### 1

#### A.It’s Extra Topical: the “state secret privilege” extends to other areas of Presidential authority that are not war powers

ACLU 13

[https://www.aclu.org/national-security/background-state-secrets-privilege, mg]

**The state secrets privilege**, when properly invoked, **permits the government to block the release of any information in a lawsuit that, if disclosed, would cause harm to national security.** However, the Bush administration is increasingly using the privilege to dismiss entire lawsuits at the onset. **The government has invoked the privilege to evade accountability for torture, to silence national security whistleblowers, and even to dismiss a lawsuit alleging racial discrimination.** This once-rare tool is being used not to protect the nation from harm, but to cover up the government’s illegal actions and prevent further embarrassment.

#### B.Their interpretation justifies affirmatives that directly restrict Executive torture of detainees, whistleblowers, or ANY affirmative that restricts Executive authority in the name of “national security”--- that potential caselist is LIMITLESS and UNPREDICTABLE and creates unfair research and strategic burdens on the negative and is a voting issue for fairness and jurisdiction— the judge can’t vote for plans that fall outside her or his jurisdiction

#### C.It’s also Effects Topical: the plan MIGHT result in FUTURE restrictions if the Courts rule against the Executive; they don’t fiat the direction that the Courts rule, that’s in the Cross-Ex.

#### D.Effects T is a voting issue: the neg can’t generate links to future, uncertain restrictions; destroys our DA link ground and CP competition; AND their interpretation makes the topic bi-directional because the Courts could rule in favor of the Executive, expanding War Powers, this eliminates all negative ground because it goes the opposite direction of the topic, allows the aff to link turn every DA. Even if they read solvency evidence that says the plaintiffs would win their lawsuits, that is a solvency question not a topicality question and mixes burdens. It’s a voter for fairness and prima facia burdens--- you can’t look at the plan in a vacuum and determine if it restricts the War Power of the Executive.

#### E. Double bind – either the aff is not topical or it does nothing. They only allow people to sue if the injury was “unlawful.” That would mean the president already doesn’t have that authority, meaning there is no restriction, OR nobody is ever allowed to sue making the aff irrelevant

### 2

#### The votes for immigration reform have been secured - it’s Obama’s top priority

Epstein 10-17

(Reid Epstein, writer for POLITICO, “Obama’s latest push features a familiar strategy” 10/17/13, <http://www.politico.com/story/2013/10/barack-obama-latest-push-features-familiar-strategy-98512_Page2.html>, KB)

President Barack Obama made his plans for his newly won political capital official — he’s going to hammer House Republicans on immigration.¶ And it’s evident from his public and private statements that Obama’s latest immigration push is, in at least one respect, similar to his fiscal showdown strategy: yet again, the goal is to boost public pressure on House Republican leadership to call a vote on a Senate-passed measure.¶ “The majority of Americans think this is the right thing to do,” Obama said Thursday at the White House. “And it’s sitting there waiting for the House to pass it. Now, if the House has ideas on how to improve the Senate bill, let’s hear them. Let’s start the negotiations. But let’s not leave this problem to keep festering for another year, or two years, or three years. This can and should get done by the end of this year.”¶ And yet Obama spent the bulk of his 20-minute address taking whack after whack at the same House Republicans he’ll need to pass that agenda, culminating in a jab at the GOP over the results of the 2012 election — and a dare to do better next time.¶ “You don’t like a particular policy or a particular president? Then argue for your position,” Obama said. “Go out there and win an election. Push to change it. But don’t break it. Don’t break what our predecessors spent over two centuries building. That’s not being faithful to what this country’s about.”¶ Before the shutdown, the White House had planned a major immigration push for the first week in October. But with the shutdown and looming debt default dominating the discussion during the last month, immigration reform received little attention on the Hill.¶ Immigration reform allies, including Obama’s political arm, Organizing for Action, conducted a series of events for the weekend of Oct. 5, most of which received little attention in Washington due to the the shutdown drama. But activists remained engaged, with Dream Act supporters staging a march up Constitution Avenue, past the Capitol to the Supreme Court Tuesday, to little notice of the Congress inside.¶ Obama first personally signaled his intention to re-emerge in the immigration debate during an interview Tuesday with the Los Angeles Univision affiliate, conducted four hours before his meeting that day with House Democrats.¶ Speaking of the week’s fiscal landmines, Obama said: “Once that’s done, you know, the day after, I’m going to be pushing to say, call a vote on immigration reform.”¶ When he met that afternoon in the Oval Office with the House Democratic leadership, Obama said that he planned to be personally engaged in selling the reform package he first introduced in a Las Vegas speech in January.¶ Still, during that meeting, Obama knew so little about immigration reform’s status in the House that he had to ask Rep. Xavier Becerra (D-Calif.) how many members of his own party would back a comprehensive reform bill, according to a senior Democrat who attended.¶ The White House doesn’t have plans yet for Obama to participate in any new immigration reform events or rallies — that sort of advance work has been hamstrung by the 16-day government shutdown.¶ But the president emerged on Thursday to tout a “broad coalition across America” that supports immigration reform. He also invited House Republicans to add their input specifically to the Senate bill — an approach diametrically different than the House GOP’s announced strategy of breaking the reform into several smaller bills.¶ White House press secretary Jay Carney echoed Obama’s remarks Thursday, again using for the same language on immigration the White House used to press Republicans on the budget during the shutdown standoff: the claim that there are enough votes in the House to pass the Senate’s bill now, if only it could come to a vote.¶ “When it comes to immigration reform … we’re confident that if that bill that passed the Senate were put on the floor of the House today, it would win a majority of the House,” Carney said. “And I think that it would win significant Republican votes.”¶ Before the resolution of the shutdown and default standoff, Carney was more circumspect about the prospect of immigration reform passing the House. Earlier in the week, Carney wouldn’t venture a guess about whether the White House believes a new immigration push from the president would actually work.¶ “Congress is a difficult institution to make predictions about,” Carney said Wednesday. “Our view is simply that it’s the right thing to do, and we’re going to push for it.”

#### The plan causes an inter-branch fight that derails Obama’s agenda

Kriner 10

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea." While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6° In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failedperhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq. When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena

#### PC is key – the window is closing

Wilson and Eilperin 10-17

(Scott and Juliet, Washington Post, 10-17-13, “Obama to refocus on key aspects of agenda,” Lexis, accessed 10-18-13, BS)

New York University public service professor Paul C. Light is pessimistic that Obama can accomplish much in coming months. He said Obama is running out of time to get things done in the face of GOP resistance and the decline of influence that comes with a second term. "I don't think that he'll get anything. His agenda is finished," Light said. "It's a political tragedy, because he's got more knowledge about the job and less juice to get it done." Keith Hennessey, who served as President George W. Bush's top economic adviser, said people shouldn't overstate the significance of Wednesday's political accord. "Substantively, the net result is they've pressed 'pause.' And that's it," said Hennessey, adding that while Obama "played defense successfully," that does not mean he will now be able to go on offense. Hennessey said it will be hard for the president and congressional Republicans to reconcile their competing fiscal goals - Obama wants to ease across-the-board budget cuts, known as the sequester, while the GOP wants broad entitlement reforms. In addition, he said, the way the White House will likely campaign for its priorities could deepen the partisan divide. "If the president portrays this as this battle between light and dark, it's hard for people to be simultaneously cooperating across party lines on other issues," he said. Obama sounded a conciliatory tone Wednesday night. "We could get all these things done even this year if everybody comes together in a spirit of how are we going to move this country forward and put the last three weeks behind us," he said. But the president's greatest opportunities in coming months are likely to come in areas where he can act on his own, both domestically and in foreign affairs. "His path to success is going to come through every single place that you can squeeze some authority which he has," said John Podesta, who chairs the liberal think tank Center for American Progress. "That is where you've got to focus your attention and where you could spend your political capital."

#### Immigration reform is key to the economy

Krudy 13

(Edward, “Analysis: Immigration reform could boost U.S. economic growth” Jan 29, 2013, Reuters)

The sluggish U.S. economy could get a lift if President Barack Obama and a bipartisan group of senators succeed in what could be the biggest overhaul of the nation's immigration system since the 1980s. Relaxed immigration rules could encourage entrepreneurship, increase demand for housing, raise tax revenues and help reduce the budget deficit, economists said. By helping more immigrants enter the country legally and allowing many illegal immigrants to remain, the United States could help offset a slowing birth rate and put itself in a stronger demographic position than aging Europe, Japan and China. "Numerous industries in the United States can't find the workers they need, right now even in a bad economy, to fill their orders and expand their production as the market demands," said Alex Nowrasteh, an immigration specialist at the libertarian Cato Institute. The emerging consensus among economists is that immigration provides a net benefit. It increases demand and productivity, helps drive innovation and lowers prices, although there is little agreement on the size of the impact on economic growth. President Barack Obama plans to launch his second-term push for a U.S. immigration overhaul during a visit to Nevada on Tuesday and will make it a high priority to win congressional approval of a reform package this year, the White House said. The chances of major reforms gained momentum on Monday when a bipartisan group of senators agreed on a framework that could eventually give 11 million illegal immigrants a chance to become American citizens. Their proposals would also include means to keep and attract workers with backgrounds in science, technology, engineering and mathematics. This would be aimed both at foreign students attending American universities where they are earning advanced degrees and high-tech workers abroad. An estimated 40 percent of scientists in the United States are immigrants and studies show immigrants are twice as likely to start businesses, said Nowrasteh. Boosting legal migration and legalizing existing workers could add $1.5 trillion to the U.S. economy over the next 10 years, estimates Raul Hinojosa-Ojeda, a specialist in immigration policy at the University of California, Los Angeles. That's an annual increase of 0.8 percentage points to the economic growth rate, currently stuck at about 2 percent. REPUBLICANS' HISPANIC PUSH Other economists say the potential benefit to growth is much lower. Richard Freeman, an economist at Harvard, believes most of the benefits to the economy from illegal immigrants already in the United States has already been recorded and legalizing their status would produce only incremental benefits. While opposition to reform lingers on both sides of the political spectrum and any controversial legislation can easily meet a quick end in a divided Washington, the chances of substantial change seem to be rising. Top Republicans such as Governor Bobby Jindal of Louisiana are not mincing words about the party's need to appeal to the Hispanic community and foreign-born voters who were turned off by Republican candidate Mitt Romney's tough talk in last year's presidential campaign. A previous Obama plan, unveiled in May 2011, included the creation of a guest-worker program to meet agricultural labor needs and something similar is expected to be in his new proposal. The senators also indicated they would support a limited program that would allow companies in certain sectors to import guest workers if Americans were not available to fill some positions. An additional boost to growth could come from rising wages for newly legalized workers and higher productivity from the arrival of more highly skilled workers from abroad. Increased tax revenues would help federal and state authorities plug budget deficits although the benefit to government revenues will be at least partially offset by the payment of benefits to those who gain legal status. In 2007, the Congressional Budget Office estimated that proposed immigration reform in that year would have generated $48 billion in revenue from 2008 to 2017, while costing $23 billion in health and welfare payments. There is also unlikely to be much of a saving on enforcement from the senators' plan because they envisage tougher border security to prevent further illegal immigration and a crackdown on those overstaying visas. One way to bump up revenue, according to a report co-authored by University of California, Davis economist Giovanni Peri, would be to institute a cap-and-trade visa system. Peri estimated it could generate up to $1.2 billion annually. Under such a system, the government would auction a certain number of visas employers could trade in a secondary market. "A more efficient, more transparent and more flexible immigration system would help firms expand, contribute to more job creation in the United States, and slow the movement of operations abroad," according to a draft report, soon to be published as part of a study by the Hamilton Project, a think tank. There was no immediate sign that either the Obama or the senators' plan would include such a system. The long-term argument for immigration is a demographic one. Many developed nations are seeing their populations age, adding to the burden of pension and healthcare costs on wage-earners. Immigration in the United States would need to double to keep the working-age population stable at its current 67 percent of total population, according to George Magnus, a senior independent economic adviser at UBS in London, While Magnus says a change of that magnitude may prove too politically sensitive, the focus should be on attracting highly skilled and entrepreneurial immigrants in the way Canada and Australia do by operating a points system for immigrants rather than focusing mainly on family connections. "The trick is to shift the balance of migration towards those with education (and) skills," he added. HARD ROAD Academics at major universities such as Harvard and the Massachusetts Institute of Technology often lament that many of their top foreign graduates end up returning to their home countries because visas are hard to get. "We have so much talent that is sitting here in the universities," said William Kerr, a professor at Harvard Business School. "I find it very difficult to swallow that we then make it so hard for them to stay." The last big amnesty for illegal immigrants was in 1986 when President Ronald Reagan legalized about 3 million already in the country. Numerous studies have shown that subsequently their wages rose significantly. Research on how immigration affects overall wages is inconclusive. George Borjas at Harvard says immigration has created a small net decrease in overall wages for those born in the United States, concentrated among the low-skilled, while Giovani Peri at UC Davis found that immigration boosts native wages over the long run. Hinojosa-Ojeda stresses that any reform needs to make it easier for guest workers to enter the country to avoid a new build-up of illegal workers. "If we don't create a mechanism that can basically bring in 300,000 to 400,000 new workers a year into a variety of labor markets and needs, we could be setting ourselves up for that again," said Hinojosa-Ojeda. Nowrasteh at Cato also believes an expanded guest worker program would stem illegal immigration and allow industries to overcome labor shortages. He found that harsher regulations in recent years in Arizona were adversely affecting agricultural production, increasing financial burdens on business and even negatively impacting the state's struggling real estate market. Some large companies have fallen foul of tougher enforcement regulations. Restaurant chain Chipotle Mexican Grill Inc fired roughly 500 staff in 2010 and 2011 after undocumented workers were found on its payrolls. Putting the chill on other employers, it is now subject of an ongoing federal criminal investigation into its hiring. "The current system doesn't seem to work for anyone," Chipotle spokesman Chris Arnold said.

