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## Over Stretch

#### An exponential increase in targeted killings is coming in the status quo- Obama's recent speech broadens the target spectrum for drones

Lesley Clark and Jonathan S. Landay May 23, 2013"Obama speech suggests possible expansion of drone killings" http://www.mcclatchydc.com/2013/05/23/192081/obama-promises-anew-to-transfer.html She arrived in Washington in 2006 as a regional reporter for the Miami Herald, and later the Bradenton Herald as well. She was assigned to cover the White House in July 2011. onathan S. Landay, senior national security and intelligence correspondent for McClatchy Newspapers, has written about foreign affairs and U.S. defense, intelligence and foreign policies for more than 25 years.

WASHINGTON — President Barack Obama on Thursday defended his administration’s use of drone strikes to kill terrorists as effective, lawful and “heavily constrained,” but he also appeared to be laying groundwork for an expansion of the controversial targeted killings. In remarks at the National Defense University in Washington, Obama cast the use of such operations as a necessary part of an overall national defense strategy, even as he acknowledged targeted killings risk “creating new enemies” and could “lead a president and his team to view drone strikes as a cure-all for terrorism.” He said the U.S. is at a crossroads of national security issues with a diffuse array of terrorist threats that require a recasting of a war on terror. “Neither I, nor any president, can promise the total defeat of terror,” Obama said, contending that the threat of large-scale attacks like the Sept. 11 2001, terrorist attacks has faded as al Qaida has been weakened, but that threats like the Boston Marathon bombing and attacks in Benghazi remain. “What we can do – what we must do – is dismantle networks that pose a direct danger, and make it less likely for new groups to gain a foothold, all while maintaining the freedoms and ideals that we defend.” As part of that, he renewed a first term campaign promise to close the detention center at Guantanamo Bay, announcing that he’d lift a ban on detainee transfers to Yemen – homeland of half of the 166 captives at the detention facility. The speech served to counter critics who say the drone program has been bathed in secrecy, as Obama offered more details on when the U.S. will deploy drone strikes. But Obama’s speech appeared to expand those who are targeted in drone strikes and other undisclosed “lethal actions” in apparent anticipation of an overhaul of the 2001 congressional resolution authorizing the use of force against al Qaida and allied groups that supported the 9/11 attacks on the United States. In every previous speech, interview and congressional testimony, Obama and his top aides have said that drone strikes are restricted to killing confirmed “senior operational leaders of al Qaida and associated forces” plotting imminent violent attacks against the United States. But Obama dropped that wording Thursday, making no reference at all to senior operational leaders. While saying that the United States is at war with al Qaida and its associated forces, he used a variety of descriptions of potential targets, from “those who want to kill us” and “terrorists who pose a continuing and imminent threat” to “all potential terrorist targets.” The previous wording also was absent from a fact sheet distributed by the White House. Targeted killings outside of “areas of active hostilities,” it said, could be used against “a senior operational leader of a terrorist organization or the forces that organization is using or intends to use to conduct terrorist attacks.” The preconditions for targeted killings set out by Obama and the fact sheet appear to correspond to the findings of a McClatchy review published in April of U.S. intelligence reports that showed the CIA killed hundreds of lower-level suspected Afghan, Pakistani and unidentified “other” militants in scores of drone attacks in Pakistan’s tribal are during the height of the operations in 2010-11. Nearly 4,000 people are estimated to have died in U.S. drone strikes since 2004, the vast majority if them conducted by the CIA in Pakistan’s tribal area bordering Afghanistan. The fact sheet also said that those who can be killed must pose a “continuing and imminent threat” to “U.S. persons,” setting no geographic limits. Previous administration statements have referred to imminent threats to the United States – the homeland or its interests. “They appear to be broadening the potential target set,” said Christopher Swift, an international legal expert who teaches national security studies at Georgetown University and closely follows the targeted killing issue. At the same time, new presidential guidance on targeted killings that Obama signed Wednesday appeared designed to address charges by some legal scholars and civil and human rights groups that the administration has relied on an overly broad definition of “imminent” that exceeds the international legal standard. In his speech, Obama introduced the phrase “continuing and imminent” in what Swift saw as an effort to better define when the U.S. government can use lethal force. “The standard for the use of force appears to be narrowing because they’ve introduced the standard of imminent and continuing,” Swift said. “Imminent means that the threat poses clear, credible and immediate risk of violence.” Swift said he still has serious problems with the administration’s criteria for targeted killing because it has yet to publicly identify beyond the Afghan Taliban and al Qaida’s regional affiliates the groups that it considers “associated forces” of the terrorist network and the criteria it uses to define them. Several other experts said they also remained troubled because Obama continued to keep secret details of the procedures that the administration uses in deciding who can be targeted in drone strikes and other lethal operations off traditional battlefields. “I don’t think anyone should feel reassured by anything that President Obama said about the use of lethal force,” said Zeke Johnson of Amnesty International. The speech came as the administration has been rattled by a series of controversies, and Obama sought to stem growing criticism of the drone program from members of Congress and civil and human rights groups that charge it’s killed hundreds of civilians and violates U.S. and international law. Obama said the guidelines he signed Wednesday include working with other countries and only using strikes when the U.S. – or other governments – do not have the ability to capture terrorists. He said the U.S. preference is to detain and prosecute, and that drone strikes are not used as “punishment” but to prevent attacks waged by terrorists who pose a “continuing and imminent threat to the American people.”

#### Targeted Killling deconstruct the norms of warfare- 3 warrants

Paul Kahn 2011 "Imagining Warfare" http://www.iilj.org/courses/documents/2011Colloquium.Kahn.pdfPaul W. Kahn is the Robert W. Winner Professor of Law and the Humanities at Yale Law School and the Director of the Orville H. Schell, Jr. Center for International Human Rights.

This new, high-tech weaponry disrupts many of our traditional expectations about warfare. Gone are long-established ideas about the place or time of combat. Gone too is the traditional idea of the combatant. The drone targets a particular individual, not a class or category of combatants. The victim is targeted for what he has done or is planning to do, not for his status. A person identified in this way has been eliminated; he may have been targeted while he was engaging in the most ordinary activities of private life. The drone is the technological equivalent of the assassin, but without the risk of personal presence.4 That absence means that the drone operates in a zone of asymmetrical violence. The operator kills, but is so removed from battle that he is unlikely even to think of himself as a combatant. He may work a desk job in an office building in an American suburb. Cumulatively, these three categories of disturbance canvas the basic elements of the political imaginary of warfare. Borrowing from Kant, we can call the first category the “aesthetics” of warfare: the spatial and temporal frame of the experience. We can call the second, the subjectivity of the combatant: is the combatant an individual or a corporate subject? The third category is that of the internal morality of combat. Traditionally, combat established a relationship of reciprocal risk – killing was linked to a willingness to be killed. Does the combatant’s privilege of killing depend upon some such reciprocity? At issue in these three categories are the where, the who, and the ethos of political violence. These categories locate us in a common world of meaning. Responding to these categories one way located us in world of warfare; answering them another way located us in a world of law enforcement. Each has been its own world. These worlds, however, are intersecting in contemporary conflicts. One consequence of that intersection is that we don’t know what body of law to apply: international humanitarian law or criminal procedure. Each of these dimensions – the aesthetics, subjectivity, and ethos of combat – must be investigated. That is a large task that can only be sketched here. The problem we confront is not the absence of norms with respect to violence, but rather a surfeit of norms that are not well ordered with respect to each other. There is not one right way to kill and be killed for the sake of political ends. Elsewhere and at other times practices have been different. We can only proceed by examining our own political imaginary as it constructs an image of the ends and means of responding to violence.

#### Allowing these norms to collapse situates the political imaginary of asymmetrical states towards policing and away from sovereignty- war dictates politics instead of the other way around

Paul Kahn 2011 "Imagining Warfare" http://www.iilj.org/courses/documents/2011Colloquium.Kahn.pdfPaul W. Kahn is the Robert W. Winner Professor of Law and the Humanities at Yale Law School and the Director of the Orville H. Schell, Jr. Center for International Human Rights

There is a banal question that the United States often faces with respect to military deployments around the world. Who, we are asked, made you the policeman to the world? The answer is no one. Communities should be free to make their law for themselves and to struggle with issues of enforcement. The history of nations is not a story of progress, but of struggle. If we believe that national politics is of value, then it is their struggle. We are remarkably obtuse to the lessons of our own history, if we fail to recognize this. What if Britain, prior to the Civil War, had invaded the United States in order to end the practice of slavery? Despite the justice of the end, would the nation have united in resistance? As I argued above, every war can become one of self-defense. Of course, as with any principle, there are exceptions. Nevertheless, our own practices suggest how narrow they are.81 Acknowledging that we are not the world’s policeman, however, does not answer the question of whether we can or should deploy violence abroad. The United States has been more than willing to go to war against its enemies. Indeed, America has been at war or preparing for war for most of the last 100 years. War is not to be explained in terms of justice – the end of law – but in terms of existence. It is the response to the perception of an existential challenge to the popular sovereign. As long as such threats are imagined, war will shape our politics. War and law enforcement are not just formal categories. They refer to structures of the political imaginary before they refer to structures of law. I have tried to delineate the basic categories through which this framing takes place: the aesthetics of war, the subjectivity of the combatant, and the ethos of war. Together, these elements produce a picture of what war is, what it is about, and what norms should govern it. Today, however, we are in an uncertain time. The old pattern of war between sovereign states is breaking apart in the face of new threats. The different elements no longer exist in relationships of mutual support. The balance among the technology of violence, the politics of war, and our normative understanding of the character of the practice no longer holds. Political violence is no longer between states with roughly symmetrical capacities to injure each other; violence no longer occurs on a battlefield between masses of faceless combatants; and those involved no longer seem morally innocent. The drone is both a symbol and a part of the dynamic destruction of what had been a stable imaginative structure. It captures all of these changes: the enemy is not a state, the target is not innocent, the engagement occurs in a normalized time and space, and there is no reciprocity of risk. We can call this situation “war,” but it is no longer clear exactly what that means. If terrorism is with us to stay, we are going to have to have to move beyond criminal or enemy. The confrontation with terror will evolve its own norms, borrowing from the traditional categories of both law enforcement and war. We will need to imagine violence organized around forms of administrative rationality. This is something we have been reluctant to do, given the history of administrative death in the 20th century. Perhaps this time the need will make us more responsive to international institutions than our practice of sacrifice of the corporate body. We simply don’t know. We cannot know, for it is not up to us alone. The terrorist who is presently neither criminal nor enemy will have a good deal to say about this.

#### The paradigm shift destroys the legal distinction between criminal and enemy

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This relationship of representation to identity provides the fundamental structures of the modern political imagination.16 Unless we keep both dimensions of the modern state in mind, we will be at a loss to understand its deeply paradoxical character. The state promised individual well-being under the rule of law, but it also made a total claim on the lives and property within its jurisdiction. The Hobbesian sovereign ended one state of nature only to establish another. The war of individuals ended, while that of states began. It is not at all clear which should be thought of as the more dangerous condition: to be murdered in the state of nature or to die for one’s country. The state was simultaneously the vehicle for peace and war, for life and death. The logic of law pointed to individual well-being as the ground of legitimacy, while sovereign presence depended upon citizens willing to sacrifice themselves. The modern state has been this curious combination of well-being and sacrifice. We hear echoes of this duality today when the American war on terror is simultaneously criticized for its failure to comply with law and for its failure to call on the entire population to share in sacrifice. Political identity in the modern state has been a negotiation of these basic categories. The double character of the state as both an inward order and an outward threat is seen in the multiple pairings of our basic political concepts: law and sovereignty, peace and war, well-being and sacrifice. Carl Schmitt was standing within this tradition when he identified the friend/enemy distinction as the defining political conception.17 That pairing, however, is no more basic than any of the others, including criminal and enemy.

#### That distinction is key to the legitimacy of the state- absent concrete political definitions war and intervention become endless bouts of militarism.

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Criminal or enemy made literally a world of difference. Entire bodies of law, substantive and procedural, turned on this distinction. More important, our understanding of ourselves – who we are and what we are doing – continues to turn on it.5 Are we defending the state or enforcing the law? Are we killing the enemy or punishing the criminal? Despite the importance of the distinction, there is no formal check list and no single characteristic by which we can determine whether the object of our violence is criminal or enemy. We are long past the time when the declaration of war might have marked the difference.6 We cannot even confidently rely on the presence of the military to tell us that we confront the enemy.7 Especially in a democracy, the question is one of perception: do we see a criminal act or an act of war? Before there is legal distinction, there is an act of the imagination. Getting this distinction right, then, has less to do with law than with popular perception. It is a political decision – some might say the political decision.8 A government that sees criminals where the populace sees the enemy will be judged ineffective or weak. If it sees enemies where the populace sees criminals, it will be judged illegitimate and authoritarian. Governments, of course, are not merely passive in this regard. They try to shape public opinion, but they do not control it. Criminal and enemy amount to different, even opposing, ways of ordering elements within what Clifford Geertz called “webs of significance.”9 Those elements range across the three categories of aesthetics, subjectivity, and ethos. All of these factors are related through habits of thought and perception; all of them are contestable, for we deal here with matters of interpretation. A change in any one factor can lead to a different weighting of the others. Where we once saw an enemy, we may come to see a criminal – and vice versa. Max Weber can help us to begin to frame the inquiry as one that juxtaposes law to sovereignty, which will in turn provide the broad foundation for the distinction of the criminal from the enemy. Weber famously defined the state as a community that successfully claims a monopoly on the legitimate use of violence within a territorial jurisdiction.10 His defin2Re-establishing the perceptual distinction between criminal and enemy would rally political support nationwide

Paul Kahn 2011 "Imagining Warfare" http://ejil.oxfordjournals.org/content/24/1/199.abstractPaul W. Kahn is the Robert W. Winner Professor of Law and the Humanities at Yale Law School and the Director of the Orville H. Schell, Jr. Center for International Human Rights.

