## \*\*\*1AC

### Plan

#### The United States Federal Judiciary should subject United States’ targeted killing operations to judicial ex post review by allowing a cause of action against the government for damages arising directly out of the constitutional provision allegedly offended.

### 1AC Allied Cooperation

#### Advantage 1 is Allied Cooperation –

#### Domestic and international criticism of the drone program is threatening its effectiveness. Reform is key.

Zenko, CFR Fellow, 13 (Micah, is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR)., “Reforming U.S. Drone Strike Policies,” http://www.cfr.org/wars-and-warfare/reforming-us-drone-strike-policies/p29736)

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

#### U.S. drone policy is more important than the spying and data scandal to European partners – it threatens the trans-atlantic relationship

Dworkin 7/17/13 (Anthony, Senior Policy Fellow at the European Council on Foreign Relations, “Actually, drones worry Europe more than spying” <http://globalpublicsquare.blogs.cnn.com/2013/07/17/actually-drones-worry-europe-more-than-spying/>)

Relations between the United States and Europe hit a low point following revelations that Washington was spying on European Union buildings and harvesting foreign email messages. Behind the scenes, though, it is not data protection and surveillance that produces the most complications for the transatlantic intelligence relationship, but rather America's use of armed drones to kill terrorist suspects away from the battlefield. Incidents such as the recent killing of at least 17 people in Pakistan are therefore only likely to heighten European unease. In public, European governments have displayed a curiously passive approach to American drone strikes, even as their number has escalated under Barack Obama’s presidency. Many Europeans believe that the majority of these strikes are unlawful, but their governments have maintained an uneasy silence on the issue. This is partly because of the uncomfortable fact that information provided by European intelligence services may have been used to identify some targets. It is also because of a reluctance to accuse a close ally of having violated international law. And it is partly because European countries have not worked out exactly what they think about the use of drones and how far they agree within the European Union on the question. Now, however, Europe’s muted stance on drone strikes looks likely to change. Why? For one thing, many European countries are now trying to acquire armed drones themselves, and this gives them an incentive to spell out clearer rules for their use. More importantly, perhaps, Europeans have noticed that drones are proliferating rapidly, and that countries like China, Russia and Saudi Arabia are soon likely to possess them. There is a clear European interest in trying to establish some restrictive standards on drone use before it is too late. For all these reasons, many European countries are now conducting internal reviews of their policy on drones, and discussions are also likely to start at a pan-European level. But as Europeans begin to articulate their policy on the use of drones, a bigger question looms. Can Europe and the United States come together to agree on when drone strikes are permissible? Until now, that would have seemed impossible. Since the September 11 attacks, the United States has based its counterterrorism operations on the claim that it is engaged in a worldwide armed conflict with al Qaeda and associated forces — an idea that President Obama inherited from President George W. Bush and has been kept as the basis for an expanded drone strike campaign. European countries have generally rejected this claim. However, the changes to American policy that President Obama announced in May could open the way to at least the possibility of a dialogue. Obama suggested that he anticipated a time in the not-too-distant future when the armed conflict against al Qaeda might come to an end. More substantially, he made clear that his administration was in the process of switching its policy so that, outside zones of hostilities, it would only use drone strikes against individuals who posed a continuing and imminent threat to the U.S. That is a more restrictive standard than the claim that any member of al Qaeda or an associated force could lawfully be killed with a drone strike at any time. European countries might be more willing to accept an approach based on this kind of “self-defense” idea. However, there remain some big stumbling blocks. First, a good deal about Obama’s new standards is still unclear. How does he define a “zone of hostilities,” where the new rules will not apply? And what is his understanding of an “imminent” threat? European countries are likely to interpret these key terms in a much narrower way than the United States. Second, Obama’s new approach only applies as a policy choice. His more expansive legal claims remain in the background so that he is free to return to them if he wishes. But if the United States is serious about working toward international standards on drone strikes, as Obama and his officials have sometimes suggested, then Europe is the obvious place to start. And there are a number of steps the administration could take to make an agreement with European countries more likely. For a start, it should cut back the number of drone strikes and be much more open about the reasons for the attacks it conducts and the process for reviewing them after the fact. It should also elaborate its criteria for determining who poses an imminent threat in a way that keeps attacks within tight limits. And, as U.S. forces prepare to withdraw from Afghanistan in 2014, it should keep in mind the possibility of declaring the war against al Qaeda to be over. All this said, Europe also has some tough decisions to make, and it is unclear whether European countries are ready to take a hard look at their views about drone strikes, addressing any weaknesses or inconsistencies in their own position. If they are, the next few years could offer a breakthrough in developing international standards for the use of this new kind of weapon, before the regular use of drones spreads across the globe.

#### Accountability over standards of imminence are impossible from executive internal measures – no one trusts Obama on drones – only the plans court action solves

Goldsmith 13 (Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law, “How Obama Undermined the War on Terror,” http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism)

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

#### Unrestrained drone policy results in collapse of NATO

Parker 9/17/12 (Tom, former policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service (MI5), “U.S. Tactics Threaten NATO” <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461?page=1>)

A growing chasm in operational practice is opening up between the United States and its allies in NATO. This rift is putting the Atlantic alliance at risk. Yet no one in Washington seems to be paying attention. The escalating use of unmanned aerial vehicles to strike terrorist suspects in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the United States and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now forced to pay attention by their own courts, which will restrict cooperation in the future. As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a very different set of constraints than their U.S. counterparts. The European Court of Human Rights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that intelligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now raises serious criminal liability issues for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But not one other member of NATO shares this legal analysis, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and it may just be the Atlantic alliance.

#### NATO prevents global nuclear war

Zbigniew Brzezinski 9, former U.S. National Security Adviser, Sept/Oct 2009, “An Agenda for NATO,” Foreign Affairs, 88.5, EBSCO

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction -- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

#### Courts don’t leak intel methods or classified information—this fear has been repeatedly dispelled by hundreds of successfully tried terrorism cases

Jaffer-director ACLU’s National Security Project-12/9/08 <http://www.salon.com/2008/12/09/guantanamo_3/> Don’t replace the old Guantánamo with a new one

The contention that the federal courts are incapable of protecting classified information — “intelligence sources and methods,” in the jargon of national security experts — is another canard. When classified information is at issue in federal criminal prosecutions, a federal statute — the Classified Information Procedures Act (CIPA) — generally permits the government to substitute classified information at trial with an unclassified summary of that information. It is true that CIPA empowers the court to impose sanctions on the government if the substitution of the unclassified summary for the classified information is found to prejudice the defendant, and in theory such sanctions can include the dismissal of the indictment. In practice, however, sanctions are exceedingly rare, and of the hundreds of terrorism cases that have been prosecuted over the last decade, none has been dismissed for reasons relating to classified information. Proponents of new detention authority, including Waxman and Wittes, invoke the threat of exposing “intelligence sources and methods” as a danger inherent to terrorism prosecutions in U.S. courts, but the record of successful prosecutions provides the most effective rebuttal.

#### No over-deterrence of military operations- government liability is rooted in the FTCA and it avoids the chilling associated with individual liability.

Kent, Constitutional Law prof, 13 (Andrew, Faculty Advisor-Center on National Security at

Fordham Law School, prof @ Fordham University School of Law- constitutional law, foreign relations law, national security law, federal courts and procedure, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” October 8, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2330476>) \*\* Evidence is gender paraphrased

Because of sovereign immunity, federal officials are sued under Bivens in their so-called personal rather than official capacities.43 In theory, persons injured by actions of a federal official could also seek compensation by suing the agent’s employer, the United States Government for damages, but the sovereign immunity of the federal government blocks this route.44 The Federal Tort Claims Act (FTCA), originally enacted in 1946 and frequently amended since,45 effects a partial waiver of sovereign immunity by allowing suits directly against the federal government instead of officers (who might be judgment proof) and making the United States liable for injuries caused by the negligent or wrongful act or omission of any federal employee acting within the scope of ~~his~~ employment, in accordance with the law of the state where the act or omission occurred.46 Under the Westfall Act of 1988, the FTCA is the exclusive remedy for torts committed by federal officials within the scope of their employment, except for suits brought for violations of the Constitution.47 In other words, state law tort claims against individual official defendants are now generally barred. The Supreme Court takes the prospect of individual liability in damages for officials very seriously and has crafted immunity doctrines to soften the blow. The Court’s rulings provide the President of the United States and certain classes of officials defined functionally—prosecutors doing prosecutorial work, legislators legislating, judges doing judicial work and certain persons performing “quasijudicial” functions—with absolute immunity from money damages suits, generally for the reason that such suits would be likely to be frequent, frequently meritless, and uniquely capable of disrupting job performance.48 All other government officials are entitled to only “qualified immunity” from money damages suits. Under the qualified immunity doctrine, officials are liable only when they violate “clearly established” federal rights, that is, when “[t]he contours of [a] right [are] sufficiently clear that every reasonable official would have understood that what ~~he is~~ [they are] doing violates that right.”49 Because qualified immunity is not just a defense to liability but also “a limited entitlement not to stand trial or face the other burdens of litigation,”50 the Court’s doctrine encourages speedy resolution of immunity questions by judges. The policy reasons for the Court’s active protection of federal officials through a robust immunity doctrine, including fear of dampening the zeal with which officials perform their jobs because of fear of personal liability, are discussed below in Section V.A.

#### Commanders are adapting to litigation to maintain unit cohesion – they will instill the rule of law to lower level officers in order to build a stable chain of command

Dunlap 9 (Charles J., Major General, USAF, is Deputy Judge Advocate General, Headquarters U.S. Air Force, “Lawfare: A Decisive Element of 21st-Century Conflicts?” Joint Force Quarterly – issue 54, 3d

quarter 2009, www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA515192‎)

Of course, the availability of expert legal advice is absolutely necessary in the age of lawfare. The military lawyers (judge advocates) responsible for providing advice for combat operations need schooling not only in the law, but also in the characteristics of the weapons to be used, as well as the strategies for their employment. Importantly, commanders must make it unequivocally clear to their forces that they intend to conduct operations in strict adherence to the law. Helping commanders do so is the job of the judge advocate. Assuring troops of the legal and moral validity of their actions adds to combat power. In discussing the role of judge advo- cates, Richard Schragger points out: Instead of seeing law as a barrier to the exercise of the clients power, [military lawyers] understand the law as a prerequisite to the meaning- ful exercise of power.... Law makes just wars possible by creating a well-defined legal space within which individual soldiers can act without resorting to their own personal moral codes}\* That said, commanders should aim not to have a judge advocate at the elbow of every rifleman, but rather to imbue troops with the right behaviors so they instinctively do the right thing on the battlefield. The most effective way is to carefully explain the enemy's lawfare strategies and highlight the pragmatic, real-world impact of Abu Ghraib-type incidents on the overall success of the mission. One of the most powerful motivators of troop conduct is the desire to enhance the security of fellow soldiers. Making the connection between adherence to law and troop safety is a critical leader- ship task. Integral to defensive lawfare operations is the education of the host nation population and, in effect, the enemy themselves. In many 21\*-century battlespaces, these audiences are not receptive to what may appear as law imposed by the West. In 1999, for example, a Chinese colonel famously argued that China was "a weak country, so do we need to fight according to your rules? No. War has rules. but those rules arc set by the West……[I]f you use those rules, then weak countries have no chance." To counter such beliefs, it is an essential lawfare technique to look for touchstones within the culture of the target audience. For example, in the early 1990s, the International Committee of the Red Cross produced an illustrated paperback that matched key provi- sions of the Geneva Convention "with bits of traditional Arab and Islamic wisdom!\*" Such innovations ought to be reexamined, along with creative ideas that would get the messages to the target audience. One way might be to provide audio cassettes in local languages that espouse what arc really Geneva Convention values in a context and manner that tit with community religious and cultural imperatives. The point is to delegitimize the enemy in the eyes of the host nation populace. This is most effectively accomplished when respected indigenous authorities lead the effort. Consider Thomas Friedman's favor- able assessment to the condemnation by Indian Muslim leaders to the November 2008 Mumbai attacks: The only effective way to stop (terrorism) is tor "the village"—the Muslim community itself— to say "no more" When a culture and a faith community delegitimize this kind of behavior, openly, loudly and consistently, it is more impor- tant than metal detectors or extra police.\* Moreover, it should not be forgotten that much of the success in suppressing violence in Iraq was achieved when Sunnis in Anbar Province and other areas realized that al Qaeda operatives were acting contrary to Iraqi, and indeed Islamic, sensibilities, values, and law. It also may be possible to use educa- tional techniques to change the attitudes of enemy lighters as well. Finally, some critics believe that "lawfare\* is a code to condemn anyone who attempts to use the courts to resolve national security issues. For example, lawyer-turned- journalist Scott Horton charged in the luly 2007 issue ot Harper's Magazine that "lawfare theorists\* reason that lawyers who present war-related claims in court "might as well be terrorists themselves."™ Though there are those who object to the way the courts have been used by some litigants.\*0 it is legally and morally wrong to paint anyone legitimately using legal processes as the "enemy." Indeed, the courageous use of the courts on behalf of unpopular clients, along with the insistence that even our vilest enemies must be afforded due process of law. is a deeply embedded American value, and the kind of principle the Armed Forces exist to preserve. To be clear, recourse to the courts and other legal processes is to be encouraged: if there are abuses, the courts are well equipped to deal with them. It is always better to wage legal battles, however vicious, than it is to fight battles with the lives of young Americans. Lawfare has become such an indel- ible feature of 21st-century conflicts that commanders dismiss it at their peril. Key leaders recognize this evolution. General James Jones. USMC (Ret.), the Nation's new National Security Advisor, observed several years ago that the nature of war has changed. "It's become very legalistic and very complex." he said, adding that now "you have to have a lawyer or a dozen."\*' Lawfare. of course, is about more than lawyers, it is about the rule of law and its relation to war. While it is true, as Professor Eckhardt maintains, that adherence to the rule of law is a "center of gravity" for democratic societ- ies such as ours—and certainly there arc those who will try to turn that virtue into a vulnerability—we still can never forget that it is also a vital source of our great strength as a nation." We can—and must—meet the chal- lenge of lawfare as effectively and aggressively as we have met every other issue critical to our national security.

### 1AC Blowback

#### Advantage 2 is Blowback –

#### Overuse of drones causes massive blowback in Pakistan-this is the consensus of research and assumes unique Pakistani cultural traits

**Dengler, US Secret service Assistant to the Special Agent in Charge, 2013**

(Judson, “An examination of the collateral psychological and political damage of drone warfare in the FATA region of Pakistan”, September, <http://calhoun.nps.edu/public/bitstream/handle/10945/37611/13Sep_Dengler_Judson.pdf?sequence=1>, ldg)