#### Collapse causes nuclear conflicts

Harris and Burrows 9

Mathew J. Burrows counselor in the National Intelligence Council and Jennifer Harris a member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” The Washington Quarterly 32:2 https://csis.org/files/publication/twq09aprilburrowsharris.pdf

Increased Potential for Global Conflict¶ Of course, the report encompasses more than economics and indeed believes the¶ future is likely to be the result of a number of intersecting and interlocking¶ forces. With so many possible permutations of outcomes, each with ample opportunity for unintended consequences, there is a growing sense of insecurity.¶ Even so, history may be more instructive than ever. While we continue to¶ believe that the Great Depression is not likely to be repeated, the lessons to be¶ drawn from that period include the harmful effects on fledgling democracies and¶ multiethnic societies (think Central Europe in 1920s and 1930s) and on¶ the sustainability of multilateral institutions (think League of Nations in the¶ same period). There is no reason to think that this would not be true in the¶ twenty-first as much as in the twentieth century. For that reason, the ways in¶ which the potential for greater conflict could grow would seem to be even more¶ apt in a constantly volatile economic environment as they would be if change¶ would be steadier.¶ In surveying those risks, the report stressed the likelihood that terrorism and¶ nonproliferation will remain priorities even as resource issues move up on the¶ international agenda. Terrorism’s appeal will decline if economic growth¶ continues in the Middle East and youth unemployment is reduced. For those¶ terrorist groups that remain active in 2025, however, the diffusion of¶ technologies and scientific knowledge will place some of the world’s most¶ dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a¶ combination of descendants of long established groupsinheriting¶ organizational structures, command and control processes, and training¶ procedures necessary to conduct sophisticated attacksand newly emergent¶ collections of the angry and disenfranchised that become self-radicalized,¶ particularly in the absence of economic outlets that would become narrower¶ in an economic downturn.¶ The most dangerous casualty of any economically-induced drawdown of U.S.¶ military presence would almost certainly be the Middle East. Although Iran’s¶ acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed¶ Iran could lead states in the region to develop new security arrangements with¶ external powers, acquire additional weapons, and consider pursuing their own¶ nuclear ambitions. It is not clear that the type of stable deterrent relationship¶ that existed between the great powers for most of the Cold War would emerge¶ naturally in the Middle East with a nuclear Iran. Episodes of low intensity¶ conflict and terrorism taking place under a nuclear umbrella could lead to an¶ unintended escalation and broader conflict if clear red lines between those states¶ involved are not well established. The close proximity of potential nuclear rivals¶ combined with underdeveloped surveillance capabilities and mobile¶ dual-capable Iranian missile systems also will produce inherent difficulties in¶ achieving reliable indications and warning of an impending nuclear attack. The¶ lack of strategic depth in neighboring states like Israel, short warning and missile¶ flight times, and uncertainty of Iranian intentions may place more focus on¶ preemption rather than defense, potentially leading to escalating crises.Types of conflict that the world continues¶ to experience, such as over resources, could¶ reemerge, particularly if protectionism grows and¶ there is a resort to neo-mercantilist practices.¶ Perceptions of renewed energy scarcity will drive¶ countries to take actions to assure their future¶ access to energy supplies. In the worst case, this¶ could result in interstate conflicts if government¶ leaders deem assured access to energy resources,¶ for example, to be essential for maintaining domestic stability and the survival of¶ their regime. Even actions short of war, however, will have important geopolitical¶ implications. Maritime security concerns are providing a rationale for naval¶ buildups and modernization efforts, such as China’s and India’s development of¶ blue water naval capabilities. If the fiscal stimulus focus for these countries indeed¶ turns inward, one of the most obvious funding targets may be military. Buildup of¶ regional naval capabilities could lead to increased tensions, rivalries, and¶ counterbalancing moves, but it also will create opportunities for multinational¶ cooperation in protecting critical sea lanes. With water also becoming scarcer in¶ Asia and the Middle East, cooperation to manage changing water resources is¶ likely to be increasingly difficult both within and between states in a more¶ dog-eat-dog world.

### 3

#### Targeted killing’s vital to counterterrorism---disrupts leadership and makes carrying out attacks impossible

Byman 2013

(Daniel L., Research Director of Saban Center for Middle East Policy, “Why Drones Work: The Case for Washington's Weapon of Choice”, Foreign Affairs, July/August 2013, <http://www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman>)

The Obama administration relies on drones for one simple reason: they work. According to data compiled by the New America Foundation, since Obama has been in the White House, U.S. drones have killed an estimated 3,300 al Qaeda, Taliban, and other jihadist operatives in Pakistan and Yemen. That number includes over 50 senior leaders of al Qaeda and the Taliban—top figures who are not easily replaced. In 2010, Osama bin Laden warned his chief aide, Atiyah Abd al-Rahman, who was later killed by a drone strike in the Waziristan region of Pakistan in 2011, that when experienced leaders are eliminated, the result is “the rise of lower leaders who are not as experienced as the former leaders” and who are prone to errors and miscalculations. And drones also hurt terrorist organizations when they eliminate operatives who are lower down on the food chain but who boast special skills: passport forgers, bomb makers, recruiters, and fundraisers.¶ Drones have also undercut terrorists’ ability to communicate and to train new recruits. In order to avoid attracting drones, al Qaeda and Taliban operatives try to avoid using electronic devices or gathering in large numbers. A tip sheet found among jihadists in Mali advised militants to “maintain complete silence of all wireless contacts” and “avoid gathering in open areas.” Leaders, however, cannot give orders when they are incommunicado, and training on a large scale is nearly impossible when a drone strike could wipe out an entire group of new recruits. Drones have turned al Qaeda’s command and training structures into a liability, forcing the group to choose between having no leaders and risking dead leaders.

#### Constraining targeted killing’s role in the war on terror causes extinction

Beres 11

Louis Rene Beres 11, Professor of Political Science and International Law at Purdue, 2011, “After Osama bin Laden: Assassination, Terrorism, War, and International Law,” Case Western Reserve Journal of International Law, 44 Case W. Res. J. Int'l L. 93

Even after the U.S. assassination of Osama bin Laden, we are still left with the problem of demonstrating that assassination can be construed, at least under certain very limited circumstances, as an appropriate instance of anticipatory self-defense. Arguably, the enhanced permissibility of anticipatory self-defense that follows generally from the growing destructiveness of current weapons technologies in rogue hands may be paralleled by the enhanced permissibility of assassination as a particular strategy of preemption. Indeed, where assassination as anticipatory self-defense may actually prevent a nuclear or other highly destructive form of warfare, reasonableness dictates that it could represent distinctly, even especially, law-enforcing behavior.

For this to be the case, a number of particular conditions would need to be satisfied. First, the assassination itself would have to be limited to the greatest extent possible to those authoritative persons in the prospective attacking state. Second, the assassination would have to conform to all of the settled rules of warfare as they concern discrimination, proportionality, and military necessity. Third, the assassination would need to follow intelligence assessments that point, beyond a reasonable doubt, to preparations for unconventional or other forms of highly destructive warfare within the intended victim's state. Fourth, the assassination would need to be founded upon carefully calculated judgments that it would, in fact, prevent the intended aggression, and that it would do so with substantially less harm [\*114] to civilian populations than would all of the alternative forms of anticipatory self-defense.

Such an argument may appear manipulative and dangerous; permitting states to engage in what is normally illegal behavior under the convenient pretext of anticipatory self-defense. Yet, any blanket prohibition of assassination under international law could produce even greater harm, compelling threatened states to resort to large-scale warfare that could otherwise be avoided. Although it would surely be the best of all possible worlds if international legal norms could always be upheld without resort to assassination as anticipatory self-defense, the persisting dynamics of a decentralized system of international law may sometimes still require extraordinary methods of law-enforcement. n71¶ Let us suppose, for example, that a particular state determines that another state is planning a nuclear or chemical surprise attack upon its population centers. We may suppose, also, that carefully constructed intelligence assessments reveal that the assassination of selected key figures (or, perhaps, just one leadership figure) could prevent such an attack altogether. Balancing the expected harms of the principal alternative courses of action (assassination/no surprise attack v. no assassination/surprise attack), the selection of preemptive assassination could prove reasonable, life-saving, and cost-effective.¶ What of another, more common form of anticipatory self-defense? Might a conventional military strike against the prospective attacker's nuclear, biological or chemical weapons launchers and/or storage sites prove even more reasonable and cost-effective? A persuasive answer inevitably depends upon the particular tactical and strategic circumstances of the moment, and on the precise way in which these particular circumstances are configured.¶ But it is entirely conceivable that conventional military forms of preemption would generate tangibly greater harms than assassination, and possibly with no greater defensive benefit. This suggests that assassination should not be dismissed out of hand in all circumstances as a permissible form of anticipatory self-defense under international law. [\*115] ¶ What of those circumstances in which the threat to particular states would not involve higher-order (WMD) n72 military attacks? Could assassination also represent a permissible form of anticipatory self-defense under these circumstances? Subject to the above-stated conditions, the answer might still be "yes." The threat of chemical, biological or nuclear attack may surely enhance the legality of assassination as preemption, but it is by no means an essential precondition. A conventional military attack might still, after all, be enormously, even existentially, destructive. n73 Moreover, it could be followed, in certain circumstances, by unconventional attacks.

