, by shaping the legal reasoning process to mimic objects moving along the dimensions of a curved space, a much higher determinacy can be rendered into the legal paradigm. If the development of constitutional jurisprudence were to follow such trajectory, it would be reasonable to infer that **the required complexity cannot be captured** within the current legal reasoning methodology. How shall the explication of law proceed along the curvature space of the Constitution? This is a very difficult proposition, not addressed here. However, presenting an analysis to illuminate further the shadowy areas of curved constitutional space may provide greater recognition of the uniqueness of this paradigm. G. False Consciousness and Curvature of the Constitution I discussed in the preceding section, the organic way in which the false consciousness develops and allows the maximum point of authority for the President. The sticking point is to determine how the fundamental values within law allow such a scenario to develop. If law is based on strict formalism, which is in turn based on a proven (or provable) collection of facts,11 how could there be an evolving fluid concept like false consciousness, which affects constitutional decision making? The problem resides in our inability to look for what is not there. This originates from a static conception of law, in which law is strictly prohibited from enmeshing itself into the changing dynamics of the society. **We must therefore look beyond existing laws, and in some cases, we must go outside of law to understand law**. The existing formalistic paradigm of legal reasoning does not always comport to a legal solution for complex, evolving problems we encounter in the society. As a result, the legal framework guiding the courts, are unable to provide solutions based on adequate reasoning. In my view, a lack of reliance on interdisciplinary application in law is one of the difficulties we currently have within the existing legal reasoning process. Distressed by the inability of existing laws to adequately respond in the particularized conflicts of today's complexity, I am thus compelled to support Professor Tribe's constitutional curvature analogy119 in pleading for the recognition of an evolving paradigm. I have shown12° the drawbacks of Justice Jackson's tripartite solution elsewhere, which would have worked perfectly had the Constitution been of straightforward Newtonian design. 1 Under this framework, the three discrete scenarios of Justice Jackson would neatly fit within the conceptualized framework with its carefully balanced counter forces combating the forces, along the way providing bullet proof checks and balances. Unfortunately, as I have shown, this is indeed not the case. If the constitutional space would be a perfect three dimensional space of Euclidian geometry, we would witness literal reasoning based on strict explication of 'if-then-else' rules applied perfectly. These rules would provide all the determinate outcomes and perfect solutions in all cases. In this construct, the background can be easily separable from the objects that interlink with each other, exerting forces on each other. In other words, in a simple constitutional space, the actors on this space, the courts, legislators, the executives, populist, and the external entities could all be liable to a rigid set of laws and be subjected to binding legal outcomes. However, as Professor Tribe mentioned, in a curved space, the objects cannot be separated from the space. 22 The newer legal paradigm of curved constitutional space cannot separate the subject of the law from the law itself. Here, the law must be continuously shaping, evolving, and structuring based on the existing circumstances. An obvious question to consider at this point is, why did I bring in the concept of false consciousness along with the vision of constitutional curvature? The question can be more efficiently addressed by responding by showing how false consciousness gives rise to curved space phenomenon. In the Newtonian world of linear geometric space, ideas are arranged linearly with respect to each other, and objects travel along straight lines. Therefore, nothing can be hidden from view for determination purposes. Similarly, in the parallel universe of legal reasoning, the law must be able to incorporate all pertinent information into the adjudication process. False consciousness is a difficult concept, yet highly relevant to the issue at hand. On one hand, it is hidden from the conceptual construct that engages in the legal reasoning of specific conflict in the existing paradigm. On the other hand, the curved space is composed of continually moving space and time, and every object can easily be identified. False consciousness needs such a paradigm. It needs a process of determination, which can capture the incremental juridical information and can contribute towards constitutional determination of legal conflicts. We can corroborate the difficulty in specific constitutional issues by taking a comparative look at two opinions by two different Supreme Court Justices. In the first, Justice Jackson postulates a tripartite framework where he pigeonholes three occurrences of fluctuating presidential power. Justice Rehnquist, on the other hand alludes to a continuous spectrum at some point in between the maximum and minimum controlling powers of Congress, and it is at this point where the President's absolute authority could remain. This Rehnquist jurisprudential development can be more closely recognized within a curved constitutional space. A space that is not bounded by the limitations of linearity of dimensions is evident in Newtonian framework. If we refrain from identifying specific sets of actions under which the President can assert his power, we can map the possibilities and scenarios more efficiently. For example, if the Constitution's objective is to create rules that can be applied to a set of predictable scenarios, by virtue of trying to identify them, we have **already limited the possibilities**. However, if we create a framework that is applicable under most scenarios, but may not be perfect fit for every one of the scenarios, we can ensure that the framework is more robust and efficient. By incorporating the environment in which the legal process unfolds, we can enhance the power of law in providing specific legal outcome for a complex scenario. This is much the same way as in a curved space, the motion of an object is determined by taking into consideration the impact due to the space that surrounds the object. In my view, we could derive an understanding of the allowable limits of presidential power by considering the shaping effect of the social environment in which the President is applying the laws of the nation. Grasping this shaping effect becomes easier as it follows a similar reasoning like the mechanics of objects in a curved space that takes account of the curvature the object has to traverse. Herein resides a very significant utility in bringing the curved space concept of physics into the legal universe. As I have shown earlier, the prudent observer or the **logical decision-maker** can never be assumed to be completely decoupled from the scenarios or circumstances being called to judge upon. I therefore, lend my fidelity to Professor Tribe's observation regarding curved constitutional space. Although highly primitive in construction at this stage, this mode of legal reasoning promises to illuminate countless legal areas which still remain within constitutional black holes, unable to achieve legal certainty under the existing norm. I am not suggesting that the current adjudication process itself is flawed. Rather, I am suggesting the possibility that the neutrality can never be achieved and therefore the validity of the adjudicated process has to be questioned. How can we prove whether there is a constitutional curvature? In a curved space, the object being observed can never be separated from the observer or the background. In other words, the relative distance or the relative mechanism of the space time continuum becomes the driving factor for a determination of the any information for the object.123 Transferring this analogy in the legal universe, we can infer that the President's process of adjudication of the events to determine if there is an imminent danger should not be taken at face value in determining whether the President's actions are constitutional. The President's relationships to the events that are unfolding in the political arena have to be taken into account. The implicit assumption here is that the President's own objective cannot be completely decoupled from the legal reasoning process. Therefore, legal reasoning must be decoupled from the shaping effect stemming from a multitude of complex, fuzzy phenomena, such as, personal aspiration of the executive, and injection of false beliefs and monolithic tendencies into the masses. What does false consciousness have to do with the shaping of the constitutional space or constitutional geometry? As I demonstrated earlier, false consciousness is the culmination in a chain of events that creates a collective consciousness that gives an illusion of a real consciousness. So the question that comes into focus is whether the false consciousness alters the geometry of the constitutional space and if it does, how does it do that? False consciousness creates a distorted prism, and by definition, anything or any input that goes through this distorted prism will provide a distorted output. Therefore, legal reasoning based on such distorted output will provide us with a completely wrong legal output. Evidence uncovered from the days leading to the Iraq War suggests that the President invoked significant danger by emphatically underscoring a **doomsday** scenario. This injected an illusionary reality into the collective consciousness of the nation. As a result, the collective consciousness inherited factors that contributed to its distortion by the process discussed in Section III.124 Under these circumstances, the collective consciousness of the nation transformed via the injection of a false consciousness: believing in the existence of significant immediate danger from Iraq.125 The President invoked his expansive power under Article II of the Constitution 12 6 and imposed war on both the nation and the world by using an indifferent and inert Congress. 127 The linear geometry of the constitutional space made erroneous assumptions on several grounds. First, it assumed that the distance between the nation's observation of imminent danger and the legal consequence of such imminent danger as engaging in war is connected by a simple straight line. If we take the analogy of a direct deductive reasoning as a geometric straight line, the imminent danger of a nation must result in an invasion of the aggressor. Second, the legal reasoning assumed that the President is a neutral adjudicator with detached neutrality in the proceedings, which turned out to be erroneous. 128 Third, this assumption that the legal consequence of unleashing war on the aggressor will cause either a minimization or complete removal of the source of the imminent danger was not founded upon provable facts. This limited set of fact patterns and legal reasoning within the constitutional analysis is therefore, proven to be completely inadequate for any substantive determination of constitutional consequence. The assumption that the imminent danger doctrine must automatically give rise to the invasion of Iraq is plain wrong. The constitutional geometry is not delineated and separable with easily identifiable objects and therefore, it may not be possible to reach directly into an outcome of war from a source of imminent danger. There are alternative destinations that could be attempted first. For example, is danger imminent as a result of false consciousness? Or, are the assumptions that come into play to define and identify imminence completely wrong? Second, false consciousness may have mischaracterized the intensity of the threat and therefore may have misdiagnosed or mislabeled the imminent danger aspect. If the characterization of imminent danger is not credible, then the conclusion of imposition of war cannot be validated. In a constitutional space characterized by a curvature or multiple explaining points that could lead to the genesis of a false belief of the imminent danger, we are provided with multiple options like negotiating with Iraq, developing consciousness of the world community, embargos, sanctions, negotiation vis-A-vis a neutral third party, **or simply waiting** for more data. Third, once we are convinced that there is neutral detachment involved, then the rationale or action of the President is better characterized and analyzed in its proper light. Because it is possible that the President may not be acting in the best interests of the nation or without due prudence or even with vengeance, it is easy to see the produced outcome of going to war may be untenable. In my view, if we analyze events of extreme significance during the process of legal observation, we must consider that the factors taken into account for making judgment may be misperceived due to false consciousness. Therefore, we must operate in a curvature space-type legal geometry. In this curved geometry of constitutional space, the legal terrain will continue to reshape the inputs that the adjudicative process incorporates into decision-making. Additionally, the relative relationship between the scenarios that are used to make judgment and adjudicate have to be analyzed carefully to deconstruct the relative merits and the explanatory power that it possesses. If these factors are influenced by false consciousness, then I propose minimizing the explanatory power. This would result in a presidential authority far lesser than the one which led the country into war with Iraq. VI. CONCLUSION In the wake of presidential transgressions related to use of manufactured intelligence for foreign invasion, unilateral excesses of executive power has suddenly sprung to life. Notwithstanding the countless calamities that resulted from such misadventure, scholars diverge on the legality of presidential usurpation of power. Constitutional uncertainty regarding the nature of concurrent authority between Congress and the President, has been debated, **yet nothing** concrete **has come** out **of those discussions**. My earlier research has thrown light on this narrow swath of constitutional significance, where I have established that the debate over optimal allocation of power between Congress and the President is far from being over. I embark on an exploration to trace whether there is **a better legal paradigm** that can explain the complex constitutional quandaries in this area. In this article, I brought in the concept of false consciousness to provide a benchmark for examining how the issues of presidential power cannot be determined with logical certainty within the current legal paradigm. This examination presents sufficient evidence to show that the parallels from the world of physics can help us in this endeavor. By assuming the texts and statutes of the Constitution mimic the dynamic nature of time-space theory of Einstein, rather than the Newtonian framework of linear space, we are able to capture the uncertainties and complexities better. On one hand, false consciousness can distort the realities to eventually shape the contours of presidential power. On the other hand, the curvature concept of the Constitution provides the inspiration for a powerful legal reasoning technique. Therefore, this Article's evidence of false consciousness' shaping effect provides us with a strong reminder that we should embrace post-modernity in our jurisprudential discourse, and attempt to inculcate concepts, such as, the curved constitutional space. In the end, my hope is to retain proximate fidelity to the Constitution, not by blindly acquiescing to the indeterminacy of the controlling legal paradigm, but by seeking ways to meld disciplines to illuminate the dark shadows of the constitutional curvature.

### 1nc consult congress cp

#### Congress should establish by statute a permanent, joint Congressional committee on international strategic policy, requiring the President consult this committee prior to use of military force. This committee should recommend cessation of use of force pursuant to the 2001 AUMF but lack the authority to veto Presidential actions. The full Congress should be required to vote on a resolution of approval no later than 30 days following consultation. The United States Federal Government should publicly clarify that it will shift its legal justification for related uses of force to a law enforcement paradigm pursuant to the consultative mechanism and not the AUMF and not use expansive self-defense justification for targeted killing. We’ll clarify?

#### The net benefit is inter-branch conflict –

#### Inter-branch tensions are escalating now over the CIA – they’ll wreck foreign policy coherence

**Samuelsohn, 3/23/14 -** senior policy reporter for POLITICO Pro.(Darren, Politico, “Dianne Feinstein-CIA feud enters uncharted territory” <http://www.politico.com/story/2014/03/dianne-feinstein-cia-feud-104927.html>)

Sen. Dianne Feinstein’s battle with the CIA has entered dangerous, uncharted territory.

Caught in the crossfire of the powerful California Democrat’s fight with the nation’s most recognized intelligence agency: America’s ability to manage **multiple geopolitical hotspots**, top national security nominations and senior Senate and CIA officials who could lose their jobs or possibly even end up in jail.

Managing relations between Congress and the intelligence community is always tricky — an outgrowth of closed-door oversight into sensitive national security issues where lawmakers often complain that they must ask the right questions to get the right answers.

But now that the Justice Department is involved in the dispute between Feinstein’s Intelligence Committee staff and the CIA — deciphering whether the CIA violated the Constitution or federal law by searching Senate computers, or whether Democratic staffers hacked into the CIA’s system to obtain classified documents — things have escalated to an unprecedented level.

While President Barack Obama won’t take sides publicly for fear of interfering with a possible criminal matter, that hasn’t stopped Senate Majority Leader Harry Reid. The Nevada Democrat last week defended Feinstein, warning in a letter to Attorney General Eric Holder that the recent back-and-forth accusations she’s had with CIA Director John Brennan could have historic ramifications for constitutional separation of powers.

“Left unchallenged, they call into question Congress’s ability to carry out its core constitutional duties and risk the possibility of an unaccountable Intelligence Community run amok,” Reid wrote.

With no clear resolution in sight, Capitol Hill and the CIA are stuck in the awkward spot of trying to maintain business as usual, when the reality is it’s anything but.

“This is the most serious feud since the Intelligence committees were established,” said Amy Zegart, a former National Security Council staffer and senior fellow at Stanford University’s Hoover Institution.

Most alarming, Zegart explained, is Feinstein’s Senate floor broadside earlier this month against the CIA. The senator’s remarks broke from her well-established reputation as a staunch defender of another wing of the intelligence community, the National Security Agency, amid scores of Edward Snowden-inspired leaks to the media.

“When someone who says they can be trusted now says they can’t, it’s really bad,” Zegart said.

Brennan said in a Friday memo to CIA employees that he’s “committed to finding a way forward” with the Senate. And senior intelligence officials insist that tensions should ease once the committee can release a redacted version of the panel’s exhaustive five-year investigation into the George W. Bush-era CIA interrogation and detention programs. A vote to declassify the report is expected before the end of the month.

But even if a portion of the Senate’s investigation were to be made public, sources on and off Capitol Hill still caution that the bad blood will linger because of the harsh accusations exchanged over how Feinstein’s aides obtained an internal CIA analysis and the lines that the intelligence agency may have crossed to find out what they did.

Feinstein and Brennan are standing by their contradictory explanations of what happened in the course of the Democratic staff’s investigation into the Bush-era CIA programs. Absent a meeting of the minds, some say the only way for the chairwoman to save face is for Brennan to go.

“Those are bridges burned,” said former Rep. Pete Hoekstra, a Michigan Republican who chaired the House Intelligence Committee.

“The real question it will come down to is whether Dianne Feinstein believes she can have a working relationship with John Brennan,” Hoekstra added. “And if she believes that relationship is beyond repair and it’s going to be difficult to rebuild that trust between the oversight committee and the CIA, … then there’s really only one alternative. And that’s Brennan has to step aside.”

Feinstein aides declined comment when asked about Brennan’s future, saying the senator’s 40-minute floor speech earlier this month speaks for itself — “for now.” At the conclusion of those remarks, Feinstein called the impasse a “defining moment for the oversight for our Intelligence Committee.”

“How Congress and how this will be resolved will show whether the Intelligence Committee can be effective in monitoring and investigating our nation’s intelligence activities or whether our work can be thwarted by those we oversee,” Feinstein said.

Senior members of the House and Senate intelligence panels are cautioning against jumping to conclusions on the Feinstein-CIA fight, though members from both sides of the aisle also expressed concern that it could still spiral out of control.