Getting this distinction of criminal from enemy right may or may not bear on the safety of the state, but it is critical to the imagination of the state. Disagreement on the identity of the enemy is as basic a political disagreement as there can be. A state that imagines enemies within has fractured into civil war or what today is more likely to be called a “dirty war.” Conversely, a state that no longer sees the enemy but only the criminal may no longer occupy the modern category of a nation-state. A world without enemies would be one without an effective conception of sovereignty. International criminal courts would step into the place of national armies. A world without criminals, on the other hand, is Hobbes’s state of nature. Criminal and enemy both destroy property and life. The meaning of the act, however, depends on how we perceive it. The achievement of the modern nation-state was to separate law from sovereignty, such that there could emerge a stable distinction of criminals from enemies. The enemy threatens the sovereign; the criminal violates the law. Before the modern era, the distinction tended to collapse in the direction of enemies. Violation of the king’s law had the taint of treason and, more deeply still, of heresy. The spectacle of the scaffold – the visible deployment of the king’s violence – was as much defeat of the enemy as punishment of the criminal. Pain produced confession, which was a form of surrender.22 We still hear religious resonances in the term “surrender.” In our increasingly post-modern era, the pressure toward collapse is in the other direction: enemies become criminals. Today, many believe that wars are to end with trials, and warfare should be permitted only as an extension of law enforcement. This shift in the imagination has no doubt been aided by the development of a technological capacity to target individual wrongdoers wherever they might be. This imaginative shift from enemies to criminals fits within a larger vision of the development of public international law as a project seeking the juridification of international relations. This project moved from a late 19th century idea of peace through law (states would be bound to each other through a legal regime of trade and communication)23 to a mid-20th century idea of peace as a requirement of law (a legal prohibition on state use of force),24 to a late 20th century idea of individual accountability under a global legal regime (criminal prosecution of political leaders who deploy force ).25 Legal academics, in particular, read the move from the League to the Charter to the ICC as a single story of the progressive realization of a global legal order in which the idea of an enemy, who is not a criminal, ultimately has no place. In the United States, however, these ideas have yet to figure significantly in the political imagination, except to be viewed with extreme suspicion.26 There has been little support for the effort to subject the Guantanamo detainees to criminal trials, little support for normalizing their detention within the US prison system, and little political support for the extension of habeas jurisdiction to Guantanamo – despite the Supreme Court’s repeated decisions.27 Similarly, there has been little political support for joining the International Criminal Court, and virtually no support for assertions of universal jurisdiction. There remains a deep belief that there are enemies and a deep fear of attack. Sovereignty, in short, remains a vital concept. That Americans continue to hold to the distinction of enemies from criminals does not mean that the categories are easy to apply or uncontested. Just the opposite. Violent acts don’t come with labels. Much of the contentious character of the “war on terror” is a consequence of this difficulty of categorization: enemy or criminal? Our controversies over the use of drones arise out of this same difficulty: weapon of war or instrument of law enforcement?

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*ition drew on several centuries of imaginative political framing, beginning with Hobbes’s idea of exit from the state of nature. The state of nature is precisely the situation in which there is no successful monopoly on violence. Without that, individuals and groups may be stronger or weaker, they may win or lose over some period of time, but they constantly confront the explicit or implicit threat of violence from others. Only a common belief in legitimacy brings stability.

#### Micro militarism and hot spot management is the kiss of death for unipolar hegemons and accelerates the collapse.

McCoy ’10MONDAY, DEC 6, 2010 02:01 PM CST [How America will collapse (by 2025)](http://www.salon.com/2010/12/06/america_collapse_2025/) Four scenarios that could spell the end of the United States as we know it -- in the very near future BY ALFRED MCCOY <http://www.salon.com/2010/12/06/america_collapse_2025/>Alfred W. McCoy is the J.R.W. Smail Professor of History at the University of Wisconsin-Madison. He is the author of A Question of Torture: CIA Interrogation, "From the Cold War to the War on Terror." Later this year, "Policing America's Empire: The United States, the Philippines, and the Rise of the Surveillance State," a forthcoming book of his, will explore the influence of overseas counterinsurgency operations on the spread of internal security measures here at home

Counterintuitively, as their power wanes, empires often plunge into ill-advised military misadventures. This phenomenon is known among historians of empire as “micro-militarism” and seems to involve psychologically compensatory efforts to salve the sting of retreat or defeat by occupying new territories, however briefly and catastrophically. These operations, irrational even from an imperial point of view, often yield hemorrhaging expenditures or humiliating defeats that only accelerate the loss of power. Embattled empires through the ages suffer an arrogance that drives them to plunge ever deeper into military misadventures until defeat becomes debacle. In 413 BCE, a weakened Athens sent 200 ships to be slaughtered in Sicily. In 1921, a dying imperial Spain dispatched 20,000 soldiers to be massacred by Berber guerrillas in Morocco. In 1956, a fading British Empire destroyed its prestige by attacking Suez. And in 2001 and 2003, the U.S. occupied Afghanistan and invaded Iraq. With the hubris that marks empires over the millennia, Washington has increased its troops in Afghanistan to 100,000, expanded the war into Pakistan, and [extended its commitment](http://www.tomdispatch.com/blog/175324/tomgram%3A_engelhardt%2C_general_petraeus%27s_two_campaigns/) to 2014 and beyond, courting disasters large and small in this guerilla-infested, nuclear-armed graveyard of empires.

#### **The decline of American power creates transnational corporations and multilateral forces degrading the earth to urban and rural wastelands with feral failed cities littered with explosions and suicide bombers.**

McCoy ’10MONDAY, DEC 6, 2010 02:01 PM CST [How America will collapse (by 2025)](http://www.salon.com/2010/12/06/america_collapse_2025/) Four scenarios that could spell the end of the United States as we know it -- in the very near future BY ALFRED MCCOY <http://www.salon.com/2010/12/06/america_collapse_2025/>Alfred W. McCoy is the J.R.W. Smail Professor of History at the University of Wisconsin-Madison. He is the author of A Question of Torture: CIA Interrogation, "From the Cold War to the War on Terror." Later this year, "Policing America's Empire: The United States, the Philippines, and the Rise of the Surveillance State," a forthcoming book of his, will explore the influence of overseas counterinsurgency operations on the spread of internal security measures here at home

As U.S. power recedes, the past offers a spectrum of possibilities for a future world order. At one end of this spectrum, the rise of a new global superpower, however unlikely, cannot be ruled out. Yet both China and Russia evince self-referential cultures, recondite non-roman scripts, regional defense strategies, and underdeveloped legal systems, denying them key instruments for global dominion. At the moment then, no single superpower seems to be on the horizon likely to succeed the U.S. In a dark, dystopian version of our global future, a coalition of transnational corporations, multilateral forces like NATO, and an international financial elite could conceivably forge a single, possibly unstable, supra-national nexus that would make it no longer meaningful to speak of national empires at all. While denationalized corporations and multinational elites would assumedly rule such a world from secure urban enclaves, the multitudes would be relegated to urban and rural wastelands. In “Planet of Slums,” Mike Davis offers at least a partial vision of such a world from the bottom up. He argues that the billion people already packed into fetid favela-style slums worldwide (rising to two billion by 2030) will make “the ‘feral, failed cities’ of the Third World… the distinctive battlespace of the twenty-first century.” As darkness settles over some future super-favela, “the empire can deploy Orwellian technologies of repression” as “hornet-like helicopter gun-ships stalk enigmatic enemies in the narrow streets of the slum districts… Every morning the slums reply with suicide bombers and eloquent explosions.”

#### **Targeted Killing blurs the lines of war and peace- creates endless warfare and intervention.**

Kitfield ’13 Updated: February 3, 2013 | 9:29 a.m.  January 31, 2013 | 8:20 p.m. <http://www.nationaljournal.com/magazine/targeted-killings-obama-s-endless-war-20130131> James Kitfield has written on defense, national security and foreign policy issues from Washington, D.C. for over two decades. He is a three-time winner of the Gerald R. Ford Award for Distinguished Reporting on National Defense, most recently in 2009 for his first-hand reporting on the Afghan War and other ongoing conflicts and threats. He has twice won the Military Reporters and Editors Association award and the Medill School of Journalism’s top prize for excellence in reporting for his first hand coverage of the war in Afghanistan (2009) and the surge in Iraq (2008). He is a recipient of the 2002 Stewart Alsop Media Excellence Award, sponsored by the Association of Former Intelligence Officers, for his coverage of the September 11, 2001 terrorist attacks and follow-on events. He received the 2001 Peter R. Weitz Prize from the German Marshall Fund for excellence in reporting on European affairs, and the 2000 Edwin Hood Award for Diplomatic Correspondence given annually by the National Press Club to recognize excellence in reporting on diplomatic and foreign policy issues

A more transparent debate about the program at Brennan’s confirmation hearings is also likely to highlight just how dramatically a decade of war has transformed America. Before the 9/11 terrorist attacks, U.S. officials routinely criticized Israel for its targeted-assassination program aimed at Palestinian terrorists. Today, deadly strikes by armed robotic drones are so routine that the media give them only passing mention. The U.S. targeted killing program also enjoys support from a majority of the public and from a relatively compliant Congress.¶ As the government has honed the ability to eliminate enemies of the state in a clandestine war without end, however, the once clear lines between all-out warfare and peacetime law enforcement continue to fade. Some Al-Qaida suspects are granted Miranda rights and charged in federal courts, while others are kept in military prisons and prosecuted by military commissions or simply held indefinitely. Still others are eviscerated far from any acknowledged battlefield by an executive branch that claims the authority to act as judge, jury, and executioner. In a nation in a state of perpetual conflict, the danger is that those lines between war and peace will continue to blur until Americans have forgotten the difference.

## Credibility

#### Obama has a unique opportunity to revive American soft power in his second term but the plan is key

Hayes 2012 (Nick Hayes, professor of history who holds the university chair in critical thinking at Saint John's University, December 3, 2012, Minnesota Post, http://www.minnpost.com/politics-policy/2012/12/troubling-questions-about-obama-s-drone-warfare)

My last post argued that, in the wake of his election victory and on the eve of his second term, President Obama stands at what could be his “Truman moment” as a “post war” president. More than a decade of war consumed the two terms of the Bush administration and Obama’s first term. He now faces an historic opportunity to articulate the doctrine and design the framework for an imperfect but lasting peace.

The post stirred up quite of reaction of a number of you. Some readers trashed my interpretation of the past and the present. One reader remembered that long, long ago, I was an aspiring poet and pacifist.

Several readers took me to task for not mentioning Obama’s third war. He has withdrawn from one conventional war in Iraq and promised to complete the withdrawal from the second -- the war in Afghanistan -- by the end of 2014. He is not relenting from a third, highly unconventional war: U.S. drone warfare against suspected terrorist targets in the Middle East and South Asia.

The drone warfare campaign threatens to cost the president much of his political capital abroad. Last week, the PEW Global Attitudes Project released a report with mixed news for Obama. The good news confirmed that world public opinion cheered Obama’s victory over Mitt Romney in the election. The bad news lay in the increasing and widespread disapproval of his foreign policy in general, and especially his use of drone attacks.

World criticism

Criticism of Obama’s drone warfare campaign stands at 80 percent in Egypt, Turkey and Jordan; 75 percent in Spain and Japan; 63 percent in France, and 59 percent in Germany. His personal popularity gives Obama valuable political capital abroad that he should spend wisely to build support for his diplomatic initiatives, especially in the Middle East, and not waste it to vindicate drone warfare that generates more enemies than it kills.