University of Arizona researchers Hudson, Owens, and Flannes state there are five distinct, yet overlapping, forms of blowback from the use of drones in counter-terror operations: the purposeful retaliation against the United States, the creation of new insurgents, complications in the Afghan-Pakistan theatre, further destabilization of Pakistan and the deterioration of U.S. and Pakistani relations.45 The authors, who are members of the Southwest Initiative for the Study of Middle East Conflicts (SISMEC), capture the main arguments against drone warfare. Most of the literature I reviewed seems to fall into one of the five categories listed above. There is an abundance of scholarly sources which support the findings of these researchers. Definitive statistical support of the negative aspects of drone warfare is difficult to assess due to intervening factors in this volatile region. Many factors can influence the criteria established by Hudson, Owens, and Flannes. In his discussion about the history of the CIA’s covert drone warfare program, University of Massachusetts—Dartmouth history faculty member Brian Glyn Williams adds to the case against drone warfare. He finds the collateral damage of drone strikes gives the media and religious leaders an opportunity to rally anti-American sentiment in Pakistan and the Islamic world in general.46 This article highlights the ability of radicals to easily use drone strikes, regardless if successful or not, to their advantage to manipulate the views of the local population. This view was supported by multiple other materials I reviewed. Writing for the German based Institute for the Study of Labor (IZA), Jaeger and Siddique discuss an example of retaliation by the Taliban which is attributed to drone strikes.47 This is typical of many examples of the Taliban or al-Qaeda directly stating their attack against the local government or U.S. was in response to drone policy in the region. In his Georgetown University Master’s thesis, Luke Olney evaluates the long term effectiveness of drone warfare. He supports the previously mentioned findings with particular emphasis on drones inspiring further radicalization, increased recruitment opportunities and further destabilization of local governments. However, he does note that drones may have some short-term success in disrupting militant groups.48 This seems to be a reoccurring theme in much of the readings I have conducted. Most researchers support the short-term advantage of drone strikes because they eliminate the target but drones have only been used extensively over the last ten years and questions exist about their effectiveness over time. The elimination of the militant is positive. But at what point does this victory become outweighed by the long-term effects of the killing? Support of the argument that drones have a negative political and diplomatic impact is made by Anne L. Oblinger in her 2011 Georgetown University thesis depicting the moral, legal, and diplomatic implications of drone warfare. Her thesis discusses the cultural and religious motivations behind terrorist activities which will be useful in a socio-cultural examination of this topic. She notes that despite their precision, drones still create many diplomatic hurdles for the U.S.49 This is another example of research which states that despite their tactical success, negative consequences still exist when leveraging drones. The majority of the literature indicates that there is a strong possibility of drone strikes having a negative overall influence in the FATA. Researchers from the University of Massachusetts, Dartmouth, Plaw, Fricker, and Williams, find that civilian casualties, real or perceived, will be the primary instigator. No matter how precise drone strikes are executed or how much technology improves, Pakistani press and society will be prone to believe that high percentages of civilians are being targeted. While the U.S. keeps details of the program somewhat secure, this practice allows the targeted groups to report the details of drone strikes to their advantage.50 There are numerous examples available of the collateral damage and devastation that drones inflict on the local community. Even if the strike successfully hits the intended target, statistics can be manipulated by the Taliban or Pakistani government. Investigative journalist Porter Gareth criticizes drone strikes because they are based on “scant evidence” in his article for The Washington Report for Middle East Affairs. He finds that the U.S. is targeting militant groups rather than al-Qaeda planning global terrorism.51 This was one of the few pieces of information which discussed who was being targeted by drone strikes and I found it particularly valuable. There should be more such information available, or forthcoming, because who is being targeted is critical to evaluating drone warfare. Ken Dilanian, of the Los Angeles Times, finds that the U.S. drone program has killed dozens of al-Qaeda operatives and hundreds of low-level militants but is has also infuriated many Pakistanis. Some officials in the State Department and National Security Council say these strikes are counterproductive because they only kill easily replaceable militants and the civilian casualties, which the U.S. disputes, destabilize the government of President Asif Ali Zardari of Pakistan. The number of drone strikes has grown since 2008 and now includes targeting of individuals based on a “pattern of life” that suggests involvement with insurgents. A former senior U.S. intelligence official stated that the CIA maintains a list of the top 20 targets and has at times had difficulty finding high value militants to add to the list. Are lower-level militants being targeted just to fill the list? This official is among those urging the CIA to reconsider its approach because the agency cannot kill all Islamic militants and drones alone will not solve challenge presented in the region. One former senior State Department official stated that drone strikes probably give motivation to those that fight us. Dilanian offers that it is impossible to independently assess the accuracy or effectiveness of the strikes because the program is classified, the Obama administration refuses to release information about the program and Pakistan has barred access to FATA from Western journalists or humanitarian agencies.52 This is one of Dilanian’s many pieces documenting drone warfare in Pakistan. Considering the sources of information he uses for this article, it appears that many in the military and intelligence community are beginning to realize the potential negative aspects of this tactic. He also identifies why it is so difficult to accurately and independently report on the impact of drone strikes and how data can be easily manipulated by the U.S., Pakistan, and militants. The New America Foundation database reflects the aggregation of credible news reports about U.S. drone strikes in Pakistan. The media outlets that New America relies upon are the three major international wire services (Associated Press, Reuters, Agence France Presse), the leading Pakistani newspapers (Dawn, Express Times, The News, The Daily Times), leading South Asian and Middle Eastern TV networks (Geo TV and Al Jazeera), and Western media outlets with extensive reporting capabilities in Pakistan (CNN, New York Times, Washington Post, LA Times, BBC, The Guardian, Telegraph). The New America Foundation makes no independent claims about the veracity of casualty reports provided by these organizations. The purpose of this database is to provide as much information as possible about the covert U.S. drone program in Pakistan. The Obama administration dramatically increased the frequency of the drone strikes, in comparison to the Bush Administration, with the peak number of drone attacks occurring in 2010, but the ratio of civilians killed in drone strikes fell to just over two percent. Despite the record 122 strikes in 2010, an average of 0.3 civilians were killed per strike, the lowest civilian death rate per strike until 2012, which saw only 0.1 civilians killed per attack in the first eight months of the year. According to data collected as of the summer of 2011, only one out of every seven drone strikes killed a militant leader. Under President Bush, about one-third of the militants killed were identified as leaders, but under President Obama, just 13 percent have been militant leaders. Drone strikes dropped sharply in 2011, as the relationship between the United States and Pakistan deteriorated. During the first half of 2012, the rate of strikes continued to fall and the civilian death ratio was close to zero. Since the U.S. drone campaign in Pakistan began in 2004, 84 to 85 percent of those killed were reported to be militants; six to eight percent were reported to be civilians and seven to nine percent remain “unknown.”53 The New America Foundation and Terror Free Tomorrow conducted the first comprehensive public opinion survey covering sensitive political issues in FATA. This survey was conducted from June 30 to July 20, 2010, and consisted of face-to-face interviews of 1,000 FATA residents age 18 or older across 120 villages or sampling points in all seven tribal Agencies of FATA. The respondents were 99 percent Pashtun, and 87 percent Sunni. Among their findings were that nearly nine out of ten opposed the U.S. following al-Qaeda and the Taliban into FATA and most would prefer that the Pakistani military fight these forces in FATA. Seventy-six percent are opposed to U.S. drone strikes, 16 percent believe they accurately target militants and just under half believed that drones predominantly kill civilians. The majority of FATA residents reject the presence of the Taliban or al-Qaeda in their region. Their top priorities included lack of jobs which was closely followed by lack of schools, good roads and security, poor health care and corruption of local official officials.54 Avner uses psychoanalysis, psychology, psychiatry, sociology, anthropology, and Islamic studies to understand Islamic terror. His research discusses the religion and culture of Islam, the psychology of Islam, the Muslim family and Muslim society from which many terrorists originate. Avner finds that terror can originate with emotions such as rage, hatred, fear and surprisingly, love and longing.56 Shame is an excessively painful feeling and is prevalent in Muslim culture. Shame, loss of honor, loss of face, and humiliation are unbearable feelings. Hamady found that shame was the worst and most painful feeling for an Arab. Preserving one’s honor and the honor of their tribe or clan is crucial. Any injury, real or imagined, causes unbearable shame that must be repaired through acts of revenge against those that damaged your honor.57 The importance of pride, honor and dignity is critical in Muslim culture. “Everything must be done to erase one’s humiliations and to regain one’s honor.”58 For Muslims who feel they have been shamed or humiliated, the only way to repair these feelings is by humiliating those that inflicted shame and humiliation on them.59 Avner’s research identifies multiple psychological factors which may explain the existing anger within segments of the Muslim community. Honor and shame is a tremendous motivator in Islam and may provide a solid predisposition for action against the offending party to regain one’s honor. Maintaining your honor or the honor of your tribe is of high importance to the Pashtun tribesmen of FATA. Once this has been violated, retaliation is obligated against those that have humiliated you. Stern reveals that the real or perceived national humiliation of the Palestinian people by Israeli policies gives rise to desperation and uncontrollable rage. Citing Mark Jurgensmeyer, Stern notes that suicide bombers are attempting to “dehumiliate” the deeply humiliated and traumatized. Through their actions, suicide bombers belittle their enemies and provide themselves with a sense of power. Repeated, small humiliations add up to a feeling of nearly unbearable despair and frustration, which can result in atrocities being committed in the belief that attacking the oppressor restores dignity.60 A skilled terrorist leader can strengthen and utilize feelings of betrayal and the desire for revenge.61 Stern shows the extent to which a Muslim will go to in order to restore their honor after being humiliated. The uncontrollable rage may not be proportionate when measured by Western standards. Even small humiliations will build to the point of suicide attacks to repair the loss of dignity. The hopelessness and aggravation many may feel in FATA should not be overlooked or diminished. Charismatic militant leaders can manipulate shame to motivate groups to action against whom they perceive has wronged their group. The most important psychoanalytic idea for understanding terrorism, according to Avner, is Heinz Kohut’s notion of narcissistic rage, “The need for revenge, for righting a wrong, for undoing a hurt by whatever means, and a deeply anchored, unrelenting compulsion in the pursuit of all these aims, which gives no rest to those that have suffered a narcissistic injury. These are the characteristic features of narcissistic rage in all its forms and which set it apart from other kinds of aggression.” This boundless rage, together with unconscious factors and the traditional Muslim family dynamic may explain Islamic terrorism, including suicidal versions.62 Kohut’s finding that narcissistic rage is the most important psychoanalytic factor for understanding is significant. The narcissistic aspect depicts how personal the hostility is and rage shows the intensity of the emotion which drives terrorists. Narcissistic rage allows the militant to pursue those that they perceive have wronged them by using extreme measures to regain their honor.

#### Overuse of drones in Pakistan empowers militants and destabilizes the government

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>

The escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

#### Pakistan collapse risks war with India and loose nukes

Twining 13 (Daniel Twining is Senior Fellow for Asia at the German Marshall Fund, Pakistan and the Nuclear Nightmare, Sept 4, http://shadow.foreignpolicy.com/posts/2013/09/04/pakistan\_and\_the\_nuclear\_nightmare)

The Washington Post has revealed the intense concern of the U.S. intelligence community about Pakistan's nuclear weapons program. In addition to gaps in U.S. information about nuclear weapons storage and safeguards, American analysts are worried about the risk of terrorist attacks against nuclear facilities in Pakistan as well as the risk that individual Pakistani nuclear weapons handlers could go rogue in ways that endanger unified national control over these weapons of mass destruction. These concerns raise a wider question for a U.S. national security establishment whose worst nightmares include the collapse of the Pakistani state -- with all its implications for empowerment of terrorists, a regional explosion of violent extremism, war with India, and loss of control over the country's nuclear weapons. That larger question is: Does Pakistan's nuclear arsenal promote the country's unity or its disaggregation? This is a complicated puzzle, in part because nuclear war in South Asia may be more likely as long as nuclear weapons help hold Pakistan together and embolden its military leaders to pursue foreign adventures under the nuclear umbrella. So if we argue that nuclear weapons help maintain Pakistan's integrity as a state -- by empowering and cohering the Pakistani Army -- they may at the same time undermine regional stability and security by making regional war more likely. As South Asia scholar Christine Fair of Georgetown University has argued, the Pakistani military's sponsorship of "jihad under the nuclear umbrella" has gravely undermined the security of Pakistan's neighborhood -- making possible war with India over Kargil in 1999, the terrorist attack on the Indian Parliament in 2001, the terrorist attack on Mumbai in 2008, and Pakistan's ongoing support for the Afghan Taliban, the Haqqani network, Lashkar-e-Taiba, and other violent extremists. Moreover, Pakistan's proliferation of nuclear technologies has seeded extra-regional instability by boosting "rogue state" nuclear weapons programs as far afield as North Korea, Libya, Iran, and Syria. Worryingly, rather than pursuing a policy of minimal deterrence along Indian lines, Pakistan's military leaders are banking on the future benefits of nuclear weapons by overseeing the proportionately biggest nuclear buildup of any power, developing tactical (battlefield) nuclear weapons, and dispersing the nuclear arsenal to ensure its survivability in the event of attack by either the United States or India. (Note that most Pakistanis identify the United States, not India, as their country's primary adversary, despite an alliance dating to 1954 and nearly $30 billion in American assistance since 2001.) The nuclear arsenal sustains Pakistan's unbalanced internal power structure, underwriting Army dominance over elected politicians and neutering civilian control of national security policy; civilian leaders have no practical authority over Pakistan's nuclear weapons program. Whether one believes the arsenal's governance implications generate stability or instability within Pakistan depends on whether one believes that Army domination of the country is a stabilizing or destabilizing factor. A similarly split opinion derives from whether one deems the Pakistan Army the country's most competent institution and therefore the best steward of weapons whose fall into the wrong hands could lead to global crisis -- or whether one views the Army's history of reckless risk-taking, from sponsoring terrorist attacks against the United States and India to launching multiple wars against India that it had no hope of winning, as a flashing "DANGER" sign suggesting that nuclear weapons are far more likely to be used "rationally" by the armed forces in pursuit of Pakistan's traditional policies of keeping its neighbors off balance. There is no question that the seizure of power by a radicalized group of generals with a revolutionary anti-Indian, anti-American, and social-transformation agenda within Pakistan becomes a far more dangerous scenario in the context of nuclear weapons. Similarly, the geographical dispersal of the country's nuclear arsenal and the relatively low level of authority a battlefield commander would require to employ tactical nuclear weapons raise the risk of their use outside the chain of command. This also raises the risk that the Pakistani Taliban, even if it cannot seize the commanding heights of state institutions, could seize either by force or through infiltration a nuclear warhead at an individual installation and use it to hold the country -- and the world -- to ransom. American intelligence analysts covering Pakistan will continue to lose sleep for a long time to come.

#### Miscalculation means this could escalate to nuclear winter and extinction

Hundley 12 (TOM HUNDLEY, Senior Editor-Pulitzer Center, “Pakistan and India: Race to the End,” http://pulitzercenter.org/reporting/pakistan-nuclear-weapons-battlefield-india-arms-race-energy-cold-war)

Nevertheless, military analysts from both countries still say that a nuclear exchange triggered by miscalculation, miscommunication, or panic is far more likely than terrorists stealing a weapon -- and, significantly, that the odds of such an exchange increase with the deployment of battlefield nukes. As these ready-to-use weapons are maneuvered closer to enemy lines, the chain of command and control would be stretched and more authority necessarily delegated to field officers. And, if they have weapons designed to repel a conventional attack, there is obviously a reasonable chance they will use them for that purpose. "It lowers the threshold," said Hoodbhoy. "The idea that tactical nukes could be used against Indian tanks on Pakistan's territory creates the kind of atmosphere that greatly shortens the distance to apocalypse." Both sides speak of the possibility of a limited nuclear war. But even those who speak in these terms seem to understand that this is fantasy -- that once started, a nuclear exchange would be almost impossible to limit or contain. "The only move that you have control over is your first move; you have no control over the nth move in a nuclear exchange," said Carnegie's Tellis. The first launch would create hysteria; communication lines would break down, and events would rapidly cascade out of control. Some of the world's most densely populated cities could find themselves under nuclear attack, and an estimated 20 million people could die almost immediately. What's more, the resulting firestorms would put 5 million to 7 million metric tons of smoke into the upper atmosphere, according to a new model developed by climate scientists at Rutgers University and the University of Colorado. Within weeks, skies around the world would be permanently overcast, and the condition vividly described by Carl Sagan as "nuclear winter" would be upon us. The darkness would likely last about a decade. The Earth's temperature would drop, agriculture around the globe would collapse, and a billion or more humans who already live on the margins of subsistence could starve. This is the real nuclear threat that is festering in South Asia. It is a threat to all countries, including the United States, not just India and Pakistan. Both sides acknowledge it, but neither seems able to slow their dangerous race to annihilation.

#### Current drone policy will collapse Yemen and lead to civil war

**Cox, Vice, 2013**

(Joseph, “ARE AMERICAN DRONES AL QAEDA'S STRONGEST WEAPON IN YEMEN?”, 8-19, <http://www.vice.com/read/are-us-drones-al-qaedas-strongest-weapon>, ldg)

Things are getting really messy in Yemen at the moment. With soldiers being murdered in their sleep and embassies closing en masse in fear of an imminent wave of attacks and multiple drone strikes, the country seems to be the latest sandbox full of blood in our war on terror. Not that this warz one is all that new. Al Qaeda in the Arabian Peninsula (AQAP) have had a presence in the area for years, their membership rose from around 300 in 2009 up to an estimated 1,000 today. In an attempt to combat this rise in manpower, the US has escalated its infamous drone program, allegedly targeting high-ranking AQAP members. Although, according to reports, they've yet to actually kill any of them. Is this hit-and-hope policy really the best way to fight al Qaeda in Yemen? Or are these drone strikes, which have a habit of killing civilians, exactly the PR ammo al Qaeda need to lure new recruits in a country that is already as politically stable as a gang of jihadists on a bouncy castle? “Drones will always be an easy way for [organizations like al Qaeda] to gain anti-American support,” Alexander Meleagrou-Hitchens, from the International Center for the Study of Radicalization, told me. “When something like a drone strike comes crashing down in people's front bedrooms or front rooms, that's going to help you recruit and radicalize, absolutely.” This is already the case in other places with a heavy US drone presence, such as Pakistan. According to research, the drone policy has caused the majority of the population to see the US as an enemy, with strikes killing civilians, breeding resentment towards the US and undermining Pakistan’s sovereignty. Indeed, the foiled Times Square bomber declared that his attack was intended as payback for the US’ worldwide use of drones, a point that is seldom admitted by advocates of "targeted killings." Depressingly, commentators believe that the use of drone strikes in Yemen could be even more damaging than they have been in Pakistan. Michael Boyle, an expert on terrorism and political violence, and author of The Costs and Consequences of Drone Warfare, told me about some vital differences between the two when it comes to patterns of al-Qaeda affiliation. “The membership of al Qaeda in a place like Pakistan comprises people who come from many areas, such as Russia, the Middle East, Africa, and Asia," he explained. "They come to Pakistan to fight. In Yemen, however, al Qaeda membership is dominated by people who were born and raised in the country, with deep connections to the local tribal structures.” This means that when a drone strike kills an unintended target, it is likely to be someone's brother, father, uncle, or son; sister, mother, aunt, or daughter. This situation is probably going to breed more desire for retribution than the death of a fellow soldier, no matter how strong the thirst for vengeful jihad. There is also the threat of killing someone with strong connections to a clan or tribe and generating a level of public outrage that could destabilize the Yemeni government. It is these close-knit ties of people who may not have any kind of connection to al Qaeda that make Yemen a completely different battlefield to Afghanistan or Pakistan. According to Ibrahim Mothana, a Yemeni youth activist, “Drone strikes are causing more and more Yemenis to hate America and join radical militants. They are not driven by ideology but rather by a sense of revenge and despair.” During the latest escalation of violence, Yemeni bloggers have claimed “there is more hostility now in Yemen against the US because of these attacks.” Even Robert Grenier, a former CIA station head, has said that the US policy in Yemen runs the risk of turning the country into a "safe haven" for al Qaeda. Even as academics, experts and Yemenis themselves are saying that drones may be contributing to a rise in al Qaeda's local fanbase, the US government are seeking to place the blame elsewhere. In the recent sentencing of Bradley Manning, prosecutors claimed that his leak of over 700,000 files to WikiLeaks had aided al Qaeda’s recruitment efforts. However, visit any local Yemeni news website and you’ll be greeted with images of the latest bloodied drone strike victims. As a Yemeni, what's more likely to make you resent the US: Whatever you happen to see of Manning's leaks, or the very real threat of a missile killing your family at any moment? Admittedly, it's difficult to know exactly how many Yemenis have been "radicalized" because of the drones' presence, and how many of these people actually end up joining their local al Qaeda division. It's not something that's particularly easy to research with any kind of authority—there's no bubbly al Qaeda PR girl sat in an office in Sana'a somewhere who will gladly pull the latest membership stats for you. Of course, it's also possible that the tribes will come to blame al Qaeda for attracting drone strikes. “Al Qaeda have a global plan, but they've had to relegate those global concerns in favor of local ones to make these tribal alliances," Meleagrou-Hitchens explained. "But in the end, they will continue to pursue this global strategy and at some point that is going to dawn on their allies [the tribes]: that these guys are going to bring a lot more trouble than they're worth.” If al Qaeda, or the myriad other extremist Islamist groups, can only survive by keeping alliances with the tribes, then it follows that the US might ultimately need the tribes' support to lessen radical Islam's grip on the area. Meleagrou-Hitchens has some ideas about how Obama's administration might go about courting that support: “I think the US would have to encourage the Yemeni government to start helping people outside of the main cities. When al Qaeda come along and say to the tribes that they can help with their running water, their crops, etc., then they'll ally with them. So you have to be able to offer them what al Qaeda is offering—or at least make sure the Yemeni government does.” But by alienating these same tribes through murder of their friends and relatives, the US seems to be making the whole situation worse. "At the moment, the US is the worst and most feared enemy,” a Yemeni-born blogger known as Noon told me over email. “The US drones have claimed the lives of many more people than al Qaeda. While al Qaeda targets military personnel in Yemen, the US drones kill arbitrarily without differentiating between civilians and so called ‘militants.’” One of the main attractions drones hold for the US is that they allow them to wage war remotely, thus avoiding the loss of life to military personnel and the domestic ill-feeling back home that comes with it. However, ultimately the resentment that drone strikes cause has to be focused somewhere and at this stage it looks most likely to turn various factions within the country against each other. With clashes erupting between Yemeni forces and local tribespeople and al Qaeda looking to break their members out of local prisons, the situation in Yemen seems primed for civil war and insurgency.

