# 1NC

### 1st Off

#### Obama is aggressively pushing completion of a farm bill --- it’s his top priority and passage is possible

Dreiling, 11/15 (Larry, 11/15/2013, “Branches jockey for farm bill positions,” http://www.hpj.com/archives/2013/nov13/nov18/1112FarmBillLDsr.cfm))

While the House-Senate farm bill discussions continue, the White House staked out its position in an address in New Orleans. Senate Agriculture Committee Chairwoman Debbie Stabenow signaled Nov. 5 that face-to-face talks among the top four farm bill negotiators will resume this week, and she is upbeat enough to hope for a deal by Thanksgiving. “I hope so. It’s doable,” the Michigan Democrat said to the Capitol Hill publication Politico. “I feel confident the four of us can come together,” Stabenow said, speaking of herself, Sen. Thad Cochran, R-MS; Rep. Collin Peterson, D-MN; and House Agriculture Committee Chairman Frank Lucas, R-OK. While the House remained on recess through Veterans Day, Peterson’s office confirmed that he was flying back to Washington early in the week, and Stabenow told Politico that all four would meet. “The savings of the farm bill will certainly be part of the solution to the budget,” said Stabenow, who is also part of those House-Senate negotiations. But she and Lucas have both said repeatedly that the text of any farm bill will be theirs to write. “The issue is who writes the farm bill,” Stabenow said. “We’ll write the farm bill.” For all her optimism, the chairwoman gave little ground herself on the contentious issue of savings on nutrition programs. The Senate farm bill proposes about $4 billion in 10-year savings, compared with the $39 billion in reductions assumed in the revised nutrition title approved by the House in September. It’s a huge gap, but Stabenow insisted that negotiators can’t ignore previously enacted food stamp cuts that went into effect Nov. 1. Those reductions will reduce spending by as much as $11 billion over the period used by the Congressional Budget Office to score the farm bill. Typically, these are not counted since the savings result from prior actions by Congress. But Stabenow said they cannot be ignored. “I am counting them,” she told Politco. “That’s real and if (the House’s) objective is to cut help for people, that started last Friday. I do count that. In fairness, that needs to be counted.” In the same vein, she showed no interest in a compromise narrowing the range of income and asset tests now used by states in judging eligibility for food stamps. “At this point, what I’m interested in doing is focusing on fraud and abuse—ways to tighten up the system to make it more accountable,” she said. “I’m not interested in taking food away from folks who have had an economic disaster, just as I’m not interested in cutting crop insurance for farmers who have had economic disasters.” Meanwhile, President Barack Obama delivered a speech at the Port of New Orleans Nov. 8, saying that passing a farm bill is the No. 1 way that Democrats and Republicans can increase jobs in the economy. Helping American businesses grow, creating more jobs—these are not Democratic or Republican priorities, Obama said. “They are priorities that everybody, regardless of party, should be able to get behind. And that’s why, in addition to working with Congress to grow our exports, I’ve put forward additional ideas where I believe Democrats and Republicans can join together to make progress right now,” Obama said. That’s when Obama launched into his pitch on the farm bill. “Congress needs to pass a farm bill that helps rural communities grow and protects vulnerable Americans,” Obama said. “For decades, Congress found a way to compromise and pass farm bills without fuss. For some reason, now Congress can’t even get that done. “Now, this is not something that just benefits farmers. Ports like this one depend on all the products coming down the Mississippi. So let’s do the right thing, pass a farm bill. We can start selling more products. That’s more business for this port. And that means more jobs right here.” Obama listed immigration reform and a responsible budget as his second and third priorities.

#### Obama’s involvement key to broker a deal on SNAP --- it will be the last crucial item in negotiations

Hagstrom, 11/3 --- founder and executive editor of The Hagstrom Report (11/3/2013, Jerry, “Compromise Is the Key to a New Farm Bill; It is time for House and Senate conferees to stop listening to the lobbyists and finish the bill,” <http://www.nationaljournal.com/outside-influences/compromise-is-the-key-to-a-new-farm-bill-20131103>))

"Can we do it? Can we still compromise?" a prominent agricultural lobbyist who has worked on several farm bills asked last week as the House and Senate conference committee on the next farm bill was about to meet for the first time. It was a good question because the bill's overlong development period has given all the interests so many opportunities to state their positions that they seem more dug in than in past bill-writing efforts. But at the conference last week there were signals that the conferees think the time to act has come. The 41 conferees did use the last and possibly only public opportunity to make the case for their views. But almost all the members abided by the directive from the conference leader, House Agriculture Committee Chairman Frank Lucas, R-Okla., to keep their remarks to three minutes. And even the most ideological of them on the right and left were polite and stressed that they were there to compromise and finish a bill. It's unclear how quickly the conferees will proceed to the big issues because the House has left town until Nov. 12, the day after Veterans Day. There has been talk of a meeting on the bill between President Obama and the four conference committee principals—Lucas, House Agriculture ranking member Collin Peterson, D-Minn., Senate Agriculture Chairwoman Debbie Stabenow, D-Mich., and Senate Agriculture ranking member Thad Cochran, R-Miss. Peterson said he has mixed feelings about such a meeting because support from Obama might cause some House members to oppose the bill. But Peterson noted that the "one place" on which Obama could be "helpful" would be resolving the size of the cut to food stamps, formally known as the Supplemental Nutrition Assistance Program. Lucas has said that it is likely to be the last item settled and that Obama, House Speaker John Boehner, R-Ohio, and Senate Majority Leader Harry Reid, D-Nev., will have to make the call on that. The official White House position on food stamps is to make no cuts, while the Senate-passed farm bill would cut the program by $4 billion over 10 years and the House-passed bill would cut it by $39 billion over the same period.

#### Plan is a perceived loss for Obama that saps his capital

Loomis, 7 --- Department of Government at Georgetown

(3/2/2007, Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, “Leveraging legitimacy in the crafting of U.S. foreign policy,” pg 35-36, <http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/7/9/4/8/pages179487/p179487-36.php>)

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, ¶ In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. ¶ Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. ¶ The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.¶ This brief review of the literature suggests how legitimacy norms enhance presidential influence in ways that structural powers cannot explain. Correspondingly, increased executive power improves the prospects for policy success. As a variety of cases indicate—from Woodrow Wilson’s failure to generate domestic support for the League of Nations to public pressure that is changing the current course of U.S. involvement in Iraq—the effective execution of foreign policy depends on public support. Public support turns on perceptions of policy legitimacy. As a result, policymakers—starting with the president—pay close attention to the receptivity that U.S. policy has with the domestic public. In this way, normative influences infiltrate policy-making processes and affect the character of policy decisions.

#### Key to rural economies, secure food supply and healthy forest --- disagreement over food assistance will make or break the bill

Denver Post, 11/10 (The Post Editorials, 11/10/2013, “Here's why the farm bill matters,” Factiva))

The farm bill has the rap of being a public policy snooze, a broad measure that gets boiled down to a debate over subsidies to wealthy farmers and food stamp handouts to the poor.

Agriculture Secretary Tom Vilsack reminded the Denver Post editorial board last week that it's important to see beyond those flashpoints. In Colorado, for example, the bill has vital implications for agricultural production, conservation and struggling rural economies. Vilsack is right, of course, but it's also true that trench warfare over food assistance is the major point of disagreement between GOP and Democratic lawmakers, who will meet this week in committee to seek compromise. They need to find consensus, and it shouldn't be that hard.Although the Supplemental Nutrition Assistance Program (SNAP) is a crucial safety net, there are ways to trim it back somewhat more than the $4 billion over 10 years that Democrats have proposed. Slicing SNAP by $39 billion, however, which some Republicans seek, is both unfair and unrealistic. One area ripe for reform involves tightening standards for states that waive work requirement rules for able-bodied adults. There are circumstances in which a waiver is justified, in an economy where there are few jobs to be found. As Vilsack told us, when a plant closes in a small town and 1,000 people lose work, it may be unrealistic to expect those people to find jobs. But waivers shouldn't go on forever if the economy improves, and tightening the rules could result in savings. Republicans have been alarmed by the growth of food assistance spending in recent years. But that trend isn't likely to be permanent even with the present law. While the Congressional Budget Office projects small increases in SNAP recipients through 2014, that number will then decline as the economy improves. A steady course that includes continued support for the needy and moderate cuts to slow government spending should be the goal. Reaching consensus on the food assistance piece will allow the other initiatives in the farm bill to go forward, including partnerships to create marketable products from beetle-killed trees and job development in rural areas.The farm bill may not be the sexiest piece of legislation, but it works in important ways to secure the nation's food supply, protect the health of federal forests and strengthen rural economies. Federal lawmakers need to move off their entrenched positions and pass the legislation.

#### Rural economy key to the overall economy—studies prove

Rocha 13—Electric Coop Today. (Victoria, Strong Rural Economy, Strong America, February, <http://www.ect.coop/industry/trends-reports-analyses/usda-rural-america-growth-report/52264>, chm)

Investments in rural communities are vital to the nation’s overall economic health and, if overlooked, could represent a missed opportunity for significant growth, according to a new report. In fact, given the right mix of economic policies, predominantly rural regions have, on average, enjoyed faster growth than “intermediate” or urban areas, according to the report by the Organization for Economic Cooperation Development on behalf of the U.S. Department of Agriculture. Promoting Growth in All Regions uses 23 case studies of specific rural regions and fresh analyses to show that “less developed regions are often important drivers of growth.” Researchers at OECD, an international economic think tank, found that during 1995-2007, rural regions accounted for 43 percent of aggregate growth in the areas they studied. “The barriers to growth regions must overcome vary widely,” researchers found, noting that policymakers should consider a “place-based approach” rather than “‘one-size-fits-all’ economy-wide policies” to foster rural economies. In the United States, “many regions are leading the way in developing such place-based strategies,” by harnessing local assets and infrastructure, wrote Doug O’Brien, deputy undersecretary for USDA Rural Development, on a department blog. In Iowa, Maine, Vermont, Tennessee and Oregon, for example, policymakers identified renewable energy generation as moneymakers and with USDA help linked that potential to already existing industries. O’Brien cited “manufacturing to wind turbine production in Iowa and the forest products industry to woody biomass in Maine,” as examples. “Missed growth opportunities are also missed revenue opportunities for governments facing budgetary shortfalls and rising deficits,” O’Brien added.

**Growth solves war**

**Royal 10** – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense, 2010, “Economic Integration, Economic Signaling and the Problem of Economic Crises,” in Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215  
Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defense behavior of interdependent states. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level, Pollins (2008) advances Modelski and Thompson’s (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crisis could usher in a redistribution of relative power (see also Gilpin, 1981) that leads to uncertainty about power balances, increasing the risk of miscalculation (Fearon, 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner, 1999). Seperately, Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level, Copeland’s (1996, 2000) theory of trade expectations suggests that ‘future expectation of trade’ is a significant variable in understanding economic conditions and security behavious of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations, However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crisis could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states. Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favor. Moreover, the presence of a recession tends to amplify the extent to which international and external conflict self-reinforce each other. (Blomberg & Hess, 2002. P. 89) Economic decline has been linked with an increase in the likelihood of terrorism (Blomberg, Hess, & Weerapana, 2004), which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. ‘Diversionary theory’ suggests that, when facing unpopularity arising from economic decline, sitting governments have increase incentives to fabricate external military conflicts to create a ‘rally around the flag’ effect. Wang (1996), DeRouen (1995), and Blomberg, Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999), and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics are greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force. In summary, recent economic scholarship positively correlated economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict at systemic, dyadic and national levels. This implied connection between integration, crisis and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

### 2nd Off

#### The executive branch of the United States federal government should issue an executive order that

#### publishes clear guidelines for targeting to be carried out by nonpoliticians and make assassination truly a last resort,

#### stipulates that an outside court review the evidence before placing Americans on a kill list

#### releases the legal briefs upon which the targeted killing was based

#### and implement these through self-binding mechanisms including, but not limited to releasing legal briefs upon which targeted killings were based, independent commissions to review and ensure compliance with the order and transparency measures that gives journalists access to White House decisionmaking. The executive should also sign a directive that consolidates lead executive authority for planning and conducting non-battlefield targeted killings under the Department of Defense.