#### Drones now tank US cred—no oversight

Zenko 13, (Micah, fellow at the Council on Foreign Relations, with expertise in Conflict Prevention; US national security policy, military planning and operations and nuclear weapons policy. “Reforming U.S. Drone Strike Policies”, Council on Foerign Relations Special Report no. 65, January 2013 <http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736>, pg15)

The problem with maintaining that drone strikes are covert is that both the American and international publics often misunderstand how drones are used. And in affected states, citizens often blame the United States for collateral damage that could have been caused by the host states’ own weapon systems. According to a recent report from Yemen: It’s extremely difficult to figure out who is responsible for any given strike. . . . It could be a manned plane from the Yemeni Air Force or the U.S. military. Or it could be an unmanned drone flown by the U.S. military or the CIA. . . . But no matter who launches a particular strike, Yemenis are likely to blame it on the Americans. What’s more, we found that many more civilians are being killed than officials acknowledge.37 Congressional oversight of drone strikes varies depending on whether the CIA or the U.S. military is the lead executive authority. The CIA, according to the chair of the Senate Select Committee on Intelligence, Senator Dianne Feinstein, meets its “fully and currently informed” legal obligations through “monthly in-depth oversight meetings to review strike records and question every aspect of the program.” 38 Individual JSOC strikes are not reported to the relevant armed services committees, but are covered under the broad special access program biannual reporting to Congress. According to senior staff members on the Senate Foreign Relations Committee and House Foreign Affairs Committee, many of their peers have little understanding of how drone strikes are conducted within the countries for which they are responsible for exercising oversight. Even serving White House officials and members of Congress repeatedly make inaccurate statements about U.S. targeted killings and appear to be unaware of how policies have changed over the past decade.39 At the same time, the judiciary committees have been repeatedly denied access to the June 2010 Office of Legal Counsel memorandum that presented the legal basis for the drone strike that killed U.S. citizen and alleged leader of AQAP Anwar al-Awlaki in September 2011.40 Finally, despite nearly ten years of nonbattlefield targeted killings, no congressional committee has conducted a hearing on any aspect of them.

#### **Generic Soft-Power defense doesn't apply, The US’s new role in global public health means that it has to take different steps to get people on board**

Kickbush ’02 Influence And Opportunity: Reflections On The U.S. Role In Global Public Health¶ [Ilona Kickbusch](http://content.healthaffairs.org/search?author1=Ilona+Kickbusch&sortspec=date&submit=Submit) doi: 10.1377/hlthaff.21.6.131¶ Health Aff November 2002 vol. 21 no. 6 131-141http://content.healthaffairs.org/content/21/6/131.long lona Kickbusch is head of the Division of Global Health at the Yale University School of Medicine, Department of Epidemiology and Public Health. From 1994 to 1998 she was director of communication at the World Health Organization in Geneva

Building a soft-power leadership role.¶ What could be the first steps in building a soft-power leadership role for the United States, taking into account its tendency toward global unilateralism within the administration and political system, on the one hand, and the collective intentionality for recognizing health as a global public good in the nongovernmental community, on the other? It is not helpful to give a long list of “shoulds,” ranging from financial contributions to world agreements, when what is needed is a change in mindset.¶ A first step would be to initiate a truly high-profile public debate on America’s role in global health that gives voice to the many actors, including government, NGOs, the private sector, universities, foundations, the media, and professional organizations. Such a debate would include a series of public hearings on the issues of equity, trade, access to drugs, governance mechanisms, financing global public goods, and the like, thus moving the agenda beyond disease control. It would therefore need not only to be a dialogue of health experts but also to include foreign policy, security, and other policy arenas of relevance.¶ Such a dialogue would go far beyond analyzing the U.S. role in international health agencies and beyond the financial contributions it makes either in multilateral or bilateral actions. It would focus in a much broader fashion on how the United States as a whole—its government, its private sector, its NGOs and foundations, its academic institutions, and its citizens—contributes to and is affected by the global distribution of health and disease. It would take global health from a technical focus into the political arena and identify the political choices that are at stake as well as priority responses.

#### Specifically its key to deal with pandemics and climate change.

Joseph S. Nye, pub. date: 2-16-07, former assistant secretary of defense and president of Harvard's Kennedy school of government, “The long view on China, political Islam and American power,” Financial Times, Lexis Nexis

The third determinant will be American power and how it is used. The US will remain the most powerful country in 2020, but the paradox is that the strongest state since Rome will not be able to protect its citizens acting alone. The US's military might is not adequate to deal with threats such as global pandemics, climate change, terrorism and international crime. These issues require cooperation and the soft power of attracting support. Defeating Islamist terrorism, for example, requires international intelligence and police co-operation, as well as drying up the sources of radical recruits. While hard military power will remain crucial for deterrence, alliances and stability, if we use it in the wrong way, we will undercut the soft power we need to win. Thus far, intelligence reports that US policies have created more new terrorists than they have destroyed. One of the determinants of the future will be whether the US recovers the ability it once had in the cold war to combine hard and soft power into smart power.

#### AND alliances key to global co-op Kreisher 12 (Otto Kreisher, Former Naval Officer/veteran Washington correspondent and defense journalist, “Chuck Hagel, Touted As Next SecDef, Argues For Soft Power, Allies”, December 10 2012, Breaking Defense, http://breakingdefense.com/2012/12/10/chuck-hagel-touted-as-next-secdef-argues-for-soft-power-allie/ )

Perhaps with an eye toward America losing its preeminent military position, Hagel argued that “engagement” is the key to address many international problems. In the national security world, engagement generally encompasses negotiations or multinational efforts. It has never been a popular tactic among most Republicans and some pro-military Democrats. However, Hagel insisted that “engagement is not surrender, it’s not appeasement,” clearly taking on some of his GOP colleagues, who have slung around appeasement — associated with the foolish actions of British Prime Minister Neville Chamberlain as he tried to avert war with Germany — to describe some of President Barack Obama’s efforts to prevent international tensions from flaring into conflict. Engagement is “an opportunity to better understand” others, Hagel said, and to bring “mutual self respect” among contesting parties. As the U.S. faces a litany of problems and potential crises in the future, he said, “we will need to turn our receivers on and our transmitters off.” The emerging issues, Hagel said, “are beyond the control of any great power” and the U.S. “cannot solve them alone.” Instead, they must be addressed through alliances, through “joint thinking,” he said.

#### Arctic warming is bringing new diseases-threatens the human population

Cooke 6/10 With rising temperatures comes strong evidence that the Arctic is seeing a spike in the rate of various diseases. ¶ 'We should recognize disease as a harbinger of a warming world.'¶ By Kieran Cooke Climate News Network June 10, 2013 <http://wwwp.dailyclimate.org/tdc-newsroom/2013/06/arctic-disease> Kieran has carried out writing and editing projects for, among others, the World Wildlife Fund ([WWF](http://www.wwf.org.uk/)), the United Nations Environment Programme ([UNEP](http://lightershadeofgreen.com/www.unep.org)) and the Forests and the European Union Research Network ([FERN](http://www.fern.org/))

LONDON – A cow grazing on the lush pasturelands of Cornwall in southwest England and a seal swimming in the ice cold waters of the Arctic might not appear to have much in common.¶ Yet the two are increasingly linked by tuberculosis, with a strain of the disease threatening cattle populations in Britain and elsewhere now showing up among seals in the high Arctic.¶ Claire Heffernan, a veterinarian and a specialist in global health and disease interaction between animals and humans, said that as the climate warms in Arctic regions, more and more diseases from Europe and elsewhere are spreading there, threatening both animal and human populations.¶ "In the past diseases might not have survived in the cold temperatures and the ice of the Arctic but as the region warms a new dynamic is introduced," Heffernan told Climate News Network.¶ "We need to fundamentally alter the way we look at disease in the context of climate change. We should recognize disease as a harbinger of a warming world."

#### And risks biodiversity loss- migration patterns.

Cooke 6/10 With rising temperatures comes strong evidence that the Arctic is seeing a spike in the rate of various diseases. ¶ 'We should recognize disease as a harbinger of a warming world.'¶ By Kieran Cooke Climate News Network June 10, 2013

Wide variety of diseases¶ Heffernan, a senior fellow at the Smith School for Enterprise and the Environment in Oxford and director of the livestock development group at the University of Reading, said a wide variety of diseases have recently become evident among Arctic animal populations.¶ Toxoplasma, a parasite common in European cat populations, is now being found in polar bears in Greenland. Erysipelas, a disease of domestic pigs, is being found in musk oxen in the Canadian Arctic: The animals have also been found to have contracted Giardiasis, an intestinal parasite of humans. Meanwhile West Nile virus has been found in wolf pups in the Canadian Arctic Such diseases could have been transmitted in a variety of ways, said Heffernan. The spread of Toxoplasma, for example, might be the result of people flushing cat feces down toilets in the United States and Europe which are then carried by tides to the Arctic. More people are visiting the region. Tourists defecating in the wilds might be the cause of the spread of Erysipelas.¶ "The Arctic is like a Heathrow airport in terms of bird, seal and other migration patterns so that's another way disease is easily spread," said Heffernan. And the disease pathway is not all one way, she added: Pathogens can also be transmitted from the Arctic to elsewhere in the world.

#### **Climate change is releasing new diseases and uncovering old ones in the Arctic- Anthrax, TB, and other ancient diseases**

Cooke 6/10 With rising temperatures comes strong evidence that the Arctic is seeing a spike in the rate of various diseases. ¶ 'We should recognize disease as a harbinger of a warming world.'¶ By Kieran Cooke Climate News Network June 10, 2013

New disease transmission cycle¶ "The point is no one is really joining up the dots between climate change and the spread of disease," Heffernan said. "There's a whole new disease transmission cycle appearing in the Arctic which we just don't understand."¶ Human disease levels in the Arctic are a continuing concern, she noted. Rates of TB among the Inuit of northern Canada are far higher than in the general populationMajor economic change and development now taking place in the Arctic means previously nomadic people are moving to towns in search jobs. Ice melt is also forcing more into settlements. With people living in close proximity to each other, disease tends to spread faster. Infant mortality in the Arctic, much of it due to diseases curable elsewhere in the world, is considerably higher than elsewhere."In 1930s there was a temperature spike in the Arctic which led to an outbreak of malaria," said Heffernan. "In subsequent years chloroquine was used to combat it. But what happens now, with temperatures rising and the prevalence of chloroquine-resistant malaria?"¶ Early in the last century there were periodic outbreaks of anthrax in the Russian Arctic, resulting in the deaths of thousands of deer and cattle. Some Russian scientists and officials have warned that burial sites of those anthrax infected animals are now being exposed.¶ "As the Arctic melts, ancient pathogens can suddenly escape," Heffernan said. "No one knows for certain how many livestock burial sites there are in the Russian Arctic – I've seen estimates ranging from 400 to 13,000."¶ In recent years there have been several anthrax outbreaks affecting both cattle and people reported in the region, particularly among communities of the indigenous Yakut communities, who often live near to such burial sites.¶ With Arctic temperatures rising at more than twice the rate of the rest of the world, Heffernan said there's an urgent need to link disease and climate change and tackle health issues.

#### **Soft power is crucial to the region- needs common agreements and uniform laws.**

Cooke 6/10 With rising temperatures comes strong evidence that the Arctic is seeing a spike in the rate of various diseases. ¶ 'We should recognize disease as a harbinger of a warming world.'¶ By Kieran Cooke Climate News Network June 10, 2013**¶**Preventing action¶ But there are a number of problems preventing concerted action: the Arctic is governed by different states with different laws. There's not even a common agreement among Arctic nation states on the region's boundaries. There's a dearth of trained medical staff and research across the region. When it comes to statistics, the Arctic is something of a black hole with health data subsumed into more general country-wide statistics.¶ "There's very little biosecurity work going on in the Arctic," said Heffernan. "We have the means to control so many of these diseases. There must be urgent, concerted, joined-up action."

#### **Russia is at huge risk for favorable disease outbreak- multiple warrants**

Revich et. al ’12 Boris Revich,1,\* [Nikolai Tokarevich](http://www.ncbi.nlm.nih.gov/pubmed/?term=Tokarevich%20N%5Bauth%5D),2 and [Alan J. Parkinson](http://www.ncbi.nlm.nih.gov/pubmed/?term=Parkinson%20AJ%5Bauth%5D)3¶ 1Institute of Forecasting, Russian Academy of Sciences, Moscow, Russia¶ 2Paster Institute of Epidemiology and Microbiology, Saint-Petersburg, Russia¶ 3Arctic Investigations Program, Division of Preparedness and Emerging Infections, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, Alaska, Anchorage, USA 2012 Boris Revich et al http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3417549/

A warming Russian Arctic will be associated with a northward expansion of plants and animal associations including their bacterial viral and parasitic flora. These associations will create favourable conditions for the emergence of infectious diseases in regions that were previously free of these pathogens. Several conclusions can be made regarding the potential emergence of zoonotic infectious diseases and their possible influence on the public health of the population of the Russian Arctic:¶ Monitoring of many zoonotic infectious diseases in the Russian Arctic is insufficient; The Russian Arctic is sparsely populated. Many people live in remote settlements with limited access to medical and public health services. Thus many infectious diseases may go undetected and result in an underestimate of the true rate of infection. Efforts should be made to evaluate and improve existing monitoring systems.¶ There is a need to improve laboratory diagnostics for many of these diseases. The finding suggest the need for improved diagnostics of tick-borne infections.¶ There is a need to educate medical providers, public health officials and the public on the role of climate change in the emergence of zoonotic infectious diseases and prevention strategies that can be used. A warming Arctic may also change social behavioural. In a warmer climate people tend to spend more time outdoors in recreational activities, which increases their contacts with vectors of zoonotic infectious diseases emphasizing the need to educate the population on measures that may prevent their exposure.¶ There is a need to raise awareness of at-risk populations to the potential for infection. These may include hunters and workers in the deer breeding and meat handling industries to the potential of infection from contact with meat, skins, and hides.¶ Anthrax cattle burial sites need to be more carefully monitored, for example, by regular visual check-ups of soil condition and bacteriologic analyses of soil samples.