#### That risks maritime terrorism in critical chokepoints around the Horn of Africa inevitable.

Ulrichsen 11 (Kristian Coates, The Geopolitics of Insecurity in the Horn of Africa and the Arabian Peninsula, Middle East Policy Council, http://www.mepc.org/journal/middle-east-policy-archives/geopolitics-insecurity-horn-africa-and-arabian-peninsula?print)

Multiple fault lines have thus opened up, facilitated by (and accelerating) processes of state weakness and the relative empowerment of non-state actors. The result is more political violence and endemic criminality in and off the coast of Somalia and the Horn. Nevertheless, the new dimension to this nexus of terrorism, piracy, gun-running and people-smuggling is its growing transregional dimension. This defines the core challenge facing the regional and global security agenda, in addition to attempts at diplomatic mediation and conflict resolution throughout the area. Intensifying illicit networks and rent-seeking criminality are part of a broader pressure on fragile state structures. They are already struggling to control and adapt to pressures arising from the accelerated flows of information, communication and migration in a rapidly globalizing environment. The coincidence of these processes in Somalia and Yemen is changing the geopolitics of insecurity in the Horn of Africa and the Arabian Peninsula, as the following sections detail. MARITIME AND ENERGY SECURITY The problem of fragile and collapsed states on both sides of the Bab al-Mandab introduces potent new elements of maritime and energy security into the regional — and global — equation. The incidence of maritime piracy in the Gulf of Aden and the Red Sea more than doubled in 2008-09, and their operational reach steadily increased. Much of the piracy was launched from the semi-autonomous region of Puntland, on Somalia's tip of the Horn, where patterns of rent-seeking and gangsterism converge with the absence of effective state authority and licit sources of income. Moreover, at least one of the seven different groups of pirates operating off the Somali coast is believed to be based in the Socotra archipelago in Yemen, while at least some of the financial proceeds are believed to pass through money-laundering channels in Dubai and Kenya.44 This underlines the growing regional and international risk from both maritime piracy and maritime terrorism. Incidents such as the seizure of the Sirius Star by Somali-based pirates in November 2008 and the attack on the Japanese supertanker M Star in the Strait of Hormuz in July 2010 illustrate both phenomena. Maritime commerce and international shipping that link the oil-exporting Gulf states to Western economies must navigate two regional chokepoints, the Strait of Hormuz and the Bab el-Mandab, in addition to the hazardous waters of the Gulf of Aden and the Red Sea. Pirates' growing aggressiveness has centered on this geostrategically and commercially vital region. It reflects the interlocking dangers stemming from a crisis of governance and spreading conflicts. In 2009, the International Maritime Board recorded a total of 406 actual and attempted attacks, the majority of which occurred in the Gulf of Aden and off the Somali coast.45 However, due to underreporting, often for fear of higher insurance premiums, the figures may be much higher. Numerous factors underlie the rise in maritime piracy off the Somali coast. These include opportunistic motivations, which are among the principal drivers of pirate groups, as well as the ready availability of targets (through high volumes of trade passing by) and means (including inadequate law enforcement and ready access to weaponry). It is contextualized by the impact of conflict, poverty and weak state capacity.46 Indeed, in the Somali case, state collapse is a major determinant of piracy. Piracy declined sharply during the short-lived projection of power and authority by the UIC in 2006 and subsequently resurged following their removal through the reappearance of pirate groups operating under warlord protection.47 With the TFG unable to control its territory, let alone its coastline and territorial waters, increased naval patrolling activity by external actors (including the EU, NATO, China, Russia, India and Iran) may offer a degree of protection to shipping but leaves untouched the root causes of piracy as a symptom of state collapse and lack of legitimate economic opportunities. Maritime terrorism presents the second major threat to international security at sea. It has similar causal facilitators to maritime piracy; the erosion of governance in littoral regions creates security gaps that may be exploited by terrorist organizations. The threat from maritime terrorism is low-level yet potentially high-impact. It encompasses subthreats ranging from maritime criminality to better-organized groupings of insurgents or militants who take advantage of the pressure on littoral states to exploit their maritime resources and the fuzzy margins between domestic and international governance of international waterways and shipping lanes. Although the number of maritime terrorist incidents has been relatively small, it does present a challenge to a global supply chain and logistical system increasingly predicated on "just-in-time" deliveries. It also encompasses the role of non-state actors with access to sophisticated weaponry operating in international waters where jurisdiction is unclear and the "seams of globalization" become vulnerable to exploitation.48

#### These attacks risk global economic collapse

Neubauer 13 (Sigurd, Defense and foreign affairs specialist, member of the International Institute for Strategic Studies, Somalia: A Terrorist-Piracy Nexus?, May 22, http://www.huffingtonpost.com/sigurd-neubauer/somalia-piracy\_b\_3320406.html)

Piracy, like terrorism has been a scourge of mankind for centuries and, though its practitioners, real (Blackbeard, Anne Bonny and Henry Morgan) and mythical (Captain Jack Sparrow in the Pirates of the Caribean movie stories) have achieved heroic stature in popular culture, its contemporary manifestations represent a major threat to the global economy and to national security. Significant strides have been made in recent years towards combating piracy, especially off the coast of Somalia, but a robust international grand strategy is urgently needed in order to forestall an ever more dangerous global threat as pirates develop ever more sophisticated organizational structures, many of which are already linked to criminal gangs and even, in some cases to terrorist groups. Their activities already impose heavy financial and human costs not only on the maritime industry but also on the countries from which they operate. Heretofore, the area around Somalia has been the most dangerous area but significant progress has been made in reducing piracy there. Last year, pirates succeeded in capturing 13 vessels, compared to 49 in 2010 and 28 in 2011, according to the International Maritime Organization (IMO). Part of that success can at least be partially explained by the European Union's heavy naval presence around the Horn of Africa, in the Gulf of Aden while improving intelligence sharing with NATO, the Combined Maritime Forces (CMF), the UK Maritime Trade Operations (UKMTO), and the International Maritime Bureau (IMB) Piracy Reporting Center. Additional measures implemented by shipping companies such as providing more armed security aboard merchant vessels while securing the ship's perimeter with razor or barbed wire have also led to the significant decrease in the number of piracy attacks. Equally important, however, was the 2009 implementation of the Djibouti Code of Conduct, a code concerning the repression of piracy and armed robbery against ships. Under the code, aside from committing themselves to abiding by various counter-piracy United Nations Security Council Resolutions, the signatories also pledged to overhaul their domestic counter-piracy legislation. As a result, a record number of pirates were sentenced by local courts around the world last year. The significance of these developments should not, however, be overstated. First, the cost remains enormous -- in 2011, it is estimated that Somali piracy cost the global economy an estimated 7 billion USD through higher insurance premiums, security enhancements, and business disruption and earned the pirates some 160 million USD in ransoms. These figures do not include the psychological burdens borne by the captives or the costs imposed on Somalia. And, the actual costs are probably even higher due to widespread underreporting. Second, while piracy off the coast of Somalia has decreased, pirates are gradually focusing their efforts where patrols are not available for protection, now operating in the wider Indian Ocean. As pirates are extending their reach from Oman to the Maldives, they have also proven to be excellent entrepreneurs, building large well-financed organizations that are able to execute ever more sophisticated attacks such as hijacking oil tankers off the coast of Nigeria and stealing the valuable cargo. Moreover, pirate groups are becoming increasingly international and are extending their reach from national bases to neighbors -- from Nigeria, for example to Benin and the Ivory Coast, usually in cooperation with powerful local elements. Economically speaking, piracy already presents an enormous challenge and it is conceivable that as pirates face stiffer resistance on the high seas by an increasingly stronger international naval presence, their political and ideological motivations could radicalize over time. Currently, terrorist groups already cooperate with criminal gangs to raise funds and piracy could potentially become a lucrative source of income for radical groups. A second plausible scenario is that as pirates struggle to capture more ships, pirates could resort to attacking shipping directly as criminal motivations could subside to radical ideology propagated by al Qaeda and its splinter groups. Hence, it is easy to envision a nightmare scenario wherein terrorists, supported by a pirate group, hijack an oil tanker not just to steal the oil or collect the ransom but to blow it up in a major port with devastating economic consequences across the globe. A separate threat scenario that should not be underestimated entails terrorists capturing a liqueﬁed natural gas carrier that can be used as a ﬂoating bomb, which can either be detonated at a major port or near a flotilla of ships in the open seas. Piracy and terrorism can also be used as means to exert economic warfare against the United States and the international community as maritime attacks oﬀer terrorists an alternate means of causing mass economic destabilization. After all, terrorists have already attacked ships -- al Qaeda, the USS Cole (2000), Abu Sayyaf a ferryboat in the Philippines (2004) and the Mumbai attacks (2008).

#### Nuclear war

Merlini, Senior Fellow – Brookings, 11

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Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even involving the use of nuclear weapons. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular rational approach would be sidestepped by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

#### The plan solves---creates less strikes with more accuracy

Dragu 13 (Tiberiu Dragu, prof of politics at NYU, and Oliver Board, On Judicial Review in a Separation of Powers System, https://files.nyu.edu/tcd224/public/papers/judicial.pdf)

Whether judicial review should be limited for epistemic reasons has been particularly salient in recent years, as courts have been repeatedly called to determine the meaning of statutes and constitutional provisions on executive officials' powers to prevent terrorist attacks. Some scholars argue that terrorism prevention, just like other national security matters, is an area of questionable judicial competence where executive officials should be afforded considerable discretion to devise counterterrorism policies not only because the pres- ident is elected, but also because the president's agents have superior information about how best to address the terrorist threat (Sunstein 2005; Tushnet 2005; Posner 2006). Similar arguments for limiting judicial review because of asymmetric institutional competence are often voiced in the scholarship on administrative rulemaking (Sunstein 2006). Judicial in-tervention in rulemaking can he at odds, so the argument goes, with the very rationale of creating administrative agencies: to have an institutional repository of expertise in realms in which elected officials lack the necessary information required by complexity of the modern- day governance (Landis 1938). Such arguments approach the question of whether judicial review is desirable or not as a balancing exercise between the rule-of-law ideal of checking the legality of policies and the separat ion-of-powers principle of dispensing policy-making authority to those institutions with superior expertise. As such, the expertise rationale for limiting the scope of judicial review seems simple and intuitive: When questions of law are intertwined with matters of fact and policy choice and when the courts are unsure what consequences will follow from a particular decision, judicial second-guessing can throw governmental policies off course. And if the harm to public policy caused by potentially erroneous judicial decisions outweighs the rule-of-law benefits of assessing the legality of policies, it is allegedly desirable to limit judicial review on grounds of institutional competence, especially in technical and complex policy areas such as national security and administrative action. Notwithstanding the foregoing, restraining the exercise of judicial review for epistemic reasons, some argue, is bound to create a zone of legal unaccountability where governmental power can be deployed in an arbitrary and illegal manner, with potentially deleterious effects for the effectiveness of public law. Because even the most expert body can act unlawfully, foreclosing legal review in certain policy areas amounts to an abdication of the judicial duty to enforce relevant legal limits (Allan 2011). The pressing question then is this: Can we reconcile the review of expert policy decisions by non-expert courts in a manner that is consistent with both the rule-of-law ideal of checking the legality of policies and the separation-of-powers concern for policy expertise? To this end, we develop a game-theoretic analysis to illustrate how the exercise of judicial review can have a beneficial effect on expertise, even if the courts are relatively ill-equipped to evaluate the likely effects of various policies. That is, our analysis proposes a novel ratio-nale for the institution of judicial review. The conventional argument for such institutional arrangement is that it ensures consistency between the actions of governmental officials and preexisting legal provisions. Without disputing the importance of judicial review as a mech-anism of legal accountability, the analysis here underscores another, perhaps less intuitive virtue: judicial review by non-expert courts can foster policy expertise. Our analysis takes as its point of departure the fact that policymakers, those with for-mal power to make decisions, have to rely on expert agents for information regarding the likely consequences of various courses of action. Nothing about this argument is profound: that policymakers depend on experts for policy advice is an institutional fact of modern government. For example, the president relies on the White House staff, bureaucrats and non-governmental experts for policy advice; the House and the Senate depend on staff mem- bers, congressional committees, bureaucrats and lobbyists for valuable information when drafting legislation; the heads of administrative agencies depend on lower-level bureaucrats and the regulated industry, among others, for information regarding the consequences of various regulations; and so on. At the same time, this separation between policy-making and policy expertise implies that the amount of information available for decision-making is endogenous to the institutional structure under which policy-making takes place, observation which leads to, as we shall show, a novel assessment of judicial review expertise perspective. To illustrate the conditions under which judicial review fosters policy expertise, we com-pare a baseline model of an interaction between a policymaker and an expert in the absence of judicial review with an institutional setting in which a court can assess the legality of policies. This analysis shows that the judiciary can be better off without its review power if judicial checks dilute the amount of information available for policy-making, which implies that there are endogenous judicial incentives to limit the detrimental effect of judicial review on expertise. More importantly, the institutional analysis underscores that judicial review can enhance the amount of information available for policy-making, while, under those con- ditions, the judiciary prefers to exercise legal review, even though it lacks the knowledge to precisely assess the likely effects of various policies. In other words, not only that it can be desirable solely on expertise grounds to subject governmental policy to the muster of judi-cial review, but non-expert courts have endogenous incentives to employ judicial review in a manner consistent with both the principle of checking the legality of policies and institutional concern for policy expertise. These results have policy implications for public and scholarly debates regarding how to design the structure of liberal governments to fight terrorism (Cole 2003; Posner 2006). Whether counterterrorism policy should be subjected to the muster of judicial review has been a contentious matter, especially in the aftermath of 9/11 as various liberal democracies made terrorism prevention a pressing objective. The contending views on the appropriate- ness of judicial review of counterterrorism policy are sharply articulated in the recent debate on drone strikes. Some say that judicial review of targeted killings is necessary to put the policy on a better legal foundation, while others argue that it is inappropriate because judges lack the required expertise to review expert executive decisions.1 Our results suggest that non-expert judicial review has the potential to induce more informed policies, an observation that is missing from current discussions on judicial review of drone strikes and other coun- terterrorism policies. In section 7, we discuss in more detail the application of our theory and its policy implications, in the context of counterterrorism policy.

### CMR

#### Executive overreliance on the military is counterproductive and sparks military backlash

Brooks 11/1/13 (Rosa Brooks, a law professor at Georgetown University, served as an Obama appointee at the Defense Department from 2009 to 2011, “Obama vs. the Generals,” http://www.politico.com/magazine/story/2013/11/obama-vs-the-generals-99379\_Page3.html

The military and the White House are not supposed to be on different “sides,” but there’s a long history of mutual recriminations; it’s practically an American tradition. Recall President Harry Truman’s theatrical firing of Gen. Douglas MacArthur amid the dispute over whether to escalate the Korean War; Dwight Eisenhower’s condemnation of the “military-industrial complex,” John F. Kennedy’s struggles with military leaders during the Cuban Missile Crisis; and Bill Clinton’s failed effort to end the ban on gay people serving openly in the military. And that’s just in the post-World War II era. Dubik argues that critics of Obama’s relationship with the military have short memories. “This administration seems more inclusive and willing to listen than the last few,” he says dryly. And, he adds, if anyone imagines that military leaders are more comfortable with Republican administrations, “that’s baloney.” Charles J. Dunlap, an Air Force major general who retired in 2010, agrees: “The longer you’re in the military, the more you realize that there’s not all that much difference between administrations.” Disputes between military leaders and the White House can be healthy for a democratic society. After all, senior commanders have a legal and ethical obligation to provide the president and Congress with honest military advice, and although Dempsey’s openly expressed concerns about Syria may not have sat well with White House officials, says retired Lt. Gen. David Barno, “the chairman does have to say, ‘Here are the risks in that course of action.’” In any case, warns another retired general, the only thing worse than an overtly dissenting military is a covertly dissenting military. “Beware the silence of the generals,” he quips. “Public silence doesn’t mean private inaction.” It is far better, he argues, to have top brass be “out in the open and accountable for what they’re thinking” than for them to be “speaking through proxies and doing back-channel manipulations.” Meanwhile, the president is “right to ask his generals tough questions,” says Dunlap. Every administration prefers to present a united front with the military, but, as another retired senior military leader told me, the president needs to be comfortable if that proves impossible: “There’s nothing wrong with the president saying, ‘The military wanted something, but as president, I decided different, and here’s why.’ The president shouldn’t be afraid of that.” That’s easier said than done. For this White House, the military is the proverbial 800-pound gorilla—more so than ever. After the Sept. 11, attacks, resources and authorities flowed lavishly to the Pentagon, which saw its budget almost double in the following decade. President George W. Bush’s administration “always wanted military guys between themselves and whatever the problem was,” recalls a retired general who served in senior positions during that period. And Bush was more than willing to spend the money needed to make that happen. Meanwhile, budgets for civilian agencies and programs remained largely stagnant. “Ten to 15 years ago, the military was much smaller and less holistic,” notes another retired officer. Today’s military is doing more with more: It sponsors radio and television shows in Afghanistan, operates health clinics in Africa, provides technical assistance to courts and parliaments, engages in cyberdefense, carries out drone strikes in far-flung places, and collects data from our telephone calls and emails. “It’s just the easiest way out of any problem,” says Eaton. “Give money to the military and let them deal with it.” The relentlessly expanding U.S. military, Barno says, is becoming “like a super-Walmart with everything under one roof.” Like Walmart, the military can marshal vast resources and exploit economies of scale in ways impossible for mom-and-pop operations. And like Walmart, the tempting one-stop-shopping convenience the military offers has a devastating effect on smaller, more traditional enterprises—in this case, the outnumbered diplomats of Foggy Bottom. Or the boutique national security shop at the White House, where power lives but resources don’t. And yet no one—least of all Obama—seems to know how to cope with the military’s relentless Walmartization. However committed the president is, in theory, to rebalancing civilian and military roles, Obama has found himself repeatedly turning to the Pentagon in times of crisis, whether in Libya, Syria or Yemen. That, in the end, may be the real story of Obama and his uneasy relationship with a military he came to office determined to rein in. “When the shit hits the fan,” says a former White House official, he’s “racing for that super-Walmart every single bloody time.”

