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***Restrictions like the Aff function within the lexicon of exceptional violence – voting aff only serves to make the sovereign more charismatic and mask its bureaucratic liberal governmentality. The alternative is to step back from the Aff and reject their direct and immediate confrontation with exceptional violence in order to do rhetorical analysis and perform a broader critique of the system***

**Saas ‘12** (William O. Saas, Pennsylvania State University, “Critique of Charismatic Violence,” symploke, Vol. 20, Nos. 1-2 (2012), p. 65-67, Project Muse, Access Provided by Wayne State University at 02/28/13) [m leap]

**The September 11**, 2001 **terrorist attacks** in New York, Pennsylvania, and Virginia **precipitated the development of a *new lexicon for exceptional violence***. **“Enemy combatant,” “indefinite detention,” “enhanced interrogation,” “high value targets,” “black sites,” “extraordinary rendition,” “predator drones,” and “hellfire missiles” are but a small representative sample of the novel phraseology invented in the wake of the attacks to describe the bellicose praxis of the U.S.’ “war on terror.”** Though this novel lexicon early comprised the avant-garde of the Bush administration’s rhetoric of retaliation, **little work was required to integrate the language and its attendant practices into the more *overt grammar of “preemptive” warfare*** codified in the United States National Security Strategy of 2002 (colloquially, the “Bush Doctrine”) and executed in Iraq. One decade and several extralegal “limited kinetic operations” later, President Barack ***Obama***—**who campaigned on a pledge to dissolve the regime of secrecy and coercion represented by Bush-era “counterterrorism”**—***routinely supplements the new war lexicon* with ever more expansive interpretations of executive prerogative**. Continuation of the most far-reaching of these new extensions of power—the until recently secret drone-assassination program that resulted in the targeted killing of a U.S. citizen in Yemen in September of 2011—is all but assured now by the confluence of enhanced measures against transparency and bi-partisan political approval (Wilson and Cohen 2012). Meanwhile, the next stage in the evolution of “post-9/11” warfare threatens to be of the “preventive” kind with Iran (Greenwald 2012).¶ The new war lexicon is one symptom of the unprecedented expansion of executive power following the attacks of September 11. **Such executive power was accompanied immediately by the development of a new vehicle for its manufacture and delivery, a sprawling executive bureaucracy** that, early on, Vice President Dick Cheney referred to as the “dark side” of the new war and which journalists Dana Priest and William Arkin have called “Top Secret America” (2010). According to Priest and Arkin, Top Secret America comprises some 1,271 government agencies and 1,931 private companies that individually work on “programs related to counterterrorism, homeland security and intelligence in about 10,000 locations across the United States.” This massive bureaucracy is populated by a workforce of over 854,000 civil servants with top-secret security clearances, inclusive of janitorial staff. Its agency locations occupy a total of over 17 million square feet of U.S. real estate, in spaces ranging from a three billion dollar techno-fortress in Maryland to commercial suites in small-town industrial malls across the suburban U.S. Its activities include domestic wiretapping, international e-mail monitoring, and myriad other forms of cultivating “intelligence” under the aegis of “national security.” The whole of this sprawling apparatus—close to one million personnel, Yottabytes1 [1One Yottabyte equals roughly “a septillion (1,000,000,000,000,000,000,000,000) pages of text.” The National Security Agency estimates that it will need Yottabytes of server space by 2015 (Bamford 2009).] of server space for storing endless streams of domestic and international “intelligence,” and the paramilitary technologies required to mobilize these elements against those deemed the enemy—falls within the administrative purview of the executive branch of U.S. government.¶ ***Hidden in plain sight: a sprawling bureaucracy designed to justify and deliver military violence—clothed in the new war lexicon—to the world***. **How might one critique this massive network of violence that has become so enmeshed in our contemporary geo-socio-political reality? Is there any hope for reversing the expansion of executive violence in the current political climate**, in which the President enjoys minimal resistance to his most egregious uses of violence? **How does exceptional violence become routine? Answers to these broad and difficult questions, derived as they are from the disorientingly vast and hyper-accelerated retrenchment of our current political situation, are best won through the broad strokes of** **what** Slavoj **Žižek calls** ***“systemic” critique*. For Žižek,** **looking squarely at interpersonal or subjective violences (e.g., torture, drone strikes), drawn as we may be by their gruesome and immediate appeal, distorts the critic’s broader field of vision.** ***For a fuller picture, one must pull one’s critical focus back several steps to reveal the deep, objective structures that undergird the spectacular manifestations of everyday, subjective violence*** (Žižek 2008, 1-2). Immediately, however, one confronts the limit question of Žižek’s mandate: how does one productively draw the boundaries of a system without too severely dampening the force of objective critique?¶ For practical purposes, this essay leaves off discussion of neoliberal economic domination, vital as it may be to a full accounting for the U.S.’ latest and most desperate expressions of state solvency. Offered instead is a critique of the organizational violence of the U.S.’ executive bureaucratic apparatus, an apparatus called into being by charismatic decree, made banal through quasi-legal codification, and guaranteed by popular disinterest. Considered also will be the peculiar, if also somewhat inevitable, continuity of the apparatus’s growth under the Obama administration. Candidate Obama’s pledge to transparency may now seem an example of truly “mere” campaign rhetoric, but the extent to which his presidency has exceeded that of George W. Bush in terms of exceptional violence bears some attention. **The central difference between the presidencies of Bush and Obama**, I suggest, **has been the discursive means by which their respective administrations have cultivated an image of charismatic rule**.¶ This essay proceeds in three steps. I begin by outlining a recent case of subjective violence, the assassination of Anwar al-Awlaki by drone strike, and then pull back to reveal the structural support for that strike. In the second section, taking Max Weber as my guide, I argue that **bureaucratic domination is both the derivative speech act of, and the logic that underwrites, the violence of the modern liberal-democratic state. Under stable conditions, the state bureaucracy facilitates the hegemony of abstract, depersonalized, and mechanical Enlightenment legal-rationalism—what Foucault called *liberal “governmentality*”**—by maintaining relative equilibrium between liberal autonomy and distributive justice among the citizenry. In other words, **modern bureaucracy effectively mediates the two poles, “liberty” and “equality,” that comprise** what political theorists have called ***the liberal-democratic paradox*** (Mouffe 2009). **When an event is framed as threatening to strip the state of its rhetorical power, however, the bureaucratic apparatus becomes the crucible for** what I identify in the third section, with additional help from Carl Schmitt and Giorgio Agamben, as ***charismatic domination, or the rhetorical exploitation of a vulnerable population by a sovereign decider***. **Under these conditions**, **the state bureaucracy becomes a kind of “vanishing mediator”** (Jameson 1988, 25-27), **its energies redirected for exclusive and singular usage by the exceptional-charismatic sovereign**. ***In the perpetual state of exception, the democratic paradox becomes subordinate to sovereign claims to total and indivisible control over the legitimate use of force.*** I conclude by outlining what I perceive as the best chances for stemming the growth of the national security bureaucracy, namely, relentless publicity.

***Restricting executive war powers is merely the next step in the state bureaucracy’s violent scheme to permanently institute its own hegemony through charismatic exception – a world post aff makes oppression, violence and catastrophe become worse and more routine – vote negative to prevent the sovereign from ethically absorbing and rebirthing its own exception***

**Saas ‘12** (William O. Saas, Pennsylvania State University, “Critique of Charismatic Violence,” symploke, Vol. 20, Nos. 1-2 (2012), p. 79-80, Project Muse, Access Provided by Wayne State University at 02/28/13) [m leap]

I have argued above that **bureaucracy effectively functions as the hyphen in the pairing of “liberal-democracy.”** **It is both the means through which the state**, in relatively stable conditions, ***administers its monopoly on violence*, and the means of mediating the *tensions inherent to the liberal-democratic paradox.*** **It ensures the ability of the state to secure the liberty of the individual, and facilitates a *leveling of the demos* to “equality before the law.”** **When the authority of the state is called into question by an extraordinary event, the bureaucracy is mobilized in service of the would-be charismatic leader. Rationalization and Enlightenment reason thus give way to irrational force, sovereign decree**, and kadi justice. Over time, **the charismatic authority**, whose only limits are its vision of history, **become institutionalized through rendering an office of charisma**. ***Once this final stage is reached*,** ***the charismatic regime* of the new history *achieves hegemony, and turns once again to a form of bureaucratic rule—only this time, with a greater presumption of executive authority.*** ***Charisma is the exception, the condition of the ideal sovereign decision***. **Under extra-ordinary conditions, the ideal sovereign of the liberal constitutional state will also be possessed of a charisma appropriate to the task of** ***framing the exception in thoughtful and ethical ways***. **Eventual popular dissatisfaction with President** George W. **Bush’s actions** after 9/11 **reflected recognition of his inability to embody a charisma coequal to or greater than the exceptional event. President Bush proved incapable of *rebirthing the exception* in sufficiently convincing ways, of effectively convincing his audience that he was suited to the task he himself marked out**. Importantly, President Bush’s rhetorical failures did not reverse the policies he had brought to bear under the charismatic/exceptional conditions following 9/11. Publicity is the enemy of the charismatic leader in the state of exception. Secrecy and suppression are the main tools for his success.¶ **Under President Bush, the executive branch capitalized on** the disaster of **9/11 in two important ways: first, through the attempt to clear space in the Middle East for market expansion, to be facilitated by erecting “democratic” governments pliable to market manipulation; second**, and related, **through the creation of a massive bureaucratic-military apparatus *immune to traditional democratic safeguards* against the concentration and abuse of state power.** **Under the pretense of the defense of the U.S. state, Congress authorized the Bush administration to invent and mobilize a national security bureaucracy that functions effectively as *a state of its own*, complete with its own restricted alternative geography and enclosed discourses**. **The purpose of this extreme bureaucratic apparatus is,** purportedly, the defense of the U.S. from threats against its interests. What it does in fact is **[to] underwrite the exceptional violence called for by its president and his administration.**¶ The continuation of President Bush’s legacy of mass-violations of international human rights law was not a foregone conclusion in 2008. **The election of Barack Obama reflected collective American desire for “change” to an adequately charismatic sovereign up to the task of *absorbing the exception*** (which had, over the previous eight years, been seriously compounded). ***That this hope was never realized is not surprising*, especially when considered against** what Weber called **the** ***“charisma of office.”*** Since at least the Reagan administration, **the U.S.’ executive-sovereign apparatus had not been oriented to normalizing the exception; instead, it became premised on the anticipation of opportunities for** what Naomi Klein has called **“disaster capitalism,” a mode of governance premised on literally *capitalizing on (and***, in several cases, ***facilitating) mass trauma and catastrophe***. **Who will save us from our charismatic leaders?**

***Expanding judicial review of drone strikes only creates the illusion of reform—it’s a smokescreen***

**Smith** 2-12-**’13**, Brandon Smith, Founder Of Alt-Market, Alt Market, February 12th, 2013, The Daily Sheeple, Lawmakers Suggest Secret “Drone Court” For Assassination Of American Citizens, <http://www.thedailysheeple.com/lawmakers-suggest-secret-drone-court-for-assassination-of-american-citizens_022013>, jj

**The only purpose in establishing a secret “Drone Court**” used in the authorization of executive assassination of American citizens ***is to placate the public, and give the false impression of social “justice***”. However, **there will NEVER be any justice to be had in classified and obscure tribunals**. **This “middle ground” solution to the murder of Americans so far contains no provisions for trial by jury, which, according to Constitutional law, is absolutely required before the government can punish a citizen under the accusation of treason**.¶ **The suggestion of a Drone Court combines the treachery of the NDAA and military controlled rendition with the insanity of Obama’s presidential kill list. *To call it a “compromise” is absurd***. **There is no compromise. There is no middle ground. If we as Americans take this step into the long dark abyss, and cater to this unprecedented power grab, our country, and the principles it was founded on, will no longer exist. Period. Such political criminality cannot be tolerated.**

