# \*\*\*1AC

Same as Round 2 Texas

# \*\*\*2AC

## \*\*\*NATO

### 2AC Cyberwar Add-on

**NATO is still relevant – key to solve 4th gen conflicts in middle east and central asia which escalate to nw – that’s brez**

#### And NATO is still relevant and nothing else can fill in

Armstrong 9/17/13 (Thomas D., “IS NATO STILL RELEVANT?” <http://scinternationalreview.org/2013/09/is-nato-still-relevant/>)

NATO’s value lies in the absence of an alternative. NATO is the most formidable and sophisticated military organization in the world, thanks in large part, but not exclusively, to the US. As Ambassador Ivo Daalder and former Supreme Allied Commander Europe James Stavridis explained: “Some countries have significant military reach. But when a group of countries wants to launch a joint intervention as a coalition—which confers political legitimacy—only NATO can provide the common command structure and capabilities necessary to plan and execute complex operations.” Moreover, the EU has shown an inability to pool the security and defense resources of its member states. If the alliance were to disband, no member state besides the US would be able to assume full responsibility for their national defense.

#### NATO cohesion solves cyber-attacks

Jamie Shea 12, Deputy Assistant Secretary General for Emerging Security Challenges, "Keeping NATO Relevant", April 19, carnegieendowment.org/2012/04/19/keeping-nato-relevant/acl9#

At the same time, the national security strategies of the NATO allies underline the extent to which they are currently preoccupied with regional crises, preventing global proliferation, dismantling terrorist networks, preserving their trade routes and access to raw materials, and integrating the rising global powers into a rules-based international system. If NATO is decreasingly responsive to this global agenda, or is focused only on contingencies requiring major military mobilization, such as those that Article 5 was traditionally intended to address, there is a risk of a disconnect between NATO-Brussels and the policy and resource decisions taken in NATO capitals or in other institutions like the EU.¶ SLIMMING DOWN AND STAYING RELEVANT¶ NATO’s core challenge for the next decade will be to slim down while retaining the capability to handle the global security agenda of its members. This is still possible, and NATO’s new Strategic Concept certainly provides the doctrinal basis. But words do not automatically lead to actions.¶ To succeed, the Alliance will need to be serious about three things: demonstrating real capability to counter the new security challenges; harmonizing allied positions on potential or actual regional crises; and binding the maximum number of its partners in North Africa, the Middle East, and the Asia-Pacific region into a structured security community through consultations, training, and interoperability. As NATO builds down, it will need to make sure that it does not sacrifice the structures and people that allow it to deliver on these three tasks and that make the Alliance more than just a multinational military headquarters for “when all else has failed” responses.¶ Because the new security challenges are often civilian in nature (90 percent of cyberspace is owned by the private sector) and because they are often managed by ministries of the interior, the police, or specialized government agencies, some have questioned NATO’s role and relevance. It is also not easy for an organization that has traditionally taken on the major role and responsibility in a crisis (Bosnia, Kosovo, Afghanistan, Libya) or has not been involved at all (Iraq, North Korea, Syria) to adapt to being a partial or supporting actor. There are a large number of agencies involved in a cyber, terrorism, or energy incident and the military role is only one of many that need to be brought into play, and with varying degrees of importance as the crisis develops. But because NATO cannot always be the complete solution does not mean that its role is symbolic, provided that the Alliance identifies the aspect of the issue that corresponds to its essentially military capabilities and crisis-management mechanisms.¶ Countering New Security Challenges¶ All future conflicts will have a cyber dimension, whether in stealing secrets and probing vulnerabilities to prepare for a military operation or in disabling crucial information and command and control networks of the adversary during the operation itself. Consequently, NATO’s future military effectiveness will be closely linked to its cyber-defense capabilities; in this respect, there is also much that NATO can do to help allies improve their cyber forensics, intrusion detection, firewalls, and procedures for handling an advanced persistent attack, such as that which affected Estonia in 2007.¶ The Alliance can also help to shape the future cyber environment by promoting information sharing and confidence-building measures among its partners and, in a longer-term perspective, other key actors, such as Brazil, China, and India. This is a field where the military is clearly ahead in many key technical areas. NATO already has one of the most capable computer incident response centers around and one of the best systems for exchanging and assessing intelligence on cyber threats. NATO must first establish its credibility in this area by bringing all of its civilian and military networks under centralized protection by the end of 2012, but it would not make sense to leave NATO’s role in cyber defense there. It can be a center of excellence for exercises, best practice, stress testing, and common standards for both allies and partners.¶ Of course, NATO will have work to do in order to be an effective player in the cyber field, along with other emerging threats. It will need to go beyond its traditional stakeholders in the allied foreign and defense ministries and build relationships with ministries of the interior, intelligence services, customs, and government crisis-management cells (such as COBRA in the United Kingdom). It will also need to step up its cooperation with industry (which is still in the lead for most of the analysis of cyber malware) and also with private security companies that will be playing an increasing role in cyber defense, protection of critical infrastructure, and protection of shipping from pirates.¶

#### Nuclear war

Jason Fritz 9, Former Captain of the U.S. Army, July, Hacking Nuclear Command and Control, www.icnnd.org/Documents/Jason\_Fritz\_Hacking\_NC2.doc

The US uses the two-man rule to achieve a higher level of security in nuclear affairs. Under this rule two authorized personnel must be present and in agreement during critical stages of nuclear command and control. The President must jointly issue a launch order with the Secretary of Defense; Minuteman missile operators must agree that the launch order is valid; and on a submarine, both the commanding officer and executive officer must agree that the order to launch is valid. In the US, in order to execute a nuclear launch, an Emergency Action Message (EAM) is needed. This is a preformatted message that directs nuclear forces to execute a specific attack. The contents of an EAM change daily and consist of a complex code read by a human voice. Regular monitoring by shortwave listeners and videos posted to YouTube provide insight into how these work. These are issued from the NMCC, or in the event of destruction, from the designated hierarchy of command and control centres. Once a command centre has confirmed the EAM, using the two-man rule, the Permissive Action Link (PAL) codes are entered to arm the weapons and the message is sent out. These messages are sent in digital format via the secure Automatic Digital Network and then relayed to aircraft via single-sideband radio transmitters of the High Frequency Global Communications System, and, at least in the past, sent to nuclear capable submarines via Very Low Frequency (Greenemeier 2008, Hardisty 1985). The technical details of VLF submarine communication methods can be found online, including PC-based VLF reception. Some reports have noted a Pentagon review, which showed a potential “electronic back door into the US Navy’s system for broadcasting nuclear launch orders to Trident submarines” (Peterson 2004). The investigation showed that cyber terrorists could potentially infiltrate this network and **insert false orders for launch.** The investigation led to “elaborate new instructions for validating launch orders” (Blair 2003). Adding further to the concern of cyber terrorists seizing control over submarine launched nuclear missiles; The Royal Navy announced in 2008 that it would be installing a Microsoft Windows operating system on its nuclear submarines (Page 2008). The choice of operating system, apparently based on Windows XP, is not as alarming as the advertising of such a system is. This may attract hackers and narrow the necessary reconnaissance to learning its details and potential exploits. It is unlikely that the operating system would play a direct role in the signal to launch, although this is far from certain. Knowledge of the operating system may lead to the insertion of malicious code, which could be used to gain accelerating privileges, tracking, valuable information, and deception that could subsequently be used to initiate a launch. Remember from Chapter 2 that the UK’s nuclear submarines have the authority to launch if they believe the central command has been destroyed.¶ Attempts by cyber terrorists to create the illusion of a decapitating strike could also be used to engage fail-deadly systems. Open source knowledge is scarce as to whether Russia continues to operate such a system. However evidence suggests that they have in the past. Perimetr, also known as Dead Hand, was an automated system set to launch a mass scale nuclear attack in the event of a decapitation strike against Soviet leadership and military.¶ In a crisis, military officials would send a coded message to the bunkers, switching on the dead hand. If nearby ground-level sensors detected a nuclear attack on Moscow, and if a break was detected in communications links with top military commanders, the system would send low-frequency signals over underground antennas to special rockets. Flying high over missile fields and other military sites, these rockets in turn would broadcast attack orders to missiles, bombers and, via radio relays, submarines at sea. Contrary to some Western beliefs, Dr. Blair says, many of Russia's nuclear-armed missiles in underground silos and on mobile launchers can be fired automatically. (Broad 1993)¶ Assuming such a system is still active, cyber terrorists would need to create a crisis situation in order to activate Perimetr, and then fool it into believing a decapitating strike had taken place. While this is not an easy task, the information age makes it easier. Cyber reconnaissance could help locate the machine and learn its inner workings. This could be done by targeting the computers high of level official’s—anyone who has reportedly worked on such a project, or individuals involved in military operations at underground facilities, such as those reported to be located at Yamantau and Kosvinksy mountains in the central southern Urals (Rosenbaum 2007, Blair 2008)¶ Indirect Control of Launch¶ Cyber terrorists could cause incorrect information to be transmitted, received, or displayed at nuclear command and control centres, or shut down these centres’ computer networks completely. In 1995, a Norwegian scientific sounding rocket was mistaken by Russian early warning systems as a nuclear missile launched from a US submarine. A radar operator used Krokus to notify a general on duty who decided to alert the highest levels. Kavkaz was implemented, all three chegets activated, and the countdown for a nuclear decision began. It took eight minutes before the missile was properly identified—a considerable amount of time considering the speed with which a nuclear response must be decided upon (Aftergood 2000).¶ Creating a false signal in these early warning systems would be relatively easy using computer network operations. The real difficulty would be gaining access to these systems as they are most likely on a closed network. However, if they are transmitting wirelessly, that may provide an entry point, and information gained through the internet may reveal the details, such as passwords and software, for gaining entrance to the closed network. If access was obtained, a false alarm could be followed by something like a DDoS attack, so the operators believe an attack may be imminent, yet they can no longer verify it. This could add pressure to the decision making process, and if coordinated precisely, could appear as a first round EMP burst. Terrorist groups could also attempt to launch a non-nuclear missile, such as the one used by Norway, in an attempt to fool the system. The number of states who possess such technology is far greater than the number of states who possess nuclear weapons. Obtaining them would be considerably easier, especially when enhancing operations through computer network operations. Combining traditional terrorist methods with cyber techniques opens opportunities neither could accomplish on their own. For example, radar stations might be more vulnerable to a computer attack, while satellites are more vulnerable to jamming from a laser beam, thus together they deny dual phenomenology. Mapping communications networks through cyber reconnaissance may expose weaknesses, and automated scanning devices created by more experienced hackers can be readily found on the internet.¶ Intercepting or spoofing communications is a highly complex science. These systems are designed to protect against the world’s most powerful and well funded militaries. Yet, there are recurring gaffes, and the very nature of asymmetric warfare is to bypass complexities by finding simple loopholes. For example, commercially available software for voice-morphing could be used to capture voice commands within the command and control structure, cut these sound bytes into phonemes, and splice it back together in order to issue false voice commands (Andersen 2001, Chapter 16). Spoofing could also be used to escalate a volatile situation in the hopes of starting a nuclear war. “ [they cut off the paragraph] “In June 1998, a group of international hackers calling themselves Milw0rm hacked the web site of India’s Bhabha Atomic Research Center (BARC) and put up a spoofed web page showing a mushroom cloud and the text “If a nuclear war does start, you will be the first to scream” (Denning 1999). Hacker web-page defacements like these are often derided by critics of cyber terrorism as simply being a nuisance which causes no significant harm. However, web-page defacements are becoming more common, and they point towards alarming possibilities in subversion. During the 2007 cyber attacks against Estonia, a counterfeit letter of apology from Prime Minister Andrus Ansip was planted on his political party website (Grant 2007). This took place amid the confusion of mass DDoS attacks, real world protests, and accusations between governments.