“Our oversight is alive and well and robust. That won’t change,” House Intelligence Committee Chairman Mike Rogers said in an interview. But the Michigan Republican also warned that the dispute needed to be resolved, and soon — otherwise there could be consequences.

“I think if this doesn’t get handled right in the next short period of time this has the potential of having other broader implications, and I hope it doesn’t get to that,” Rogers said.

“You don’t want everything to become adversarial,” he added. “The oversight will continue. If it’s adversarial or not, it will continue. It’s always better when both sides agree to a framework on what will be provided; otherwise, it becomes a subpoena exchange, and that’s just not helpful.”

Rep. Dutch Ruppersberger (D-Md.), the ranking member of the House Intelligence Committee, said he’d never seen a dispute like the one between Feinstein and the CIA during his 12 years on the panel.

“When Sen. Feinstein has a concern, I think we must listen,” he told POLITICO. “These are serious allegations. If true, it has a chilling effect on all of our intelligence agencies, especially our two committees that oversee all of the intelligence agencies, including the CIA.”

In the absence of answers of what happened, several intelligence veterans said the Feinstein-CIA dispute is taking up lawmakers’ limited oxygen supply on complex issues ranging from Snowden’s revelations about government surveillance overreach to cybersecurity threats and tensions flaring in Ukraine, Syria, Egypt and other global hotspots.

#### The CP establishes a consultative framework for executive-legislative cooperation but avoids fights over authority

**Baker and Hamilton 11 -** James A. Baker III was secretary of state from 1989 to 1992. Lee H. Hamilton is a former Democratic representative from Indiana who chaired the House Committee on Foreign Affairs (“Breaking the war powers stalemate” Washington Post, 6/9, http://www.washingtonpost.com/opinions/breaking-the-war-powers-stalemate/2011/06/08/AGX0CrNH\_story.html)

With our country engaged in three critical military conflicts, the last thing that Congress and the White House should be doing is squabbling over which branch of government has the final authority to send American troops to war. But that is exactly what has been happening, culminating with the House’s rebuke of the Obama administration last Friday for the way it has gone about the war in Libya.

On one hand is a bipartisan group of House members who argue that President Obama overreached because he failed to seek congressional approval for the military action in Libya within 60 days of the time the war started, as required by the War Powers Resolution. The lawmakers are particularly upset because the administration sought, and received, support from the United Nations — but not from them.

On the other hand is the White House, which argues that history is on its side. The 1999 NATO-led bombing over Kosovo lasted 18 days longer than the resolution’s 60-day requirement before the Serbian regime relented.

Stuck in the middle are the American people, particularly our soldiers in arms. They would be best served if our leaders debated the substantive issues regarding the conflict in Libya — and those of Afghanistan and Iraq — rather than engaging in turf battles about who has ultimate authority concerning the nation’s war powers.

There is, unfortunately, no clear legal answer about which side is correct. Some argue for the presidency, saying that the Constitution assigns it the job of “Commander in Chief.” Others argue for Congress, saying that the Constitution gives it the “power to . . . declare war.” But the Supreme Court has been unwilling to resolve the matter, declining to take sides in what many consider a political dispute between the other branches of government.

We believe there is a better way than wasting time disputing who is responsible for initiating or continuing war.

Almost three years ago, we were members of the Miller Center’s bipartisan National War Powers Commission, which proposed a pragmatic framework for consultation between the president and Congress. Co-chaired by one of us and the late Warren Christopher, the commission could not resolve the legal question of which branch has the ultimate authority. Only the court system can do that. Instead, the commission strove to foster interaction and consultation, and reduce unnecessary political friction. The commission — which represented a broad spectrum of views, from Abner Mikva on the liberal end to Edwin Meese on the conservative end — made a unanimous recommendation to the president and Congress in 2008.

The commission’s proposed legislation would repeal and replace the War Powers Resolution. Passed over a presidential veto and in response to the Vietnam War, the 1973 resolution was designed to give Congress the ability to end a conflict and force the president to consult more actively with the legislative branch before engaging in military action. The resolution, a hasty compromise between competing House and Senate plans, stated that the president must terminate a conflict within 90 days if Congress has not authorized it. But no president has ever accepted the statute’s constitutionality, Congress has never enforced it and even the bill’s original sponsors were unhappy with the end product. In reality, the resolution has only further complicated the issue of war powers.

Our proposed War Powers Consultation Act offers clarity. It creates a consultation process, defines what constitutes “significant armed conflict” and identifies specific actions that both the president and Congress must take.

On the executive side, the president would be required to confer with a specific group of congressional leaders before committing to combat operations that last or are expected to last more than a week. Reasonable exemptions exist, including training exercises, covert operations or missions to protect and rescue Americans abroad. Likewise, if an emergency precedes engagement, or secrecy is required that precludes prior consultation, then consultation can follow within three days. Under this proposal, the strike on Osama bin Laden would plainly fall within the president’s prerogative, while an action such as our current engagement in Libya would require advance consultation and congressional action at the appropriate time.

On the legislative side, Congress would have to vote on a resolution of approval no later than 30 days after the president had consulted lawmakers. If Congress refused to vote yea or nay, it would do so in the face of a clear requirement to the contrary. Inaction would no longer be a realistic option.

Given the Constitution’s ambiguity, no solution is perfect. But Congress and the White House should view the War Powers Consultation Act as a way out of the impasse. It is what the American people want when their leaders confront the serious questions of war and peace.

#### Solves case without binding restrictions – fosters debate and accountability and creates de facto political constraint

**Hamilton, 9** - The Honorable Lee H. Hamilton is president and director of the Woodrow

Wilson International Center for Scholars and director of the Center on

Congress at Indiana University (Rivals for Power: Presidential-Congressional Relations, ed: Thurber, p. 297-298)

By forcing Congress to take an up or down vote, the legislation directs Congress to state its support for or opposition to military action on the record and to assert itself in a way it has been hesitant to do in the last sixty years. If the resolution is defeated in one or both houses, any member of Congress— representative or senator—“may file a joint resolution of disapproval of the significant armed conflict, and the joint resolution shall be highly privileged, shall become the pending business of both Houses, shall be voted on within five calendar days thereafter, and shall not be susceptible to intervening motions, except that each house may adjourn from day to day.” The president can veto this joint resolution, but Congress can override that veto.

This provision does not provide Congress the power to stop the president from committing U.S. troops to military action. As one critic of the proposed legislation writes, “No matter how many conditions Congress might try to place on the president’s use of force in such a concurrent resolution, the president would be under no legal obligation to comply because the provisions would have no force or effect outside Congress. This is because concurrent resolutions are mere sense-of-Congress expressions.”34 However, in practice, it appears that presidents already have no obligation to engage Congress in initiating hostilities. Barring judicial intervention, there is not an enforceable legal obligation to guarantee the sharing of war powers. The joint resolution is, therefore, a mechanism to reinsert Congress into the process.

James Wilson’s words—“This system will not hurry us into war”—express a core objective of the War Powers Consultation Act. It would force debates of costs and benefits of proposed military action into the public domain. The president would have to confront questions and criticisms. The executive would not be able to assume Congress’s silent acceptance of his war-making authority—though Congress certainly could respond to the executive’s military initiatives weakly as it has done in the past. There is, after all, no legislative panacea for an unassertive Congress. Yet in each of these respects, the War Powers Consultation Act would be an improvement over the present state of affairs.

#### The aff’s restriction cements an adversarial model of inter-branch relations which breaks consultation

**Mann, 90 –** senior fellow in governance studies, at Brookings (Thomas,A Question of Balance : the president, the Congress, and foreign policy, relevant chapter here: <http://cas.uwo.ca/documents/political_science/Mann%20p1-34.pdf>)

Collaboration entails consultation with Congress before executive action. It requires the initiation of serious discussions on Capitol Hill with key members of both parties before policies are set in stone. It means the president must provide timely information to Congress on major foreign policy developments and demonstrate a capacity to change his mind in the face of reasonable opposition. By dealing honestly and openly with influential and knowledgeable legislators, the president can strengthen the hand of responsible forces in Congress and thereby increase his chances of attracting majority support for his policies and preserving as much discretion as possible over the conduct of foreign policy.

No formal mechanisms can guarantee collaboration between the branches; presidents will pursue this approach only when they believe it will advance their interests. But some changes in law and organization would make consultation a more routine feature of presidential-congressional relations. The spirit, if not the letter, of laws and mechanisms presently in place for the oversight of intelligence activities could well be applied to war powers, arms control, diplomacy, and foreign economic policy. The Select Intelligence committees give the administration a secure setting for advice and criticism but also for support of covert activities. When used in the manner that was intended, these procedures provide the benefits of democratic accountability without compromising the president's ability to act quickly and decisively on behalf of American security interests.

These virtues are noticeably absent in the spheres of war powers and arms control. As Katzmann recommends, the War Powers Act should be amended by substituting an explicit consultation mechanism for the provision requiring the withdrawal of troops as a consequence of congressional inaction. And in line with Blechman's advice, the president would strengthen his position in arms control policy and reduce the maneuvering room for congressional initiatives on the details of negotiating positions by devising informal arrangements whereby Congress can help shape negotiating objectives and strategies.

The same general strategy of reform—seeking to substitute early congressional involvement in the setting of broad policy goals for a reliance on detailed, restrictive, often punitive measures after the fact— can be pursued fruitfully in other areas of foreign policy. The Hamilton- Gilman initiative to revamp the foreign assistance program, discussed by Jentleson, is a good case in point. Another attractive proposal recently advanced calls for new congressional select oversight committees on the dollar and the national economy to focus attention on exchange rate policy and its connection with fiscal, monetary, and trade issues.45

Reformers should be wary of reorganization plans that put a premium on simplification and hierarchy. Despite the surface appeal of joint oversight committees in foreign policy (less burden on executive officials, fewer leaks), separate House and Senate committees provide significant policymaking advantages. Competition between the chambers and their committees can energize congressional oversight and keep collaboration and consultation from degenerating into cooptation. Increased opportunities for service on the committees help build a critical mass of knowledgeable and experienced members in each chamber. Separate committees have more credibility in their respective chambers and thus are in a better position to facilitate more constructive and predictable involvement by the full House and Senate in foreign policy. By the same token, mechanisms for consultation can be effective only insofar as those being consulted can speak for the full Congress. While contemporary congressional leaders are necessarily sensitive to and solicitous of rank-and-file opinion, it would be wise to include some less senior members, particularly the relevant subcommittee chairs, in formal and informal discussions between the branches.

While contemporary congressional leaders are necessarily sensitive to and solicitous of rank-and-file opinion, it would be wise to include some less senior members, particularly the relevant subcommittee chairs, in formal and informal discussions between the branches. Another trap that reformers on Capitol Hill should avoid is the "never again" genre of statutory restriction that, like generals' tendency to fight the last war, follows episodes in which the executive branch fails to honor the letter and spirit of its foreign policy partnership with Congress. While it was perfectly natural for Congress to move to close possible loopholes in existing law following the revelations of the abuse of White House power in the Iran-contra affair, efforts to codify limits and criminalize executive behavior can be counterproductive to interbranch relations. Examples of legislative overkill include proposals requiring notice of all covert operations within forty-eight hours and making it a crime for any government official to try to provide aid indirectly to any foreign country or group that is prohibited by law from receiving direct U.S. aid. Remedies of this sort, designed to prevent the recurrence of what was almost certainly the exception, not the norm, in executive behavior, are of dubious constitutionality and certain to provoke opposition from any occupant of the White House. Instead, Congress should replace its passive-aggressive syndrome in foreign policy with a steadier, more mature posture toward the president. Congress should monitor executive behavior vigilantly and punish presidents for clear transgressions of law and procedure, but not rewrite the rules that govern their normal interactions.

#### Extinction

**Hamilton 2** [Lee H., President and Director of the Woodrow Wilson International Center for Scholars, Vice Chairman of the 9/11 Commission, President's Homeland Security Advisory Council, Former Member of the United States House of Representatives for 34 Years, Co-Chair of the Iraq Study Group, Formerly Special Assistant to the Director at the Woodrow Wilson Center, A Creative Tension: The Foreign Policy Roles of the President and Congress, p. 3-7]

We face many dangers, however. The diversity of the security and economic threats around the globe is daunting. Terrorism, which has already struck the united states brutally, will be a continuing threat in the years ahead, and it may become more deadly if weapons of mass destruction proliferate and reach the wrong hands. the greatest security threat might be the danger that nuclear weapons or materials in russia could be stolen and sold to terrorists or hostile nations and used against americans at home or abroad. groups and individuals that do not wish us well will also attempt to attack us with weapons of mass disruption, such as information warfare, which could assault our economic, financial, communications, information, transportation, or energy infrastructures. there are numerous other threats to national security. The world's population will increase substantially during the first half of the twenty-first century, placing added strain on natural resources, including water, and possibly intensifying interstate conflicts and civil strife. Economic crises will likely be a regular occurrence, throwing some nations into turmoil and occasionally creating widespread financial instability. International crime, the illegal drug trade, global warming, infectious diseases, and other transnational problems will challenge national sovereignty and threaten our security, prosperity, and health. yet these dangerous threats are balanced by many opportunities. as the world's most powerful nation, the United States has a tremendous capacity to influence the world for good—to protect international peace, root out terrorism, resolve conflicts, spread prosperity, and advance democracy and freedom. Other nations look to us for leadership and to set an example of responsible and principled international action. our values of freedom, justice, the rule of law, and equality of opportunity are increasingly the values of peoples around the globe. In the coming decades, the spread of these values and incredible advances in science and technology will give us the capacity to disseminate knowledge, cure diseases, reduce poverty, protect the environment, and create jobs in the farthest-flung corners of the world. so our new world is as full of hope as it is of danger. To meet the threats and take advantage of the opportunities, the United States will need strong leadership, expertise in many fields, and large measures of foresight and resolve. Again and again, I have been impressed with the need for U.S. leadership on the most pressing international challenges. If something important has to be done—from fighting international terrorism to bringing peace to the middle east—no other country can take our place. We may not get it right every time, but our leadership is usually constructive and helpful. We must, however, be aware of the limits to American power. The united states is neither powerful enough to cause all of the world's ills, nor powerful enough to cure them. So it is critical that we maintain good relations with our international allies and friends, manage prudently our sometimes difficult relationships with Russia and China, and support and strengthen international institutions. A world that is committed to working together through effective international institutions and partnerships will be the world most capable of protecting peace and security and advancing prosperity and freedom. Equally important for a successful foreign policy will be cooperation between the president and Congress. Today's moment of U.S. preeminence has not come to this nation by chance. Sound policies shaped by past presidents and congresses helped to place us in this desirable position. To remain secure, prosperous, and free, the united states must continue to lead. That leadership requires the president and Congress to live up to their constitutional responsibilities to work together to craft a strong foreign policy. The great constitutional scholar Edward Corwin noted that the constitution is an invitation for the president and congress to struggle for the privilege of directing foreign policy. Although the president is the principal foreign policy actor, the Constitution delegates more specific foreign policy powers to congress than to the executive. it designates the president as commander-in-chief and head of the executive branch, whereas it gives Congress the power to declare war and the power of the purse. The president can negotiate treaties and nominate foreign policy officials, but the senate must approve them. Congress is also granted the power to raise and support armies, establish rules on naturalization, regulate foreign commerce, and define and punish offenses on the high seas. This shared constitutional responsibility presupposes that the president and Congress will work together to develop foreign policy, and it leaves the door open to both of them to assert their authority. On some basic foreign policy issues, the president and congress agree on their respective roles. For instance, Congress generally does not question the president's power to manage diplomatic relations with other nations, and presidents accept that congress must appropriate funds for diplomacy and defense. But on a panoply of other issues—from oversight of foreign aid and responsibility for trade policy to authorization of military deployments and funding for international institutions—Congress and the president battle intensely to exert influence and advance their priorities. Of course, I approach the executive–legislative relationship from the perspective I gained during my congressional experience. That experience has convinced me that Congress plays a very important role in foreign policy, but does not always live up to its constitutional responsibilities. Its tendency too often has been either to defer to the president or to engage in foreign policy haphazardly. I recognize that political pressures, institutional dynamics, and the heavy domestic demands placed on Congress can make it difficult for it to exercise its foreign policy responsibilities effectively. But I believe that Congress could improve its foreign policy performance markedly if it made a concerted effort to do so. Although the president is the chief foreign policy maker, Congress has a responsibility to be both an informed critic and a constructive partner of the president. The ideal established by the founders is neither for one branch to dominate the other nor for there to be an identity of views between them. Rather, the founders wisely sought to encourage a creative tension between the president and Congress that would produce policies that advance national interests and reflect the views of the American People. Sustained consultation between the president and Congress is the most important mechanism for fostering an effective foreign policy with broad support at home and respect and punch overseas. In a world of both danger and opportunity, we need such a foreign policy to advance our interests and values around the globe.