#### Nuclear terrorism is feasible - high risk of theft and attacks escalate

Dvorkin 12

Vladimir Z. Dvorkin 12 Major General (retired), doctor of technical sciences, professor, and senior fellow at the Center for International Security of the Institute of World Economy and International Relations of the Russian Academy of Sciences. The Center participates in the working group of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, 9/21/12, "What Can Destroy Strategic Stability: Nuclear Terrorism is a Real Threat," belfercenter.ksg.harvard.edu/publication/22333/what\_can\_destroy\_strategic\_stability.html

Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, **these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons.** The use of **“**dirty bombs**”** will not cause many immediate casualties, but it **will result into long-term radioactive contamination, contributing to the spread of** panic and socio-economic destabilization**.**¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. **Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that** well-trained terrorists may be able to penetrate nuclear facilities**.**¶ **Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time**.¶ Of all the scenarios, it **is building an improvised nuclear device by terrorists that poses the maximum risk. There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** **Information on the design of such devices, as well as implosion-type devices, is available in the public domain**. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that **such materials can be bought on the black market.** Theft of weapons-grade uranium is also possible**. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).**¶ **A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is** comparable to the yield of the bomb dropped on Hiroshima**.** **The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences**.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. **A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures**.¶ If a nuclear terrorist act occurs, **nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act.** We can imagine what would happen if they do so, **given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause violent protests in the Muslim world. Series of armed clashing terrorist attacks may follow. The prediction that Samuel Huntington has made in his book “**The Clash of Civilizations **and the Remaking of World Order” may come true**. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. **This is especially dangerous for Russia because these fault lines run across its territory.** To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

### 4

#### Restrictions on executive war powers DO NOTHING for the state of political legal exception we live in and only gives further justification for violent intervention on the basis of legality

Dyzenhaus 05 (David, is a professor of Law and Philosophy at the University of Toronto, and a Fellow of the Royal Society of Canada, “Schmitt v. Dicey: Are States of Emergency Inside or Outside the Legal Order?” Cardozo Law Review 27)

Rossiter had in mind Lincoln's actions during the Civil War, including the proclamation by which Lincoln, without the prior authority of Congress, suspended habeas corpus. n35 Lincoln, he said, subscribed to a theory that in a time of emergency, the President could assume whatever legislative, executive, and judicial powers he thought necessary to preserve the nation, and could in the process break the "fundamental laws of the nation, if such a step were unavoidable." n36 This power included one ratified by the Supreme Court: "an almost unrestrained power to act toward insurrectionary citizens as if they were enemies of the United States, and thus place them outside the protection of the Constitution." Rossiter's difficulties here illustrate rather than solve the tensions inherent in the idea of constitutional dictatorship. On the one hand, he wants to assert that emergency rule in a liberal democracy can be constitutional in nature. "Constitutional" implies restraints and limits in accordance not only with law, but with fundamental laws. These laws are not the constitution that is in place for ordinary times; rather, they are the laws that govern the management of exceptional times - the eleven criteria that he developed for constitutional dictatorship. The criteria are either put within the discretion of the dictator - they are judgments about necessity - or are couched as limits that should be enshrined either in the constitution or in legislation. However, Rossiter does not properly address the fact that judgments about necessity are for the dictator to make, which means that these criteria are not limits or constraints but merely factors about which the dictator will have to decide. Other criteria look more like genuine limits. Moreover, they are limits that could be constitutionally enshrined - for example, the second criterion, which requires that the person who makes the decision that there is an emergency should not be the person who assumes dictatorial powers. Yet, as we have seen, Rossiter's foremost example of the modern constitutional dictator, Lincoln, not only gave himself dictatorial powers but, Rossiter supposes, had no choice but to do this. Moreover, if these criteria are constitutionally enshrined, so that part of the constitution is devoted to the rules that govern the time when the rest of the constitution might be suspended, they still form part of the constitution. So, no less than the ordinary constitution, what we can think of as the exceptional or emergency constitution - the constitution that governs the state of emergency - is subject to suspension should the dictator deem this necessary. This explains why, on the other hand, Rossiter equated emergency rule with potentially unlimited dictatorship, with Locke's idea of prerogative. And Rossiter said, "whatever the theory, in moments of extreme national emergency the facts have always been with ... John Locke." So Rossiter at one and the same time sees constitutional dictatorship as unconstrained in nature and as constrainable by principles - his eleven criteria. The upshot is that "constitutional" turns out not to mean what we usually take it to mean; rather, it is a misleading name for the hope that the person who assumes dictatorial powers does so because of a good faith evaluation that this is really necessary and with the honest and steadfast intention to return to the ordinary way of doing things as soon as possible. Giorgio Agamben is thus right to remark that the bid by modern theorists of constitutional dictatorship to rely on the tradition of Roman dictatorship is misleading. n39 They rely on that tradition in an effort to show that dictatorship is constitutional or law-governed. But in fact they show that dictatorship is in principle absolute - the dictator is subject to whatever limits he deems necessary, which means to no limits at all. As H.L.A. Hart described the sovereign within the tradition of legal positivism, the dictator is an uncommanded commander. n40 He [\*2015] operates within a black hole, in Agamben's words, "an emptiness of law." n41 Agamben thus suggests that the real analogue to the contemporary state of emergency is not the Roman dictatorship but the institution of iustitium, in which the law is used to produce a "juridical void" - a total suspension of law. n42 And in coming to this conclusion, Agamben sides with Carl Schmitt, his principal interlocutor in his book. However, it is important to see that Schmitt's understanding of the state of exception is not quite a legal black hole, a juridically produced void. Rather, it is a space beyond law, a space which is revealed when law recedes, leaving the state, represented by the sovereign, to act. In substance, there might seem to be little difference between a legal black hole and space beyond law since neither is controlled by the rule of law. But there is a difference in that nearly all liberal legal theorists find the idea of a space beyond law antithetical, even if they suppose that law can be used to produce a legal void. This is so especially if such theorists want to claim for the sake of legitimacy that law is playing a role, even if it is the case that the role law plays is to suspend the rule of law. Schmitt would have regarded such claims as an attempt to cling to the wreckage of liberal conceptions of the rule of law brought about by any attempt to respond to emergencies through the law. They represent a vain effort to banish the exception from legal order. Because liberals cannot countenance the idea of politics uncontrolled by law, they place a veneer of legality on the political, which allows the executive to do what it wants while claiming the legitimacy of the rule of law. We have seen that Rossiter presents a prominent example which supports Schmitt's view, and as I will now show, it is a depressing fact that much recent post 9/11 work on emergencies is also supportive of Schmitt's view. II. Responding to 9/11 For example, Bruce Ackerman in his essay, The Emergency Constitution, n43 starts by claiming that we need "new constitutional concepts" in order to avoid the downward spiral in protection of civil liberties that occurs when politicians enact laws that become increasingly repressive with each new terrorist attack. n44 We need, he says, to rescue the concept of "emergency powers ... from fascist thinkers like Carl Schmitt, who used it as a battering ram against liberal [\*2016] democracy." n45 Because Ackerman does not think that judges are likely to do, or can do, better than they have in the past at containing the executive during an emergency, he proposes mainly the creative design of constitutional checks and balances to ensure, as did the Roman dictatorship, against the normalization of the state of emergency. Judges should not be regarded as "miraculous saviors of our threatened heritage of freedom." n46 Hence, it is better to rely on a system of political incentives and disincentives, a "political economy" that will prevent abuse of emergency powers. He calls his first device the "supramajoritarian escalator" n48 - basically the requirement that a declaration of a state of emergency requires legislative endorsement within a very short time, and thereafter has to be renewed at short intervals, with each renewal requiring the approval of a larger majority of legislators. The idea is that it will become increasingly easy with time for even a small minority of legislators to bring the emergency to an end, thus decreasing the opportunities for executive abuse of power. n49 The second device requires the executive to share security intelligence with legislative committees and that a majority of the seats on these committees belong to the opposition party. Ackerman does see some role for courts. They will have a macro role should the executive flout the constitutional devices. While he recognizes both that the executive might simply assert the necessity to suspend the emergency constitution and that this assertion might enjoy popular support, he supposes that if the courts declare that the executive is violating the constitution, this will give the public pause and thus will decrease incentives on the executive to evade the constitution. n51 In addition, the courts will have a micro role in supervising what he regards as the inevitable process of detaining suspects without trial for the period of the emergency. Suspects should be brought to court and some explanation should be given of the grounds of their detention, not so that they can contest it - a matter which Ackerman does not regard as practicable - but in order both to give the suspects a public identity so that they do not disappear and to provide a basis for compensation once the emergency is over in case the executive turns out to have fabricated [\*2017] its reasons. He also wishes to maintain a constitutional prohibition on torture, which he thinks can be enforced by requiring regular visits by lawyers. Not only is the judicial role limited, but it is clear that Ackerman does not see the courts as having much to do with preventing a period of "sheer lawlessness." n53 Even within the section on the judiciary, he says that the real restraint on the executive will be the knowledge that the supramajoritarian escalator might bring the emergency to an end, whereupon the detainees will be released if there is no hard evidence to justify detaining them. In sum, according to Ackerman, judges have at best a minimal role to play during a state of emergency. We cannot really escape from the fact that a state of emergency is a legally created black hole, a lawless void. It is subject to external constraints, controls on the executive located at the constitutional level and policed by the legislature. But internally, the rule of law does next to no work; all that we can reasonably hope for is decency. But once one has conceded that internally a state of emergency is more or less a legal black hole because the rule of law, as policed by judges, has no or little purchase, it becomes difficult to understand how external legal constraints, the constitutionally entrenched devices, can play the role Ackerman sets out. Recall that Ackerman accepts that the reason we should not give judges more than a minimal role is the history of judicial failure to uphold the rule of law during emergencies in the face of executive assertions of a necessity to operate outside of law's rule. For that reason, he constructs a political economy to constrain emergency powers. But that political economy still has to be located in law in order to be enforceable, which means that Ackerman cannot help but rely on judges. But why should we accept his claim that we can rely on judges when the executive asserts the necessity of suspending the exceptional constitution, the constitution for the state of emergency, when one of his premises is that we cannot so rely? Far from rescuing the concept of emergency powers from Schmitt, Ackerman's devices for an emergency constitution, an attempt to update Rossiter's model of constitutional dictatorship, fails for the same reasons that Rossiter's model fails. Even as they attempt to respond to Schmitt's challenge, they seem to prove the claim that Schmitt made in late Weimar that law cannot effectively enshrine a distinction between constitutional dictatorship and dictatorship. They appear to be vain attempts to find a role for law while at the same time conceding that law has no role. Of course, this last claim trades on an ambiguity in the idea of the rule of law between, on the one hand, the rule of law, understood as the rule of substantive principles, and, on the other, rule by law, where as long as there is a legal warrant for what government does, government will be considered to be in compliance with the rule of law. Only if one holds to a fairly substantive or thick conception of the rule of law will one think that there is a point on a continuum of legality where rule by law ceases to be in accordance with the rule of law. Ackerman's argument for rule by law, by the law of the emergency constitution, might not answer Schmitt's challenge. But at least it attempts to avoid dignifying the legal void with the title of rule of law, even as it tries to use law to govern what it deems ungovernable by law. The same cannot be said of those responses to 9/11 that seem to suggest that legal black holes are not in tension with the rule of law, as long as they are properly created. While it is relatively rare to find a position that articulates so stark a view, it is quite common to find positions that are comfortable with grey holes, as long as these are properly created. A grey hole is a legal space in which there are some legal constraints on executive action - it is not a lawless void - but the constraints are so insubstantial that they pretty well permit government to do as it pleases. And since such grey holes permit government to have its cake and eat it too, to seem to be governing not only by law but in accordance with the rule of law, they and their endorsement by judges and academics might be even more dangerous from the perspective of the substantive conception of the rule of law than true black holes.

#### Their appeals to democratic deliberation assume an ideal public sphere which doesn’t exist. Democracy is impossible, it’s always an imposition of power. The affirmative only universalizes and justifies this power, justifying exclusion and violence against all heretics.

Andrew Shaap (Center for Applied Philosophy and Public Ethics, University of Melbourne, Victory, Australia). “Agonism in Divided Societies.” Philosophy and Social Criticism 32.2, 2006.

Given Gutmann and Thompson’s recognition that reasonable pluralism is the inevitable outcome of the free operation of reason among moral equals and that democratic deliberation should primarily be concerned with finding ways of living together with fundamental moral disagreement, what weight is there to Mouffe’s claim (above) that deliberative democracy is at pains to erase the conflictual aspect of pluralism? And what are the implications of this claim for understanding reconciliation as a political undertaking in divided societies?

Insofar as Mouffe’s argument is plausible, it seems to come down to this: It is a political mistake to model democracy on the ideal of an unconstrained deliberation between free and equal citizens because the anticipated moral consensus in terms of which conflict is made meaningful is always, in fact, *politically* constituted. Following from this, it is because deliberative democracy presupposes commonality in terms of an anticipated moral consensus rather than as a political achievement that it often *fails to recognize* the political nature of its own exclusions.

The claim that any moral consensus is always politically constituted depends on the premise that the separation between morality and ethics (or between procedure and substance) on which deliberative democracy relies is untenable. Drawing on Wittgenstein, Mouffe asserts that public reasoning is always reasoning within a particular tradition or discourse. Agreement on procedures or a public conception of justice (and hence what counts as a ‘reasonable’ claim) is made possible, therefore, only insofar as members of a society already share a common ‘form of life’. Fundamental moral disagreement occurs *between* different forms of life in which case there is no shared public morality to appeal to in order to arbitrate the conflict. It is a mistake to understand political conflict only in terms of disagreement between reasonable comprehensive moral doctrines because fundamental political conflict always also involves a conflict between identities.

When put this way, Mouffe’s claim is too bald since ‘forms of life’ are rarely (if ever) discrete but share certain points of commonality because they are constituted in relation to each other. But Mouffe also presents a more subtle form of the argument, which is more plausible. She claims that in a democracy a certain degree of consensus on public reasons is possible but this will always be a ‘conflicting consensus’ since the basic principles that members of society share are interpreted differently according to the traditions or forms of life in which they are situated. Indeed, it is the *contestability* of what Gutmann and Thompson (above) call the ‘principles that set the conditions of political discussion’ that creates a space for politics between them. For, as William Connolly argues, politics invariably entails an ‘ambiguous and relatively open-ended interaction of persons and groups who share a range of concepts but share them imperfectly and incompletely’.