## \*\*\*Imminence

### Kwoka

#### We set a standard of imminence

Kwoka 11 (Lindsay, J.D. UPenn, “TRIAL BY SNIPER: THE LEGALITY OF TARGETED KILLING IN THE WAR ON TERROR” Accessed at HeinOnline)

But this is not the end of the inquiry. Even if a targeted individual is not located on a field of battle, he may still be a threat, and tar- geted killing may potentially be necessary and appropriate in some circumstances. Applying the reasoning of" Hamdi here, a court would likely find that the use of targeted killing is only "necessary and ap- propriate" if it is the only way to prevent someone like Al-Awlaki from engaging in terrorist activity or otherwise harming the United States. The Hamdi Court was concerned with assuring that the executive used the least intrusive means in achieving its objective of preventing the enemy combatant from returning to battle. The Court made clear that the means used to achieve this objective should be no more intrusive than necessary.7\* It is consistent with the Court's concern to allow targeted killing only when it is the only means available to pre- vent harm to the United States. If the executive can demonstrate that an individual outside of a warzone will harm the United States unless he is killed, targeted kill- ing may be authorized. This is consistent with Hamdi, in which the main concern was preventing future harm to the United States while using the least intrusive means available. This is also consistent with U.S. criminal law, in which the executive branch is permitted to kill an individual if there is no peaceful means left to apprehend him. Such an approach is also consistent with the approach of the Supreme Court. Even the most stalwart protectors of constitutional rights of alleged terrorists recognize that immediate action by the executive is at times necessary to prevent attacks.7'' An approach that allows the executive to use deadly force when it is the only available means of preventing harm effectively balances the need to protect citizen's constitutional rights while affording sufficient deference to the executive.

### A2: No standing

#### Yes standing – case in the DC circuit court now – that will be on politics

### A2: Court Deferential

#### The court won’t be deferential and the plan checks the executive

Jaffer, Director-ACLU Center for Democracy, 13 **(**Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), <http://www.harvardlawreview.org/issues/126/april13/forum_1002.php>)

Even enthusiasts of the drone program have become anxious about its legal soundness. (“People in Washington need to wake up and realize the legal foundations are crumbling by the day,” Professor Bobby Chesney, a supporter of the program, recently said.) Judicial review could clarify the limits on the government’s legal authority and supply a degree of legitimacy to actions taken within those limits. It could also encourage executive officials to observe these limits. Executive officials would be less likely to exceed or abuse their authority if they were required to defend their conduct to federal **judges.** **Even** Jeh **Johnson, the Defense Department’s former general counsel and a vocal defender of the targeted killing program, acknowledged** in a recent **speech that** judicial review could add “rigor” to the executive’s decisionmaking process. **In explaining the function of** the Foreign Intelligence Surveillance **Court,**which oversees government surveillance in certain national security investigations, executive officials have often said that even the mere prospect of judicial review deters error and abuse.

## \*\*\*PQD

### 2AC Sonar Add-ON

#### The plan is key to challenge active sonar

Times Tribune 11/24/13

http://thetimes-tribune.com/news/health-science/sonar-tests-hazardous-to-sea-life-1.1589369

Sonar tests hazardous to sea life

Q: I understand the Navy is doing sonar testing and training in the oceans and that their activities will likely kill hundreds, if not thousands, of whales and other marine mammals. What can be done to stop this? A: Active sonar is a technology used on ships to aid in navigation, and the Navy tests and trains with it extensively in American territorial waters. The Navy also conducts missile and bomb testing in the same areas. But environmentalists and animal advocates contend that this is harming whales and other marine wildlife, and are calling on the Navy to curtail such training and testing exercises accordingly. "Naval sonar systems work like acoustic floodlights, sending sound waves through ocean waters for tens or even hundreds of miles to disclose large objects in their path," reports the nonprofit Center for Biological Diversity. "But this activity entails deafening sound: even one low-frequency active sonar loudspeaker can be as loud as a twin-engine fighter jet at takeoff." According to the CBD, sonar and other military testing can have an especially devastating effect on whales, given how dependent they are on their sense of hearing for feeding, breeding, nursing, communication and navigation. The group adds that sonar can also directly injure whales by causing hearing loss, hemorrhages and other kinds of trauma, as well as drive them rapidly to the surface or toward shore. In 2007, a U.S. appeals court sided with the Natural Resources Defense Council, which had contended that Navy testing violated the National Environmental Policy Act, Marine Mammal Protection Act and Endangered Species Act. But within three months of this ruling, then-President George W. Bush exempted the Navy, citing national security reasons. The exemption was subsequently upheld by the Supreme Court upon challenge, and the Navy released estimates that its training exercises scheduled through 2015 could kill upward of 1,000 marine mammals and seriously injure another 5,000. But in September a federal court in California sided with green groups in a lawsuit charging that the National Marine Fisheries Service failed to protect thousands of marine mammals from Navy warfare training exercises in the Northwest Training Range Complex along the coasts of California, Oregon and Washington. As a result, the NMFS must reassess its permits to ensure that the Navy's activities comply with protective measures under the Endangered Species Act. The ruling will no doubt be challenged. Also, the Navy still has the green light to use sonar and do weapons testing off the East Coast.

#### That results in submarine hulls to collapse

Hyson-Research Director and Co-Founder Sirius Institute-2K

Letter to chief of the marine mammal conservation division of NMFS, 4/3, http://www.interpac.net/~plntpuna/siriusa/VOD/vod-vol-3No-4.htm)

“Another matter ignored is that TIME REVERSED ACOUSTICS are used….even available in Scientific American.”

Another matter ignored is that TIME REVERSED ACOUSTICS are used, as detailed by Dr. Mathias Fink in the November 1999 Scientific American. In this article, Dr. Fink shows how any sound received by a LFAS array can be reversed in time (after recording) and sent back to the point of detection, massively amplified. This is known as a phase-conjugate system. At the proposed 240 dB levels of output reported, and using several ships in concert, where the powers of each are combined in phase, one can develop powers and intensities orders of magnitude more intense than a single array, in fact the increase is on the order of the SQUARE of the number of systems combined. Thus the 5 ship fleet proposed for testing when combined will have powers approaching 5 X 5 or 25 times as intense, and with 30 ships together (as projected for the DEPLOYED system, which is what the EIS should have actually covered) then the total power is some 30 X 30 or 900 times the power and intensity of a single 18 projector array hung under only one ship. These systems can create shock waves in the water, intense pressure waves traveling at 5500 feet per second. With sharp focusing, and by making two or more shock waves cross going different directions, the water cavitates, leaving a region of steam in the cavitated area. This area then collapses, like a large bubble, with the release of tremendous focused energy, analagous to an acoustic "laser" Suppose one projected a broad band sound into the water, and then listened. Some frequencies would cause, say, a submarine hull to resonate, just as the whales' ears and tissues do. One would then receive the reflected sounds from the submarines in the area using the LFAS arrays. One then "time reverses" and amplifies this sound and sends it back. The hull of the targeted submarine will then be resonated, "rung like hitting a bell", with this resonant frequency at extremely high intensities. This could cause a hull, especially near its crush depth, to rupture, sinking the sub, killing the crew. This is an acoustic weapon, with capabilities both in detection and offensive attack. Such acoustic weapons were outlawed years ago by joint treaty of the US and USSR and in the Geneva Conventions. Thus, the LFAS is a matter for Geneva and the United Nations, and other planetary governing bodies such as the World Court at the Hague, and is thus beyond the jurisdiction of the NMFS, and in fact, is a matter for strategic debate. This is "Star Wars" underwater. I have also been told that the completed system will include some 1200 separate units mounted on the bottom of the world's oceans. This increases the influence and magnitude of sound even more. Then, to understand the total impact of this development, we must include the parallel work of NATO allies, France and opposing countries, perhaps the Russians, Chinese or others. Rapid proliferation is likely, given the basic principles are even available in Scientific American.

#### That triggers accidential nuclear war

Wallace-Poli Sci, University of British Columbia-95

Submarine Proliferation and Regional Conflict

Journal of Peace Research vol 32 no 1

http://www.jstor.org.ezproxy.uky.edu/stable/425469?seq=1

In such circumstances, there are a number of ways in which a shooting war could begin accidentally. The most obvious starting- point would see a submarine initiating an attack against an underwater opponent by mistake or miscalculation. With luck, the shooting might stop there, but it need not. Other subs, hearing the distant battle, might assume general war had broken out and launch their own attacks. Political and military commanders, faced with the loss of powerful and expensive assets, would likely be under pressure to retaliate. Most ominously of all, once a submarine battle had begun, those submarines tasked with attacking surface vessels or land targets in the event of all-out war might, out of fear or ignorance, launch their weapons rather than risk their possible destruction. Thus might tactical confusion beneath the waves lead to a full-scale strategic battle above.

## \*\*\*Offcase

### 2AC T

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging

unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually

committed to the courts as claims brought under the Suspension Clause. Both are fundamental

judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir.

1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments

because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene,

553 U.S. 723.

#### Their ex-post evidence concludes aff – we’re a restriction and ex-ante is not

Vladeck 13 (Steve, Professor of Law and the Associate Dean for Scholarship – American University Washington College of Law, JD – Yale Law School, Senior Editor – Journal of National Security Law & Policy, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…,” Lawfare Blog, 2-10, http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/)

That’s why, even though [I disagree](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) with the [DOJ white paper](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf) that ex ante review would present a nonjusticiable political question, I actually agree that courts are ill-suited to hear such cases–not because, as the white paper suggests, they lack the power to do so, but because, in most such cases, they would lack the competence to do so. **III. Drone Courts and the Legitimacy Problem** That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante revew in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea. **IV. Why Damages Actions Don’t Raise the Same Legal Concerns** 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](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, [it demonstrates that](http://www.brookings.edu/research/reports/2011/05/guantanamo-wittes) 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… To be sure, there are a host of legal doctrines that would get in the way of such suits–foremost among them, [the present judicial hostility](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) to causes of action under [*Bivens*](http://supreme.justia.com/cases/federal/us/403/388/case.html); the state secrets privilege; and official immunity doctrine. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that [immunity is constitutionally grounded](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0731_ZS.html)), each of these concerns can be overcome by statute–so long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and official immunity doctrine; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many–if not most–of these cases, these legal issues would be overcome. **V. Why Damages Actions Aren’t Perfect–But Might Be the Least-Worst Alternative** Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists. Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. That said, there are two enormous upsides to damages actions that, in my mind, make them worth it–even if they are deeply, fundamentally flawed: First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability–and, as importantly, precedent–such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution requires at least some form of judicial process–and, compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to get all of the relevant constituencies to the table. That’s a very long way of reiterating what I wrote in [my initial response](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) to the DOJ white paper, but I end up in the same place: If folks really want to provide a judicial process to serve as a check on the U.S. government’s conduct of targeted killing operations, this kind of regime, and not an ex ante “drone court,” is where such endeavors should focus.