***The aff’s entrenchment of liberal governmentality causes extinction***

**Dillon,** 200**8** (Michael, “Revisiting Franco’s Death” Foucault on Politics, Security and War. Pg 176-178)

If Foucault is right, that **liberal peace is the extension of war by other means**, then t**hose other means come in the form of** the prevalence of **security discourses**. **Peace becomes the extension of war through the discourse of security.** [Foucault cryptically notes how liberal biopolitics is a dispositif de securite (Foucault, 2007: p. 91). **Its very arts of governance revolve around the securing of life as species existence**.] Here is how and why. **Whatever endangers the promotion of species life endangers liberal biopolitics. The peace for which liberal biopolitics strives is that of the uninterrupted promotion of species existence. Such a peace is endangered when it is challenged by other accounts of existence and by the sheer intractability of species existence itself. Liberal biopolitics makes war on that which endangers species existence through the discursive practices which seeks to secure the promotion of species existence. Peace and war find their biopolitical articulation in the biopolitical discourses of security** (Dillon and Reid, 2008). In sum, **making life live ostensibly rejects war as a virtue and proclaims peace.** The vocation of war is to kill. The vocation of biopolitics is 'to make live'. But **biopolitics cannot make live unless it preserves life from that which threatens it. To do that biopolitics must also seek a command of a refigured death, specifically that of biopoliticised economy of who shall live and who shall die**. Although he acknowledges it, Foucault does not reflect on this necropolitics beyond the observations he made about the state racism of Nazi Germany and the incipient racism of state socialism. My additional argument is that it is their **apparatuses of security** which, therefore**, do the biopolitical work of inscribing the logos of peace with the logos of war**. **Liberal peace is a necropolitics of security which makes permanent war against life on behalf of life. Making life live is therefore a lethal business because the promotion of species existence appears to be threatened on all sides, not only by alternative accounts of existence, but also by the danger which species existence always seems to pose to itself not least in often being resistant to the biopolitical injunction to make life live. For not all life can live if life itself is to be promoted. Some life is inimical to life and has to be exterminated if it cannot be corrected and reformed. Life is like that. To be precise species life is like that and so we have to clarify this basic classification of what it is to be a living being because it is foundational to biopolitics** and how, as such, it has need of the sub-division of species life into more or less functionally utile categories of human life to which the term race applies. Foucault pursues the point through two well formed questions: 'Given this power's objective is essentially to make live, how can it let die? **How can the power of death, the function of death, be exercised in a political system centred upon biopower**?' (Foucault, 2003b: P. 254). **The answer is** prefigured in how he habitually talks about power and politics in terms of **political rationalities and governmental technologies. If governmental technologies regulate, political rationalities ontologise**. They express an understanding of the real. In Foucault ontologies matter but he does not presume that material practices proceed from ontological principles. The world is too messy for that. **There is continual interplay between ontologising and technologising**. An understanding of the real lurks in every technology. Every ontology desires to be operationalised in an appropriate technology.6 **Biopolitics performs the ontologising and technologising thorough the simultaneous refiguration of both life and death**. That is to say through the biopolitical enunciation of the real as species existence (political rationality), and its micro-political practices (governmental technologies). **It is at this point**, Foucault says, that **'racism intervenes' (**2003b: p. 254). **It breaks up the biological continuum, sub-divides the species, according to which forms of life are more fit, more eligible or more disposed to life and which are not; and which are indeed inimical to life and in need of extermination.** Here Foucault says, in addition, that racism enacts the relation of war which templates the modern account of the political: `this relation ("If you want to live you must take lives, you must be able to kill") was not invented by either racism or the modern State. It is the relationship of war' (2003b: p. 255). Enacting the relation of war, the martial imprinting of modern politics in biological terms, **biopolitics differentiates life into categories of living things more and less eligible to live by virtue of the ways in which they live, accounting whether or not that living promotes, diminishes or profoundly threatens species life itself: The fact that the other dies does mean simply that I live** in the sense that his death guarantees my safety; **the death of the other**, the death of the bad race, of the inferior race (or the degenerate, or the abnormal) **is something that will make life in general healthier: healthier and purer.** (2003b: p. 255) **Biopolitics thus enacts a necropolitical audit of living things** in which race functions as a sorting device. Racism is the 'Appel' **which classifies those marked out for biopolitical discrimination, selection, correction and, if necessary, elimination. This necropoliticised peace machine - which runs the gamut from peace-keeping and peace-making to 'operations other than war' and imperial conquest - is the liberal way of war** (Dillon and Reid, 2008).

**Case**

**Circumvention – General**

***Zero risk of solvency***

1. ***Obama will circumvent – the past 5 years prove.***

**Cohen**, Fellow at the Century Foundation, **12**

(Michael, 3-28-12, “Power Grab,” http://www.foreignpolicy.com/articles/2012/03/28/power\_grab?page=full)

This month marks the one-year anniversary of the onset of U.S. military engagement in **the Libyan civil war**. While the verdict is still out on the long-term effects of the conflict for U.S. interests in the region, it's closer to home where one can point to the war**'s** greater **lasting impact** -- namely **in further increasing the power of the executive branch to wage war without congressional authorization. But don't expect to hear much about that issue** on the campaign trail this election year. Rather **the erosion of congressional oversight of the executive branch's war-making responsibilities has been something of a *bipartisan endeavor* -- and one that is *unlikely to end any time soon*.¶** It might seem like a bit of ancient history now, but **one of the more creative arguments to come out of the U.S. military intervention in Libya was t**he **Obama** administration**'s** **assertion** **that the war did not actually represent "hostilities."** Indeed, according to the president's argument to Congress, U.S. operations in Libya "do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve U.S. ground troops" -- thus making them something less than war. On the surface this appears patently absurd. The United States was flying planes over Libyan air space and dropping bombs. Missiles were being fired from off-shore. An American military officer (Adm. James Stavridis) commanded the NATO effort. There were reports of forward air controllers on the ground spotting targets for U.S. bombers. In all, NATO planes flew more than 26,000 sorties in Libya, nearly 10,000 of which were strike missions. By what possible definition is this not considered "hostilities"?¶ As it turns out **the ambiguity over whether the war represented "hostilities" is one codified in U.S. law** -- namely **the** War Powers Resolution (**WPR**). Under the provisions of the WPR the President was required to notify Congress within 48 hours of the beginning of U.S. military involvement. He then had 60 days to receive authorization from Congress and if he failed to do he would have 30 days to end the fighting. (Of course, if U.S. military actions do not rise to the level of "hostilities," then the president does not have to go through this rigmarole and receive congressional approval.)¶ Now on the surface, **such an elastic view of what the word hostilities means is *hardly unusual*. Indeed, it is rather *par for the course* in discussions of the W**ar **P**owers **R**esolution. In 1975, the Ford administration claimed that "hostilities" only refers to a scenario in which U.S. forces are "actively engaged in exchanges of fire with opposing units." Similar efforts at defining down hostilities were attempted by the Carter, Reagan, and Clinton administrations when they sought to use military force. Still, these generally were in reference to peacekeeping missions like in Lebanon and Bosnia -- not offensive operations like those waged in Libya.¶ In a political vacuum, **Obama's stance on "hostilities" in Libya might represent the traditional push and pull of executive-legislative branch disagreements about presidential war-fighting prerogatives**.¶ But of course, on this issue we are far from being in a political vacuum. **Obama's broadening of executive power comes with the backdrop of** the George W. **Bush** administration**'s** **efforts** to expand the president's ability to wage war. Indeed, **the position taken by** the **Obama** administration **bears uncomfortable similarities to the one taken by** John **Yoo when he served at the Justice Department and argued** -- in the wake of 9/11 -- **that the Constitution granted the president practically unquestioned executive power to wage war**. Yet, **even Bush sought congressional approval for military actions in Afghanistan and Iraq; Obama didn't bother to do the same for Libya.** In addition, **Obama** also **overruled the opinion of his own** Office of Legal Counsel (**OLC) on the question of whether the president must abide by the War Powers Resolution in regard to the Libyan intervention.** The OLC said he did; the White House assembled legal opinions that said he didn't -- and the latter view won out. As Bruce Ackerman, a law professor at Yale University, noted at the time, "Mr. **Obama's** **decision** **to** **disregard** that office's opinion [**the OLC**] **and embrace the White House counsel's view is *undermining a key legal check* on arbitrary presidential power."¶** **So at a time when *the door has been opened rather wide on unaccountable war-waging* by the executive branch** -- **with minimal legislative checks and balances** -- the ***Obama*** administration has ***opened it even further.*** What is perhaps most surprising is that **it is being promulgated by a president who pledged as a candidate to put an end to such practices.¶** As Ackerman said to me, Obama came into office with a golden opportunity to reestablish some modicum of restraint over the actions of the executive branch in the pursuit of national security. Ironically, in a Boston Globe questionnaire in December 2007, Obama specifically rejected the argument that he used, in part, to justify going around Congress on Libya. "The President," wrote candidate Obama, "does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation ... History has shown us time and again, however, that military action is most successful when it is authorized and supported by the Legislative branch."¶ While **Obama** has hardly gone as far down the road on expanding executive power as Bush did, it is also true that he "**consolidated many of the principles of executive power that were first described in the Bush administration**," says Ackerman. In effect, "Obama has done nothing to stop the return of another John Yoo." Indeed, with his actions on Libya, ***Obama has done more than consolidate Bush* administration *positions -- he has expanded them*.¶** These are negative developments, but it gets worse. In the president's initial letter to Congress, the airstrikes in Libya, "will be limited in their nature, duration, and scope. Their purpose is to support an international coalition as it takes all necessary measures to enforce the terms of U.N. Security Council Resolution 1973." The U.N. resolution specifically did not call for regime change and yet in July 2011, Secretary of Defense Leon Panetta made clear that the U.S. "objective" in Libya "is to do what we can to bring down the regime of Qaddafi." Moreover, as Micah Zenko, a fellow at the Council on Foreign Relations, said to me, NATO forces looked the other way at flights by the French government, among others, that re-supplied the Libyan rebels (in violation of the arms embargo mandated under Section 9 of Resolution 1970); sought to kill Qaddafi via airstrikes (eventually indirectly succeeding); helped to plan the operations that allowed the insurgents to capture Tripoli, and provided sensitive and secret satellite imagery to the rebels. In short, the United States went far beyond the mandate established by the Security Council and in effect lied when claiming that the operations in Libya were simply about protecting civilians. Putting aside the international law implications, the administration adopted a position of regime change of a foreign leader without any approval from Congress.¶ What is most surprising about the Obama administration's position is that it likely would not have been a heavy lift to get congressional backing for the operations in Libya in the early stages of the air campaign. But **by disregarding Congress's role on Libya -**- and shifting the intent of the U.S. mission without any congressional input into the decision -- **the president has set a new and potentially troubling precedent**. In contrast, by seeking congressional authorization Obama would have, ironically, restored some of the balance between the legislative and executive branch on issues of use of American military force.¶ ***Running roughshod over Congress has becom*ing something of *a norm*** **with**in the **Obama** administration. As one foreign-policy analyst close to the White House said to me "**they** generally **don't do a good job of keeping people in the Hill in the loop on what they are doing. *They see congressional oversight as a nuisance*** -- even within their own party." **Another analyst** I spoke to **had a one-word response to the question of the administration's attitude toward Congress's role in foreign policy: "Dismissive." Whether the lack of** proper **consultation over** the closing of **the detainee facility at Guantanamo** Bay, the **refusal to share** with intelligence committees **the rationale for *t***argeted ***k***illing***s***, **or even** **brief** Hill **staffers on changes in missile defense deployment, this sort of *ignoring of congressional prerogatives has often been the rule, not the exception.****¶* ***What has been Congress's response*** to this disregarding of its role in foreign policy decision-making***?* The usual hemming and hawing, but little in the way of concrete action.** During the Bush years, Republicans were more than happy to let the president expand his executive powers when it came to Iraq, Afghanistan, and the global war on terrorism. When Democrats took back the House and Senate from Republicans in 2006, they placed greater scrutiny on the Bush administration's conduct of the war in Iraq -- but still continued to fund the **conflict. Even in Washington's highly partisan current environment, little has changed; it's mostly sound and fury signifying *nothing*.**¶ **Republicans eschewed a constitutional confrontation with the White House over Libya**, though the House GOP did make a rather partisan effort to defund the Libya operations (a measure that failed) and still today House and Senate members raise their frustrations in committee hearings over their heavy-handed treatment by the White House.¶ But the actions of some **Republicans point in a different direction**. Last year, **House Armed Services Committee Chairman** Buck **McKeon actually tried to expand the** original **A**uthorization for **U**se of **M**ilitary **F**orce that granted U.S. kinetic actions just three days after 9/11 -- **which would have actually increased executive war-making power. While some** on the Hill have long **suspected** **the constitutionality of the W**ar **P**owers **R**esolution, it was one of the few checks that Congress maintained over the president (aside from ability to defund operations, which in itself is a difficult tool to wield effectively). Now **they have been complicit in its further watering down**.¶ Aside from Ron Paul, **there's been little mention of the president's overreach** in Libya by the GOP's presidential aspirants. And **why should there be? If any of them become president they too would want to enjoy the expanded executive power that Obama has helped provide for them**. Quite simply, **in a closely divided country in which each party has a fair shot to win the White House every four years, *there is little political incentive* for either Democrats or Republicans to say enough is enough.¶ And with a former constitutional law professor punting on the issu**e (along with the much abused and maligned Congress), **we're now even further from chipping away at the vast power the executive branch has been husbanded on national security issues**. In the end, that may be the greatest legacy of the U.S. intervention in Libya.