For instance, most members of a democracy share a commitment to human rights. However, what counts as a human right and what duties they impose on us is vigorously contested. More to the point, ‘reconciliation’ itself is an essentially contested concept. This is evidenced in debates about what ‘true’ reconciliation would require. In South Africa, for instance, reconciliation *was interpreted differently by various actors in terms of: a non-racial ideology* that promotes unity in the form of the ‘rainbow nation’; an inter-communal understanding that would preserve the distinct identities of separate cultures; a religious ideology that demands repentance from wrongdoers; a human rights approach that calls for restoring the rule of law in order to prevent future abuses; and community building that would restore social trust in divided townships. As Brandon Hamber & Hugo van der Merwe discuss, although the various interpretations of reconciliation they identify sometimes co-existed ‘quite comfortably’ within political institutions and discourses in South Africa, they are, in various ways, incompatible. Consequently, the different meanings assigned to reconciliation often emerged at the ‘core of the conflict between different groups’.

Consequently, in any actually existing democracy, the terms in which an anticipated moral consensus among free and equal persons is represented will always be based on a contingent and provisional hegemony of the prevailing tradition within which these terms are conceived. It is in this

sense, then, that an anticipated moral consensus is always, in fact, politically constituted since it must always be articulated within a determinate political community, a concrete “we” that is constituted in relation to a “them”. As Gillian Rose writes, ‘Politics begins not when you organize to defend an individual or particular or local interest, but when you organize to further the ‘general’ interest within which your particular interest may be represented’. Yet, deliberative democrats such as Gutmann and Thompson tend to understand politics only in the narrower sense as a conflict between particular interests while seeking to determine in advance (by recourse to the regulative idea of consensus) the general interest in terms of which political conflict should be represented.

Because it *presupposes* commonality in terms of an anticipated moral consensus rather than recognizing commonality as a contingent outcome of political interaction, deliberative democracy tends to neglect the political nature of its own exclusions. In particular, the requirement that particular claims should be reasonable may prevent certain objections to a dominant order from being raised in the first place. If Mouffe is correct that reasoning always takes place within a particular tradition, then those members of society who articulate the overlapping moral consensus are likely to sound more reasonable than those who are marginalized by this dominant tradition. The requirement that particular claims should be represented in terms of the general principles of public reason may therefore have the effect of silencing certain claims because they appear unreasonable or are simply inexpressible in these terms. As Sheldon Wolin puts it, public reason may then appear not so much as a neutral but a ‘neutralizing principle’.

To restate this argument in relation to Gutmann and Thompson’s theory, insofar as the principle of reciprocity requires citizens to justify their claims in terms that other members of society might reasonably accept it takes for granted a certain reciprocity of interests among individuals in sharing these particular institutions. (For, in the absence of such a reciprocity of interests, there would be no basis for shared norms in terms of which to press one’s claims). Because they represent political community in terms of the ideal of a moral community of free and equal persons, Gutmann and Thompson are unable to acknowledge the extent to which the exclusion of ‘unreasonable’ claims from democratic deliberation is an act of power and not simply a moral requirement. As such, moral disagreement is contained or civilized only by excluding from serious democratic deliberation those claims that cannot be represented in terms of the dominant political discourse that determines what counts as reasonable.

By contrast, Mouffe insists that ‘instead of trying to erase the traces of power and exclusion, democratic politics requires us to bring them to the fore, to make them visible so that they can enter the terrain of contestation’. When it comes down to it, Mouffe does not dispute the fact that we need some such distinction as that between reasonable/unreasonable in order to enable democratic deliberation. Rather, her point is that because the basis on which this distinction is drawn is always contestable, it can not be a simple moral distinction but must have a political dimension. In Schmittian terms, what is ultimately at stake in how the distinction is drawn is never only a matter of right and wrong but always potentially the distinction between friend and enemy, which is to say a matter of identity and belonging - of how a “we” comes to appear on the political scene.

#### Our alternative is to recognize the necessity of the opposition. This requires the unchecked authority of the executive to respond to the exception.

Nagan and Haddad 12 (Winston and Aitza, "Sovereignty in Theory and Practice." San Diego International Law Journal 13)

Although Schmitt was German, his ideas about sovereignty, and the political exception have had influence on the American theory and practice of sovereignty. Carl Schmitt was a philosophic theorist of sovereignty during the Third Reich. n375 His ideas about sovereignty and its above the law placement in the political culture of the State have important parallels in the developing discourse in the United States about the scope of presidential authority and power. His views have attracted the attention of American theorists. Schmitt developed his view of sovereignty on the concept described as "the exception". n376 This idea suggests that the sovereign or executive may invoke the idea of exceptional powers which are distinct from the general theory of the State. In Schmitt's view, the normal condition of the functions of the theory of a State, rides with the existence of the idea of the "exception." The exception is in effect intrinsic to the idea of a normal State. In his view, [\*487] the normal legal order of a State depends on the existence of an exception. n377 The exception is based on the continuing existence of an existential threat to the State and it is the sovereign that must decide on the exception. n378 In short, the political life of a State comprises allies and enemies. For the purpose of Statecraft, "an enemy exists only when at least potentially, one fighting collectivity of people confronts another similar collectivity." n379 In this sense, the political reality of the State always confronts the issue of the survival of the group. This reality is explained as follows. The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping. \*\*\* As an ever present possibility [war] is the leading presupposition which determines in a characteristic way human action and thinking and hereby creates a specifically political behavior.\*\*\* A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction between friend and enemy and hence a world without politics. n380 Schmitt's view bases the supremacy of the exception on the supremacy of politics and power. n381 Thus, the exception, as rooted in the competence of the executive, is not dependent on law for its authority but on the conditions of power and conflict, which are implicitly pre-legal. n382 The central idea is that in an emergency, the power to decide based on the exception accepts its normal superiority over law on the basis that the suspension of the law is justified by the pre-legal right to self-preservation. n383 Schmitt's view is a powerful justification for the exercise of extraordinary powers, which he regards as ordinary, by executive authority. This is a tempting view for executive officers but it may not be an adequate explanation of the interplay of power, legitimacy, and the constitutional foundations of a rule of law State. In a later section, we draw on insights from the New Haven School, which deals empirically with the problem of power and the problem of constituting authority using the methods of contextual mapping. Nonetheless, Schmitt's view provides support for theorists who seek to enlarge executive power on the unitary presidency theory.

### Democratic Deliberation

#### AFF can’t solve - security logic overwhelms

Neocleous 2K6

[mark “security liberty and the myth of balance: towards a critique of security politics” contemporary political theory 6 131-149 Professor of the Critique of Political Economy; Head of Department of Politics & History @ brunel university in London]

Maybe the answer to Ignatieff's question is simply that liberty is the original myth of liberal ideology. And it is this myth that is used to legitimate the gross and thoroughly reactionary concessions made by contemporary liberals to the security practices of contemporary states. As liberal after liberal keeps lining up to tell us liberty must always be sacrificed to the value of security (Posner 2001). And so we find Bruce Ackerman (2004 1037) proposing a constitution which 'authorizes the government to detain suspects without the criminal law's usual protections of probable cause or even reasonable suspicion' Michael Walzer (2004 33–50) suggesting that if we define 'supreme emergency' as a communitarian doctrine then we will accept that acts such as killing the innocent are on occasion acceptable and Waldron (2003 207) conceding that 'it is not hard to think of scenarios where detention without trial is justified' (adding that classic liberal proviso that what is hard is to make sure that this power is not abused). The miserable lowpoint of this set of liberal concessions to some fairly drastic 'security measures' is John Gray's 'modest proposal' (2004 132–138) that terrorists have an inalienable right to be tortured. With liberal arguments such as these it's perhaps not surprising to find that the name of the central inspection tower overlooking Abu Ghraib in Iraq is 'Liberty Tower'. What follows from this is that we should resist any talk of 'balancing' liberty and security for such talk of balance merely disguises a more fundamental commitment to the latter rather than the former. But maybe what also follows from this is that we should also avoid fooling ourselves that we can develop a 'radical' or 'critical' security politics. This is what is proposed by those aiming to 'Humanise' the security agenda by turning into a security question issues such as migration refugees gender and the environment. Such positions rely ultimately on the assumption that as Ken Booth (1991) puts it since 'security' is the absence of threats and 'emancipation' is the freeing of people from human and physical constraints 'security and emancipation are two sides of the same coin ... Emancipation theoretically is security'. This seems to me to be as about as mistaken as one can possibly be about security. Calling anything a security issue plays into the hands of the state and the only way the state knows how to deal with threats to security is to tighten its grip on civil society and ratchet-up its restrictions on human freedoms. 'Speaking and writing about security is never innocent' Jef Huysmans comments. 'It always risks contributing to the opening of a window of opportunity for a "fascist mobilization" or an "internal security ideology"' (2002 43). This is because the logic of 'security' is the logic of an anti-politics (Jayasuriya 2004) in which the state uses 'security' to marginalize all else most notably the constructive conflicts the debates and discussions that animate political life suppressing all before it and dominating political discourse in an entirely reactionary way. This is precisely the point alluded to by Marx in 1843 when he suggested that security was the supreme concept of bourgeois society: it's a concept that legitimizes any action by the state whatsoever so long as the action is conducted in the name of security. And this explains why virtually every authoritarian measure since has been conducted in the name of security from the reordering of international capital under the guise of national security (Neocleous 2006b) to the reassertion of loyalty and consensus as the foundation of domestic order (Neocleous 2006c) all the way down to the extermination camps of the holocaust the first stage of which was to be taken into 'security confinement' by the security police.

### Targeted Killing

#### Drones minimize civilian casualties – “pattern-of-life” analysis and reduced operator tension makes collateral damage unlikely – the alternative is empirically worse

Lewis 13

(Michael W. Lewis, flew fighters for the Navy in the early 1990s. He now teaches international law at Ohio Northern University School of Law, “Drones: Actually the Most Humane Form of Warfare Ever” AUG 21 2013, <http://www.theatlantic.com/international/archive/2013/08/drones-actually-the-most-humane-form-of-warfare-ever/278746/>, KB)

Turning to the question of civilian casualties: All armed conflicts cause civilian casualties, and most modern conflicts have done so in large numbers, in part due to the fact that insurgents often hide among the civilian population. The 2006 Israeli conflict with Hezbollah and its 2009 and 2012 battles with Hamas in Gaza, the 1999 Russian war with Chechen rebels, and the final stages of the struggle between Sri Lanka and the LTTE (Tamil Tigers) all killed more civilians than combatants, in some cases substantially more. Although the U.S. has not caused civilian casualties at rates that high, there have been memorable examples of civilian casualties in each of the recent conflicts in which we have been involved, and those casualties were caused by all kinds of weapons systems. The 1991 Gulf War involved the Al-Firdos bunker airstrike that killed up to 400 civilians. The Kosovo campaign included airstrikes that hit the Chinese Embassy in Belgrade and struck a civilian train in the Grdelica gorge. The 2003 Iraq War included civilian casualties caused by Marine ground troops in Haditha and military contractors in Nisoor Square, while a cruise missile strike in 2009 killed approximately 35 civilians at al-Majalah in Yemen.¶ Like any other weapons system, drones have caused civilian casualties. But they also have the potential to dramatically reduce civilian casualties in armed conflicts, and particularly in counterinsurgencies. Their ability to follow targets for days or weeks accomplishes two things that contribute to saving the lives of innocents: First, it confirms that the target is engaged in the behavior that put them on the target list, reducing the likelihood of striking someone based on faulty intelligence. Second, by establishing a "pattern of life" for the intended target, it allows operators to predict when the target will be sufficiently isolated to allow a strike that is unlikely to harm civilians.¶ Another, less obvious, feature that reduces civilian casualties is that drones are controlled remotely, so the decision to employ a weapon can be reviewed in real time by lawyers, intelligence analysts, and senior commanders without any concern (in most cases) that a hesitation to act may cost lives. Even more importantly, the operators themselves are not concerned for their own safety, eliminating the possibility that the combination of tension, an unexpected occurrence, and a concern for personal safety leads to weapons being fired when they shouldn't be.¶ This potential of drones to vastly reduce civilian casualties was not fully realized at first, but it has been dramatically attained in the past few years.¶ In 2007, the U.S. Army and Marine Corps began disseminating a new Counterinsurgency (COIN) Manual that emphasized the need for soldiers to be involved in nation-building and bolstering local civil-society institutions, in addition to defeating insurgents militarily. Part of implementing this strategy involved minimizing civilian casualties. When Gen. Stanley McChrystal took command of ISAF (International Security Assistance Force) in Afghanistan in 2009, he emphasized the need to continue reducing civilian casualties in all phases of operations. He assigned teams of civilians and military officers to conduct root-cause analysis of every civilian casualty in theater and tasked them with developing protocols to eliminate such deaths.¶ These teams produced a number of recommendations for drones. One of the most significant was switching the preferred method of targeting from compounds to vehicles. While targeting compounds improved the likelihood that the right individual was being targeted, it also greatly increased the chances that members of the target's family and the families of his bodyguards and close associates would be harmed. Although vehicle strikes ran a greater risk of target misidentification, increasing surveillance and pattern-of-life analysis mitigated that risk. Because it is easier to determine who is in a vehicle than to keep track of everyone who enters and leaves a compound, vehicle strikes reduced the likelihood that family members and friends would be collateral damage. Also, because vehicle strikes can be conducted on isolated roads, the likelihood of other civilian bystanders being harmed was minimized.