#### Obama himself decides drone targeting --- publishing guidelines creates transparency

NYT, 12 (Editorial, 5/30/2012, “Too Much Power for a President,” <http://www.nytimes.com/2012/05/31/opinion/too-much-power-for-a-president.html?_r=0)>)

It has been clear for years that the Obama administration believes the shadow war on terrorism gives it the power to choose targets for assassination, including Americans, without any oversight. On Tuesday, The New York Times revealed who was actually making the final decision on the biggest killings and drone strikes: President Obama himself. And that is very troubling. ¶ Mr. Obama has demonstrated that he can be thoughtful and farsighted, but, like all occupants of the Oval Office, he is a politician, subject to the pressures of re-election. No one in that position should be able to unilaterally order the killing of American citizens or foreigners located far from a battlefield — depriving Americans of their due-process rights — without the consent of someone outside his political inner circle.¶ How can the world know whether the targets chosen by this president or his successors are truly dangerous terrorists and not just people with the wrong associations? (It is clear, for instance, that many of those rounded up after the Sept. 11, 2001, attacks weren’t terrorists.) How can the world know whether this president or a successor truly pursued all methods short of assassination, or instead — to avoid a political charge of weakness — built up a tough-sounding list of kills?¶ It is too easy to say that this is a natural power of a commander in chief. The United States cannot be in a perpetual war on terror that allows lethal force against anyone, anywhere, for any perceived threat. That power is too great, and too easily abused, as those who lived through the George W. Bush administration will remember.¶ Mr. Obama, who campaigned against some of those abuses in 2008, should remember. But the Times article, written by Jo Becker and Scott Shane, depicts him as personally choosing every target, approving every major drone strike in Yemen and Somalia and the riskiest ones in Pakistan, assisted only by his own aides and a group of national security operatives. Mr. Obama relies primarily on his counterterrorism adviser, John Brennan.¶ To his credit, Mr. Obama believes he should take moral responsibility for these decisions, and he has read the just-war theories of Augustine and Thomas Aquinas.¶ The Times article points out, however, that the Defense Department is currently killing suspects in Yemen without knowing their names, using criteria that have never been made public. The administration is counting all military-age males killed by drone fire as combatants without knowing that for certain, assuming they are up to no good if they are in the area. That has allowed Mr. Brennan to claim an extraordinarily low civilian death rate that smells more of expediency than morality.¶ In a recent speech, Mr. Brennan said the administration chooses only those who pose a real threat, not simply because they are members of Al Qaeda, and prefers to capture suspects alive. Those assurances are hardly binding, and even under Mr. Obama, scores of suspects have been killed but only one taken into American custody. The precedents now being set will be carried on by successors who may have far lower standards. Without written guidelines, they can be freely reinterpreted.¶ A unilateral campaign of death is untenable. To provide real assurance, President Obama should publish clear guidelines for targeting to be carried out by nonpoliticians, making assassination truly a last resort, and allow an outside court to review the evidence before placing Americans on a kill list. And it should release the legal briefs upon which the targeted killing was based.

### 3rd Off

#### Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms

Posner 9/3, Law Prof at University of Chicago

(Eric, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

#### **Statutory restriction of Presidential War Powers makes warfighting impossible**

Yoo 12 – prof of law @ UC Berkeley

(John, War Powers Belong to the President, ABA Journal February 2012 Issue, http://www.abajournal.com/magazine/article/war\_powers\_belong\_to\_the\_president) <we do not endorse the ableist language used in this card, but have left it in to preserve the author’s intent. we apologize for the author’s inappropriate use of the word “paralyze”>

The framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action—sometimes under pressured or even emergency circumstances—that is best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. Congress is too large and unwieldy to take the swift and decisive action required in wartime. Our framers replaced the Articles of Confederation, which had failed in the management of foreign relations because they had no single executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress’ loose, decentralized structure would paralyze American policy while foreign threats grow. Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure. Congress’ track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate’s rejection of the Treaty of Versailles at the end of World War I. Congress’ isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president’s foreign adventurism, the real threat to our national security may come from inaction and isolationism. Many point to the Vietnam War as an example of the faults of the “imperial presidency.” Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War and the passage of the ineffectual War Powers Resolution. Congress passed the resolution in 1973 over President Richard Nixon’s veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it. Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare war.” But these observers read the 18th century constitutional text through a modern lens by interpreting “declare war” to mean “start war.” When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain—where the framers got the idea of the declare-war power—fought numerous major conflicts but declared war only once beforehand. Our Constitution sets out specific procedures for passing laws, appointing officers and making treaties. There are none for waging war because the framers expected the president and Congress to struggle over war through the national political process. In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent danger as will not admit of delay.” This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive. Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. Only Congress can raise the military, which gives it the power to block, delay or modify war plans. Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military. Congress’ check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse. If Congress feels it has been misled in authorizing war, or it disagrees with the president’s decisions, all it need do is cut off funds, either all at once or gradually. It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action. Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation. The framers expected Congress’ power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war. Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’ funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### The plan spills over to broader Congressional decisionmaking

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Legacy Chains

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

#### Executive control of warmaking is key to avoiding nuclear war and terrorism

Li 2009 - J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University (Zheyao, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE)

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modern state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demis

e. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### 4th Off

#### Text: The United States Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes.

#### Damages actions solve the aff while preserving executive flexibility

Vladek 2013 - professor of law and the associate dean for scholarship at American University Washington College of Law (February 10, Steve, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…” <http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/>)

At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I actually think virtually all of these concerns could be mitigated. For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. Re: adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief (more on that below), it’s hard to see any pure Article III problem with such a suit for retrospective relief. As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what Tennessee v. Garner contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, it demonstrates that judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances–albeit not always ideally–the government’s interest in secrecy with the detainee’s ability to contest the evidence against him. Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures, so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. More to the point, it should also follow that courts would be far more able to review the questions that will necessary be at the core of these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight–removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc. And in addition to the substantive questions, it will also be much easier for courts to review the government’s own procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go along way toward proving the lawfulness vel non of an individual strike…

#### Congressional granting of ex post review solves norms and recruitment

Jonathan Hafetz 13, Associate Prof of Law at Seton Hall University Law School, former Senior Staff Attorney at the ACLU, served on legal teams in multiple Supreme Court cases regarding national security, “Reviewing Drones,” 3/8/2013, <http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones_b_2815671.html>

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes.¶ Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large.¶ For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings.¶ Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat.¶ Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge.¶ Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.¶ Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed.

### Prolif

#### Long timeframe – no one wants to invest in the near term

Zenko 2013 (Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No. 65, January 2013, “U.S. Drone Strike Policies”, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎)

Based on current trends, it is unlikely that most states will have, within ten years, the complete system architecture required to carry out distant drone strikes that would be harmful to U.S. national interests. However, those candidates able to obtain this technology will most likely be states with the financial resources to purchase or the industrial base to manufacture tactical short-range armed drones with limited firepower that lack the precision of U.S. laser-guided munitions; the intelligence collection and military command-and-control capabilities needed to deploy drones via line-of-sight communications; and crossborder adversaries who currently face attacks or the threat of attacks by manned aircraft, such as Israel into Lebanon, Egypt, or Syria; Russia into Georgia or Azerbaijan; Turkey into Iraq; and Saudi Arabia into Yemen. When compared to distant U.S. drone strikes, these contingencies do not require system-wide infrastructure and host-state support. Given the costs to conduct manned-aircraft strikes with minimal threat to pilots, it is questionable whether states will undertake the significant investment required for armed drones in the near term.

#### Hostile states won’t follow norms and there’s no enforcement mechanism – they just constrain US flexibility

Lerner 2013 - Vice President for Government Relations at the Center for Security Policy (March 25, Ben, “Judging ‘Drones’ From Afar” <http://spectator.org/archives/2013/03/25/judging-drones-from-afar/1>)

Whatever the potential motivations for trying to codify international rules for using UAVs, such a move would be ill advised. While in theory, every nation that signs onto a treaty governing UAVs will be bound by its requirements, it is unlikely to play out this way in practice. It strains credulity to assume that China, Russia, Iran, and other non-democratic actors will not selectively apply (at best) such rules to themselves while using them as a cudgel with which to bash their rivals and score political points. The United States and its democratic allies, meanwhile, are more likely to adhere to the commitments for which they signed up. The net result: we are boxed in as far as our own self-defense, while other nations with less regard for the rule of law go use their UAVs to take out whomever, whenever, contorting said “rules” as they see fit. One need only look at China’s manipulation of the Law of the Sea Treaty to justify its vast territorial claims at the expense of its neighbors to see how this often plays out. And who would enforce the treaty’s rules — a third party tribunal? Would it be an apparatus of the United Nations, the same U.N. that assures us that it is not coming after the United States or its allies specifically, even as its investigation takes on as its “immediate focus” UAV operations recently conducted by those countries? The United States already conducts warfare under the norms of centuries of practice of customary international law in areas such as military necessity and proportionality, as well as the norms to which we committed ourselves when we became party to the 1949 Geneva Conventions and the United Nations Charter. These same rules can adequately cover the use of UAVs in the international context. But if the United States were to create or agree to a separate international regime for UAVs, we would subject ourselves to new, politicized “rules” that would needlessly hold back countries that already use UAVs responsibly, while empowering those that do not. America is in the midst of an important conversation about UAVs. President Obama should state unambiguously that we will not invite others to dictate its outcome.

#### No impact to global drone prolif and it’s impossible to solve

Alejandro Sueldo 12, J.D. candidate and Dean’s Fellow at the University of California, Berkeley, School of Law and a PhD candidate at the Department of War Studies at King’s College London of the University of London, 4/11/12, “The coming drone arms race,” <http://dyn.politico.com/printstory.cfm?uuid=70B6B991-ECA7-4E5F-BE80-FD8F8A1B5E90>

**Of particular concern are the legal and policy challenges posed if other states imitate the U.S. targeted killing program**. For Washington is setting a precedent whereby states can send drones, often over sovereign borders, to kill foreigners or their own citizens, who are deemed threats. ¶ Other states may also follow Washington’s example and develop their own criteria to define imminent threats and use drones to counter them. ¶ Washington will find it increasingly difficult to protest other nations’ targeted killing programs — particularly when the United States has helped define this lethal practice. U.S. opposition will prove especially difficult when other states justify targeted killings as a matter of domestic affairs. ¶ Should enough states follow the U.S. example, the practice of preemptively targeting and killing suspected threats may develop into customary international law. Such a norm, however, which requires consistent state practice arising out of a sense of legal obligation, now looks unlikely. While targeted killing policies are arguably executed by states citing a legal obligation to protect themselves from imminent threats, **widespread state practice is still uncommon. ¶ But international law does not forbid drones**. And **given the lack of an international regime to control drones, state and non-state actors are free to determine their future use. ¶ This lack of international consensus about how to control drones stems from a serious contradiction in incentives. Though drones pose grave challenges, they** also **offer states lethal and non-lethal capabilities that are of great appeal. Because the potential for drone technology is virtually limitless, states are now unwilling to control how drones evolve.**

#### U.S. drone use doesn’t set a precedent, restraint doesn’t solve it, and norms don’t apply to drones at all in the first place

Amitai Etzioni 13, professor of international relations at George Washington University, March/April 2013, “The Great Drone Debate,” Military Review, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage. ¶ Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, **China has taken the lead in the development of anti-ship missiles and** seemingly **cyber weapons as well.** One must keep in mind that **the international environment is a hostile one. Countries**—and especially non-state actors— most of the time **do not play by some set of self constraining rules**. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—**if the United States refrains from employing that technology**. ¶ I **am not arguing that there are no natural norms that restrain behavior**. There are certainly some that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). **However drones are but one step**—following bombers and missiles—**in the development of distant battleﬁeld technologies.** (Robotic soldiers—or future ﬁghting machines— are next in line**). In such circumstances, the role of norms is much more limited.**

#### The link and impact can’t both be true – if counties model the US use of drones will be extremely limited

Anderson 2013 - senior fellow in Governance Studies at Brookings and a professor of law at American University (May 24, Kenneth, “The Case for Drones” <http://www.realclearpolitics.com/articles/2013/05/24/the_case_for_drones_118548.html>)

This critique often leads, however, to the further objection that the American use of drones is essentially laying the groundwork for others to do the same. Steve Coll wrote in the New Yorker: “America’s drone campaign is also creating an ominous global precedent. Ten years or less from now, China will likely be able to field armed drones. How might its Politburo apply Obama’s doctrines to Tibetan activists holding meetings in Nepal?” The United States, it is claimed, is arrogantly exerting its momentary technological advantage to do what it likes. It will be sorry when other states follow suit. But the United States does not use drones in this fashion and has claimed no special status for drones. The U.S. government uses drone warfare in a far more limited way, legally and morally, and entirely within the bounds of international law. The problem with China (or Russia) using drones is that they might not use them in the same way as the United States. The drone itself is a tool. How it is used and against whom—these are moral questions. If China behaves malignantly, drones will not be responsible. Its leaders will be.