## Plan

#### Text: The United States federal government should statutorily restrict war powers authority of the President of the United States to authorize drone targeted killing through the AUMF

## Solvency

#### Congressional authority is key to check mission creep and perpetual war

James Jay Carafano, Ph.D. March 24, 2011 "Should the President Have Asked Congress for a Declaration of War Against Libya Before Bombing? No" http://www.heritage.org/research/commentary/2011/03/should-the-president-have-asked-congress-for-a-declaration-of-war-against-libya-before-bombing-no James Jay Carafano, a leading expert in national security and foreign policy challenges, is The Heritage Foundation’s Vice President, Foreign and Defense Policy Studies, E. W. Richardson Fellow, and Director of the Kathryn and Shelby Cullom Davis Institute for International Studies.

No one declares war anymore! Not since World War II has any nation declared war on another — with the possible exception of a 1967 declaration against Israel by five Arab countries. While fighting remains as common as ever, the practice of issuing formal declarations has gone out of style.¶ It's not the first time that's happened. Formal declarations of war fell out of fashion during the 17th century, too. Our Founding Fathers thought that was wrong, and so they stuck a requirement in the Constitution saying Congress must approve a declaration before the nation went to war.¶ But that provision was never intended as an absolute check on executive power. Not all military operations constitute wars. Nor is a war declaration the only legitimate way Congress can signal support for military operations.¶ As "The Heritage Guide to the Constitution" points out, there have been only five declared wars in our nation's history, but numerous other hostilities "have been specifically authorized by Congress through instruments other than formal declarations." The framers of the Constitution, however, did think there was something important about "formal" declarations. Democracies, they felt, were fundamentally different from other states and ought to be as open and transparent as possible about what they were doing.¶ War declarations are part of that transparency regimen. When you declare war, you specify your grievances and how you expect to resolve them. That is actually a good practice, and it is too bad democracies have gotten away from it.¶ Yet, clearly, President Barack Obama has the authority to order the current operations in Libya. The Constitution divides the powers of initiating military actions between the executive and Congress to foster deliberation and consultation to the extent possible under the circumstances. But at the end of the day, the president is the commander in chief. He alone bears the legal and moral responsibility for ordering U.S. armed forces into action.¶ What rankles most about the president's decision on Libya is the lack of open deliberation and discussion. Certainly he had time to consult Congress and the American people, yet he spent much more time consulting the U.N. Security Council.¶ It is discomforting to see an American president seemingly defer to the United Nations rather than lead the country. Moreover, the U.N. resolution he got does not help much. The United Nations is not sovereign, nor do we need its permission to act.¶ Furthermore, the resolution is vague and open-ended. And Obama so far has done little to provide clarity about our objectives and our commitment.¶ These are serious concerns. The lack of congressional consultation and the vagueness of the mission deny Americans what the Constitution intended: a clear statement of purpose about U.S. military action. It is vital to avoid "mission creep" and perpetual fighting.¶ All that said, a declaration of war against Libya would be a bad idea, because going to war in Libya is a bad idea. That is not to say that the United States should do nothing, but Libya does not merit significant, protracted operations by U.S. forces.¶ You fight wars to protect vital national interests. The United States has legitimate interests in the outcome of the Libyan turmoil: seeing Gadhafi brought to justice, and not seeing a new terrorist haven established, a humanitarian crisis, or civil war spreading to nearby nations. But these concerns fall short of being vital national interests and can be addressed through measures short of war.¶

#### Mission creep makes intervention inevitable- endless wars justified by liberal internationalism wreck the economy and dilute diplomacy

Gordon N. Bardos May 24, 2013 "A Foreign Policy of Mission Creep"http://nationalinterest.org/commentary/foreign-policy-mission-creep-8514?page=1 Gordon N. Bardos is the assistant director of the Harriman Institute at Columbia University.

In an eye-opening article in these spaces a few weeks ago, James Joyner cited the words of an American general in Afghanistan who, in reciting his troops’ successes in Helmand province, noted that "Roads have been paved and markets secured, allowing commerce to grow in places like Marja, Nad Ali and Lashkar Gah . . ." Both the general and his troops undoubtedly performed the mission their country gave them professionally and with dedication. But the exchange still begs utterly valid questions: how, when and why did the growth of commerce in Marja, Nad Ali and Lashkar Gah become worth American lives or taxpayer dollars? And what might this portend for our potential involvement in Syria? Liberal internationalism, so popular in Washington over the past two decades, has transformed the traditional purpose of American foreign policy—historically understood as systematizing relations between sovereign states and attempting to influence the behavior of other countries—into the much more grandiose attempt to remake the political cultures and economic systems of states and societies thousands of miles from our shores. The result of this transformation of U.S. foreign-policy goals has been what Andrew Bacevich once aptly described as “endless war,” in which the U.S. military is used as an instrument for nation- and state-building in open-ended missions around the world. Consider, as outlined below, the record of some of our recent interventions, and the discrepancy in the time required to achieve their respective military and civilian objectives. Needless to say, long-running interventions cost real money. The post-WWII reconstruction of Germany is estimated to have cost some $35 billion in 2011 dollars. Bosnia after 1995 received more money than any country in Europe under the Marshall Plan. As of April 2013, the United States had spent $60 billion on reconstruction in Iraq and $93 billion in Afghanistan (and as of 2005 Kosovo had received twenty-five times the amount provided to Afghanistan in per capita terms). These amounts do not even include these wars’ financial costs, or their costs in human lives. The enormous discrepancy between achieving the military and civilian objectives of our foreign interventions is intimately connected to the recent Washingtonian vogue for Clausewitz’s conflation of war with politics and diplomacy. Thus, in the 1990s Richard Holbrooke became a proponent of “diplomacy backed by force,” and in a memorable exchange between Madeleine Albright and her UK counterpart in the UN Security Council, Albright claimed that “after all, war is merely an extension of politics by other means.” To which her British colleague replied “Yes, Madeleine, that is exactly what Clausewitz said. But he was a German, and the Germans listened to him. Look what happened to them, twice.” The obvious problem here is that with the militarization of U.S. foreign policy and our increasingly grandiose ambitions abroad, we have gone down an intellectual slippery slope: if war is the equivalent of diplomacy and diplomacy is equal to nation-building, it therefore follows that war is the same as nation-building. This equation perhaps explains why the U.S. Army now has considerably more civil-affairs personnel than the U.S. State Department has foreign-service officers. Unfortunately, our grandiose ambition to effect transformative change in far-off countries has not achieved any notable successes. Consider Washington’s pet project in Bosnia, the Muslim-Croat Federation. After Bosnia’s October 2010 elections, it took some six months for the federation to form a government, which Bosnia’s own Central Electoral Commission then ruled had been formed illegally. Bosnia’s international colonial administration, the Office of the High Representative (OHR), however, suspended the ruling. Some twelve months later, political winds in Bosnia shifted, the questionable government fell apart, and a party in the prior ruling coalition went to the federation’s constitutional court to prevent its cadres from being purged from the new government. Unfortunately, the constitutional court could not rule on the issue, since for the past five years Muslim and Croat parties have been unable to agree on replacing the court’s four missing judges. Many of these problems stem from an internationally approved effort to substitute two Bosnian-Croat parties representing some 90 percent of the Bosnian-Croat electorate with a marginal (but malleable) party which scraped up about two percent of the Croat vote. Unfortunately for the international architects of this plan, even this small party has fallen apart, with a faction loyal to the federation president forming a new microparty. Its chances for success at Bosnia’s next elections seem slim, however, since said federation president has recently been arrested. The divided city of Mostar does not have a functioning legal government because it was unable to hold elections in 2012. The OHR imposed a specific electoral regime on the city in 2004, but its solution to the problem has been ruled unconstitutional. In December 2009, the European Court of Human Rights ruled that Bosnia’s current electoral law violates the rights of ethnic minorities to be elected to statewide office, but Muslim and Croat politicians can’t agree on how to amend the constitution. A few months ago, the American ambassador in Sarajevo announced an attempt to reform this chaos, but he is leaving his post in a few weeks. In Iraq, contra Marx’s proposed sequence of events, the farce that has become our Bosnian state-building project is repeated as tragedy. Consider the reality of Iraq in April 2013, a full decade after “mission accomplished” was proclaimed. On April 12, bomb attacks in mosques in Baghdad and Diyala province killed eleven people and wounded 30 more. On April 15, thirty-one people were killed and over two hundred wounded in coordinated bombings in Baghdad, Tuz Khurmatu, Kirkuk, and Nasiriyah. On April 18, twenty-seven people were killed and dozens more injured in a Baghdad café bombing. On April 23, twenty people were killed in clashes between security forces and anti-government Sunni protesters near Kirkuk. On April 24, seven people were killed and more than twenty injured in a car bombing in the Shia district of al-Husseiniyah near Baghdad. On April 25, ten policemen and thirty gunmen were killed in clashes in Mosul. On April 29, eighteen people were killed and dozens injured after five car bombs went off in Shia-majority provinces in southern Iraq. All told, surveying the nation-building achievements of our foreign policy over the past couple of decades is not encouraging. Last summer, seventeen years after the ostensible end of the Bosnian conflict, a local politician told his constituents “The war is not over. We are still fighting the same war.” Iraqi prime minister Nuri al-Maliki recently warned that Iraq is in danger of returning to “sectarian war,” and notwithstanding Donald Rumsfeld’s view that “freedom is untidy” and “stuff happens,” an Iraq on the cusp of civil war under increasing Iranian influence is not where the country was supposed to be ten years after the fall of Saddam Hussein. And in Afghanistan, by this time next year there is a good chance the Taliban will again be calling the shots. The lessons of recent decades suggest that American military might can probably (at least eventually) remove Assad from power, but there is precious little historical evidence to show that we can substantively shape the end-state in Syria—the “end-state” here being understood as the six to twelve months after the Washington war lobby and the media lose interest and move on to some more fashionable crisis. President Obama’s inability to get four senators from his own party to vote for gun reform is a stark, telling reminder of the limits of U.S. power, executive and otherwise. Against Clausewitz and his latter-day enthusiasts, the late scholar of international relations Edwin Fedder frequently noted that if you have to resort to military force, your diplomacy has already failed. As the Obama administration debates the pros and cons of intervening in Syria, understanding the differences between diplomacy, waging war and nation-building become more urgent—as does developing a realistic appreciation for what military intervention can and cannot achieve.

#### Restricting the AUMF solves inevitable warfare- creates structural checks to a riskless system

BENJAMIN H. FRIEDMAN JUNE 19, 2012 "Drones, Special Operations, and Whimsical Wars" http://www.cato.org/blog/drones-special-operations-whimsical-wars Benjamin H. Friedman is a research fellow in defense and homeland security studies. His areas of expertise include counter-terrorism, homeland security and defense politics.