¶ How do we know that this has succeeded? Bowden mentions studies done by several independent organizations that have assessed civilian casualties caused by drones in Pakistan. The three most well respected and independent sources on this issue are the Long War Journal, the New America Foundation and The Bureau of Investigative Journalism (TBIJ). Among these, the U.K.-based TBIJ has consistently produced the highest estimates of civilian casualties for drone strikes. According to TBIJ, between January 2012 and July 2013, there were approximately 65 drone strikes in Pakistan, which they estimate to have killed a minimum of 308 people. Yet of these casualties, even TBIJ estimates that only 4 were civilians. This would amount to a civilian casualty rate of less than 1.5 percent, meaning that only 1 in 65 casualties caused by drones over that 19-month period was a civilian. This speaks to drones effective discrimination between civilian and military targets that no other weapons system can possibly match.¶ Another indication that drones cause fewer civilian casualties than traditional warfare was provided by Hamid Karzai in 2011. The U.S. was employing all types of units in Afghanistan, ground troops, airstrikes, artillery and drones. But the source of friction with the Afghan government was not drones but rather special forces night raids. Karzai proclaimed that he would withhold further cooperation until his government was given greater control over night raids. Drones did not cause him or the Afghan people any appreciable concern.

#### CIA keeps drone info secret and courts won’t enforce – signature strikes prove

Marsden 13

(William, journalist, The Montreal Gazette, 2/2/2013, “Drone warfare comes under increasing attack; Controversial U.S. program cloaked in frayed veil of secrecy,” Lexis, accessed 7/6/2013, BS)

Both for political reasons and because of the questionable legality of it, the U.S. drone program is cloaked in a frayed veil of secrecy. While U.S. courts have refused to order the government to release information about a program that officially doesn't exist, the administration of President Barack Obama leaks when it benefits Obama's image. It's hard to keep Hellfire air-to-surface missile attacks secret. Pre-election concerns that Obama was appearing weak resulted in a series of New York Times stories in which unnamed administration sources depicted him as tough enough to make the weekly drone-kill decisions. Obama became the moral man saddled with a troubling but necessary drone war to keep America safe. This article was followed by a speech last June by Obama's "high priest" of killer drones, John Brennan, who at the time, was his lead terrorism adviser and is now his nominee to head the CIA. He said that "in order to prevent terrorist attacks on the United States and to save American lives, the United States government conducts targeted strikes against specific al-Qaida terrorists, sometimes using remotely piloted aircraft, often referred to publicly as 'drones.' " The killer drone program began under former president George H.W. Bush in 2002. Fifty strikes occurred under his administration. Obama has accelerated the program sevenfold with 350 strikes, says Zenko and other experts. Estimates vary as to how many "terrorists" and how many "civilians" have been killed. Of the 32 al-Qaida leaders on Obama's kill list, 22 have been killed, 21 by drones, Zenko said. The total number of people killed is much higher - more than 3,000, according to some accounts. How many of these were civilians depends on how "civilian" is defined. The administration says civilian deaths are minimal. Nongovernment organizations say the figure is more than 2,000. Naureen Shah, association director of the counterterrorism and human rights project at Columbia Law School, said the criteria for a drone strike fall into two categories. So-called "personality" attacks means that the government knows the identity of the person targeted. "Signature" attacks target people whose identities are unknown but whose behaviour gives a terrorist signature. For example, they could be seen carrying a weapon or transporting, say, fertilizer that could be used in improvised explosive devices. Or they could be simply giving first aid to a victim of a drone strike. "The U.S. has never acknowledged that they conduct signature strikes," Zenko said. "When John Brennan was asked the question specifically, he refused to answer. And the reason is it gets into a lot of sort of international legal problems."

### Solvency

#### Courts can’t enact social change – there are powerful restraints that are difficult to overcome

**Rosenberg**, Associate Professor Political Science @ U Chicago Law **1991,** Gerald N *The Hollow Hope*, p. 21

To sum up, the Constrained Court view holds that litigants asking courts for significant social reform are faced with powerful constraints. First, they must convince courts that the rights they are asserting are required by constitutional or statutory language. Given the limited nature of constitutional rights, the constraints of legal culture, and the general caution of the judiciary, this is no easy task. Second, courts are wary of stepping too far out of the political mainstream. Deferential to the federal government and potentially limited by congressional action, courts may be unwilling to take the heat generated by politically unpopular rulings. Third, if these two constraints are overcome and cases are decided favorably, litigants are faced with the task of implementing the decisions. Lacking powerful tools to force implementation, court decisions are often rendered useless given much opposition. Even if litigators seeking significant social reform win major victories in court, in implementation they often turn out to be worth very little. Borrowing the words of Justice Jackson from another context, the Constrained Court view holds that court litigation to produce significant social reform may amount to little more than "a teasing illusion like a munificent bequest in a pauper's will" (Edwards v. California 1941, 186).

Friesen ‘13

(Sarah Friesen is currently a member of the Young Leaders Program at The Heritage Foundation and research expert. “Contrary to Popular Belief, Drones Not All Bad” April 18, 2013 at 4:00 pm http://blog.heritage.org/2013/04/18/contrary-to-popular-belief-drones-not-all-bad/,TSW)

Last week, Politico published an article on America’s misconception of drones, and why those misconceptions can, and should, be remedied. As technology advances, the ways in which it can be exploited grows. Drones are no exception. While steps need to be taken to ensure that privacy rights are protected from drone activities, the U.S. should not unnecessarily restrain such a valuable technology.¶ Today, the public has a negative perception of drones—to put it mildly. The connotation is generally that of Big Brother watching Americans going about their daily lives—all under the guise of keeping us “safe,” of course. This is far from reality.¶ Drones do, in fact, provide many services that keep Americans safe. These include:¶ Border patrol security¶ Emergency preparation and disaster response¶ Cargo delivery (private sector)¶ Maritime domain awareness¶ Environmental monitoring (flooding, dams, levees, etc.)¶ Law enforcement (pursuit or search and rescue)¶ Arguably, these are all things that need to be done. Drones provide a cheaper platform that keeps the pilot out of any potential danger. This raises the obvious question: If drones have good uses, then why do people think they are so bad?¶ Ellen Tauscher, former Undersecretary of State for Arms Control and International Security says that a big contributor to the problem is that “there are too many different names being used to describe the technology.” Having so many names floating about only exacerbates an already confusing topic.¶ One of the many names for drones is “unmanned aerial vehicle.” This is entirely inaccurate. Drones, like planes and helicopters, do have pilots, but they fly the drones remotely.¶ Another aspect of the confusion surrounding drones, according to Politico, is the secrecy that shrouds how the military uses them. It seems that this secrecy has led to speculation that has tainted the American public’s view of drones in general, both military and non-military. America needs to ensure that guidelines for the domestic usage of drones are based on fact, not speculation.¶ Generally, drones can and should be regulated by the laws already in place dealing with aerial surveillance. This is the route that should be taken instead of requiring a warrant for drone usage in the U.S. This would not only severely restrict the effectiveness of drones but also be a misapplication of the Fourth Amendment.¶ The government and the private sector need to present a coherent and clear picture to the American people of what drones really are. If the public’s inaccurate and negative perception of drones is not altered, it could influence policy to the point of depriving America of a truly valuable tool.

#### No political will to implement the plan

Druck, JD – Cornell Law, ‘12

(Judah, 98 Cornell L. Rev. 209)

There are obvious similarities between the causes and effects of the public scrutiny associated with the larger wars discussed above. In each situation, the United States was faced with some, or even all, of the traditional costs associated with war: a draft, an increasingly large military industry, logistical sacrifices (such as rationing and other noncombat expenses), and significant military casualties. n114 Americans looking to keep the United States out of foreign affairs ob-viously had a great deal on the line, which provided sufficient incentive to scrutinize military policy. In the face of these potentially colossal harms, the public was willing to assert a significant voice, which in turn increased the willingness of politicians to challenge and subsequently shift presidential policy. As a result, public scrutiny and activism placed a President under constant scrutiny in one war, delayed U.S. intervention in another, and even helped end two wars entire-ly. Thus, we may extract a general principle from these events: when faced with the prospect of a war requiring heavy domestic sacrifices, and absent an incredibly compelling reason to engage in such a war (as seen in World War II, for example), n115 the public is properly incentivized to emerge and exert social (and, consequently, political) pressure in order to engage and shift foreign policy. However, as we will see, the converse is true as well. B. The Introduction of Technology-Driven Warfare and Shifting Wartime Doctrines The recent actions in Libya illustrate the culmination of a shift toward a new era of warfare, one that upsets the system of social and political checks on presidential military action. Contrary to the series of larger conflicts fought in the twen-tieth century, this new era has ushered in a system of war devoid of some of the fundamental aspects of war, including the traditional costs discussed above. Specifically, through the advent of military technology, especially in the area of robotics, modern-day hostilities no longer require domestic sacrifices, thereby concealing the burden of war from main-stream consciousness. n116 By using fewer troops and introducing drones and other [\*228] forms of mechanized warfare into hostile areas more frequently, n117 an increased number of recent conflicts have managed to avoid many domestic casualties, economic damages, and drafts. n118 In a way, less is on the line when drones, rather than people, take fire from enemy combatants, and this reality displaces many hindrances and considerations when deciding whether to use drones in the first place. n119 This move toward a limited form of warfare has been termed the "Obama Doctrine," which "emphasizes air power and surgical strikes, rather than boots on the ground." n120 Under this military framework, as indicated by the recent use of drones in the Middle East, the traditional harms associated with war might become increasingly obsolete as technolo-gy replaces the need for soldiers. Indeed, given the increased level of firepower attached to drones, we can imagine a situation where large-scale military engagements are fought without any American soldiers being put in harm's way, without Americans having to ration their food purchases, and without teenagers worrying about being drafted. n121 For example, "with no oxygen-and sleep-needing human on board, Predators and other [unmanned aerial vehicles] can watch over a potential target for 24 hours or more - then attack when opportunity knocks." n122 Thus, if the recent actions in Libya are any indication of what the future will look like, we can predict a major shift in the way the United States carries out wars . n123 [\*229] C. The Effects of Technology-Driven Warfare on Politics and Social Movements The practical effects of this move toward a technology-driven, and therefore limited, proxy style of warfare are mixed. On the one hand, the removal of American soldiers from harm's way is a clear benefit, n124 as is the reduced harm to the American public in general. For that, we should be thankful. But there is another effect that is less easy to identify: pub-lic apathy. By increasing the use of robotics and decreasing the probability of harm to American soldiers, modern war-fare has "affected the way the public views and perceives war" by turning it into "the equivalent of sports fans watching war, rather than citizens sharing in its importance." n125 As a result, the American public has slowly fallen victim to the numbing effect of technology-driven warfare; when the risks of harm to American soldiers abroad and civilians at home are diminished, so too is the public's level of interest in foreign military policy. n126 In the political sphere, this effect snowballs into both an uncaring public not able (or willing) to effectively mobi-lize in order to challenge presidential action and enforce the WPR, and a Congress whose own willingness to check presidential military action is heavily tied to public opinion. n127 Recall, for example, the case of the Mayaguez, where potentially unconstitutional action went unchecked because the mission was perceived to be a success. n128 Yet we can imagine that most missions involving drone strikes will be "successful" in the eyes of [\*230] the public: even if a strike misses a target, the only "loss" one needs to worry about is the cost of a wasted missile, and the ease of deploying another drone would likely provide a quick remedy. Given the political risks associated with making critical statements about military action, especially if that action results in success, n129 we can expect even less congressional WPR en-forcement as more military engagements are supported (or, at the very least, ignored) by the public. In this respect, the political reaction to the Mayaguez seems to provide an example of the rule, rather than the exception, in gauging politi-cal reactions within a technology-driven warfare regime. Thus, when the public becomes more apathetic about foreign affairs as a result of the limited harms associated with technology-driven warfare, and Congress's incentive to act consequently diminishes, the President is freed from any possible WPR constraints we might expect him to face, regardless of any potential legal issues. n130 Perhaps unsurpris-ingly, nearly all of the constitutionally problematic conflicts carried out by presidents involved smaller-scale military actions, rarely totaling more than a few thousand troops in direct contact with hostile forces. n131 Conversely, conflicts that have included larger forces, which likely provided sufficient incentive for public scrutiny, have generally complied with domestic law. n132 The result is that as wars become more limited, n133 unilateral presidential action will likely become even more un-checked as the triggers for WPR enforcement fade away. In contrast with the social and political backlash witnessed during the Civil War, World War I, the Vietnam War, and the Iraq War, contemporary military actions provide insuffi-cient incentive to prevent something as innocuous and limited as a drone strike. Simply put, technology-driven warfare is not conducive to the formation of a substantial check on presidential action. n134