#### C/I – Authority is what the president may do not what the president can do

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### Prefer our interpretation –

#### A. Overlimits – core cases revolve around regulating the executive, not banning specific policies – their interpretation eliminates the role of topic literature across the areas

#### B. Aff Ground – Ban the policy affs are solved by agent counterplans – err aff because the range of good affs is small and the neg is strapped with generics

#### Reasonability 1st – competing interpretations crowds out substance and the topic is already limited by areas while our aff is located squarely in the literature

### 2AC K

#### Focus of the debate should be on the material implications of the plan---discourse doenst spill over

**Ghughunishvili 10**

Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

As provided by the Copenhagen School securitization theory is comprised by speech act, acceptance of the audience and facilitating conditions or other non-securitizing actors contribute to a successful securitization. The causality or a one-way relationship between the speech act, the audience and securitizing actor, where politicians use the speech act first to justify exceptional measures, has been criticized by scholars, such as Balzacq. According to him, the one-directional relationship between the three factors, or some of them, is not the best approach. To fully grasp the dynamics, it will be more beneficial to “rather than looking for a one-directional relationship between some or all of the three factors highlighted, it could be profitable to focus on the degree of congruence between them. 26 Among other aspects of the Copenhagen School’s theoretical framework, which he criticizes, the thesis will rely on the criticism of the lack of context and the rejection of a ‘one-way causal’ relationship between the audience and the actor. The process of threat construction, according to him, can be clearer if external context, which stands independently from use of language, can be considered. 27 Balzacq opts for more context-oriented approach when it comes down to securitization through the speech act, where a single speech does not create the discourse, but it is created through a long process, where context is vital. 28 He indicates: In reality, the speech act itself, i.e. literally a single security articulation at a particular point in time, will at best only very rarely explain the entire social process that follows from it. In most cases a security scholar will rather be confronted with a process of articulations creating sequentially a threat text which turns sequentially into a securitization. 29 This type of approach seems more plausible in an empirical study, as it is more likely that a single speech will not be able to securitize an issue, but it is a lengthy process, where a the audience speaks the same language as the securitizing actors and can relate to their speeches.

#### Perm do the plan and non-mutually exclusive parts of the alternative---creates self-reflexivity which solves the link but avoids conservative cooption

Cole 10 (David Cole is a professor at Georgetown University Law Center, “Breaking Away,” http://www.newrepublic.com/article/magazine/politics/79752/breaking-away-obama-bush-aclu-guantanamo-war-on-terror)

To dismiss the changes Obama has introduced as merely rhetorical, however, as Goldsmith and others have done, is to miss the critical difference between lawless and law-abiding exercises of state power. The Constitution, domestic law, and international law permit democracies to take aggressive action to defend themselves against attacks like the ones we suffered on September 11. But they insist that when the state employs coercion to achieve security, it must abide by rules designed to forestall government abuse and respect human rights. Bush blatantly disregarded this principle; Obama has embraced it. It is true that, by the end of his term, Bush had been compelled to curtail his most aggressive assertions of power. Waterboarding was out, many of the disappeared prisoners had been transferred to Guantánamo and identified, the military commissions had been improved, and courts were reviewing Guantánamo detentions. But Bush adopted these changes grudgingly, after losing before the courts, Congress, and public opinion. And as the declassified torture memos illustrate, his administration continued to obstinately reinterpret the laws against torture and cruel, inhuman, and degrading treatment in order to permit the CIA to do precisely what Congress, the courts, and international law had forbade. By contrast, Obama has willingly accepted the limits of law. Critics on all sides undermine their credibility if they fail to acknowledge the significant differences between Obama and Bush. Liberals risk sounding as if no national security policy short of ordinary criminal law enforcement will suffice, while conservatives and moderates appear tone-deaf to the difference that the rule of law makes to the legitimacy of state power. For both advocates of civil liberties and defenders of Bush, it is tempting to accuse the Obama administration of being no better than its predecessor. But if we fail to recognize the changes he has instituted, we run the risk of contributing to a misleading historical narrative that will support future presidents who might choose to repeat Bush’s errors. On issues of executive power, history can play an important role. Even if Obama himself is unlikely to unleash the tactics of the previous administration, a future president might justify doing so by pointing to the fact that observers from across the political spectrum agreed that both Bush and Obama had embraced the same policy. There are, however, two areas in which Obama has come up painfully short, and that is on issues of transparency and accountability. These failures threaten to undermine the good that Obama has otherwise done, because if U.S. counterterrorism policy is to succeed, it is critical to restore the trust that Bush’s policies so recklessly squandered.

#### The alternative is impossible---our expertise epistemology is key to confront global threats

**Cole, 12 –** professor of law at Georgetown (David, “Confronting the Wizard of Oz: National Security,

Expertise, and Secrecy” 44 Conn. L. Rev. 1617-1625 (2012), <http://scholarship.law.georgetown.edu/facpub/1085>)

Rana is right to focus our attention on the assumptions that frame modern Americans’ conceptions about national security, but his assessment raises three initial questions. First, it seems far from clear that there ever was a “golden” era in which national security decisions were made by the common man, or “the people themselves,” as Larry Kramer might put it.8 Rana argues that neither Hobbes nor Locke would support a worldview in which certain individuals are vested with superior access to the truth, and that faith in the superior abilities of so-called “experts” is a phenomenon of the New Deal era.9 While an increased faith in scientific solutions to social problems may be a contributing factor in our current overreliance on experts,10 I doubt that national security matters were ever truly a matter of widespread democratic deliberation. Rana notes that in the early days of the republic, every able-bodied man had to serve in the militia, whereas today only a small (and largely disadvantaged) portion of society serves in the military.11 But serving in the militia and making decisions about national security are two different matters. The early days of the Republic were at least as dominated by “elites” as today. Rana points to no evidence that decisions about foreign affairs were any more democratic then than now. And, of course, the nation as a whole was far less democratic, as the majority of its inhabitants could not vote at all.12 Rather than moving away from a golden age of democratic decision-making, it seems more likely that we have simply replaced one group of elites (the aristocracy) with another (the experts). Second, to the extent that there has been an epistemological shift with respect to national security, it seems likely that it is at least in some measure a response to objective conditions, not just an ideological development. If so, it’s not clear that we can solve the problem merely by “thinking differently” about national security. The world has, in fact, become more interconnected and dangerous than it was when the Constitution was drafted. At our founding, the oceans were a significant buffer against attacks, weapons were primitive, and travel over long distances was extremely arduous and costly. The attacks of September 11, 2001, or anything like them, would have been inconceivable in the eighteenth or nineteenth centuries. Small groups of non-state actors can now inflict the kinds of attacks that once were the exclusive province of states. But because such actors do not have the governance responsibilities that states have, they are less susceptible to deterrence. The Internet makes information about dangerous weapons and civil vulnerabilities far more readily available, airplane travel dramatically increases the potential range of a hostile actor, and it is not impossible that terrorists could obtain and use nuclear, biological, or chemical weapons.13 The knowledge necessary to monitor nuclear weapons, respond to cyber warfare, develop technological defenses to technological threats, and gather intelligence is increasingly specialized. The problem is not just how we think about security threats; it is also at least in part objectively based.

#### No risk of endless warfare

**Gray 7**—Director of the Centre for Strategic Studies and Professor of International Relations and Strategic Studies at the University of Reading, graduate of the Universities of Manchester and Oxford, Founder and Senior Associate to the National Institute for Public Policy, formerly with the International Institute for Strategic Studies and the Hudson Institute (Colin, July, “The Implications of Preemptive and Preventive War Doctrines: A Reconsideration”, <http://www.ciaonet.org/wps/ssi10561/ssi10561.pdf>)

7. A policy that favors preventive warfare expresses a futile quest for absolute security. It could do so. Most controversial policies contain within them the possibility of misuse. In the hands of a paranoid or boundlessly ambitious political leader, prevention could be a policy for endless warfare. However, the American political system, with its checks and balances, was designed explicitly for the purpose of constraining the executive from excessive folly. Both the Vietnam and the contemporary Iraqi experiences reveal clearly that although the conduct of war is an executive prerogative, in practice that authority is disciplined by public attitudes. Clausewitz made this point superbly with his designation of the passion, the sentiments, of the people as a vital component of his trinitarian theory of war. 51 It is true to claim that power can be, and indeed is often, abused, both personally and nationally. It is possible that a state could acquire a taste for the apparent swift decisiveness of preventive warfare and overuse the option. One might argue that the easy success achieved against Taliban Afghanistan in 2001, provided fuel for the urge to seek a similarly rapid success against Saddam Hussein’s Iraq. In other words, the delights of military success can be habit forming. On balance, claim seven is not persuasive, though it certainly contains a germ of truth. A country with unmatched wealth and power, unused to physical insecurity at home—notwithstanding 42 years of nuclear danger, and a high level of gun crime—is vulnerable to demands for policies that supposedly can restore security. But we ought not to endorse the argument that the United States should eschew the preventive war option because it could lead to a futile, endless search for absolute security. One might as well argue that the United States should adopt a defense policy and develop capabilities shaped strictly for homeland security approached in a narrowly geographical sense. Since a president might misuse a military instrument that had a global reach, why not deny the White House even the possibility of such misuse? In other words, constrain policy ends by limiting policy’s military means. This argument has circulated for many decades and, it must be admitted, it does have a certain elementary logic. It is the opinion of this enquiry, however, that the claim that a policy which includes the preventive option might lead to a search for total security is **not at all convincing**. Of course, folly in high places is always possible, which is one of the many reasons why popular democracy is the superior form of government. It would be absurd to permit the fear of a futile and dangerous quest for absolute security to preclude prevention as a policy option. Despite its absurdity, this rhetorical charge against prevention is a stock favorite among prevention’s critics. It should be recognized and dismissed for what it is, a debating point with little pragmatic merit. And strategy, though not always policy, **must be nothing if not pragmatic**.