1. ***Non-enforcement – the plan creates the illusion of constraint with no practical effect***

**Posner & Vermeule ’11**, Eric Posner is Kirkland & Ellis Distinguished Service Professor of Law and Aaron Director Research Scholar at the University of Chicago. Adrian Vermeule - John H. Watson, Jr. Professor of Law – Harvard Law School, The Executive Unbound [electronic resource] : After the Madisonian Republic, Oxford University Press, USA, 2011. 01/01/2011 1 online resource (256 p.) Language: English, pg 87-89, jj

**Why did these statutes prove less effective than their proponents hoped**¶ **or, in the extreme, become *dead letters?*** In all the cases, **the basic pattern is**¶ **similar. The statutes were enacted during a high-water mark of political**¶ **backlash against strong executive power, which supermajorities in Congress**¶ **attempted to translate into binding legal constraints**. However, **once**¶ **the wave of backlash receded and the supermajorities evaporated, there**¶ **was insufficient political backing for the laws to ensure their continued**¶ **vigor over time**. **Later Congresses have not possessed sufficient political**¶ **backing or willpower to employ the override mechanisms that the statutes**¶ **create**, such as the override of presidential declarations of emergency created¶ by the National Emergencies Act.¶ **Even where the statutes attempt to change the legal default rule, so that**¶ **the president cannot act without legislative permission—as in the case of**¶ **the *W*ar *P*owers *R*esolution, after the 60- or 90-day grace period has**¶ **passed—the president may simply ignore the statutory command, and will**¶ **succeed if he has correctly calculated that Congress will be unable to**¶ **engage in ex post retaliation and the courts will be unwilling to engage in**¶ **ex post review**. President **Clinton’s implicit decision to brush aside the resolution**¶ **during the Kosovo conflict** (albeit with the fig leaf of a compliant¶ legal opinion issued by the Justice Department’s Office of Legal Counsel) 16¶ ***shows that what matters is what Congress can do after the fact, not what it***¶ ***says before the fact***.¶ Here a major problem for framework statutes is the “presidential power¶ of unilateral action” 17 to which we referred in the introduction. **Statutory**¶ **drafters may think they have cleverly closed off the executive’s avenues of**¶ **escape when they set the legal status quo to require legislative permission**.¶ **Because the president can act in the real world beyond the law books**,¶ **however—the armed forces did not threaten to stand down from their**¶ **Kosovo mission until Congress gave its clear approval, but instead simply**¶ **obeyed the President’s orders—the actual status quo may change regardless**¶ **of whether the legal situation does.** **Once armed forces are in action**,¶ **the political calculus shift s and legislators will usually be unable to find**¶ **enough political support to retaliate—especially not on the basis of an**¶ **arcane framework statute passed years or decades before**.¶ To be sure, **if the framework statutes are very specific, then violating them**¶ **may itself create a political cost for the president**, whose political opponents¶ will denounce him for Caesarism**. This cost is real, but in the type of**¶ **high-stakes matters that are most likely to create showdowns between the**¶ **president and Congress in the first place, the benefits are likely to be greater**¶ **than the costs** so long as the president’s action is popular and credible—the¶ crucial constraints we will discuss in chapter 4 . Moreover, **if the president**¶ **can credibly claim to the public that the violation was necessary, then the**¶ **public will be unlikely to care too much about the legal niceties**. As legal¶ theorist Frederick Schauer argues for constitutional violations 18 (and, we¶ add, the argument holds a fortiori for statutory violations), there is an¶ interesting asymmetry surrounding illegality: if the underlying action is unpopular,¶ then citizens will treat its illegality as an aggravating circumstance,¶ but if the underlying action is popular, its illegality usually has little independent¶ weight. Finally, **if the president credibly threatens to violate the**¶ **statute, then Congress will have strong incentives to find some face-saving**¶ **compromise that allows the president to do what he wishes without forcing**¶ **a showdown that, legislators anticipate, may well end badly**.¶ **The upshot is that subject-specific framework statutes have a Potemkin**¶ **quality: they stand about in the landscape, providing an *impressive facade***¶ **of legal constraint on the executive, but actually blocking very little action**¶ **that presidents care about**. In some cases presidents will have strictly political¶ incentives to obtain congressional permission before acting, even in¶ the domain of foreign affairs and national security. Yet this is not a consequence¶ of the legal structures erected by Madisonian theory, either through¶ constitutional rules or framework statutes. Rather, as an important recent¶ model suggests, it actually implies a very different regime in which presidents¶ may, but need not, obtain congressional consent. 19 The intuition¶ behind this result is that a regime of optional separation of powers puts¶ presidents to a revealing choice between proceeding unilaterally or instead¶ through Congress, and thus gives imperfectly informed voters the maximum¶ possible information and the greatest possible scope for rewarding or punishing presidents and legislators for their actions. Needless to say,¶ however, this political mechanism gives cold comfort to Madisonian liberal¶ legalists, who would blanch at the idea that an optional version of the¶ separation of powers is superior to a mandatory version.¶ Political scientist Andrew Rudalevige is correct to describe the collapse¶ of the constrained post-Watergate executive as the most significant contributor¶ in the growth of a “New Imperial Executive.” 20 **Framework statutes**¶ **are one of liberal legalism’s principal instruments of executive constraint**,¶ **in a world of litt le constitutional constraint. But having been tried, they**¶ **have been found wanting.**

***Obama won’t let Congress restrict his power without a fight – the plan passes over his veto***

Howard **Fineman 9/14-13**, is editorial director of the Huffington Post Media Group. Huffington Post, Tim Kaine's Bold New War Proposal For Obama, <http://www.huffingtonpost.com/2013/09/14/tim-kaine-obama_n_3923450.html>, jj

**Conventional wisdom and history hold that presidents never willingly cede an angstrom of their power to wage war**, **which is grounded in their role as commander in chief**. The corollary is that ***they'll veto any efforts to limit such power*** -- **which is what even the embattled Richard Nixon did in 1973.**

***Deference and circumvention inevitable – the best they can achieve is inconsistent application of precedent.***

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 52-54)

THE COURTS

We now turn from Congress to the courts, the other main hope of liberal legalism. In both economic and security crises, courts are marginal participants. Here **two Schmittian themes are relevant: that courts come too late to the crisis to make a real difference in many cases, and that courts have pragmatic and *political incentives* to defer to the executive**, whatever the nominal standard of review. The largest problem, underlying these mechanisms, is that ***courts possess legal authority but not robust political legitimacy***. Legality and legitimacy diverge in crisis conditions, and the divergence causes courts to assume a restrained role. We take up these points in turn.

The Timing of Review

A basic feature of judicial review in most Anglo-American legal systems is that courts rely upon the initiative of private parties to bring suits, which the courts then adjudicate as “cases and controversies” rather than as abstract legal questions. This means that **there is always a time lag, of greater or lesser duration, between the adoption of controversial government measures and the issuance of judicial opinions on their legal validity ensures that courts are *less likely to set precedents while crises are hot,*** **precedents** that ***will be warped by the emotions of the day* or by the political power of aroused majorities**.70

Delayed review has severe costs, however. For one thing, courts often face a fait accompli. Although it is sometimes possible to strangle new programs in the crib, once those measures are up and running, it is all the more difficult for courts to order that they be abolished. This may be because new measures create new constituencies or otherwise entrench themselves, creating a ratchet effect, but the simpler hypothesis is just that officials and the public believe that the measures have worked well enough. Most simply, returning to the pre-emergency status quo by judicial order seems unthinkable; doing so would just re-create the conditions that led the legislature and executive to take emergency measures in the first place.

For another thing, **even if courts could overturn or restrict emergency measures, by the time their review occurs, those measures will by their nature already have worked, or not**. **If they have worked,** or at least if there is a widespread sense that the crisis has passed, **then the legislators and public may not much care whether the courts invalidate the emergency measures after the fact**. By the time the courts issue a final pronouncement on any constitutional challenges to the EESA, the program will either have increased liquidity and stabilized financial markets, or not. In either case, **the legal challenges will interest constitutional lawyers, but will *lack practical significance***.

Intensity of Review

Another dimension of review is intensity rather than timing. At the level of constitutional law, **the overall record is that courts tend to defer heavily to the executive in times of crisis, only reasserting themselves once the public sense of imminent threat has passed**. As we will discuss in chapter 3, federal courts deciding administrative cases after 9/11 have tended to defer to the government’s assertion of security interests, although more large number work is necessary to understand the precise contours of the phenomenon. Schmitt occasionally argued that the administrative state would actually increase the power of judges, insofar as liberal legislatures would attempt to compensate for broad delegations to the executive by creating broad rights of judicial review; consider the Administrative Procedure Act (APA), which postdates Schmitt’s claim. It is entirely consistent with the broader tenor of Schmitt’s thought, however, to observe that **the very political forces that constrain legislatures to enact broad delegations in times of crisis also hamper judges**, including judges applying APA-style review. **While their nominal power of review may be vast, the judges cannot exercise it to the full in times of crisis.**

Legality and Legitimacy

At a higher level of abstraction, **the basic problem underlying judicial review of emergency measures is the divergence between the courts’ legal powers and their political legitimacy in times of perceived crisis**. **As Schmitt pointed out, emergency measures can be “exceptional” in the sense that although illegal**, or of dubious legality, **they may nonetheless be politically legitimate**, if they respond to the public’s sense of the necessities of the situation.71 Domesticating this point and applying it to the practical operation of the administrative state, courts reviewing emergency measures may be on strong legal ground, but will tend to lack the political legitimacy needed to invalidate emergency legislation or the executive’s emergency regulations. Anticipating this, courts pull in their horns.