Asked the last week on 60 Minutes how many shooting wars the United States is in, Secretary of Defense Leon Panetta took a moment to answer. He eventually said we are going after al Qaeda in Pakistan and its “nodes” in Somalia, Yemen, and North Africa. Somehow, he left out the indefinite war we have going in Afghanistan. It’s no wonder that Panetta can’t keep track of the wars he’s supposed to manage. On top of Afghanistan and the drone campaigns, 12,000 U.S. special operations forces are distributed around dozens of countries, increasingly outside declared war zones, where they train foreign militaries, collect intelligence, and occasionally launch lethal raids. As just reported in the Washington Post, some of these forces are now operating a dozen bases across Northern Africa, where their activities include overseeing contractors flying surveillance aircraft. Despite the Obama administration’s claims of great progress in fighting al Qaeda, the global shadow war shows no signs of abating. The official rationale for using force across the world is that al Qaeda is global. But that’s true only thanks to a capacious definition of al Qaeda that imposes a sense of false unity of disparate groups. The always-overrated remnant of the organization that sponsored the 9/11 attacks barely exists anymore, even in Pakistan. Our counterterrorism efforts are directed mostly against others: terrorists that take up al Qaeda’s name and desire to kill westerners but have limited links to the real McCoy, as in Yemen and North Africa, and insurgents friendly to jihadists but mostly consumed by local disputes, like the Taliban in Afghanistan, al Shabaab in Somalia, and al Qaeda’s Islamist allies in southern Yemen. Like the phony Communist monolith in the Cold War, the myth of a unified, global “al Qaeda” makes actions against vaguely-linked entities—many with no obvious interest in the United States—seem like a coherent campaign against globe trotting menace bent on our destruction. The real reason we are fighting so much these days is that war is too easy. International and domestic restraints on the use of U.S. military power are few. And unrestrained power tends to be exercised. Presidents can use it whimsically, at least until they do something costly that creates a backlash and wakes up public opposition. Drones and special operations forces made this problem worse. Most of the world is what the military calls a permissive environment, especially since the end of the Cold War. Most places lack forces capable of keeping our military out. Many potential allies invite it. The risks traditionally associated with war—invasion, mass death, etc.—are now alien to Americans. Since the draft ended, the consequences of even bad wars for most of us are minor: unsettling media stories and mildly higher taxes deferred by deficits. That’s why, as Nuno Monteiro argues, the U.S. military was already quite busy in the 1990s despite the absence of real enemies. Because war is so cheap, the public has little reason to worry much about it. That leaves elected representatives without any electoral incentive to restrain presidential war powers. No surprise then that the imperial presidency grew as American power did. Technology gains and secrecy exacerbate the problem. Even more than strategic bombing from high altitude, which already prevented U.S. casualties, drones cheapen warfare. Covert raids are riskier, of course, but secrecy limits public appreciation of those risks. The president and his advisors assure us that they use these forces only after solemn debate and nights spent (badly) reading just war theory. But a White House that debates the use of force only with itself short-circuits the democratic process. That is not just a constitutional problem but a practical one. Broad debate among competing powers generally produces better decisions than narrower, unilateral ones. That is why is it is naïve to suggest, as John Fabian Witt did last week in a New York Times op-ed, that the executive branch is developing sensible legal institutions to manage the gray area between war and peace occupied by drone strikes. What’s needed are checks and balances. That means Congress needs to use its war powers. First, Congress should rewrite the 2001 Authorization of Military Force, which has morphed into a legal rationale for doing whatever presidents want in the name of counterterrorism. That bill authorized force against the organizers of the September 11 attacks and those who aided them, which seemed to mean al Qaeda and the Taliban in Afghanistan and maybe Pakistan. The new law should state that acts of war, including drone strikes, in other places require a new authorization of force. If Congress is for bombing stuff in Yemen and Somalia, it should debate those missions. Second, Congress should reform the convoluted laws governing the deployment of special operations forces, making their use more onerous and transparent. Those forces should engage in covert action only after a presidential finding, as with the CIA. Third, Congress should require that taxes or offsets fund wars. That would increase debate about their worth. The trouble, as already noted, is that Congress has no interest in doing these things. Congressional leaders are today more interested in policing leaks about the president’s unilateral exercise of war powers than in restraining them. Short of a military disaster involving special operations forces or drones, this seems unlikely to change in the short term. In the longer term, we need a restoration of Congress’ institutional identity. Even without an electoral reason, politicians should want to exercise war powers simply because they can—because people like power. That’s the assumption behind Edward Corwin’s notion that the constitution’s is an “invitation to struggle” over foreign policy. Something has obstructed Congress’ desire to struggle. Those concerned by the president’s promiscuous use of force should try to identify and remove the obstruction.

#### US needs to alter law to be a first mover – international responses to drone proliferation crumble without domestic accountability- restores US cred.

Alston 2011 (Philip, professor of law at NYU School of Law and former UN Special Rapporteur on extrajudicial executions, “The CIA and Targeted Killings Beyond Borders”, Harvard National Security Journal, Vol. 2) PY

It might be argued in response by the United States that the standard of accountability required is lower in relation to non-international armed conflicts, which is how the conflicts in Afghanistan and Pakistan would be categorized by most observers. This lower standard might be said to be evidenced by the fact that states are not obligated to give full access to the International Committee of the Red Cross ("ICRC") in such conflicts. But the ICRC's review of customary law makes it abundantly clear that the obligation to ensure accountability applies fully in both international and non-international armed conflicts. This is based on military manuals, including that of the United States, explicit state practice, requirements imposed by the Security Council, and norms endorsed by a range of other international bodies. n88¶ For its part, IHRL, developed by a wide range of international and regional institutions, and reflected in customary law principles, places a particular emphasis on the obligation of states to investigate, prosecute, and punish any alleged violation of the norms banning extrajudicial executions. United States officials, as well as some American commentators, have tended to assume that the duty to investigate alleged violations of the right to life, a duty that has been elaborated upon at length in the jurisprudence of bodies such as the Human Rights Committee n89 and the European Court [\*313] of Human Rights, flows only from specific treaty obligations. n90 By noting that the United States is not a party to the European Convention, and by arguing that the ICCPR does not obligate the United States extraterritorially, n91 they assume that the well-developed jurisprudence emanating from these two bodies has no relevance in determining the United States' obligations in relation to a practice such as extraterritorial targeted killings. Leaving aside the contentious debates over the extraterritorial nature of ICCPR obligations, this approach incorrectly assumes that the duty to investigate killings has no existence in customary international law, independent of treaty obligations. The right to life has long been acknowledged as part of custom, and a duty to investigate has long been assumed to be a central part of that norm, not least by the United States when it consistently calls upon other governments to investigate killings without invoking any specific treaty-based obligations binding upon the governments concerned. n94¶ [\*314] Customary and treaty-based obligations to investigate alleged violations of the right to life can only be met if states accept the need for a degree of transparency which makes it possible to satisfy the obligations to ensure accountability. In explaining what human rights law requires, the European Court of Human Rights has long insisted that "[t]here must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts." n95 In the same context, the Court has made it clear that there is no single formula by which this is to be achieved, by acknowledging that "[t]he degree of public scrutiny required may well vary from case to case." n96¶ There is thus compelling evidence that both applicable bodies of law require transparency and accountability. Nevertheless, in view of the tendency of those advocating the use of targeted killings to suggest that counter-terrorism requires different rules or that intelligence agencies must operate on a different basis, it is appropriate to consider whether there are circumstances that would warrant the adoption of significantly less demanding standards of accountability. In relation to terrorism, it is often argued that there are unavoidable tradeoffs between security and respect for human rights as well as between security and transparency. In other words, secrecy and limits on rights are part of the price that must be paid for security in a world subject to terrorist threats. While these claims have been thoroughly canvassed in other contexts n97 they call for two particular responses in the present setting. The first is to acknowledge that, in relation [\*315] to targeted killing operations, there are major security and effectiveness concerns that require a strong element of secrecy, rather than disclosure. For example, disclosing the identity of an intelligence source or putting an informant at risk of retaliation will limit the extent to which the information justifying a given targeting decision can be publicly divulged. Similarly, it might be argued that significant disclosure would eliminate the fear or uncertainty factor that is designed to constrain the activities of groups who might conclude from published criteria that they were unlikely to be subject to drone attacks. n98 There will thus be certain limits as to how much transparency can be required.¶ The second response to the argument about necessary tradeoffs is that "security" in this context must be interpreted not only as a goal in itself, but also as a means by which to protect the fundamental values of human rights and democracy. n99 There can thus be no question of simply trading off one value against the other, or of assuming that constraining freedoms increases security. In rejecting what he evocatively describes as the "hydraulic liberty-security metaphor," n100 Stephen Holmes argues that there are in fact many ways in which respect for liberty contributes to enhanced security. While others have also stressed the importance of empirical justifications favoring a degree of transparency on the part of the CIA and other intelligence actors, n101 Holmes invokes what are essentially prudential and efficiency based reasons in support of what he terms "rule-governed counterterrorism." They include the efficiency-enhancing effect of being forced to give reasons for decisions, the greater likelihood that visceral and punitive reactions--which can generally be assumed to be inefficient--will be constrained by following accepted guidelines, the need [\*316] to expose groups of like-minded decision-makers to counter-arguments coming from other perspectives, and the need to deter official reliance on claims of an emergency in order to avoid scrutiny. n102¶ The other argument that suggests the appropriateness of less demanding standards of accountability relates to the special situation of intelligence agencies. In response, it is appropriate to acknowledge the deep tensions between the need for accountability and the inherent bias of such agencies towards unaccountability. It is clearly paradoxical to be seeking transparency and encouraging information sharing from agents whose very existence is premised on secrecy and absolute discretion. The need for intelligence services to be accountable has always been strong simply because of the power that they exercise and the otherwise unlimited potential for abuse of that power. But over the past decade the importance of accountability has grown dramatically for various reasons. Reaction to the events of 9/11 placed intelligence agencies at the forefront of efforts to combat terrorism and put a premium on rapid action, efficiency, and the exercise of only very loosely constrained agency discretion, often at the expense of transparency, respect for human rights, and meaningful congressional consultation. Agency personnel numbers and budgets increased greatly, special operations became far more common, and double-hatting served to make scrutiny more difficult. In addition, joint operations as well as intelligence-sharing with foreign counterpart agencies, often working for authoritarian regimes, became widespread and increased the likelihood of human rights abuses occurring. n103¶ But the challenges to accountability have also multiplied since 9/11. In an age of enhanced global terror operations the structural predisposition to secrecy on the part of intelligence officials has only been strengthened. The heterogeneity and geographical spread of actual and potential terrorist groups, the reality of homegrown terror, and the potential for large-scale acts of terrorism, have all contributed to support for secrecy. This goes beyond the mere need to ensure operational secrecy. Intelligence agencies cannot operate in a traditional hierarchical fashion for fear that a leak at one point in the chain of command will undermine the entire operation. Individual officers are thus given considerable discretion and even relative [\*317] autonomy according to the circumstances. Moreover, the centrality of the notion of "plausible deniability" means that such agencies are often required to act in ways that not only leave no fingerprints, but also leave (almost) no internal paper trail. These factors in turn make the agency less disposed towards, and less accessible to, either internal or external oversight. But the response is not to reinforce these pathological tendencies, but rather to reassert the primacy of IHRL and IHL standards and thus the need for appropriate levels of transparency and accountability, albeit tailored to reflect the legitimate exigencies faced by such actors.¶ Before moving to consider the Obama administration's approach to these issues, it is important to underscore the fact that we are talking about two different levels of accountability. The first is that national procedures must meet certain standards of transparency and accountability in order to meet existing international obligations. The second is that the national procedures must themselves be sufficiently transparent to international bodies as to permit the latter to make their own assessment of the extent to which the state concerned is in compliance with its obligations. In other words, even in situations in which states argue that they put in place highly impartial and reliable accountability mechanisms, the international community cannot be expected to take such assurances on the basis of faith rather than of convincing information. Assurances offered by other states accused of transgressing international standards would not be accepted by the United States in the absence of sufficient information upon the basis of which some form of verification is feasible. Since the 1980s, the phrase "trust but verify" n104 has been something of a mantra in the arms control field, but it is equally applicable in relation to IHL and IHRL. The United States has consistently demanded of other states that they demonstrate to the international community the extent of their compliance with international standards. A great many examples could be cited, not only from the annual State Department reports on the human rights practices of other states, but also from a range of statements by the President and the Secretary of State in relation to countries like Egypt, Libya, and Syria in the context of the Arab Spring of 2011.

#### Squo drone strategy unsustainable--- host-state and domestic backlash--- plan solves and establishes global norms for drone use

Zenko 2013 (Micah Zenko, Douglas Dillon fellow in the Center for Preventive Action at CFR, previously worked at Harvard Kennedy School and State Department, January 2013, “Reforming U.S. Drone Strike Policies,” CFR Special Report No 56)

Over the past decade, the use of unmanned aerial systems—commonly referred to as drones—by the U.S. government has expanded exponentially in scope, location, and frequency.1 From September 2001 to April 2012, the U.S. military increased its drone inventory from fifty to seventy-five hundred—of which approximately 5 percent can be armed.2 Yet despite the unprecedented escalation of its fleet and mis- sions, the U.S. government has not provided a clear explanation of how drone strikes in nonbattlefield settings are coordinated with broader foreign policy objectives, the scope of legitimate targets, and the legal framework. Drones are critical counterterrorism tools that advance U.S. interests around the globe, but this lack of transparency threatens to limit U.S. freedom of action and risks proliferation of armed drone technology without the requisite normative framework.

Existing practices carry two major risks for U.S. interests that are likely to grow over time. The first comes from operational restrictions on drones due to domestic and international pressure. In the United States, the public and policymakers are increasingly uneasy with limited transparency for targeted killings.3 If the present trajectory continues, drones may share the fate of Bush-era enhanced interrogation techniques and warrantless wiretapping—the unpopularity and illegality of which eventually caused the policy’s demise. Internationally, objections from host states and other counterterrorism partners could also severely circumscribe drones’ effectiveness. Host states have grown frustrated with U.S. drone policy, while opposition by nonhost partners could impose additional restrictions on the use of drones. Reforming U.S. drone strike policies can do much to allay concerns internationally by ensuring that targeted killings are defensible under international legal regimes that the United States itself helped estab- lish, and by allowing U.S. officials to openly address concerns and counter misinformation.