### 1nc extraterritoriality da

#### Law enforcement paradigm spills over to extraterritorial habeas status

**Lobel, 11** – Jules, Bessie McKee Walthour Endowed Chair and Professor of Law, University of Pittsburgh School of Law (“Fundamental Norms, International Law, and the Extraterritorial Constitution,” Yale Journal of International Law, <http://www.yjil.org/print/volume-36-issue-2/fundamental-norms-international-law-and-the-extraterritorial-constitution?print=1&tmpl=component> //Red)

In a wide variety of contexts, aliens have challenged U.S. government actions undertaken outside our territorial limits. Iraqi and Afghan citizens allegedly tortured while detained by the U.S. military in Iraq and Afghanistan have sought damages for violations of their constitutional rights; aliens subjected to extraordinary rendition—the transfer of detainees by U.S. officials to countries where they are detained and tortured—have asserted various constitutional claims; and foreign nationals detained by the U.S. military at Bagram Airfield Military Base in Afghanistan have filed petitions for habeas corpus. The Supreme Court's 2008 decision in Boumediene v. Bush decisively rejected the Bush administration's categorical argument that constitutional rights do not apply to governmental actions taken against aliens beyond our borders and instead adopted a **functional approach** to the extraterritorial application of the Constitution. The Court concluded that "**questions of extraterritoriality turn on objective factors** and practical concerns, **not formalism**." Whether a constitutional provision has extraterritorial effect must be determined on a case-by-case basis, depending on the "'particular circumstances, the practical necessities, and the possible alternatives which Congress had before it,' and, in particular, whether judicial enforcement of the provision would be 'impracticable and anomalous.'" Applying that functional test to detainees held at Guantanamo, the Court found habeas review necessary because (1) the procedural protections afforded the detainees were inadequate; (2) "in every practical sense Guantanamo is not abroad;" and (3) there were few, if any, practical barriers to federal courts' exercise of habeas jurisdiction. While the Boumediene decision has been viewed by some as broadly reflecting the Court's march toward a global or more cosmopolitan Constitution, its import and application remain unclear. In subsequent cases, the government has argued that Boumediene was premised on **Guantanamo's unique status** as de facto sovereign territory that in every practical sense is "not abroad," and therefore cannot be applied to other prisoners detained by the United States in Afghanistan, Iraq, or CIA sites around the globe. The government also has successfully asserted in several D.C. Circuit cases after Boumediene that the Court's decision only applies to habeas petitions and leaves unaffected the circuit's prior law that Fifth Amendment rights do not apply to aliens anywhere abroad, even those detained at Guantanamo. While it is unlikely that the government's attempt to cabin Boumediene so narrowly will succeed, the Court's functional balancing test has been criticized as vague, malleable, and policy oriented. Most recently, the D.C. Circuit applied Boumediene's functional test to deny prisoners held at Bagram Airfield Military Base in Afghanistan a right to seek habeas relief, leading to editorial criticism that the court had permitted what the Supreme Court had refused to countenance at Guantanamo—"a legal black hole" or "law-free zone" —and had affirmed an "extravagant claim of executive power." This Article argues that **Boumediene's functional test**, which focuses the inquiry of whether the Suspension Clause applies to an executive detention abroad primarily on practical concerns, **is in considerable tension with the fundamental norms jurisprudence that underlies and pervades the Court's opinion**. The Court's functional test is disconnected from its ringing pronouncements that the writ of habeas corpus is a "fundamental" bulwark in protecting liberty, "a right of first importance," and "an indispensable mechanism for monitoring the separation of powers." While the Court claimed that the writ's indispensable separation of powers function was central to its analysis of the extraterritorial application of the Suspension Clause, nowhere does the test the Court articulates acknowledge the importance of separation of powers principles. So too, **while the Court continuously emphasized the detainees' interest in avoiding** lengthy, prolonged, and **indefinite confinement without adequate due process** protections, that fundamental interest makes no appearance in the Court's functional test. Justice Kennedy's opinion in Boumediene thus resembles his decision in Lawrence v. Texas in that both are strongly premised on a fundamental norms jurisprudence that is untethered from the specific test used to decide the case. This Article seeks to reintegrate the fundamental norms strands of the Boumediene opinion into its functional test, and thus normatively ground the opinion. It does so by arguing that the functional test should be informed by international law, a consideration that the Boumediene decision omitted from its analysis despite briefing by the petitioners and amici arguing that international law supported the application of habeas. While several commentators have supported applying international law's jurisdictional principles to address the practical concerns underlying the functional test, this Article argues that utilizing international law's substantive, fundamental, nonderogable norms to help determine the Constitution's extraterritorial application would both allay the Court's practical concerns and ground the Court's test on the important normative principles that underlie its Boumediene opinion. The argument made here is premised on international law's post-World War II recognition that certain basic norms of civilized society, such as the prohibitions on torture, genocide, slavery, extrajudicial execution, and prolonged arbitrary detention without any judicial review are so fundamental as to be nonderogable under any circumstances. That certain norms are so central to individual dignity and civilized society that, unlike ordinary proscriptions, they can never be disregarded by any government at any time, finds expression in several contemporary international law concepts and terms. For example, the International Court of Justice has referred to "fundamental" or "peremptory" norms of international law, and the Vienna Convention on the Law of Treaties provides that governments have no power to enter into treaties that conflict with a peremptory—or jus cogens—norm, which it defines as "a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted." The use of such "fundamental," "peremptory," "jus cogens" norms to inform the applicability of the Constitution's provisions to U.S. officials' conduct abroad would address the tension between perceived U.S. foreign policy needs and the recognition that there are certain fundamental principles that the government should never violate wherever it acts. Such a normative approach follows from the Court's decisions in the Insular Cases as well as Justices Harlan's and Frankfurter's opinions in Reid v. Covert, and is consistent with the line of cases, including Johnson v. Eisentrager, that Justice Kennedy relied on in Boumediene. Moreover, the use of international law in this manner to determine not the content of constitutional rights but rather their territorial applicability avoids the primary objections raised to the use of international law to help determine the Constitution's meaning domestically. Finally, the determination by the international community, including the United States, that certain conduct is never justified by practical concerns, and the prohibition of such conduct in every nation in the world, should meet the concerns for flexibility and practicality at the root of the "impractical and anomalous" functional test. Part II of the Article demonstrates how Justice Kennedy's functional test sought to negotiate a compromise between an all-or-nothing view of the Constitution's extraterritorial application to aliens abroad. It argues, however, **that** Kennedy's **compromise** formulation **is in considerable tension with the fundamental norms jurisprudence** underlying the opinion, and is **ultimately based on** an unprincipled and erroneous **separation of the domestic arena from the international order.** Part III traces the development of Kennedy's impractical and anomalous test from the cases he relied upon, illustrating that those cases emphasize not merely practicalities, but the fundamental norms of civilized society in determining when constitutional norms apply abroad. Those decisions are, at minimum, consistent with using international law to inform that determination. Part IV argues that judicial use of fundamental, nonderogable norms of international law to inform the Constitution's extraterritorial application is consistent with principles of modern international law, the intent and practice of the Framers, and modern judicial precedent. Part V explores the use of international law by other legal systems—Canada, the United Kingdom, and the European Court of Human Rights—to determine the reach of constitutional or human rights.

#### That causes jurisdiction disputes – tanks US foreign relations

**Lobel, 11** – Jules, Bessie McKee Walthour Endowed Chair and Professor of Law, University of Pittsburgh School of Law (“Fundamental Norms, International Law, and the Extraterritorial Constitution,” Yale Journal of International Law, <http://www.yjil.org/print/volume-36-issue-2/fundamental-norms-international-law-and-the-extraterritorial-constitution?print=1&tmpl=component> //Red)

Commentators note that the relationship between international law and domestic national law can be aptly “characterized in terms of coordination between formally autonomous, but in practice highly interdependent, legal orders.”5 With the dramatic rise in the frequency and scope of transnational criminal activity and the modern phenomenon of globalization, the interrelationship of these two legal orders has come into sharper focus. From issues relating to international terrorism to more banal matters with distinct international dimensions, national courts in the modern era find themselves deciding **cases with significant international elements** and **which have the potential to impact relations between sovereigns on the international plane.** One area which is implicated across a broad range of legal topics and which has a natural propensity to affect international relations is the assertion of extraterritorial jurisdiction.6 This is **due to the inherently conflict-generative nature of extraterritoriality.** As one author notes: [E]xtraterritorial punishment has also been considered inconsistent with, or at least problematic under, the light of the principle of state sovereignty. The world is divided into political entities with an exclusive right to regulate the conduct of individuals within their territorial borders. A crucial normative difficulty with extraterritorial jurisdiction is, then, that it is not claimed exclusively on the high seas, or Antarctica for that matter, but rather on the **territory of another sovereign state**.7 Moreover, as Nollkaemper notes, “[t]he rule of law at the national level does not provide an adequate framework for the control of public power as it relates to such transnational issues as . . . protection of fundamental rights, health, and security.”8 When confronted with such matters, national courts are thus left with the Herculean task of addressing transnational legal issues, which national legal systems cannot alone regulate, and under certain circumstances **which can provide fertile ground for conflict.**9 In such instances, a court may find it more appropriate to demure – to refuse to enter into the fray by finding a limitation on its ability to extend its jurisdictional reach to the matter under consideration. Such demurrals serve to decrease the potential for international conflict but at the cost of sovereign power.

#### Canada flips out

**Coughlan, 06** – Steve, Professor of Law at Dalhousie University, Halifax, with Nova Scotia, Robert Currie, Hugh Kindred, and Teresa Scassa (“GLOBAL REACH, LOCAL GRASP: CONSTRUCTING EXTRATERRITORIAL JURISDICTION IN THE AGE OF GLOBALIZATION,” Prepared for the Law Commission of Canada, 6/23/06, Online //Red)

The reach of national law is often greater than its grasp. Canada, like other nations, has effective legal power over its territory and all within it. However, one consequence of the current process of globalization is that Canadian interests are no longer confined exclusively within Canadian borders. Canada thus finds it increasingly necessary to consider asserting its legal jurisdiction beyond its frontiers. Such extraterritorial assertion of Canadian legal authority may run into strong opposition from other countries, who might view Canada as attempting to intervene in their own national territories and domestic affairs. Likewise, other states, under the same pressures of globalization, may try to exercise their legislative acts, government decrees and court orders in the territory of Canada, where they are likely to be **rebuffed with** equal **indignation.** Yet the rapidly growing volume and variety of transnational interactions between people, activities and events, which constitute the engine of globalization, ensure that the extraterritorial application of national legal powers cannot be avoided. Consequently the scope, means and effectiveness of extraterritorial action must be examined and evaluated.

#### Then we all die

**Leblanc, 08** – former commander of Canadian Forces Northern Area (“Mutual Security Interests in the Arctic,” http://www.cdfai.org/conf2008/PDF/CDFAI%202008%20Conference%20-%20Panel%20One.pdf)**Red**

Global warming is affecting the arctic archipelago and for Canada **the immediate danger is through the environment.** It will cost a fortune to clean up the environment and it is an extremely fragile one, and so the question is who would pay for a clean up should an accident occur with a ship carrying a flag of convenience? The Canadian arctic can also be seen as a backdoor and this raises additional security concerns. Canada and the United states have two mutual interests in the arctic, one being security in the post 9 / 11 world and second, oil reserves. The future is unpredictable but **there are advantages to cooperation.** If we work together we will have intelligence and advance warning. The artic is a vast area and it is difficult to monitor with limited resources so we could share limited resources to help each other in surveillance, interception, and ice breaking. Working together would also lower our costs such as with the mapping of the continental shelf where coast guard vessels and scientists are working together in a difficult environment because it is in our mutual interests. It is in the national interest of Canada and the US to have well managed arctic waters. This is seen in Canada announcing that it will make NORDREG, the arctic maritime regulatory regime, compulsory. It is likely that the US will reaffirm its objection to this. A possible solution would be to bring the control of the arctic under NORAD, this would bring enhanced security to both Canada and the United States. There is some degree of urgency in coming to terms with this disagreement because global warming is proceeding faster than predicted and the world is a less secure place **with rogue states, terrorism, weapons of mass destruction and the resurgence of Russian activity.** The security situation in the arctic is not improving and it is in the nationalinterests of both countries to reach a compromise. Both countries need to work to secure the arctic as this is what good neighbours do.

### Self Defense

#### Reject laundry list impact cards – no evidence for propensity

#### Squo solves --- Obama rejected the Bush doctrine

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

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

#### No norm against preemption exists regardless of US action --- means it’s inevitable

Keir A. Lieber 2, Assistant Professor of Political Science, University of Notre Dame and Robert J. Lieber, Professor of Government and Foreign Service, Georgetown University, December 2002, http://164.109.48.86/journals/itps/1202/ijpe/pj7-4lieber.htm

Some analysts believe that it is counterproductive to make explicit the conditions under which America will strike first, and there are compelling reasons for blurring the line between preemption and prevention. The attacks of September 11th demonstrate that terrorist organizations like al Qaeda pose an immediate threat to the United States, are not deterred by the fear of U.S. retaliation, and would probably seize the opportunity to kill millions of Americans if WMD could effectively be used on American soil. A proactive campaign against terrorists thus is wise, and a proclaimed approach toward state sponsors of terrorism might help deter those states from pursuing WMD or cooperating with terrorists in the first place. Other critics have argued that the Bush NSS goes well beyond even the right to anticipatory self-defense that has been commonly interpreted to flow from Article 51 of the U.N. Charter, and thus the Bush strategy will undermine international law and lead other states to use U.S. policy as a pretext for aggression. The most common examples are that the broad interpretation of legitimate preemption could lead China to attack Taiwan, or India to attack Pakistan. This logic is not compelling, however, as these states are not currently constrained from taking action by any norm against preemption, and thus will not be emboldened by rhetorical shifts in U.S. policy.