#### China won’t use drones to resolve territorial disputes – fears backlash and creating a precedent

**Erickson and Strange 13** [Andrew Erickson, associate professor at the Naval War College and Associate in Research at Harvard University's Fairbank Centre, and Austin Strange, researcher at the Naval War College's China Maritime Studies Institute and graduate student at Zhejiang University, 5-29-13 China has drones. Now how will it use them? Foreign Affairs, McClatchy-Tribune, 29 May 2013, http://www.nationmultimedia.com/opinion/China-has-drones-Now-how-will-it-use-them-30207095.html, da 8-3-13]

Drones, able to dispatch death remotely, without human eyes on their targets or a pilot's life at stake, make people uncomfortable - even when they belong to democratic governments that presumably have some limits on using them for ill. (On May 23, in a major speech, US President Barack Obama laid out what some of those limits are.) An even more alarming prospect is that unmanned aircraft will be acquired and deployed by authoritarian regimes, with fewer checks on their use of lethal force.¶ Those worried about exactly that tend to point their fingers at China. In March, after details emerged that China had considered taking out a drug trafficker in Myanmar with a drone strike, a CNN blog post warned, "Today, it's Myanmar. Tomorrow, it could very well be some other place in Asia or beyond." Around the same time, a National Journal article entitled "When the Whole World Has Drones" teased out some of the consequences of Beijing's drone programme, asking, "What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea?"¶ Indeed, the time to fret about when China and other authoritarian countries will acquire drones is over: they have them. The question now is when and how they will use them. But as with its other, less exotic military capabilities, Beijing has cleared only a technological hurdle - and its behaviour will continue to be constrained by politics.¶ China has been developing a drone capacity for over half a century, starting with its reverse engineering of Soviet Lavochkin La-17C target drones that it had received from Moscow in the late 1950s. Today, Beijing's opacity makes it difficult to gauge the exact scale of the programme, but according to Ian Easton, an analyst at the Project 2049 Institute, an American think-tank devoted to Asia-Pacific security matters, by 2011 China's air force alone had over 280 combat drones. In other words, its fleet of unmanned aerial vehicles is already bigger and more sophisticated than all but the United States'; in this relatively new field Beijing is less of a newcomer and more of a fast follower. And the force will only become more effective: the Lijian ("sharp sword" in Chinese), a combat drone in the final stages of development, will make China one of the very few states that have or are building a stealth drone capacity.¶ This impressive arsenal may tempt China to pull the trigger. The fact that a Chinese official acknowledged that Beijing had considered using drones to eliminate the Myanmar drug trafficker, Naw Kham, makes clear that it would not be out of the question for China to launch a drone strike in a security operation against a non-state actor. Meanwhile, as China's territorial disputes with its neighbours have escalated, there is a chance that Beijing would introduce unmanned aircraft, especially since India, the Philippines and Vietnam distantly trail China in drone funding and capacity, and would find it difficult to compete. Beijing is already using drones to photograph the Senkaku/Diaoyu islands it disputes with Japan, as the retired Chinese major-general Peng Guangqian revealed earlier this year, and to keep an eye on movements near the North Korean border.¶ Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry.

#### China’s courts defer to the CCP – means they won’t have a comparable method even after modelling

#### No SCS war – in no one’s rational interest

Ba, Professor IR Delaware, ’11 (Alice, December, “Staking Claims and Making Waves in the South China Sea: How Troubled Are the Waters?” Contemporary Southeast Asia: A Journal of International and Strategic Affairs, Vol 33 No 3, Project Muse)

Conclusion To varying degrees, authors in this issue generally agree that conflict can be avoided and that there are spaces for potential compromise. Fravel, for example, cites historical precedents where China has been willing to make territorial compromises in support of larger strategic and political objectives; he also sees opportunities in China’s exclusion of the Spratlys from its drawing of its baselines.52 Goldstein draws attention to the concern for moderation and compromise from China’s senior leadership, as well as key naval higher-ups; Thayer highlights the mechanisms and interests that exist to counter more emotional and violent reactions. Womack, along with Fravel and Thayer, sees China and ASEAN states’ 2011 agreement and attention to implementing the DoC as a significant recognition by states of the need to reduce tensions, especially as it involved critical and symbolic concessions, especially on the parts of China and Vietnam. Much like the original DoC, the 2011 agreement and [End Page 285] states’ ability to overcome their stalemate expressed a common interest to ratchet down the dispute from where it was in 2009 and 2010. While acknowledging the need for “bolder” measures, Womack sees the DoC as both “reasonable” and “promising” as a framework that moreover can provide the basis for “a more robust Spratly Management Authority”. Most of all, authors mostly see the prospects for major conflict being mitigated by an unfavourable cost-benefit calculus where the costs of conflict and militarization will be high and the benefits far from clear. Certainly, this is true of Southeast Asia’s weaker states, but it is also true of the major powers — China and the United States. For China, for example, Womack is strongest in seeing militarization of the dispute as contrary to China’s “quarter century of broad and peaceful development” and reform-era policies and diplomacy that have served it very well. A South China Sea conflict scenario would also likely have ripple effects along China’s periphery among other neighbouring and lesser states that are most vulnerable to Chinese power. Given the attention and priority that has been given to stabilizing China’s periphery these past two decades, it hardly seems in China’s interest to militarize the South China Sea in such a way that invites more active interventions from others in the seas around it, especially given its own reliance on those waters to get goods in and out. At minimum, militarization would divert resources and attention from both domestic and other global objectives, with active defence of claims requiring “diplomatic and military efforts of the utmost magnitude”.53 Womack is blunt in his argument that the Spratlys, in the larger scheme of Chinese objectives, is insignificant: “[T]here is no threshold of military superiority that would make it beneficial for China to establish its control over all the Spratlys at the cost of strategic hostility with Southeast Asia.” By one argument, China has the most to lose with the militarization of the South China Sea dispute. As for the United States, Goldstein is most direct in considering the risks and costs of US involvement. Much as is the case in his discussion on US assessments of China, Goldstein’s concern is that too much is assumed of US power and attraction, and too much weight has already been placed on a dispute that is not that important to US larger interests or global balance of power. As already noted, Washington’s diplomatic intervention has already been at cost to US-China relations in other areas. US-China tensions also [End Page 286] potentially push away Southeast Asian states who fear great power conflict more than they want the US to balance China.54 Most of all, Goldstein warns the United States against “competing for the sake of competing” and to guard against over-involving itself in a conflict that risks US credibility, if not lives (as it did forty years ago in Vietnam).

### Pakistan

#### **Drone use doesn’t cause resentment – alt causes.**

Etzioni 13, Professor of International Relations @ George Washington University

(Aimtai Etzioni, senior adviser to the Carter administration, “Everything Libertarians and Liberals Get Wrong About Drones”, The Atlantic, 4/30/13, http://www.theatlantic.com/politics/archive/2013/04/everything-libertarians-and-liberals-get-wrong-about-drones/275356/)

Some critics worry that relying upon drones will engender significant resentment and potentially aid terrorist recruitment efforts. However, those who are inclined towards terrorism already loathe the United States for a thousand other reasons. Pew surveys show that anti-Americanism thrives in regions where there have been no drone strikes (for example, in Egypt) and, where drones have been active, high levels of anti-Americanism predated their arrival (for instance in Pakistan).

#### No impact to Pakistani public opinion

Khory 2013 – professor at Mount Holyoke (March 27, Kavita, “The Worrying Future of Drone Strikes” <https://www.mtholyoke.edu/media/worrying-future-drone-strikes>)

QA: What has been the Pakistani government’s response to these drone strikes, and does it publicly or privately support the drone strikes? KK: The precise role of Pakistan’s government and military in the drone strikes remains unclear. For the most part, the government denies any operational knowledge of the attacks. Government officials have challenged the legality of drone strikes in Pakistan, which have risen significantly under the Obama administration, and complain that these strikes are carried out without their consent. Yet, as we learned from documents released by WikiLeaks in 2010, senior Pakistani officials tacitly approved drone strikes while publicly condemning them. Pakistanis have shared intelligence with American counterparts, and until 2011 the CIA carried out drone missions from an airbase in Pakistan. QA: Is the Pakistani government under pressure from within Pakistan to end drone strikes on its soil? KK: Despite growing anger and protests against drone strikes, public opinion is not likely to influence policy in any meaningful way. Drone strikes are a sticking point in current United States-Pakistan relations, but policy toward them is shaped by a variety of factors. For example, the Pakistani government’s support for drone strikes declined significantly after the killing of Osama bin Laden and the deaths of 24 Pakistani soldiers in a botched NATO airstrike. The government’s ambiguous posture and contradictory policy on drones is frustrating for many Pakistanis, but few are calling for a radical restructuring of Pakistan-U.S. relations.

#### Drones are key to Pakistani stability – status quo solves

Curtis 2013 (7/16, Lisa, Senior Researcher, Heritage Foundation, “Pakistan Makes Drones Necessary,” <http://www.heritage.org/research/commentary/2013/7/pakistan-makes-drones-necessary>)

One of the central campaign platforms of newly elected Pakistani prime minister Nawaz Sharif was a promise to curb the use of U.S. drones on Pakistani territory. Indeed there has been a sharp reduction in the number of drone attacks conducted in Pakistan this year compared to the last three.¶ But until Islamabad cracks down more aggressively on groups attacking U.S. interests in the region and beyond, drones will remain an essential tool for fighting global terrorism. Numbering over three hundred and fifty since 2004, drone strikes in Pakistan have killed more than two dozen Al Qaeda operatives and hundreds of militants targeting U.S. and coalition forces.¶ President Obama made clear in his May 23 speech at the National Defense University that Washington would continue to use drones in Pakistan’s tribal border areas to support stabilization efforts in neighboring Afghanistan, even as it seeks to increase transparency and tighten targeting of the drone program in the future. Obama also defended the use of drones from a legal and moral standpoint, noting that by preemptively striking at terrorists, many innocent lives had been saved.¶ The most compelling evidence of the efficacy of the drone program came from Osama bin Laden himself, who shortly before his death contemplated moving Al Qaeda operatives from Pakistan into forested areas of Afghanistan in an attempt to escape the drones’ reach, according to Peter Bergen, renowned author of Manhunt: The Ten-Year Search for Bin Laden from 9/11 to Abbottabad.¶ How to Reduce the Need for Drones

#### No escalation- crises will be resolved through negotiations

Alagappa 9, Distinguished Senior Fellow at the East-West Center, PhD in International Affairs from the Fletcher School of Law and Diplomacy, 2009 (Muthiah, “Nuclear Weapons Reinforce Security and Stability in 21st Century Asia”, Vol 4 No 1)

The stabilizing effect of nuclear weapons may be better illustrated in India-Pakistan relations, as the crises between these two countries during the 1999–2002 period are often cited as demonstrating nuclear weapon-induced instability. Rather than simply attribute these crises to the possession of nuclear weapons, a more accurate and useful reading would ground them in Pakistan’s deliberate policy to alter the status quo through military means on the premise that the risk of escalation to nuclear war would deter India from responding with full-scale conventional retaliation; and in India’s response, employing compellence and coercive diplomacy strategies. In other words, particular goals and strategies rather than nuclear weapons per se precipitated the crises. Further, the outcomes of these two crises revealed the limited utility of nuclear weapons in bringing about even a minor change in the territorial status quo and highlighted the grave risks associated with offensive strategies. Recognition of these limits and the grave consequences in part contributed to the two countries’ subsequent efforts to engage in a comprehensive dialogue to settle the many disputes between them. The crises also led to bilateral understandings and measures to avoid unintended hostilities. Though it is too soon to take a long view, it is possible to argue that, like the Cuban missile crisis in 1962, the 1999 and 2001–02 crises between India and Pakistan mark a watershed in their strategic relations: the danger of nuclear war shifted their focus to avoiding a major war and to finding a negotiated settlement to bilateral problems. Large-scale military deployments along the common border, Pakistan-supported insurgent activities in India, and cross-border terrorism continue; and the two countries regularly conduct large-scale military exercises and test nuclear-capable missiles that have each other’s entire territory within range. Despite these activities, the situation has become relatively less tense; stability with the ability to absorb shocks even like that created by the November 26terrorist attack in Mumbai has begun to characterize the bilateral relationship.