#### The alt invites worse conflict

Dipert 6 (Randall, PhD, Professor of Philosophy, University at Buffalo, Buffalo, “Preventive War and the Epistemological Dimension of the Morality of War,” https://www.law.upenn.edu/live/files/1291-dipert-preventive-war)

One might think that this principle would give little guidance in recommending anticipatory wars. However, let us suppose that John Rawls, following Raymond Aron and others, is correct in claiming that democratic states (‘liberal constitutional democracies’) have very few except legitimate reasons to go to war, and consequently rarely do go to war for ‘bad’ reasons (Rawls 1999: 47).42 Some wars might still occur because of epistemic mistakes or from (legitimate) mutual fear and distrust trust\*/something Rawls seems not to consider. Let us further suppose that this general level of warfare in a region or in the world gradually decreases in those places where there exist nothing but constitutional democracies. Let us further suppose that democracy can be imposed, or the conditions for democracy can be created, by the correct application of military force. Then there are circumstances in which, if the conditions for the permissibility of preventive of war are met, then preventive war is further recommended by this second principle. There is an interesting question here, beyond philosophical considerations, about whether a nation should formulate and announce policies of exactly what conditions will, and what conditions will not, trigger preventive war. 43 But there is another and telling side of this coin: what if we should have and announce a policy of never engaging in any preemptive or preventive war? Here I think we are encouraging a hostile enemy to prepare an offensive, including weapons development, right up an actual attack. If there do exist, or can possibly exist, truly devastating weapons, this is to invite their development and one’s own annihilation. Even a small nuclear power with ballistic missiles (perhaps positioning missiles on ocean freighters on the high seas) would be free to inflict devastating attacks. While large, stable countries such as China and the former USSR, have historically been deterred by the policy of massive nuclear retaliation, it is unlikely that all nuclear nations with ballistic missiles (including terrorist organizations), will remain deterrable. I believe that such a policy of banning or foreswearing preventive war would almost certainly result in more, rather than fewer, wars and deaths, because it would embolden more state-like entities to believe that they could succeed in an unjust war, especially in ideological wars whose ‘success’ consists simply in inflicting harm on its enemy at all costs.44 To announce a policy of rejecting any preemptive or preventive war is thus almost certainly mistaken and violates my second principle insofar as it increases possible threats. The rare and careful use of restricted preemptive and preventive war, under unspecified conditions, in the world we are likely to have for centuries\*/without, for example, militarily dominant international organizations willing to punish with force the illegitimate use of force\*/is actually likely to make the world more safe. This is not a conclusion that I am especially happy with.45

#### Climate securitization overcomes flawed notions of security discourse – encapsulates their impact

Trombetta 2008

Maria Julia, Environmental security and climate change: analyzing the discourse, Cambridge Review of International Affairs, 21:4, 585-602

The possibility of transforming into a threat something that has not yet materialized and allowing it to bring about the practices suggested by the Copenhagen School in the case of securitization presents a grim perspective. The possible adoption of a precautionary approach to security issues has been criticized on the grounds that it can justify preventive military actions, extensive surveillance measures, the inversion of the burden of proof or actions decided on the worst case scenario (Aradau and van Munster 2007). In the case of the environment, it is possible that the securitization of climate change would result in confrontational politics, with states adopting politics to protect their territory against sea-level rising and immigration; with the Security Council adopting resolutions to impose emission targets, and even military action against polluting factories; and surveillance systems to monitor individual emissions. This possibility, however, depends on taking for granted a security logic based on enemies and extraordinary measures. What is at stake in the climate security discourse is the possibility of introducing mechanisms to prevent emergencies within a system that tends to rely, on the one hand, on governing through emergencies and, on the other hand, on insurance and compensation. The securitization of climate is an attempt to evoke the symbolic power of an environmental discourse based on interdependence and prevention to establish a framework for security and energy governance at the global level. It is about renegotiating the spaces in which risk management and market mechanisms prevail, and those in which intervention and regulations are legitimated. Securitization remains a very political moment. Its implications largely depend on what is securitized and what means are employed to provide security.

### 2AC EPA DA

#### No link- the plan would likely be a district court ruling

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so.

#### Court links is non-unique – detention and habeas cases

Savage 2/11 (Charlie, “Appeals Court Allows Challenges by Detainees at Guantánamo Prison”, http://www.nytimes.com/2014/02/12/us/appeals-court-clears-way-for-guantanamo-challenges.html)

WASHINGTON — A federal appeals court ruled Tuesday that judges had the power to oversee complaints by detainees about the conditions of their confinement at the military prison at Guantánamo Bay, Cuba. The ruling was a defeat for the Obama administration and may open the door to new lawsuits by the remaining 155 Guantánamo inmates. In a two-to-one decision, a panel of the United States Court of Appeals for the District of Columbia Circuit held that courts may oversee conditions at the prison as part of a habeas corpus lawsuit. The ruling overturned lower court decisions that judges could not oversee such matters. At the same time, the court rejected a request by three detainees on a hunger strike at Guantánamo for an injunction barring the government from force-feeding them by strapping them into a restraint chair, inserting a gastric tube through their noses and pouring a liquid nutritional supplement into their stomachs. Judge David S. Tatel wrote that “absent exceptional circumstances prison officials may force-feed a starving inmate actually facing the risk of death.” He added, “Petitioners point to nothing specific to their situation that would give us a basis for concluding that the government’s legitimate penological interests cannot justify the force-feeding of hunger-striking detainees at Guantánamo.” Still, because the majority concluded that the judiciary had the authority to review such claims, it sent the case back to Federal District Court for further consideration. Jon Eisenberg, a lawyer for the prisoners, celebrated the larger reach of the ruling as a “huge win” for those seeking greater judicial oversight of how the military treats detainees. “This decision establishes that the federal courts have the power to stop the mistreatment of detainees at Guantánamo Bay,” Mr. Eisenberg said. “The Court of Appeals has given us the green light to continue our challenge to the detainees’ force-feeding as being unconstitutionally abusive. We intend to do that.” Among other things, he added, the government, after the Oct. 18 oral arguments in the case, revised its procedures for using restraint chairs in the force-feeding, but has declined to let the detainees’ lawyers review those guidelines. The ruling, he said, “gives us the green light to ask the district court to order such disclosure.” Allison Price, a Justice Department spokeswoman, said, “The department is reviewing the decision.” If the case stands — the Justice Department could file an appeal asking the full appeals court or the Supreme Court to review it — it would be a milestone in a long-running legal battle, involving all three branches of government, over the extent to which detainees are entitled to judicial review if they are being indefinitely detained without trial at the prison. The Bush administration initially argued that courts had no jurisdiction over foreigners held at the prison, which is on Cuban soil. In 2004, the Supreme Court ruled that courts did have jurisdiction to hear detainees’ lawsuits. In 2005, Congress enacted a law stripping courts of the power to hear such claims. The following year, the Supreme Court — in a case involving military commissions — ruled that the law only applied to future lawsuits. Congress responded by passing the Military Commissions Act of 2006, which barred courts from hearing both existing and future lawsuits by detainees. Two years later, the Supreme Court ruled that detainees nevertheless could bring habeas corpus lawsuits challenging the factual basis for their detention as accused enemy combatants. That left open the question of whether they could bring cases involving unrelated complaints over the conditions of confinement. Lower courts said they could not, and the Obama administration agreed. But in the force-feeding case, two of the three judges on the panel said they could bring such cases because conditions were a subset of habeas corpus cases. Moreover, Judge Tatel wrote, if a judge ordered the military to stop treating a detainee in some “unlawful manner,” and it did not rectify the conditions, the court said judges may then “simply order the prisoner released.” Judge Tatel, who was appointed by President Bill Clinton, was joined by Judge Thomas B. Griffith, who was appointed by President George W. Bush. The third judge on the panel, Judge Stephen F. Williams, who was appointed by President Ronald Reagan and took senior status in 2001, disagreed. In a dissenting opinion, Judge Williams said his colleagues should have followed Congress’s intentions and dismissed the case. Congress “unmistakably sought to prevent the federal courts from entertaining claims based on detainees’ conditions of confinement,” he wrote. “Such evident congressional intent would seem to counsel a cautious rather than a bravura reading” of whether such claims fell into the category of habeas corpus lawsuits. The claims arose after a major hunger strike at Guantánamo a year ago, with a majority of detainees participating at one point, according to the military’s official count. The mass protest refocused global attention on the prison and pushed the Obama administration to revive the effort to close it. Those who lost sufficient weight were forced to eat a nutritional supplement, a practice that revived complaints by medical ethics groups that doctors should not force-feed prisoners who decide not to eat. A similar debate erupted during the Bush administration. Four detainees filed a lawsuit seeking to stop the military from force-feeding them. One was later transferred to Algeria, but three — Shaker Aamer, a Saudi citizen and former resident of Britain; Ahmed Belbacha, an Algerian; and Abu Dhiab, a Syrian, remain at Guantánamo. All had been approved for transfer, if security conditions could be met in the receiving country, by a 2009-10 task force. The hunger strike dwindled in the last six months of 2013, and in December the United Sates Southern Command stopped reporting the daily count of hunger strikers. Mr. Eisenberg, who recently visited his clients, said he was told that there were 25 detainees still on hunger strikes, with 16 of them being force-fed. A military spokesman declined to confirm or deny that count.

#### Turn – All climate cases will be dismissed on the grounds of the PQD – that’s the 1AC Dunher evidence – only the plan solves EPA regulations by upholding them in the face of an oppositional congress – more evidence – the plan is a prerequisite to the DA’s impacts

May 11 (Jim, Ph.D. in Law @ Wiedner Law, “RECENT DEVELOPMENTS AT THE JUNCTURE OF THE POLITICAL QUESTION DOCTRINE AND CLIMATE LITIGATION LAW” <http://works.bepress.com/cgi/viewcontent.cgi?article=1080&context=james_may>)

Without near-term federal legislative action on climate change—the prospects of which seem as likely as the Kansas City Royals emerging as 2011 World Series champs, but hey, hope springs eternal—climate regulation as it were remains an untidy amalgam of actions and programs by states, individuals, the U.S. Environmental Protection Agency (EPA), and other federal, regional, and state agencies. The fate of precursors to climate change is also in the hands of the courts, mostly federal. As has been reported in previous issues of this newsletter, international and federal tribunals and federal and state courts are awash in climate adjudication. And if and when federal climate legislation emerges, there will be much more. During 2009–2010, climate litigation shook the rust off the political question doctrine and public nuisance law, resurfaced standing, and challenged or precipitated sometimes bracing federal and state action in ways that might make even the more dilettante climate law observers stop and announce, “Wow.” Perhaps the most interesting recent injection of constitutional law into environmental policy involves the use of the political question doctrine to thwart climate litigation by states and individuals. For a half decade, states and individuals have turned to common law causes of action for redress in climate litigation. See James R. May, Climate Change, Constitutional Consignment, and the Political Question Doctrine, 85 DENV. U. L. REV. 919, 958 (2008). Federal common-law causes of action, including those for public nuisance, provide potential—although imperfect and problematic—means for judicial cognizance of and redress for these effects. See id. Nonetheless, some federal courts have determined that the seldom used “political question doctrine” bars them from “entering the climate change thicket,” reasoning that the matter is consigned to the coordinate branches of government. Id. at 957–59. This is an astonishing legal development, because until recently the political question doctrine had touched only about a half dozen matters. The Supreme Court has decided that there are certain “political questions”—including matters that are demonstrably committed to a coordinate branch of government, require an initial policy determination, lack ascertainable standards, or could otherwise result in judicial embarrassment—that are nonjusticiable. Baker v. Carr, 369 U.S. 186, 217 (1962). For example, the Court has recognized executive power over foreign affairs, impeachment, and treaty abrogation as political questions into which courts ought to decline jurisdiction, finding them to be consigned to the elected federal branches of government under the “political question doctrine.” James R. May, Constitutional Law and the Future of Natural Resource Protection, in THE EVOLUTION OF NATURAL RESOURCES LAW AND POLICY 124, 146 (Lawrence J. MacDonnell & Sarah F. Bates eds., 2009). Climate change litigation has now entered this mix.