#### The plan causes circumvention via PMCs—takes out the aff

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Andreas, Geschwister Scholl Institute for Political Science, University of Munich, “Theorising the use of private military and security companies: a synthetic perspective,” Journal of International Relations and Development, 2014, 17, (112–141)

In contrast with this functionalist view, the political-instrumentalist model conceives of privatisation as a strategy of governments to reduce **political costs** rather than enhance problem-solving effectiveness and economic costefficiency (Avant 2005: 60; Chesterman and Lehnardt 2007: 252–3; Avant and Sigelman 2010; Carmola 2010: 45–50, 90–91; Deitelhoff 2010: 198–9; Deitelhoff and Geis 2010). The use of PMSCs serves as an instrument for the **reduction of political costs** accruing to governments from warfare in the context of democratic politics. The political-instrumentalist model relies on the **principal-agent literature** on accountability-evasion, responsibility-shirking and blame-shifting as motives for delegation (Hood 2002; Flinders and Buller 2006; Bartling and Fischbacher 2012). According to this strand of principal-agent research, delegation may be a rational strategy for political cost-sensitive actors who seek to **avoid accountability** for (**potentially**) **controversial or unsuccessful policy decisions** and measures. The model also draws analogies from IR scholarship that has conceived of international cooperation through intergovernmental organisations as a ‘new raison d’e´tat’ (Wolf 1999), that is, **a deliberate strategy** that allows governments to enhance their autonomy **from parliamentary and societal actors** as the intergovernmental arena is largely insulated from effective political control. According to the political-instrumentalist model, governments are not mere transmitters of societally dominant interests but follow their own governmental interests and logics. They seek to keep or even expand their policy autonomy from other legislative and judiciary actors, as well as the broader public. From this perspective, the privatisation of security is a genuinely political and instrumentalist strategy of governments in **strong** and **democratic states** (Binder 2007: 307–8) that serves to **avoid politically costly parliamentary, civil society and media scrutiny,** **opposition and control in the area of security policies.** Democratic oversight and control mechanisms are politically costly because they increase transparency and reduce governments’ autonomy. They render decision-making and implementation more time-intense and cumbersome, less calculable and, ultimately, more risky for governmental actors. Moreover, research on the ‘Democratic Peace’ has shown that democratic electorates are casualty-sensitive (Scho¨ rnig 2008); that is, fallen soldiers can undermine electoral support for military operations and even for incumbent governments, which limits governments’ political leeway in matters of security policy. Failed and/or illegal **military interventions** can endanger incumbents’ re-election in democratic systems and may sometimes even force them to resign (Cockayne 2007: 206, 212; Carmola 2010: 45–60; Deitelhoff 2010: 198–9). By shifting security tasks from the public to the private sphere, governmental actors seek to **reduce (further**) the transparency of decision-making in the realm of security policy, **diffuse accountability**, circumvent democratic and legal control mechanisms and thus enhance their political autonomy in decisions concerning the use of military force. **The use of PMSCs thus increases the power of governments vis-a`-vis their parliaments** (Avant 2005: 60; Avant and Sigelman 2010; Deitelhoff and Geis 2010). Highly political security measures are ‘depoliticised’, that is, removed from contested and (at least somewhat) transparent parliamentary, civil society and media debates. **Transferring** the execution of **security functions to PMSCs** may **help governments** to **hide the origins, extent and consequences of unpopular decisions from other state organs** and broader constituencies (Cockayne 2007: 212). Thus, privatisation serves to cover or downplay the roles and responsibilities of governments. In extreme cases, the responsibility for controversial or unpopular policies is shifted to private actors — this may be attractive and succeed reasonably well if the appearance of a distance between the government and PMSCs can be upheld. PMSCs may then allow for covert foreign policy not approved of by the national public (Deitelhoff 2010: 198). Governmental actors profit from the lesser transparency, the weaker oversight and regulation, as well as the lower media profile of PMSCs compared with public armed forces (Chesterman and Lehnardt 2007; Schneiker 2007; Cutler 2010). In the absence of major scandals, PMSCs are still relatively low-key agents who fly under the radar of public scrutiny and are more or less insulated from intense public contestation and control. Their lack of transparency and accountability to parliaments and the broader public suits the governmental strategy of depoliticisation by delegation (Flinders and Buller 2006). Obviously, governments’ desire to reduce political costs through outsourcing would need to vary if it is to account for variation in the use of PMSCs. From a political-instrumentalist perspective, the crucial context variable that conditions governments’ desire to reduce political costs by delegation will be the anticipated political costliness of the decisions and measures that are to be taken, that is, their (un)popularity in the broader public. Thus, we can hypothesise from a political-instrumentalist perspective that **the less popular a military operation among the domestic audience**, **the greater will be the incentives of governmental actors to reduce political costs and the higher their propensity to rely on the security services of PMSCs.** States will first and foremost outsource politically and societally controversial tasks to PMSCs.

### Terror

#### AQ dead—affiliates are hype and not a threat

Zachary Keck, associate editor of The Diplomat, 3/17/14, Al Qaeda's Brand is Dead, nationalinterest.org/print/commentary/al-qaedas-brand-dead-10059

As Al Qaeda’s operational capability has withered, [3]some observers have sought [3] to reframe the terrorism threat to the U.S. and the West in terms of Al Qaeda’s ideological appeal. According to this perspective, Al Qaeda continues to be a potent threat to the United States and the Western world because its ideology is spreading across the Arab world, and inspiring new groups that will attack the West.

Framing the threat in this way has the advantage of ensuring the Global War on Terror’s longevity. Indeed, by this measurement the U.S. is still embroiled in WWII given that neo-Nazi groups continue to exist, and sometimes carry out terrorist attacks in the West.

But the larger problem with the argument that Al Qaeda’s ideology is spreading is that it is completely inaccurate. The “Al Qaeda brand” was never as popular in the Arab world as it was portrayed in the West, and far from growing, its popularity has been rapidly declining in recent years. In fact, there are signs that **Al Qaeda itself no longer believes in it.**

Much of the confusion about Al Qaeda’s popularity is rooted in the Western tendency to conflate Al Qaeda with Islamic terrorism more generally. If one defines Al Qaeda’s brand as simply being any terrorist attack or insurgency carried out in the name of Islam, an argument could be made that the threat is growing. But, of course, this is not what Al Qaeda’s ideology is, nor is it what made Al Qaeda such a threat to the United States and its Western allies.

Islamic-inspired terrorism long predated the formation of Al Qaeda. It was, for instance, a constant reality in the Arab world during the Cold War thanks to the many groups that were inspired by the writings of Sayyid Qutb. These groups sought to be vanguard movements that used terrorism and leadership assassinations to overthrow Arab regimes [the “near enemy”] that they viewed as insufficiently Islamic.

Al Qaeda was an entirely different story, as a few astute individuals in the U.S. national security establishment realized during the 1990s. Al Qaeda had a very precise ideology, which was seen as a competitor to the ideology espoused by the domestic jihadists.

Like the domestic jihadists, Al Qaeda’s ultimate goal was to topple local regimes and replace them with ones based on Sharia Law (and ultimately a single Caliphate). However, Al Qaeda leaders claimed that the domestic jihadists were failing in this goal because of the support the local regimes received from the United States and its Western allies. According to Al Qaeda, the U.S. and its Western allies would never allow their allied governments in the Arab world to be toppled. Therefore, in order for jihadists to overthrow these hated regimes, and set up more Islamic governments in their place, they must first target the far enemy—the U.S. and the West. Only when the jihadists had forced the U.S. to stop supporting these local regimes could the latter be overthrown.

Ayman al-Zawahiri, the current leader of Al Qaeda, explained this ideological argument nicely in his [4]famous 2005 letter to [4]Al Qaeda [5] in Iraq’s leader [4], Abu Musab al-Zarqawi. In the letter, al-Zawahiri wrote:

“It is my humble opinion that the Jihad in Iraq requires several incremental goals:

The first stage: Expel the Americans from Iraq.

The second stage: Establish an Islamic authority or emirate [in Iraq]….

The third stage: Extend the jihad wave to the secular countries neighboring Iraq.”

Al Qaeda’s ideology was also evident in the way it operated before 9/11. Specifically, the group set up shop in countries like Sudan and Afghanistan, where sympathetic governments existed. Although Al Qaeda provided some limited support to these regimes to shore up support, and provided some funds to domestic jihad groups, living in friendly territory allowed bin Laden and Al Qaeda to concentrate the bulk of their energies and resources on attacking the United States. Even after 9/11, Al Qaeda Central has operated primarily from Pakistan, where the government at least supports its allies, the Afghan Taliban.

**None of the so-called Al Qaeda franchises have replicated this model**. Only Al Qaeda in the Arabian Peninsula (AQAP) in Yemen has shown any real commitment to attacking the U.S. or other Western homelands. Even so, **this commitment has been extremely limited**, particularly when compared with AQAP’s commitment to fighting the Yemeni government.

For the most part, the attacks in the U.S. that are often attributed to AQAP consisted of homegrown terrorists who contacted Anwar al-Awlaki, the Yemin-born American cleric killed by a U.S. drone strike in 2011, to get his approval for their attacks. Although al-Awlaki was happy to encourage these homegrown terrorists, AQAP didn’t devote any of its own resources to support them. Similarly, al-Awaki and some of his associates published an English-language publication, Inspire Magazine, which urged Muslims living in Western countries to orchestrate their own attacks.

One of the exceptions to this model is Umar Farouk Abdulmutallab, the Nigerian who unsuccessfully tried to down a commercial airplane flying to Detroit on Christmas Day 2009. Abdulmutallab had been in Yemen studying Arabic when he decided to join the international jihad. After making contact with AQAP, the group built him a specially designed underwear bomb that would not be detected by airport security. Thus, the group did devote some resources to the attack—namely, building the bomb and possibly financing Abdulmutallab’s airfare—but it wasn’t willing to sacrifice any of its own members to attacking the U.S. Furthermore, the original impetus for the attack came from Abdulmutallab, who contacted the group on his own initiative.

Another exception to AQAP’s usual model came in 2010, when the group attempted to ship two cargo bombs to Chicago. Tipped off by Saudi intelligence, the packages were discovered before the bombs exploded. Unlike the previous attacks, the initial impetus to launch this attack didn’t come from outside the group. Still, the amount of resources AQAP devoted to the attack were minimal, a fact that the group publicly bragged about.

While these events demonstrate that AQAP does pose some threat to the U.S. homeland, they hardly suggest the group is modeling itself off Al Qaeda’s ideology. In contrast to the limited resources it has devoted to attacking the United States, the group has spent the bulk of its energies on waging war against the Yemeni government. This has at times included launching conventional style attacks in south Yemen, and holding territory, which they have tried to govern. Clearly, then, AQAP is far more invested in attacking the near enemy, and only casually interested in attacks on the far enemy.

All the other Al Qaeda affiliates have focused exclusively on trying to overthrow local regimes and establishing Sharia governments in their place—which is **a direct refutation to Al Qaeda’s ideology**. This cannot be attributed entirely to a lack of viable options for attacking the West. For years now Somali Americans have traveled to Somalia to join al-Shabaab in its fight for control over that country. [6]According to U.S. intelligence estimates [6], the group counted at least fifty U.S.-passport holders as members in 2011, and as many as twenty today. Al-Shabaab leaders could have directed any one of these members to return to the United States to carry out attacks there given the ease with which they could gain entry into America.

Yet there is no evidence al-Shabaab has decided to use a single one of these members for the purpose of attacking the United States. Instead, it has felt they are of more use staying in Somalia to fight in the civil war there. The only external attacks it has precipitated have been against African countries that have troops in Somalia fighting al-Shabaab. The goal of these attacks is to force those African countries to withdraw their troops from Somalia, and therefore increase the chances that al-Shabaab will prevail in its effort to seize control of the country.

The actions of Al Qaeda in Iraq (AQI) are also telling. The group publicly claimed it was established to defend Iraq against the U.S.-led occupation, and for years it had easy access to U.S. and coalition troops in Iraq. True to its word, AQI did carry out brutal attacks against the U.S. and other international troops stationed in Iraq. Still, the bulk of AQI’s efforts went towards attacking the Iraqi government and the country’s Shi’a populations, despite al-Zawahiri’s plea that it focus instead on the infidels. Once again, in contrast to Al Qaeda’s ideology, AQI chose the near enemy over the far one. It has since expanded into Syria, where it once again is battling a near enemy rather than the West.

More recently, even Al Qaeda Central has seemingly abandoned its own ideology, as evidenced by al-Zawahiri calling on Muslims wage jihad everywhere from Syria to Russia. While it’s far too early to proclaim that the remnants of Al Qaeda Central are no longer interested in attacking the U.S. homeland, the fact that the group’s public statements now seem to be gravitating towards focusing on the near enemy or different far enemies suggest that even it is amending its ideology.

Symbolic of the [7] lack of support for Al Qaeda’s mission is the fact that newer Islamist groups with supposed Al Qaeda links haven’t adopted the Al Qaeda name. Even groups that formerly took the Al Qaeda name, such as AQAP and AQI (long before being disavowed by Al Qaeda Central), have dropped Al Qaeda from their names.

Instead of Al Qaeda’s ideology spreading, then, what we are seeing is Islamist groups revert back to the domestic-jihad model that was prevalent in the Cold War but had lost steam in the 1990s. Al Qaeda had always considered itself an ideological competitor to these domestic jihadists. Increasingly, it is becoming one of them.

None of this should be surprising for at least two reasons. First, the Arab Spring unequivocally refuted Al Qaeda’s central premise that the U.S. would never allow one of its local allies to be toppled by domestic uprisings. Al Qaeda leaders trying to make this argument today would sound absurd and gain few followers. The larger implication of this, however, is that **it makes little sense for terrorist groups** seeking to govern Muslim states **to attack the U.S**. Far from being necessary to achieve their ultimate objective, it is almost certainly counterproductive given that it attracts the attention of the formidable counterterrorism capabilities the U.S. has amassed since 9/11. This may explain why AQAP hasn’t attempted to attack the U.S. homeland **since the Arab Spring began**.

The other reason it is not surprising that Al Qaeda has increasingly adopted the domestic jihadist ideology is because al-Zawahiri is now the leader of Al Qaeda Central. [8]According to many accounts [8], even during the pre-9/11 years al-Zawahiri was always far more interested in trying to seize control of his native Egypt than attacking the United States, which was bin Laden’s main preoccupation. Reportedly, al-Zawahiri only joined bin Laden’s global jihad out of desperation after the group he was running at the time, Egyptian Islamic Jihad, had run out of resources to fight the Egyptian government. With bin Laden no longer in charge, al-Zawahiri can now use Al Qaeda’s resources to focus on what was always his true ambition in life, overthrowing local regimes.

#### Terrorists won’t use WMD

Forest 12 (James, PhD and Director of Terrorism Studies and an associate professor at the United States Military Academy, “Framework for Analyzing the Future Threat of WMD Terrorism,” Journal of Strategic Security, Volume 5, Number 4, Article 9, Winter 2012, <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1193&context=jss>) \*\*NOTE---CBRN weapon = chemical, biological, radiological or nuclear weapon

The terrorist group would additionally need to consider whether a WMD attack would be counterproductive by generating, for example, condemnation among the group's potential supporters. This possible erosion in support, in turn, would degrade the group's political legitimacy among its constituencies, who are viewed as critical to the group's long-term survival. By crossing this WMD threshold, the group could feasibly undermine its popular support, encouraging a perception of the group as deranged mass murders, rather than righteous vanguards of a movement or warriors fighting for a legitimate cause.16 The importance of perception and popular support—or at least tolerance—gives a group reason to think twice before crossing the threshold of catastrophic terrorism. A negative perception can impact a broad range of critical necessities, including finances, safe haven, transportation logistics, and recruitment. Many terrorist groups throughout history have had to learn this lesson the hard way; the terrorist groups we worry about most today have learned from the failures and mistakes of the past, and take these into consideration in their strategic deliberations. Furthermore, a WMD attack could prove counterproductive by provoking a government (or possibly multiple governments) to significantly expand their efforts to destroy the terrorist group. Following a WMD attack in a democracy, there would surely be a great deal of domestic pressure on elected leaders to respond quickly and with a massive show of force. A recognition of his reality is surely a constraining factor on Hezbollah deliberations about attacking Israel, or the Chechen's deliberations about attacking Russia, with such a weapon.

## 2nc

### 2nc solvency frontline

#### The CP solves the aff – 1nc Hamilton says it creates an obligation for the President to consult, which means decisions have to be made with Congressional input. It’s not a legal restriction on authority but still has the political effect of improving decision-making.

#### The CP is the best balance of war powers – it establishes a cooperative model for shared powers, rather than making Congress ascendant – this is key to every aspect of foreign policy – that’s Hamilton.