#### Extinction is a possibility—Justifies focus on policies to prevent it

Matheny, ‘7 [Jason G. Matheny, Department of Health Policy and Management, Bloomberg one might begin to address these problems. School of Public Health, Johns Hopkins University ,“Reducing the Risk of Human Extinction,” Risk Analysis, 27:5]

In this article, I discuss a subset of catastrophic events—those that could extinguish humanity.1 It is only in the last century, with the invention of nu-clear weapons, that some of these events can be both caused and prevented by human action. While extinction events may be very improbable, their con- sequences are so grave that it could be cost effective to prevent them.

#### President can and will create loopholes and expand his authority in other areas

Epps 13

professor of constitutional law @ University of Baltimore Garrett, 2-16-13, "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/

Finally, in time of war, there will be occasions when a target emerges and decisions must be made too quickly for even a secret court proceeding. And thus the "drone court" would not be able to rule on some cases; an ambitious president could find many exceptions. In addition, an ambitious executive might also use the secret court as a means to extend the drone-strike authority beyond actions in time of authorized military action. With such a review mechanism in place, the argument might go, there's no danger in ceding the president's authority to use drones against enemies not so designated by Congress.

#### He’ll claim Article II

Currier 13

(Cora, Former editor of the New Yorker, "Drone strikes test legal grounds for ’war on terror’", 2/6/13, http://www.pbs.org/wnet/need-to-know/security/drone-strikes-test-legal-grounds-for-war-on-terror/16252/)

Administration officials say strikes against al-Qaida and associated forces are permitted under international law on the basis of self-defense, in addition to the authority the AUMF provides under domestic law. The U.N. has been investigating targeted killings and civilian casualties from drone strikes. In a case where the 2001 AUMF did not apply, the administration could seek a new authorization from Congress or rely on presidential powers to use force against an imminent threat. Gen. Carter Ham, the head of U.S. Africa Command, said in an interview with The Wall Street Journal in December that an authorization to address new threats in North Africa was a “worthy discussion.” But what form that would take is unclear. The Pentagon and White House did not comment to ProPublica on the possibility of a new AUMF. Presidents have used force without Congressional authorization by invoking presidential powers under Article II of the Constitution. Obama ordered airstrikes over Libya in the spring of 2011 citing international cooperation and “national interest” as justification. (Several lawmakers subsequently sued the administration for bypassing them, but the case was dismissed.) He has also claimed authority to launch pre-emptive cyberattacks, the New York Times reported this weekend. President Bill Clinton cited the nation’s right to self-defense when he bombed Afghanistan and Sudan in 1998 in retaliation for the bombing of U.S. embassies in East Africa. Obama officials regularly cite self-defense alongside the AUMF in justifying targeted killing. White House counterterror adviser John Brennan has said that the U.S. uses “a flexible understanding of 2018imminence’ ” in determining what constitutes a threat. The Justice Department memo on targeting U.S. citizens also references a “broader concept of imminence,” which it holds “does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.”

#### Even if there is a low probability of extinction, it deserves countermeasures—DAs allow us to evaluate those countermeasures

Matheny, ‘7 [Jason G. Matheny, Department of Health Policy and Management, Bloomberg one might begin to address these problems. School of Public Health, Johns Hopkins University ,“Reducing the Risk of Human Extinction,” Risk Analysis, 27:5]

It is possible for humanity (or its descendents) to survive a million years or more, but we could succumb to extinction as soon as this century. During the Cuban Missile Crisis, U.S. President Kennedy estimated the probability of a nuclear holocaust as “somewhere be- tween one out of three and even” (Kennedy, 1969, p. 110). John von Neumann, as Chairman of the U.S. Air Force Strategic Missiles Evaluation Committee, pre- dicted that it was “absolutely certain (1) that there would be a nuclear war; and (2) that everyone would die in it” (Leslie, 1996, p. 26). More recent predictions of human extinction are little more optimistic. In their catalogs of extinction risks, Britain’s Astronomer Royal, Sir Martin Rees (2003), gives humanity 50-50 odds on surviving the 21st century; philosopher Nick Bostrom argues that it would be “misguided” to assume that the probability of extinction is less than 25%; and philosopher John Leslie (1996) assigns a 30% probability to extinction during the next five centuries. The “Stern Review” for the U.K. Treasury (2006) assumes that the probability of human extinction during the next century is 10%. And some explanations of the “Fermi Paradox” imply a high probability (close to 100%) of extinction among technological civilizations (Pisani, 2006).4 Estimating the probabilities of unprecedented events is subjective, so we should treat these numbers skeptically. Still, even if the probability of extinction is several orders lower, because the stakes are high, it could be wise to invest in extinction countermeasures.

#### Prefer the DA—The sheer magnitude of extinction justifies deliberation of policies to prevent it

Matheny, ‘7 [Jason G. Matheny, Department of Health Policy and Management, Bloomberg one might begin to address these problems. School of Public Health, Johns Hopkins University ,“Reducing the Risk of Human Extinction,” Risk Analysis, 27:5]

We may be poorly equipped to recognize or plan for extinction risks (Yudkowsky, 2007). We may not be good at grasping the significance of very large numbers (catastrophic outcomes) or very small numbers (probabilities) over large timeframes. We struggle with estimating the probabilities of rare or unprece- dented events (Kunreuther et al., 2001). Policymakers may not plan far beyond current political administra- tions and rarely do risk assessments value the exis- tence of future generations.18 We may unjustifiably discount the value of future lives. Finally, extinction risks are market failures where an individual enjoys no perceptible benefit from his or her investment in risk reduction. Human survival may thus be a good requiring deliberate policies to protect. It might be feared that consideration of extinc- tion risks would lead to a reductio ad absurdum: we ought to invest all our resources in asteroid defense or nuclear disarmament, instead of AIDS, pollution, world hunger, or other problems we face today. On the contrary, programs that create a healthy and con- tent global population are likely to reduce the probability of global war or catastrophic terrorism. They should thus be seen as an essential part of a portfolio of risk-reducing projects. Discussing the risks of “nuclear winter,” Carl Sagan (1983) wrote: Some have argued that the difference between the deaths of several hundred million people in a nuclear war (as has been thought until recently to be a reasonable upper limit) and the death of every person on Earth (as now seems possible) is only a matter of one order of magnitude. For me, the difference is considerably greater. Restricting our attention only to those who die as a consequence of the war conceals its full impact. If we are required to calibrate extinction in numerical terms, I would be sure to include the number of people in future generations who would not be born. A nuclear war imperils all of our descendants, for as long as there will be humans. Even if the population remains static, with an average lifetime of the order of 100 years, over a typical time period for the biological evolution of a successful species (roughly ten million years), we are talking about some 500 trillion people yet to come. By this criterion, the stakes are one million times greater for extinction than for the more modest nuclear wars that kill “only” hundreds of millions of people. There are many other possible measures of the potential loss—including culture and science, the evo- lutionary history of the planet, and the significance of the lives of all of our ancestors who contributed to the future of their descendants. Extinction is the undoing of the human enterprise. In a similar vein, the philosopher Derek Parfit (1984) wrote: I believe that if we destroy mankind, as we now can, this outcome will be much worse than most people think. Compare three outcomes: 1. Peace 2. A nuclear war that kills 99% of the world’s existing population 3. A nuclear war that kills 100% 2 would be worse than 1, and 3 would be worse than 2. Which is the greater of these two differences? Most people believe that the greater difference is between 1 and 2. I believe that the difference between 2 and 3 is very much greater . . . . The Earth will remain habitable for at least another billion years. Civilization began only a few thousand years ago. If we do not destroy mankind, these thousand years may be only a tiny fraction of the whole of civilized human history. The difference be- tween 2 and 3 may thus be the difference between this tiny fraction and all of the rest of this history. If we com- pare this possible history to a day, what has occurred so far is only a fraction of a second. Human extinction in the next few centuries could re- duce the number of future generations by thousands or more. We take extraordinary measures to protect some endangered species from extinction. It might be reasonable to take extraordinary measures to pro- tect humanity from the same.19 To decide whether this is so requires more discussion of the methodological problems mentioned here, as well as research on the extinction risks we face and the costs of mitigating them.20

## CP

#### Disclosing the legal basis and procedures for targeted killing policy enables public accountability and criticism---it’s the best middle ground that solves the excesses of drone warfare while preserving its beneficial clarification of the stakes of state violence

Brennan-Marquez 13

Kiel Brennan-Marquez 13, Visiting Human Rights Fellow at Yale Law School, 5/24/13, “A Progressive Defense of Drones,” <http://www.salon.com/2013/05/24/a_progressive_defense_of_drones/>

In this respect, drones represent a welcome shift of paradigm: they stand to clarify the moral stakes of state-sponsored violence by eliminating the dynamic of attachment that has traditionally accompanied it. By itself, of course, this proposition does not entail that drone strikes are preferable to traditional troop deployments. What it does entail, however, is that the benefits of moral clarity should be weighed, in practice, against the drawbacks of less circumspect decision-making. As much as drones are liable to desensitize leaders, making violence easier to employ, the outrage they produce is also likely to have a chilling effect in the other direction. Which way will this calculus ultimately run? We exercise an important threshold of control over this question. Whether the anesthetic effect of machine-induced violence will outstrip the sense of outrage that violence-by-machines provoke, or vice versa, is not a static political fact to which we must be resigned – it’s a hard issue for us to deliberate with care. One thing, however, is certain. Moral clarity in the face of drone strikes, as compared to troop deployments, is only politically worthwhile — indeed, only possible — insofar as members of the public are kept informed about when drone strikes are happening, and what damage they cause. Transparency is a precondition of outrage – and of accountability.¶ Importantly, this does not necessarily mean that information about drone strikes should be publicized, and subject to approval, before the fact. The question of ex ante oversight, which has begotten protracted debate in the popular media and academic circles alike, is an incredibly difficult one – as ever with respect to decisions that bear on national security. Many proposals have emerged, running the gamut from leaving the president and military leaders unfettered to make strategic decisions — as in traditional theaters of war — to full-blown judicial review of drone strikes. Sound arguments exist on both sides of this debate, and they are the usual arguments that tend to sprout up around wartime violence. Make leaders too accountable, one side laments, and their decisions will blow in the political wind, reflecting external pressures rather than national security interests. But grant leaders too much discretion, the other side rejoins, and the power they wield — the most tremendous power of all, over life and death — will transform from a means of protection into a wellspring of abuse.¶ I take no position in this debate – not because I don’t have my own view, which of course I do, but because part of my effort here is to disentangle the question of oversight beforehand from the question of transparency afterward. This distinction is not always drawn with care, and my claim about moral clarity is addressed toward the latter, not the former. To insist that information about drone strikes be made transparent to the public, ensuring that we have an opportunity to scrutinize it with the unrelenting moral clarity that violence-by-machines makes possible, does not depend on the existence of oversight beforehand. Nor is it undermined by the absence of such oversight. The two simply operate on different dimensions. Thus, even if we ultimately decide that it’s wise, for national security reasons, to insulate drone strikes from oversight by Congress, the judiciary or any other governmental body, we should still insist that information about drone strikes be made publicly available after the fact. In other words, regardless of our collective decision, whatever it ends up being, about whether to insulate drone strikes from review, there’s a different ideal of accountability — transparency — that simultaneously deserves our attention. Amid all the discussion of institutionalized oversight, we should not lose sight of what is, in the longer arc of our democracy, the most potent oversight of all: popular disapproval.¶ This defense of transparency may seem cold comfort, little as it does to ensure that any given drone strike will be executed with the rectitude demanded by instruments-of-death. Yet irresponsible decisions are perennially a risk during wartime, whether it’s machines or troops that carry out the violence. The problem of how to ensure that decisions in the interest of national security are made responsibly — whether the answer is prophylactic oversight, or precisely its absence — is a grave and timeless problem. It yields to no easy answer. And drones neither exacerbate nor attenuate its difficulty. The issue of transparency after the fact, by contrast, is much simpler. In fact, I would go so far as to call it an obvious issue. Transparency ought to exist. Period. Even if there are good reasons to prohibit the American people — or their institutional representatives: legislators and judges — from vetoing individual drone strikes, we nevertheless have a right to know what is happening, once it has happened, and to decide for ourselves whether the results are acceptable.¶ It is in this respect, if only this respect, that drones are a welcome development in the history of war making. They make possible what to date has been, for all intents and purposes, a fantasy: the irruption of moral truth in a domain — the battlefield — traditionally overrun by mysticism and lies.