Deference collapses CMR; the court is an essential piece to the triangle, solves a culture of isolation

Gilbert, Lieutenant Colonel, 98 (Michael, Lieutenant Colonel Michael H. Gilbert, B.S., USAF Academy; MSBA, Boston University; J.D., McGeorge School of Law; LL.M., Harvard Law School. He is a member of the State Bars of Nebraska and California. “ARTICLE: The Military and the Federal Judiciary: an Unexplored Part of the Civil-Military Relations Triangle,” 8 USAFA J. Leg. Stud. 197, lexis)

The legislative, executive, and judicial branches of the federal government comprise and form a triangle surrounding the military, each branch occupying one side of the civil-military triangle. Commentators have written countless pages discussing, analyzing, and describing the civil-military relationship that the Congress and the President have with the armed forces they respectively regulate and command. Most commentators, however, have neglected to consider the crucial position and role of the federal judiciary. This article examines the relationship between the judiciary and the military in the interest of identifying the role that the judiciary, specifically the United States Supreme Court, plays in civil-military relations. Without an actual, meaningful presence of the judiciary as a leg of the civil-military triangle, the triangle is incomplete and collapses. In its current structure, the judiciary has adopted a non-role by deferring its responsibility to oversee the lawfulness of the other two branches to those branches themselves. This dereliction, which arguably is created by the malfeasance of the United States Supreme Court, has resulted in inherent inequities to the nation, in general, and to service members, in particular, as the federal courts are reluctant to protect even basic civil rights of military members. Judicial oversight is one form of civilian control over the military; abrogating this responsibility is to return power to the military hierarchy that is not meant to be theirs. [\*198] Under the United States Constitution, Congress has plenary authority over the maintenance and regulation of the armed forces, and the President is expressly made the Commander-in-Chief of the armed forces. The unwillingness of the Court to provide a check and balance on these two equal branches of the federal government creates an area virtually unchallengeable by the public. As a result, a large group of people, members of the military services, lack recourse to address wrongs perpetrated against them by their military and civilian superiors. Ironically, the very men and women dedicating their lives to protect the U.S. Constitution lack many of the basic protections the Constitution affords everyone else in this nation. The weakness in the present system is that the Supreme Court has taken a detour from the Constitution with regard to reviewing military issues under the normally recognized requirements of the Constitution. The federal judiciary, following the lead of the Supreme Court, has created de facto immunity from judicial interference by those who seek to challenge policy or procedure established by the other two branches and the military itself. When the "Thou Shalt Nots" of the Amendments to the Constitution compete with the necessities of the military, the conflict is resolved in favor of the military because it is seen as a separate society based upon the constitutionally granted authority of Congress to maintain and regulate the armed forces. 1 Essentially, the Court permits a separate world to be created for the military because of this regulation, distinguishing and separating the military from society. 2 The Court needs to reexamine their almost complete deference on military matters, which is tantamount to an exception to the Bill of Rights for matters concerning members of the military. Unless the Court begins to provide the oversight that is normally dedicated to many other areas of law fraught with complexity and national importance, judicial review of the military will continue to be relegated to a footnote in the annals of law. Combined with the downsizing and further consequent decline of interaction between the military and general society, 3 this exile from the protection of the Constitution could breed great injustices within the military. Perhaps even more importantly, the military might actually begin to believe that they are indeed second-class citizens, separate from the general [\*199] population, which could create dire problems with civil-military relations that are already the subject of concern by many observers. 4

CMR erosion collapses hegemony

Barnes, Retired Colonel, 11 (Rudy Barnes, Jr., BA in PoliSci from the Citadel, Military Awards: Legion of Merit, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal with Oak Leaf Cluster, Army Reserve Component Achievement Medal, National Defense Service Medal, “An Isolated Military as a Threat to Military Legitimacy,” http://militarylegitimacyreview.com/?page\_id=159)

The legitimacy of the US military depends upon civil-military relations. In Iraq and Afghanistan conflicting religions and cultures have presented daunting challenges for the US military since mission success in counterinsurgency (COIN) operations depends upon public support in those hostile cultural environments; and even in the US, civil-military relations are fragile since the military is an authoritarian regime within a democratic society. This cultural dichotomy within our society creates the continuing potential for conflict between authoritarian military values and more libertarian civilian values that can undermine military legitimacy, especially when there are fewer bridges between the military and the civilian population it serves. The US military is a shield that protects our national security, but it can also be a sword that threatens our national security. After all, the US military controls the world’s most destructive weaponry. Our Founding Fathers understood this danger and provided for a separation of powers to prevent a concentration of power in the military. Still, if the US military were ever to become isolated from the civilian population it serves, then civil-military relations would deteriorate and US security would be at risk. Richard Cohen has opined that we are slowly but inexorably moving toward an isolated military: The military of today is removed from society in general. It is a majority white and, according to a Heritage Foundation study, disproportionately Southern. New England is underrepresented, and so are big cities, but the poor are no longer cannon fodder – if they ever were – and neither are blacks. We all fight and die just about in proportion to our numbers in the population. The all-volunteer military has enabled America to fight two wars while many of its citizens do not know of a single fatality or even of anyone who has fought overseas. This is a military conscripted by culture and class – induced, not coerced, indoctrinated in all the proper cliches about serving one’s country, honored and romanticized by those of us who would not, for a moment, think of doing the same. You get the picture. Talking about the picture, what exactly is wrong with it? A couple of things. First, this distant Army enables us to fight wars about which the general public is largely indifferent. Had there been a draft, the war in Iraq might never have been fought – or would have produced the civil protests of the Vietnam War era. The Iraq debacle was made possible by a professional military and by going into debt. George W. Bush didn’t need your body or, in the short run, your money. Southerners would fight, and foreigners would buy the bonds. For understandable reasons, no great songs have come out of the war in Iraq. The other problem is that the military has become something of a priesthood. It is virtually worshipped for its admirable qualities while its less admirable ones are hardly mentioned or known. It has such standing that it is awfully hard for mere civilians – including the commander in chief – to question it. Dwight Eisenhower could because he had stars on his shoulders, and when he warned of the military-industrial complex, people paid some attention. Harry Truman had fought in one World War and John Kennedy and Gerald Ford in another, but now the political cupboard of combat vets is bare and there are few civilian leaders who have the experience, the standing, to question the military. This is yet another reason to mourn the death of Richard Holbrooke. He learned in Vietnam that stars don’t make for infallibility, sometimes just for arrogance. (Cohen, How Little the US Knows of War, Washington Post, January 4, 2011) The 2010 elections generated the usual volume of political debate, but conspicuously absent were the two wars in which US military forces have been engaged for ten years. It seems that dissatisfaction with the wars in Iraq and Afghanistan has caused the American public to forget them and those military forces left to fight them. A forgotten military can become an isolated military with the expected erosion of civil-military relations. But the forgotten US military has not gone unnoticed: Tom Brokaw noted that there have been almost 5,000 Americans killed and 30,000 wounded, with over $1 trillion spent on the wars in Afghanistan and Iraq, with no end in sight. Yet most Americans have little connection with the all-volunteer military that is fighting these wars. It represents only one percent of Americans and is drawn mostly from the working class and middle class. The result is that military families are often isolated “…in their own war zone.” (See Brokaw, The Wars that America Forgot About, New York Times, October 17, 2010) Bob Herbert echoed Brokaw’s sentiments and advocated reinstating the draft to end the cultural isolation of the military. (Herbert, The Way We Treat Our Troops, New York Times, October 22, 2010) In another commentary on the forgotten military, Michael Gerson cited Secretary of Defense Robert Gates who warned of a widening cultural gap between military and civilian cultures: “There is a risk over time of developing a cadre of military leaders that politically, culturally and geographically have less and less in common with the people they have sworn to defend.” Secretary Gates promoted ROTC programs as a hedge against such a cultural divide. Gerson concluded that the military was a professional class by virtue of its unique skills and experience: “They are not like the rest of America—thank God. They bear a disproportionate burden, and they seem proud to do so. And they don’t need the rest of society to join them, just to support them.” (Gerson, The Wars We Left Behind, Washington Post, October 28, 2010) The Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen, has seconded the observations of Secretary Gates and warned of an increasingly isolated military and “…a potentially dangerous gulf between the civilian world and men and women in uniform.” Mullen explained, “To the degree that we are out of touch I believe is a very dangerous force.” And he went on to observe that “Our audience, our underpinnings, our authority, everything we are, everything we do, comes from the American people…and we cannot afford to be out of touch with them.” (Charley Keyes, Joint Chiefs Chair Warns of Disconnect Between Military and Civilians, CNN.com, January 10, 2011) Gerson’s observation that the military are not like the rest of Americans goes to the heart of the matter. An isolated military that exacerbates conflicting military and civilian values could undermine civil-military relations and threaten military legitimacy. The potential for conflicting values is evident in the article by Kevin Govern on Higher Standards of Honorable Conduct Reinforced: Lessons (Re) Learned from the Captain Honors Incident (see article posted under this section) which highlights the “exemplary conduct” standard for military personnel and the need to enforce the unique standards of exemplary conduct to maintain good order and discipline in the military. The communal and authoritarian military values inherent in the standards of exemplary conduct often clash with more libertarian civilian values; but in the past that clash has been moderated by bridges between the military and civilian cultures, most notably provided by the draft, the National Guard and reserve components. The draft is gone and the National Guard and reserve components are losing ground in an all-volunteer military that is withdrawing from Iraq and Afghanistan. The Reserve Officer Training Program (ROTC) has provided most civilian-soldier leaders for the US military in the past, but it is doubtful that will continue in the future. If Coleman McCarthy speaks for our best colleges and universities, then ROTC is in trouble and so are civil-military relations: These days, the academic senates of the Ivies and other schools are no doubt pondering the return of military recruiters to their campuses. Meanwhile, the Pentagon, which oversees ROTC programs on more than 300 campuses, has to be asking if it wants to expand to the elite campuses, where old antipathies are remembered on both sides. It should not be forgotten that schools have legitimate and moral reasons for keeping the military at bay, regardless of the repeal of “don’t ask, don’t tell.” They can stand with those who for reasons of conscience reject military solutions to conflicts. ROTC and its warrior ethic taint the intellectual purity of a school, if by purity we mean trying to rise above the foul idea that nations can kill and destroy their way to peace. If a school such as Harvard does sell out to the military, let it at least be honest and add a sign at its Cambridge front portal: Harvard, a Pentagon Annex. (Coleman McCarthy, Don’t ask, don’t tell has been repealed. ROTC still shouldn’t be on campus, Washington Post, December 30, 2010) McCarthy’s attitude toward ROTC reflects a dangerous intellectual elitism that threatens civil-military relations and military legitimacy. But there are also conservative voices that recognize the limitations of ROTC and offer alternatives. John Lehman, a former Secretary of the Navy, and Richard Kohn, a professor of military history at the University of North Carolina at Chapel Hill, don’t take issue with McCarthy. They suggest that ROTC be abandoned in favor of a combination of military scholarships and officer training during summers and after graduation: Rather than expanding ROTC into elite institutions, it would be better to replace ROTC over time with a more efficient, more effective and less costly program to attract the best of America’s youth to the services and perhaps to military careers. Except from an economic perspective, ROTC isn’t efficient for students. They take courses from faculty almost invariably less prepared and experienced to teach college courses, many of which do not count for credit and cover material more akin to military training than undergraduate education. Weekly drills and other activities dilute the focus on academic education. ROTC was begun before World War I to create an officer corps for a large force of reservists to be mobilized in a national emergency. It has outgrown this purpose and evolved into just another source of officers for a military establishment that has integrated regulars and reservists into a “total force” in which the difference is between part-time and full-time soldiering. The armed services should consider a program modeled in part on the Marine Platoon Leaders Corps to attract the nation’s most promising young people. In a national competition similar to ROTC scholarships, students should be recruited for four years of active duty and four years of reserve service by means of all-expenses-paid scholarships to the college or university of their choice. Many would no doubt take these lucrative grants to the nation’s most distinguished schools, where they would get top-flight educations and could devote full attention on campus to their studies. Youths would gain their military training and education by serving in the reserve or National Guard during college (thus fulfilling their reserve obligation). Being enlisted would teach them basic military skills and give them experience in being led before becoming leaders themselves. As reservists during college, they would be obligated to deploy only once, which would not unduly delay their education or commissioned service. They could receive their officer education at Officer Candidate School summer camps or after graduation from college. This program could also be available to those who do not win scholarships but are qualified and wish to serve. Such a system would cost less while attracting more, and more outstanding, youth to military service, spare uniformed officers for a maxed-out military establishment, and reconnect the nation’s leadership to military service – a concern since the beginning of the all-volunteer armed force. (Lehman and Kohn, Don’t expand ROTC. Replace it. Washington Post, January 28, 2011) The system proposed by Lehman and Kohn would preserve good civil-military relations only if it could attract as many reserve component (civilian-soldier) military officers as has ROTC over the years. Otherwise the demise of ROTC will only hasten the isolation of the US military. As noted by Richard Cohen, Tom Brokaw, Bob Herbert, Michael Gerson, Secretary of Defense Bill Gates and Chairman of the Joint Chiefs Admiral Mike Mullen, the increasing isolation of the US military is a real danger to civil-military relations and military legitimacy. The trends are ominous: US military forces are drawing down as they withdraw from Iraq and Afghanistan and budget cuts are certain to reduce both active and reserve components, with fewer bridges to link a shrinking and forgotten all-volunteer military to the civilian society it serves. The US has been blessed with good civil-military relations over the years, primarily due to the many civilian-soldiers who have served in the military. But with fewer civilian-soldiers to moderate cultural differences between an authoritarian military and a democratic society, the isolation of the US military becomes more likely. Secretary Gates and Admiral Mullen were right to emphasize the danger of an isolated military, but that has not always been the prevailing view. In his classic 1957 work on civil-military relations, The Soldier and the State, Samuel Huntington advocated the isolation of the professional military to prevent its corruption by civilian politics. It is ironic that in his later years Huntington saw the geopolitical threat environment as a clash of civilizations which required military leaders to work closely with civilians to achieve strategic political objectives in hostile cultural environments such as Iraq and Afghanistan. (see discussion in Barnes, Military Legitimacy: Might and Right in the New Millennium, Frank Cass, 1996, at pp 111-115) Today, the specter of an isolated military haunts the future of civil-military relations and military legitimacy. With fewer civilian-soldiers from the National Guard and Reserve components to bridge the gap between our military and civilian cultures, an all-volunteer professional military could revive Huntington’s model of an isolated military to preserve its integrity from what it perceives to be a morally corrupt civilian society. It is an idea that has been argued before. (see Robert L. Maginnis, A Chasm of Values, Military Review (February 1993), cited in Barnes, Military Legitimacy: Might and Right in the New Millennium, Frank Cass, 1996, at p 55, n 6, and p 113, n 20) The military is a small part of our population—only 1 percent—but the Department of Defense is our largest bureaucracy and notorious for its resistance to change. Thomas Jefferson once observed the need for such institutions to change with the times: “Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstance, institutions must advance also, and keep pace with the times.” Michael Gerson noted that the military remains a unique culture of warriors within a civilian culture, and that “it is not like the rest of America.” For that reason a forgotten and isolated military with values that do not keep pace with changing times and circumstances and conflict with civilian values would not only be a threat to military legitimacy but also be a threat to our individual freedom and democracy. In summary, the US military is in danger of becoming isolated from the civilian society it must serve. Military legitimacy and good civil-military relations depend upon the military maintaining close bonds with civilian society. In contemporary military operations military leaders must be both diplomats as well as warriors. They must be effective working with civilians in domestic and foreign emergencies and in civil-military operations such as counterinsurgency and stability operations, and they must be combat leaders who can destroy enemy forces with overwhelming force. Diplomat-warriors can perform these diverse leadership roles and maintain the close bonds needed between the military and civilian society. Such military leaders can help avoid an isolated military and insure healthy civil-military relations.

Loss of mission effectiveness risks multiple nuclear wars

Kagan and O’Hanlon 7 Frederick, resident scholar at AEI and Michael, senior fellow in foreign policy at Brookings, “The Case for Larger Ground Forces”, April 2007, http://www.aei.org/files/2007/04/24/20070424\_Kagan20070424.pdf

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnel intensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

#### Balanced CMR is essential to democratic modeling

Barnes, Retired Colonel, 11 (Rudy Barnes, Jr., BA in PoliSci from the Citadel, Military Awards: Legion of Merit, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal with Oak Leaf Cluster, Army Reserve Component Achievement Medal, National Defense Service Medal, “Military Legitimacy: Might and Right in the New Millennium”, originally published in 1996, revised Feb 8, 2011, document accessed from: http://militarylegitimacyreview.com/?page\_id=206)

Continuing nation assistance operations have confirmed the importance of human rights and civil-military relations to military legitimacy. Military forces in undemocratic regimes have historically been associated with human rights violations and political oppression. The U.S. has provided security and humanitarian assistance to encourage democratization in many such regimes: first to Latin America in the 1970s and 1980s, and more recently to Eastern Europe and Russia. In most developing countries the military is not separated from domestic politics as in the U.S., and is expected to provide internal as well as external security to the civilian population. This makes it especially important that the requirements of internal security be balanced with the restraint needed to protect human rights. In Latin America the exercise of political power by military forces has had a corrosive influence on military professionalism and civil-military relations. The use of the military to protect or install corrupt regimes has eroded their legitimacy. To build the public support required for military legitimacy, Latin American militaries must limit their political role, constrain the use of force, and focus on improving civil-military relations.21 A joint project between US Army military lawyers and their Peruvian counterparts to promote human rights is discussed in chapter 7. It illustrates how institutionalizing respect for human rights in the military can improve civil-military relations and legitimacy. According to the 1993 UN Truth Commission Report on the civil war in El Salvador the Salvadoran military has a long way to go to achieve legitimacy. The Report indicates gross human rights violations were committed by death squads associated with U.S.-trained military forces. The conviction of two officers for the murder of six Jesuit priests in 1989 was a positive step, but the failure to purge those officers identified with human rights violations indicates military legitimacy remains an elusive goal. In Eastern Europe there have been similar problems with military legitimacy. Promoting the values of democracy, human rights, and the rule of law in former communist countries can contribute to peace, security and military legitimacy in two ways: first, democratic regimes are less likely to misuse their military power than authoritarian regimes; and second, the democratic values of individual liberty and civilian control contribute to better civil-military relations and military professionalism, and professionalism (internal control) is the best defense against the misuse of military power.22 The failure of civil-military relations and military professionalism in the "masterless" armies of the former Yugoslavia has contributed to the unspeakable atrocities in the Bosnian civil war. Better civil-military relations and military professionalism could help protect human rights and prevent the spread of similar violence throughout the region. "Civil-military relations take on a deeper significance and must be viewed as a critical element in the struggle to maintain legitimacy of existing democratic governments as they attempt to deal with the internal and external manifestations of this crisis."23 The future of democracy, human rights, and the rule of law in emerging democracies depends upon better civil-military relations, which will require effective separation of military and political power (ideally civilian control of the military), but this should not preclude domestic military missions with political implications. For U.S. military advisors to help their indigenous counterparts improve civil-military relations, they must understand the requirements and principles of military legitimacy, especially the role of human rights and the rule of law. Civil-military relations in the U.S. There have been important lessons learned in civil-military relations in the U.S. as well as overseas. While they have not involved serious violations of human rights (with the exception of the Indian wars and the Kent State incident) they do provide important lessons in military legitimacy and useful precedents for the future.