#### Nuclear deterrence is stable between India and Pakistan

Ganguly, poli sci prof- Indiana, 08 (Sumit, Nuclear Stability in South Asia, Intl Security Vol 33, No 2, Fall)

The Robustness of Nuclear Deterrence As the outcomes of the 1999 and 2001–02 crises show, nuclear deterrence is robust in South Asia. Both crises were contained at levels considerably short of full-scale war. That said, as Paul Kapur has argued, Pakistan's acquisition of a nuclear weapons capability may well have emboldened its leadership, secure in the belief that India had no good options to respond. India, in turn, has been grappling with an effort to forge a new military doctrine and strategy to enable it to respond to Pakistani needling while containing the possibilities of conflict escalation, especially to the nuclear level.78 Whether Indian military planners [End Page 65] can fashion such a calibrated strategy to cope with Pakistani probes remains an open question. This article's analysis of the 1999 and 2001–02 crises does suggest, however, that nuclear deterrence in South Asia is far from parlous, contrary to what the critics have suggested. Three specific forms of evidence can be adduced to argue the case for the strength of nuclear deterrence. First, there is a serious problem of conflation in the arguments of both Hoyt and Kapur. Undeniably, Pakistan's willingness to provoke India has increased commensurate with its steady acquisition of a nuclear arsenal. This period from the late 1980s to the late 1990s, however, also coincided with two parallel developments that equipped Pakistan with the motives, opportunities, and means to meddle in India's internal affairs—particularly in Jammu and Kashmir. The most important change that occurred was the end of the conflict with the Soviet Union, which freed up military resources for use in a new jihad in Kashmir. This jihad, in turn, was made possible by the emergence of an indigenous uprising within the state as a result of Indian political malfeasance.79 Once the jihadis were organized, trained, armed, and unleashed, it is far from clear whether Pakistan could control the behavior and actions of every resulting jihadist organization.80 Consequently, although the number of attacks on India did multiply during the 1990s, it is difficult to establish a firm causal connection between the growth of Pakistani boldness and its gradual acquisition of a full-fledged nuclear weapons capability. Second, India did respond with considerable force once its military planners realized the full scope and extent of the intrusions across the Line of Control. Despite the vigor of this response, India did exhibit restraint. For example, Indian pilots were under strict instructions not to cross the Line of Control in pursuit of their bombing objectives.81 They adhered to these guidelines even though they left them more vulnerable to Pakistani ground fire.82 The Indian military exercised such restraint to avoid provoking Pakistani fears of a wider attack into Pakistan-controlled Kashmir and then into Pakistan itself. Indian restraint was also evident at another level. During the last war in [End Page 66] Kashmir in 1965, within a week of its onset, the Indian Army horizontally escalated with an attack into Pakistani Punjab. In fact, in the Punjab, Indian forces successfully breached the international border and reached the outskirts of the regional capital, Lahore. The Indian military resorted to this strategy under conditions that were not especially propitious for the country. Prime Minister Jawaharlal Nehru, India's first prime minister, had died in late 1964. His successor, Lal Bahadur Shastri, was a relatively unknown politician of uncertain stature and standing, and the Indian military was still recovering from the trauma of the 1962 border war with the People's Republic of China.83 Finally, because of its role in the Cold War, the Pakistani military was armed with more sophisticated, U.S.-supplied weaponry, including the F-86 Sabre and the F-104 Starfighter aircraft. India, on the other hand, had few supersonic aircraft in its inventory, barring a small number of Soviet-supplied MiG-21s and the indigenously built HF-24.84 Furthermore, the Indian military remained concerned that China might open a second front along the Himalayan border. Such concerns were not entirely chimerical, because a Sino-Pakistani entente was under way. Despite these limitations, the Indian political leadership responded to Pakistani aggression with vigor and granted the Indian military the necessary authority to expand the scope of the war. In marked contrast to the politico-military context of 1965, in 1999 India had a self-confident (if belligerent) political leadership and a substantially more powerful military apparatus. Moreover, the country had overcome most of its Nehruvian inhibitions about the use of force to resolve disputes.85 Furthermore, unlike in 1965, India had at least two reserve strike corps in the Punjab in a state of military readiness and poised to attack across the border if given the political nod.86 Despite these significant differences and advantages, the Indian political leadership chose to scrupulously limit the scope of the conflict to the Kargil region. As K. Subrahmanyam, a prominent Indian defense analyst and political commentator, wrote in 1993: [End Page 67] The awareness on both sides of a nuclear capability that can enable either country to assemble nuclear weapons at short notice induces mutual caution. This caution is already evident on the part of India. In 1965, when Pakistan carried out its "Operation Gibraltar" and sent in infiltrators, India sent its army across the cease-fire line to destroy the assembly points of the infiltrators. That escalated into a full-scale war. In 1990, when Pakistan once again carried out a massive infiltration of terrorists trained in Pakistan, India tried to deal with the problem on Indian territory and did not send its army into Pakistan-occupied Kashmir.87 Subrahmanyam's argument takes on additional significance in light of the overt acquisition of nuclear weapons by both India and Pakistan. Third, Sagan's assertion about the dominance of the Pakistani military in determining Pakistan's security policies is unquestionably accurate. With the possible exception of the Kargil conflict, however, it is far from clear that the Pakistani military has been the primary force in planning for and precipitating aggressive war against India. The first Kashmir war, without a doubt, had the explicit approval of Pakistan's civilian authorities.88 Similarly, there is ample evidence that the highly ambitious foreign minister, Zulfikar Ali Bhutto, goaded President Ayub Khan to undertake the 1965 war.89 Finally, once again Bhutto, as much as the Pakistani military dictator Yahya Khan, was complicit in provoking a war with India in 1971, following the outbreak of a civil war in East Pakistan.90

#### No impact to coup – military not aggressive

Ganguly, poli sci prof- Indiana, 08 (Sumit, Nuclear Stability in South Asia, Intl Security Vol 33, No 2, Fall)

Third, Sagan's assertion about the dominance of the Pakistani military in determining Pakistan's security policies is unquestionably accurate. With the possible exception of the Kargil conflict, however, it is far from clear that the Pakistani military has been the primary force in planning for and precipitating aggressive war against India. The first Kashmir war, without a doubt, had the explicit approval of Pakistan's civilian authorities.88 Similarly, there is ample evidence that the highly ambitious foreign minister, Zulfikar Ali Bhutto, goaded President Ayub Khan to undertake the 1965 war.89 Finally, once again Bhutto, as much as the Pakistani military dictator Yahya Khan, was complicit in provoking a war with India in 1971, following the outbreak of a civil war in East Pakistan.90 Consequently, even though deductive theories may suggest that military organizations are universally more prone to the use of force and the adoption of offensive military doctrines, an assessment of the empirical evidence from South Asia suggests a more complex reality. Even though the Pakistani military has been risk prone and intransigent toward India, the evidence does not support the proposition that the Pakistani military has been more war prone. Civilian decisionmakers have often played a critical role in urging the military to undertake aggressive actions. Furthermore, in the context of weak democratic [End Page 68] institutions and with politicians desirous of exploiting an existing culture of populist jingoism, civilian regimes, especially in Pakistan, have demonstrated a substantial propensity to resort to war.91

### Solvency

#### Either the plan does nothing or it jacks the state secrets privilege

Rosen 2011 - Professor of Law and Director, Center for Military Law and Policy, Texas Tech University School of Law (Richard D., “PART III: ARTICLE: DRONES AND THE U.S. COURTS” 37 Wm. Mitchell L. Rev. 5280)

Assuming a complaint survives the jurisdictional, justiciability, immunity, and other hurdles to lawsuits challenging U.S. drone policy, the state secrets doctrine is likely to bring the suit to a quick end. n93 Under the doctrine, the United States may prevent the disclosure of information in judicial proceedings if there is a reasonable danger of revealing military or state secrets. n94 Once the privilege is properly invoked and a court is satisfied that release would pose a reasonable danger to secrets of state, "even the most compelling necessity cannot overcome the claim of privilege." n95 Not only will the state secrets doctrine thwart plaintiffs from acquiring or introducing evidence vital to their case, n96 it could result in dismissal of the cases themselves. Under the doctrine, the courts will dismiss a case either because the very subject of the case involves state secrets, n97 or a case cannot proceed without the privileged evidence or presents an unnecessary risk of revealing [\*5293] protected secrets. n98 Employing drones as a weapons platform against terrorists and insurgents in an ongoing armed conflict implicates both the nation's military tactics and strategy as well as its delicate relations with friendly nations. n99 As such, lawsuits challenging the policy cannot be tried without access to and the possible disclosure of highly classified information relating to the means, methods, and circumstances under which drones are employed. VI. Conclusion The instinctive reaction of most lawyers to a party's unlawful actions is to turn to the courts for redress. Although the lawfulness of U.S. policy of attacking al Qaeda and Taliban leaders with drones is contentious, the controversy must be resolved through the political process and outside the courts.

#### Secrecy doctrine is key to national security – differential in expertise

Ellis 2006 – district judge (May 12, Tim, “EL-MASRI v. TENET” <http://www.leagle.com/decision/2006967437FSupp2d530_1914>)

How searching the judicial inquiry must be depends on the particular circumstances of the case, for it is well-settled that the depth of a court's inquiry increases relative to the adverse party's need for the information the government seeks to protect. Reynolds, 345 U.S. at 11, 73 S.Ct. 528; Sterling, 416 F.3d at 343. If the information is peripheral to the adverse party's claims, the court's inquiry need not be as searching as it must be in cases where the claimed state secrets are at the core of the suit. In those cases where the claimed state secrets are at the core of the suit and the operation of the privilege may defeat valid claims, courts must carefully scrutinize the assertion of the privilege lest it be used by the government to shield "material not strictly necessary to prevent injury to national security." Ellsberg, 709 F.2d at 58. But, in undertaking this inquiry, courts must also bear in mind the Executive Branch's preeminent authority over military and diplomatic matters and its greater expertise relative to the judicial branch in predicting the effect of a particular disclosure on national security.7 Accordingly, the judiciary must accept the executive branch's assertion of the privilege whenever its independent inquiry discloses a "reasonable danger that compulsion of the evidence

will expose military matters which, in the interest of national security, should not be divulged." Reynolds, 345 U.S. at 10, 73 S.Ct. 528 (emphasis added). Importantly, once the court is satisfied that any disclosure of the putative secrets "might have a deleterious effect on national security, the claim of the privilege will be accepted without requiring further disclosure.'" Id. (quoting Reynolds, 345 U.S. at 9, 73 S.Ct. 528).