**When the public sense of crisis passes, legality and legitimacy will once again pull in tandem; courts then have more freedom to invalidate emergency measures, but it is less important whether or not they do so,** as the emergency measure will in large part have already worked, or not. **The precedents set after the sense of crisis has passed may be calmer and more deliberative**, and thus of higher epistemic quality—this is the claim of the common lawyers, which resembles an application of the Madisonian vision to the courts—**but the public will *not take much notice of those precedents*, and they will have *little sticking power when the next crisis rolls around.***

**Circumvention – Specific**

***Ex Post fails – no lawsuits will happen***

**Chong ’12**, JANE Y. CHONG, Yale Law School, J.D. 2014; Duke University, B.A. 2009, December, 2012, Yale Law Journal, 122 Yale L.J. 724, NOTE: Targeting the Twenty-First-Century Outlaw, Lexis, jj

1. Civil Action In 2009, Professors **Murphy and Radsan used the due process model** that emerged from the Court's detainment decisions as a basis **for arguing that Bivens-style private civil actions could enable targets to challenge the legality of their placement on the kill list after an attack**. n46 **The proposal conceded that the role for the courts under such a schema would be "*vanishingly small*," but deserves mention for offering a form of limited judicial scrutiny** designed to establish executive accountability with minimal harm to national security. n47 Yet in the wake of Awlaki's killing, ***ex post review of the Executive's targeting determinations is unsatisfactory for obvious reasons.*** **The strategy assumes that the target would be alive to bring such a challenge or that a next friend would be able to bring an unmooted claim**. n48 Certainly, **the adequacy of an ex ante approach has been directly called into question by** Nasser **al-Aulaqi's failure to obtain standing to challenge his son's targeting in 2010**. Although whether the approach proves entirely unavailing ex post, in the wake of the target's death, remains to be seen, n49 under Judge Bates's interpretation of the political question doctrine, ***the "vanishingly small" role that civil action offers the judiciary appears to vanish to nothing.***

***The aff’s illogical – victims won’t turn the government that attacked them for relief***

**Radsan & Murphy ’09**, Afsheen John Radsan, William Mitchell College of Law, Richard W. Murphy, Texas Tech University School of Law, Due Process and Targeted Killing of Terrorists (March 1, 2009). Cardozo Law Review, Vol. 31, p. 405, 2009; William Mitchell Legal Studies Research Paper No. 126; Texas Tech Law School Research Paper No. 2010-06. Available at SSRN: <http://ssrn.com/abstract=1349357>, jj

But as the dissenting judge in Arar noted, these special factors lose much of their force once one acknowledges that ***a Bivens-style action needs to overcome formidable hurdles of fact and law***.210 As to practical hurdles, ***most people left alive by a Predator strike or other targeted killing would not turn to American courts for relief***. **Some would not sue because they are, in fact, the enemy—Osama bin Laden is not going to hire an American lawyer**.211 **Others would not sue because doing so is beyond their means—a villager from the mountains of Afghanistan is not likely to hire an American lawyer either.**

***Cause of action fails and doesn’t increase accountability***

* Also links to politics

**Epps ’13**, Garrett Epps, a former reporter for The Washington Post, is a novelist and legal scholar. He teaches courses in constitutional law and creative writing for law students at the University of Baltimore and lives in Washington, D.C. His new book is Wrong and Dangerous: Ten Right Wing Myths About Our Constitution. 2-16-13, The Atlantic, Why a Secret Court Won't Solve the Drone-Strike Problem, <http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/>, jj

**What about after the fact, then? Could there be a secret court that would hear the administration's case for a drone strike and then decide whether that strike had been justified?** Not hardly, I think. A court that meets in secret, hears only one side of a dispute, and issues a final judgment without notifying other parties is not any kind of Article III court I recognize. It is not deciding cases; it is granting absolution. Finally, **some scholars have suggested that the Congress create a new "cause of action**"--a right to sue in an ordinary federal court on a claim that the government improperly unleashed drones on a deceased relative. **The survivors of the late Anwar al-Awlaki tried such a suit, and the Obama administration has so far insisted that it concerns "political questions," not fitted for judicial proceedings**. **Congress could pass a statute specifically granting a right to sue in a federal district court. Without careful design, that would actually not make things any better.** ***The survivors will file their complaint; the administration will claim state secrets and refuse to provide information***. **A court might reject the secrets claim and order the government to produce discovery. The administration would probably refuse to comply.** **The court's recourse would be to order judgment for the plaintiffs. The dead person's family would get some money, but *we'd be no closer to accountability for the drone-strike decision*.** Professor Stephen I. **Vladeck** of American University **has offered a remedy** to this problem. He proposes a statute in which Congress assigns jurisdiction to a specific judicial district, probably the District Court for the District of Columbia. **Congress in the statute would strip the executive of such defenses as "state secrets" and "political question**." **Survivors of someone killed in a drone attack could bring a wrongful-death suit**. The secret evidence would be reviewed by the judge, government lawyers, and the lawyers for the plaintiff. Those lawyers would have to have security clearance; the evidence would not be shown to the plaintiffs themselves, or to the public. After review of the evidence, the court would rule. If the plaintiffs won, they would receive only symbolic damages--but they'd also get a judgment that the dead person had been killed illegally. It's an elegant plan, and the only one I've seen that would permit us to involve the Article III courts in adjudicating drone attacks. Executive-power hawks would object that courts have no business looking into the president's use of the war power. But Vladeck points out that such after-the-fact review has taken place since at least the Adams administration. "I don't think there's any case that says that how the president uses military force--especially against a U.S. citizen--is not subject to judicial review," he said in an interview. "He may be entitled to some deference and discretion, but not complete immunity." **The real problem with Vladeck's court might be political. I expect that any president would resist such a statute as a dilution of his commander in chief power, and enactment seems unlikely**. **Without such a statute**, then, **systematic review of secret drone killings must come inside the executive branch**. That doesn't mean it will be a lawless whitewash. Congress can prescribe rules for these reviews, decide who will carry them out, and require periodic reports to its committees and to the public. In a recent conversation, David Ignatius of the Washington Post, an old friend and my go-to guy for national-security thinking, suggested the role be assigned to the president's Intelligence Advisory Board, a non-partisan panel of independent experts from outside the executive branch, who serve independently for fixed terms. That is the kind of body we need. **Bringing in the courts themselves would be at best tricky, and at worst as dangerous, in its way, as allowing the drone war to continue without supervision.**

***Drone court won’t improve targeting --- errors inevitable***

**Goldsmith ’12**, Jack Goldsmith is a Harvard Law professor and a member of the Hoover Task Force on National Security and Law. He served in the Bush administration as assistant attorney general in charge of the Office of Legal Counsel. His new book is Power and Constraint: The Accountable Presidency after 9/11. MARCH 19, 2012, Foreign Policy, Fire When Ready, <http://www.foreignpolicy.com/articles/2012/03/19/fire_when_ready?page=full>, jj

**A second disclosure issue concerns the process by which targeting decisions are made and the factual basis for those decisions** (including the evidence of ties to al Qaeda, the imminence of the threat posed by the target, the extent of cooperation with other nations, and the reasons capture is not feasible). This is the most legitimate concern of critics and even some supporters of the president's targeted killing campaign, especially when that campaign involves a U.S. citizen. **There is every reason to think that the government was super careful and extra scrupulous in the process preceding the Awlaki killing. But despite the elaborate system of deliberation, scrutiny, and legitimation supporting U.S. targeting practices, the U.S. government can and sometimes does make mistakes about its targets. There is simply no way to wring all potential error from the system and still carry on a war. *Even full-blown ex ante judicial review of targeting would not guarantee the elimination of errors.***

***No deterrent effect from lawsuits***

**Schwartz, 10** (Joanna C. Schwartz\*, \*Binder Teaching Fellow, UCLA School of Law, J.D., Yale Law School, A.B., Brown University, April, 2010, UCLA Law Review, ARTICLE: Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking, 57 UCLA L. Rev. 1023, Lexis, jj)

**The United States Supreme Court considers it "almost axiomatic"** n1 **that** civil rights **damages actions** n2 **deter government employees and policymakers**. **Being sued and even the threat of suit are expected to cause government officials** [\*1025] **to conform their conduct to the law**. n3 **Courts believe the deterrent power of lawsuits is so strong** that it can ""dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties'" and cause other "able citizens" to avoid public office altogether. n4

**A host of distinguished scholars have offered multiple theories about why civil rights damages actions - and the millions of dollars paid out each year in these cases - will not effectively deter** police department **officials from engaging in future unconstitutional behavior**. n5 An equally accomplished group has defended the deterrent power of civil rights damages actions. n6

More than descriptive accuracy is at stake in this debate. Courts use the expectation of deterrence as a basis to limit remedies: Decisional law immunizes defendants from liability for fear that civil rights damages actions will overly chill government activities. n7 In constitutional criminal procedure, courts have confined the reach of the exclusionary rule on the ground that damages actions adequately deter the police. n8

Scholars, like courts, link practical conclusions to their respective accounts of the deterrent effect of lawsuits. They recommend imposing more direct penalties on government officials, n9 changing liability rules to give Section 1983 [\*1026] greater effect, n10 or using injunctive claims instead of damages actions to influence government behavior. n11

**Courts' and scholars' deep convictions about the deterrent effect** of civil rights damages actions - and, by implication, the prescriptions that follow - **rely heavily on the assumption** n12 **that when a plaintiff prevails** n13 **against a government entity and/or its employee(s), a government policymaker** n14 **will gather information about the lawsuit and weigh the costs and benefits of the alleged activity**. **The policymaker will then decide whether to maintain the status quo and risk being sued again, or make changes that would reduce the likelihood of future suit.**

**There are good reasons, however, to doubt expectations of (1) rational decisionmaking and (2) access to relevant information underlying this assumption of what I call "informed deterrence."** **Modern *cognitive social science* challenges rational choice theory and, in its place, substitutes "bounded rationality**." n15 This "bounded" rival to "rational man" cannot engage in the [\*1027] stylized weighing assumed in current accounts of lawsuits' deterrent effects. n16 **Theories of the deterrent power of** civil rights **damages actions would benefit from a more nuanced view of human cognition and decisionmaking**. n17

This Article, however, focuses on the second assumption underlying accounts of deterrence: that government officials have access to enough useful information about suits that they can make informed decisions about whether and how to act in response. The impact of imperfect information on decisionmaking has received significant scholarly attention. n18 Yet **judicial and scholarly discussions of the deterrent effect of civil rights damages actions overwhelmingly assume that governments gather copious amounts of information about suits and analyze that information in sophisticated ways.** n19

[\*1028] **This Article challenges the assumption of informed decisionmaking by exploring the ways in which information from lawsuits is gathered and analyzed by twenty-six law enforcement agencies across the United States**. **Drawing on *documentary evidence and interviews*, I demonstrate that law enforcement officials only rarely have information about suits brought against their departments and officers**. n20 Over two-thirds of police departments and over 80 percent of sheriffs' departments with more than one thousand sworn officers have no computerized system to track lawsuits brought against them. n21 Even less frequently do law enforcement agencies investigate claims made in lawsuits, review closed litigation files, or consider the dispositions of cases. n22 Finally, the small number of departments with formal policies to gather data from lawsuits characteristically falter in the implementation phase. **Technological kinks, employee error, and deliberate efforts to sabotage data collection combine to undermine departments' limited efforts to gather this information**. n23

**If policymakers do not gather and analyze information from lawsuits, they cannot possibly make informed decisions intended to avoid future** [\*1029] **misconduct**. n24 Yet, my research - and the use of information from lawsuits and other data in different contexts - offers reason to believe that the inverse is also true: When officials actually consider information from lawsuits, they use that information to reduce the likelihood of future misbehavior. n25

In other complex and challenging realms, government entities and private corporations have changed behavior after gathering and analyzing relevant information. CompStat - a system to track and analyze data relevant to criminal behavior - is used by police departments throughout the country to diagnose trends and reduce crime. n26 Rates of litigation against anesthesiologists have declined following trend analyses of closed malpractice claim files. n27 Corporate behavior has improved over the past half century as regulations increasingly require companies to disclose information about the use of chemicals, workplace injuries, and the nutritional value of foods. n28 Across the public and private spheres, organizations have demonstrated the capacity to change behavior after confronting previously ignored data. This Article suggests that more robust and effective information policies and practices may have a similar effect on law enforcement behavior.