### AT Perm Do Both – Links to Terror DA

#### The counterplan aloneis key to effective drone operations---the permutation sends the signal that the rest of the government sides with critics of drones over the executive---that delegitimizes drones and collapses the program

Anderson 10

Kenneth Anderson 10, Professor of International Law at American University, 3/8/10, “Predators Over Pakistan,” The Weekly Standard, <http://www.weeklystandard.com/print/articles/predators-over-pakistan>

Obama deserves support and praise for this program from across the political spectrum. More than that, though, the drone strikes need an aggressive defense against increasingly vocal critics who are moving to create around drone warfare a narrative of American wickedness and cowardice and of CIA perfidy. ¶ Here the administration has dropped the ball. It has so far failed to provide a robust affirmation of the propositions that underwrite Predator drone warfare. Namely: ¶ n Targeted killings of terrorists, including by Predators and even when the targets are American citizens, are a lawful practice; ¶ n Use of force is justified against terrorists anywhere they set up safe havens, including in states that cannot or will not prevent them; ¶ n These operations may be covert—and they are as justifiable when the CIA is tasked to carry them out secretly as when the military does so in open armed conflict. ¶ n All of the above fall within the traditional American legal view of “self-defense” in international law, and “vital national security interests” in U.S. domestic law. ¶ There are good reasons for Republicans and centrist Democrats to make common cause in defending these propositions. On the one hand, they should want to aggressively protect the administration against its external critics—the domestic and international left—who are eager to prosecute Americans for their actions in the war on terror. They should also want to make clear that in defending drone strikes, they are defending the American (and not just the Obama) legal and strategic position. Moreover, it will be the American view of domestic and international law for future administrations, Democratic and Republican. ¶ At the same time, congressional Republicans and centrist Democrats need to put Obama’s senior legal officials on the record and invite them to defend their own administration, defend it to the full extent that the Obama administration’s actions require. Which is to say, Congress needs to hear publicly from senior administration lawyers and officials who might be personally less-than-enthused about targeted killings of terrorists and not eager to endorse them publicly, or to do so only with hedged and narrow legal rationales from which they can later walk away. ¶ Consider, for instance, the diffidence of Harold Koh, the legal adviser of the Department of State. In an informal public discussion with his predecessor, John Bellinger, aired on C-SPAN on February 17, he was asked about drones and targeted killings and declined to say that the practice was lawful. (Granted, it was in an unscripted setting, which cannot be taken as anyone’s last word and on which it would be unfair to place too much weight.) All he said was that if he concluded that it was unlawful, he would, if he thought it appropriate, resign his position. He added that he remained at his post. The statement falls far short of the defense one might hope for from such a high-ranking administration lawyer. More than a year into the new administration, that ought surely to strike the general counsels of the CIA, the Pentagon, the Director of National Intelligence, the NSC, and other agencies directly conducting these activities as somewhat less than reassuring. ¶ In fact, the administration’s top lawyers should offer a public legal defense of its policies, and congressional Republicans and Democrats should insist on such a defense. This is partly to protect the full use-of-force tools of national security for future administrations, by affirming the traditional U.S. view of their legality. But it is also to protect and reassure the personnel of the CIA, NSC, and intelligence and military agencies who carry out these policies that they are not just effective but lawful policies of the U.S. government and will be publicly defended as such by their superiors. ¶ Even as the Obama administration increasingly relies on Predator strikes for its counterterrorism strategy, the international legal basis of drone warfare (more precisely, its perceived international legal legitimacy) is eroding from under the administration’s feet—largely through the U.S. government’s inattention and unwillingness to defend its legal grounds, and require its own senior lawyers to step up and defend it as a matter of law, legal policy, and legal diplomacy. On the one hand, the president takes credit for the policy—as frankly he should—as taking the fight to the enemy. His vice president positively beams with pride over the administration’s flock of Predator goslings. On the other hand, the Obama administration appears remarkably sanguine about the campaign gearing up in the “international law community” aimed at undermining the legal basis of targeted killing as well as its broad political legitimacy, and ultimately at stigmatizing the use of Predators as both illegal and a coward’s weapon. ¶ Stigmatizing the technology and the practice of targeted killing is only half of it, though. The other half is to undermine the idea that the CIA may use force and has the authority to act covertly under orders from the president and disclosure to Congress, as long provided in U.S. law. The aim is to create a legal and political perception that, under international law, all uses of force must be overt—either as law enforcement or as armed conflict conducted by uniformed military. ¶ The Obama administration is complacent about this emerging “international soft law” campaign. But Obama’s opponents in this country, for their part, likewise underestimate and ignore the threat such a campaign presents to national security. That’s apparently because many on the right find it hard to imagine that mere congeries of NGOs, academics, activists, U.N. officials, and their allies could ever overcome “hard” American national security interests, particularly when covered by the magic of the Obama administration. Both liberal and conservative national security hands, looking at the long history of accepted lawfulness of targeted killings under American law, think, “Come on, there’s obvious sense to this, legal and political. These arguments in domestic and international law have long been settled, at least as far as the U.S. government is concerned.” But if there’s a sense to it, there’s a sensibility as well, one that goes to the overall political and legal “legitimacy” of the practice within a vague, diaphanous, but quite real thing called “global public opinion,” the which is woven and spun by the interlocking international “soft law” community and global media. ¶ It’s a mistake to remain oblivious to either the sense or the sensibility. Outside of government, the oblivious include hard-realist conservatives. Inside government, some important political-legal actors are struggling impressively both to overcome bureaucratic inertia and get in front of this issue, and to overcome factions within government unpersuaded by, if not overtly opposed to, this program—particularly as conducted by the CIA. Those actors deserve political support from congressional Republicans and Democrats. Because obliviousness to the sensibility of lawfulness and legitimacy—well, we should all know better by now. Does anyone still believe that the international legal-media-academic-NGO-international organization-global opinion complex cannot set terms of debate over targeted killing or covert action? Or that it cannot overcome “hard” American security interests? Or that this is merely another fringe advocacy campaign of no real consequence, whether in the United States, or abroad in Europe, or at the United Nations?¶ The Obama administration assumes that it uniquely sets the terms of legal legitimacy and has the final word on political sensibility. This is not so—certainly not on this issue. The international soft-law campaign looks to the long-term if necessary, and will seek the political death of targeted killings, Predator drones, and their progeny, and even perhaps to CIA covert action, by a hundred thousand tiny paper cuts. The campaign has already moved to the media. Starting with Jane Mayer’s narrative of Predator drone targeted killing in the New Yorker last October, and followed by many imitators, the ideological framework of the story has shifted. In the space of a year—Obama’s year, no less—it has moved from Candidate Obama’s brave articulation of a bold new strategy for attacking terrorists to the NGOs’ preferred narrative of a cowardly, secretive American CIA dealing collateral damage from the skies. Here’s the thumbnail version of drone warfare, as portrayed in the media.

## Terror DA

### 2NC Overview

#### Literally turns the entire aff - Congress will give Obama unfettered power in the event of an emergency

Brooks 13

(Rosa Brooks, “Mission Creep in the War on Terror” March 14, 2013, <http://www.foreignpolicy.com/articles/2013/03/14/mission_creep_in_the_war_on_terror>, KB)

AUMF or no AUMF, if the United States finds credible evidence of an imminent and grave terrorist attack -- of the 9/11 variety -- no one's going to give the president a hard time if he kills the bad guys before they have a chance to attack us. And trust me: If the president has solid evidence of such an impending attack, it won't matter if the terrorists are an al Qaeda offshoot or a rogue group of Canadian girl scouts.¶ And if, despite our best efforts at prevention, another serious terrorist attack occurs in the future, Congress will undoubtedly be quick to give the president any additional authorities he needs -- with the same speed with which Congress passed its 2001 authorization to use force.¶ In the end, it's not that complicated. If we can't shoehorn drone strikes against every "associate of an associate" of al Qaeda into the 2001 AUMF, we should stop trying to stretch or change the law. Instead, we should scale back the targeted killings.¶ It's past time for a serious overhaul of U.S. counterterrorism strategy. This needs to include a rigorous cost-benefit analysis of U.S. drone strikes, one that takes into account issues both of domestic legality and international legitimacy, and evaluates the impact of targeted killings on regional stability, terrorist recruiting, extremist sentiment, and the future behavior of powerful states such as Russia and China. If we undertake such a rigorous cost-benefit analysis, I suspect we'll come to see scaling back drone strikes less as an inconvenience than as a strategic necessity -- and we may come to a new appreciation of counterterrorism measures that don't involve missiles raining from the sky.¶ This doesn't mean we should never use armed drones -- drones, like any other weapons-delivery mechanism, will at times be justifiable and useful. But it does mean we should rediscover a long-standing American tradition: reserving the use of exceptional authorities for rare and exceptional circumstances.

#### Status quo target vetting is carefully calibrated to avoid every aff impact in balance with CT--- there’s only a risk that restrictions destroy it

McNeal 13

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

Target vetting is the process by which the government integrates the opinions of subject matter experts from throughout the intelligence community.180 The United States has developed a formal voting process which allows members of agencies from across the government to comment on the validity of the target intelligence and any concerns related to targeting an individual. At a minimum, the vetting considers the following factors: target identification, significance, collateral damage estimates, location issues, impact on the enemy, environmental concerns, and intelligence gain/loss concerns.181 An important part of the analysis also includes assessing the impact of not conducting operations against the target.182 Vetting occurs at multiple points in the kill-list creation process, as targets are progressively refined within particular agencies and at interagency meetings.¶ A validation step follows the vetting step. It is intended to ensure that all proposed targets meet the objectives and criteria outlined in strategic guidance.183 The term strategic is a reference to national level objectives—the assessment is not just whether the strike will succeed tactically (i.e. will it eliminate the targeted individual) but also whether it advances broader national policy goals.184 Accordingly, at this stage there is also a reassessment of whether the killing will comport with domestic legal authorities such as the AUMF or a particular covert action finding.185 At this stage, participants will also resolve whether the agency that will be tasked with the strike has the authority to do so.186 Individuals participating at this stage analyze the mix of military, political, diplomatic, informational, and economic consequences that flow from killing an individual. Other questions addressed at this stage are whether killing an individual will comply with the law of armed conflict, and rules of engagement (including theater specific rules of engagement). Further bolstering the evidence that these are the key questions that the U.S. government asks is the clearly articulated target validation considerations found in military doctrine (and there is little evidence to suggest they are not considered in current operations). Some of the questions asked are:¶ • Is attacking the target lawful? What are the law of war and rules of engagement considerations?¶ • Does the target contribute to the adversary's capability and will to wage war?¶ • Is the target (still) operational? Is it (still) a viable element of a target system? Where is the target located?¶ • Will striking the target arouse political or cultural “sensitivities”?¶ • How will striking the target affect public opinion? (Enemy, friendly, and neutral)?¶ • What is the relative potential for collateral damage or collateral effects, to include casualties?¶ • What psychological impact will operations against the target have on the adversary, friendly forces, or multinational partners?¶ • What would be the impact of not conducting operations against the target?187¶ As the preceding criteria highlight, many of the concerns that critics say should be weighed in the targeted killing process are considered prior to nominating a target for inclusion on a kill-list.188 For example, bureaucrats in the kill-list development process will weigh whether striking a particular individual will improve world standing and whether the strike is worth it in terms of weakening the adversary's power.189 They will analyze the possibility that a strike will adversely affect diplomatic relations, and they will consider whether there would be an intelligence loss that outweighs the value of the target.190 During this process, the intelligence community may also make an estimate regarding the likely success of achieving objectives (e.g. degraded enemy leadership, diminished capacity to conduct certain types of attacks, etc.) associated with the strike. Importantly, they will also consider the risk of blowback (e.g. creating more terrorists as a result of the killing).191