#### **Drone courts fail – can’t consider all legal factors in time.**

Groves 13, Senior Research Fellow @ Heritage Foundation

(Steven Groves, Senior Research Fellow in the Margaret Thatcher Center for Freedom @ Heritage Foundation, J.D. from Ohio Northern University, BA in History, “Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad”, The Heritage Foundation, 4/10/13, http://www.heritage.org/research/reports/2013/04/drone-strikes-the-legality-of-us-targeting-terrorists-abroad)

Certain former Obama Administration officials, the editorial board of The New York Times, and at least one U.S. Senator have called for the establishment of a special oversight panel or court to review the Administration’s targeting determinations, particularly in instances in which a U.S. citizen is targeted.[49] Essentially, such a court would scrutinize the Administration’s targeting decisions, presumably including its decisions to place individuals on the “disposition matrix.” The court would apparently have the authority to overrule and nullify targeting decisions. The creation of such a court is ill advised and of doubtful constitutionality.¶ The proponents of a drone court apparently do not appreciate the potential unintended consequences of establishing such an authority. The idea is wrongheaded and raises more questions than it answers. For instance, could the drone court decide as a matter of law that a targeted strike is not justified because the United States is not engaged in an armed conflict with al-Qaeda?

Could the drone court rule that members of a force associated with al-Qaeda (e.g., AQAP) may not be targeted because AQAP was not directly involved in the September 11 attacks and therefore the strike is not authorized under the AUMF? The proposed drone court cannot avoid these fundamental questions since the justification for the targeted strikes is dependent on the answers to these questions.¶ Even if the proposed drone court attempts to eschew intervention into foundational questions such as the existence of an armed conflict, it still would not be in a position to rule on the “easy” questions involved in each and every drone strike. Does the target constitute an “imminent threat” to the United States? When civilian casualties may occur as a result of the strike, does the drone court have the authority to overrule the targeting decision as a violation of the principle of proportionality? Is the target an innocent civilian or a civilian “directly participating in hostilities”? Should U.S. forces attempt to capture the target before resorting to a drone strike? Is capture feasible? Any drone court, even if constituted with former military and intelligence officials, is ill suited to weigh all of the competing factors that go into a decision to target an al-Qaeda operative and make a timely decision, particularly when there is often only a short window of time to order a strike.¶ Regardless, creating a judicial or quasi-judicial review process will not ameliorate, much less resolve, objections to U.S. targeted killing practices. Critics will continue to demand more judicial process, including appeals from the proposed drone court, and additional transparency no matter what kind of forum is established to oversee targeting decisions.

#### **Federal courts fail – no jurisdiction, kills SOP, and no due process.**

Robertson 13, ex-judge for District Court of D.C.

(James Robertson, “Judges shouldn’t decide about drone strikes”, Washington Post, 2/15/13, http://articles.washingtonpost.com/2013-02-15/opinions/37117878\_1\_drone-strikes-justice-department-white-paper-federal-courts)

In the wake of the recent confirmation hearing on John Brennan’s nomination as CIA director, and the probably related “leak” of a Justice Department white paper on targeted killings, some politicians, pundits and professors have suggested that “kill lists,” drone strikes and targeting protocols be submitted for “independent judicial review” — essentially, that federal judges ought to be assigned the task of monitoring, mediating and approving the killer instincts of our government. This is a very bad idea.¶ U.S. judges have been hard-wired against rendering “advisory opinions” since 1793, when the first chief justice, John Jay, declined to answer George Washington’s legal questions about the status of a British ship that had been captured by the French and brought to an American port. To answer the president’s questions, Jay wrote, would violate “the lines of separation drawn by the Constitution between the three departments of the government.” Jay’s letter referred to Article II, Section 2 of the Constitution, which provides that the president “may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices” — a provision, Jay wrote, that “seems to have been purposely as well as expressly united to the executive departments.”¶ From that letter — itself an advisory opinion — has grown a complex but well-established and understood set of constraints on the federal courts: They are to decide only “cases” or “controversies” that are “justiciable” and “ripe” for decision. Federal courts rule on specific disputes between adversary parties. They do not make or approve policy; that job is reserved to Congress and the executive.¶ Nor do federal courts act ex parte — hearing one side only — or sit in a Star Chamber, like the co-opted judges of 16th-century England. The targets of a drone strike make no appearance before a judge; they have no notice of the charges against them; no lawyer; no chance to call witnesses or confront the evidence against them; no due process rights

. Their case is necessarily considered in absentia and in secret. An American judge cannot do American justice in such a case. If he did, his independence would be severely compromised.¶ But — say the politicians, pundits and professors — courts routinely rule on government requests for search warrants and, in the national security context, on requests for foreign intelligence surveillance. Why not requests for drone strikes? The answer is simple: A search warrant is not a death warrant.

#### **Courts fail – can’t micromanage tactical decisions.**

Rittgers 10, Legal Policy Analyst @ CATO

(David Rittgers, reserve judge advocate, served in Afghanistan as a special forces officer, Cato Institute, “Both Left and Right Are Wrong about Drones”, 2/25/10, http://www.cato.org/publications/commentary/both-left-right-are-wrong-about-drones)

Liberal critics should refrain from erroneously labeling drone strikes as "nonjudicial killings." Even the most controversial drone strikes—those that kill American citizens who have joined al Qaeda affiliates overseas—are permissible under the laws of war. Neither Congress nor the courts should micromanage tactical decisions such as whether the president can order soldiers to seize a particular hill or employ a certain weapon. Referring to drone strikes as "nonjudicial" implies that the courts should be given the ability to rule out specific drone attacks. Vetting these targets for accuracy of intelligence and minimization of collateral damage is essential, and the record continues to improve on that front.

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## CP

#### Kiyemba decisions undermined legitimacy of our commitment to the rule of law globally

Vaughn and Williams, Professors of Law, 13 [2013, Katherine L. Vaughns B.A. (Political Science), J.D., University of California at Berkeley. Professor of Law, University of Maryland Francis King Carey School of Law, and Heather L. Williams, B.A. (French), B.A. (Political Science), University of Rochester, J.D., cum laude, University of Maryland Francis King Carey School of Law, “OF CIVIL WRONGS AND RIGHTS: 1 KIYEMBA V. OBAMA AND THE MEANING OF FREEDOM, SEPARATION OF POWERS, AND THE RULE OF LAW TEN YEARS AFTER 9/11”, Asian American Law Journal, Vol. 20, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2148404]

In 2007, Ninth Circuit Judge A. Wallace Tashima observed that the rule of law—touted by the United States throughout the world since the end of World War II— has been “steadily undermined . . . since we began the so-called ‘War on Terror.’”185 “The American legal messenger,” Tashima notes, “has been regarded throughout the world as a trusted figure of goodwill, mainly by virtue of close identification with the message borne”—“that the rule of law is fundamental to a free, open, and pluralistic society,” that the United States represents “a government of laws and not of persons,” where “no one—not even the President—is above the law.”186 But, according to Tashima, the actions that the United States has “taken in the War on Terror, especially [in] our detention policies, have belied our commitment to the rule of law” and caused a “dramatic shift in world opinion,” so that the War on Terror has been greeted internationally with “increasing skepticism and even hostility.”187 Put differently, the United States has shot the messenger—and with it, goes the message, the commitment to the rule of law, and our international credibility.188 The primary assassin in this “assault on the role of law” is the argument “that the President is not bound by law—that he can flout the Constitution, treaties, and statutes of the United States as Commander-in-Chief during times of war.”189 Also wreaking havoc on the rule of law is the notion, described above, that the President’s actions in times of war are unreviewable, that the judiciary has no role to play in checking wartime policies. What is the likely reason for the executive to take such an approach as their legal defense, despite swearing, upon inauguration, to “preserve, protect[,] and defend the Constitution of the United States,”190 and despite constitutional directive that he “take Care that the Laws be faithfully executed”?191 Significantly, as Charles Fried and Gregory Fried observe, the oath of office does not mention defending national security.192 Rather, “the President’s duty is explicitly to the law, not [to] some vague goal beyond the law.”193 According to these authors, “the law is our defense against tyranny, the arbitrary imposition of one person’s will over all others, and against anarchy, the ungoverned conduct of many people’s wills.”194 If, as the executive has done since 9/11, “we cut down the laws to lay hold of our enemies,” where are we to “hide when the Devil turns round on us, armed with the power of the state?”195 As the Supreme Court so eloquently noted in Ex Parte Milligan,196 the Constitution “is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.”197 Central to this protection are the separation of powers, by which one branch of government is not permitted to go unchecked. Indeed, as Justice O’Connor stated in the Hamdi case, “[w]hatever power the United States Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake.”198 And even the executive’s war power “does not remove constitutional limitations,” including the separation of powers, “safeguarding essential liberties.”199 Perhaps the most likely reason, then, for the position taken by the Bush administration has its roots in an old adage from the Nixon administration. As history will recall, in May 1977, former President Richard M. Nixon famously told British interviewer David Frost that “when the President does it, that means that it is not illegal.”200 The Bush administration, taking a page out of Nixon’s book, used various tactics to effectively “dismantle constitutional checks and balances and to circumvent the rule of law.”201 In so doing, the administration took advantage of 9/11 to assert “the most staggering view of unlimited presidential power since Nixon’s assertion of imperial prerogatives.”202 The D.C. Circuit’s reinstated opinion in Kiyemba III is, as we have noted, governing. That opinion, adopting a view that the government had argued all along, recharacterizes the law pertaining to detainees at Guantanamo Bay as a matter of immigration—an area of law in which the sovereign prerogative on which is admitted and excluded from entry into the United States is virtually immune from judicial review.203 This is not, as we explain below, a matter of immigration; instead, it is a matter of the executive’s power to imprison and detain, as the Supreme Court stated in Boumediene.204 The Bush administration long adopted the position that judicial review of its detention policies would frustrate its war efforts and its Commander-in-Chief authority. However, as the Boumediene Court explained, “the exercise of [the executive’s Commander-in-Chief powers] is vindicated, not eroded, when [or, if] confirmed” by the judiciary.205 As the Milligan Court stated, the founding fathers “knew—the history of the world told them—the nation they were founding, be its existence short of long, would be involved in war.”206 How frequently or of what length, “human foresight could not tell.”207 But, the founders knew that “unlimited power, wherever lodged at such a time, was especially hazardous to freemen.”208 For this reason, “they secured the inheritance they had fought to maintain, by incorporating in a written constitution the safeguards which time had proved were essential to its preservation.”209 These safeguards cannot be disturbed by any one branch, unless the Constitution so provides—and with the checks authorized therein.210 Indeed, “[t]o hold [that] the political branches have the power to switch the Constitution on or off at will . . . would permit a striking anomaly in our tripartite system of government, leading to a regime in which Congress and the President, not [the courts] say ‘what the law is.’”211 “Our basic charter cannot be contracted away like this.”212 To the extent that it has been—through executive action, paired with judicial inaction—the rule of law is undermined. We can and we must do better—the Constitution, and those who drafted it, demand so.

#### The CP enhances discussion about institutional analysis of the topic

Barak-Erez, 9 --- Visiting Professor, Stanford Law

(Fall 2009, Daphne, American Journal of Comparative Law, “Terrorism Law between the Executive and Legislative Models,” 57 Am. J. Comp. L. 877))

I. Introduction: Two Models of Terrorism Law

Three executive orders promulgated by President Barack Obama in his first week in office focus on reforming anti-terrorism measures - the first establishes a task force for reviewing detention policy options, n1 the second addresses the closure of the Guantanamo Bay detention facilities, n2 and the third focuses on defining the rules of lawful interrogations. n3 All these orders are aimed at changing policies established by President George Bush, policies which were also based on presidential decisions, such as the military order concerning the detention of non-citizens suspected of terrorism, promulgated after September 11, 2001. n4 President Obama's reform is only one example that shows the role of the executive branch in the creation and shaping of anti-terrorism law. This involvement is not a matter of course. A fundamental question underlying anti-terrorism law is the choice between promulgating anti-terrorism measures through the executive branch and promoting laws which regulate them through the legislative branch. Each choice has its implications.