3 The second major risk is that of proliferation. Over the next decade, the U.S. near-monopoly on drone strikes will erode as more countries develop and hone this capability. The advantages and effectiveness of drones in attacking hard-to-reach and time-sensitive targets are com- pelling many countries to indigenously develop or explore purchasing unmanned aerial systems. In this uncharted territory, U.S. policy pro- vides a powerful precedent for other states and nonstate actors that will increasingly deploy drones with potentially dangerous ramifications. Reforming its practices could allow the United States to regain moral authority in dealings with other states and credibly engage with the international community to shape norms for responsible drone use.

The current trajectory of U.S. drone strike policies is unsustainable. Without reform from within, drones risk becoming an unregulated, unaccountable vehicle for states to deploy lethal force with impunity. Consequently, the United States should more fully explain and reform aspects of its policies on drone strikes in nonbattlefield settings by ending the controversial practice of “signature strikes”; limiting tar- geted killings to leaders of transnational terrorist organizations and individuals with direct involvement in past or ongoing plots against the United States and its allies; and clarifying rules of the road for drone strikes in nonbattlefield settings. Given that the United States is currently the only country—other than the United Kingdom in the tra- ditional battlefield of Afghanistan and perhaps Israel—to use drones to attack the sovereign territory of another country, it has a unique opportunity and responsibility to engage relevant international actors and shape development of a normative framework for acceptable use of drones.

# 2AC

## OLC CP

#### CP can't solve the aff

#### Soft Power- The restriction won't be perceived internationally, the plan alone is necessary to boost cred/SP

#### Overstretch- Even if they claim to defund drones completely a 1% risk of rollback means you vote aff

#### C/A Carafono- Congress is key to check mission creep by enforcing the restriction through the power of the purse- it's the only way to stop perpetual war

#### C/A Freidman- restricting the AUMF solves drones infinitely better because our mechanism sets up legal restrictions to executive war powers

#### Perm Do Both

#### A) checks rollback

Richard Wolf, citing Paul Light, 10-27-11 Public Service Professor

“Obama Uses Executive Powers to Get Past Congress,” USA TODAY, [www.usatoday.com/news/washington/story/2011-10-26/obama-executive-orders/50942170/1](http://www.usatoday.com/news/washington/story/2011-10-26/obama-executive-orders/50942170/1)

On all three initiatives, Obama used his executive authority rather than seeking legislation. That limited the scope of his actions, but it enabled him to blow by his Republican critics. "It's the executive branch flexing its muscles," presidential historian and author Douglas Brinkley says. "President Obama's showing, 'I've still got a lot of cards up my sleeve.'" The cards aren't exactly aces, however. Unlike acts of Congress, executive actions cannot appropriate money. And they can be wiped off the books by courts, Congress or the next president. Thus it was that on the day after Obama was inaugurated, he revoked one of George W. Bush's executive orders limiting access to presidential records. On the very next day, Obama signed an executive order calling for the Guantanamo Bay military detention facility in Cuba to be closed within a year. It remains open today. Harry Truman's federal seizure of steel mills was invalidated by the Supreme Court. George H.W. Bush's establishment of a limited fetal tissue bank was blocked by Congress. Bill Clinton's five-year ban on senior staff lobbying former colleagues was lifted eight years later — by Clinton. "Even presidents sometimes reverse themselves," says Paul Light, a professor of public service at New York University. "Generally speaking, it's more symbolic than substantive."

#### B) legal interps never credible if internal

Jack Goldsmith 5-1-13, Law Professor, Harvard Law School “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism

For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests. A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants. The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust. Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

#### Perm do the CP

#### Perm do the CP then the plan

#### Condo Bad

#### OLC fails- careerism means they will yield on implementation

Eric A. Posner 2011 - University of Chicago Law School Professor,

http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf Deference To The Executive In The United States After 9/11: Congress, The Courts, And The Office Of Legal Counsel

Finally, President Obama ignored the OLC’s position on the Libya intervention. In that case, the OLC took a brave stand, only to be pushed to the sidelines. This major event offered unusually rapid confirmation of Professor Ackerman’s assertion that the executive can avoid negative advice from the OLC by soliciting advice from the White House Counsel’s Office. (President Obama also received favorable advice from the State Department legal counsel.) Professor Morrison argued before this event that the President faces strong disincentives to doing an end‐run around the OLC.68 Afterward, he could only criticize the President, allege that the President suffered from negative political fallout, and note that he hoped that this sort of thing does not happen often.69 Although the President was criticized, there is simply no evidence that his evasion of the OLC has hurt him politically. As is so often case, the (apparent) success of the operation provides its own justification. These examples provide some evidence that OLC serves as enough of an ex post constraint to undermine Professor Ackerman’s extreme thesis, but still is weak evidence of robust constraints. It is hard, on this evidence, to distinguish between the constraint and enabler hypotheses. In other words, it is possible that the OLC serves as either a weak constraint or a weak enabler.Why has the OLC been so weak? First, the constellation of factors that drive decisionmaking in the executive branch might prevent the President from using the OLC to solve a time‐inconsistency problem. The President benefits from neutral advice and from the ability to cite OLC approval. When the OLC blocks the President, however, short‐term political considerations trump the medium‐term advantages of maintaining a neutral OLC. Meanwhile, OLC lawyers yield to political pressure either for careerist reasons or to prevent the President from cutting the OLC out of the process.

#### Obama circumvents OLC - Covert rulings

Jack Goldsmith, 7-15-13 Professor at Harvard Law School

Blaming (or Crediting) the Lawyers for Our Syria Policy Lawfare Blog, 7-15, http://www.lawfareblog.com/2013/07/blaming-or-crediting-the-lawyers-for-our-syria-policy/

First, the Obama administration has continued controversial Bush-era interpretations of international law related to intervention – such as the use of the “unwilling or unable” standard in assessing self-defense for drone strikes – when it suits their interests. Second, the administration has in other contexts interpreted international law opportunistically when it wants to intervene, such as when it read UNSCR 1973 very broadly (many say too broadly) in removing Gadhafi in Libya. Third, the President has overruled OLC on legal matters concerning domestic law when he wanted to continue an intervention (I am thinking here of the President’s disregard of OLC Libya War Powers Resolution advice), and could surely do the same with legal advice concerning international law in a similar context. And fourth, according to both the WSJ and the NYT, the administration eventually went forward with the military aid to certain Syrian rebels in any event, even though it could not find a justification to do so under international law – but it did so through CIA covert action rather than through more open channels. I have no doubt that law and lawyers and concern for creating unfavorable precedents are influencing this debate inside the administration. But the responsibility for the halting nature and scope of the USG’s intervention in Syria cannot be placed on the lawyers’ shoulders. It rests with the President, who has plenty of legal room for more aggressive intervention if he wants to do more. (For what it is worth, I find the President’s reluctance to intervene admirable and appropriate – but I think that he alone, and not the lawyers, deserves credit, or blame, for our Syria policy.)

#### OF Bad

#### 1. Unnecessarily steals aff ground- there are plenty of counter-plans that access the net-benefit and avoid the abuse e.g. XO, Proclamations, etc.

#### 2. Education about solvency is lost- overlooks how the policy interacts with the harms of the case

#### 3. Fails to test the lit base- the CP questions how to deal with the problem instead of its implications

#### Links to politics- overcoming executive path dependence burns PC

Anjali Dalal 2013, Yale Law School Resident Fellow

<http://www.utexas.edu/law/journals/tlr/sources/Volume%2091/Issue%207/Metzger/Metzger.fn053.Dalat.AdministritiveConstitutionalism.pdf> ADMINISTRATIVE CONSTITUTIONALISM AND THE RE-ENTRENCHMENT OF SURVEILLANCE CULTURE

It is helpful to tease out the two mechanisms that I argue can carry a norm from suggested to entrenched: path dependency and historical practice. Path dependency is motivated by the fact that change does not come easily in Washington. As President Obama realized in his first term, change requires much more than the support of the electorate. It also requires political will and political capital. Path dependency captures the instincts of government officials to opt for the path of least resistance – to pick their political battles wisely. Even if the Department of Justice was suddenly overtaken by the spirit of Edward Levi, the battle to reverse course would be a difficult one. In its corner, it would have the underrepresented and underfunded activist groups trying to expose and protest the surveillance culture we live in. Against it, would be the powerful defense contractor lobby and the national security war hawks that would argue that country’s security was compromised as a consequence.

## Politics

#### Uniqueness overwhelms the link- the PQD protects Obama from impeachment after he raises the debt ceiling by himself Eric Posner 9/30/13 a professor at the University of Chicago Law School, is a co-author of The Executive Unbound: After the Madisonian Republic and Climate Change Justice. <http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/09/obama_can_t_stop_a_government_shutdown_but_he_can_raise_the_debt_ceiling.html?wpisrc=burger_bar>

As I have argued [before](http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/01/debt_ceiling_president_obama_has_the_power_to_raise_the_debt_limit_without.html), the president has the constitutional authority to lift the debt ceiling on his own. If Congress won’t vote to do this, then it will have commanded him to spend vast sums on valued programs, but not given him enough money to do so. Where the president is given conflicting commands, he can use his discretion to resolve the conflict, bolstered here by his inherent administrative powers and his emergency powers to protect the nation, both sanctioned by constitutional tradition. Since a default on public debt would result in an economic catastrophe, he can borrow with or without Congress behind him. And if this comes to pass, Congress will have little recourse. If lawmakers complain that the president failed to let the government default, they’ll get little sympathy from the public. Conceivably, the House could launch impeachment proceedings against the president, claiming that he has violated the law. But impeachment would be fruitless; a conviction requires a two-thirds majority in the Senate, which the Democrats control. And while an impeachment would further bog down the presidency, it would be politically risky for Republicans as well. If Republicans in the House tried to stop the president by going to court, they would probably lose there, too. The courts would refuse to intervene under the [political question doctrine,](http://www.law.cornell.edu/wex/political_question_doctrine) which directs courts to stay out of disputes between the legislature and the executive. Most private individuals would lack standing to bring a challenge because they would not be able to show how increased borrowing specifically injured them. Maybe people who own credit-default swaps that pay off in the case of default would claim that raising the debt ceiling harmed them, but courts would probably dodge such claims under the political question doctrine as well

#### Circumvents backlash

**Buchanan & Dorf 12** ((How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) From the Debt Ceiling Standoff October 2012 Articles - Archived By: Neil H. Buchanan & Michael C. Dorf Columbia Law Review)

The federal statute known as the “debt ceiling” limits total borrowing by the United States. Congress has repeatedly raised the ceiling to authorize necessary borrowing, but a political standoff in 2011 nearly made it impossible to borrow funds to meet obligations that Congress had affirmed earlier that very year. Some commentators urged President Obama to ignore the debt ceiling, while others responded that such borrowing would violate the separation of powers and therefore that the president should refuse to spend appropriated funds. This Article analyzes the choice the president nearly faced in summer 2011, and which he or a successor may yet face, as a “trilemma” offering three unconstitutional options: ignore the debt ceiling and unilaterally issue new bonds, thus usurping Congress’s borrowing power; unilaterally raise taxes, thus usurping Congress’s taxing power; or unilaterally cut spending, thus usurping Congress’s spending power. We argue that the president should choose the “least unconstitutional” course—here, ignoring the debt ceiling. We argue further, though more tentatively, that if the bond markets would render such debt inadequate to close the gap, the president should unilaterally increase taxes rather than cut spending. We then use the debt ceiling impasse to develop general criteria for political actors to choose among unconstitutional options. We emphasize three principles derived from a famous speech by President Lincoln: 1) minimize the unconstitutional assumption of power; 2) minimize sub-constitutional harm; and 3) preserve, to the extent possible, the ability of other actors to undo or remedy constitutional violations.

Boehner is taking the lead on negotiations Obama is not even involved  
AP September 12, 2013  
Tea Party Republicans flex muscle, put Boehner in tight spot as shutdown looms

<http://www.foxnews.com/politics/2013/09/12/tea-party-republicans-flex-muscle-put-boehner-in-tight-spot-as-shutdown-looms/#ixzz2ejzKK3G4>

House Speaker John Boehner once again finds himself caught in the middle of a Capitol brawl between Tea Party Republicans and his Democratic counterparts, as he tries to navigate the choppy political waters and prevent a government shutdown at the end of the month. Tea Party-aligned members of Boehner's caucus are flexing their muscle and pressuring him to allow a vote on an anti-ObamaCare measure as part of ongoing budget talks. They want the vote tied directly to the budget measure, and rejected a compromise plan earlier this week -- leaving unclear how Congress might pass a short-term spending bill before funding runs out on Sept. 30. Boehner, after meeting with bipartisan congressional leaders on Thursday morning, offered no hint of what the next step might be. In the face of heated intra-party squabbling -- and even nastier accusations flying between Republican and Democrats -- he projected cool. "There's all this speculation about these deadlines that are coming up. I'm well aware of the deadlines. So are my colleagues," he said. "And so we're working with our colleagues to work our way through these issues. I think there's a way to get there. ... There are a million options that are being discussed by a lot of people." But Boehner realizes that the party's public image going into the 2014 elections could be at stake, with Democrats eager to pin the blame on them if Congress can't reach a budget deal and there's a partial shutdown. Lawmakers came within minutes of a shutdown during a budget fight in 2011, and have continued to pass a series of short-term measures -- leaving the prospect of a shutdown perpetually over the horizon. This time, the biggest sticking point centers on ObamaCare. House conservatives wanted to make sure the spending measure includes a provision to de-fund the health care law. Boehner floated a compromise that would allow members to take a vote on that, but also keep the ObamaCare provision distinct and allow the Senate to carve it out and vote it down, while still sending the budget portion to the White House.