#### It improves Presidential decision-making and creates the perception of joint foreign policy development

Kaine and McCain, 14 [Senator Kaine From West Virginia and John McCain, Senator from Arizona, “STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS”, http://beta.congress.gov/congressional-record/2014/1/16/senate-section/article/S441-1]

Some of us may see the problem in these two instances as a failure of Presidential leadership, and I would agree, but I also believe the examples of Libya and Syria represent the broader problem we as a nation face: What is the proper war power authority of the executive and legislative branches when it comes to limited conflicts, which are increasingly the kinds of conflicts with which we are faced? It is essential for the Congress and the President to work together to define a new war powers consultative agreement that reflects the nature of conflict in the 21st century and is in line with our Constitution. Our Nation does not have 535 commanders in chief. We have one--the President--and that role as established by our Constitution must be respected. Our Nation is poorly served when Members of Congress try to micromanage the Commander in Chief in matters of war. At the same time, now more than ever, we need to create a broader and more durable national consensus on foreign policy and national security, especially when it comes to matters of war and armed conflict. We need to find ways to make internationalist policies more politically sustainable. After the September 11 attack, we embarked on an expansive foreign policy. Spending on defense and foreign assistance went up, and energy shifted to the executive. Now things are changing. Americans want to pull back from the world. Our foreign assistance and defense budgets are declining. The desire to curb Presidential power across the board is growing, and the political momentum is shifting toward the Congress. America has gone through this kind of political rebalancing before, and much of the time we have gotten it wrong. That is how we got isolationism and disarmament after World War I, that is how we got a hollow army after Vietnam, and that is how we weakened our national security after the Cold War in the misplaced hope of cashing in on a peace dividend. **We can't afford to repeat these mistakes.** A new war powers resolution--one that is recognized as both constitutional and workable in practice--can be an important contribution to this effort. It can more effectively invest in the Congress the critical decisions that impact our national security. It can help build a more durable consensus in favor of the kinds of policies we need to sustain our global leadership and protect our Nation. In short, the legislation we are introducing today can restore a better balance to the way national security decisionmaking should work in a great democracy such as ours. Let me say again. Neither the Senator from Virginia nor I believe the legislation we are introducing today answers all of the monumental and difficult questions surrounding the issue of war powers. We believe this is a matter of transcendent importance to our Nation, and we as a deliberative body of our government should debate this issue, and we look forward to that debate. This legislation should be seen as a way of starting that discussion both here in the Congress and across our Nation. We owe that to ourselves and our constituents. Most of all, we owe that to the brave men and women who serve our Nation in uniform and are called to risk their lives in harm's way for the sake of our Nation's national defense. Before I yield to my tardy colleague from Virginia, I wish to mention again another reason why I think this legislation should be the beginning of a serious debate which we should bring to some conclusion. The fact is that no President of the United States has recognized the constitutionality of the War Powers Act. That is a problem in itself. That is a perversion, frankly, of the Constitution of the United States of America. That is one reason, but the most important reason is that I believe we are living in incredibly dangerous times. When we look across the Middle East, when we look at Asia and the rise in the tensions in that part of the world and we look at the conflicts that are becoming regional--and whose fault they are is a subject for another debate and discussion, but the fact is that we are in the path of some kind of conflict in which--whether the United States of America wants to or not--we may have to be involved in some ways. We still have vital national security interests in the Middle East. It is evolving into a chaotic situation, and one can look from the Mediterranean all the way to the Strait of Hormuz, the Gulf of Aqaba, and throughout the region. So I believe the likelihood of us being involved in some way or another in some conflict is greater than it has been since the end of the Cold War, and I believe the American people deserve legislation and a clear definition of the responsibilities of the Congress of the United States and that of the President of the United States. Again, I thank my colleague from Virginia, whose idea this is, who took a great proposal that was developed at the University of Virginia and was kind enough to involve me in this effort. I thank him for it. I thank him for his very hard work on it, despite the fact that, as the Chair will recognize, he was late for this discussion. I yield the floor. The PRESIDING OFFICER. The Senator from Virginia. Mr. KAINE. Mr. President, I thank my colleague from Arizona for pointing out to all in the Chamber my tardiness, and I should not have been tardy because I do not like to follow the Senator from Arizona. I would rather begin before him. But I want to thank him for his work with me, together, on this important issue and amplify on a few of the comments he has made. Today, together, as cosponsors we are introducing the War Powers Consultation Act of 2014, which would repeal the 1973 War Powers Resolution and replace it. I could not have a better cosponsor than Senator McCain and appreciate all the work he and his staff have done over the last months with us. I gave a floor speech about this issue in this Chamber in July of 2013, almost to the day, 40 years after the Senate passed the War Powers Resolution of 1973. Many of you remember the context of that passage. When it was passed in the summer of 1973, it was in the midst of the end of the Vietnam war. President Nixon had expanded the Vietnam war into Cambodia and Laos without explicit congressional approval, and the Congress reacted very negatively and passed this act to try to curtail executive powers in terms of the initiation of military hostilities. It was a very controversial bill. When it was passed, President Nixon vetoed it. Congress overrode the veto at the end of 1973. But as Senator McCain indicated, no President has conceded the constitutionality of the 1973 act, and most constitutional scholars who have written about the question have found at least a few of what they believe would be fatal infirmities in that 1973 resolution. It was a hyperpartisan time, maybe not unlike some aspects of the present, and in trying to find that right balance in this critical question of when the Nation goes to war or initiates military action, Congress and the President did not reach an accord. I came to the Senate with a number of passions and things I hoped to do. But I think I came with only one obsession, and this is that obsession. Virginia is a State that is most connected to the military of any State in the country. Our map is a map of American military history--from Yorktown, where the Revolutionary War ended, to Appomattox, where the Civil War ended, to the Pentagon, where 9/11 happened. That is who we are. One in nine Virginians is a veteran. If you add our Active Duty, our Guard and Reserve, our military families, our DOD civilians, our DOD contractors, you are basically talking about one in three Virginians. These issues of war and peace matter so deeply to us, as they do all Americans. The particular passion I had in coming to this body around war powers was because of kind of a disturbing thought, which is, if the President and Congress do not work together and find consensus in matters around war, we might be asking our men and women to fight and potentially give their lives without a clear political consensus and agreement behind the mission. I do not think there is anything more important that the Senate and the Congress can do than to be on board on decisions about whether we initiate military action, because if we do not, we are asking young men and women to fight and potentially give their lives, with us not having done the hard work of creating the political consensus to support them. That is why I have worked hard to bring this to the attention of this body with Senator McCain. The Constitution actually sets up a fairly clear framework. The President is the Commander in Chief, not 535 commanders-in-chief, as Senator McCain indicated. But Congress is the body that has the power both to declare war and then to fund military action. In dividing the responsibilities in this way, the Framers were pretty clear. James Madison, who worked on the Constitution, especially the Bill of Rights, wrote a letter to Thomas Jefferson and said: The constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It [[Page S443]] has accordingly with studied care vested the question of war in the Legislature. Despite that original constitutional understanding, our history has not matched the notion that Congress would always be the initiator of military action. Congress has only declared war five times in the history of the United States, while Presidents have initiated military action prior to any congressional approval more than 120 times. In some of these instances where the President has initiated war, Congress has come back and either subsequently ratified Presidential action--sometimes by a formal approval or sometimes by informal approval such as budgetary allocation--but in other instances, including recently, Presidents have acted and committed American military forces to military action without any congressional approval. The Senator from Arizona mentioned the most recent one. President Obama committed military force to NATO, action against Libya in 2011, without any congressional approval, and he was formally censured by the House of Representatives for doing so. The current context that requires a reanalysis of this thorny question, after 40 years of the War Powers Resolution, was well stated by the Senator from Arizona. Wars are different. They start differently. They are not necessarily nation state against nation state. They could be limited in time or, as of now, we are still pursuing a military force that was authorized on September 18, 2001, 12 or 13 years later. Wars are of different duration, different scope, different geography. Nation states are no longer the only entities that are engaged in war. These new developments that are challenging--what do we do about drones in countries far afield from where battles were originally waged--raise the issue of the need to go back into this War Powers Resolution and update it for the current times. As the Senator from Arizona mentioned, this has been a question that Members of Congress have grappled with and thought about, as have diplomats and scholars and administration officials and Members of Congress for some time. In 2007, the Miller Center for the study of the presidency at the University of Virginia convened a National War Powers Commission under the chairmanships of two esteemable and bipartisan leaders--former Secretaries of State Warren Christopher and James Baker. The remaining members of the Commission were a complete A list of thinkers in this area--Slade Gorton, Abner Mikva, Ed Meese, Lee Hamilton. The Commission's historian was no less than Doris Kearns Goodwin, who looked at the entire scope of this problem in American history and what the role of Congress and the President should be. The Commission issued a unanimous report, proposing an act to replace the War Powers Act of 1973, briefed Congress and incoming President Obama on the particular act in 2007 and 2008, but at that time, the time was not yet ripe for consideration of this bill. But now that we are 40 years into an unworkable War Powers Resolution and now, as the Senator indicated, we have had a string of Presidents-- both Democratic Presidents and Republican Presidents--who have maintained that the act is unconstitutional and now that we have had a 40-year history of Congress often exceeding to the claim of unconstitutionality by not following the War Powers Resolution itself, we do think it is time to revisit. Let me just state two fundamental, substantive issues that this bill presents in the War Powers Consultation Act of 2014. First, there is a set of definitions. What is war? The bill defines significant military action as any action where involvement of U.S. troops would be expected to be in combat for at least a week or longer. Under those circumstances, the provisions of the act would be triggered. There are some exceptions in the act. The act would not cover defined covert action operations. But once a combat operation was expected to last for more than 7 days, the act would be triggered. The act basically sets up two important substantive improvements on the War Powers Resolution. First, a permanent consultation committee is established in Congress, with the majority and minority leaders of both Houses and the chairs and ranking members of the four key committees in both Houses that deal with war issues--Intel, Armed Services, Foreign Relations, and Appropriations. That permanent consultation committee is a venue for discussion between the executive and legislative branches--permanent and continuous--over matters in the world that may require the use of American military force. Because the question comes up often: What did the President do to consult with Congress? Is it enough to call a few leaders or call a few committee chairs? This act would normalize and regularize what consultation with Congress means by establishing a permanent consultation committee and requiring ongoing dialogue between the Executive and that committee. The second requirement of this bill is that once military action is commenced that would take more than 7 days, there is a requirement for a vote in both Houses of Congress. The consultation committee itself would put a resolution on the table in both Houses to approve or disapprove of military action. It would be a privileged motion with expedited requirements for debate, amendment, and vote, and that would ensure that we do not reach a situation where action is being taken at the instance of one branch with the other branch not in agreement, because to do that would put our men and women who are fighting and in harm's way at the risk of sacrificing their lives when we in the political leadership have not done the job of reaching a consensus behind the mission. To conclude, I will acknowledge what the Senator from Arizona said. This is a very thorny and difficult question that has created challenges and differences of interpretation since the Constitution was written in 1787. Despite the fact that the Framers who wrote the Constitution actually had a pretty clear idea about how it should operate, it has never operated that way. Forty years of a failed War Powers Resolution in today's dangerous world suggests that it is time now to get back in and to do some careful deliberation to update and normalize the appropriate level of consultation between a President and the legislature. The recent events as cited by the Senator--whatever you think about the merits or the equities, whether it is Libya, whether it is Syria, whether it is the discussions we are having now with respect to Iran or any other of a number of potential spots around the world that could lead to conflict--suggest that while decisions about war and initiation of military action will never be easy, they get harder if we do not have an agreed-upon process for coming to understand each other's points of view and then acting in the best interest of the Nation to forge a consensus.

### IBC – turns terrorism

#### Increasing partisan fighting makes policymakers overly cautious – prevents developing effective responses to terrorism

**Krasner, 2/23/14** - distinguished scholar at Stanford and a senior fellow at the Hoover Institution (Stephen “The Foreign Policy Essay: Domestic Politics and Foreign Policy—Better Than It Looks”

<http://www.lawfareblog.com/2014/02/the-foreign-policy-essay-domestic-politics-and-foreign-policy-better-than-it-looks/>

Nuclear and biological weapons make it possible for individuals or groups with limited resources to kill tens of thousands of people, or maybe even more. Such attacks could emanate from any place in the world, including the United States itself. Creating and maintaining a world of well governed democratic states with effective policing and intelligence capabilities would be the best way to minimize the chances of such an attack, but that is not the world we live in today. In many areas of the world, as the connection between 9/11 and Afghanistan vividly illustrated, domestic political authorities may be incapable or uninterested in addressing transnational threats. There is no single template that can eliminate the risk of attacks emanating from badly governed or malevolent political entities. The most likely path to success is trial and error. But in a highly partisan political environment, trial and error can be costly because initiatives that falter or do not bring any obvious benefit will be condemned by the political opposition. Given the domestic costs of trial-and-error policies in a highly partisan environment, one likely response is excessive caution. U.S. policies in the Middle East over the last several years offer some illustrations. The explanation by Obama administration officials for the killing of Ambassador J. Christopher Stevens and several of his colleagues in Benghazi, Libya was pilloried by Republicans, who accused the administration of misrepresentation and hiding information about the involvement of Islamic terrorist organizations. Given that Washington is the place from which all facts almost certainly emerge, my own view (which is not informed by any privileged information) is that while Obama administration officials may not have had an entirely accurate understanding of what went on when Susan Rice spoke on the Sunday news programs, it is unlikely that there was willful misrepresentation, and recent reports seem to support this view. The political costs to the Obama administration of conscious, deliberate misrepresentation would have been higher than the benefits. The likely consequence of this incident is that State Department officials will be even more cautious about engaging with actors in dangerous places. This means that these officials will be even more isolated in highly fortified embassies and will therefore be less able to help guide policy in dangerous regions of the world—which are often the regions where U.S. policy needs the most guidance from knowledgeable officials. The most positive response to Ambassador Stevens’s death would have been something along the lines of: “Ambassador Christopher Stevens was a seasoned diplomat with an excellent knowledge of Libya who was willing to put his life at risk in the service of his country. We understand that if our Foreign Service officers are to perform their tasks in the most effective way possible, they cannot be fully safe.” Sadly, the level of partisanship in Washington has made it impossible for any official, Democrat or Republican, to make such a statement. U.S. policy toward Syria offers another example of the tendency to choose excessive caution over trial and error, driven at least in part by high levels of partisanship. The optimal policy for the United States would have been to identify and support those groups within the Syrian opposition that offered the best chance of producing an outcome in which the fighting ended or was contained, the Asad regime was replaced, basic human rights were protected, transnational terrorist threats were addressed, and relations with Israel did not worsen. Of course, the chances of identifying such a group were never very high and failure would have been the most likely outcome. But given the partisan divide in Washington, a strategy of investing resources in a policy that would most likely fail would have been political suicide. In a less partisan environment, political leaders might have been willing to risk acting more decisively. The probability of a good outcome would have been higher, even if never very high.

### Solves – TK/Cyber

#### CP applies to targeted killing and cyber

**Chen, 12** ­– JD Boston College (Julia L. Chen, Restoring Constitutional Balance: Accommodating the Evolution of War, 53 B.C.L. Rev. 1767 (2012), http://lawdigitalcommons.bc.edu/bclr/vol53/iss5/4)

In 2008, the National War Powers Commission proposed new legislation, the War Powers Consultation Act of 2009.338 This proposed legislation would clarify some of the issues that limit the effectiveness of the War Powers Resolution of 1973, and would require Congress to act affirmatively in response to presidential war powers decisions.339 Although this proposal was a step in the right direction, the proposal requires further modification to encompass the full reality of modern warfare.340 The modifications proposed below will ensure that the new law has sufficient breadth to encompass all conflicts regardless of the actors.341 Furthermore, the modifications incorporate a bifurcated process to accommodate the realities of fighting modern wars, which rely on covert actions.342 These proposed reforms bring the balance of power between the executive and legislative branches more closely in line with the Framers’ intent and more thoroughly accommodate the realities of modern warfare.343

1. Revise the Scope of War Powers Legislation

The scope of actors that fall within the War Powers Consultation proposal should be broadened.344 The proposal currently is limited to “combat operation[s] by U.S. armed forces.”345 The legislation should be more expansive, and closer to the reality of modern war fighting, which is conducted by many actors in addition to the military.346 This change could be accomplished by omitting the words “armed forces.” 347 Therefore, the scope of the legislation should be modified to encompass “any combat operation by the United States.”348 This change to the proposed legislation would encompass military, government civilians, contractors, UAVs, and other technological innovations that act on behalf of the nation.349

The scope of conflicts that fall within the War Powers Consultation proposal should also be broadened.350 The proposed legislation currently applies to “any conflict expressly authorized by Congress, or . . . combat operations lasting more than a week or expected by the President to last more than a week.”351 On the one hand, this proposal would encompass the 2011 action in Libya.352 On the other hand, it would not encompass short-duration, high-impact strikes, such as the cyber-attack launched against Estonia in 2007.353 Although an action may be of short duration, it may have long-term effects, and it may have sufficient force to profoundly affect the United States in the form of money, personnel, or foreign relations.354 Thus, language should be added to the proposed legislation to make it applicable to all offensive strikes.355 This expansion would add scenarios that are likely to instigate reprisal against America.356 Therefore, this modification would force the President to explain to Congress why a fight is worth starting and why it is in the national interest.357 Furthermore, this change would still allow the executive to act unilaterally to defend the country against attacks, and would ensure the balance between the political branches intended by the Framers.358

### announce plank

#### Solved by Obama publicly renouncing his legal authority - the distinction is key

Posner, 9/3/13 (Eric, Professor of Law at Chicago Law School. An editor of The Journal of Legal Studies, he has also published numerous articles and books on issues in international law, Slate Magazine, 9/3/13, http://www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever.¶ It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.”¶ Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him.