#### Democratic backsliding causes great power war

Azar Gat 11, the Ezer Weizman Professor of National Security at Tel Aviv University, 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, the decline of major great power war has deepened further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’, where countries that have so far failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars among themselves, as well as with developed countries.¶ While the trend is very real, one wonders if the near disappearance of armed conﬂict within the developed world is likely to remain as stark as it has been since the collapse of communism. The post-Cold War moment may turn out to be a ﬂeeting one. The probability of major wars within the developed world remains low—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. But the deep sense of change prevailing since 1989 has been based on the far more radical notion that the triumph of capitalism also spelled the irresistible ultimate victory of democracy; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. This notion, however, is fast eroding with the return of capitalist non-democratic great powers that have been absent from the international system since 1945. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist China, whose massive growth represents the greatest change in the global balance of power. Russia, too, is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character.¶ Authoritarian capitalism may be more viable than people tend to assume. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan, particularly the former, were as efﬁcient economically as, and if anything more successful militarily than, their democratic counterparts. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the new non-democratic powers are both large and capitalist. China in particular is the largest player in the international system in terms of population and is showing spectacular economic growth that within a generation or two is likely to make it a true non-democratic superpower.¶ Although the return of capitalist non-democratic great powers does not necessarily imply open conﬂict or war, it might indicate that the democratic hegemony since the Soviet Union’s collapse could be short-lived and that a universal ‘democratic peace’ may still be far off. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, as China grows in power, it is likely to become more assertive, ﬂex its muscles, and behave like a superpower, even if it does not become particularly aggressive. The democratic and non-democratic powers may coexist more or less peacefully, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. But there is also the prospect of more antagonistic relations, accentuated ideological rivalry, potential and actual conﬂict, intensiﬁed arms races, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

#### Balanced CMR is key to democratic consolidation-the relationship is statistically significant

**Tusalem, Arkansas State political science professor, 2013**

(Rollin, “Bringing the military back in: The politicisation of the military and its effect on democratic consolidation”, International Political Science Review, August, SAGE, ldg)

Panel regression results presented in Table 2 confirm the hypothesis that a politicised military infrastructure affects democratic politics. For instance, the military index of politicisation (provided by PRS) is negatively correlated with democratic accountability at (p < .05). Thus, states that have politically active military institutions are more likely to face lower levels of political accountability. We can also infer from Table 2 that the Siaroff index of military activism is positively correlated with higher levels of democratic accountability (p < .01), suggesting that states that have restrictions on “reserved domains” are more likely to be responsive to political rights and civil liberties, and have checks and balances in their political system. The role of institutionalised military intervention, reflected by the occurrence of coup events in the historical past (prior to transition), also has a negative effect on democratic accountability (achieving statistical significance at p < .10), largely confirming how the historical legacy of institutional structures may affect the nature of transitional politics (Pop-Eleches, 2007). Interestingly, none of the military-related variables concerning the size of the national army and spending on the military as an institution are correlated with democratic accountability. We now move to examine the effect of a politicised military on a more substantive and maximalist measure of democracy, the EIU measure. Table 3 conveys how all the relevant measures—the PRS measure (significant at p < .05), the Siaroff index (significant at p < .05), and the coup index prior to transition (significant at p < .01)—have coefficient signs in the expected direction and are statistically significant across the board. Out of all the three variables capturing the politicisation of the military, the variable that has the most salient effect on promoting the politics of inclusion, equality, pluralism, and fairness in governance is the dummy variable of whether or not a state had a coup in its pre-transition history. Hence, states whose militaries were engaged in coups prior to transition are less likely to strengthen the nature of democratic politics, an indication that activist militaries in the pre-transition period are more likely to remain restive and destabilising in the post-transition period, largely affecting and eroding democratic gains. Hence, this comports with Stepan’s (1988) argument that historical legacies of military adventurism matter in shaping how far states move forward in their transitional trajectory toward consolidation. Finally, what effect does an activist military have on the prospects for democratic consolidation? The results presented in Table 4 show that the PRS measure is negatively correlated with democratic consolidation (significant at p < .01) and, based on the predicted estimates shown in Figure 1, we see that the BTI measure of consolidation is at its highest when the PRS measure is 1 (states with apolitical military institutions), while the BTI score is at its lowest when the PRS measure is 6 (states with politicised military institutions), even when holding all control variables constant at their means and modes. These results are mimicked when we look at the effect of the Siaroff index of military activism on democratic consolidation. Table 4 shows a positive relationship between the Siaroff index and democratic consolidation (significant at p < .01), and the predicted estimates illustrated in Figure 2 show that as the restrictions on reserved domains increase, so do the prospects for democratic consolidation. To substantiate further, the BTI transformation index reaches its maximum value when the Siaroff index is 10 (connoting lower levels of reserved domains), while the BTI transformation index reaches its minimum level when the Siaroff index is 2 (connoting higher levels of reserved domains). This shows that states which have militaries that control security, defence, and social policies, particularly those whose post-transitional constitutions gave the military responsibilities and positions in government, are less likely to consolidate or strengthen their democratic institutions. What about the effect of the military’s historical prerogative in ending civilian rule in the past? Does this activism persist even in the post-transition period, producing problems as it relates to democratic consolidation? The results in Table 4 confirm the deleterious effect of prior coup events on the prospects of democratic consolidation, although this time the prior coup variable attains only marginal significance (at p < .10), results which attained a higher level of statistical significance when the EIU measure of democracy was used. It should also be noted here that the reduced models that drop the number of countries from 44 to 39 states also yield results that corroborate the main models in all the regression analyses. Thus, even if we restrict the sampling to states that strictly transitioned to democracy, the pernicious effect of a politicised military on democratic accountability and democratic consolidation remains statistically significant. The empirical findings of this study convey that transitional states where reserved domains granted to the military are high, specifically states where the military apparatus has a large role in shaping national policies, are more likely to have lower levels of democratic accountability and are more likely to reverse democratic gains. Furthermore, politicised military institutions and the institutional legacy of overthrowing civilian regimes in the pre-transitional past have an enduring effect in eroding prospects for democratic consolidation. Scholars provide the normative prescription that reserved domains given to the military should not be provided by the state. In fact, such domains must be immediately dismissed at the onset of roundtable negotiations during “pacted” transitional processes (Diamond, 1999). Civilian governments should not grant the military a “golden parachute” to escape prosecution for human rights violations committed in the authoritarian past. For instance, there is consensus that one reason behind the relative success of Chilean, Brazilian, and Argentinean democratisation is attributed to amendments in their constitution that openly targeted the reserved domains granted to the military. These actions drastically lessened the military’s activism post-transition (Hagopian, 2005). The high-publicity trials of military generals involved in a coup or past human rights violations should be encouraged, to deter the military from pursuing a political role in the affairs of the state. Immunity deals granted to military generals who have denigrated the rule of law should be avoided so as to have a deterrent effect on the military’s potential activism (Siaroff, 2009). In light of democracy-building initiatives of international organisations, Fitch (1998) recommends that new democracies should discourage military generals from participating in constituent assemblies/constitutional conventions. It is also recommended that generals or retired generals not be invited to take positions in the civil service or bureaucracy. Many also recommend that a civil–military equilibrium must be reached in which civilian governments retain control of the economy, especially in determining budgets that affect the military, their pay scales, and issues concerning the promotion and demotion of highly ranked officers. Lastly, the military’s role in influencing public policy and the consultative role it grants to the executive should be restrained or severed altogether as these reserved domains may threaten democratic values and institutions (Alagappa, 2001; Kohn, 1997; Trinkunas, 2001). The results of this study also find that other military-related variables, like the size of the army and the percentage of GDP spent on the military, have no effect on democratic quality and consolidation. This corroborates the empirical findings of McKinlay and Cohan (1975) and Zuk and Thompson (1982), which allude to how the corporate model of greed and grievance coming from the military is not a salient factor in shaping its political agenda and motivations. Thus, the effect of the military on democratic outcomes is largely not a structural issue per se; rather, it is more a function of how the military’s activism in the pre-transitional process leads them to demand reserved domains at the cusp of constructing post-authoritarian constitutions. As these domains accrue over time, it provides the impetus for the military to further erode democratic gains, thus paving the way for the return of creeping authoritarianism.

## \*\*\*2AC

### \*\*\*Nato

### 2AC A2: Budget

#### NATO solving budget cuts now with smart defense and connected forces programs

Eide 2/11/13 (Barth, defense minister of Norway, “Closing the gap: Keeping NATO strong in an era of austerity” <http://www.nato.int/cps/en/SID-21281BCB-2C102202/natolive/opinions_98350.htm?selectedLocale=en>)

The good news is that we already have a solid conceptual basis for keeping NATO strong. At our Summit in Lisbon two and a half years ago, we adopted a new Strategic Concept for our Alliance. It describes the risks and threats that we are up against. And it highlights three essential core tasks to meet the Allies’ individual and shared interests – collective defence, crisis management, and cooperative security. But in order to carry out these tasks successfully, we need the right forces and the right capabilities. And at a time of financial difficulties for many of our nations, acquiring those forces and capabilities has become a formidable challenge. At our most recent NATO Summit in Chicago last May, our Heads of State and Government set the goal of “NATO Forces 2020”: modern, tightly connected forces that are equipped, trained, exercised and commanded so that they can operate, together with other allies – and with partners – in any environment. To help us reach this goal, we also agreed at Chicago to pursue two separate initiatives: Connected Forces and Smart Defence. Smart Defence is meant to be a new guiding principle for capability development. The aim here is to encourage multinational solutions to both maintaining and acquiring defence capabilities – in other words, nations working together to deliver capabilities that they cannot afford alone. Connected Forces has garnered fewer headlines, but it’s just as important as Smart Defence. Its objective is to maintain and strengthen the readiness and interoperability of our forces, even as our operations draw down. We will place a greater emphasis on NATO-led training and exercises, taking into account the specific regional knowledge and expertise of countries, including that of Norway and its Nordic neighbours. We also want to make better use of computer-assisted training and simulation. And we will take advantage of the U.S. offer to rotate elements of a U.S.-based combat brigade to Europe on an annual basis for exercises that can help turn the NATO Response Force into an effective, deployable capability, one that has experience operating in different environments and addressing different scenarios. (In this regard, I applaud Norway’s efforts to focus NATO’s military command structure on the unique strategic challenges in this and other regions of the Alliance, rather than taking a one-size-fits-all approach.) We are off to a good start in implementing both Smart Defence and the Connected Forces Initiative. But it is vital that we maintain the momentum. Our Libya operation two years ago demonstrated that European Allies and Canada can take the lead in NATO-led combat operations – and Norway’s air force performed brilliantly. But Libya also confirmed the Alliance’s over-reliance on some critical U.S. capabilities, especially strategic enablers like Intelligence, Surveillance and Reconnaissance, and air-to-air refuelling. This transatlantic capability gap is simply not sustainable in the long term. First, the fiscal crisis has hit the United States as well, and it will be cutting defence expenditure in the coming years (although hopefully avoiding the meat-axe cuts required by “sequestration”). The U.S. also has a revised defence strategy that shifts the emphasis of its force posture from Europe to the Middle East and the Asia-Pacific region.

#### Nato still relevant----military and commerce

Charles A. Kupchan 13, D.Phil from Oxford in International Affairs, Professor of International Affairs at Georgetown, Whitney H. Shepardson Senior Fellow at the Council on Foreign Relations, 3/6/13, "Why is NATO still needed, even after the downfall of the Soviet Union?," http://www.cfr.org/nato/why-nato-still-needed-even-after-downfall-soviet-union/p30152

The North Atlantic Treaty Organization (NATO) is an international military alliance that was created to enable its members (the United States, Canada, and their European partners) to counter the threat posed by the Soviet Union. Alliances usually come to an end when the threat that led to their formation disappears. However, NATO defies the historical norm, not only surviving well beyond the Cold War's end, but also expanding its membership and broadening its mission.¶ NATO remains valuable to its members for a number of reasons. The expansion of the alliance has played an important role in consolidating stability and democracy in Central Europe, where members continue to look to NATO as a hedge against the return of a threat from Russia. In this respect, NATO and the European Union have been working in tandem to lock in a prosperous and secure Atlantic community.¶ Meanwhile, NATO has repeatedly demonstrated the utility of its integrated military capability. The alliance used force to end ethnic conflict in the Balkans and played a role in preserving the peace that followed. NATO has sustained a long-term presence in Afghanistan, helping to counter terrorism and prepare Afghans to take over responsibility for their own security. NATO also oversaw the mission in Libya that succeeded in stopping its civil war and removing the Qaddafi regime. All of these missions demonstrate NATO's utility and its contributions to the individual and collective welfare of its members, precisely why they continue to believe in the merits of membership.

#### NATO solves all impacts and deescalates them – it also 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.¶ This field is the very expression of security policy in the twenty-first century, in which industry will not just provide equipment but entire security management services to the armed forces. Private contractors will be firmly embedded in every level of defense ministries as well as the armed forces and security agencies. Many of the security functions traditionally performed by governments will be subcontracted to private companies—from physical protection to malware analysis, intelligence and early warning, and logistics. Accordingly, NATO must learn how to work more productively with them.¶ Given the exponential growth in malware and hacking skills, the cyber threat is the most pressing challenge; but there are others too that NATO can readily handle. For instance, using its Special Forces Headquarters at Allied Command Operations to train and set common standards for special forces with centralized air lift, or monitoring emerging technologies so that NATO can better exploit both existing and future disruptive technologies and counter the use of asymmetric methods by its adversaries. Yet another is the protection of critical infrastructure and supply lines for energy and raw materials, especially in the maritime domain where 90 percent of global trade takes place. Key choke points are especially vulnerable to piracy or threats of closure during crises and war. Related areas are the protection against chemical, biological, or radiological agents and training armed forces to cope with extreme weather conditions and natural disasters resulting from climate change.¶ The difference between these emerging challenges and what NATO encountered in the past is that they cannot be deterred. Cyber attacks, terrorism, supply shortages, and natural disasters will all occur. So a key new role of NATO is to help develop the societal resilience to cope with these new types of attacks, to plug vulnerabilities, and to build in the redundant back-up capabilities to allow societies to recover quickly.¶ But again, while NATO’s military organization and capabilities can be a useful first or second responder, they will need to be coordinated with domestic police, health, and emergency management agencies and organizations like the EU. So NATO’s progress in practically embracing the new challenges will depend upon its capacity for effective networking. This is where civilian-military exercises involving NATO and the EU, and NATO and the civilian crisis-management agencies, can help the Alliance to better prepare and understand the different structures and procedures used by its member nations.

#### Cyber causes 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.

### \*\*\*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.

#### 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.”

#### C/I – ex post is a restriction on authority and better than ex ante

Brooks ‘13

Rosa, Professor of Law @ Georgetown University Law Center and Bernard L. Schwartz Senior Fellow @ the New American Foundation, “The Constitutional and Counterterrorism Implications of Targeted Killing: Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights”, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf

A judicial mechanism designed to ensure that US targeted killing policy complies with US law and the law of armed conflict might take any of several forms. Most controversially, a court might be tasked with the ex ante determination of whether a particular individual could lawfully be targeted. This approach is likely to be strenuously resisted by the Administration on separation of powers grounds, and it also raises potential issues about whether the Constitution’s case and controversy requirement could be satisfied, insofar as proceedings before such a judicial body would, of necessity, be in camera and ex parte. 45 This is also true for the existing FISA court, however, and its procedures have generally been upheld on Fourth Amendment grounds. It would seem odd to permit ex parte proceedings in an effort to ensure judicial approval for surveillance, but reject such proceedings as insufficiently protective of individual rights when an individual has been selected for lethal targeting rather than mere search and seizure. I believe it would be possible to design an ex ante judicial mechanism that would pass constitutional and practical muster. It would be complex and controversial, however, and there is an alternative approach that might offer many of the same benefits with far fewer of the difficulties. This alternative approach would be to develop a judicial mechanism that conducts a post hoc review of targeted killings, perhaps through a statute creating a cause of action for damages for those claiming wrongful injury or death as a result of unlawful targeted killing operations. This would add additional incentives for executive branch officials to abide by the law, without placing the judiciary in the troubling role of authorizing or rejecting the use of military force in advance. While proceedings might need to be conducted at least partially in camera, judicial decisions in these cases could be released in redacted form.

#### We meet – Targeted killing authority comes from the AUMF and self defense

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)

The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats.

#### Their interpretation is flawed

#### A. Over limits- core cases revolve around regulating executive behavior not banning specific policies. Their interpretation would eliminate topic literature.

#### B. Affirmative Ground-Ban specific policies are dead to any agent counterplan. You should err affirmative because the negative is strapped with an arsenal of generics.

#### ---Reasonability-competing interpretations causes substance crowd by encouraging debate over Topicality instead of war powers. Good is good enough when the topic is limited by areas and our affirmative is in the lit.

### 2AC Amendment CP

#### Permutation do both – shields THE LINK TO PQD – because it means that the courts are just following up on what Congress says

#### Permutation do the counterplan – it’s plan plus, the plan text says the federal judiciary should conduct ex post judicial review, the counterplan only adds an amendment process with the states and Congress

#### Normal means of a constitutional amendment is delay – the neg must defend normal means, its key to aff offense – this means blowback continues and the risk of terrorism increases linearally and CMR continues to struggle in the interim

Barr 4(Bob, Washington Times. http://www.washtimes.com/commentary/20040418-102137-7612r.htm)

In the American political system, the Constitution was meant to operate like people who freeze their credit cards in a block of ice. That is, when faced with supremely important and emotional decisions involving things like the censorship of unpopular ideas or the seizure of firearms, the Constitution makes us walk to the corner and take a time out. Specifically, we have to get a two-thirds supermajority in both chambers of Congress and then three-quarters of the states to agree. It is an amazingly onerous process. The last amendment to the Constitution — the 27th — which set limits on congressional pay, was initially proposed in the states' petitions to the first Constitutional Congress in the 1780s but only started to move in the 1990s. It took more than two centuries to finally earn a spot alongside free speech and the right not to self-incriminate.

#### Delay means you can’t solve allies and NATO – its seen as uncredible reform

Bell 5/18/12 (Josh, Media Strategist, “Government Asks for Another Delay in Targeted Killing FOIA Lawsuit” <https://www.aclu.org/blog/national-security/government-asks-another-delay-targeted-killing-foia-lawsuit>)

We’ve just learned that the Obama administration has asked the court for another extension for filing briefs in the ACLU’s FOIA lawsuit seeking information about the government’s targeted killing program (see the government’s letter here, and the ACLU’s response opposing the request here). Responding to the news, ACLU Deputy Legal Director Jameel Jaffer said: “We are disappointed and frustrated with the administration's eleventh-hour request for more time to answer a Freedom of Information Act request it should have responded to months ago. The FOIA law was meant to guarantee not just access to information but timely access, and the administration's serial requests for delay are tantamount to a denial of this right. The administration's request for further delay is particularly remarkable because, over the last few weeks, several senior officials have given public speeches about the targeted killing program. The program is plainly not a secret. It should not take the administration months to acknowledge as much to the courts.” Our FOIA request, filed last October, asks for information relating about the targeted killings of three U.S. citizens in Yemen: Anwar al-Awlaki, his 16-year-old son Abdulrahman al-Awlaki, and Samir Khan. The targeted killing program goes beyond the law by claiming unprecedented authority for the executive branch. Releasing information about how the program works is the first step in the process of bringing it in line with the Constitution.

#### The counterplan is a voting issue for education and ground – it’s not predictable- no amendment has ever dealt with SOP, undermines affirmative research

Thomas O. Heuglin, Professor of Political Science at Wilfrid Laurier University, Waterloo, Canada and Alan Fenna, Professor of Politics and Government at Curtin University, Perth, Australia, 2006 (Comparative Federalism p )

More important than the actual numbers are the political change effected by constitutional amendments. In the American case, most have had to do with civil rights or functioning of the presidency, and only few with federalism and the division of powers. In contrast to Canada and Australia, the US Constitution has never been amended to alter the division of powers by transferring authority from one level of government to the other.

#### Links to politics- Congress has to call the Convention even if 2/3 of the states suggest it

Black 12 (Eric, writer for the Minn Post, analyzing politics and government of Minnesota and the United States, the historical background of topics and other issues. He is a former reporter for the Star Tribune, “Fixing our system: Would another constitutional convention do the trick?,” http://www.minnpost.com/eric-black-ink/2012/12/fixing-our-system-would-another-constitutional-convention-do-trick)

As you may know, there is a way to amend that Constitution that doesn’t require congressional approval. Article V of the Constitution says that if two-thirds of all state legislatures petition Congress to do so, Congress must call for a convention to propose amendments to the Constitution after which, whether Congress likes them or not, the proposed amendments would be referred to the states for ratification. (As with any amendments, ratification requires the agreement of three-fourths of the states.)

#### Only the plan solves operative legal effect, the counterplan is only symbolic

Strauss-prof law Chicago-01 114 Harv. L. Rev. 1457

One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or declarations of national holidays. If they bring about change, they do so because of their symbolic value, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutionayl change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not [\*1468] be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they do not require that the ground be prepared so thoroughly, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place.