#### Fiat solves the link

#### Logical policymakers do both

\*Edwards 2000 [Distinguished Professor of Political Science, director of the Center for Presidential Studies, Texas A&M University (George C. III, March. “Building Coalitions.” Presidential Studies Quarterly, Vol. 30, Iss. 1.)]

Besides not considering the full range of available views, **members of Congress are not generally in a position to make trade-offs between policies. Because of its decentralization, Congress usually considers policies serially,** that is, **without reference to other policies. Without an integrating mechanism, members have few means by which to set and enforce priorities** and to emphasize the policies with which the president is most concerned. This latter point is especially true when the opposition party controls Congress.

#### Congress introduces the bill and votes no- vote aff to vote neg.

#### Boehner will never allow a default [ASHLEY PARKER](http://topics.nytimes.com/top/reference/timestopics/people/p/ashley_parker/index.html) and [ANNIE LOWREY](http://topics.nytimes.com/top/reference/timestopics/people/l/annie_lowrey/index.html) October 3, 2013

<http://www.nytimes.com/2013/10/04/us/politics/debt-limit-impasse.html?_r=0>  
Speaker John A. Boehner has privately told Republican lawmakers **anxious about fallout from the government shutdown that** he would not allow a **potentially more** crippling federal default **as the atmosphere on Capitol Hill turned increasingly tense on Thursday. Mr.** Boehner**’s** comments**, recounted by multiple lawmakers,** that he would use a combination of Republican and Democratic votes to increase the federal debt limit if necessary appeared aimed at reassuring his colleagues — and nervous financial markets — that he did not intend to let the economic crisis spiral further out of control. They came even though he has so far refused to allow a vote on a Senate budget measure to end the shutdown that many believe could pass with bipartisan backing. They also reflect Mr. Boehner’s view that a default would have widespread and long-term economic consequences while the shutdown, though disruptive, had more limited impact. With the mood in Congress already unsettled by the bitter sparring over the fiscal standoff, the Capitol was shaken anew Thursday afternoon when a high-speed chase beginning near the White House ended near the Senate office complex with Capitol Police shooting the driver to death. The sound of gunfire outside the Capitol forced at least five senators in the vicinity to take cover on their stomachs and led to a temporary lockdown of members of Congress and their staffs. The House and Senate adjourned for the day shortly after the incident as the shutdown extended into a third day. Along with Senator Mitch McConnell of Kentucky, the Senate Republican leader, Mr. Boehner has long dismissed the idea that Congress would not act to prevent a damaging default, and President Obama on Thursday called a default “the height of irresponsibility.” But the failure of the House and Senate to reach a deal ahead of the shutdown has raised questions of whether Republicans could be persuaded to join in raising the debt limit before the Treasury Department runs out of money about the middle of October. His comments were read by members of both parties as renewing his determination on the default and came as the Treasury warned that an impasse over raising the debt limit might prove catastrophic and potentially result “in a financial crisis and recession that could echo the events of 2008 or worse.” Lawmakers said that in recent days, Mr. Boehner, who is under fierce attack from Democrats over his handling of the shutdown, has made clear that he is willing to use a combination of Republican and Democratic votes on the debt limit if need be. Representative Leonard Lance of New Jersey, one of the moderate Republicans who met privately with Mr. Boehner on Wednesday, would not provide details of the meeting, but said, “The speaker of the House does not want to default on the debt on the United States, and I believe he believes in Congress as an institution, and I certainly believe he is working for the best interests of the American people.” One lawmaker, who spoke on the condition of anonymity, said Mr. Boehner **suggested he** would be willing to violate the so-called Hastert Rule to pass a debt-limit increase**.** The informal rule refers to a policy of not bringing to the floor any measure that does not have a majority of Republican votes.

#### Default means literally nothing

Jeffrey Dorfman 10/3/13 - professor of economics at The University of Georgia and consultant on economic issues to a variety of corporations and local governments.  
<http://www.forbes.com/sites/jeffreydorfman/2013/10/03/dont-believe-the-debt-ceiling-hype-the-federal-government-can-survive-without-an-increase/>  
**That’s right.** As much as the politicians and news media have tried to convince you that the world will end without a debt ceiling increase, it is **simply** not true. **The federal** debt ceiling sets a **legal limit for how much money the federal government can borrow. In other words, it places an** upper limit on the national debt. It is like the credit limit on the government’s gold card.Reaching the debt ceiling does not mean that the government will default on the outstanding government debt. In fact, the U.S. Constitution forbids defaulting on the debt **(**[**14th Amendment, Section 4**](http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html)**), so the government is not allowed to default even if it wanted to. In reality,** if the debt ceiling is not raised in the next two weeks, the government will actually have to prioritize its expenses **and keep its monthly, weekly, and daily spending under the revenue the government collects.** In simple terms, the government would have to spend an amount less than or equal to what it earns. **Just like ordinary Americans have to do in their everyday lives.**

#### Economy resilient – economic collapses in ’87, ’92, ’97, ’98, and 2000 were bigger and deeper – your evidence is alarmist

#### Other even bigger crises prove resilience

Mark Skousen. "What have we learned." Forecasts&Strategies. 2 Jun. 2003. http://www.markskousen.com/article.php?id=1096

The second lesson is that the global economy is far more resilient than anyone imagined. During the past 20 years, we have suffered through two major energy crises, double digit inflation, stock market and real estate crashes in the U.S. and Japan, an unprecedented credit crunch, mammoth federal deficits, the AIDS crisis, several major wars, terrorist attacks, the collapse of the Soviet Union and many other mini-panics, and yet we continue to survive and even prosper. We are not depression-proof, but we are surprisingly depression-resistant. Armageddon has again been postpone

## Congressional Resolutions CP

#### Perm do the CP – it’s a way to restrict war power authority

Louis Fisher, Scholar in Residence at the Cato Constitution Project, 2009, The Law: The Baker-Christopher War Powers Commission, Presidential Studies Quarterly Volume 39, Issue 1

The commission devotes a section to the War Powers Resolution (WPR), summarizing the objections that have been directed to it. Elsewhere, I have criticized the WPR as an abdication of congressional power. It is constitutionally indefensible to permit the president to go to war for whatever reason, whenever and wherever, for up to 60 to 90 days (Fisher and Adler 1998). The commission report does not offer that objection. Instead, it states that constitutional scholars “generally agree that Section 5(c) of the Resolution is unconstitutional in light of the Supreme Court's subsequent decision in INS v. Chadha, 462 U.S. 919 (1983). Section 5(c) provides that Congress may compel the President to remove troops—otherwise lawfully committed to the battlefield—merely by passing a concurrent resolution” (National War Powers Commission 2008, 23). A concurrent resolution must pass each chamber but is not presented to the president for signature or veto. Therefore, it has no force of law. Oddly, the commission's draft bill relies on congressional action through a concurrent resolution.

#### Links to politics

Jacob Gerson, U. Chicago Ast. Professor Law, Eric Posner, U. Chicago Law Professor, December 2008, Article: Soft Law: Lessons from Congressional Practice, 61 Stan. L. Rev. 573

But why is Congress's statement credible? Maybe Congress does not really mean that it disapproves of the Iraq war, but is trying to obtain some short-term political advantage by pandering to temporary passions. Perhaps the legislature is exploiting a transient public mood in the hope of pressuring the President to yield in some other political disputes between the two branches.¶ [\*589] A standard insight of the signaling theory literature in economics is that as a general matter, a statement is credible when it is accompanied by a costly action in particular, an action that is more costly for a dishonest speaker to engage in. n66 Passing resolutions is costly: it takes time that could be used for other things passing legislation, engaging in constituent service, meeting supporters, enjoying leisure. These other activities benefit members of Congress either directly or by improving their chances for reelection. If Congress spends resources to enact a resolution disapproving the Iraq war, observers will rationally infer that Congress cares more about this issue than it cares about other issues for which it does not enact resolutions. In turn, people who are taking actions with an eye toward how Congress might, in the future, regulate the Iraq intervention or other military interventions would do well to take note of the resolution.

#### Hard law is key to legal certainty—accesses all of the reasons congress is key

Gregory Shaffer, Professor of Law, University of Minnesota Law School, and Mark Pollack, Professor of Political Science and Jean Monnet Chair, Temple University., Sept 2011, ARTICLE: HARD VERSUS SOFT LAW IN INTERNATIONAL SECURITY, 52 B.C. L. Rev 1147

To effect specific policy goals, state and private actors increasingly turn to legal instruments that are harder or softer in manners that best align with such proposals. n79 These variations in precision, obligation, and third-party delegation can be used strategically to advance both international and domestic policy goals. Much of the existing literature examines the relative strengths and weaknesses of hard and soft law for the states that make it. It is important, for our purposes, to address these purported advantages in order to assess the implications of the interaction of hard and soft law on each other.

Hard law as an institutional form features a number of advantages. n80 Hard law instruments, for example, allow states to commit themselves more credibly to international agreements by increasing the costs of reneging. They do so by imposing legal sanctions or by raising the costs to a state's reputation where the state has acted in violation of its legal commitments. n81 In addition, hard law treaties may have the advantage of creating direct legal effects in national jurisdictions, again increasing the incentives for compliance. n82 They may solve problems of incomplete contracting by creating mechanisms for the interpretation and elaboration of legal commitments over time, n83 including through the use of dispute settlement bodies such as courts. n84 In different ways, they thus permit states to monitor, clarify, and enforce their commitments. Hard law, as a result, can create more legal certainty. States, as well as private actors working with and through state representatives, [\*1163] should use hard law where "the benefits of cooperation are great but the potential for opportunism and its costs are high." n85

#### The CP delegitimizes the plan’s norm

Gregory Shaffer, Professor of Law, University of Minnesota Law School, and Mark Pollack, Professor of Political Science and Jean Monnet Chair, Temple University., Sept 2011, ARTICLE: HARD VERSUS SOFT LAW IN INTERNATIONAL SECURITY, 52 B.C. L. Rev 1147

As we have observed in our previous scholarship, the existing analyses of hard and soft law tend to begin by assuming that mutual gains from cooperation among states are achievable. n109 These analyses then proceed to explore the advantages and disadvantages, the choice, and the effectiveness of hardand softlaw approaches to achieve these gains. Some of this literature certainly recognizes that soft law can be used in an antagonistic fashion. n110 For example, in an early article on soft law, Christine Chinkin acknowledges that soft law "has both a legitimising and delegitimising direct effect. . . . While there is no doctrine of desuetude in international law, the legitimacy of a previously existing norm of international law may be undermined by emerging principles of soft law." n111 Similarly, Michael Reisman of the New Haven School early noted the challenge of the rise of soft law in terms of generating an "inconsistent normativity to the point where, in critical matters, international law has become like a camera whose every shot is a double exposure." n112

Yet the literature has yet to assess systematically the conditions under which actors are likely to deploy hard and soft law as antagonists [\*1167] instead of complements. What we need, in this respect, is to build a conditional theory of international law. n113

The perception of mutual gain is certainly an important prerequisite for international cooperation. Yet the harmonious, complementary interaction of hardand soft-law approaches to international cooperation relies on a hitherto unspecified set of scope conditions. By scope conditions, we refer to the conditions under which a particular event or class of events is likely to occur. n114 In the case of the interaction of hard and soft law as complements, the primary scope condition is a low level of distributive conflict among states, and in particular among powerful states. Second, the proliferation of international organizations in distinct functional areas of international law gives rise to legal fragmentation and "regime complexes." n115 Existing accounts of complementary interaction of hard and soft law appear to implicitly assume that distributive conflict among states, and hence the incentive to engage in forum shopping and strategic inconsistency, are low. n116 These conditions may hold in certain areas, but variation in distributive conflict and the opportunities offered by regimes and fora with overlapping jurisdiction should result in actors using hardand soft-law instruments in different ways, including sometimes as antagonists. Under conditions of high distributive conflict and high regime complexity, we are likely to see hard and soft law often interacting as antagonists.