#### Legitimacy is inevitable – other decisions will offset the aff and politics doesn’t affect the plan

Gibson 13 (James L., Sidney W. Souers Professor of Government, Director of the Program on Citizenship and Democratic Values, Washington University in St. Louis, “IS THE U.S. SUPREME COURT’S LEGITIMACY GROUNDED IN

PERFORMANCE SATISFACTION AND IDEOLOGY?”)

The overwhelming weight of the evidence we present in this paper is that the legitimacy of the U.S. Supreme Court is not much dependent upon the Court making decisions that are pleasing to the American people. The Court’s legitimacy seems not to be grounded in policy agreement with its decisions, nor is it connected to the ideological and partisan cross-currents that so wrack contemporary American politics. Whether desirable or undesirable, it seems that the current Supreme Court has a sufficiently deep reservoir of goodwill that allows it to rise above the contemporary divisions in the American polity. These empirical conclusions have enormous theoretical importance. It seems that the Court as currently configured is unlikely to consistently disappoint either the left or the right. As we have documented above, the current Supreme Court makes fairly conservative policy, but it clearly does not make uniformly conservative policy. Thus, even the Rehnquist and Roberts Courts have made many decisions that should be pleasing to liberals, even if conservatives should be slightly more pleased with the Court. Perhaps a court closely divided on ideology cannot produce the consistent decisional fuel needed to ignite a threat to the institution’s legitimacy. Some worry that an ideologically divided Court undermines the institution’s legitimacy (e.g. Liptak 2011). Perhaps the truth is exactly the opposite: an ideologically divided Court is able to please both liberals and conservatives with its decisions, and therefore decisional displeasure does not build to the point of challenging the institution’s legitimacy.

#### Plan maintains deference –

#### A. Congress wants the aff

Somin 4/23/13 (Illya, Professor of Law at George Mason University School of Law, “Oral Testimony on Drones and Targeted Killing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights” <http://www.volokh.com/2013/04/23/oral-testimony-on-drones-and-targeted-killing-before-the-senate-judiciary-subcommittee-on-the-constitution-civil-rights-and-human-rights/>)

A video of my and other witnesses’ oral testimony on the use of drones for targeted killing in the War Terror, before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights is now available here (just click on “webcast”). It was interesting for me to see that there was a broad consensus among the academic and ex-military witnesses on two key points: that the use of drones for targeted killing of terrorists is not inherently illegal or immoral, and that we need stronger safeguards to ensure that we are limiting drone strikes to legitimate military targets. It seems to me that many of the senators who asked questions – both Democrats and Republicans – were also sympathetic on these points. Whether this will lead to appropriate reforms remains to be seen. I will try to post my written testimony by tomorrow. UPDATE: You can also watch the hearing at the C-SPAN site here, though there are a few technical problems in that video that I noticed. UPDATE #2: I do want to clarify one unfortunately ambiguous aspect of an answer I gave to a question by Sen. Michael Lee around 2:07:00 of the video at the Subcommittee website. I mentioned there that the Israeli government government has a judicial review mechanism for considering the legality of targeted killing decisions. I should have made clear that the Israeli system, as outlined in the Israeli High Court of Justice’s 2006 decision on the legality of targeted killing, establishes after-the-fact judicial review rather than judicial review in advance, of the kind contemplated in proposals to create a FISA-like court to review targeting decisions aimed at US citizens in advance. Both Sen. Lee’s question and the part of my answer that mentions Israel were ambiguous on the issue of the timing of judicial review. So I wanted to clarify that point here. As I noted later in my testimony, we cannot and should not simply copy all aspects of Israeli policy in this area, since their strategic situation and political system differ from ours. But we nonetheless should try to learn from their experience.

#### B. So does Obama – none of your evidence assumes the targeted killing program

Baker, New York Times, 2013 (Peter, “Pivoting From a War Footing, Obama Acts to Curtail Drones”, 5-23, <http://www.nytimes.com/2013/05/24/us/politics/pivoting-from-a-war-footing-obama-acts-to-curtail-drones.html?pagewanted=all&_r=0>, ldg)

WASHINGTON — Nearly a dozen years after the hijackings that transformed America, President Obama said Thursday that it was time to narrow the scope of the grinding battle against terrorists and begin the transition to a day when the country will no longer be on a war footing. Declaring that “America is at a crossroads,” the president called for redefining what has been a global war into a more targeted assault on terrorist groups threatening the United States. As part of a realignment of counterterrorism policy, he said he would curtail the use of drones, recommit to closing the prison at Guantánamo Bay, Cuba, and seek new limits on his own war power. In a much-anticipated speech at the National Defense University, Mr. Obama sought to turn the page on the era that began on Sept. 11, 2001, when the imperative of preventing terrorist attacks became both the priority and the preoccupation. Instead, the president suggested that the United States had returned to the state of affairs that existed before Al Qaeda toppled the World Trade Center, when terrorism was a persistent but not existential danger. With Al Qaeda’s core now “on the path to defeat,” he argued, the nation must adapt. “Our systematic effort to dismantle terrorist organizations must continue,” Mr. Obama said. “But this war, like all wars, must end. That’s what history advises. It’s what our democracy demands.” The president’s speech reignited a debate over how to respond to the threat of terrorism that has polarized the capital for years. Republicans contended that Mr. Obama was declaring victory prematurely and underestimating an enduring danger, while liberals complained that he had not gone far enough in ending what they see as the excesses of the Bush era. The precise ramifications of his shift were less clear than the lines of argument, however, because the new policy guidance he signed remains classified, and other changes he embraced require Congressional approval. Mr. Obama, for instance, did not directly mention in his speech that his new order would shift responsibility for drones more toward the military and away from the Central Intelligence Agency. But the combination of his words and deeds foreshadowed the course he hopes to take in the remaining three and a half years of his presidency so that he leaves his successor a profoundly different national security landscape than the one he inherited in 2009. While President George W. Bush saw the fight against terrorism as the defining mission of his presidency, Mr. Obama has always viewed it as one priority among many at a time of wrenching economic and domestic challenges. “Beyond Afghanistan, we must define our effort not as a boundless ‘global war on terror,’ ” he said, using Mr. Bush’s term, “but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.” “Neither I, nor any president, can promise the total defeat of terror,” he added. “We will never erase the evil that lies in the hearts of some human beings, nor stamp out every danger to our open society. But what we can do — what we must do — is dismantle networks that pose a direct danger to us, and make it less likely for new groups to gain a foothold, all the while maintaining the freedoms and ideals that we defend.” Some Republicans expressed alarm about Mr. Obama’s shift, saying it was a mistake to go back to the days when terrorism was seen as a manageable law enforcement problem rather than a dire threat. “The president’s speech today will be viewed by terrorists as a victory,” said Senator Saxby Chambliss of Georgia, the top Republican on the Senate Intelligence Committee. “Rather than continuing successful counterterrorism activities, we are changing course with no clear operational benefit.” Senator John McCain, Republican of Arizona, said he still agreed with Mr. Obama about closing the Guantánamo prison, but he called the president’s assertion that Al Qaeda was on the run “a degree of unreality that to me is really incredible.” Mr. McCain said the president had been too passive in the Arab world, particularly in Syria’s civil war. “American leadership is absent in the Middle East,” he said. The liberal discontent with Mr. Obama was on display even before his speech ended. Medea Benjamin, a co-founder of the antiwar group Code Pink, who was in the audience, shouted at the president to release prisoners from Guantánamo, halt C.I.A. drone strikes and apologize to Muslims for killing so many of them. “Abide by the rule of law!” she yelled as security personnel removed her from the auditorium. “You’re a constitutional lawyer!” Col. Morris D. Davis, a former chief prosecutor at Guantánamo who has become a leading critic of the prison, waited until after the speech to express disappointment that Mr. Obama was not more proactive. “It’s great rhetoric,” he said. “But now is the reality going to live up to the rhetoric?” Still, some counterterrorism experts saw it as the natural evolution of the conflict after more than a decade. “This is both a promise to an end to the war on terror, while being a further declaration of war, constrained and proportional in its scope,” said Juan Carlos Zarate, a counterterrorism adviser to Mr. Bush. The new classified policy guidance imposes tougher standards for when drone strikes can be authorized, limiting them to targets who pose “a continuing, imminent threat to Americans” and cannot feasibly be captured, according to government officials. The guidance also begins a process of phasing the C.I.A. out of the drone war and shifting operations to the Pentagon. The guidance expresses the principle that the military should be in the lead and responsible for taking direct action even outside traditional war zones like Afghanistan, officials said. But Pakistan, where the C.I.A. has waged a robust campaign of air assaults on terrorism suspects in the tribal areas, will be grandfathered in for a transition period and remain under C.I.A. control. That exception will be reviewed every six months as the government decides whether Al Qaeda has been neutralized enough in Pakistan and whether troops in Afghanistan can be protected. Officials said they anticipated that the eventual transfer of the C.I.A. drone program in Pakistan to the military would probably coincide with the withdrawal of combat units from Afghanistan at the end of 2014. Even as he envisions scaling back the targeted killing, Mr. Obama embraced ideas to limit his own authority. He expressed openness to the idea of a secret court to oversee drone strikes, much like the intelligence court that authorizes secret wiretaps, or instead perhaps some sort of independent body within the executive branch. He did not outline a specific proposal, leaving it to Congress to consider something along those lines. He also called on Congress to “refine and ultimately repeal” the authorization of force it passed in the aftermath of Sept. 11. Aides said he wanted it limited more clearly to combating Al Qaeda and affiliated groups so it could not be used to justify action against other terrorist or extremist organizations. In renewing his vow to close the Guantánamo prison, Mr. Obama highlighted one of his most prominent unkept promises from the 2008 presidential campaign. He came into office vowing to shutter the prison, which has become a symbol around the world of American excesses, within a year, but Congress moved to block him, and then he largely dropped the effort. With 166 detainees still at the prison, Mr. Obama said he would reduce the population even without action by Congress. About half of the detainees have been cleared for return to their home countries, mostly Yemen. Mr. Obama said he was lifting a moratorium he imposed on sending detainees to Yemen, where a new president has inspired more faith in the White House that he would not allow recidivism. The policy changes have been in the works for months as Mr. Obama has sought to reorient his national security strategy. The speech was his most comprehensive public discussion of counterterrorism since he took office, and at times he was almost ruminative, articulating both sides of the argument and weighing trade-offs out loud in a way presidents rarely do. He said that the United States remained in danger from terrorists, as the attacks in Boston and Benghazi, Libya, have demonstrated, but that the nature of the threat “has shifted and evolved.” He noted that terrorists, including some radicalized at home, had carried out attacks, but less ambitious than the ones on Sept. 11. “We have to take these threats seriously and do all that we can to confront them,” he said. “But as we shape our response, we have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11.”