#### The CP will be rolled back – the Court can review amendments

**Haddad, 96** (Marty, The Wayne Law Review. 42 Wayne L. Rev. 1685. Lexis)

While it is clear that the judiciary has no power in generating an amendment's text, such is not the case regarding judicial review of the amendment process. 97 While the Coleman case now governs and regards amendment procedures as political questions, this seems to go against the weight of authority in our Constitution's history. 98 The amendment process was found to be a political question in Coleman because of a lack of judicially manageable standards 99 and not because of a textual commitment to Congress. The Court therefore did not proclaim that the Constitution's text fully excluded them from any role in the amending process, despite the fact that Article V states that an amendment is valid for all intents and purposes when ratified by three-fourths of the state legislatures. 100 The Court was correct in balking on the idea of complete abstention from procedural issues, because some room must be left for judicial decision-making in the amendment process in order to remedy potential abuses by the legislatures. 101 That being the case, a ruling on the substance of amendments is undoubtedly within the Court's power. In playing this role, the Court is simply interpreting the Constitution, rather than second-guessing the legislature, which is often the case when the Court [\*1710] becomes entrenched in procedural issues. 102 Constitutional interpretation is a task which the judiciary has performed with unquestioned authority for nearly two hundred years. 103 Determinations of the constitutionality of amendments must remain a judicial function in order to maintain the validity of the [\*1711] Court's non-textualist method of constitutional explication.

#### The CP doesn’t solve the judicial review internal links and kills an independent judiciary

Sullivan 96, Professor of Law

[January, 1996, Kathleen M. Sullivan, Professor of Law, Stanford University, “CONSTITUTIONAL CONSTANCY: WHY CONGRESS SHOULD CURE ITSELF OF AMENDMENT FEVER”, 17 Cardozo L. Rev. 691]

How have we managed to survive over two hundred years of social and technological change with only twenty-seven constitutional amendments? The answer is that we have granted broad interpretive latitude to the Supreme Court. Narrow construction would necessitate more frequent resort to formal constitutional amendments. Broad construction eliminates the need. Thus, the Court has determined that eighteenth century restrictions on searches of our "papers and effects" apply to our twentieth century telephone calls, and that the command of equal protection forbids racially segregated schools even though such segregation was known to the Fourteenth Amendment's framers. Neither of these decisions - Katz v. United States and Brown v. Board of Education - required a constitutional amendment. Nor did the Court's "switch in time that saved nine" during the New Deal. In the early twentieth century, the Court struck down much federal economic legislation as exceeding Congress's power and invading the province of the states. Under President Roosevelt's threat to expand and pack the Court, the Court desisted, and started to defer to all legislation bearing some plausible relationship to interstate commerce. Some scholars have called the Court's decision to defer to national economic legislation revolutionary enough to count as an informal constitutional amendment, but most view it as within the broad contours of reasonable interpretive practice. Increasing the frequency of constitutional amendment would undermine the respect and legitimacy the Court now enjoys in this interpretive role. This danger is especially acute in the case of proposed constitutional amendments that would literally overturn Supreme Court decisions, such as amendments that would declare a fetus a person with a right to life, permit punishment of flag-burning, or authorize school prayer. Such amendments suggest that if you don't like a Court decision, you mobilize to overturn it. Justice Jackson once quipped that the Court's word is not final because it is infallible, but is infallible because it is final. That finality, though, has many salutary social benefits. For example, it allows us to treat abortion clinic bombers as terrorists rather than protesters. If every controversial Supreme Court decision resulted in plebiscitary overruling in the form of a constitutional amend- [\*703] ment, surely the finality of its word would be undermined, and with it the social benefits of peaceful conflict resolution. The fact that we have amended the Constitution only four times in order to overrule the Supreme Court is worth remembering.

#### Strong judicial model prevents Russian loose nukes

Nagle, Independent Research Consultant Specializing in the Soviet Union, 1994 (Chad. “What America needs to do to help Russia avoid chaos” Washington Times, August 1, Lexis Nexis)

As things stand right now, there is indeed potential for danger and instability in Russia, as Mr. Criner notes. But this is not because America has failed to act as a "moral compass" in the marketplace. Rather, Russia's inherent instability at present stems from the fact that in all of its 1,000-year history, it never had a strong, independent judiciary to act as a check on political power. The overwhelming, monolithic power of the executive, whether czar or Communist Party, has always been the main guarantor of law and order. Now, as a fragile multiparty democracy, Russia has no more than an embryo of a judiciary. The useless Constitutional Court is gone, the Ministry of Justice is weak, and the court system is chaotic and ineffective. Hence, the executive determined the best safeguard against the recurrence of popular unrest, the kind that occurred in October 1993, to be the concentration of as much power as possible in its hands at the expense of a troublemaking parliament. Under a sane and benign president, Russia with a "super presidency" represents the best alternative for America and the West. The danger lies in something happening to cause Mr. Yeltsin's untimely removal from office. If Russia is ever to develop a respected legal system, it will need the protracted rule of a non-tyrannical head of state. In the meantime, the United States can provide a model to Russia of a system in which the judiciary functions magnificently. America, the world's only remaining superpower, can provide advice and technical expertise to the Russians as they try to develop a law-based society. We can also send clear signals to the new Russia instead of the mixed ones emanating from the Clinton administration. Now is the time for America to forge ahead with the "new world order," by promoting the alliance of the industrialized democracies of the Northern Hemisphere on American terms, not Russian. This constitutes the real "historical moment" to which Mr. Criner refers. Russia is not in a position to make threats to or demands of the United States any more so than when it ruled a totalitarian empire. It should learn to play by new rules as a first lesson in joining the family of nations. Coddling an aggressive Russia and giving it unconditional economic aid (as Alexander Rutskoi has called for) would be counterproductive, and might even encourage Russia to "manufacture" crises whenever it wanted another handout. Russia is indeed a dangerous and unstable place. The prospect of ordinary Third World political chaos in an economically marginal country with a huge stockpile of intercontinental ballistic missiles is a nightmare. However, Mr. Yeltsin is busily consolidating power, and the presidential apparatus is growing quickly. With his new team of gray, non-ideological figures intent on establishing order in the face of economic decline and opposition from demagogues (e.g. Vladimir Zhirinovsky and Mr. Rutskoi), Mr. Yeltsin is already showing signs of success. Under such circumstances, the best America can do is stand firm, extend the hand of friendship and pray for Mr. Yeltsin's continued good health.

Extinction

Helfand and Pastore 9 [Ira Helfand, M.D., and John O. Pastore, M.D., are past presidents of Physicians for Social Responsibility. March 31, 2009, “U.S.-Russia nuclear war still a threat”, http://www.projo.com/opinion/contributors/content/CT\_pastoreline\_03-31-09\_EODSCAO\_v15.bbdf23.html]

President Obama and Russian President Dimitri Medvedev are scheduled to Wednesday in London during the G-20 summit. They must not let the current economic crisis keep them from focusing on one of the greatest threats confronting humanity: the danger of nuclear war. Since the end of the Cold War, many have acted as though the danger of nuclear war has ended. It has not. There remain in the world more than 20,000 nuclear weapons. Alarmingly, more than 2,000 of these weapons in the U.S. and Russian arsenals remain on ready-alert status, commonly known as hair-trigger alert. They can be fired within five minutes and reach targets in the other country 30 minutes later.  Just one of these weapons can destroy a city. A war involving a substantial number would cause devastation on a scale unprecedented in human history. A study conducted by Physicians for Social Responsibility in 2002 showed that if only 500 of the Russian weapons on high alert exploded over our cities, 100 million Americans would die in the first 30 minutes.  An attack of this magnitude also would destroy the entire economic, communications and transportation infrastructure on which we all depend. Those who survived the initial attack would inhabit a nightmare landscape with huge swaths of the country blanketed with radioactive fallout and epidemic diseases rampant. They would have no food, no fuel, no electricity, no medicine, and certainly no organized health care. In the following months it is likely the vast majority of the U.S. population would die. Recent studies by the eminent climatologists Toon and Robock have shown that such a war would have a huge and immediate impact on climate world wide. If all of the warheads in the U.S. and Russian strategic arsenals were drawn into the conflict, the firestorms they caused would loft 180 million tons of soot and debris into the upper atmosphere — blotting out the sun. Temperatures across the globe would fall an average of 18 degrees Fahrenheit to levels not seen on earth since the depth of the last ice age, 18,000 years ago. Agriculture would stop, eco-systems would collapse, and many species, including perhaps our own, would become extinct.  It is common to discuss nuclear war as a low-probabillity event. But is this true? We know of five occcasions during the last 30 years when either the U.S. or Russia believed it was under attack and prepared a counter-attack. The most recent of these near misses occurred after the end of the Cold War on Jan. 25, 1995, when the Russians mistook a U.S. weather rocket launched from Norway for a possible attack.  Jan. 25, 1995, was an ordinary day with no major crisis involving the U.S. and Russia. But, unknown to almost every inhabitant on the planet, a misunderstanding led to the potential for a nuclear war. The ready alert status of nuclear weapons that existed in 1995 remains in place today.

### 2AC Obama DA

#### No deal now – negotiations failing

**South China Morning Post 12-28-13**

(“Iran nuclear talks hit an obstacle over enrichment, officials say”,

<http://www.scmp.com/news/world/article/1391829/iran-nuclear-talks-hit-obstacle-over-enrichment-officials-say>, ldg)

Iran is taking steps to improve its ability to speed up uranium enrichment in a development that could delay implementation of a nuclear deal with six world powers because Tehran’s actions are opposed by the United States and its allies. Iran’s nuclear chief, Ali Akbar Salehi, said late on Thursday that his country is building a new generation of centrifuges for uranium enrichment but they need further tests before they can be mass produced. His comments appeared aimed at countering criticism from Iranian hardliners by showing their country’s nuclear programme is moving ahead and has not been halted by the accord. But two officials familiar with Iran’s nuclear activities said Tehran has gone even further by interpreting a provision of the interim Geneva nuclear deal in a way rejected by many, if not all, of the six powers that sealed the deal with Iran. They told reporters on Friday that Iranian technical experts told counterparts from the six powers last week that some of the cutting-edge machines have been installed at a research tract of one of Iran’s enriching sites. They gave no numbers. Iran argued that it had a right to increase its enrichment capabilities in such a manner under the research and development provisions of the November 24 Geneva accord, said the officials, who represent countries that are members of the Vienna-based UN nuclear agency monitoring Tehran’s atomic activities. They spoke on condition of anonymity because they are not authorised to discuss the closed meetings. Iran’s approach is being hotly disputed by the United States and other representatives of the six powers – the United States, Russia, China, Britain, France and Germany – said the officials. They said the six have argued that installing any centrifuge that increases overall numbers, particularly a new model, violates Tehran’s commitment to freeze the amount and type of enriching machines at November 24 levels. In commitments under the Geneva accord, Iran agreed to freeze the number of centrifuges enriching uranium for six months and only to produce models now installed or in operation, so it can exchange them piece by piece for any damaged ones. At the same time, the interim deal allows Iran to continue centrifuge research and development. The disagreement contributed to the decision to adjourn the talks in Geneva last Sunday, the officials said. On Friday night, no one was answering telephone calls for comment at Iran’s mission to the International Atomic Energy Agency, the UN nuclear organisation. Calls to officials in Tehran were not immediately returned on Friday. Two technical meetings about Iran’s nuclear programme since the November agreement have dragged on for several days, but a session planned in Geneva on Monday is scheduled to last only a day. That time scale suggests both sides are anticipating the need to return to their capitals for more consultation on the issue. The development regarding uranium enrichment reflects the difficulties expected in implementing the November 24 deal as the two sides argue over interpretations of the document outlining both Iran’s obligations and moves by the international community to ease economic sanctions in return for Tehran’s nuclear concessions. Such differences could delay the deal past its envisaged January start and strengthen both hardliners in Tehran and congressional sceptics in Washington who argue that the accord doesn’t work and gives Iran too much for too little in return.

#### National security link isn’t unique – NSA Reform kills Obama’s political capital now

Page 12/30/13 (Susan, Washington Bureau chief of USA TODAY, “Ex-NSA chief calls for Obama to reject recommendations” <http://www.usatoday.com/story/news/politics/2013/12/30/gen-michael-hayden-urges-obama-reject-nsa-commission-recommendations/4249983/>)

WASHINGTON — Retired general Michael Hayden, former director of the National Security Agency and the Central Intelligence Agency, called on President Obama Monday to show "some political courage" and reject many of the recommendations of the commission he appointed to rein in NSA surveillance operations. "President Obama now has the burden of simply doing the right thing," Hayden told USA TODAY's Capital Download. "And I think some of the right things with regard to the commission's recommendations are not the popular things. They may not poll real well right now. They'll poll damn well after the next attack, all right?" Obama, who received the report from the five-member advisory committee just before he left to vacation in Hawaii, has promised to make "a pretty definitive statement" in January about its 46 recommendations. He appointed the panel in the wake of a firestorm over disclosures by former NSA contractor Edward Snowden about surveillance of all Americans' telephone calls and spying on German Chancellor Angela Merkel and other friendly foreign leaders. The commission, led by former acting CIA director Michael Morell, said the recommendations were designed to increase transparency, accountability and oversight at the NSA. Hayden, who headed the super-secret agency from 1999 to 2005, oversaw the launch of some of the controversial programs after the Sept. 11 attacks on New York and Washington in 2001. He defended them as effective and properly overseen by congressional intelligence committees and a special court. "Right now, since there have been no abuses and almost all the court decisions on this program have held that it's constitutional, I really don't know what problem we're trying to solve by changing how we do this," he said, saying the debate was sparked after "somebody stirred up the crowd." That's a reference to Snowden, who was granted asylum in Russia. Snowden's revelations have fueled objections by civil liberties advocates that the NSA goes too far in collecting information about Americans not suspected of any wrongdoing. This month, a federal judge in Washington called the program "almost Orwellian," although a few days later, another federal judge in New York said it was legal. Hayden's blunt warnings about the risks he sees in accepting the commission's recommendations underscore the difficult balancing act Obama faces between ensuring the nation's security and respecting citizens' privacy. No decision he makes is likely to avoid criticism. "Here I think it's going to require some political courage," said Hayden, 68, a retired Air Force general whose service in the nation's top intelligence posts gives him particular standing. "Frankly, the president is going to have to use some of his personal and political capital to keep doing these things."

#### Health care will drain capital – Obama will have to defend himself

Seher 1/5/14 (Jason, staffwriter, “5 tests for kumbaya on Capitol Hill” <http://politicalticker.blogs.cnn.com/2014/01/05/5-things-that-will-measure-obama-congress-comity/?hpt=hp_t2>)

4. Obamacare The Republican-controlled House seems set on spending 2014 like it spent most of 2013: shining a white-hot spotlight on the uneven rollout of Obamacare and trying to repeal or roll back the President's signature health care law. House Majority Leader Eric Cantor announced Thursday the House's first order of business when it returns from its holiday break would be a vote on legislation to address potential security risks for personal information collected on the Obamacare website, HealthCare.gov. Americans for Prosperity, which spent $16 million on anti-Obamacare television ads in the fall, will spend $2.5 million on fresh commercials that target three Democratic senators up for re-election for their support of Obamacare: Kay Hagan of North Carolina, Mary Landrieu of Louisiana, and Jeanne Shaheen of New Hampshire. While HealthCare.gov provides a steady stream of fodder for conservatives, websites can be fixed and glitches remedied. But Republicans are banking on the idea that the "it's more than just a botched website" narrative, especially the President's broken promise on keeping your health care plan, can carry them to electoral success in the midterm elections this fall. The latest CNN/ORC poll on Obamacare law showed opposition to it now sits at 62% and that the administration is fighting a losing battle to sell one of the Democrats' key electoral blocs - women - on the law's merits. Nearly two-thirds of those surveyed believe the new law will increase the amount of money they personally pay for medical care, a finding that runs counter to the White House's argument that the law is working and its favorite statistical refrain: Health care costs in the United States have grown at the slowest rate on record over since the act was signed into law.

#### No Court Uniqueness – **Obama is fighting NSA case and this proves lower courts don’t link**

Ackerman and Roberts 12/16/13 (Spencer and Dan, Washington reporters for the Guardian, “NSA phone surveillance program likely unconstitutional, federal judge rules”, http://www.theguardian.com/world/2013/dec/16/nsa-phone-surveillance-likely-unconstitutional-judge)

A federal judge in Washington ruled on Monday that the bulk collection of Americans’ telephone records by the National Security Agency is likely to violate the US constitution, in the most significant legal setback for the agency since the publication of the first surveillance disclosures by the whistleblower Edward Snowden. Judge Richard Leon declared that the mass collection of metadata probably violates the fourth amendment, which prohibits unreasonable searches and seizures, and was "almost Orwellian" in its scope. In a judgment replete with literary swipes against the NSA, he said James Madison, the architect of the US constitution, would be "aghast" at the scope of the agency’s collection of Americans' communications data. The ruling, by the US district court for the District of Columbia, is a blow to the Obama administration, and sets up a legal battle that will drag on for months, almost certainly destined to end up in the supreme court. It was welcomed by campaigners pressing to rein in the NSA, and by Snowden, who issued a rare public statement saying it had vindicated his disclosures. It is also likely to influence other legal challenges to the NSA, currently working their way through federal courts. The case was brought by Larry Klayman, a conservative lawyer, and Charles Strange, father of a cryptologist killed in Afghanistan when his helicopter was shot down in 2011. His son worked for the NSA and carried out support work for Navy Seal Team Six, the elite force that killed Osama bin Laden. In Monday’s ruling, the judge concluded that the pair's constitutional challenge was likely to be successful. In what was the only comfort to the NSA in a stinging judgment, Leon put the ruling on hold, pending an appeal by the government. Leon expressed doubt about the central rationale for the program cited by the NSA: that it is necessary for preventing terrorist attacks. “The government does not cite a single case in which analysis of the NSA’s bulk metadata collection actually stopped an imminent terrorist attack,” he wrote. “Given the limited record before me at this point in the litigation – most notably, the utter lack of evidence that a terrorist attack has ever been prevented because searching the NSA database was faster than other investigative tactics – I have serious doubts about the efficacy of the metadata collection program as a means of conducting time-sensitive investigations in cases involving imminent threats of terrorism.” Leon’s opinion contained stern and repeated warnings that he was inclined to rule that the metadata collection performed by the NSA – and defended vigorously by the NSA director Keith Alexander on CBS on Sunday night – was unconstitutional. “Plaintiffs have a substantial likelihood of showing that their privacy interests outweigh the government’s interest in collecting and analysing bulk telephony metadata and therefore the NSA’s bulk collection program is indeed an unreasonable search under the fourth amendment,” he wrote. Leon said that the mass collection of phone metadata, revealed by the Guardian in June, was "indiscriminate" and "arbitrary" in its scope. "The almost-Orwellian technology that enables the government to store and analyze the phone metadata of every telephone user in the United States is unlike anything that could have been conceived in 1979," he wrote, referring to the year in which the US supreme court ruled on a fourth amendment case upon which the NSA now relies to justify the bulk records program.