## Flexibility DA

#### War powers are unnecessary and cause more wars than they prevent

By Margaret Talev - May 24, 2013 3:01 PM CT  
Obama Sees Sunset on Sept. 11 War Powers in Drone Limits

<http://www.bloomberg.com/news/2013-05-24/obama-sees-sunset-on-sept-11-war-powers-in-drone-limits.html>

President [Barack Obama](http://topics.bloomberg.com/barack-obama/) said the broad war powers Congress approved to fight al-Qaeda after the Sept. 11, 2001, attacks shouldn’t continue forever and that he’s reining in drone strikes and paving the way to close the prison at Guantanamo Bay, Cuba. “In the years to come, not every collection of thugs that labels themselves al-Qaeda will pose a credible threat to the [United States](http://topics.bloomberg.com/united-states/),” the president said in an hour-long address yesterday at National Defense University in Washington. “Unless we discipline our thinking, our definitions, our actions, we may be drawn into more wars we don’t need to fight, or continue to grant presidents unbound powers more suited for traditional armed conflicts between nation states,” Obama said. “This war, like all wars, must end. That’s what history advises. That’s what our democracy demands.” The president’s speech was months in the works and came a day after he signed a classified document shared with key members of Congress containing details of the changes. While calling the U.S. drone campaign justified and legal, Obama said he was tightening the rules governing who can be targeted in the strikes by unmanned aircraft. The U.S. military, instead of the Central Intelligence Agency, will be the lead authority for drone strikes, administration officials said. Obama said he will work with Congress on how to add scrutiny to a largely secret program.

**Unfettered presidential powers cause nuclear war; ev is gender modified**

Forrester 89 - Professor, Hastings College of the Law (Ray, August 1989, ESSAY: Presidential Wars in the Nuclear Age: An Unresolved Problem, 57 Geo. Wash. L. Rev. 1636)

On the basis of this report, the startling fact is that **one** man **[person] alone has the ability to start a nuclear war**. A basic theory--if not the basic theory of our Constitution--is that **concentration of power** **in any one person**, or one group, **is dangerous to** mankind **[humanity]. The Constitution**, therefore, **contains a strong system of checks and balances, starting** **with the separation of powers** between the President, Congress, and the Supreme Court. The message is that no one of them is safe with unchecked power. Yet, in what is probably the most dangerous governmental power ever possessed, we find the potential for world destruction lodged in the discretion of one person. As a result of public indignation aroused by the Vietnam disaster, in which tens of thousands lost their lives in military actions initiated by a succession of Presidents, Congress in 1973 adopted, despite presidential veto, the War Powers Resolution. Congress finally asserted its checking and balancing duties in relation to the making of presidential wars. Congress declared in section 2(a) that its purpose was to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations. The law also stated in section 3 that [t]he President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated. . . . Other limitations not essential to this discussion are also provided. The intent of the law is clear. Congress undertook to check the President, at least by prior consultation, in any executive action that might lead to hostilities and war.  [\*1638]  President Nixon, who initially vetoed the resolution, claimed that it was an unconstitutional restriction on his powers as Executive and Commander in Chief of the military. His successors have taken a similar view. Even so, some of them have at times complied with the law by prior consultation with representatives of Congress, but obedience to the law has been uncertain and a subject of continuing controversy between Congress and the President. Ordinarily, the issue of the constitutionality of a law would be decided by the Supreme Court. But, despite a series of cases in which such a decision has been sought, the Supreme Court has refused to settle the controversy. The usual ground for such a refusal is that a "political question" is involved. The rule is well established that the federal judiciary will decide only "justiciable" controversies. "Political questions" are not "justiciable." However, the standards established by the Supreme Court in 1962 in [Baker v. Carr, 369 U.S. 186,](http://www.lexisnexis.com/us/lnacademic/mungo/lexseestat.do?bct=A&risb=21_T9842011382&homeCsi=7338&A=0.48452774259109876&urlEnc=ISO-8859-1&&citeString=369%20U.S.%20186&countryCode=USA) to determine the distinction between "justiciable controversies" and "political questions" are far from clear. One writer observed that the term "political question" [a]pplies to all those matters of which the court, at a given time, will be of the opinion that it is impolitic or inexpedient to take jurisdiction. Sometimes this idea of inexpediency will result from the fear of the vastness of the consequences that a decision on the merits might entail. Finkelstein, Judicial Self-Limitation, 37 HARV. L. REV. 338, 344 (1924)(footnote omitted). It is difficult to defend the Court's refusal to assume the responsibility of decisionmaking on this most critical issue. The Court has been fearless in deciding other issues of "vast consequences" in many historic disputes, some involving executive war power. It is to be hoped that the Justices will finally do their duty here. But **in the meantime the spectre of single-minded power persists, fraught with all of the frailties** of human nature **that each human possesses, including the President**. World history is filled with tragic examples. Even if the Court assumed its responsibility to tell us whether the Constitution gives Congress the necessary power to check the President, the War Powers Resolution itself is unclear. Does the Resolution require the President to consult with Congress before launching a nuclear attack? It has been asserted that "introducing United States Armed Forces into hostilities" refers only to military personnel and does not include the launching of nuclear missiles alone. In support of this interpretation, it has been argued that Congress was concerned about the human losses in Vietnam and in other presidential wars, rather than about the weaponry. Congress, of course, can amend the Resolution to state explicitly that "the introduction of Armed Forces" includes missiles as well as personnel. However, the President could continue to act without prior consultation by renewing the claim first made by President  [\*1639]  Nixon that the Resolution is an unconstitutional invasion of the executive power. Therefore, the real solution, in the absence of a Supreme Court decision, would appear to be a constitutional amendment. All must obey a clear rule in the Constitution. The adoption of an amendment is very difficult. Wisely, Article V requires that an amendment may be proposed only by the vote of two-thirds of both houses of Congress or by the application of the legislatures of two-thirds of the states, and the proposal must be ratified by the legislatures or conventions of three-fourths of the states. Despite the difficulty, the Constitution has been amended twenty-six times. Amendment can be done when a problem is so important that it arouses the attention and concern of a preponderant majority of the American people. But the people must be made aware of the problem. It is hardly necessary to belabor the relative importance of the control of nuclear warfare. A constitutional amendment may be, indeed, the appropriate method. But the most difficult issue remains. What should the amendment provide? How can the problem be solved specifically? The Constitution in section 8 of Article I stipulates that "[t]he Congress shall have power . . . To declare War. . . ." The idea seems to be that only these many representatives of the people, reflecting the public will, should possess the power to commit the lives and the fortunes of the nation to warfare. This approach makes much more sense in a democratic republic than entrusting the decision to one person, even though he may be designated the "Commander in Chief" of the military forces. His power is to command the war after the people, through their representatives, have made the basic choice to submit themselves and their children to war. There is a recurring relevation of a paranoia of powerthroughout human historythat has impelled one leader after another to draw their people **into wars** which, in hindsight, were foolish, unnecessary, and, in some instances, downright insane. Whatever may be the psychological influences that drive the single decisionmaker to these irrational commitments of the lives and fortunes of others, the fact remains that the **behavior is a predictable** one **in any government that does not provide an effective check and balance against uncontrolled power in the hands of one human**. We, naturally, like to think that our leaders are above such irrational behavior. Eventually, however, human nature, with all its weakness, asserts itself whatever the setting. At least that is the evidence that experience and history give us, even in our own relatively benign society, where the Executive is subject to the rule of law.  [\*1640]  Vietnam and other more recent engagements show that it can happen and has happened here. But the "nuclear football"--the ominous "black bag" --remains in the sole possession of the President. And, most important, his **[the] decision to launch a nuclear missile would be**, in fact if not in law, a **declaration of nuclear war, one which** the nation and, indeed, **humanity** in general, probably **would be unable to survive**.

#### Prez powers bad outweighs their flex turn

Lobel 2008 (Jules Lobel, Professor of Law at University of Pittsburgh Law School, Ohio State Law Journal, 69 Ohio St. L.J. 391, Lexis)

One might argue, however, that the potential danger that Congress could enact impractical, and unduly restrictive legislation controlling the movement of troops in battle supports a constitutional rule that accords the President sole power in this area, even if the line that was drawn was somewhat vague or logically indefensible.¶ That argument fails for two reasons. First, such a line is unnecessary. Congress has never interfered with battle plans or troop movements in the course of battle, even during the Civil War when congressional intermeddling in military matters was at its height. There is no reason to believe that Congress is even remotely likely to do so in the future, or that it is even capable of doing so. The line drawing would not be in response to a real problem, but a speculative, highly remote hypothetical. Important constitutional distinctions ought not be based on imaginary problems.¶ Worse still, the purely speculative danger that Congress might in the future interfere with battle plans or troops movements in the course of warfare must be balanced against the very real and present danger that Presidents will use an exclusive power over troop movements to expand their power dramatically at Congress's expense.¶ Modern Presidents have done just that. They have sought to expand their narrow constitutional power to repel sudden attacks into a power to introduce U.S. troops into hostilities anywhere in the world where, in the President's opinion, the United States' national interests are threatened. They have argued that the President's narrow power to protect our troops precludes Congress from limiting offensive actions that significantly expand a war.¶ The current administration has gone further, arguing that the President's power to direct the movement of troops precludes Congress from absolutely forbidding torture, or warrantless spying against Americans. The potential for abuse of a narrow but theoretically expandable rule is enormous, ever-present, and demonstrated by history.¶ Congress has also generally not restricted the President's power to repel attacks on American troops. 288 But the President's power to repel attacks [\*462] should be viewed as an independent power that permits the Executive to act with speed and flexibility in the absence of congressional authority, but that Congress has the right to regulate and limit that power.

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## Congress Resolutions CP

#### Hard law key

Jacob Gerson, U. Chicago Ast. Professor Law, Eric Posner, U. Chicago Law Professor, December 2008, Article: Soft Law: Lessons from Congressional Practice, 61 Stan. L. Rev. 573

The binding effect of hard law is its straightforward advantage over soft law, and we need not dwell on this issue. A more interesting possibility is that hard law better satisfies rule-of-law values such as publicity than soft law does. The main distinction between hard law and soft law is that hard law complies with formalities that clearly distinguish binding law. A central tenet of the rule of law is that law be public, so that people may debate it, object to it, and plan their lives around it. Secret law is anathema and perhaps soft law resembles secret law. This concern can be easily overstated, however. If soft law is secret, then it cannot regulate, in which case it cannot serve any useful purpose. Congressional resolutions themselves also comply with publicity formalities that distinguish them from unenacted bills. Nonetheless, one might worry that unsophisticated people, or people who cannot get legal advice, are likely to misunderstand the importance of soft law, putting them at a disadvantage with respect to savvier fellow citizens. Consider, for example, Susan Rose-Ackerman's critique of the Supreme Court's interpretation of The Developmentally Disabled Assistance and Bill of Rights Act in Pennhurst State School v. Halderman. n95 The Court rejected the plaintiffs' argument that the statute created judicially enforceable rights for the developmentally disabled, arguing instead that the weak language in the Act indicated that Congress intended to announce a policy in the hope of eliciting a favorable response from states. n96 Rose-Ackerman argues that the Court's holding permitted Congress to earn public credit by enacting a statute that expressed popular aspirations but did not have any effect. Perhaps the Court should have "repealed" the statute, which would have embarrassed Congress and forced it to enact clearer legislation. n97 Importantly, the Act was not a soft statute but rather was a hortatory hard statute. It was duly enacted but had no formal legal effect. n98 Nonetheless, one concern is that such a statute would deceive the public, leading it to extend credit to a Congress that accomplished nothing at all. The problem with this view is that Congress did, in fact, do something: it announced a policy on the treatment of developmentally disabled people, a policy that was consistent with other hard-statute rules and could well have anticipated further legislative developments. n99 Announcing the policy in advance might well have encouraged states and private actors to adjust their behavior in advance of hard legislation. It is possible therefore to view soft law as facilitating rule-of-law values rather than undermining them. However, rule-of-law values might require that courts strike down statutes that are ambiguous and confusing, at least in certain conditions. The rule of lenity in criminal law reflects this idea: people should not go to jail because they violate criminal statutes that they cannot understand. If this concern is valid for hard law, it is even stronger for soft law, where people might not understand that a soft statute may affect behavior. If only sophisticated people can anticipate Congress's changing views about the treatment of developmentally disabled people on the basis of hortatory statutes or concurrent resolutions, then unsophisticated people are put at a disadvantage. By the same token, if the public typically associates hard statutes with binding obligations, then using the hortatory statute with only precatory language creates confusion and ambiguity. If the public associates soft statutes with nonbinding obligations, then the soft statute will be superior to the hard hortatory statute because it will accomplish the same communicative ends, but avoid the confusion produced by using a hard statute. In terms of public knowledge of and reaction to soft law, rule-of-law problems are certainly not inevitable. A different rule-of-law objection concerns the enactment of law without the consent of the President. If Congress can regulate with soft statutes, then the constitutional requirement of presentment is rendered void and the President's role in producing legislation is eliminated. The procedural formalities of legislation do not just clarify congressional action; they also ensure that Congress does not cut the President out of the picture. Just such a concern lay behind the Supreme Court's rejection of the legislative veto. The analogous concern can be found in the literature on international soft law. If international law obtains its legitimacy from the consent of states, as is often argued, n100 how can international soft law that is, international law that lacks [\*599] the consent of at least some states have any legitimacy? n101 We address the constitutional question in Part IV.C. For now, consider two points.