### 2AC Politics – Iran

#### **New reports undermine the push for sanctions and there’s no internal link to war**

AFP 2/18 (Agence France Presse, “Report undermines US Iran sanctions push”, http://news.yahoo.com/report-undermines-us-iran-sanctions-push-181331768.html)

Washington (AFP) - A new non-partisan report by top foreign policy experts largely backs White House warnings that imposing new sanctions on Iran could seriously complicate, if not derail, hopes of a final nuclear deal with Tehran. The study by the Iran Project assesses claims by critics of the sanctions push in Congress that it would fracture the international coalition pursuing talks -- which resumed in Austria on Tuesday -- and a sanctions regime already squeezing Iran's economy. But it also argues that the Obama administration has been a little too adamant that the bill, if passed, would inevitably lead to war with the Islamic Republic. The White House, has for now, succeeded in thwarting a bid by a bi-partisan group of hawkish senators to pass new sanctions on Iran which they say will increase US leverage in nuclear talks. Supporters of the legislation, including the Democratic leader of the Senate Foreign Relations Committee Robert Menendez, say that any new sanctions would only come into force in a "trigger" mechanism in six months if talks on a permanent nuclear deal fail. But the Iran Group report casts doubt on that claim, an important point because Washington promised not to impose new sanctions in an interim deal with Iran reached late last year. "After carefully reading the bill line by line and consulting with both current and retired Senate staff of the relevant committees, it appears that the critics are correct: the change in sanctions law takes effect upon passage," the report said. The report questions the claim by pro-sanctions supporters that since economic pain brought Iran to the table, more punishment will get it to capitulate in negotiations. "Medicine administered at a certain dosage can improve the health of a patient, but if that patient turns around and doubles it, they might poison themselves." The report also supports the contention that imposing new sanctions in Washington could undermine President Hassan Rouhani among ultra hard liners in Tehran. It gives some credence to the idea that US allies would see the imposition of new sanctions by Congress as a failure by Washington to live up to its promises. But the administration got little support for its claims that the sanctions bill could put the United States on a "march to war" with Iran, by killing off chances of a diplomatic solution. "It would seem that both sides are too confident in their claims that a new sanctions bill will lead directly to war or that the Iranians will never walk away," the report said. Still, it concluded that the new sanctions bill could increase the probability of war with Iran even if it did not guarantee such an outcome. The report was written by Jim Walsh, a researcher at the Massachusetts Institute of Technology and included contributions from foreign policy experts including career diplomat Thomas Pickering, former senior CIA officer Paul Pillar, and Jessica Tuchman Matthews, president of the Carnegie Endowment for International Peace

#### Reid will block the vote on Iran sanctions

Tobin 2/4 (Jonathan S., “Sanctions Stall Doesn’t Signal AIPAC’s Fall”, http://www.commentarymagazine.com/2014/02/04/iran-sanctions-stall-doesnt-signal-aipacs-decline-nuclear/)

After amassing an impressive 58 senators from both parties to co-sponsor a bill calling for new sanctions on Iran in case the current negotiations end in failure, the legislation has stalled in the Senate. Alarmed by what it felt was a threat to its diplomacy with Iran, the administration and its backers launched an all-out attack on the measure, claiming its passage would so offend Tehran that it would end nuclear talks with the West and leave the United States no alternative but to go to war. Even worse, some of the president’s supporters claimed that the only reason so many legislators, including 16 Democrats, would back the bill was that they were acting, in the words of influential television comedian Jon Stewart, as senators “from the great state of Israel.” This not-so-subtle invocation of the Walt-Mearsheimer canard in which a vast pro-Israel conspiracy manipulates a helpless Congress paid off by wealthy Jews to the detriment of American interests has become a chestnut of Washington policy debates, but one the administration’s cheerleaders haven’t hesitated to invoke. All this has chilled a debate about passing more Iran sanctions that might be considered moot in any case since as long as Majority Leader Harry Reid is determined to keep the bill from coming to a vote, it has little chance of passage. But rather than discuss the administration’s scorched-earth campaign on the issue, the New York Times prefers to join with the administration in taking another shot at the arch-villain of the supporters of the conspiratorial view of U.S. foreign policy put forward in the infamous “Israel Lobby” thesis: the American Israel Public Affairs Committee (AIPAC). According to the Times, the lull in the battle over sanctions is a sign that AIPAC is losing its touch on Capitol Hill. This is considered good news for the administration and critics of the pro-Israel lobby and the bipartisan community for which it speaks. But while AIPAC can’t be happy with the way it and other advocates of sanctions have been brushed back in this debate, reports of its decline are highly exaggerated. While the administration has won its point for the moment in stalling the bill, the idea that it has won the political war over Iran is, at best, premature.

#### Negotiations fail – Iran won’t dismantle a thing

Goldberg 2/19 (Jeffrey, “Column: Weapons expert sees no chance of Iran success”, http://www.nhregister.com/opinion/20140219/column-weapons-expert-sees-no-chance-of-iran-success)

Until recently, Gary Samore was the Obama administration’s top expert on weapons of mass destruction and the go-to White House official on the complexities and challenges of the Iranian nuclear program. So I pay attention when he says that the Iran nuclear talks have an almost zero chance of success. One of the many reasons for this, he believes, is that the West has given the Iranian regime insufficient cause to feel as if it must give up its nuclear dreams. The negotiations might drag on for two or three years. And then? “And then the Iranians could decide they’re strong enough to walk away,” he says. This analysis does not make him a new pessimist or a harsh critic of the administration’s approach. Samore has never believed that the United States, alone or in combination with other like- minded powers, could do anything but delay Iran’s nuclear program. A full-scale ground invasion could bring about the end of the Iranian nuclear program, but that is quite obviously not happening, and short of that, he says, there is no permanent fix. What we have now is, essentially, a truce for a truce. I sat down with Samore at his office at Harvard University — where he is the executive director for research at the Belfer Center for Science and International Affairs at the John F. Kennedy School of Government — to discuss this next round of negotiations. Below is a lightly edited transcript. Question: What would Iran have to agree to in order for these negotiations to work? Answer: Iran would have to drastically limit the number of centrifuges they will have at Natanz, for starters. They could be dismantled, or disinstalled, or put in storage someplace, but a monitored storage. Basically, they would have to operate far fewer centrifuges than they currently have. We’re also talking about taking down their supply of low-enriched uranium, way below the seven or eight tons they have currently have that they have no need for. We’re talking about losing Qom, the famous Fordow facility inside a mountain. We’re talking about closing or converting the Arak heavy water research reactor, either shutting it or converting it to a low power light water reactor. And we’re talking about enhanced monitoring and verification. Q: You think it could happen? A: As I read the Iranian position, they reject all of that. [President Hassan] Rouhani says they won’t dismantle a thing. He says he has to have an enrichment facility big enough to provide fuel for the Bushehr nuclear plant, and that would be tens of thousands of centrifuge machines, fifty or sixty thousand of the current machines, to provide fuel for a single year’s fuel load. And they say they need their heavy water research reactor to produce isotopes. So I think we’re miles apart. And I think both sides are really locked in by their domestic politics. If Rouhani were free to act, he might very well accept restrictions for the sake of getting the sanctions lifted and for changing Iran’s international position. But he’s very constrained by the hard-liners.

#### No link – we’re the DC Court

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011.

#### Court action shields Obama from controversy

Pacelle, Prof-Political Science-Georgia Southern, 2002 (Richard L., Prof of Poli Sci @ Georgia Southern University, The Role of the Supreme Court in American Politics: The Least Dangerous Branch? 2002 p 175-6)

The limitations on the Court are not as significant as they once seemed. They constrain the Court, but the boundaries of those constraints are very broad. Justiciability is self-imposed and seems to be a function of the composition of the Court, rather than a philosophical position. Checks and balances are seldom successfully invoked against the judiciary, in part because the Court has positive institutional resources to justify its decisions. The Supreme Court has a relatively high level of diffuse support that comes, in part, from a general lack of knowledge by the public and that contributes to its legitimacy.[6] The cloak of the Constitution and the symbolism attendant to the marble palace and the law contribute as well. As a result, presidents and Congress should pause before striking at the Court or refusing to follow its directives. Indeed, presidents and members of Congress can often use unpopular Court decisions as political cover. They cite the need to enforce or support such decisions even though they disagree with them. In the end, the institutional limitations do not mandate judicial restraint, but turn the focus to judicial capacity, the subject of the next chapter

#### And Obama won’t backlash

#### A. distancing himself from the program now

McDuffee 1/16 (Allen, “Congress Blocks Plan to Transfer Drone Control From CIA to Pentagon”, http://www.wired.com/dangerroom/2014/01/drone-strikes-likely-stay-cia/)

An effort by President Obama to transfer America’s lethal, highly classified drone program from the CIA to the Pentagon appears to have been thwarted by lawmakers wielding a secret weapon of their own. The Washington Post reported Wednesday that members of Congress inserted a provision in a classified annex to the $1.1 trillion government spending bill introduced this week that would restrict funding or authorization to transfer from one to the other. The move is an unusual one for Congress, and the debate over it will be closed to a small circle because of the classified nature of the addendum. President Obama, under considerable pressure from the left over the program’s civilian deaths and potential violations of international law, has for some time sought a way to distance himself from the controversial program that has come to be seen as his signature foreign policy and national security tool. However, many members of Congress, even some in the president’s own party, are not in agreement with the transfer of authority. Sen. Dianne Feinstein (D-Calif.), chairman of the Senate Intelligence Committee and a member of the Appropriations Committee, declined to offer comment in the Post report, but said last year that she had seen the CIA “exercise patience and discretion specifically to prevent collateral damage” and that she “would really have to be convinced that the military would carry it out that well.” In Beltway circles, experts say that while the U.S. drone program will have minor adjustments as needed, major debate over the direction of the program concluded years ago. “Realistically, the policy window for reforming how the U.S. conducts lethal counterterrorism strikes is closed in Washington,” says Council on Foreign Relations fellow Micah Zenko. However, during his nomination hearings last February, CIA Director John Brennan said that lethal operations are a “last resort” and could distract from the agency’s core mission of intelligence gathering. Over the course of the spring, following Brennan’s hearings, President Obama began laying the groundwork for the shift. In a May 2013 speech on counterterrorism at National Defense University, Obama opaquely signaled that he would minimize the number of lethal strikes and that he was transferring the program from the CIA to the Pentagon — a move that some observers understood as an attempt to make the program more transparent. Just weeks before Obama’s speech, when the Obama administration declined to send a representative to a Senate hearing on drone operations, Sen. Dick Durbin (D-Ill.) said “more transparency is needed to maintain the support of the American people and the international community.” He added that the White House should provide details on its claim to “its legal authority to engage in targeted killings and the internal checks and balances involved in U.S. drone strikes.”