So far, the choice between executive-based and legislative-based anti-terrorism measures has not been at the core of the debate surrounding legal responses to terrorism. This debate has usually been devoted to the question of whether anti-terrorism law is compatible with human rights norms. Accordingly, it has paid relatively little attention to the institutional aspects of anti-terrorism law, with one exception - the ever-growing interest in the availability (or lack) of judicial review. Indeed, the focus on judicial review has been the subject of classical English precedents, such as Liversidge, n5 and of newer decisions of the U.S. Supreme Court in Rasul n6 and Boumediene. n7 Bruce Ackerman referred to this focus on judicial review as the "model of judicial-management." n8

This Article concentrates on the institutional aspects of anti-terrorism law. n9 More specifically, it evaluates the significance of the choice between promulgating anti-terrorism measures through the [\*879] executive as opposed to doing so through the legislative branch. These two options will be referred to as the executive model of terrorism law and the legislative model of terrorism law.

#### All debates over authority questions require an understanding of the separation of powers and how the branches interact --- it’s vital to topic education

Gaziano, 2001 (Todd, senior fellow in Legal Studies and Director of the Center for Legal Judicial Studies at the Heritage Foundation, 5 Texas Review of Law & Politics 267, Spring, lexis)

Any discussion of the proper scope of executive and congressional authority requires a basic understanding of this concept of the separation of powers. The constitutional separation of powers, therefore, informs all aspects of the debate over a President's proper authority to issue executive orders and proclamations. n11 It reinforces a President's right or [\*272] duty to issue a decree, order, or proclamation to carry out a particular power that truly is committed to his discretion by the Constitution or by a lawful statute passed by Congress. On the other hand, the constitutional separation of powers may restrict presidential power where the President attempts to issue an order regarding a matter that is expressly committed to another branch of government; it might even render presidential action void. Separation of powers principles alone, however, will not always yield a clear answer. For example, they may be indeterminate where the locus of power is unclear or ambiguous, or where two branches of government share power over a particular subject matter. n12

## Norms

#### No impact to global drone prolif and it’s impossible to solve

Alejandro Sueldo 12, J.D. candidate and Dean’s Fellow at the University of California, Berkeley, School of Law and a PhD candidate at the Department of War Studies at King’s College London of the University of London, 4/11/12, “The coming drone arms race,” <http://dyn.politico.com/printstory.cfm?uuid=70B6B991-ECA7-4E5F-BE80-FD8F8A1B5E90>

**Of particular concern are the legal and policy challenges posed if other states imitate the U.S. targeted killing program**. For Washington is setting a precedent whereby states can send drones, often over sovereign borders, to kill foreigners or their own citizens, who are deemed threats. ¶ Other states may also follow Washington’s example and develop their own criteria to define imminent threats and use drones to counter them. ¶ Washington will find it increasingly difficult to protest other nations’ targeted killing programs — particularly when the United States has helped define this lethal practice. U.S. opposition will prove especially difficult when other states justify targeted killings as a matter of domestic affairs. ¶ Should enough states follow the U.S. example, the practice of preemptively targeting and killing suspected threats may develop into customary international law. Such a norm, however, which requires consistent state practice arising out of a sense of legal obligation, now looks unlikely. While targeted killing policies are arguably executed by states citing a legal obligation to protect themselves from imminent threats, **widespread state practice is still uncommon. ¶ But international law does not forbid drones**. And **given the lack of an international regime to control drones, state and non-state actors are free to determine their future use. ¶ This lack of international consensus about how to control drones stems from a serious contradiction in incentives. Though drones pose grave challenges, they** also **offer states lethal and non-lethal capabilities that are of great appeal. Because the potential for drone technology is virtually limitless, states are now unwilling to control how drones evolve.**

#### U.S. drone use doesn’t set a precedent, restraint doesn’t solve it, and norms don’t apply to drones at all in the first place

Amitai Etzioni 13, professor of international relations at George Washington University, March/April 2013, “The Great Drone Debate,” Military Review, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage. ¶ Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, **China has taken the lead in the development of anti-ship missiles and** seemingly **cyber weapons as well.** One must keep in mind that **the international environment is a hostile one. Countries**—and especially non-state actors— most of the time **do not play by some set of self constraining rules**. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—**if the United States refrains from employing that technology**. ¶ I **am not arguing that there are no natural norms that restrain behavior**. There are certainly some that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of mass destruction). **However drones are but one step**—following bombers and missiles—**in the development of distant battleﬁeld technologies.** (Robotic soldiers—or future ﬁghting machines— are next in line**). In such circumstances, the role of norms is much more limited.**

#### The link and impact can’t both be true – if counties model the US use of drones will be extremely limited

Anderson 2013 - senior fellow in Governance Studies at Brookings and a professor of law at American University (May 24, Kenneth, “The Case for Drones” <http://www.realclearpolitics.com/articles/2013/05/24/the_case_for_drones_118548.html>)

This critique often leads, however, to the further objection that the American use of drones is essentially laying the groundwork for others to do the same. Steve Coll wrote in the New Yorker: “America’s drone campaign is also creating an ominous global precedent. Ten years or less from now, China will likely be able to field armed drones. How might its Politburo apply Obama’s doctrines to Tibetan activists holding meetings in Nepal?” The United States, it is claimed, is arrogantly exerting its momentary technological advantage to do what it likes. It will be sorry when other states follow suit. But the United States does not use drones in this fashion and has claimed no special status for drones. The U.S. government uses drone warfare in a far more limited way, legally and morally, and entirely within the bounds of international law. The problem with China (or Russia) using drones is that they might not use them in the same way as the United States. The drone itself is a tool. How it is used and against whom—these are moral questions. If China behaves malignantly, drones will not be responsible. Its leaders will be.

#### No South China Sea dispute – China moderated

Fravel, Professor PolSci MIT, 3-22-’12 (Taylor- Member MIT Security Studies Program, “All Quiet in the South China Sea” Foreign Affairs)

In recent years, China became increasingly ready to assert and defend its territorial and maritime claims in the South China Sea, where six other nations have competing claims. Beijing publicly challenged the legality of foreign oil companies' investments in Vietnam's offshore energy industry, emphasized its own rights over islands and waters far from the Chinese mainland, detained hundreds of Vietnamese fishermen near the Chinese-held Paracel Islands, and harassed Vietnamese and Philippine vessels conducting seismic surveys in waters that Beijing claims. Many East Asian countries saw China's behavior as a sign of the country's new willingness to adopt a more unilateral and confrontational posture in the region. Little noticed, however, has been China's recent adoption of a new -- and much more moderate -- approach. The primary goals of the friendlier policy are to restore China's tarnished image in East Asia and to reduce the rationale for a more active U.S. role there. The first sign of China's new approach came last June, when Hanoi dispatched a special envoy to Beijing for talks about the countries' various maritime disputes. The visit paved the way for an agreement in July 2011 between China and the ten members of the Association of Southeast Asian Nations (ASEAN) to finally implement a declaration of a code of conduct they had originally drafted in 2002 after a series of incidents in the South China Sea. In that declaration, they agreed to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes." Since the summer, senior Chinese officials, especially top political leaders such as President Hu Jintao and Premier Wen Jiabao, have repeatedly reaffirmed the late Deng Xiaoping's guidelines for dealing with China's maritime conflicts to focus on economic cooperation while delaying the final resolution of the underlying claims. In August 2011, for example, Hu echoed Deng's approach by stating that "the countries concerned may put aside the disputes and actively explore forms of common development in the relevant sea areas." Authoritative Chinese-language media, too, has begun to underscore the importance of cooperation. Since August, the international department of People's Daily (under the pen name Zhong Sheng) has published several columns stressing the need to be less confrontational in the South China Sea. In January 2012, for example, Zhong Sheng discussed the importance of "pragmatic cooperation" to achieve "concrete results." Since the People's Daily is the official paper of the Central Committee of the Chinese Communist Party, such articles should be interpreted as the party's attempts to explain its new policy to domestic readers, especially those working lower down in party and state bureaucracies. In terms of actually setting aside disputes, China has made progress. In addition to the July consensus with ASEAN, in October China reached an agreement with Vietnam on "basic principles guiding the settlement of maritime issues." The accord stressed following international law, especially the UN Convention on the Law of the Sea. Since then, China and Vietnam have begun to implement the agreement by establishing a working group to demarcate and develop the southern portion of the Gulf of Tonkin near the disputed Paracel Islands. China has also initiated or participated in several working-level meetings to address regional concerns about Beijing's assertiveness. Just before the East Asian Summit last November, China announced that it would establish a three billion yuan ($476 million) fund for China-ASEAN maritime cooperation on scientific research, environmental protection, freedom of navigation, search and rescue, and combating transnational crimes at sea. The following month, China convened several workshops on oceanography and freedom of navigation in the South China Sea, and in January it hosted a meeting with senior ASEAN officials to discuss implementing the 2002 code of conduct declaration. The breadth of proposed cooperative activities indicates that China's new approach is probably more than just a mere stalling tactic. Beyond China's new efforts to demonstrate that it is ready to pursue a more cooperative approach, the country has also halted many of the more assertive behaviors that had attracted attention between 2009 and 2011. For example, patrol ships from the Bureau of Fisheries Administration have rarely detained and held any Vietnamese fishermen since 2010. (Between 2005 and 2010, China detained 63 fishing boats and their crews, many of which were not released until a hefty fine was paid.) And Vietnamese and Philippine vessels have been able to conduct hydrocarbon exploration without interference from China. (Just last May, Chinese patrol ships cut the towed sonar cable of a Vietnamese ship to prevent it from completing a seismic survey.) More generally, China has not obstructed any recent exploration-related activities, such as Exxon's drilling in October of an exploratory well in waters claimed by both Vietnam and China. Given that China retains the capability to interfere with such activities, its failure to do so suggests a conscious choice to be a friendlier neighbor. The question, of course, is why did the Chinese shift to a more moderate approach? More than anything, Beijing has come to realize that its assertiveness was harming its broader foreign policy interests. One principle of China's current grand strategy is to maintain good ties with great powers, its immediate neighbors, and the developing world. Through its actions in the South China Sea, China had undermined this principle and tarnished the cordial image in Southeast Asia that it had worked to cultivate in the preceding decade. It had created a shared interest among countries there in countering China -- and an incentive for them to seek support from Washington. In so doing, China's actions provided a strong rationale for greater U.S. involvement in the region and inserted the South China Sea disputes into the U.S.-Chinese relationship. By last summer, China had simply recognized that it had overreached. Now, Beijing wants to project a more benign image in the region to prevent the formation of a group of Asian states allied against China, reduce Southeast Asian states' desire to further improve ties with the United States, and weaken the rationale for a greater U.S. role in these disputes and in the region. So far, Beijing's new approach seems to be working, especially with Vietnam. China and Vietnam have deepened their political relationship through frequent high-level exchanges. Visits by the Vietnamese Communist Party general secretary, Nguyen Phu Trong, to Beijing in October 2011 and by the Chinese heir apparent, Xi Jinping, to Hanoi in December 2011 were designed to soothe spirits and protect the broader bilateral relationship from the unresolved disputes over territory in the South China Sea. In October, the two also agreed to a five-year plan to increase their bilateral trade to $60 billion by 2015. And just last month, foreign ministers from both countries agreed to set up working groups on functional issues such as maritime search and rescue and establish a hotline between the two foreign ministries, in addition to starting talks over the demarcation of the Gulf of Tonkin. Even if it is smooth sailing now, there could be choppy waters ahead. Months of poor weather have held back fishermen and oil companies throughout the South China Sea. But when fishing and hydrocarbon exploration activities resume in the spring, incidents could increase. In addition, China's new approach has raised expectations that it must now meet -- for example, by negotiating a binding code of conduct to replace the 2002 declaration and continuing to refrain from unilateral actions. Nevertheless, because the new approach reflects a strategic logic, it might endure, signaling a more significant Chinese foreign policy shift. As the 18th Party Congress draws near, Chinese leaders want a stable external environment, lest an international crisis upset the arrangements for this year's leadership turnover. And even after new party heads are selected, they will likely try to avoid international crises while consolidating their power and focusing on China's domestic challenges. China's more moderate approach in the South China Sea provides further evidence that China will seek to avoid the type of confrontational policies that it had adopted toward the United States in 2010. When coupled with Xi's visit to Washington last month, it also suggests that the United States need not fear Beijing's reaction to its strategic pivot to Asia, which entails enhancing U.S. security relationships throughout the region. Instead, China is more likely to rely on conventional diplomatic and economic tools of statecraft than attempt a direct military response. Beijing is also unlikely to be more assertive if that sustains Southeast Asian countries' desires to further deepen ties with the United States. Whether the new approach sticks in the long run, it at least demonstrates that China, when it wants to, can recalibrate its foreign policy. That is good news for stability in the region.