#### D.C. court nominations triggers backlash against Obama

National Review 11/21/13 (“Nuclear Fallout” http://www.nationalreview.com/article/364556/nuclear-fallout-editors)

The filibuster is not sacred writ, and we are on record supporting procedural changes to overcome partisan obstruction. The more serious concern here is that the Democrats are attempting to pack the courts, especially the D.C. Circuit court, with a rogue’s gallery of far-left nominees. That is worrisome in and of itself, but there is a deeper agenda: Much of what President Obama has done in office is of questionable legality and constitutionality. The president no doubt has in mind the sage advice of Roy Cohn: “Don’t tell me what the law is. Tell me who the judge is.” He is attempting to insulate his agenda from legal challenge by installing friendly activists throughout the federal judiciary. That is precisely what he means when he boasts, “We are remaking the courts.” Republicans are in fact obstructing those appointments; unlike the nomination of John Roberts et al., these appointments deserve to be obstructed. The filibuster is a minor issue; the major issue is that President Obama is engaged in a court-packing scheme to protect his dubious agenda, and Harry Reid’s Senate is conspiring with him to do so. The voters missed their chance to forestall these shenanigans in 2012. They made the wrong decision then, and have a chance to make partial amends in 2014, when they will be deciding not only what sort of Senate they wish to have, but what sort of courts, and what sort of country.

#### No link – 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.

#### Supreme Court Links don’t apply – the plan is the D.C. district 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. 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.

#### No war – impact will be contained

**Alcaro, European Foreign and Security Policy Studies research fellow, 2012**

(Riccardo, “Avoiding the Unnecessary War. Myths and Reality of the West-Iran Nuclear Standoff”, March, online pdf, ldg)

There are at least three countries that might feel compelled to catch up with Iran: Turkey, Egypt, and Saudi Arabia. However, no automatism should be presumed. Turkey is part of a nuclear-armed military alliance, NATO, hosts US nuclear weapons in its bases, and has recently agreed to install parts of a US-built and NATO-run ballistic missile defence system on its soil. These are all good reasons for Turkey to remain a non-nuclear-weapon state.34 Saudi Arabia has developed over time a deep relationship with the United States ranging from counter-terrorism cooperation to Saudi massive presence in American financial markets - which would work as a US-imposed brake to Saudi potential nuclear ambitions. Furthermore, the nuclear dispute with Iran has prompted the United States to undertake a military build-up in the Persian Gulf, coupled with pledges of US military aid packages not only to Saudi Arabia but also to the smaller Gulf states. On one occasion, US Secretary of State Hillary Rodham Clinton even went as far as to predict the extension of the US “nuclear umbrella” over its allies in the Gulf if Iran indeed went nuclear.35 Similarly to Turkey, Saudi Arabia has at least as many good reasons to forgo the nuclear military path than do otherwise. Egypt is a more complicated case. The Egyptians have historically struggled to resist the temptation of the atomic bomb. A key factor behind their restraint has been massive US assistance (worth over one billion dollars a year, most of which in military aid), which is to continue to have a moderating effect even on a post-Arab Spring Egypt. In fact, whatever government emerges from the unwieldy political process ongoing in Egypt would be ill-advised if it added yet another complication to the mountain of political and economic problems it is set to cope with. Egypt’s dire need for foreign assistance, both political and financial, would not be well served if the new government in Cairo were to flirt with dreams of an indigenous nuclear arsenal. In addition, all three aforementioned countries are compliant parties to the NonProliferation Treaty. US security guarantees, financial assistance, and “moral” persuasion are to be factored in when assessing the motivations that Turkey, Saudi Arabia or Egypt might have to remain committed to the treaty. But they are part of a broader strategic calculus extending beyond the bargain with the United States. The NPT has been an effective, if imperfect, means to avoid uncontrolled proliferation of nuclear weapon states for over forty years. While Iran’s withdrawal would deal a severe blow to this fundamental pillar of international security, a nuclear arms race in the Gulf would all but vanquish its residual authority. Together with US pledges of aid and security guarantees, the unwillingness of Turkey, Egypt and Saudi Arabia to take responsibility for the near collapse of the international non-proliferation regime make a nuclear arms race an unlikely prospect.

### 2AC PQD DA

#### The PQD is already dead in the realm for foreign policy

Skinner 8/23, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

Lower federal courts often erroneously cite the “political question doctrine” to dismiss as nonjusticiable individual rights claims arising in foreign or military affairs contexts, a trend that has increased since the 1962 case of Baker v. Carr. Similarly, lower courts have begun citing “special factors counselling hesitation” when dismissing constitutional claims (“Bivens claims”) in similar contexts, inappropriately treating “special factors” as a nonjusticiability doctrine. Lower federal courts should not cite either doctrine as a reason to avoid adjudicating individual rights claims arising in the context of foreign or military affairs. Rather, lower federal courts should adjudicate these claims on their merits by deciding whether the political branch at issue had the power under the Constitution to act as it did. Doing so is consistent with the manner in which the Supreme Court has approached these types of cases for over 200 years. The Court affirmed this approach in the 2012 case of Zivotofsky v. Clinton, a case in which the Court once and for all rung the death knell for the application of the “political question doctrine” as a nonjusticiability doctrine in cases involving individual rights – even those arising in a foreign policy context. In fact, a historical review of Supreme Court cases demonstrates that the Supreme Court has never applied the so-called “political question doctrine” as a true nonjusticiable doctrine to dismiss individual rights claims (and arguably, not to any claims at all), even those arising in the context of foreign or military affairs. This includes the seminal “political question” case of Marbury v. Madison. Rather, the Supreme Court has almost always rejected the “political question doctrine” as a basis to preclude adjudication of individual rights claims, even in the context of foreign or military affairs. Moreover, the Supreme Court has consistently admonished lower courts regarding the importance of the judiciary branch’s adjudication of individual rights claims, even in such contexts.13 That is not to say that from time to time the Court has not cited a “political question doctrine” in certain of its cases. However, a close review of those cases demonstrates that rather than dismissing such claims in those cases as “nonjusticiable,” the Court in fact adjudicated the claims by finding that either the executive or Congress acted constitutionally within their power or discretion. Moreover, the post-9/11 Supreme Court cases of Hamdi v. Rumsfeld, Rasul v. Bush, and Bush v. Boumediene, in which the Supreme Court consistently found that the political branches overstepped their constitutional authority, clarified that the doctrine should not be used to dismiss individual rights claims as nonjusticiable, even those arising in a foreign or military affairs context. In case there remained any doubt, the Supreme Court in Zivotofsky rejected the “political question doctrine” as a nonjusticiability doctrine, at least in the area individual rights, if not altogether. The Court found the case, involving whether the parents of a boy born in Jerusalem had the right to list Israel as his place of birth pursuant to a Congressional statute, was justiciable.17 The Court addressed the real issue, which was whether Congress had the authority to trump the President over whether Israel could be listed as the country of birth on passports where a person was born in Jerusalem, notwithstanding the President’s sole authority to recognize other governments. 18 In ruling as it did, the Court stayed true to many of its earlier cases involving “political questions” by adjudicating the claim through deciding whether one of the political branches took action that was within its constitutional authority. In the case, the Court showed its willingness to limit the power of the President in the area of foreign affairs rather than finding the claim nonjusticiable.

#### Federal courts are asserting more coercive restrictions on the executive in the area of national security—PQD already under assault

Kent, Constitutional Law prof, 13 (Andrew, Faculty Advisor-Center on National Security at

Fordham Law School, prof @ Fordham University School of Law- constitutional law, foreign relations law, national security law, federal courts and procedure, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” October 8, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2330476)

Litigation challenging the national security actions of the federal government has taken a seemingly paradoxical form in recent years. Prospective coercive remedies like injunctions and habeas corpus (a kind of injunction) are traditionally understood to involve much greater intrusions by the judiciary into government functioning than retrospective money damages awards. Yet federal courts have developed and strictly applied doctrines barring Bivens damages actions against federal officials because of an asserted need to preserve the prerogatives of the political branches in national security and foreign affairs. At the same time, the courts have been increasingly assertive in cases involving coercive remedies, especially habeas, that have dramatically impacted post-9/11 national security policies, and federal courts, particularly the Supreme Court are increasingly willing to rule against the executive in cases concerning justiciability and judicial power.

#### **The plan doesn’t link**

Taylor 13 (Paul, is a Senior Fellow, Center for Policy & Research. Focus on national security policy, international relations, targeted killings, and drone operations. “Former DOD Lawyer Frowns on Drone Court,” http://centerforpolicyandresearch.com/2013/03/23/former-dod-lawyer-frowns-on-drone-court/)

First, Johnson notes, as others have, that judges would be loath to issue the equivalent of death warrants, first of all on purely moral grounds, but also on more political grounds. Courts enjoy the highest approval ratings of the three branches of government, yet accepting the responsibility to determine which individuals may live or die, without that individual having an opportunity to appear before the court would simply shift some of the public opprobrium from the Executive to the Judiciary. However, if the court exercised ex post review, it instead would be in its ordinary position of approving or disapproving the Executive’s decisions, not making its decisions for it. Another concern raised by Johnson is that the judges would be highly uncomfortable making such decisions because they would be necessarily involve a secret, purely ex parte process. While courts do this on a daily basis, as when they issue search or arrest warrants, the targeted killing context stands apart in that the judge’s decision would be effectively irreversible. Here again, the use of ex post process would free the courts from this problem, and place it in the executive (which includes the military, incidentally, an organization which deals with this issue as a matter of course).

#### Their link evidence is about extra-territorial application of due process to non-citizens – it speaks to the Alien Tort Statute which the mandates of the plan don’t have an effect upon

#### This card goes line-by-line on your scenario – no way they’ll be an impact even if the PQD is broken

Isenberg 10 (David, Research Fellow – Independent Institute, "Contractor Legal Immunity and the ’Political Questions’ Doctrine," CATO Institute, 1-19, http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine)

To this Carter writes: the consequences predicted by defense contractor advocates vastly overstate the actual impact these GWOT tort suits will have on Government contingency contracting. Several reasons exist for this contention. First, the Government currently pays far too much money to defense contractors overseas for them to now decline performance of contingency contracts. The alleged dramatic price increases in U.S. Government contracts due to the increased litigation risk are unlikely as well. Contract prices may rise to some degree, but the Government can ill afford to refuse to pay them. Second, the U.S. military does not own the internal means to provide the goods and perform the services contracted for in a contingency environment — such goods and services are necessary for mission accomplishment. Finally, as discussed earlier, apart from the political question doctrine, defense contractors who face allegations of tortious conduct in a contingency environment have several legal defenses and other alternatives to limit or avoid liability, including insurance. Viewed together, these points counter forecasts of the impending ruin of Government contingency contracting. With their recent activity involving the political question doctrine, courts have hardly thrust open the floodgates to litigation. Rather, they have properly focused their attention on protecting military decision-making and policy from judicial intrusion, and limited their rulings accordingly. For those suits that do not question military decisions or policy, they will move forward (at least without political question problems). This may or may not cause an increase in contractor costs due to higher insurance premiums related to tort damages, which could then be conveyed to the U.S. Government in the form of higher prices. However, the political question doctrine’s purpose is not to inhibit the principles of accountability inherent in the American tort law system. For those who wish to change this system, they should look instead toward the political branches or state governments for relief. These entities have in their arsenals statutes, regulations, and other mechanisms more appropriate for change. Such methods are much more apt for this purpose than reliance on a mutation of the political question doctrine into a form beyond its established limits. To argue that Government contingency contracting will break down unless the political question doctrine extends to all tort suits brought against combat zone defense contractors is disingenuous. Alarming predictions of compromised logistics and mission failure grossly exaggerate the effect of these GWOT tort suits on combat zone contractors and Government contingency contracting. Such hyperbole ignores the reality and degree of the U.S. Government’s financial commitment to and dependency on contingency contracting in Iraq and Afghanistan. Finally, even if the consequences to the DoD procurement system are as dire as defense contractor advocates have alleged, the political branches are in a much more appropriate position to remedy them and can do so much more immediately and effectively.

#### Afghanistan won’t spillover to central Asia

**Kazemi, Afghanistan Analysts Network, 12-12-12**

(S. Reza, “A Potential Afghan Spill-Over: How Real Are Central Asian Fears?”, <http://aan-afghanistan.com/index.asp?id=3152>, ldg)

A spill-over of the Afghan conflict or aspects of it like the drug trade into Central Asia is realistic, but it need not be as threatening and disastrous as the region’s governmental officials depict it. It also may differ for particular Central Asian countries. Tajikistan and Uzbekistan – of Afghanistan’s three direct Central Asian neighbours (with the third being Turkmenistan) – are likely to continue to be most affected. A spill-over of Islamist terrorism from Afghanistan seems unlikely, however, at least for the time being. The leadership of the IMU, regarded as the most serious militant threat against the region, has been largely dismantled. Although a 2011 AAN report identified some IMU presence in Afghanistan’s Balkh, Faryab and Kunduz provinces bordering Central Asia, the bulk of the IMU fighters are based in Pakistan’s Waziristan, far away from any shared Afghanistan-Central Asia frontier. It is unclear, therefore, if the movement can re-group to organise and carry out attacks in Central Asian territory, apart from causing localised instability and violence on Afghan soil.(9) And even if so, terrorist and extremist threats facing Central Asia (and particularly Tajikistan and Uzbekistan) are more home-grown than what would originate from Afghanistan, as, for example, Christian Bleuer argues (read, for example, here), although others like Ahmed Rashid have, both in the past and recently, talked about larger regional networks of militants. If there is any actual spill-over of the Afghan conflict into Central Asia, it is more likely to continue to be drug trafficking. Afghanistan is by far the largest global producer of poppy and hashish and increasingly of derivates produced from them. As the recent fighting in Tajikistan’s Gorno-Badakhshan Autonomous Oblast (GBAO) has shown, there are cross-border networks functioning and corrupt government officials both in Afghanistan and Central Asia can hugely benefit from their trafficking (for a UN report on drug trafficking from Afghanistan through Central Asia and onwards, see here). In a reverse way, Uzbekistan has engaged to influence Afghanistan’s socio-political developments more seriously than any other Central Asian government. It has supported the Uzbek commander-turned-politician Abdul Rashid Dostum and his party Jombesh-e Melli-ye Islami-ye Afghanistan (Afghanistan’s National Islamic Movement) (for latest developments in the party, read a recent AAN paper). Tajikistan and Uzbekistan also have large numbers of co-ethnics inside Afghanistan, but Afghan Tajiks and Uzbeks are very different from their ethnic kin in Tajikistan and Uzbekistan, mainly because of Central Asia’s Sovietisation, despite speaking almost similar languages (see, for example, here).(10) It also needs to be recalled that conflicts in Afghanistan and Tajikistan have had mutual spill-over effects. During the 1992-97 Tajik civil war, parts of the Tajik opposition fled to Afghanistan, were supported by Afghan mujahedin and used Afghanistan as a safe haven and base to carry out attacks in Tajikistan. During the conflict between the Northern Alliance and the Taleban, Tajikistan had provided, among other things, an airbase to the Northern Alliance in Kulyab in southern Tajikistan for them to use to mobilise and organise the resistance against the Taleban’s advance towards northern Afghanistan (read, for example, here). In addition, the civil war in Tajikistan drove tens of thousands of people out of Tajikistan to the northern Afghan provinces of Balkh, Kunduz and Takhar (read here). Judging by recent contemporary precedents, an American Central Asia researcher, who requested not to be named, wrote to AAN that ‘the previous experience in the mid- to late 1990s of having a civil war in northern Afghanistan and a Taleban government controlling much of the north was not particularly traumatic’. Whatever the speculations about the Afghan conflict going northwards may be, Central Asia plus Afghanistan is one of the world’s least integrated regions. To subsume the five former Central Asian Soviet republics under one term – ‘the -stans’ – reflects an un-informed and superficial look at this region. Considering the growing number of bilateral and intra-regional conflicts and competing attempts to achieve regional leadership, this perception is everything but justified.

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### \*\*\*Allies

### Judicial Review Solves

#### Solves – comparatively better than ex ante review

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)

The argument for some form of judicial review is compelling, not least because such review would clarify the scope of the government’s authority to use lethal force. The targeted killing program is predicated on sweeping constructions of the 2001 Authorization for Use of Military Force (AUMF) and the President’s authority to use military force in national self-defense. The government contends, for example, that the AUMF authorizes it to use lethal force against groups that had nothing to do with the 9/11 attacks and that did not even exist when those attacks were carried out. It contends that the AUMF gives it authority to use lethal force against individuals located far from conventional battlefields. As the Justice Department’s recently leaked white paper makes clear, the government also contends that the President has authority to use lethal force against those deemed to present “continuing” rather than truly imminent threats.These claims are controversial. They have been rejected or questioned by human rights groups, legal scholars, federal judges, and U.N. special rapporteurs. 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. But to recognize that judicial review is indispensible in this context is not to say that Congress should establish a specialized court, still less that it should establish such a court to review contemplated killings before they are carried out. First, the establishment of such a court would almost certainly entrench the notion that the government has authority, even far away from conflict zones, to use lethal force against individuals who do not present imminent threats. When a threat is truly imminent, after all, the government will not have time to apply to a court for permission to carry out a strike. Exigency will make prior judicial review infeasible. To propose that a court should review contemplated strikes before they are carried out is to accept that the government should be contemplating strikes against people who do not present imminent threats. 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.