#### B. he wants restrictions

Baker 2013

(Peter, , New York Times, “Pivoting From a War Footing, Obama Acts to Curtail Drones”, 5-23, <http://www.nytimes.com/2013/05/24/us/politics/pivoting-from-a-war-footing-obama-acts-to-curtail-drones.html?pagewanted=all&_r=0>, ldg)

WASHINGTON — Nearly a dozen years after the hijackings that transformed America, President Obama said Thursday that it was time to narrow the scope of the grinding battle against terrorists and begin the transition to a day when the country will no longer be on a war footing. Declaring that “America is at a crossroads,” the president called for redefining what has been a global war into a more targeted assault on terrorist groups threatening the United States. As part of a realignment of counterterrorism policy, he said he would curtail the use of drones, recommit to closing the prison at Guantánamo Bay, Cuba, and seek new limits on his own war power. In a much-anticipated speech at the National Defense University, Mr. Obama sought to turn the page on the era that began on Sept. 11, 2001, when the imperative of preventing terrorist attacks became both the priority and the preoccupation. Instead, the president suggested that the United States had returned to the state of affairs that existed before Al Qaeda toppled the World Trade Center, when terrorism was a persistent but not existential danger. With Al Qaeda’s core now “on the path to defeat,” he argued, the nation must adapt. “Our systematic effort to dismantle terrorist organizations must continue,” Mr. Obama said. “But this war, like all wars, must end. That’s what history advises. It’s what our democracy demands.” The president’s speech reignited a debate over how to respond to the threat of terrorism that has polarized the capital for years. Republicans contended that Mr. Obama was declaring victory prematurely and underestimating an enduring danger, while liberals complained that he had not gone far enough in ending what they see as the excesses of the Bush era. The precise ramifications of his shift were less clear than the lines of argument, however, because the new policy guidance he signed remains classified, and other changes he embraced require Congressional approval. Mr. Obama, for instance, did not directly mention in his speech that his new order would shift responsibility for drones more toward the military and away from the Central Intelligence Agency. But the combination of his words and deeds foreshadowed the course he hopes to take in the remaining three and a half years of his presidency so that he leaves his successor a profoundly different national security landscape than the one he inherited in 2009. While President George W. Bush saw the fight against terrorism as the defining mission of his presidency, Mr. Obama has always viewed it as one priority among many at a time of wrenching economic and domestic challenges. “Beyond Afghanistan, we must define our effort not as a boundless ‘global war on terror,’ ” he said, using Mr. Bush’s term, “but rather as a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.” “Neither I, nor any president, can promise the total defeat of terror,” he added. “We will never erase the evil that lies in the hearts of some human beings, nor stamp out every danger to our open society. 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Davis, a former chief prosecutor at Guantánamo who has become a leading critic of the prison, waited until after the speech to express disappointment that Mr. Obama was not more proactive. “It’s great rhetoric,” he said. “But now is the reality going to live up to the rhetoric?” Still, some counterterrorism experts saw it as the natural evolution of the conflict after more than a decade. “This is both a promise to an end to the war on terror, while being a further declaration of war, constrained and proportional in its scope,” said Juan Carlos Zarate, a counterterrorism adviser to Mr. Bush. The new classified policy guidance imposes tougher standards for when drone strikes can be authorized, limiting them to targets who pose “a continuing, imminent threat to Americans” and cannot feasibly be captured, according to government officials. The guidance also begins a process of phasing the C.I.A. out of the drone war and shifting operations to the Pentagon. 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With 166 detainees still at the prison, Mr. Obama said he would reduce the population even without action by Congress. About half of the detainees have been cleared for return to their home countries, mostly Yemen. Mr. Obama said he was lifting a moratorium he imposed on sending detainees to Yemen, where a new president has inspired more faith in the White House that he would not allow recidivism. The policy changes have been in the works for months as Mr. Obama has sought to reorient his national security strategy. The speech was his most comprehensive public discussion of counterterrorism since he took office, and at times he was almost ruminative, articulating both sides of the argument and weighing trade-offs out loud in a way presidents rarely do. He said that the United States remained in danger from terrorists, as the attacks in Boston and Benghazi, Libya, have demonstrated, but that the nature of the threat “has shifted and evolved.” He noted that terrorists, including some radicalized at home, had carried out attacks, but less ambitious than the ones on Sept. 11. “We have to take these threats seriously and do all that we can to confront them,” he said. “But as we shape our response, we have to recognize that the scale of this threat closely resembles the types of attacks we faced before 9/11.”

#### And so is the national security link – Syria is causing Obama to get the heat from the GOP

Tobin 2/18 (Jonathan S., “GOP Foreign-Policy Battle Must Start Now”, http://www.commentarymagazine.com/2014/02/18/gop-foreign-policy-battle-must-start-now/)

To be sure, Republicans won’t be running much on foreign policy in 2014. Anger about ObamaCare’s impact on the economy and the millions of Americans who have lost their insurance coverage will remain the keynote of the GOP campaign to win back the Senate while holding onto their House majority. But, as Cantor rightly pointed out at VMI, the spectacle of Obama’s weak leadership is creating problems abroad that can’t be entirely ignored. The debacle in Syria, exacerbated by the president’s humiliating retreat on chemical-weapons use, undermined U.S. credibility. So, too, is the way the president has allowed the West to be drawn into nuclear talks with Iran that seem aimed more at protecting the Islamist regime’s nuclear ambitions than squelching them. As Cantor rightly pointed out: America’s friends worry we have lost our way, that we have lost the will to live up to our values or stand up to aggressors. They see a divided, inward-looking America that is focused on its weaknesses rather than its strengths, and they know this is an America that invites challenges and emboldens adversaries. Obama’s foreign-policy strategy has had one common theme: alienating allies in the Middle East as well as Asia and appeasing foes like Russia and Iran. But the problem isn’t just a feckless administration that views diplomacy as an end in itself rather than a tool to be used to defend American interests. The growth of isolationist sentiment within the Republican Party has led to a situation where many on the right seemed to have joined forces with the left on intelligence issues like the NSA and in support for more defense cuts.

#### No political capital – lame duck presidency and approval ratings

McManus 2/2/14 (Doyle, staffwriter, “McManus: Reality sets in for Obama” http://www.columbian.com/news/2014/feb/02/reality-sets-in-for-obama/)

The rap against President Obama's State of the Union address on Tuesday was that his agenda, once ambitious and transformational, has suddenly turned modest. Instead of grand bargains and sweeping change, the president proposed holding a summit meeting on working families and extracting a promise from colleges to admit more low-income students — not exactly sweeping solutions to middle-class stagnation and college debt. What happened to the visionary politician who promised that his inauguration would mark the moment the rise of the oceans began to slow? Simple: Reality has sunk in. In year six of Obama's presidency, modest proposals are the most appropriate offering. At the moment, the president has much to be modest about -- and no real alternative. Any ability Obama might have had to navigate Washington's poisonous political culture to forge consensus on sweeping initiatives vanished when Republicans took over the House of Representatives in 2010. And the president's sway has ebbed even further since his re-election in 2012, thanks to the chaotic launch of his health insurance program and the economy's stubborn failure to produce enough new jobs. With Obama's job-approval rating stuck well below 50 percent, Republicans in Congress see plenty of reasons to oppose him but only danger in helping him. Obama still has big goals, of course, which he listed in his speech: Immigration reform, early childhood education, infrastructure spending, raising the minimum wage, even the lost cause of gun control. But he listed all of those in his speech last year -- and achieved none of them. That's why the president's embrace of things he can do without Congress makes sense. Expect to see more executive orders, more White House summits and more private-sector arm-twisting. Obama's chief image maker, Dan Pfeiffer, deployed two phrases to dramatize this new strategy. The president "has a pen," he said, meaning the power to issue executive orders, and he "has a phone," meaning the ability to persuade corporate CEOs, college presidents and others to do the right thing. This will be "a year of action," Pfeiffer added -- as opposed, presumably, to a year of stalled initiatives on Capitol Hill. Obama offered insight into how he has accepted his newfound limits in a recent interview with David Remnick of the New Yorker. "We cannot remake the world entirely during this little stretch that we have," the president said. "At the end of the day, we're part of a long-running story. We just try to get our paragraph right." That doesn't mean he'll quit trying, and bipartisan legislation on one big issue might still be possible: Immigration reform. But expect downsized ambition to be the order of the day. Obama might still like to see a federal minimum wage of $10.10 an hour. But because that seems unlikely to pass the Republican-controlled House, it looks as if he'll have to settle for the far more modest change he announced Tuesday: raising the minimum wage by executive order to $10.10 for federal contract workers. That may be frustrating for a president who lamented in his speech that "corporate profits and stock prices have rarely been higher, and those at the top have never done better. But average wages have barely budged. Inequality has deepened. Upward mobility has stalled. Our job is to reverse these trends." But failing in that, as he seems likely to do, the president promised Tuesday to look for incremental ways to chip away at the gap between rich and poor. And he will console himself with earlier victories. Already, at the White House, there's a sense that the main work of the Obama administration is mostly complete.

#### Obama will remove the sanctions himself – no impact

Tehran Times 1/22 (“White House seeks to bypass Congress on Iran deal”, http://www.tehrantimes.com/politics/113602-white-house-seeks-to-bypass-congress-on-iran-deal)

TEHRAN – The White House has been exploring ways to circumvent Congress and unilaterally lift sanctions on Iran once a final nuclear agreement is reached, according to sources with knowledge of White House conversations and congressional insiders familiar with its strategy, the Washington Free Beacon reported on Tuesday. The issue of sanctions relief has become one of the key sticking points in the Iran debate, with lawmakers pushing for increased economic pressure and the White House fighting to roll back regulations. While many in Congress insist that only the legislative branch can legally repeal sanctions, senior White House officials have been examining strategies to skirt Congress, according to those familiar with internal conversations. Sen. Mark Kirk (R., Ill.), who is leading the charge on new sanctions legislation, said that it is unacceptable for the White House to try to bypass Congress on such a critical global issue. “The American people must get a say in any final nuclear agreement with Iran…,” Kirk told the Washington Free Beacon. “The administration cannot just ignore U.S. law and lift sanctions unilaterally.” Congressional insiders say that the White House is worried Congress will exert oversight of the deal and demand tougher nuclear restrictions on Tehran in exchange for sanctions relief. Top White House aides have been “talking about ways to do that (lift sanctions) without Congress and we have no idea yet what that means,” said one senior congressional aide who works on sanctions. “They’re looking for a way to lift them by fiat, overrule U.S. law, drive over the sanctions, and declare that they are lifted.” Under the interim nuclear deal with Iran that began on Monday, Tehran will receive more than $4 billion in cash, according to the White House. President Barack Obama could unilaterally unravel sanctions through several executive channels, according to former government officials and legal experts. Executive orders grant the president significant leverage in the how sanctions are implemented, meaning that Obama could choose to stop enforcing many of the laws on the books, according to government insiders. Those familiar with the ins and outs of sanctions enforcement say that the White House has long been lax with its enforcement of sanctions regulations already on the books. “It’s no secret that the president, with executive power, can determine sanctions implementation, particularly with waivers and the decision not to sanction certain entities,” said Jonathan Schanzer, a former analyst at the Treasury Department, which is responsible for enforcing sanctions.