### AT: Permutation

#### It severs or links to the net benefit– the CP doesn’t establish a restriction on the President’s war powers authority, it merely requires him to consult a joint Congressional committee in advance of any war powers decision.

#### The CP institutionalizes formal consultation and revitalizes a Congressional foreign policy role without having binding authorization requirements - the difference is the plan is a prior authorization requirement that says the President has to obtain authorization first. The CP doesn’t prevent Congress from blocking an operation, but it doesn’t require the President to obtain it in advance.

**Baker and Hamilton, 9 –** former secretary of state and former member of Congress (“WAR POWERS IN THE 21ST CENTURY “ Senate Hearing, 4/28, <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg54641/html/CHRG-111shrg54641.htm>)

Mr. Hamilton. And the important thing there is that the President must consult in that situation. He doesn't have an option. If he's going to commit troops for a significant armed conflict, he shall consult, which is----

Mr. Baker. But, not obtain approval. No requirement in here for approval, but there's a mandatory requirement of consultation.

The Chairman. Right, but there is, then, a mandatory requirement for a vote within 30 days----

Mr. Baker. That's correct.

Mr. Hamilton. Correct.

The Chairman. So you are triggering a requirement for Congress to engage, which has been significantly absent with respect to war powers. I mean, you know, it seems to me that the constitutional mandate, ``Congress shall declare war,'' does not require Congress to declare war.

Mr. Baker. No.

The Chairman. It simply gives them the power to declare war, if they choose to do so. Correct?

Mr. Baker. That's correct.

The Chairman. And, in effect, Congress has complicated this significantly, not the least of which, for instance, in the longest war in our history, Vietnam, where they refused to ever step up and either do the purse or make the declaration.

Mr. Baker. That's correct, sir. And we think, in something as important and serious as this, and particularly given the fact that the polls over the last 50-plus years have showed that the American people really want both the Congress and the President involved when the Nation sends its young men and women into battle, we don't think it's unreasonable to say Congress, after 30 days, should take a position on the issue.

Now, if a vote--if a Resolution of Approval does not pass, our statute provides that any Member of the House or Senate could introduce a Resolution of Disapproval. If that Resolution of Disapproval passes, it would not have the force of law unless the constitutional requirement of the presentment clause was met and it was presented to the President for his signature or veto. If he vetoed it and Congress overrode the veto, then, of course, you would have an actionable event of disapproval.

The Chairman. All of which, in total, I believe, actually-- and this is what I think is very significant about your proposal and one of the reasons why I think it threads the needle very skillfully--is that you actually wind up simultaneously affording the President the discretion, as Commander in Chief, and the ability to be able to make an emergency decision to protect the country, but you also wind up empowering Congress. And, in fact, subtly, or perhaps not so subtly, asking Congress to do its duty. I think that's not insignificant at all, and I think you've found a very skillful way of balancing those without even resolving the other issues that have previously been so critical, in terms of the larger constitutional authority, one way or the other.

#### The resolutions plank just forces Congress to take a stand on foreign policy decisions – it’s not binding and if it fails, all that means is any member can introduce a resolution of disapproval. It doesn’t require a vote for disapproval – it’s a choice and hence an effect of the CP, and it’s only binding if the President signs it – the main effect is political, not legal

**Howell, 11 –** professor of political science at the University of Chicago (William, “THE FUTURE OF THE WAR PRESIDENCY The Case of the War Powers Consultation Act”, in The Presidency in the Twenty-First Century By: Charles W. Dunn, p. 88)

To foster such consultation, the Commission recommends that we replace the War Powers Resolution with the Commission’s own legislative initiative, the WPCA. The WPCA requires the president to consult with—as distinct from merely notify—a newly created Joint Congressional Consultation Committee, on which will sit high-ranking party officials as well as chairpersons and ranking minority members of those congressional committees dealing with foreign affairs. Though urged to meet with the Joint Committee before a military venture, under exigent circumstances the president may choose to wait as many as three days after the initiation of conflict before doing so. Furthermore, consultation is required only for “significant” wars, which the statute defines as military operations that are expected to last at least one week. Predeployment consultation requirements are waived for minor ventures, training exercises, or emergency defensive actions. Once troops are in the field, though, the president must meet with the Joint Committee every two months and honor a variety of reporting requirements.

Under the WPCA, members of Congress have obligations of their own. If Congress fails to authorize a war before it begins, then within thirty days of its initiation the chair and vice chair of the Joint Committee must introduce to both the House and the Senate identical concurrent resolutions calling for the war’s approval. Should these resolutions fail in either chamber, any member of Congress can introduce a resolution expressing Congress’s disapproval of the military venture. Such a resolution must be voted on within five days of its submission. Although a resolution of disapproval is not binding unless the president signs it or Congress overrides a presidential veto, the Commission anticipates that the mere act of forcing members to vote will “promote accountability and provide members of the Joint Congressional Consultation Committee incentive to actively engage the president.”12

By all indications, the Commission does not expect that congressional resolutions, by themselves, will redirect U.S. foreign policy. Rather, these resolutions are viewed as means to an end: they are valuable to the extent that they foster intra- and interbranch consultations about war. Rather than blindly call for more deliberation, the Commission offers the vehicle for its actual realization, because its members fully expect that demands for further information, active debate, and introspection will precede the casting of public votes on war. The Commission’s work intends to serve a single objective: to encourage greater consultation between the executive and legislative branches. The word consultation appears more than one hundred times in the Commission’s final report and in the title of its proposed statute. If we take the Commission on its own terms, then, the success or failure of the WPCA unambiguously rides on its ability to encourage each branch of government to share its opinions and information about prospective and ongoing military ventures far more than it currently does; and, one hopes, Congress and the president will factor these opinions and this information into the decisions they make about war.

#### Restrictions ruin consultation – 1nc Mann evidence slays the permutation – they lock in an adversarial model of interbranch authority that prevents consultation from becoming genuine. Hamilton and Baker say the permutation is likely to cause fights over authority

#### It creates an absurd result – it has the Congress tell the President that it wants genuine consultation over war powers decisions while simultaneously telling the President that he lacks decision-making authority over it

#### Prior authorization requirements ruin cooperation and wreck foreign policy

**Spiro, 13** – Peter, Charles Weiner Chair in international law at Temple University (“Syria Insta-Symposium: Obama’s Constitutional Surrender?,” Opinio Juris, <http://opiniojuris.org/2013/08/31/syria-insta-symposium-obamas-constitutional-surrender/> //Red)

Whatever happens with regard to Syria, the larger consequence of the president’s action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to initiate military action without seeking congressional approval. . . . Obama has reversed decades of precedent regarding the nature of presidential war powers — and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. **foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history**. . . . Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will **soon be coming to a foreign policy decision near you.** The request makes all the difference. Just compare this episode to Kosovo, in which Congress tried and failed to get its act together to agree on an institutional position on the NATO bombing. But President Clinton had not requested authorization, and so there was no concession that congressional approval was needed. So he left himself free to ignore Congress’ failure to approve the action. Obama will have no such out. (He claimed authority to go it alone in his statement today, but this is a context in which actions speak louder than words.) If Congress doesn’t authorize the use of force in Syria, his hands will be tied. The request shifts the default position. In the past, presidents have been able unilaterally to initiate uses of force short of real war so long as Congress doesn’t formally disapprove. Institutional incentives have always pointed away from such disapproval. In fact there are only two partial examples of Congress limiting presidential uses of force in the modern era — Lebanon (Reagan) and Somalia (Clinton) — and that happened only after unilateral presidential actions had headed south. But of course those incentives also point against formally approving these sorts of lesser operations. Kosovo proved both sides of the coin, as measures both to approve and disapprove went down in defeat. Over at Lawfare, Jack Goldsmith congratulates Obama for the move. Future presidents will not be so thankful, and maybe the rest of us shouldn’t be, either. Assuming a limited operation with no American casualties, Obama could have sweated the political heat just like he did during Libya. Through Democrat and Republican administrations presidents have for the most part used the power to initiate lesser uses of force in ways that served the national interest. **American power would have been embarrassed by the** requirement of congressional approval**, which in many cases wouldn’t have been forthcoming.** The rest of the world can basically forget about the US going to military bat in these kinds of situations if congressional action is a precondition. This is a huge development with broad implications not just for separation of powers but for the global system generally.

### Link – authorization requirements

#### Formal authorization requirements subject the executive to partisan warfare – it confirms allied doubts about what Syria signified and collapses global leadership

**McInnis, 13** – Kathleen, PhD candidate at the Department of War Studies, King’s College London and a Research Consultant at Chatham House (“A CANARY IN THE COAL MINE FOR U.S. GLOBAL LEADERSHIP?,” War on the Rocks, 10/28/13, <http://warontherocks.com/2013/10/a-canary-in-the-coal-mine-for-u-s-global-leadership/> //Red)

The Obama administration appears to have dodged a bullet with respect to two critical issues: intervening in Syria and budgetary default. However, as the dust starts to settle, real questions are emerging abroad as to whether the canary is croaking for U.S. global leadership.

The people of the United States have lost their appetite for interventions in complex wars in the Middle East. So from Washington’s perspective, avoiding an intervention in Syria is a “win.” But the view from abroad is considerably more worrying. Cuts to defense spending through sequestration and perceived American legislative dysfunction are exacerbating Allied concerns about whether the U.S. will really put its money where its mouth is. This, in turn, leads to questions about the future of U.S. global leadership. If left unaddressed, these issues will become serious strategic challenges for the United States.

I have worked on transatlantic security issues for most of my career, and have just returned from interviewing defense professionals in Australia, Japan and New Zealand. The impression I consistently get from interacting with Allies and partners: it’s hard to overestimate how carefully our Allies watch what’s going on in the United States. This is because they rely on the U.S. for security guarantees in the event of a major threat to their own territory or security interests. And on balance, it’s a two-way street; the U.S. secures access to foreign bases and support for military coalitions, among other things. Because many Allies are looking to the United States as the strategic equivalent of an insurance policy, questions left unanswered regarding U.S. capability and credibility remain particularly concerning. Unfortunately, the U.S. is currently faring poorly on both counts.

Somewhat paradoxically, despite the fact that the U.S. is the world’s largest military power, questions are emerging about the capability of the U.S. to respond in the event of an attack on Allies. This is due to the disastrous impact that sequestration—the meat cleaver approach to defense cost cutting—is having on American readiness. As Christine Fox, former director of Cost Assessment and Program Evaluation at the Office of the Secretary of Defense, recently argued, “With military units unable to maintain a high level of combat proficiency, we are effectively gambling that a major operation against a capable adversary will not occur over the next three to four years.”

This argument has been confirmed by several military service chiefs. General Ray Odierno, U.S. Army Chief of Staff, recently testified that if sequestration continues, 85% of our active and reserve brigades will not be prepared for contingency requirements. Furthermore, the military aspects of the “pivot” to Asia have already been slowed down as a result. , Chief of Naval Operations Admiral Jonathan Greenert testified in July that the U.S. is unlikely to meet its goal to reposition 60 percent of its ships in the Pacific by 2020 because of budget constraints. This is understandably disconcerting to U.S. allies, particularly in Asia.

Legislative dysfunction is a well-known problem in democracies, and America is clearly no exception. Not a day goes by without the Republicans and Democrats pillorying each other. Partisan dysfunction is hardly unique to the United States—just look at Italy or Belgium. Yet the Obama administration’s decision to submit the question of a Syria intervention to Congressional approval has caused disquiet in capitals around the world.

Yes, Congress is the only authority in the United States Government that can declare war. But Congressional approval takes time and in a crisis, decisive action is usually required.

*[[[REST OF CARD OMMITTED BECAUSE MARKED AT “USUALLY REQUIRED]]]*

### link – wolfgang

#### Obama circumvents the plan

Wolfgang 1/16/14

Ben, White House Correspondent for the Washington Times, “Little change expected in U.S. surveillance policy,” http://www.washingtontimes.com/news/2014/jan/16/little-change-expected-in-us-surveillance-policy/

If the skeptics are correct, President Obama is about to **embrace** and endorse many of the controversial national-security tools and tactics introduced by his predecessor, despite railing against those policies while campaigning for the Oval Office in 2008. Expectations for Friday's long-awaited address, in which Mr. Obama will outline changes to U.S. spying, surveillance and data-collection efforts, are exceedingly low among privacy advocates and others. They expect the president, while paying lip service to the notion of privacy protections and limited government power, to continue the practices first established by the Bush administration in the aftermath of the Sept. 11, 2001, terrorist attacks. Mr. Obama's shift shouldn't come as a surprise, political analysts say, and can be partly attributed to the fact that **it's simply difficult for a president to ever** give up authority**,** **especially if that authority is meant to protect American lives.** It also may come from the fact that the president fears being viewed by history as the commander in chief who curtailed intelligence-gathering only to see a terrorist attack occur, said William Howell, a politics professor at the University of Chicago who has written extensively on presidential power. "When you're running for office, you may espouse the benefits of a limited executive, but when you assume office, there are profound **pressures** **to claim** and nurture **and exercise authority** at every turn **and not** to **relinquish** the **powers available to you**," Mr. Howell said. Leading up to and during his 2008 presidential campaign, Mr. Obama made it a point to separate himself from Mr. Bush on the national security front, but there remain many **notable similarities**. Guantanamo Bay still is operational, **despite** repeated **pledges** from the president that he'd close the U.S. detentional facility in Cuba and house enemy combatants elsewhere. Mr. Obama has dramatically increased the use of drones to target terrorists abroad — a step the administration vehemently defends as being quicker, more effective and far less dangerous to American personnel than sending in ground troops. U.S. surveillance efforts, rather than having been reined in, have in some ways **expanded**. In the process, they have caused Mr. Obama significant foreign policy headaches.

### Tea Party

#### Current Presidential control sets a ceiling on how much the Tea Party can materially affect foreign policy---empowering Congress means empowering isolationist Tea Partiers

Bruce Stokes 14, director of global economic attitudes at the Pew Research Center, 2/12/14, “The Tea Party's worldview,” http://www.europeanvoice.com/article/2014/february/the-tea-party-s-worldview/79627.aspx

About half of Tea Party sympathisers among Republicans and Independents who lean Republican say the United States is doing too much in solving world problems, according to a recent Pew Research Centre survey. This wariness of an activist American foreign policy merely mirrors the sentiment of the broader public.

Similarly, roughly eight in ten Tea Party supporters say it is more important for President Barack Obama to focus on domestic issues rather than foreign policy. In turning inward, the Tea Party is no different from the American public at large.

But such neo-isolationist sentiment should not be equated with protectionism. Tea Party backers agree with the broader public that trade is good for the United States and that American involvement in the global economy is a good thing.

However, Tea Party adherents are far more concerned about declining American influence around the world than is the public at large: 86% say the US plays a less important role today, compared with just 53% of the public who are so concerned.

This is particularly galling to Tea Party supporters because nearly three in four say the United States should be the world's only military superpower, while over half the general public puts a priority on such defence superiority. And Tea Party sympathisers are willing to back up their concerns with spending. Nearly half want to increase the Pentagon's budget, while only about a quarter of the public would do so.

One distinguishing characteristic of Tea Party foreign-policy beliefs is their animosity toward some US foes and the fierceness of their support for traditional friends.

Roughly three-quarters of Tea Party adherents have an unfavourable view of China, compared with the negative view of just over half of the general public. And two-thirds see China's emergence as a world power as a threat to the US. Roughly half the public agrees.

Iran is a particular Tea Party concern: 39% say that the country poses the gravest danger to the US. The general public is less troubled. (Tea Party sympathisers are more concerned about Iran than about China.) And they are far more sceptical about current efforts to curb Tehran's nuclear programme: 84% of Tea Party adherents say Iranian leaders are not serious about addressing international concerns about their country's nuclear enrichment programme compared with 60% of the public that is sceptical.

At the same time, 86% of Tea Party backers have a favourable opinion of Israel, compared with the pro-Israel sentiment by 61% of the general public. This may be one reason 38% of Tea Party supporters say the US should be more involved in resolving the dispute between Israel and the Palestinians. Just 21% of the general public agrees.

Tea Party members of Congress do not set American foreign policy. That is a presidential prerogative in the United States. And Tea Party sympathisers represent only a minority of Congress, although their influence in the Republican party belies the number of their supporters. But their foreign-policy views do have an impact on the US's posture in the world, through the budgetary process. And Tea Party voters and their views of the world shape the US political debate.

So the Tea Party worldview bears watching in 2014. It has global implications.