#### The link threshold’s as low as possible---internal executive standards are already as stringent as they can be without compromising mission effectiveness

McNeal 13

Gregory McNeal 13, Associate Professor of Law, Pepperdine University, 3/5/13, “Targeted Killing and Accountability,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819583>

In Part I we discussed the broad legal and policy determinations that lead to the creation of kill-lists, in Part II we narrowed our focus to the bureaucratic and political vetting of those lists. Now the article turns to the legal and policy considerations that inform the kinetic implementation of the targeted killing policy. When it comes time to eliminate a person on the kill-list, the United States has developed an extensive pre-execution set of policies, doctrine and practices designed to ensure that a target is in fact the person on the kill-list. Similarly, once that target is correctly identified, an elaborate process exists for estimating and mitigating the incidental harm to nearby civilians and civilian objects (so called collateral damage) that might flow from attacking the kill-list target. Discussing the mixture of law and policy applicable to the execution of a targeted killing is critical because in most contemporary operations the policy guidelines, special instructions, and rules of engagement are so restrictive that legal issues will rarely be the determinative factor in a strike.225 Rather, policy instruments will often prohibit attacks against persons that would clearly qualify as lawful targets under the law of armed conflict, and those instructions will place such a low threshold for acceptable collateral damage that attacks are usually prohibited before an operation could ever inflict “excessive” harm to civilians.226 As will be discussed in the end of this Part, where policy instruments differ as to strike authority or “acceptable collateral damage” (e.g strikes in Pakistan versus Afghanistan) we see a difference in the number of reported civilian casualties per strike, suggesting that policy instruments can have a significant impact on the conduct of targeted killings.

#### Distraction - change in drone policy kills anti-terror efforts

Carafano 13

(James, VP for Defense and Foreign Policy Studies at Heritage Foundation, http://www.heritage.org/research/commentary/2013/2/drone-of-battle)

Drone strikes and other covert operations clearly serve a military purpose: defending the U.S. against real, legitimate threats of armed violence . Yet , the president's drone wars raise some serious concerns. They have become this administration's primary means for battling transnational terrorism - and they are inadequate.¶ Al Qaeda is not simply about attacking the U.S. That is just a means to an end. The terrorist organization is part of a global Islamist insurgency, dedicated to seizing power and territory and ruling in a manner that is contrary to the vital national interests of this nation . It will rule without humanity or prudence, bringing war and crushing freedom wherever its shadow can spread .¶ So even though we are preventing them from attacking our homeland, it doesn't mean we are winning. Al Qaeda and its affiliates are making progress on other fronts - in the Caucuses, the Middle East, North Africa and South Asia .¶ Further, just killing its leadership won't stop al Qaeda. This organization is a human web. Killing a few nodes in the web - just like cutting a few strands in a real web - won't take it down. ¶ Worrying about the legality of drone wars is distracting concern from what Washington really ought to be worried about: the very real possibility that it may be losing the larger war against radical Islamism.

### 2NC Solve Terror

#### Prefer our evidence---critics are wrong---drones are highly effective at counter-terror, and don’t cause high civilian casualties or blowback

Young 12

Alex Young 13, Associate Staff, Harvard International Review, 2/25/13, “A Defense of Drones,” Harvard International Review, <http://hir.harvard.edu/a-defense-of-drones>

The War on Terror is no longer a traditional conflict. The diffuse, decentralized nature of terrorist organizations had already made this an unconventional war; now, the use of unmanned aircraft has added another non-traditional layer. Conventional military strategies have failed in Iraq and Afghanistan: the United States has, in many cases, stopped sending people into combat, opting instead for airstrikes by unmanned aerial vehicles. Over the past decade, US military and intelligence agencies have expanded their use of unmanned Predator and Reaper drones; these robotic aircraft are generally used to carry out targeted strikes against known members of terrorist groups. US reliance on drones in Afghanistan, Pakistan, Yemen, and other countries has changed the nature of the war on terror.¶ This strategy is not without controversy. The Obama administration’s heavy use of unmanned drones in the War on Terror has come under fire from a variety of opponents, including human rights groups, think tanks, and even foreign governments. Critics claim that drone strikes cause civilian casualties, incorrectly target only the most prominent leaders of terrorist groups, and create backlash against the US. To hear some tell it, the use of drones exacerbates, rather than solves, the problem of terrorism.¶ The reality is not so bleak: drones are very good at what they do. Unmanned attacks are highly effective when it comes to eliminating specific members of terrorist organizations, disrupting terrorist networks without creating too much collateral damage. Their effectiveness makes drone strikes a vital part of US counterterrorism strategy.¶ Predator and Reaper drones are not the indiscriminate civilian-killers that some make them out to be: strikes are targeted and selective. This has become increasingly true as drone technology has improved, and as the military has learned how best to use them. A confluence of factors has made drone strikes much better at eliminating enemy militants while avoiding civilians: drones now carry warheads that produce smaller blast radiuses, and the missiles carrying those warheads are guided using laser, millimeter-wave, and infrared seekers. The result has been less destructive drone strikes that reach their intended target more reliably. A number of non-technological shifts have also made drones a more useful tool: Peter Bergen, a national security analyst for CNN, summarized on July 13th, 2012 that more careful oversight, a deeper network of local informants, and better coordination between the US and Pakistani intelligence communities have also contributed to better accuracy. Data gathered by the Long War Journal indicates that the civilian casualty rate for 2012 and the beginning of 2013 is only 4.5 percent. Even Pakistani Major General Ghayur Mehmood acknowledges that, “most of the targets [of drone strikes] are hard-core militants.” Imprecise drone strikes that cause many civilian casualties are now a thing of the past. This improved accuracy may also help to mitigate anti-American sentiment that stems from civilian casualties.

## T

#### They justify restrictions on Executive ability to withhold state secrets about military plane crashes

**ACLU 13**

[https://www.aclu.org/national-security/background-state-secrets-privilege, mg]

Although the state secrets privilege has existed in some form since the early 19th century, its modern use, and the rules governing its invocation, derive from the landmark Supreme Court case United States v. Reynolds, 345 U.S. 1 (1953**). In Reynolds**, the widows of three civilians who died in the crash of a military plane in Georgia filed a wrongful death action against the government. In response to their request for the accident report, **the government insisted that the report could not be disclosed because it contained information about secret military equipment that was being tested aboard the aircraft during the fatal flight.** When the accident report was finally declassified in 2004, it contained no details whatsoever about secret equipment. **The government’s true motivation in asserting the state secrets privilege was to cover up its own negligence**. While the Supreme Court upheld the use of the privilege in Reynolds, it did not dismiss the lawsuit. Instead the Court recognized the potential for abuse of the privilege, and placed restrictions on its use to ensure the power would not be “lightly invoked.”

#### They justify restrictions on Executive-ordered kidnappings and rendition which adds an entire topic area

**ACLU 13**

[https://www.aclu.org/national-security/background-state-secrets-privilege, mg]

Last year, **in the ACLU’s case El-Masri v. Tenet, which challenges the illegal kidnapping of Khaled El-Masri,** a German national, the U.S. District Court for the Eastern District of Virginia accepted the CIA’s invocation of the state secrets privilege to dismiss El-Masri’s entire lawsuit. **The CIA claimed that the simple fact of holding proceedings would jeopardize state secrets**, notwithstanding the vast amount of information that has already been made public about El-Masri and the United States’ “extraordinary rendition” program. While it might be appropriate to protect classified evidence during the course of the case, the ACLU called the dismissal at such an early stage “unjust, unnecessary, and improper.” An appeal is pending.¶ ¶ **Unless the courts reject the government’s overbroad claims of privilege, the government will have every incentive to continue invoking “state secrets” as a shield against embarrassing disclosures.** ¶

#### *It’s arbitrary and undermines research*

*Resnick 1*

*Evan Resnick 1, assistant professor of political science – Yeshiva University, “Defining Engagement,” Journal of International Affairs, Vol. 54, Iss. 2*

*In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.*

#### Broad interpretations cause unmanageable research burdens

Taylor 5

Taylor III, now a JD from William and Mary, 2005¶ (Jarred, “Searching for a More Perfect Union,” <https://docs.google.com/document/d/1ypiOXjRVPWzNxDsFVJ0S1n-QfIGtXzp7Y59meEwd-bE/edit?hl=en_US>)

**It would take even the most seasoned scholar years of research and hundreds of pages to** adequately **analyze** the development of **any presidential power** over the course of American history; **war power is** certainly **no exception**. Every President since George Washington has interpreted the martial prerogatives of his office in different ways, and most have set some sort of precedent for succeeding officeholders. Nevertheless, some of the major changes in executive military power bear highlighting.

#### Limits literally double the educational benefit of debate

Arrington 2009

(Rebecca, UVA Today, “Study Finds That Students Benefit From Depth, Rather Than Breadth, in High School Science Courses” March 4)

A recent study reports that high school students who study fewer science topics, but study them in greater depth, have an advantage in college science classes over their peers who study more topics and spend less time on each. Robert Tai, associate professor at the University of Virginia's Curry School of Education, worked with Marc S. Schwartz of the University of Texas at Arlington and Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics to conduct the study and produce the report. "Depth Versus Breadth: How Content Coverage in High School Courses Relates to Later Success in College Science Coursework" relates the amount of content covered on a particular topic in high school classes with students' performance in college-level science classes. The study will appear in the July 2009 print edition of Science Education and is currently available as an online pre-print from the journal. "As a former high school teacher, I always worried about whether it was better to teach less in greater depth or more with no real depth. This study offers evidence that teaching fewer topics in greater depth is a better way to prepare students for success in college science," Tai said. "These results are based on the performance of thousands of college science students from across the United States." The 8,310 students in the study were enrolled in introductory biology, chemistry or physics in randomly selected four-year colleges and universities. Those who spent one month or more studying one major topic in-depth in high school earned higher grades in college science than their peers who studied more topics in the same period of time. The study revealed that students in courses that focused on mastering a particular topic were impacted twice as much as those in courses that touched on every major topic

#### Turns their offense—limits are vital to creativity and innovation

Intrator 10

David Intrator (President of The Creative Organization) October 21, 2010 “Thinking Inside the Box,” http://www.trainingmag.com/article/thinking-inside-box

One of the most pernicious myths about creativity, one that seriously inhibits creative thinking and innovation, is the belief that one needs to “think outside the box.” As someone who has worked for decades as a professional creative, nothing could be further from the truth. This a is view shared by the vast majority of creatives, expressed famously by the modernist designer Charles Eames when he wrote, “Design depends largely upon constraints.” The myth of thinking outside the box stems from a fundamental misconception of what creativity is, and what it’s not. In the popular imagination, creativity is something weird and wacky. The creative process is magical, or divinely inspired. But, in fact, creativity is not about divine inspiration or magic. It’s about problem-solving, and by definition a problem is a constraint, a limit, a box. One of the best illustrations of this is the work of photographers. They create by excluding the great mass what’s before them, choosing a small frame in which to work. Within that tiny frame, literally a box, they uncover relationships and establish priorities. What makes creative problem-solving uniquely challenging is that you, as the creator, are the one defining the problem. You’re the one choosing the frame. And you alone determine what’s an effective solution. This can be quite demanding, both intellectually and emotionally. Intellectually, you are required to establish limits, set priorities, and cull patterns and relationships from a great deal of material, much of it fragmentary. More often than not, this is the material you generated during brainstorming sessions. At the end of these sessions, you’re usually left with a big mess of ideas, half-ideas, vague notions, and the like. Now, chances are you’ve had a great time making your mess. You might have gone off-site, enjoyed a “brainstorming camp,” played a number of warm-up games. You feel artistic and empowered. But to be truly creative, you have to clean up your mess, organizing those fragments into something real, something useful, something that actually works. That’s the hard part. It takes a lot of energy, time, and willpower to make sense of the mess you’ve just generated. It also can be emotionally difficult. You’ll need to throw out many ideas you originally thought were great, ideas you’ve become attached to, because they simply don’t fit into the rules you’re creating as you build your box.