## Pakistan

#### No impact to coup – military not aggressive

Ganguly, poli sci prof- Indiana, 08 (Sumit, Nuclear Stability in South Asia, Intl Security Vol 33, No 2, Fall)

Third, Sagan's assertion about the dominance of the Pakistani military in determining Pakistan's security policies is unquestionably accurate. With the possible exception of the Kargil conflict, however, it is far from clear that the Pakistani military has been the primary force in planning for and precipitating aggressive war against India. The first Kashmir war, without a doubt, had the explicit approval of Pakistan's civilian authorities.88 Similarly, there is ample evidence that the highly ambitious foreign minister, Zulfikar Ali Bhutto, goaded President Ayub Khan to undertake the 1965 war.89 Finally, once again Bhutto, as much as the Pakistani military dictator Yahya Khan, was complicit in provoking a war with India in 1971, following the outbreak of a civil war in East Pakistan.90 Consequently, even though deductive theories may suggest that military organizations are universally more prone to the use of force and the adoption of offensive military doctrines, an assessment of the empirical evidence from South Asia suggests a more complex reality. Even though the Pakistani military has been risk prone and intransigent toward India, the evidence does not support the proposition that the Pakistani military has been more war prone. Civilian decisionmakers have often played a critical role in urging the military to undertake aggressive actions. Furthermore, in the context of weak democratic [End Page 68] institutions and with politicians desirous of exploiting an existing culture of populist jingoism, civilian regimes, especially in Pakistan, have demonstrated a substantial propensity to resort to war.91

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## DA

### AT: Syria

#### Obama’s Syria move increased Presidential war powers because it maintained ultimate control with the executive

Balkin 9/3, Law Prof at Yale

(Jack, What Congressional Approval Won't Do: Trim Obama's Power or Make War Legal, www.theatlantic.com/politics/archive/2013/09/what-congressional-approval-wont-do-trim-obamas-power-or-make-war-legal/279298/)

One of the most misleading metaphors in the discussion of President Obama’s Syria policy is that the president has “boxed himself in” or has “painted himself into a corner.” These metaphors treat a president’s available actions as if they were physical spaces and limits on action as if they were physical walls. Such metaphors would make sense only if we also stipulated that Obama has the power to snap his fingers and create a door or window wherever he likes. The Syria crisis has not created a new precedent for limiting presidential power. To the contrary, it has offered multiple opportunities for increasing it. If Congress says no to Obama, it will not significantly restrain future presidents from using military force. At best, it will preserve current understandings about presidential power. If Congress says yes, it may bestow significant new powers on future presidents

-- and it will also commit the United States to violating international law. For Obama plans to violate the United Nations Charter, and he wants Congress to give him its blessing. People who believe Obama has painted himself into a corner or boxed himself in might not remember that the president always has the option to ask Congress to authorize any military action he proposes, thus sharing the responsibility for decision if the enterprise goes sour. If Congress refuses, Obama can easily back away from any threats he has made against Syria, pointing to the fact that Congress would not go along. There is no corner. There is no box. Wouldn’t congressional refusal make the United States look weak, as critics including Senator John McCain warn loudly? Hardly. The next dictator who acts rashly will face a different situation and a different calculus. The UN Security Council or NATO may feel differently about the need to act. There may be a new threat to American interests that lets Obama or the next president offer a different justification for acting. It just won’t matter very much what Obama said about red lines in the past. World leaders say provocative things all the time and then ignore them. Their motto is: That was then, and this is now. If Congress turns him down, won’t Obama be undermined at home, as other critics claim? In what sense? It is hard to see how the Republicans could be less cooperative than they already are. And it’s not in the interest of Democrats to fault a president of their own party for acceding to what Congress wants instead of acting unilaterally. Some commentators argue (or hope) that whatever happens, Obama’s request for military authorization will be an important precedent that will begin to restore the constitutional balance between the president and Congress in the area of war powers. Don’t bet on it. By asking for congressional authorization in this case, Obama has not ceded any authority that he ­or any other president ­has previously asserted in war powers. Syria presents a case in which previous precedents did not apply. There is no direct threat to American security, American personnel, or American interests. There is no Security Council resolution to enforce. And there is no claim that America needs to shore up the credibility of NATO or another important security alliance. Nor does Obama have even the feeble justification that the Clinton Administration offered in Kosovo­: that congressional appropriations midway through the operation offered tacit and retroactive approval for the bombings. It is naive to think that the next time a president wants to send forces abroad without congressional approval, he or she will be deterred by the fact that Barack Obama once sought congressional permission to bomb Syria. If a president can plausibly assert that any of the previous justifications apply -- ­including those offered in the Libya intervention -- the case of Syria is easily distinguishable.

### AT: Knowles

#### Flexibility is key to fix new problems

Cordesman 2000 - a senior fellow at the Center for Strategic and International Studies (date obtained from most recent cite, Anthony, “The Military in a New Era: Living with Complexity” <http://indianstrategicknowledgeonline.com/web/C18Corde.pdf>)

The United States must also prepare for major regional conflicts, some of which could involve a major nuclear power and an emerging peer. These include the immediate risk of a major regional conflict in the Persian Gulf or in Korea and the longer term threats posed by Russia and China. They also include major regional wars against opponents such as North Korea and Iraq, and a wide range of opponents that may emerge with little warning. The world now has nearly 200 nations, nearly 80 percent of which have emerged since World War II. About half of the emerging nations have serious ethnic and religious divisions or instability, and about 40 percent have disputed borders. It may be unfair to categorize some states as rogue or failed. At the same time, extremist regimes such as that in Libya are likely to emerge in many parts of the world. Continuing civil wars in states such as Burma/Myanmar, Sri Lanka, and Sudan are not likely to vanish. There is also a continuing risk of major regional wars that do not directly involve U.S. interests, but which could lead to U.S. intervention, at least on a humanitarian level. The nuclear arms race between India and Pakistan is perhaps the grimmest case in point. It is not clear how these tensions and conflicts will interact with the emergence of regional blocs. It is clear, however, that U.S. military planning does face the need for power projection in a wide range of regions with very different force requirements and potential conditions for coalition warfare. U.S. planning must also consider the possibility of the emergence of the following new regional power blocs without being certain whether and when such blocs will be partners, rivals, or opponents: • The European Union and Europe versus the North Atlantic Treaty Organization (NA TO) and Atlanticism: The United States must face continuing uncertainty regarding Russia and other members of the former Soviet Union (FSU), and the possible emergence of a strategic relationship between China and Russia. At the same time, it may see NATO and Atlanticism erode as the European Union grows stronger, and economic and political rivalries distance Europe from the United States. Ironically, this may not reduce the implied U.S. military commitment to NATO or the level of U.S. peacemaking involvement in Europe. • Tense Middle East and Persian Gulf: It seems unlikely that the United States will demonize Iran, Iraq, and Libya indefinitely. At the same time, there is little near-term prospect that the United States will not face the continuing risk of a major regional war in the Persian Gulf. It seems unlikely that even if an Arab-Israeli peace does involve all parties, the United States will not continue to have commitments in the Levant, and there is little near- to mid-term prospect that the United States can do anything more than slow the rate of proliferation in the region. • Divided Asia: Asian economic developmeni has brought a tenuous stability to Southeast Asia, although scarcely to Northeast Asia and South Asia. North Korea and the China-Taiwan issue currently seem likely to present lasting military problems, and China could emerge as a serious threat in regional terms. Even in Southeast Asia, the Association of Southeast Asian Nations (ASEAN) does little to bring stability to nations such as Burma/Myanmar and Cambodia, and the risk of a massive civil war in Indonesia is unlikely to be eliminated. • Unstable Africa: It is far from clear that any part of Africa can cooperate as an effective region. North Africa, however, presents obvious problems in terms of immigration and transnational threats to Europe. The region is a major energy exporter, and it could affect naval traffic through the Mediterranean. So far, no Maghreb nation has demonstrated that it can develop fast enough to deal with its population growth. A large part of sub-Saharan Africa is already at war, and these wars are creating new and unstable regional power blocs. The increasing U.S. dependence on West African oil gives these problems growing strategic importance. • Unstable Latin America: Like East Asia, Latin America has experienced significant economic growth in recent years. At the same time, economic and ethnic divisions still threaten to create new conflicts, and Colombia is already involved in a civil drug war of major importance to the United States. It should be stressed that each region has its successes and the fact that things can degenerate in each region, in spite of globalism and more positive trends, is no indication that they will. U.S. military planning, however, is not concerned with regional successes. It is concerned with regional failures, and there are several major areas of potential regional conflict that involve nations fully armed for a future conflict. They include: • Greece and Turkey • Arab-Israeli • Persian Gulf • North and South Korea • People's Republic of China and Taiwan • South China Sea/Spratly Islands • India and Pakistan • Horn of Africa • Sudan • Congo

#### The only question is capability – no chance for structural decline of conflict because of the speed and complexity of threats

Cordesman 2000 - a senior fellow at the Center for Strategic and International Studies (date obtained from most recent cite, Anthony, “The Military in a New Era: Living with Complexity” <http://indianstrategicknowledgeonline.com/web/C18Corde.pdf>)

Put simply, there is no meaningful prospect that the United States will face less need to plan for major regional wars during the next quarter century, or that any U.S. military service will face less need for global engagement, than it does today. The same is true of peacemaking activity, no matter what strategies and doctrines U.S. political and military leaders may appear to agree on at any given time. Moreover, the very complexity of the national and regional problems in the modern world means that crises will emerge with only ambiguous strategic warning, that most U.S. scenario analysis and contingency planning will continue to have only limited success, and that the level of U.S. involvement will be contingency-driven. Strategy and doctrine that attempt to deny these realities have no chance of success and will almost certainly lead to planning that fails to properly prepare U.S. military forces for the future.7 It should also be clear that the risk of underestimating the true nature of the complexity of the trends that shape the modern world is particularly severe in the case of military forces. Conflicts and crises almost inevitably are random walks through history. They involve the cases in which the system does not work, and the trends that are perceived as dominant do not apply. This is true even in the case of the use of force to prevent conflict or when the United States and its allies attempt two politically correct oxymorons: crisis management and conflict resolution. The true nature of globalism means that U.S. military action will remain event-driven. Neither the Clinton nor Weinberger doctrines will have a meaningful impact on this fact. Vacuous generalizations about treating the world as a morality play are neither a doctrine nor a policy. Statements about committing U.S. forces only to contingencies that involve vital strategic interests are strategically naive to the point of being ridiculous. The United States will be unable to wait to determine whether a given crisis affects vital national interests.