Even if we embrace the potential impact of information from suits on law enforcement behavior, however, there remains a gap between where we are now and where we might one day be. Until that gap closes, the information failures revealed in my study should lead us to reconsider certain assumptions in judicial opinions and scholarship. ***No longer should we facilely - and inaccurately - consider it "almost axiomatic" that lawsuits deter.*** n29 Nor can local governments that ignore information from suits insist [\*1030] that the threat of excessive deterrence ought to compel courts to expand immunities or eliminate the exclusionary rule.

**Accountability**

**Accountability**

***Obama’s exercising caution now---drones are being scaled back---this solves the aff***

**Ackerman, 12/31/13** [President Barack Obama’s mid-year decision to wind down drone, Spencer, The Guardian news, <http://www.theguardian.com/world/2013/dec/31/deaths-drone-strikes-obama-policy-change>]

President Barack **Obama’s** mid-year **decision to *wind down drone* strik*es*** **has accounted for a** **lower number of deaths** resulting **from** such **actions in 2013**, ***newly compiled data indicates*.** **Sifting through the estimates** of three non-governmental organizations, the Council on Foreign Relations scholar Micah **Zenko published** on Tuesday **a *tally of drone strikes*** in Pakistan, Yemen and Somalia, the central theaters of deadly and formally undeclared counterterrorism operations run in official secrecy. **While specific figures are difficult to narrow down and even harder to verify**, **the number of strikes**, almost exclusively by drones, ***declined in 2013***, as did the casualties they caused. **Between the** **three countries, there were around 55 strikes this year, a *substantial drop* from the roughly 92 in 2012**. In 2013 the strikes killed up to 271 people, down from an estimate of between 505 and 532 in 2012. Approximately one in every nine to 10 deaths is a civilian. **The data comes from** **estimates compiled by the New America Foundation**, **the Long War Journal and the Bureau of Investigative Journalism.** Yet attempts to correlate the decline in strikes to a decline in specific threats are blocked by secrecy, diplomatic contingency and political convenience, Zenko said. With the drawdown of the US wars in Iraq and Afghanistan, Zenko said, “there has never been more available, both dedicated US and leased, satellite bandwidth; never been more strike drones available; and there’s more people who can watch full-motion video [for targeting]. There has never been more assets available to kill people and strikes are going down. **There’s been *a policy*** ***decision***, **and** I think **they’ve been correct to *emphasize* that**.” **A number of counterterrorism scholars consider 2013 to have been a good year for terrorist groups that claim to be** motivated by Islam. **Daveed Gartenstein-Ross** of the conservative Foundation for the Defense of Democracies **cited a “*regeneration*” for al-Qaida** – although the regeneration Gartenstein-Ross cited occurred among “affiliate” groups of varying connection to the organization that attacked the US on 9/11, and in places mostly outside the reach of drones, such as Mali, Libya, Syria and Iraq. The exception is Somalia, where al-Shabab, an Islamist militia that formally joined al-Qaida in 2012, launched a handful of terrorist attacks in the capital, Mogadishu, and a dramatic, deadly assault on Kenya’s Westgate mall in September that killed 70 people. The US responded with what is believed to be the only missile strike of the year, apparently launched from a drone in October and leaving two dead. 'They have not opened a new front' **But despite the strength of groups believed to be aligned with al-Qaida, observers are yet to see an** **affiliated rise in either the groups’ sophistication or ability and ambition to attack the US at home.** US officials and sympathetic analysts in 2013 talked more of threats to “US interests” than threats to the American people. The only domestic attack in 2013 that might be considered jihadism came at the Boston marathon in April, from two brothers with no known connection to any terrorist organization. The actual threat posed by jihadist terrorism in 2013 remains the subject of fierce and unresolved debate. **In May, Obama signaled a *discomfort*** **with the rise in drone strikes** that have become synonymous with his stewardship of counterterrorism, during a speech at the National Defense University. While Obama did not pledge to end the strikes – and indeed sharply defended them – he placed new emphasis on avoiding them. **Zenko said** the available data did not show “big changes pre-speech or post-speech”, but did indicate that the **strikes had**, at least temporarily**, *stopped proliferating***. “To their credit, they have not opened a new front in Syria, Iraq or North Africa,” Zenko said. While the strikes did not end after the speech, there was an increase in raids, from Libya to Somalia, conducted by elite troops and the CIA and aiming to capture terrorist operatives rather than kill them. Administration officials have stopped short of declaring such raids a policy shift – either because no such shift occurred or because the veil of secrecy surrounding drone strikes prevents such a declaration. The data also points to other patterns that cut against the Obama administration’s typical contention that the strikes kill senior terrorist leaders, the standard the president set in the president's May speech. In tribal Pakistan, the initial front of US drone strikes, there was a steep rise in strikes in 2010 and a continued high rate in 2011, followed by a decline in 2012 and a steeper decline in 2013. The pattern fits the rise and fall of the US troop surge in neighboring Afghanistan, suggesting that the strikes in Pakistan had more to do with protecting nearby US troops than killing al-Qaida’s top operatives. Zenko gave Obama “a lot of credit” for acknowledging the so-called “force protection” component of the Pakistan strikes in his May speech – a detail that got little media attention. “No longer was there just the nonsense of a significant, imminent threat to the homeland,” Zenko said. There is no comparable US troop presence in Yemen, but strikes in Yemen, a relative rarity before the 2010 rise of al-Qaida’s local affiliate, swelled to more than 40 in 2012, before dropping off this year to around 26. The drop occurred despite a highly-publicized threat warning in the summer, attributed to the group, that prompted the closure of regional US diplomatic facilities and a temporary rise in strikes on Yemen. When Zenko took a closer look at local announcements of Yemen strikes by the US-sponsored security departments, he said, he found them typically attributed to reports of threats to the Yemeni military or police; generic “threat warnings”; or to US diplomats. While government statements on counterterrorism provide no guarantee of truth, those in Yemen rarely had to do with attempts on the United States. Counterterrorism run amok? Protest against US drone attacks People burn a mock US flag during a protest against US drone attacks in Pakistan. Photograph: STR/EPA As with Guantánamo Bay and bulk surveillance by the National Security Agency, drone strikes have become an international symbol of US counterterrorism efforts run amok. **The *new* government of Pakistan has made the strikes a point of diplomatic *contention* with Washington**, although the country's security services have facilitated them in the past. In Yemen, where the government is more openly aligned with the US on counterterrorism, anger about and fear of drones have become a cultural phenomenon, as a local activist testified to the Senate in the spring, citing parents who used threats of the drones to discipline misbehaving children. In October, the United Nations special rapporteur investigating drone strikes, Ben Emmerson, cited 33 cases in which drone strikes, mostly by the US, killed civilians and potentially violated international law. Emmerson called on the US government to lift the veil of secrecy surrounding the strikes, which are conducted by the CIA and the military’s Joint Special Operations Command, an elite force that has even fewer requirements to brief legislators than does the CIA. Obama’s speech in May did not yield greater transparency on what the administration has called “targeted killing”. That, **Zenko said, obscured an analysis of the 2013 frequency of “signature strikes”, the most** **notorious of US counterterrorism efforts**: **operations that kill not specific**, known terrorists but individuals, often “military aged males”, **believed to fit a pattern of terrorist behavior**. **“They can’t say they’re stopping signature strikes,” Zenko said, “because it acknowledges they’ve done them.”**

**Yemen**

***Yemen stability increasing***

**Nasher, ’13** (Sader, “Yemen Minister: Yemen’s Stability

Key to Regional Stability,” 1/28, http://www.al-monitor.com/pulse/politics/2013/02/yemen-minister-interview-security.html, bgm)

**Yemeni Interior Minister Maj. Gen. Abdel-Qader Qahtan says that the situation in Yemen has improved more than a year after the formation of a national reconciliation government, following the groundwork laid by the Gulf Initiative for a transfer of power in the country**. He pointed out that **“the security aspect of things is presently very reassuring.”** In his first interview with an Arab newspaper since assuming his post as interior minister, Qahtan said that President Abed Rabbo Mansour Hadi's recent decisions provided moral and practical motivation to ministry and its various departments, and gave it an incentive to recover its sovereign role of maintaining security and stability in the country. In his interview with Al-Khaleej, Qahtan clarified that **the reconciliation government's performance did not satisfy everyone's aspirations and hopes. But given the size of the challenges and grave problems inherited by the reconciliation government from the former regime, it would be fair to say that it achieved great strides on several levels, including with respect to security and the economy.**

**Pre-emption**

**1NC – pre-emption**

***This advantage is a joke—throw out all their ev from 2002 and 2004—it was written before targeted killing was even a thing, and is in the context of the Bush doctrine---this is the intro their impact article:***

James B. **Steinberg 2**, senior fellow and vice president and director of Foreign Policy Studies at the Brookings Institution, Michael O’Hanlon, Director of Research for the 21st Century Defense Initiative at Brookings, Ph.D. from Princeton in public and international affairs, and Susan Rice, senior fellow in Foreign Policy at Brookings, “The New National Security Strategy and Preemption,” <http://www.brookings.edu/research/papers/2002/12/terrorism-ohanlon>

Building on a concept he articulated in a June 2002 speech at West Point, President George W. **Bush has adopted a new emphasis on preemption in his** administration's National Security Strategy (**NSS**), issued September 20, 2002. Preemption, defined as the anticipatory use of force in the face of an imminent attack, has long been accepted as legitimate and appropriate under international law. In the new NSS, however, the administration is broadening the meaning to encompass preventive war as well, in which force may be used even without evidence of an imminent attack to ensure that a serious threat to the United States does not "gather" or grow over time. The strategy also elevates preemption in importance, and visibility, within the tool kit of U.S. foreign policy.

***No impact to pre-emption norms***

**Rivkin, 5** [DAVID B. RIVKIN, JR. \* Partner, Washington, D.C. office of Baker & Hostetler LLP; Visiting Fellow, Nixon Center; Contributing Editor, The National Review and National Interest mag‐ azines; Member, UN Subcommission on the Promotion and Protection of Human Rights; served in a variety of legal and policy positions at the Departments of Justice and Energy and the White House during the Reagan and H.W. Bush Ad‐ ministrations, Harvard Journal of Law & Public Policy, The Virtues of Preemptive Deterrence, <http://www.law.harvard.edu/students/orgs/jlpp/Vol29_No1_Rivkin.pdf>, jj]

Despite these ample justifications, the Bush Administration’s public embrace of preemption has been roundly condemned. To begin, **preemption foes opine**, in an argument eerily remi‐ niscent of Cold War‐era lamentations over deterrence rooted in a viable nuclear war‐fighting posture, **that preemption is dan‐ gerously destabilizing and will result in more, not fewer, con‐ flicts**. **The reasoning here appears to be that allowing states to use force in advance of an actual attack would make them more prone to use force promiscuously—hypothetically, that the U.S. regime change in Baghdad might induce Argentina to invade the Falklands again.**

**Regurgitating this old action‐reaction argument makes even less sense today than it did fifty years ago**.24 **Few foreign policy analysts now believe a country that wishes to go to war with another nation, for whatever domestic ideological or foreign policy reasons, has somehow been “set free” by the Bush Doc‐ trine**. **That some countries may find it expedient to justify their military exploits by referring to the U.S. strategy, as** Vladimir **Putin’s Russia routinely does when trying to justify its brutal conduct in Chechnya, does not mean that they would not have behaved in exactly the same way in the absence of the Bush Doctrine**. **Even fewer maintain that, but for the Bush Doctrine, these conflicts would not occur**. ***This criticism ignores the reali‐ ties of international relations and ascribes to the United States an unrealistic degree of doctrinal influence.***

# 2NC

**Overview**

**Saas ‘12** (William O. Saas, Pennsylvania State University, “Critique of Charismatic Violence,” symploke, Vol. 20, Nos. 1-2 (2012), p. 68-69, Project Muse, Access Provided by Wayne State University at 02/28/13) [m leap]

The ***extra-legal*** condemnation and ***execution*** of al-Awlaki ***is only one of the more recent cases of unilateral violence carried out by the White House* throughout the so-called war against terrorism**. **Viewed from even a slight remove, the secret panel-drone attack becomes an expression of a broader** ***executive-bureaucratic pathology***, **a set of proximal coordinates immanent to a more expansive and *ominous cartography of executive power***. Like the photographs of torture at Abu Ghraib, evidence of detainee deaths at Bagram prison in Afghanistan, Red Cross reports on detainee abuse at Guantanamo Bay, evidence of so-called “extraordinary rendition” and international torture, acknowledgment of CIA “black sites” used to imprison “enemy combatants” indefinitely, video footage from a U.S. Apache helicopter gunning down journalists, leaked “torture memos,” and so on, news of **the secret White House panel is *merely one node* for controversy *among many* in the recent history of *unilateral executive violence***.¶ Controversial primarily among critics of U.S. foreign policy, ***the Obama administration’s expansive interpretations and extensions of executive power and concomitant expansion of the national security bureaucracy are not sources of substantive lay-public outcry***. Priest’s and Arkin’s July, 2010 exposé of the vast post-9/11 expansion of the national security bureaucracy, which became the subject of a PBS Frontline episode in late 2011, did not reach far beyond a relatively small (if also strident) readership. Neither has increasingly widespread news of the use of drone attacks—and the significant number of civilian deaths they have caused—spurred much popular debate. **A February, 2012 poll in the Washington Post showed that a vast majority of the American electorate supports the Obama administration’s “counter-terrorism” policies** (Wilson and Cohen 2012), **with “83 percent of Americans” and “fully 77 percent of liberal Democrats” endorsing the use of drone strikes for assassinations**, leading the pollsters to conclude that “***Obama is unlikely to suffer any political consequences* as a result of his policy** in this election year.” **What was divisive along party-lines under the second Bush administration has now become a site of *unusually strong bi-partisan consensus*: the Post poll also found that “53 percent of self-identified liberal Democrats—and 67 percent of moderate or conservative Democrats—support keeping Guantanamo Bay open.”** ***Where*** candidate ***Obama campaigned on a promise to reverse these policies***, President Obama may be re-elected in part because ***he has in fact enhanced them***.

**FW**

***Debating the rhetorical frame for war-fighting decisions is the only way to address the source of war-fighting abuses.***

Jeremy **ENGELS** Communications @ Penn St. **AND** William **SAAS** PhD Candidate Comm. @ Penn ST. **13** [“On Acquiescence and Ends-Less War: An Inquiry into the New War Rhetoric” *Quarterly Journal of Speech* 99 (2) p. 230-231]

**The framing of public discussion facilitates acquiescence** **in contemporary wartime**: thus, **both the grounds on which war has been justified and the ends toward which war is adjusted are bracketed** and hence made infandous. The **rhetorics of acquiescence bury the grounds for war under nearly impermeable layers of political presentism and keep the ends of war in a state of perpetual flux so that they cannot be challenged**. Specific details of the war effort are excised from the public realm through the rhetorical maneuver of ‘‘occultatio,’’ and the authors of such violence\*the president, his administration, and the broader national security establishment\*use a wide range of techniques to displace their own responsibility in the orchestration of war.28 Freed from the need to cultivate assent, acquiescent rhetorics take the form of a status update: hence, President Obama’s March 28, 2011 speech on Libya, framed as an ‘‘update’’ to Americans ten days after the bombs of ‘‘Operation Odyssey Dawn’’ had begun to fall. Such post facto discourse is a new norm: Americans are called to acquiesce to decisions already made and actions already taken. The Obama Administration has obscured the very definition of ‘‘war’’ with euphemisms like ‘‘limited kinetic action.’’ The original obfuscation, the ‘‘war on terror,’’ is a perpetually shifting, ends-less conflict that denies the very status of war. How do you dissent from something that seems so overwhelming, so inexorable? It’s hard to hit a perpetually shifting target. Moreover, as the government has become increasingly secretive about the details of war, crucial information is kept from citizens\*or its revelation is branded ‘‘treason,’’ as in the WikiLeaks case\*making it much more challenging to dissent. Furthermore, government surveillance of citizens cows citizens into quietism. So what’s the point of dissent? After all, this, too, will pass. Thus even the most critical citizens come to rest in peace with war. The confidence game of the new war rhetoric is one of perpetually shifting ends. In this ‘‘post-9/11’’ paradigm of war rhetoric, citizens are rarely asked to harness their civic energy to support the war effort, but instead are called to passively cede their wills to a greater Logos, the machinery of ends-less war. President Obama has embodied the dramatic role of wartime caretaker more adeptly than his predecessor, repeatedly exhorting citizens to ‘‘look forward’’ rather than to examine the historical grounds upon which the present state of ends-less war was founded and institutionalized.29 All the while, that forward horizon is constantly being reshaped\*from retribution, to prevention, to disarmament, to democratization, to intervention, and so on, as needed. What Max Weber called ‘‘charisma of office’’\*the phenomenon whereby extraordinary political power is passed on between charismatically inflected leaders\*is here cast in bold relief: **until and unless the grounds of the new war rhetoric are meaningfully represented and unapologetically challenged, ends-less war can only continue unabated**.30 **War rhetoric is a mode of display that aims to dispose audiences to certain ways and states of being in the world**. This, in turn, is the essence of the new war rhetoric: authorities tell us, don’t worry, we’ve got this, just go about your everyday business, go to the mall, and take a vacation. What we are calling acquiescent rhetorics aim to disempower citizens by cultivating passivity and numbness. Acquiescent rhetorics facilitate war by shutting down inquiry and deliberation and, as such, are anathema to rhetoric’s nobler, democratic ends. **Rhetorical scholars thus have an important job to do.We must bring** **the** objective **violence of war out into the open so that all affected by war can meaningfully question the grounds, means, and ends of battle**.We can do this by describing, and demobilizing, the rhetorics used to promote acquiescence. In sum, we believe that **by making the seemingly uncontestable contestable, rhetorical critics can and should begin to invent a pedagogy that would reactivate an acquiescent public by creating space for talk where we have previously been content to remain silent**.

**USFG Fiat Good/“Cede The Political”**

***Policy debate cannot change anything because too many people are illiterate and media saturated – the political sphere that the neg is concerned with has already been bought and sold by multinational corporations – political education doesn’t help because the system works on simulation and junk politics – the system has already passed the threshold into inverted totalitarianism – continuing the bureaucratic simulation of post-politics destroys meaning and propels us toward self-annihilation and ecosystem collapse***

**Hedges ‘9** – [Thom interviews Chris Hedges (fifteen years as a war correspondent for the New York Times, author, senior fellow at The Nation Institute in New York City, Pulitzer Prize winning journalist, received the Amnesty International Global Award for Human Rights Journalism, taught at Columbia University, New York University and Princeton University, and is currently the F. Ross Johnson-Connaught Distinguished Visitor in American Studies at the Centre for the Study of the United States at The University of Toronto) about his book "Empire of Illusion", 21 July 2009, Transcribed by Suzanne Roberts, Portland Psychology Clinic, http://www.thomhartmann.com/blog/2009/07/transcript-chris-hedges-empire-illusion-21-july-2009] MRL

Thom: So great to have you here. In synopsis you paint a rather dire portrait of a bread and circus America. Chris Hedges: Yeah. It’s the story of an America that has transferred its allegiance to spectacle, to pseudo-events, that no longer can determine what is real and what is illusion, that confuses how they’re made to feel with knowledge, that confuses propaganda with ideology, and that’s exceedingly dangerous. All totalitarian societies are image-based societies, and that’s what our society has become. Thom: Already. We’re past the point of saying we’re at a threshold. You’re saying we have **passed the threshold**. Chris Hedges: Yeah. I think that you can easily, there’s enough indicators within the culture, to illustrate that print-based culture, those people who deal in nuance and ambiguity and ideas are a minority. Thom: But can’t there be a nuanced and thoughtful electronic, I mean I read you all the time on the Internet. You’ve got a piece up today on Commondreams.org. As do I, by the way. Chris Hedges: Sure, but the fact is shows like yours, in the cultural mainstream, are marginal. Thom: We’re anomalies. We’re the exception that proves the rule. Chris Hedges: Yeah. You’re not interrupting me, you’re not insulting me, you’re not shouting. It’s not carnival barking. You use the airwaves to actually try and discuss ideas and allow your guests to flesh out opinions, opinions that you may not even agree with. That’s very different from almost everything we see. And look, newspapers are dying, the publishing industry is dying, you have 42 million Americans who are illiterate. You have another 50 million Americans who are semi literate, meaning they read at a 4th of 5th grade level. And then you have people who are functionally literate, but they don’t read. **There are tremendous consequences for that**, because as you well know, having worked in the advertising industry, these images are not benign. They are skillfully orchestrated and manipulated by for-profit corporations to get us to do a lot of things that are not in our interests. And of course, this all ties into the rise of celebrity culture, well on display with our 3 week coverage of the death of Michael Jackson. Thom: Right, yeah, the whole circus around him. So how do we fix this? How do we recover some sense, I mean you read DeTocqueville, you know, DeTocqueville's story, Democracy in America is the title, 1838. And he only spent 6 months here, he was in his late 30s, French nobleman, came over, looked around, blew his mind. The average farmer was as literate as the average scholar. Chris Hedges: Yeah. That’s the tragedy, isn’t it? Thom: Yeah. And I would submit to you that while we could go back to the founding of the modern P.R. industry, and Woodrow Wilson, and you know all that kind of stuff, in the 19 teens, that the idea of corporate personhood has played a big role in this. The rise of corporate dominance and the theft of human rights, essentially, has played a big role in this. And that it really began going downhill fast when the Reagan administration came to power. And particularly when they decided that they were going to change our schools. Chris Hedges: Yeah. Although I think that, you know, it’s been decades in the making. And I think that we have seen profound cultural transformation in American culture, or cultures. Because, you know, we once had distinct regional and ethnic cultures, these were all **systematically destroyed** in the early part of the 20th century by corporate interests who used mass communications as well as an understanding of human psychology to **turn** **consumption into an inner compulsion**. And with that we lost the old values of thrift, of regional identity that had it’s own iconography, esthetic expression and history, as well as diverse immigrant traditions. Thom: But, you know, Chris, I guarantee it there’s somebody listening right now going, “These young kids these days! They don’t understand!” You know, kind of thing. And is it possible that there is some redeeming value in this new culture that has been created out of corporatocracy and what I would argue is a form of fascism, basically an external control of our government? Or is it something that we just need to pull down and start over? And if so, how? Chris Hedges: Well, Sheldon Wolin, the great political philosopher who taught at Berkeley and later Princeton, now 86, has written his sort of magnum opus called, “Democracy Incorporated.” And he argues that we live in a system that he calls **inverted totalitarianism**. The classical totalitarianism, in classical totalitarianism, like fascism or communism, economics is always subordinate to politics. But in inverted totalitarianism, **politics is subordinate to economics**. And with a rise of the consumer society, with **the commodification of everything**, including human beings and natural resources, you have built into it a form, **an inevitable form of self annihilation**.