#### Empowering Congress triggers an isolationist withdrawal from global engagement---extinction

Nicholas Burns 14, professor of the practice of diplomacy and international politics at Harvard’s Kennedy School of Government, 1/30/14, “The new American isolationism,” <https://www.bostonglobe.com/opinion/2014/01/30/new-american-isolationism/Kvnzv4gNdDCOabdWgdjAKP/story.html>

ARE AMERICANS turning inward, tiring of our immense global responsibilities, just when our leadership may be needed most?

That is the unsettling conclusion from a poll conducted last autumn by The Pew Research Center and Council on Foreign Relations (where I serve on the board of directors). The poll found:

■ 53 percent of respondents say the United States is less powerful than a decade ago;

■ 70 percent believe the United States is less respected;

■ 52 percent agreed that “the US should mind its own business internationally and let other countries get along the best they can on their own.”

For Bruce Stokes, director of Global Economic Attitudes at Pew, these findings describe “an unprecedented lack of support for American engagement with the rest of the world.”

On the surface, American public skepticism about our global role is understandable. Since the 9/11 attacks, the United States has fought two deeply unpopular land wars in Afghanistan and Iraq — the longest in our history. We suffered through the most damaging economic crisis since the Great Depression and watched as pressures rose on the poor and middle class. President Obama spoke for millions of Americans when he said in 2011 that it was “time to focus on nationbuilding here at home.”

But there are worrisome signs that support for US international leadership is breaking down in Congress. On the far left of the Democratic Party, there is visibly less support for sustaining world-class military and diplomatic capabilities. Meanwhile, the Tea Party sometimes gives the impression it wants to dig a giant moat around the country with drawbridges pulled up — permanently — to separate us from the rest of the world.

The problem with this line of thinking, of course, is that while isolation and retreat may have been perfectly rational responses to the world of 1814, they are recipes for foreign policy failure in the more highly integrated world of 2014. The Atlantic and Pacific oceans did not stop the 9/11 hijackers and won’t deter cyber criminals and terrorists waiting to strike in the future. The global economy knits together every nation on earth. That is why an increasing number of American jobs depend on our ability to export, trade, and invest competitively overseas.

In a very real way, the fate of every person on earth is now linked as never before. That is the tangible import of climate change, human trafficking, and the drug and crime cartels that plague every country in the world.

The United States serves, as Princeton’s John Ikenberry puts it, as the global “system operator.” By any metric of power — political, military, economic — the United States is still, by far, the most influential country in the world. China, India, and Brazil — the three great rising powers — are neither ready nor willing to replace us. And we should not want to live in a world dominated in the future by an autocratic and bullying Beijing.

In her gripping 2013 book, “Those Angry Days,” Lynne Olson chronicled the titanic public battle between the isolationist hero Charles A. Lindbergh and the interventionist President Franklin D. Roosevelt on the eve of the Second World War. It was not at all a given in 1939 to 1941 that FDR would finally defeat the isolationists who would have kept us criminally neutral in the battle against Hitler.

Fortunately, we face no isolationist movement in 2014 as dramatically powerful as Lindbergh and his allies in the US Senate before Pearl Harbor. The main lesson of that time, however, applies today. The United States needs to lead internationally, however burdensome that may sometimes be.

But, many of America’s closest friends are worried about us. In London last week, I listened to a litany of concerns about the consistency and durability of US global leadership. Could it be, some wondered, that in our understandable desire to withdraw from Iraq and Afghanistan, we may have pulled back too much from the rest of the Middle East, especially Syria and Egypt?

In a recent column that should be read carefully in Washington’s corridors of power, the influential British Financial Times columnist Philip Stephens warned starkly: “The US remains the only power that matters everywhere, but Washington no longer thinks that everywhere matters.”

#### Obama vetoes anything broader

Ari Shapiro 13, NPR correspondent, Why Obama Wants To Change The Key Law In The Terrorism Fight, May 29, <http://www.npr.org/blogs/itsallpolitics/2013/05/29/187059276/why-obama-wants-to-change-the-key-law-in-the-terrorism-fight>

Obama promised to work with Congress to refine, and ultimately repeal, the AUMF's mandate.

"And I will not sign laws designed to expand this mandate further," he said.

## 1nr

### \*posner link from ellis

#### Disagreements over authority trigger constitutional showdowns – even if the executive wants the plan – it’s about who decides, not the decision itself

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 75-77)

Showdowns occur when the location of constitutional authority for making an important policy decision is ambiguous, and multiple political agents (branches, parties, sections, governments) have a strong interest in establishing that the authority lies with them. Although agents often have an interest in negotiating a settlement, asymmetric information about the interests and bargaining power of opposing parties will sometimes prevent such a settlement from being achieved. That is when a showdown occurs. Ultimately, however, someone must yield; this yielding to or acquiescence in the claimed authority of another agent helps clarify constitutional lines of authority, so that next time the issue arises, a constitutional impasse can be avoided. From a normative standpoint, constitutional showdowns thus have an important benefit, but they are certainly not costless. As long as the showdown lasts, the government may be paralyzed, unable to make important policy decisions, at least with respect to the issue under dispute.

We begin by examining a simplified version of our problem, one involving just two agents—Congress and the executive. We assume for now that each agent is a unitary actor with a specific set of interests and capacities. We also assume that each agent has a slightly different utility function, reflecting their distinct constituencies. If we take the median voter as a baseline, we might assume that Congress is a bit to the left (or right) of the median voter, while the president is a bit to the right (or left). We will assume that the two agents are at an equal distance from the median, and that the preferences of the population are symmetrically distributed, so that the median voter will be indifferent between whether the president or Congress makes a particular decision, assuming that they have equal information.39 But we also will assume that the president has better information about some types of problems, and Congress has better information about other types of problems, so that, from the median voter’s standpoint, it is best for the president to make decisions about the first type of problem and for Congress to make decisions about the second type ofproblem.40

Suppose, for example, that the nation is at war and the government must decide whether to terminate it soon or allow it to continue. Congress and the president may agree about what to do, of course. But if they disagree, their disagreement may arise from one or both of two sources. First, Congress and the president have different information. For example, the executive may have better information about the foreign policy ramifications of a premature withdrawal, while Congress has better information about home-front morale. These different sources of information lead the executive to believe that the war should continue, while Congress believes the war should be ended soon. Second, Congress and the president have different preferences because of electoral pressures of their different constituents. Suppose, for example, that the president depends heavily on the continued support of arms suppliers, while crucial members of Congress come from districts dominated by war protestors. Thus, although the median voter might want the war to continue for a moderate time, the president prefers an indefinite extension, while Congress prefers an immediate termination.

So far, we have explained why the president and Congress might disagree about when to terminate the war, but mere policy disagreement does not result in a showdown. Showdowns arise only when there is a disagreement about authority. If Congress believes that the president has the sole authority to terminate the war, then his view will prevail. Congress may try to pressure him or influence him by offering support for other programs desired by the president, or by trying to rile up the public, but these activities are part of normal politics, and do not provoke a constitutional showdown. Similarly, if the president believes that Congress has the sole authority to terminate the war, then Congress’s view will prevail. This outcome is shown in cell 3 in table 2.1. Similarly, no showdown occurs when the two branches agree both about authority and policy—for example,

that the president decides, and Congress agrees with his decision (cell 1). The first column represents the domain of normal politics.

Showdowns can arise only when Congress and the president disagree about who decides. Here, there are two further possibilities. First, Congress and the president disagree about who decides but agree about the correct policy outcome (cell 2). In these situations, which arise with some frequency, the two branches are often tempted to paper over their differences because an immediate policy choice is not at stake. But sometimes a showdown will occur. We will discuss this special case later. Second, Congress and the president disagree about the policy outcome and about authority (cell 4). In this case, showdowns are likely, because a policy decision must be made, and if the parties cannot agree about what it should be, then they cannot avoid resolving the question of authority. We focus on this case for now.

### process Good

**That outweighs their offense and is the ultimate theory impact - disads don’t solve because it doesn’t force an evaluation of competing political options**

Schuck, 99 [Peter H., Professor, Yale Law School, and Visiting Professor, New York Law School, Spring (“Delegation and Democracy” – Cardozo Law Review) http://www.constitution.org/ad\_state/schuck.htm]

God and the devil are in the details of policymaking, as they are in most other important things—and the details are to be found at the agency level. This would remain true, moreover, even if the nondelegation doctrine were revived and statutes were written with somewhat greater specificity, for many of the most significant impacts on members of the public would still be indeterminate until the agency grappled with and defined them. Finally, the agency is often the site in which public participation is most effective. This is not only because the details of the regulatory impacts are hammered out there. It is also because the agency is where the public can best educate the government about the true nature of the problem that Congress has tried to address. Only the interested parties, reacting to specific agency proposals for rules or other actions, possess (or have the incentives to ac-quire) the information necessary to identify, explicate, quantify, and evaluate the real-world consequences of these and alternative proposals. Even when Congress can identify the first-order effects of the laws that it enacts, these direct impacts seldom exhaust the laws’ policy consequences. Indeed, first-order effects of policies usually are less significant than the aggregate of more remote effects that ripple through a complex, interrelated, opaque society. When policies fail, it is usually not because the congressional purpose was misunderstood. More commonly, they fail because Congress did not fully appreciate how the details of policy implementation would confound its purpose. Often, however, this knowledge can only be gained through active public participation in the policymaking process at the agency level where these implementation issues are most clearly focused and the stakes in their correct resolution are highest.

### we meet

#### The plan text should be interpreted through the host of 1ac evidence which we will reintroduce into the debate

#### First, 1ac advocate

Graham Cronogue 12, J.D. from Duke, a new aumf: defining combatants in the war on terror, 22 Duke J. Comp. & Int'l L. 377

**The AUMF must be updated**. In 2001, the AUMF authorized force to fight against America's most pressing threat, the architects of 9/11. [\*402] However, much has changed since 2001. Bin Laden is dead, the Taliban has been deposed, and it is extremist organizations other than al-Qaeda and the Taliban who are launching many of the attacks against Americans and coalition partners. n124 In many ways, **the greatest threat is coming from** groups not even around in 2001, groups such as **AQAP and al Shabaab**. n125 **Yet these groups do not fall under the AUMF**'s authorization of force. These groups are not based in the same country that launched the attacks, have different leaders, and were not involved in planning or coordinating 9/11. Thus, under a strict interpretation of the AUMF, the President is not authorized to use force against these groups.

Congress needs to specifically authorize force **against groups outside of al-Qaeda and the Taliban**. Our security concerns demand that the President can act quickly and decisively when facing threats. **The current authorization does not cover** many of **these threats**, yet it is much more difficult to achieve this decisiveness if the President is forced to rely solely on his inherent powers. **A clear congressional authorization would clear up** much of **this problem**. Under Justice Jackson's framework, granting or denying congressional authorization ensures that President does not operate in the "zone of twilight." n126 Therefore, **if Congress lays out the exact scope of the President's power**, naming or clearly defining the targeted actors, **the constitutionality** or unconstitutionality **of presidential actions will become much clearer**. n127

**Removing the 9/11 nexus** to reflect the current reality of war without writing a carte blanche is the most important form of congressional guidance regarding target authorization. In order for the President to operate under the current AUMF, he must find a strong nexus between the target and the attacks on September 11. As I have shown in this paper, this nexus is simply non-existent for many groups fighting the United States today. Yet, the President should want to operate pursuant to congressional authorization, Justice Jackson's strongest zone of presidential authority. In order to achieve this goal, the administration has begun to stretch the statutory language to include groups whose connection to the 9/11 attacks, if any, is extraordinarily limited. The current **presidential practice only nominally follows the AUMF**, a practice Congress has seemingly consented to by failing to amend the statute for over ten years. **This** [\*403] "**stretching" is dangerous** as Congress is no longer truly behind the authorization and has simply acquiesced to the President's exercise of broad authority.

The overarching purpose of the **new authorization should** be to **make it clear that** the domestic legal foundation for using **military force is not limited to al-Qaeda and the Taliban** but also extends to the many other organizations fighting the United States. The language in Representative McKeon's bill does a fairly good job of achieving this goal by specifically naming al-Qaeda and the Taliban along with the term "associated force." This provision makes it clear the President is still authorized to use force against those responsible for 9/11 and those that harbored them by specifically mentioning al-Qaeda and the Taliban. However, the additional term "associated force" makes it clear that the authorization is not limited to these two groups and that the President can use force against the allies and separate branches of al-Qaeda and the Taliban. This creates a very flexible authorization.

Despite the significant flexibility of the phrase "associated force engaged in hostilities", I would propose defining the term or substituting a more easily understood and limited term. Associated force could mean many things and apply to groups with varying levels of involvement. Arguably any group that strongly identifies with or funds al-Qaeda or the Taliban could be an associated force. Thus, we could end up in the previously describe situation where group "I" who is in conflict with the United States or a coalition partner in Indonesia over a completely different issue becomes a target for its support of an associated force of al-Qaeda. Beyond that, the United States is authorized to use all necessary force against any groups that directly aid group "I" in its struggle.

My proposal for the new AUMF would appear as follows:

AFFIRMATION OF ARMED CONFLICT WITH AL-QAEDA, THE TALIBAN, AND ASSOCIATED FORCES

Congress affirms that -

(1) the United States is engaged in an armed conflict with al-Qaeda, the Taliban, and associated forces and that those entities continue to pose a threat to the United States and its citizens, both domestically and abroad;

a. for the purposes of this statute, an associated force is a nation, organization, or person who enjoys close and well-established collaboration with al-Qaeda or the Taliban and as part of this relationship has either engaged in or has intentionally provided direct tactical or logistical support for armed conflict against the United States or coalition partners.

[\*404]

(2) the President has the authority to use all necessary and appropriate force during the current armed conflict with al-Qaeda, the Taliban, and associated forces pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541);

(3) the current armed conflict includes nations, organization, and persons who -

a. are part of al-Qaeda, the Taliban, or associated forces; or

b. engaged in hostilities or have directly supported hostilities in aid of a nation, organization or person described in subparagraph (A);

c. or harbored a nation, organization, or person described in subparagraph (A); and

(4) the President's authority pursuant to the Authorization for Use of Military Force includes the authority to detain belligerents, including persons described in paragraph (3), until the termination of hostilities.

(5) Nothing in this authorization should be construed to limit the President's ability to respond to new and emerging threats or engage in appropriate and calculated actions of self-defense.

The definition of "associated forces" will add much needed clarity and provide congressional guidance in determining what groups actually fall under this provision. Rather than putting faith in the President not to abuse his discretion, **Congress should** simply **clarify** what it means and limit his discretion to acceptable amounts. The "close and well-established collaboration" ensures that only groups with very close and observable ties to al-Qaeda and the Taliban are designated as "associated forces." While the requirement that part of their collaboration involve some kind of tactical or logistical support ensures that those classified as enemy combatants are actually engaged, or part of an organization that is engaged, in violence against the United States. Also, requiring that the associated force's violence be directed at the United States or a coalition partner and that this violence is part of its relationship with al-Qaeda or the Taliban is another important limitation.

First, requiring the associated force to engage in violence that is directed at these nations ensures that "associated force" does not include countries such as Iran that might have a relationship with al-Qaeda and give it financial support but are not actually in violent conflict with the United States. Second, requiring that this violence is made in furtherance of its relationship with al-Qaeda and the Taliban ensures that the violence that makes a group an "associated force" is actually related to its collaboration with al-Qaeda and the Taliban. Without this second provision, a group that [\*405] supports al-Qaeda would be elevated to an "associated force" if it engaged in violence with, for instance, Australia over a completely unrelated issue.

While some groups that work closely with and support al-Qaeda would not be considered associated forces, it is important to limit the scope of this term. This label effectively elevates the group to the same status as al-Qaeda and the Taliban and attaches authorization for force against any group that supports or harbors it. Furthermore, there is little real harm by narrowly defining associated forces because the groups that do support al-Qaeda will still be subject to the authorization under the "support" or "harbor" prongs. Narrowly defining "associated forces" simply prevents the problem of authorization spreading to supporters of those who are merely supporters of al-Qaeda.