#### No impact to a deal and too many obstacles

**Hibbs, Carnegie Nuclear Policy Program senior associate, 12-30-13**

(Mark, “A Year of Too-Great Expectations for Iran”, <http://carnegieendowment.org/2013/12/30/year-of-too-great-expectations-for-iran/gxbv>, ldg)

If all goes according to plan, sometime during 2014 Iran will sign a comprehensive final agreement to end a nuclear crisis that, over the course of a decade, has threatened to escalate into a war in the Middle East. But in light of the unresolved issues that must be addressed, it would be unwise to bet that events will unfold as planned. Unrealistic expectations about the Iran deal need to be revised downward. In Geneva on November 24, Iran and the five permanent members of the United Nations Security Council—China, France, Russia, the United Kingdom, and the United States—plus Germany agreed to a Joint Plan of Action. For good reason, the world welcomed this initial agreement because it squarely put Iran and the powers on a road to end the crisis through diplomacy. The deal calls for Tehran and the powers to negotiate the “final step” of a two-stage agreement inside six months. In the best case, the two sides will with determination quickly negotiate that final step. Iran will demonstrate to the International Atomic Energy Agency (IAEA) that its nuclear program is wholly dedicated to peaceful uses and agree to verified limits on its sensitive nuclear activities for a considerable period of time. In exchange, sanctions against Iran will be lifted. An effective final deal could emerge. But Iran and the West will continue to have major differences whether or not there is a final nuclear pact. Residual mutual suspicion is significant, and the United States and Iran have competing hardwired security commitments in the region. The United States will not pivot away from Israel and the Arab states in the Persian Gulf, and Iran will not abandon the Alawites in Syria and push Hezbollah to renounce force. The November deal will not lead to a transformation of the West’s relations with Iran, and the act of signing a deal will not mean Washington and Tehran have somehow overcome their multiple fundamental differences and become partners, as some observers either hope or fear. THE CLOCK IS TICKING U.S. Secretary of State John Kerry knew what he was talking about when he announced in Geneva that the initial step of the Iran nuclear deal had been agreed to and warned that “now the really hard part begins.” The Joint Plan of Action says that Iran and the powers “aim to conclude” the final agreement in “no more than one year.” But the issues that remain to be resolved and the amount of work that needs to be done could delay agreement on the final step for many months. The main problem is not that Iran will refuse to implement what it agreed to in the initial deal. It will almost certainly stop producing and installing more uranium-enrichment centrifuges, limit that enrichment to no more than 5 percent U-235 (enriching to higher levels would bring Iran closer to weapons-grade material), and convert its enriched uranium gas inventory to less-threatening oxide. It is also likely to halt essential work on the Arak heavy-water reactor project, where Iran is developing the capability to produce plutonium, which can be used for making nuclear weapons. Tehran has every incentive to comply with these measures. Were it to cheat, Iran’s adversaries, convinced that Iran cannot be trusted, would be vindicated and would gain leverage to add sanctions or use force. Iran knows this. Instead, the potential showstoppers looming before the parties concern matters that the negotiation of the final step itself must resolve. Crucially, the Joint Plan of Action left open how Iran, the powers, and the IAEA would resolve two critical matters: unanswered questions about sensitive and potentially embarrassing past and possibly recent Iranian nuclear activities, and unfulfilled demands by the UN Security Council that Iran suspend its uranium-enrichment program. Since 2006, Tehran has refused to comply with the Security Council’s suspension orders, and since 2008, it has refused to address allegations leveled by the IAEA that point to nuclear weapons research and development by Iran. The Joint Plan of Action is deliberately vague about how to handle these issues, not because Western diplomats were naive but in part because the powers intended the initial deal to build confidence. That means that groundbreaking and dealmaking were paramount, inviting bold statements, not nitty-gritty outlines. Also leading to this outcome is the fact that when the United States revved up the negotiation this fall in direct bilateral talks with Iran, what was originally a four-step road map became a two-step process featuring an initial step and a final step, with the fine print of steps two and three in the original scheme left to be worked out. If the parties do not work out the two major challenges they face, the negotiation may fail. If differences result in a stalemate, Iran’s hardliners could gain the upper hand, continue pursuing unfettered nuclear development, and eventually terminate the initial accord. Alternatively, U.S. lawmakers could respond to a lack of progress by adding to Iran’s sanctions burden, which would likewise doom the negotiation. There is much at stake.

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### Alt

Alt fails- can’t change international politics

**McCormack 10** (Tara, is Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster. 2010, (Critique, Security and Power: The political limits to emancipatory approaches, page 59-61)

In chapter 7 I engaged with the human security framework and some of the problematic implications of ‘emancipatory’ security policy frameworks. In this chapter I argued that the shift away from the pluralist security framework and the elevation of cosmopolitan and emancipatory goals **has served to** **enforce international power inequalities rather than lessen them**. Weak or unstable states are subjected to greater international scrutiny and international institutions and other states have greater freedom to intervene, but the citizens of these states have **no way of controlling or influencing** these international institutions or powerful states. This shift away from the pluralist security framework **has not challenged the status quo**, which may help to explain why major international institutions and states **can easily adopt** a more cosmopolitan rhetoric in their security policies. As we have seen, the shift away from the pluralist security framework has entailed a shift towards a more openly hierarchical international system, in which states are differentiated according to, for example, their ability to provide human security for their citizens or their supposed democratic commitments. In this shift, the old pluralist international norms of (formal) international sovereign equality, non-intervention and ‘blindness’ to the content of a state are overturned. Instead, international institutions and states have more freedom to intervene in weak or unstable states in order to ‘protect’ and emancipate individuals globally. Critical and emancipatory security theorists argue that the goal of the emancipation of the individual means that security must be reconceptualised away from the state. As the domestic sphere is understood to be the sphere of insecurity and disorder, the international sphere represents greater emancipatory possibilities, as Tickner argues, ‘if security is to start with the individual, its ties to state sovereignty must be severed’ (1995: 189). For critical and emancipatory theorists there must be a shift towards a ‘cosmopolitan’ legal framework, for example Mary Kaldor (2001: 10), Martin Shaw (2003: 104) and Andrew Linklater (2005). For critical theorists, one of the fundamental problems with Realism is that it is unrealistic. Because it prioritises order and the existing status quo, Realism attempts to impose a particular security framework onto a complex world, ignoring the myriad threats to people emerging from their own governments and societies. Moreover, traditional international theory serves to obscure power relations and omits a study of why the system is as it is: [O]mitting myriad strands of power amounts to exaggerating the simplicity of the entire political system. Today’s conventional portrait of international politics thus too often ends up looking like a Superman comic strip, whereas it probably should resemble a Jackson Pollock. (Enloe, 2002 [1996]: 189) Yet as I have argued, contemporary critical security theorists seem to show a marked lack of engagement with their problematic (whether the international security context, or the Yugoslav break-up and wars). **Without concrete engagement and analysis**, however, **the critical project is undermined and critical theory becomes nothing more than a request that people behave in a nicer way to each other**. Furthermore, whilst contemporary critical security theorists argue that they present a more realistic image of the world, through exposing power relations, for example, their lack of concrete analysis of the problematic considered **renders them actually unable to engage** with existing power structures and the way in which power is being exercised in the contemporary international system. For critical and emancipatory theorists the central place of the values of the theorist mean that it cannot fulfil its promise to critically engage with contemporary power relations and emancipatory possibilities. Values must be joined with engagement with the material circumstances of the time.

#### Uncertainty principals mean shifting your thought process won’t change the inevitability of security competition

Copeland 2k [Dale C., Professor of Political Science, University of Virginia, author The Origins of Major War, “The Constructivist Challenge to Structural Realism.(Review)” *International Security*, September 22, 2000, <http://www.accessmylibrary.com/article-1G1-67320178/constructivist-challenge-structural-realism.html>]

For more than a decade realism, by most accounts the dominant paradigm in international relations theory, has been under assault by the emerging paradigm of constructivism. One group of realists--the structural (or neo-/systemic) realists who draw inspiration from Kenneth Waltz's seminal Theory of International Politics[1]--has been a particular target for constructivist arrows. Such realists contend that anarchy and the distribution of relative power drive most of what goes on in world politics. Constructivists counter that structural realism misses what is often a more determinant factor, namely, the intersubjectively shared ideas that shape behavior by constituting the identities and interests of actors. Through a series of influential articles, Alexander Wendt has provided one of the most sophisticated and hard-hitting constructivist critiques of structural realism.[2] Social Theory of International Politics provides the first book-length statement of his unique brand of constructivism.[3] Wendt goes beyond the more moderate constructivist point that shared ideas must be considered alongside material forces in any empirical analysis. Instead he seeks to challenge the core neorealist premise that anarchy forces states into recurrent security competitions. According to Wendt, whether a system is conflictual or peaceful is a function not of anarchy and power but of the shared culture created through discursive social practices. Anarchy has no determinant "logic," only different cultural instantiations. Because each actor's conception of self (its interests and identity) is a product of the others' diplomatic gestures, states can reshape structure by process; through new gestures, they can reconstitute interest s and identities toward more other-regarding and peaceful means and ends. If Wendt is correct, and "anarchy is what states make of it," then realism has been dealt a crushing blow: States are not condemned by their anarchic situation to worry constantly about relative power and to fall into tragic conflicts. They can act to alter the intersubjective culture that constitutes the system, solidifying over time the non-egoistic mind-sets needed for long-term peace. Notwithstanding Wendt's important contributions to international relations theory, his critique of structural realism has inherent flaws. Most important, it does not adequately address a critical aspect of the realist worldview: the problem of uncertainty. For structural realists, it is states' uncertainty about the present and especially the future intentions of others that makes the levels and trends in relative power such fundamental causal variables. Contrary to Wendt's claim that realism must smuggle in states with differently constituted interests to explain why systems sometimes fall into conflict, neorealists argue that uncertainty about the other's present interests--whether the other is driven by security or nonsecurity motives--can be enough to lead security-seeking states to fight. This problem is exacerbated by the incentives that actors have to deceive one another, an issue Wendt does not address. Yet even when states are fairly sure that the other is also a security seeker, they know that it might change its spots later on. States must therefore worry about any decline in their power, lest the other turn aggressive after achieving superiority. Wendt's building of a systemic constructivist theory--and his bracketing of unit-level processes--thus presents him with an ironic dilemma. It is the very mutability of polities as emphasized by domestic-level constructivists--that states may change because of domestic processes independent of international interaction--that makes prudent leaders so concerned about the future. If diplomacy can have only a limited effect on another's character or regime type, then leaders must calculate the other's potential to attack later should it acquire motives for expansion. In such an environment of future uncertainty, levels and trends in relative power will thus act as a key constraint on state behavior. The problem of uncertainty complicates Wendt's efforts to show that anarchy has no particular logic, but only three different ideational instantiations in history--as Hobbesian, Lockean, or Kantian cultures, depending on the level of actor compliance to certain behavioral norms. By differentiating these cultures in terms of the degree of cooperative behavior exhibited by states, Wendt's analysis reinforces the very dilemma underpinning the realist argument. If the other is acting cooperatively, how is one to know whether this reflects its peaceful character, or is just a facade masking aggressive desires? Wendt's discussion of the different degrees of internalization of the three cultures only exacerbates the problem. What drives behavior at the lower levels of internalization is precisely what is not shared between actors--their private incentives to comply for short-term selfish reasons. This suggests that the neorealist and neoliberal paradigms, both of which emphasize the role of uncertainty when interna lization is low or nonexistent, remain strong competitors to constructivism in explaining changing levels of cooperation through history. And because Wendt provides little empirical evidence to support his view in relation to these competitors, the debate over which paradigm possesses greater explanatory power is still an open one.