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Because nothing has intrinsic value when society is no longer recognized as sacred. You exhaust everything for their, for its ability to make money. No matter how much human misery you create, no matter how much you go, how far you go to **destroy the ecosystem** that is sustaining the human species. And that with the rise of celebrity culture, of consumer culture, and on federate capitalism, you get what Benjamin Demott has called, I think quite correctly, **junk politics**. Thom: Yeah. And we have a junk politics junk culture. And I think perhaps the most important point you just made is, and we just talked about for the last hour, is this loss of a sense of the sacred. And, you know, it’s interesting, I think some months ago I had you on, and I was taking the atheist position and we were having this debate because in the previous hour I had had an atheist on and I had taken the religious position and had a debate, my reality is a little bit of both, and between heart and mind, I guess, to use Jefferson’s old letter to his girlfriend in France. How do we, it seems to me that we are wired for the sacred. And that there is still, within the zeitgeist of America, within the soul of America, there is still this belief, that for example, the constitution is something that is sacred. That the founding ideals of the enlightenment are sacred. And I’m using that word in its broadest sense. Secular religion of America, as it were. Some people call it American exceptionalism and ridicule it, but I think that in that, setting aside the two major parties, in that in citizen movements, we can perhaps recapture those original dreams. Am I just being hopelessly optimistic? Chris Hedges: No, no. The sacred, understanding the sacred, is absolutely key. And although I don’t like the new atheists, you know, I must throw in that almost any orthodox believer would consider me an atheist and lead, the London Review of Books when they reviewed "I Don't Believe in Atheists" began by saying I was a non-believer. Thom: Right. Chris Hedges: But what does tie me to, and to you, is that utter importance of the sacred. And you know Karl Polanyi, this great economist in 1944, wrote a book called "The Great Transformation" in which he said that a society that no longer recognizes the sacred, that exhausts everything for profit, always kills itself. And I think that’s what we’re seeing. And as an economist, he actually used the word sacred. That human beings have an intrinsic worth, that the natural world has an intrinsic worth, beyond it’s potential to generate profit. Thom: And this has nothing to do with religion. Chris Hedges: No. Thom: That’s why I said. This is resacrilizing America. Chris Hedges: Right. Thom: And thus, perhaps, to the extent that we’re an example to the world, perhaps saving the world. I mean these are big words. Chris Hedges: We live in a corporate state. We live in a state that no longer responds to the interests of its citizens, but does the bidding of corporations. There is no shortage of examples of that, from the largest transference of wealth upwards in American history, to the so-called healthcare debate, where for profit healthcare industries are literally profiting off of death, any debate about healthcare must begin from the factual understanding that the for profit healthcare industry is the problem. Then **we can debate what we do. But unfortunately**, and many, many citizens know that, across the floor, but **we can’t have it because we are completely controlled. We’ve undergone a** kind of **coup d‘etat in slow motion. We live in** a kind of **inverted totalitarianism** where **the façade of democracy** and the constitution are **held up as an ideal but the actual levers of power** are **driven by very destructive forces.**

**A2 perm**

***Perm fails—focus on particular violent acts is a lure that causes ideological mystification and means we only address symptoms not the root cause of violence***

**Žižek ’8** (Slavoj, *Violence: Six Sideways Reflections*, Big Ideas // Small Books, 2008, p. 3-8) [m leap]

Instead of confronting violence directly, the present book casts six sideways glances. There are reasons for ***looking at the problem of violence awry***. My underlying premise is that ***there is something inherently mystifying in a direct confrontation with it: the overpowering horror of violent acts and empathy with the victims inexorably function as a lure which prevents us from thinking***. A dispassionate conceptual development of the typology of violence must by definition ignore its traumatic impact. Yet there is a sense in which a cold analysis of violence somehow reproduces and participates in its horror. A distinction needs to be made, as well, between (factual) truth and truthfulness: what renders a report of a raped woman (or any other narrative of a trauma) truthful is its very factual unreliability, its confusion, its inconsistency. If the victim were able to report on her painful and humiliating experience in a clear manner, with all the data arranged in a consistent order, this very quality would make us suspicious of its truth. The problem here is part of the solution: the very factual deficiencies of the traumatised subject's report on her experience bear witness to the truthfulness of her report, since they signal that the reported content "contaminated" the manner of reporting it. The same holds, of course, for the so-called unreliability of the verbal reports of Holocaust survivors: the witness able to offer a clear narrative of his camp experience would disqualify himself by virtue of that clarity.2 **The only appropriate approach** to my subject thus **seems to be one which permits** variations on **violence *kept at a distance*** out of respect towards its victims. Adorno's famous saying, it seems, needs correction: it is not poetry that is impossible after Auschwitz, but rather prose.3 Realistic prose fails, where the poetic evocation of the unbearable atmosphere of a camp succeeds. That is to say, when Adorno declares poetry impossible (or, rather, barbaric) after Auschwitz, this impossibility is an enabling impossibility: poetry is always, by definition, "about" something that cannot be addressed directly, only alluded to. One shouldn't be afraid to take this a step further and refer to the old saying that music comes in when words fail. There may well be some truth in the common wisdom that, in a kind of historical premonition, the music of Schoenberg articulated the anxieties and nightmares of Auschwitz before the event took place. In her memoirs, Anna Akhmatova describes what happened to her when, at the height of the Stalinist purges, she was waiting in the long queue in front of the Leningrad prison to learn about her arrested son Lev: One day somebody in the crowd identified me. Standing behind me was a young woman, with lips blue from the cold, who had of course never heard me called by name before. Now she started out of the torpor common to us all and asked me in a whisper (everyone whispered there), "Can you describe this?" And I said, "I can." Then something like a smile passed fleetingly over what had once been her face.4 The key question, of course, is what kind of description is intended here? Surely it is not a realistic description of the situation, but what Wallace Stevens called "description without place," which is what is proper to art. This is not a description which locates its content in a historical space and time, but a description which creates, as the background of the phenomena it describes, an inexistent (virtual) space of its own, so that what appears in it is not an appearance sustained by the depth of reality behind it, but a decontextualised appearance, an appearance which fully coincides with real being. To quote Stevens again: "What it seems it is and in such seeming all things are." Such an artistic description "is not a sign for something that lies outside its form."5 Rather, it extracts from the confused reality its own inner form in the same way that Schoenberg "extracted" the inner form of totalitarian terror. He evoked the way this terror affects subjectivity. Does this recourse to artistic description imply that we are in danger of regressing to a contemplative attitude that somehow betrays the urgency to "do something" about the depicted horrors? ***Let's think about the fake sense of urgency that pervades the left-liberal humanitarian discourse on violence: in it, abstraction and graphic (pseudo)concreteness coexist in the staging of the scene of violence*** – against women, blacks, the homeless, gays... "A woman is raped every six seconds in this country" and "In the time it takes you to read this paragraph, ten children will die of hunger" are just two examples. Underlying all this is a hypocritical sentiment of moral outrage. Just this kind of pseudo-urgency was exploited by Starbucks a couple of years ago when, at store entrances, posters greeting customers pointed out that a portion of the chain's profits went into health-care for the children of Guatemala, the source of their coffee, the inference being that with every cup you drink, you save a child's life. ***There is a fundamental anti-theoretical edge to these urgent injunctions. There is no time to reflect: we have to act now. Through this fake sense of urgency, the post-industrial rich, living in their secluded virtual world, not only do not*** deny or ***ignore the harsh reality outside their area – they actively refer to it all the time***. As Bill Gates recently put it: "What do computers matter when millions are still unnecessarily dying of dysentery?" ***Against this fake urgency, we might want*** to place Marx's wonderful letter to Engels of 1870, when, for a brief moment, it seemed that a European revolution was again at the gates. Marx's letter conveys his sheer panic: can't the revolutionaries wait for a couple of years? He hasn't yet finished his Capital. ***A critical analysis of the present global constellation – one which offers no clear solution, no "practical" advice on what to do, and provides no light at the end of the tunnel, since one is well aware that this light might belong to a train crashing towards us – usually meets with reproach: "Do you mean we should do nothing? Just sit and wait?" One should gather the courage to answer: "YES, precisely that!"*** There are situations when ***the only truly "practical" thing to do is to resist the temptation to engage immediately and to "wait and see" by means of a patient, critical analysis***. Engagement seems to exert its pressure on us from all directions. In a well-known passage from his Existentialism and Humanism, Sartre deployed the dilemma of a young man in France in 1942, torn between the duty to help his lone, ill mother and the duty to enter the Resistance and fight the Germans; Sartre's point is, of course, that there is no a priori answer to this dilemma. The young man needs to make a decision grounded only in his own abyssal freedom and assume full responsibility for it.6 An obscene third way out of the dilemma would have been to advise the young man to tell his mother that he will join the Resistance, and to tell his Resistance friends that he will take care of his mother, while, in reality, withdrawing to a secluded place and studying... There is more than cheap cynicism in this advice. It brings to mind a well-known Soviet joke about Lenin. Under socialism, Lenin's advice to young people, his answer to what they should do, was "Learn, learn, and learn." This was evoked at all times and displayed on all school walls. The joke goes: Marx, Engels, and Lenin are asked whether they would prefer to have a wife or a mistress. As expected, Marx, rather conservative in private matters, answers, "A wife!" while Engels, more of a bon vivant, opts for a mistress. To everyone's surprise, Lenin says, "I'd like to have both!" Why? Is there a hidden stripe of decadent jouisseur behind his austere revolutionary image? No-he explains: "So that I can tell my wife that I am going to my mistress, and my mistress that I have to be with my wife..." "And then, what do you do?" "I go to a solitary place to learn, learn, and learn!" Is this not exactly what Lenin did after the catastrophe of 1914? He withdrew to a lonely place in Switzerland, where he "learned, learned, and learned," reading Hegel's logic. And ***this is what we should do today when we find ourselves bombarded with mediatic images of violence. We need to "learn, learn, and learn" what causes this violence***.