Compared to Representative McKeon's proposal, these **new provisions would** narrow the scope **of authorization**. The President would not be able to use this authorization to attack new groups that both spring up outside our current theater and have no relation to al-Qaeda, the Taliban or the newly defined associated forces. However, part (5) of my authorization would ensure that the President is not unnecessarily restricted in responding to new and emergent threats from organizations that do not collaborate and support al-Qaeda. In this way, the proposal incorporates Robert Chesney's suggestion, "**it may be** that it [is] **better to draw the statutory circle narrowly**, with language making clear that the narrow framing does not signify an intent to try and restrict the President's authority to act when necessary against other groups in the exercise of lawful self-defense." n128 The purpose of the new AUMF should not be to give the President a carte blanche to attack any terrorist or extremist group all over the world. **The purpose of this authorization is to provide clear authorization for the use of force against al-Qaeda and its allies**. Moreover, **if a new group is created** that has no relation to any of the relevant actors defined in this statute, **Congress can pass another authorization** that addresses this reality. The purpose of congressional authorization should not be to authorize the President to act against every conceivable threat to American interests. In fact, such an authorization would effectively strip Congress of its constitutional war making powers. Instead, the new proposal should provide clear domestic authorization for the use of force [\*406] against those nations that present the greatest threat to the United States today.

CONCLUSION

The original AUMF was hastily passed during a time of crisis to address America's most pressing security threats and concerns. Over time these threats and concerns have changed and grown. Our law on conflict should evolve with these changes. The best way to bring about this change is to update the AUMF. This update should reflect the present reality of the conflict **by expanding the authorization** to use force **beyond** simply **those involved in 9/11**. This authorization should expand **to include groups such as AQAP** who work closely with and fight alongside al-Qaeda. However, we should not expand the scope of the statute as far as Congress has proposed. Representative McKeon's legislation would effectively give the President a carte blanche to decide who and what to attack and detain. Such a broad grant of authority would effectively allow the President to use force whenever and wherever he wanted. Instead, the new legislation should balance the need for decisive presidential action against the very real concern of adding too much gloss to the Executive power. My proposal attempts to find such a balance by clearly defining the groups of combatants, **ensuring that the President has clear and significant authority** to act against those organizations. It also limits his discretion in deciding what groups fit this description and **prevents him from starting a global and perpetual war on terror**, while ensuring that he is not completely barred from responding to new threats as they arise. Undoubtedly, my proposal has flaws and loopholes and cannot be used to authorize force against all future threats, but it does a better job than Representative McKeon's of heeding President Lincoln's warning.

#### Second, wainstein says this takes out solvency because current legal authority causes hesistance and prevents solution to terrorism

Kenneth Wainstein 13, partner at cadwalader, wickersham & taft llp, statement before the committee on foreign relations united states senate concerning counterterrorism policies and priorities: addressing the evolving threat, March 20, <http://www.foreign.senate.gov/imo/media/doc/Wainstein_Testimony.pdf>

It has recently become clear, however, that the Al Qaeda threat that occupied our attention after 9/11 is no longer the threat that we will need to defend against in the future. Due largely to the effectiveness of our counterterrorism efforts, the centralized leadership that had directed Al Qaeda operations from its sanctuary in Afghanistan and Pakistan -- known as “**Al Qaeda Core**” -- **is now just a shadow** of what it once was. While still somewhat relevant as an inspirational force, Zawahiri and his surviving lieutenants are reeling from our aerial strikes and no longer have the operational stability to manage an effective global terrorism campaign. **The result has been a migration of operational authority and control** from Al Qaeda Core **to its affiliates** in other regions of the world, such as Al Qaeda in the Arabian Peninsula, Al Qaeda in Iraq and Al Qaeda in the Islamic Maghreb.

As Andy Liepman of the RAND Corporation cogently explained in a recent article, this development is subject to two different interpretations. While some commentators diagnose Al Qaeda as being in its final death throes, others see this franchising process as evidence that Al Qaeda is “coming back with a vengeance as the new jihadi hydra.” As is often the case, the truth likely falls somewhere between these polar prognostications. Al Qaeda Core is surely weakened, but its **nodes** around the world have picked up the terrorist mantle and **continue to pose a threat to America and its allies** -- as tragically evidenced by the recent violent takeover of the gas facility in Algeria and the American deaths at the U.S. Mission in Benghazi last September. **This threat has been compounded by** a number of other variables, including the opportunities created for Al Qaeda by the events following **the Arab Spring**; the ongoing threat posed by **Hizballah**, its confederates in **Iran** and other terrorist groups; **and** the growing incidence over the past few years of **home-grown violent extremism** within the United States, such as the unsuccessful plots targeting Times Square and the New York subway.

We are now at a pivot point where we need to reevaluate the means and objectives of our counterterrorism program in light of the evolving threat. The Executive Branch is currently engaged in that process and has undertaken a number of policy shifts to reflect the altered threat landscape. First, it is working to develop stronger cooperative relationships with governments in countries like Yemen where the Al Qaeda franchises are operating. Second, they are coordinating with other foreign partners -- like the French in Mali and the African Union Mission in Somalia -- who are actively working to suppress these new movements. Finally, they are building infrastructure -- like the reported construction of a drone base in Niger -- that will facilitate counterterrorism operations in the regions where these franchises operate.

While it is important that the Administration is undergoing this strategic reevaluation, **it is** also **important that Congress participate** in that process. Over the past twelve years, Congress has made significant contributions to the post-9/11 reorientation of our counterterrorism program. First, it has been instrumental in strengthening our counterterrorism capabilities. From the Authorization for Use of Military Force passed within days of 9/11 to the Patriot Act and its reauthorization to the critical 2008 amendments to the Foreign Intelligence Surveillance Act, Congress has repeatedly answered the government’s call for strong but measured authorities to fight the terrorist adversary.

Second, **Congressional action has gone a long way toward institutionalizing measures that were hastily adopted after 9/11 and creating a lasting framework** for what will be a “long war” against international terrorism. Some argue against such legislative permanence, citing the hope that today’s terrorists will go the way of the radical terrorists of the 1970’s and largely fade from the scene over time. That, I’m afraid, is a pipe dream. The reality is that **international terrorism will remain a potent force** for years and possibly generations to come. Recognizing this reality, both Presidents Bush and Obama have made a concerted effort to look beyond the threats of the day and to focus on regularizing and institutionalizing our counterterrorism measures for the future -- as most recently evidenced by the Administration’s effort to develop lasting procedures and rules of engagement for the use of drone strikes. Finally, **Congressional action has provided** one other very important element to our counterterrorism initiatives -- a measure of **political legitimacy that could** never be achieved **through unilateral executive action**. At several important junctures since 9/11, Congress has undertaken to carefully consider and pass legislation in sensitive areas of executive action, such as the legislation authorizing and governing the Military Commissions and the amendments to our Foreign Intelligence Surveillance Act. **On each** such **occasion, Congress’ action had the effect of calming public concerns and providing** a level of **political legitimacy to the Executive Branch’s counterterrorism efforts. That legitimizing effect** -- and its continuation through meaningful oversight -- **is critical to maintaining the public’s confidence** in the means and methods our government uses in its fight against international terrorism. **It also provides assurance to our foreign partners and** thereby **encourages them to engage in the operational cooperation** that is so **critical to** the **success** of our combined efforts against international terrorism.

These post-9/11 examples speak to the value that Congressional involvement can bring both to the national dialogue about counterterrorism matters and specifically to the current reassessment of our strategies and policies in light of the evolving threat. It is heartening to see that Congress is starting to ratchet up its engagement in this area. For example, certain Members are expressing views about our existing targeting and detention authorities and whether they should be revised in light of the new threat picture. Some have asked whether Congress should pass legislation governing the Executive Branch’s selection of targets for its drone program. Some have suggested that Congress establish a judicial process by which a court reviews and approves any plan for a lethal strike against a U.S. citizen before that plan is put into action. Some have proposed legislation more clearly directing the Executive Branch to send terrorist suspects to military custody, as opposed to the criminal justice system. Others have argued more generally that the AUMF should be amended to account for the new threat **emanating from** Ansar al Sharia, Boko Haram and the other dangerous **groups that have little direct connection to Al Qaeda and its affiliates** or to anyone who “planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001.” While these ideas have varying strengths and weaknesses, they are a welcome sign that Congress is poised to get substantially engaged in counterterrorism matters once again.

In assessing these and other proposals for national security legislation, Congress should be guided by a pair of principles that their legislative efforts have largely followed over the past twelve years. First, it is important to remember the practical concern that time is of the essence in counterterrorism operations and that **legal authorities must be crafted in a way that permits** operators and **decision makers in the Executive Branch to react** to circumstances **without undue delay**. That concern was not sufficiently appreciated prior to 9/11, and as a result many of our counterterrorism tools were burdened with unnecessary limitations and a stifling amount of process. In fact, the tools used by our national security investigators who were trying to prevent terrorist attacks were much less user-friendly than those available to criminal investigators who were investigating completed criminal acts. The result was slowed investigations and an inability to develop real-time intelligence about terrorist threats, like the one that hit home on 9/11.

The Patriot Act and subsequent national security legislation helped to rectify that imbalance and to make our counterterrorism tools and investigations more nimble and effective, while at the same time providing for sufficient safeguards and oversight to ensure that they are used responsibly and consistent with our respect for privacy and civil liberties. Any future legislation should follow that model. For instance, any scheme for regulating the use of targeted drone strikes -- which may well raise myriad practical and constitutional issues beyond the concern with operational delay -- should be designed with an appreciation for the need for quick decision making and action in the context of war and targeting.

Second and more generally, Congress should maintain its record of largely resisting legislation that unduly restricts the government’s flexibility in the fight against international terrorism. For example, there have been occasional efforts to categorically limit the Executive Branch’s options in its detention and prosecution of terrorist suspects. While there may well be good principled arguments behind these efforts, pragmatism dictates that we should not start taking options off the table. We should instead maximize the range of available options and allow our counterterrorism professionals to select the mode of detention or prosecution that best serves the objectives for each particular suspect -- development of intelligence, certainty of successful prosecution, etc.

**Flexibility should** also **be the watchword when approaching any effort to amend the A**uthorization for **U**se of **M**ilitary **F**orce. The diffusion of terrorist threats that has led to the call for amending the AUMF is bound to continue, and **new groups will** likely **be forming and mounting a threat** to the U.S. **in the years to come**. Any amended AUMF must be crafted with language that clearly defines the target of our military force, but that also encompasses all such groups that pose a serious threat to our national security.

### Presumption

#### Major congressional opposition to limiting the AUMF—“unthinkable” for the GOP.

Zengerle and Spetalnick 5/24 Patricia Zengerle (Foreign policy/National security writer for Reuters) and Matt Spetalnick (White House correspondent for Reuters) “Obama wants to end 'war on terror' but Congress balks” Reuters. 5/24/2013 http://www.reuters.com/article/2013/05/24/us-usa-obama-speech-idUSBRE94M04Y20130524 //Chappell

(Reuters) - President Barack Obama wants to roll back some of the most controversial aspects of the U.S. "war on terror," but efforts to alter the global fight against Islamist militants will face the usual hurdle at home: staunch opposition from Republicans in Congress. In a major policy speech on Thursday, Obama narrowed the scope of the targeted-killing drone campaign against al Qaeda and its allies and announced steps toward closing the Guantanamo Bay military prison in Cuba. He acknowledged the past use of "torture" in U.S. interrogations, expressed remorse over civilian casualties from drone strikes, and said Guantanamo "has become a symbol around the world for an America that flouts the rule of law." After launching costly wars in Iraq and Afghanistan, the United States is tiring of conflict. While combating terrorism is still a high priority, polls show Americans' main concerns are the economy and other domestic issues such as healthcare. Conservative opponents said they would try to block the closure of Guantanamo and rejected Obama's call to repeal the Authorization for Use of Military Force, passed in September 2001 and the legal basis for much of the "war on terror." "We have 166 prisoners remaining (at Guantanamo) ... the meanest, nastiest people in the world. They wake up every day seeking to do harm to America and Americans. And if they are released, that's exactly what they are going to do," Republican Senator Saxby Chambliss said in an address to constituents on Friday. Obama called for an end to a "boundless global war on terror" but Republicans warned against being too quick to declare al Qaeda a spent force. "To somehow argue that al Qaeda is quote ‘on the run,' comes from a degree of unreality that to me is really incredible. Al Qaeda is expanding all over the Middle East from Mali to Yemen and all the places in between," scoffed Republican Senator John McCain after Obama's speech.

### vagueness

**Ruled void for vagueness and struck down**

Klapach, 99 [Joseph S., JD Candidate – Cornell University Law School, “Thou Shalt Not Politic”, Cornell Law Review, January, 84 Cornell L. Rev. 504, Lexis]

A statute may be void for vagueness when (1) it is so indeterminate that ordinary individuals must guess at its meaning or application 68 or (2) it lacks sufficient definiteness for enforcement in a nonarbitrary manner. 69 In Thomas v. Collins, 70 for example, the Court struck down a statute restricting "solicitation" by labor unions, stating that "the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker ... wholly at the mercy of the varied understanding of his hearers ... Such a distinction offers no security for free discussion ... [and] blankets with uncer tainty whatever may be said." 71 In Big Mama Rag v. United States, 72 the leading case that addresses the question of vagueness and tax-exempt organizations, a feminist organization challenged as unconstitutionally vague certain Treasury regulations requiring 501(c)(3) educational organizations that "'advocate[] a particular position'" to present a "full and fair exposition" of the pertinent facts. 73 The court agreed with the challenge and struck down the regulations as unconstitutionally vague for failing to "explain[] which applicant organizations are subject to the standard and ... [to] articulate its substantive requirements." 74 The court first criticized the IRS for equating the terms "advocates a particular position" with "controversial," noting that this definition "gives IRS officials no objective standard by which to judge which applicant organizations are advo [\*517]  cacy groups ... [and leaves only] one's subjective notion [as the measure] of what is 'controversial.'" 75 The court then challenged the "full and fair exposition" standard with a barrage of questions:

#### Turns solvency

Margulies, 03 [Peter, Professor of Law – Roger Williams University, “The Virtues And Vices Of Solidarity: Regulating The Roles Of Lawyers For Clients Accused Of Terrorist Activity”, Maryland Law Review, 62 Md. L. Rev. 173, Lexis]

n162. Courts may strike down an entire statute as void-for-vagueness, or hold that one or more of its terms are vague as applied. Courts have been unwilling to invalidate the material support provision as a whole on vagueness grounds, reasoning that its core prohibition on financial support provides sufficient clarity. See Humanitarian Law Project v. Reno, 9 F. Supp. 2d 1176, 1201 (C.D. Cal. 1998) (holding in relevant part that only the AEDPA terms "training" and "personnel" were impermissibly vague), aff'd, 205 F.3d 1130 (9th Cir. 2000), cert. denied, 532 U.S. 904 (2001). Presumably for the same reasons, the terms dealing with specific, tangible commodities, such as "explosives," have not been the subject of vagueness challenges.

**Even if the court doesn’t strike it down – causes massive delay**

King, 2k [Rachel, Legislative Counsel – American Civil Liberties Union, “Why A Victims' Rights Constitutional Amendment Is A Bad Idea: Practical Experiences From Crime Victims”, University of Cincinnati, Winter, 68 U. Cin. L. Rev. 357, Lexis]

Conservative columnist Bruce Fein, former Deputy Attorney General during the Reagan Administration, opposes the VRA claiming the vague wording of the amendment will lead to protracted litigation delaying criminal trials and causing confusion within the criminal justice system. He wrote: Suppose a Mafia godfather were murdered. Would crime victims include the deceased's wife, parents, grandparents, children, grandchildren, brothers, sisters, uncles, nieces, nephews, creditors, bosom friends, business partners, or a cherished priest? The amendment offers nary a clue.

**Outweighs fiat**

Neely 81 [Richard, Former Chief Justice – West Virginia Court of Appeals, How Courts Govern America, p. 5-6]

However, when we come to constitutional law, the actions of courts are almost entirely outside the control of the legislative branch. The courts’ rulings in constitutional matters cannot be changed except by amending the federal or state constitutions, which, as history demonstrates, is extremely difficult to do. Consequently, when the United States Supreme Court says that segregation is unconstitutional, or mandates the reapportionment of state legislatures to give the previously underrepresented citizen in urban areas one-man, one-vote for both houses of the state legislature, or rules that states cannot interfere with doctor-patient decisions concerning abortions during the first trimester of pregnancy, there is absolutely no recourse from its decision except constitutional amendment or impeachment of the court and appointment of a new court which will overrule the offending decision.\*