### 1AR JI

#### **Follow on doesn’t solve our shit**

McCormack, law prof-Utah, 13 (Wayne McCormack is the E. W. Thode Professor of Law at the University of Utah S.J. Quinney College of Law, U.S. Judicial Independence: Victim in the “War on Terror”, Aug 20, https://today.law.utah.edu/projects/u-s-judicial-independence-victim-in-the-war-on-terror/)

One of the principal victims in the U.S. so-called “war on terror” has been the independence of the U.S. Judiciary. Time and again, challenges to assertedly illegal conduct on the part of government officials have been turned aside, either because of overt deference to the Government or because of special doctrines such as state secrets and standing requirements. The judiciary has virtually relinquished its valuable role in the U.S. system of judicial review. In the face of governmental claims of crisis and national security needs, the courts have refused to examine, or have examined with undue deference, the actions of government officials. The U.S. Government has taken the position that inquiry by the judiciary into a variety of actions would threaten the safety of the nation. This is pressure that amounts to intimidation. When this level of pressure is mounted to create exceptions to established rules of law, it undermines due process of law. Perhaps one or two examples of Government warnings about the consequences of a judicial decision would be within the domain of legal argument. But a long pattern of threats and intimidation to depart from established law undermines judicial independence. That has been the course of the U.S. “war on terror” for over a decade now. Here are some of the governmental actions that have been challenged and a brief statement of how the Courts responded to Government demands for deference. 1. Guantanamo. In Boumediene v. Bush,1 the Supreme Court allowed the U.S. to detain alleged “terrorists” under unstated standards to be developed by the lower courts with “deference” to Executive determinations. The intimidation exerted on the Court was reflected in Justice Scalia’s injudicious comment that the Court’s decision would “surely cause more Americans to be killed.” 2. Detention and Torture Khalid El-Masri2 claimed that he was detained in CIA “black sites” and tortured – case dismissed under the doctrine of “state secrets privilege.” (SSP) Maher Arar3 is a Canadian citizen who was detained at Kennedy Airport by U.S. authorities, shipped off to Syria for imprisonment and mistreatment, and finally released to Canadian authorities – case dismissed under “special factors” exception to tort actions for violations of law by federal officials – awarded $1 million by Canadian authorities. Jose Padilla4 was arrested deplaning at O’Hare Airport, imprisoned in the U.S. for four years without a hearing and allegedly mistreated in prison – case dismissed on grounds of “good faith” immunity. Binyam Mohamed5 was subjected to “enhanced interrogation techniques” at several CIA “black sites” before being repatriated to England, which awarded him £1 million in damages – U.S. suit dismissed under SSP. 1 553 U.S. 723 (2008). 2 El-Masri v. United States, 479 F.3d 296 (4th Cir. 2007). 3 Arar v. Ashcroft, 414 F. Supp. 2d 250 (E.D.N.Y. 2005), aff’d by 585 F.3d 559 (2009). 4 Padilla v. Yoo, 678 F.3d 748 (9th Cir. 2012). 5 Mohamed v. Jeppesen Dataplan, 614 F.3d 1070 (9th Cir. en banc 2010) damages – U.S. suit dismissed under SSP. 3. Unlawful Detentions Abdullah Al-Kidd6 arrested as a material witness, held in various jails for two weeks, and then confined to house arrest for 15 months – suit dismissed on grounds of “qualified immunity” and apparent validity of material witness warrant. Ali Al-Marri was originally charged with perjury, then detained as an enemy combatant, for a total detention of four years before the Fourth Circuit finally held that he must be released or tried.7 Javad Iqbal8 was detained on visa violations in New York following 9/11 and claimed he was subjected to mistreatment on the basis of ethnic profiling – suit dismissed on grounds that he could not prove Attorney General authorization of illegal practices and court’s unwillingness to divert attention of officials away from national security. Osama Awadallah9 was taken into custody in Los Angeles after his name and phone number were found on a gum wrapper in the car of one of the 9/11 hijackers – charged with perjury before grand jury and held as material witness – Second Circuit reversed district court ruling on abuse of the material witness statute 4. Unlawful Surveillance Amnesty International10 is one of numerous organizations that brought suit believing that its communications, especially with foreign clients or correspondents had been monitored by the National Security Agency – suit dismissed because the secrecy of the NSA spying program made it impossible to prove that any particular person or group had been monitored. The validity of the entire Foreign Surveillance Act (FISA) rests on the “special needs” exception to the Fourth Amendment, a conclusion that was rejected by one district court although accepted by others. 5. Targeted Killing Anwar Al-Awlaki (or Aulaqi)11 was reported by press accounts as having been placed on a “kill list” by President Obama – suit by his father dismissed on grounds that Anwar himself could come forward and seek access to U.S. courts – not only Anwar but his son were then killed in separate drone strikes. 6. Asset Forfeiture 6 Al-Kidd v. Ashcroft, 580 F.3d 949, 951-52 (9th Cir. 2009). 7Al-Marri v. Wright, 487 F.3d 160 (4th Cir. 2007). 8 Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) 9 United States v. Awadallah, 349 F.3d 42 (2d Cir. 2003); see also In re Grand Jury Material Witness Detention, 271 F. Supp. 2d 1266 (D. Or. 2003); In re Application of U.S. for a Material Witness Warrant, 213 F. Supp. 2d 287 (S.D. N.Y. 2002). 10 Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138 (2013). 11 Al-Aulaqi v. Obama, 727 F. Supp. 2d 1 (D.D.C. 2010) Both Al Haramain Islamic Foundation12 and KindHearts for Charitable Humanitarian Development13 have been found by the Department of Treasury to be fronts for raising money for Hamas, and their assets have been blocked – despite findings of due process violations by the lower courts, the blocking of assets has been upheld on the basis that their support for terrorist activities is public knowledge. Avoiding Accountability The “head in the sand” attitude of the U.S. judiciary in the past decade is a rather dismal record that does not fit the high standard for judicial independence on which the American public has come to rely. Many authors have discussed these cases from the perspective of civil rights and liberties of the individual. What I want to highlight is how undue deference to the Executive in “time of crisis” has undermined the independent role of the judiciary. Torture, executive detentions, illegal surveillance, and now killing of U.S. citizens, have all escaped judicial review under a variety of excuses. To be clear, many of the people against whom these abuses have been levied are, or were, very dangerous if not evil individuals. Khalid Sheikh Muhamed and Anwar al-Aulaqi should not be allowed to roam free to kill innocent civilians. But hundreds of years of history show that there are ways of dealing with such people within the limits of restrained government without resort to the hubris and indignity of unreviewed executive discretion. The turning of blind eyes by many, albeit not all, federal judges is a chapter of this history that will weigh heavily against us in the future. No judge wants to feel responsible for the deaths of innocents. But moral responsibility for death is with those who contribute to the act. Meanwhile the judge has a moral responsibility for abuses by government of which the judiciary is a part. There is nothing “new” in the killing of innocents for religious or political vengeance. This violence has always been with us and will unfortunately continue despite our best efforts to curb it. Pleas for executive carte blanche power are exactly what the history of the writ of habeas corpus were developed to avoid,14 and what many statements in various declarations of human rights are all about. The way of unreviewed executive discretion is the way of tyranny.

### \*\*\*Amendments CP

### 1AR Delay – Amendments

#### Most recent amendment took 200 years to approve.

**Hanlon, 2k** (Michael C, J.D., University of Virginia, 2000. 16 J. L. & Politics 663. Lexis)

What makes the Twenty-seventh Amendment special is not its language. Rather, the amendment is unique in that, unlike the other amendments to the Constitution, the Congressional Pay Amendment took longer than the previous record of four years, from the time of its passage by Congress, to gain ratification by three-fourths of the states. 3 In fact, this most recent amendment to the Constitution took more than 202 years to achieve approval by the requisite number of states. 4 Congress proposed what is now the Twenty-seventh Amendment on September 25, 1789, as part of a package of twelve proposed amendments. 5 Ten of these proposed amendments were ratified by 1791, and became our Bill of Rights. The other two proposals, including the congressional pay measure, languished in the ratification pipeline for the next two centuries.

### 1AR Court Rollback

Even if the Court doesn’t roll it back, they will water down its interpretation.

**Strauss, 2k1** (David A, Harry N. Wyatt Professor of Law, The University of Chicago. 114 Harv. L. Rev. 1457. Lexis)

On these occasions the formal amendment will be relatively insignificant for a different reason. When there is no lasting social consensus behind a textual amendment, the change in the text of the Constitution is unlikely to make a lasting difference - at least if it seeks to affect society in an important way - unless society changes in the way that the amendment envisions. Until that happens, the amendment is likely to be evaded, or interpreted in a way that blunts its effectiveness. This is, in a sense, the other side of the fact that a mature society has a variety of institutions, in addition to the text of the Constitution, that can affect how the society operates. Those institutions can change society without changing the Constitution; but they can also keep society basically the same - perhaps with some struggle, but still basically the same - even if the text of the Constitution changes. This was, most notoriously, the story of the Fourteenth and, especially, the Fifteenth Amendment. The Fifteenth Amendment was somewhat effective in the short run, but within a generation it had been reduced to a nullity in the South. 12

#### ---The Supreme Court will interpret narrowly----if their PQD link is right and precedent makes the court super reluctant and deferencial they won’t get involved.

SEGAL AND SPAETH 2002 **–** POL SCI PROF @ SUNY STONY BROOK, WINNER OF C. HERMAN PRITCHETT AWARD FOR BEST BOOK IN LAW AND JUDICIAL POLITICS FROM AMERICAN POL SCI ASSOCIATION, *THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED*, P. 5-6

**If action by Congress to undo the Court's interpretation of one of its laws does not subvert judicial authority, a fortiori neither does the passage of a constitutional amendment**, for example, **the Twenty-Sixth Amendment reducing the voting age to eighteen and thereby undoing the decision in Oregon v. Mitchell**,' which held that Congress could not constitutionally lower the voting age in state elections. Furthermore, **not only does a constitutional amendment not subvert judicial authority, courts themselves – ultimately, the Supreme Court – have the last word when** **determining the sanctioning amendment's meaning. Thus, the Court is free to construe any amendment – whether or not it overturns one of its decisions – as it sees fit, even though its construction deviates appreciably from the language or purpose of the amendment.**

### 1AR Russia

#### Russian economic decline causes nuclear war

Filger, 9 [Sheldon, correspondent for the Huffington Post, “Russian Economy Faces Disastrous Free Fall Contraction,” http://www.globaleconomiccrisis.com/blog/archives/356]

In Russia historically, economic health and political stability are intertwined to a degree that is rarely encountered in other major industrialized economies. It was the economic stagnation of the former Soviet Union that led to its political downfall. Similarly, Medvedev and Putin, both intimately acquainted with their nation’s history, are unquestionably alarmed at the prospect that Russia’s economic crisis will endanger the nation’s political stability, achieved at great cost after years of chaos following the demise of the Soviet Union. Already, strikes and protests are occurring among rank and file workers facing unemployment or non-payment of their salaries. Recent polling demonstrates that the once supreme popularity ratings of Putin and Medvedev are eroding rapidly. Beyond the political elites are the financial oligarchs, who have been forced to deleverage, even unloading their yachts and executive jets in a desperate attempt to raise cash. Should the Russian economy deteriorate to the point where economic collapse is not out of the question, the impact will go far beyond the obvious accelerant such an outcome would be for the Global Economic Crisis. There is a geopolitical dimension that is even more relevant then the economic context. Despite its economic vulnerabilities and perceived decline from superpower status, Russia remains one of only two nations on earth with a nuclear arsenal of sufficient scope and capability to destroy the world as we know it. For that reason, it is not only President Medvedev and Prime Minister Putin who will be lying awake at nights over the prospect that a national economic crisis can transform itself into a virulent and destabilizing social and political upheaval. It just may be possible that U.S. President Barack Obama’s national security team has already briefed him about the consequences of a major economic meltdown in Russia for the peace of the world. After all, the most recent national intelligence estimates put out by the U.S. intelligence community have already concluded that the Global Economic Crisis represents the greatest national security threat to the United States, due to its facilitating political instability in the world. During the years Boris Yeltsin ruled Russia, security forces responsible for guarding the nation’s nuclear arsenal went without pay for months at a time, leading to fears that desperate personnel would illicitly sell nuclear weapons to terrorist organizations. If the current economic crisis in Russia were to deteriorate much further, how secure would the Russian nuclear arsenal remain? It may be that the financial impact of the Global Economic Crisis is its least dangerous consequence.

### \*\*\*PQD DA

### 1AR AT: Thumper

#### Multiple detention cases prove there’s no court deference on war powers- PQD is dead

Skinner 8/23, Professor of Law at Willamette

(13, Gwynne, Misunderstood, Misconstrued, and Now Clearly Dead: The 'Political Question Doctrine' in Cases Arising in the Context of Foreign Affairs, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2315237)

RECENT SUPREME COURT CASE LAW HAS SOUNDED THE DEATH KNELL FOR THE “POLITICAL QUESTION DOCTRINE”WITH REGARD TO INDIVIDUAL RIGHTS CLAIMS IN THE REALM OF FOREIGN AFFAIRS. Four important Supreme Court cases in the aftermath of 9/11 and Iraq and Afghanistan Wars clarify that individual rights claims – even those arising in the context of national security and foreign policy – will be adjudicated notwithstanding that they involve important questions for the executive and legislative branch, including in the areas of military and foreign affairs. In these cases, the Supreme Court ensured that the federal judiciary’s role in adjudicating individual rights cases in the area of Constitutional and international law would be maintained. The Supreme Court either did not invoke the “political question doctrine” when it could have, or in the case of one, rejected it altogether. Hamdi v. Rumsfeld In 2004 case of Hamdi v. Rumsfeld,279 the Supreme Court found although Congress had authorized the President to hold indefinitely a U.S. citizen who met the definition of an enemy combatant,280, the citizen-detainee was entitled to challenge his classification as an enemy combatant given that right to habeas had not been suspended, to receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker.281 In Hamdi, the Supreme Court noted that even in a military context, the Court is not usurping the role of the military when it simply exercises its “time-honored and constitutionally mandated roles of reviewing and resolving claims…” The Court stated that “simply because this case touches upon the military’s judgment in its treatment of Plaintiff does not mean that the courts are prohibited from exercising their respective power. Although the Supreme Court has acknowledged that ‘core strategic matters of warmaking,’ deserve deference to the “coordinate branches of the government” – something not at issue here - the Constitution ‘most assuredly envisions a role for all three branches when individual liberties are at stake.’ Rasul v. Bush Importantly, Rasul v. Bush, the 2004 Supreme Court case that held that detainees in Guantanamo Bay had statutory habeas rights, also addressed access to U.S. courts in civil cases brought by detainees. In Rasul, the Court found that nothing precluded aliens detained in military custody outside of the U.S. from the privilege in litigation in U.S. courts. The district court had dismissed civil claims brought under the Alien Tort Statute and the Torture Victim Protection for conditions of confinement, noting that the aliens did not have the privilege of litigation in U.S. courts for claims that rest on the habeas statute, which the lower court had found the aliens were not entitled to invoke.286 First, the Supreme Court noted that because the lower court was in error in finding that the federal habeas statute did not extend to the plaintiff, its analysis regarding the civil claims was equally flawed.287 Moreover, in addition, the Court noted that “in any event, nothing in Eisentrager or in any of our other cases categorically excludes aliens detained in military custody outside the United States from the “privilege of litigation” in U.S. courts.288 The Court noted that the ATS in particular gives aliens the right to sue in federal courts for violations of the law of nations.289 The Court further noted, “The fact that petitioners in these cases are being held in military custody is immaterial to the question of the District Court's jurisdiction over their non-habeas statutory claims.” 290 In its decision, the Supreme Court did not foreclose the possibility that special factors counseling hesitation might prevent a Bivens claim or that the “political question doctrine” might preclude an ATS or TVPA claim. However, its clarification that the federal courts are open to those in military custody for such claims, without any obvious restriction, casts doubt on decisions that limit access to remedies for violations of both human rights and constitutional rights. Justice Kennedy’s concurrence in Rasul arguably addressed the “political question doctrine” (without calling it that directly), and appears to add support for the position taken in this article that rather than dismiss cases as nonjusticiable, courts should directly address whether the branch at issue acted within its constitutional powers. In his concurrence in Rasul, Kennedy agreed that the federal courts should have jurisdiction to consider challenges to the legality of the detaining of foreign nationals held at Guantanamo Bay Naval Base.2 He distinguished Eisentrager in two signification ways: first, that unlike the prisoners in the Landsberg prison Germany, the detainees at issue in Rasul were held in what was in all practical purposes a United States Territory.292 Second, the plaintiffs in Eisentrager were tried and convicted by a military commission for violating the laws of war and were sentenced to prison,293 where the Guantanamo Bay detainees were being held indefinitely and without any benefit of any legal proceeding to determine their case.294 While noting that Eisentrager indicates there is a “realm of political authority over military affairs where the judicial power may not enter” and acknowledging the power over military affairs the President and Congress has, 295 Justice Kennedy stated that a “faithful application” of Eisentrager “requires an initial inquiry into the general circumstances of the detention to determine whether the Court has the authority to entertain the petition and to grant relief after considering all of the facts presented.”296 This demonstrates Justice Kennedy’s view that the real issue whether the President and Congress are acting within their constitutional powers, not turning a blind eye to justiciability. Justice Kennedy confirmed this reading by stating, “A necessary corollary of Eisentrager is that there are circumstances in which the courts maintain the power and the responsibility to protect persons from unlawful detention even where military affairs are implicated.”297 Boumediene v. Bush Perhaps the most important, recent case clarifying that individual rights claims will be adjudicated in foreign and military contexts is the 2008 case of Boumediene v. Bush.298 In the case, the Supreme Court found that the Constitutional right to habeas corpus extended to those held at Guantanamo Bay, striking down Congress’ attempt to strip the federal courts of jurisdiction to hear such cases as part of the Military Commissions Act.299 In Boumediene, the Supreme Court specifically rejected the “political question doctrine” as a reason for dismissal of the case.300 The Court found that although the Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, it does not grant them the power to decide when and where the Constitutions’ terms apply. 301 When the United States acts outside its borders, the Court opined, its powers are not “absolute and unlimited” but are subject “to such restrictions as are expressed in the Constitution.”302 The Court went on: Abstaining from questions involving formal sovereignty and territorial governance is one thing. To hold the political branches have the power to switch the Constitution on or off at will is quite another. The former position reflects this Court's recognition that certain matters requiring political judgments are best left to the political branches. The latter would permit a striking anomaly in our tripartite system of government, leading to a regime in which Congress and the President, not this Court, say “what the law is.

### 1AR No impact

#### **No internal link – no evidence says that litigation of DOD contractors would hurt DOD operations – the Afghan instability evidence just says DOD contractors are key – litigation won’t chill operations**

Isenberg 10 (David, Research Fellow – Independent Institute, "Contractor Legal Immunity and the ’Political Questions’ Doctrine," CATO Institute, 1-19, http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine)

Traditionally, the reason given for this is that such cases may involve “political questions” that the Judicial Branch is ill-equipped to decide. Thus defense contractor advocates claim these actions must be dismissed, else there be grim consequences for Government contingency contracting. But according to Maj. Carter, “the recent developments in political question doctrine case law are significant to the future of Government contingency contracting. However, they are not catastrophic — although portrayed as such by some defense contractor advocates. There will not be an explosion of contracting costs passed on to the Government. There will not be a mass refusal of defense contractors to accept contingency contracts. There will not be chaos on the battlefield. Such predictions are nothing more than “bellowing bungle.” Carter wrote: What is the political question doctrine? According to Chief Justice John Marshall, “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in [the U.S. Supreme Court].” In 2004, the Court held “[s]ometimes .. . the law is that the judicial department has no business entertaining [a] claim of unlawfulness — because the question is entrusted to one of the political branches or involves no judicially enforceable rights. Such questions are said to be ‘nonjusticiable,’ or ‘political questions.’” What this means is that traditionally courts have deferred to the political branches in matters of foreign policy and military affairs. Policy decisions regarding the employment of U.S.military forces in combat belong to the political branches, not the courts. The Supreme Court has held that, due to their “complex, subtle, and professional” nature, decisions as to the “composition, training, equipping, and control of a military force” are “subject always” to the control of the political branches. Tort suits that challenge the internal operations of these areas of the military are likely to be dismissed as political questions.

#### No chilling effect

Kent 10/14/13 (Andrew, is a Professor, Fordham Law School; Faculty Advisor, Center on National Security at Fordham Law School, “ARE DAMAGES DIFFERENT?: BIVENS AND NATIONAL SECURITY,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2330476)

Though Goldsmith lists “civil trials” as part of his detailed description of the post-9/11 accountability, the book barely addresses them, and for good reason. As we have seen, Bivens suits have played a relatively small role in the national security area because the courts of appeals have not allowed them to go forward. Goldsmith’s account of the effectiveness of this new ecology of transparency provides interesting context for thinking about the way the courts have equilibrated doctrine in the national security area. On the one hand, it might be said that his account undermines one of the Supreme Court’s most potent arguments against monetary liability for federal officials—the fear that it will “over-deter,” cause excessive caution that damages the public interest, especially in the national security area where boldness is arguably more necessary.208 It might seem farfetched to think that a civil tort suit will by itself cause significant over-deterrence for, say, a senior CIA official who is also worried about investigations by the inspector general, DOJ prosecutors and an internal accountability board; congressional scrutiny; foreign civil and criminal trials ginned up by NGOs; and public scrutiny and calumny in the press or NGO reports. This is especially the case if, as seems likely,209 the official has personal liability insurance or can request reimbursement of costs and indemnification from his agency, or both. It is likely true, as Goldsmith suggests, that all of these accountability mechanisms put together have caused some over-deterrence. But it does not seem credible that civil torts suits would alone tip the balance from appropriate deterrence to overdeterrence.