**2NC Link – Ex Post**

***The aff allows Obama’s program of state-sanctioned murder to continue in all but appearance. It’s not accountability; it’s a means of alleviating liberal guilt over murdered Pakistanis by allowing for cheap reparations.***

Jeremy **Leaming**, April 24, 20**13**, American Constitution Society Blog, Senate Committee Struggles with Constitutional Principles and Drone Warfare, <http://www.acslaw.org/acsblog/senate-committee-struggles-with-constitutional-principles-and-drone-warfare>, jj

One of Brooks’ suggestions focused on judicial review. Congress, Brooks said, “consider creating a judicial mechanism, perhaps similar to the existing Foreign Intelligence Surveillance Court, to authorize and review the legality of targeted killings outside of traditional battlefields.” Yet, even this suggestion **Brooks** continued would be controversial, likely opposed by the administration, and possibly unworkable. So she **offered an alternative – a judicial mechanism that “conducts post hoc review of targeted killings, perhaps through a statute creating a cause of action for damages for those claiming wrongful injury or death as a result of unlawful targeted killing operations**.” ***Reparations, however, are rather cold, providing fleeting comfort to Pakistanis and others who have lost loved ones to America’s ongoing and loosely defined war on terror***. **The matters of war and inherent human rights are not very compatible** and as complex as we make them. The subcommittee hearing certainly highlighted the great difficulty of these matters and the unease in trying to address them.

## Accountability

**UQ Trick vs Drones**

***Movements DA***

***The state of exception will end in the status quo; mounting public pressure against drones in the status quo forces massive scaling-back of militaristic targeted killing. The affirmative’s cosmetic restriction saves the drone program by abating public anger.***

**Zenko 13 – fellow @ CFR**

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In his Nobel Peace Prize acceptance speech, President Obama declared: “Where force is necessary, we have a moral and strategic interest in binding ourselves to certain rules of conduct. Even as we confront a vicious adversary that abides by no rules, I believe the United States of America must remain a standard bearer in the conduct of war.”63 **Under** President **Obama drone strikes have expanded and intensified**, and they will remain a central component of U.S. counterterrorism operations for at least another decade, according to U.S. officials.64 **But** much **as** the **Bush** administration **was compelled to reform** its controversial **counterterrorism** practices, **it is likely that the United States will ultimately be *forced by domestic and international pressure to scale back its drone strike policies.*** The **Obama** administration **can *preempt this pressure*** by clearly articulating that the rules that govern its drone strikes, like all uses of military force, are based in the laws of armed conflict and inter- national humanitarian law; by engaging with emerging drone powers; and, most important, by matching practice with its stated policy ***by limiting drone strikes*** to those individuals it claims are being targeted (which would reduce the likelihood of civilian casualties since the total number of strikes would significantly decrease). **The choice** the United States faces **is not** **between unfettered drone use and sacrificing freedom of action, but between *drone*** policy ***reforms by design or*** drone policy reforms ***by default.*** **Recent history demonstrates that *domestic political pressure could severely limit drone strikes in ways*** that the CIA or JSOC have ***not anticipated.*** In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, **drone strikes are vulnerable to** similar—albeit still largely untapped—**moral outrage**, **and** they are even more **susceptible to political constraints** because they occur in plain sight. **Indeed, a negative trend in U.S. public opinion on drones is already apparent.** Between February and June 2012, **U.S. support for drone strikes against suspected terrorists fell** from 83 per- cent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gun- ships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forc- ing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making signifi- cant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allow- ing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets. According to U.S. diplomats and military officials, active resis- tance—such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attack- ing Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. ***Nevertheless,*** in each of these cases, ***domestic anger would*** partially or ***fully abate if the United States modified its drone policy*** in the ways suggested below.

## Pre-emption

**2NC – Pre-emptive War Not Modeled**

***Prefer our ev which references actual research not just intuition***

Scott A. **Silverstone ‘09**\*, ***professor*** ***of*** ***I***nternational ***R***elations in the Department of Social Sciences at West Point, Chinese Attitudes on Preventive War and the “Preemption Doctrine”, 2009, U.S. Air Force Academy,Institute for National Security, online – pdf, jj

It is important to note that **Chinese respondents did not interpret the Bush administration‘s efforts to gain acceptance for looser preemption standards to be an effort to reshape an international norm.** Instead, it was seen as a unilateral declaration of America‘s right to take action, even if much of the rest of the world objected. **This raises a serious question about the hegemon‘s ability to reshape international norms**, as Brooks and Wohlforth suggest it can and should (see footnote 60). The hegemon might certainly be able to act without external constraints based simply on its overwhelming power; these Chinese respondents bluntly recognized the fact of American power and the unchecked capabilities it implies. But generating acceptance from other states that these acts are justified by new normative standards is a very different challenge. According to the consensus view among these academics at CSU and the military officers interviewed, America is not in a special position to rewrite the rules of the international system to legitimate its self-serving policies.86 Some saw the emphasis on weapons of mass destruction in the Bush doctrine as an indication that America‘s specific intent was to use preemption to sustain American supremacy in nuclear weapons and lock in a permanently asymmetric power relationship with regional states that might pursue nuclear weapons of their own for deterrence purposes. **Not a single respondent in the interviews and focus groups supported the notion that looser preemption standards might serve China‘s security needs in the future**. This conclusion was based on three general points raised by many respondents. First, ***preventive military action was not seen as an applicable strategic concept for the various security concerns on China‘s periphery***.87 Interestingly, **when Taiwan was raised all respondents argued that this was an internal, domestic Chinese problem. Since the logic of preventive war applies to power shifts among independent states, preventive war or preemption was simply seen as irrelevant**. Second, **most linked preemption with America‘s experience in Iraq, which generated great skepticism over whether this policy option could actually achieve useful goals without producing a range of unforeseen, and unmanageable, problems that would negate any value preemption might hold**. **Many drew the conclusion that America is far too confident in the use of military force to deal with foreign problems**. Finally, **the strong consensus view shared by the PLA officers, the faculty and the students, which was raised independently in each interview session and without prompting by the interviewer, was that preventive war violates China‘s cultural preference for** creating the Confucian ideal of ―harmonious society‖ and **ensuring that its rise as a great power in accomplished peacefully.**

# 1NR

## Solvency

### \*2NC – A – Circumvention

#### And, the plan text is extremely vague – that was in CX [explain] – that guarantees circumvention

Mitchell, Assistant Professor of Law, George Mason University School of Law, 9

(Jonathan, Jan, “Legislating Clear-Statement Regimes in National- Security Law,” http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=jonathan\_mitchell)

The challenge for these efforts to strengthen the War Powers Resolution and FISA¶ is that any future ambiguous statute will provide rope for executive-branch lawyers to¶ concoct congressional “authorization” for the President’s actions, no matter what¶ restrictions or interpretive instructions Congress provides in framework legislation. None¶ of these proposed reforms will disable the executive from using its expansive theories of¶ constitutional avoidance and implied repeal to provide a veneer of legality for the¶ President’s actions, and to minimize the prospect of future criminal sanctions and¶ political reprisals against executive-branch employees.

#### Statutory restrictions don’t restrict the president – they just force him to be more creative

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Legacy Chains

Finegold & Skocpol (1995: 222) describe policy legacies: Past and present policies are connected in at least three different ways. First, past policies give rise to analogies that affect how public officials think about contemporary policy issues. Second, past policies suggest lessons that help us to understand the processes by which contemporary policies are formulated and implemented and by which the conse quences of contemporary policies will be determined. Third, past policies impose limi tations that reduce the range of policy choices available as responses to contemporary problems. All three of the ways in which they connect past policy to present policy can be viewed as changes in the institutional context in which policy is made. These legacies are institutionalized in two different ways: first, through changes in formal rules or procedures, and second, in the 'taken for granteds', 'schemas', and accepted wisdom of policy makers and ordinary citizens alike (Sewell, 1992: 1-29). While a policy or event can leave multiple legacies, it often leaves a single major legacy. For example, the War Powers Resolution for mally changed the relationship between the president and the congress with regard to war-making and the deployment of troops. Subsequent military interventions were influenced by this change and have, in turn, left their own legacy (legal scholars might call it precedent) as a link in that chain. Legacy chains can be modified, trans formed, or reinforced as they step through each 'link' in the chain. As another example, US involvement in Vietnam left a legacy in the sphere of press/military relations which affected the intervention in Grenada in 1983 (the press was completely excluded for the first 48 hours of the operation). The press legacy chain begun in Vietnam also affected the Panama invasion of 1989 (a press pool was activated, in country, but excluded from the action), but the legacy had been trans formed slightly by the Grenada invasion (the press pool system itself grew out of complaint regarding press exclusion in Grenada) (Paul & Kim, 2004). Because of the different ways in which policy legacies are institutionalized, some legacies have unintended institutional conse quences. The War Powers Resolution was intended to curtail presidential war-making powers and return some authority to the con gress. In practice, the joint resolution failed to force presidents to include congressional participation in their intervention decision making, but it had the unintended conse quence of forcing them to change the way they planned interventions to comply with the letter of the law (see the extended ex ample presented later in the article).1

**\*2NC – No Lawsuits**

***In cx they describe mechanism as ACLU, etc --- but the gov will mess with their visas so they cant get here***

RT 10/30-’13 [Victims of drone strike testify before Congress, <http://rt.com/usa/rehman-drone-grayson-hearing-924/>, jj]

Family's Pakistani lawyer denied entry into US The Rehman’s testimony to Congress was originally intended to take place in September, but delays in the visa processing for their lawyer, Mirza Shahzad Akbar, pushed that back. Speaking to RT, Mr. Akbar was straightforward in his belief that the ongoing denial of his entry into the country with his clients was directly tied to his involvement in pressing against US drone strikes. “I think the reason is very obvious, the reason is my criticism of the US drone program in Pakistan, and the legal action I’ve brought since 2010 against CIA officials acting in Pakistan, and against the Pakistani government.” “The congressional briefing was one occasion where the clients I’m representing would have a voice to speak to American lawmakers, who would also challenge president Obama’s contention that drone strikes are very precise, and they only hit militants, which is not true. Raffiq and his family is a living example of that.” Mr. Akbar was meant to travel along with the Rehman family, but has faced recurring problems entering the US since he began representing civilian victims of drone strikes in 2011. "It's not like my name is scratched because there is some sort of confusion. My name is blocked!" Akbar told the Guardian in September. He later wrote a column for The Hill newspaper, which is widely read on Capitol Hill, trying to bring light to his entry issues. "Before I started drone investigations I never had an issue with US visas. In fact, I had a US diplomatic visa for two years," says Akbar.

***They will LOSE THE CASES—turns the aff***

**Murphy and Radsan – Their Author – 9** (Richard, AT&T Professor of Law – Texas Tech University School of Law, and Afsheen John, Professor – William Mitchell College of Law; Assistant General Counsel – Central Intelligence Agency, “Due Process and Targeted Killing of Terrorists,” Cardozo Law Review, November, 32 Cardozo L. Rev. 405, Lexis)

In addition, the doctrine of qualified immunity requires dismissal of actions against officials if a court determines they reasonably believed they were acting within the scope of their legal authority.220 Defendants would satisfy this requirement so long as they reasonably claimed they had authority under the laws of war (assuming their applicability). These standards are ***hazy***, and a court applying them would tend to ***defer to the executive*** on matters of military judgment.221

In view of so many practical and legal hurdles, some courts and commentators might be inclined to ***categorically reject all Bivens-style challenges to targeted killings***. In essence, they might view lawsuits related to targeted killing as a political question left to the executive.222 This view parallels Justice Thomas‘s that courts should not second-guess executive judgments as to who is an enemy combatant.223 Contrary to Justice Thomas‘s view, the potency of the government‘s threshold defenses means that targeted-killing cases that make it to the merits would likely involve the most egregious conduct—for example, killing an unarmed Jose Padilla at O‘Hare Airport on a shoot-to-kill order. For these egregious cases, a judicial check on executive authority is most necessary.