### Links - Drone Courts

#### Judicial review would result in all targeted killings being ruled unconstitutional---courts would conclude they don’t satisfy the requirement of imminence for use of force in self-defense

Benjamin McKelvey 11, J.D., Vanderbilt University Law School, November 2011, “NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, 44 Vand. J. Transnat'l L. 1353

In the alternative, and far more broadly, the DOJ argued that executive authority to conduct targeted killings is constitutionally committed power. n101 Under this interpretation, the President has the authority to defend the nation against imminent threats of attack. n102 This argument is not limited by statutory parameters or congressional authorization, such as that under the AUMF. n103 Rather, the duty to defend the nation is inherent in the President's constitutional powers and is not subject to judicial interference or review. n104

The DOJ is correct in arguing that the President is constitutionally empowered to use military force to protect the nation from imminent attack. n105 As the DOJ noted in its brief in response, the Supreme Court has held that the president has the authority to protect the nation from "imminent attack" and to decide the level of necessary force. n106 The same is true in the international context. Even though Yemen is not a warzone and al-Qaeda is not a state actor, international law accepts the position that countries may respond to specific, imminent threats of harm with lethal force. n107 [\*1367] Under these doctrines of domestic and international law, the use of lethal force against Aulaqi was valid if he presented a concrete, specific, and imminent threat of harm to the United States. n108

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the "imminence" standard. n109 However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants of authority. n110 In the context of targeted killing, a federal court could evaluate the targeted killing program to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. Targeted killing, by its very name, suggests an entirely premeditated and offensive form of military force. n111 Moreover, the overview of the CIA's targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval. n112 While the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat to the nation, the judiciary has the authority to define "imminence" as a legal standard. n113 These [\*1368] are general concepts of law, not political questions, and they are subject to judicial review. n114

Under judicial review, a court would likely determine that targeted killing does not satisfy the imminence standard for the president's authority to use force in defense of the nation. Targeted killing is a premeditated assassination and the culmination of months of intelligence gathering, planning, and coordination. n115 "Imminence" would have no meaning as a standard if it were stretched to encompass such an elaborate and exhaustive process. n116 Similarly, the concept of "defensive" force is eviscerated and useless if it includes entirely premeditated and offensive forms of military action against a perceived threat. n117 Under judicial review, a court could easily and properly determine that targeted killing does not satisfy the imminence standard for the constitutional use of defensive force. n118

#### Judicial review of targeted killings would destroy unit cohesion, cause risk aversion, undermine mission effectiveness, and disclose key intel sources---all of those destroy effective drone ops

Larry Maher 10, Quartermaster General, Veterans of Foreign Wars, et al, 9/30/10, BRIEF OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS AND DISMISSAL, Nasser al-Aulaqi, Plaintiff, vs. Barack H. Obama, et al., Defendants, <http://www.lawfareblog.com/wp-content/uploads/2010/10/VFW_Brief_PACER.pdf>

As a member organization comprised of individual veterans who have served this nation in war, and who continue to do so around the world, the VFW has a strong interest in protecting the operations of the U.S. armed forces from unwarranted or inappropriate judicial intrusion, as it believes is the case here. Such judicial interference with the Executive Branch and its constitutional war powers has dangerous implications for national security and our armed forces. Litigation over combat activities would undermine unit cohesion, the core of combat effectiveness at the small unit level. Judicial scrutiny of combat decision making—including strategic, operational and tactical decisions—would induce risk aversion and second-guessing among America’s military leaders, degrading their effectiveness. And, in the sensitive field of special operations, cases such as this may compromise the sources and methods used by America’s elite warriors, potentially threatening both their mission and their safety. Because of the importance of these issues, and the serious threat that this suit and similar litigation pose to national defense, the VFW is submitting this amicus curiae brief in order to share with the Court its perspective on the reasons why this action should be dismissed for lack of subject-matter jurisdiction.

SUMMARY OF ARGUMENT

The VFW agrees with the Government’s arguments regarding why this suit is barred, including by the political question doctrine. Rather than repeating those arguments, this amicus brief seeks to add perspective to the reasons why suits like the present action would threaten national security by interfering with ongoing military operations. Allowing this case to proceed would contravene the core military principle of “unity of command,” and undermine the military’s chain of command, creating uncertainty for subordinate leaders and soldiers. Such litigation also would adversely affect unit cohesion, the glue which binds small units together in the heat of battle, and enables them to survive and accomplish their missions. Further, litigation of cases such as this would undermine battlefield decisionmaking by subjecting tactical, operational and strategic decisions to second-guessing by courts far removed from the battlefield. And, to the extent this case will involve the activities of special operations forces, the VFW urges the Court to tread with particular caution, because of the need to protect the extremely sensitive sources and methods utilized by our nation’s elite forces.

#### Targeted killing’s vital to CT

Kenneth Anderson 13, Professor of International Law at American University, June 2013, “The Case for Drones,” Commentary, Vol. 135, No. 6

Targeted killing of high-value terrorist targets, by contrast, is the end result of a long, independent intelligence process. What the drone adds to that intelligence might be considerable, through its surveillance capabilities -- but much of the drone's contribution will be tactical, providing intelligence that assists in the planning and execution of the strike itself, in order to pick the moment when there might be the fewest civilian casualties.

Nonetheless, in conjunction with high-quality intelligence, drone warfare offers an unparalleled means to strike directly at terrorist organizations without needing a conventional or counterinsurgency approach to reach terrorist groups in their safe havens. It offers an offensive capability, rather than simply defensive measures, such as homeland security alone. Drone warfare offers a raiding strategy directly against the terrorists and their leadership.

If one believes, as many of the critics of drone warfare do, that the proper strategies of counterterrorism are essentially defensive -- including those that eschew the paradigm of armed conflict in favor of law enforcement and criminal law -- then the strategic virtue of an offensive capability against the terrorists themselves will seem small. But that has not been American policy since 9/11, not under the Bush administration, not under the Obama administration -- and not by the Congress of the United States, which has authorized hundreds of billions of dollars to fight the war on terror aggressively. The United States has used many offensive methods in the past dozen years: Regime change of states offering safe havens, counter-insurgency war, special operations, military and intelligence assistance to regimes battling our common enemies are examples of the methods that are just of military nature.

Drone warfare today is integrated with a much larger strategic counterterrorism target -- one in which, as in Afghanistan in the late 1990s, radical Islamist groups seize governance of whole populations and territories and provide not only safe haven, but also an honored central role to transnational terrorist groups. This is what current conflicts in Yemen and Mali threaten, in counterterrorism terms, and why the United States, along with France and even the UN, has moved to intervene militarily. Drone warfare is just one element of overall strategy, but it has a clear utility in disrupting terrorist leadership. It makes the planning and execution of complex plots difficult if only because it is hard to plan for years down the road if you have some reason to think you will be struck down by a drone but have no idea when. The unpredictability and terrifying anticipation of sudden attack, which terrorists have acknowledged in communications, have a significant impact on planning and organizational effectiveness.

#### Plan would collapse the effectiveness of Special Forces missions---lawsuits would disclose sources and methods that are vital to mission accomplishment

Larry Maher 10, Quartermaster General, Veterans of Foreign Wars, et al, 9/30/10, BRIEF OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS AND DISMISSAL, Nasser al-Aulaqi, Plaintiff, vs. Barack H. Obama, et al., Defendants, <http://www.lawfareblog.com/wp-content/uploads/2010/10/VFW_Brief_PACER.pdf>

Finally, the VFW’s membership includes many current and former members of the U.S. armed forces’ elite special operations forces—Army Rangers and Special Forces, Navy SEALs, Air Force parajumpers and combat controllers, and Marine Corps Force Reconnaissance personnel, among others. These elite warriors conduct highly dangerous missions today in Iraq, Afghanistan, and other countries around the world. By definition, special operations “are operations conducted in hostile, denied, or politically sensitive environments to achieve military, diplomatic, informational, and/or economic objectives employing military capabilities for which there is no broad conventional force requirement. These operations often require covert, clandestine, or low-visibility capabilities.” U.S. Joint Chiefs of Staff, Joint Pub. 3-05, Doctrine for Joint Special Operations, at I-1 (2003), available at http://www.dtic.mil/doctrine/new\_pubs/jp3\_05.pdf.

Special operations are differentiated from conventional operations in many ways, but foremost among these are their “degree of physical and political risk, operational techniques, mode of employment, independence from friendly support, and dependence on detailed operational intelligence and indigenous assets.” Id. “Surprise is often the most important principle in the conduct of successful [special operations] and the survivability of employed [special operations forces],” and the very nature of special operations requires “high levels of security . . . to protect the clandestine/covert nature of missions.” Id. at I-6. More than mission accomplishment is at stake—“[g]iven their operating size, [special operations teams] are more vulnerable to potential hostile reaction to their presence than larger conventional units,” and therefore the protection of sources and methods is essential for the survival of special operations forces. Id. To preserve this element of surprise, special operations forces must broadly conceal their tactics, techniques and procedures, including information about unit locations and movements, targeting decisions, and operational plans for future missions. Disclosure of this information would allow this nation’s adversaries to defend themselves more effectively, potentially inflicting more casualties upon U.S. special operations forces. Such disclosure would also provide information about how the U.S. military gathers information about its adversaries, enabling terrorist groups like Al Qaeda to alter its communications and activities in order to evade future detection and action by the U.S. Government. Such harm would not be limited to just this instance or terrorist group group; these disclosures would also provide future terrorist adversaries and military adversaries with insight into U.S. special operations capabilities which would enable them to counter such capabilities in future conflicts. Cf. Public Declaration of Robert M. Gates, Secretary of Defense, Govt. Exhibit 4, September 23, 2010, at ¶¶ 6-7.

In this matter, the Plaintiff asks the Court to pull back the veil on the U.S. special operations community, exposing special operations sources and methods to the public, including this nation’s enemies. This would do tremendous harm to current special operations personnel, including VFW members, who are operating abroad in Iraq, Afghanistan, and elsewhere, and who depend on stealth, security and surprise for their survival and mission accomplishment. Further, in his prayer for relief, Plaintiff asks the Court to order the disclosure of “the criteria that are used in determining whether the government will carry out the targeted killing of a U.S. citizen.” As Secretary Gates states in his public declaration filed by the Government, without confirming or denying any allegation made by Plaintiff, this type of information “constitutes highly sensitive and classified military information that cannot be disclosed without causing serious harm to the national security of the United States." Id. at ¶5. These criteria necessarily reflect the sources, methods and analytic processes used to produce them, and would tend to reveal other information about military' sources and methods which are essential to the success and survival of special operations personnel.

### Links – Court General

#### 1) Spillover – Judicial intrusion into war powers sets a precedent that undermines overall military power

Chesney et al 10 – Senior Fellow of Governance Studies @ Brookings

(Robert, Benjamin Wittes – Senior Fellow of Governance Studies @ Brookings, Rabea Benhalim – Legal Fellow of Governance Studies @ Brookings, The Emerging Law of Detention: The Guantánamo Habeas Cases as Lawmaking, http://www.brookings.edu/research/papers/2010/01/22-guantanamo-wittes-chesney)

It is hard to overstate the resulting significance of these cases. They are more than a means to decide the fate of the individuals in question. They are also the vehicle for an unprecedented wartime law-making exercise with broad implications for the future. The law established in these cases will in all likelihood govern not merely the Guantánamo detentions themselves but any other detentions around the world over which American courts acquire habeas jurisdiction. What’s more, to the extent that these cases establish substantive and procedural rules governing the application of law-of-war detention powers in general, they could end up impacting detentions far beyond those immediately supervised by the federal courts. They might, in fact, impact superficially-unrelated military activities, such as the planning of operations, the selection of interrogation methods, or even the decision to target individuals with lethal force.

## Case

### AT: PQD

#### Deference has changed – even if the government is losing cases, circumvention means deference is high

Scheppele 12 (Kim, Professor of Sociology and Public Affairs in the Woodrow Wilson School, Director of the Program in Law and Public Affairs, Princeton University, January 2012, "The New Judicial Deference" Boston University Law Review, Lexis)

[\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives.