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### Plan

#### Plan: The United States Federal Judiciary should conduct judicial ex post review of United States’ targeted killing operations.

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#### Scenario One: War Fighting

#### Domestic and international support for the US drone program is collapsing, threatening to shut it down entirely. 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.

#### And, Drones are critical to resolve U.S. military overreach and prevent reductions in power projection capacity

Rushforth JD candidate 12 (Elinor June, J.D. candidate, University of Arizona, James E. Rogers College of Law, “THERE'S AN APP FOR THAT: IMPLICATIONS OF ARMED DRONE ATTACKS AND PERSONALITY STRIKES BY THE UNITED STATES AGAINST NON-CITIZENS, 2004-2012” Arizona Journal of International and Comparative Law 29 Ariz. J. Int'l & Comp. Law 623, Lexis)

G. Arguments Made by Proponents of the Drone Program The drone program is a fixture in the Obama administration's fight against terror n163 and the moral and legal defense the administration offers serves as an indication that these attacks will continue. n164 Further, proponents of the drone program argue their use reduces risk to U.S. service members, decreases American weariness at foreign intervention, and minimizes civilian casualties during attacks and missions. First, because asymmetric warfare has increased, the United States has sought out creative ways to fight terrorists, insurgents, and asymmetric wars more generally. n165 Despite controversy surrounding the drone program, it allows surveillance and lethal missions without putting U.S. troops in harm's way. n166 This is an almost incontrovertible positive factor when considering American public support for a new and technologically incredible program. n167 Due to the lingering Overseas Contingency Operations, Americans are eager for some good news, and this program can deliver. Drone operators are on the front lines of a new and more sophisticated type of war and the information their surveillance missions provide can prove invaluable to service members on the ground. n168 This dual benefit weighs heavily in favor of drone proliferation. Drones can be [\*649] deployed to survey and attack where it would otherwise be impractical for troops, and a single pilot, to venture. n169 However, the analysis of this benefit must be separated between the two organizations employing drones: the military and the CIA. n170 Drones are used for surveillance and killing by both organizations but usually with different purposes in mind. n171 The military has focused its drones primarily on tactical support of ground forces, n172 either by providing information about enemy tactics or eliminating combatants entrenched in defended positions. n173 The CIA uses drones to eliminate specific targets in remote areas in which conventional U.S. military action would be impossible. n174 During Operation Southern Watch, the military used drones to police no-fly zones in Iraq and they were eventually used to target Iraqi radar systems during the second Iraq War. n175 In Operation Enduring Freedom, the military has expanded its use of armed drones to provide air support to ground operations and to act as "killer scouts." n176 By providing immediate battle damage assessment, drones enable commanders to determine if further action is necessary, and provide a new perspective on the field. n177 In Operation Iraqi Freedom, the armed drone retained and expanded its roles targeting anti-aircraft vehicles, performing as a decoy revealing enemy positions, and aiding in a rescue mission. n178 Based on these successes, military leaders maintain the value of drones. n179 The CIA's use [\*650] of drones facilitates U.S. attacks in environments where it is deemed too dangerous for ground troops to have a physical presence. n180 The ability to protect American lives, keep military costs down, and damage terrorist infrastructure and leadership is central to proponents' view of this program. Second, the American public has grown tired of drawn-out conflicts and foreign intervention, and the drone program offers a more palatable form of foreign involvement. n181 President Obama claims that "it is time to focus on nation-building here at home" and, presumably, the drone program allows the government to operate without deployment of ground troops to areas in which intervention is deemed necessary, be it for humanitarian or military purposes. n182 Lethal operations, surveillance for U.S. military operations, and less costly intervention all become possible when robots are the actual tools. With a weary electorate, the Executive can maintain a presence abroad militarily, while remaining able to argue that its full focus is on protecting and growing our nation at home.

#### Overreach collapses hegemony, risks hostile challengers and nuclear war

Florig, prof International Studies, 10 (Dennis, Professor- Division of International Studies- Hankuk (Korean) University of Foreign Studies, Review of International Studies, vol 36, issue 4, October, 2010, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1548783)

IV. Potential Sources of Hegemonic Breakdown and Future Challenges to Hegemony Despite the belief of some in the U.S. in the divine sanction of U.S. hegemony, hegemons do not stand forever any more than the houses of absolute monarchs of earlier ages who claimed celestial legitimation. Theory of hegemonic cycles focuses on the macro-historical process of the rise and decline of hegemonic powers. However, within any one of the long cycles, there are lesser periods of hegemonic weakening and regeneration. The loss of the Vietnam War followed by the oil shock induced recessions of the 1970s and the early 1980s led some to predict the imminent breakdown of U.S. hegemony. The decisive victory in the first Iraq war and the revival of the U.S. economy in the 1990s led others to talk of a second American century. Both were premature. Similarly, the short term outcome of the war in Iraq, whether it is the stabilization of a pro-American regime, the coming to power of a government unfriendly to the U.S. or on-going civil war will almost certainly lead either to new euphoric pronouncements about the 21st century belonging to the U.S. or claims that the end of U.S. hegemony are nigh. Again, either conclusion will most likely be premature. However, the outcome on the main battlefield so far in the Terrorism Wars will indicate much about the future direction of the global system. Hegemonic states and even hegemonic systems do have life spans, however hard it is to gauge them. On the home front, the Iraq War, like the Vietnam War before it, has laid bare one of the key problems of U.S. missionary hegemony—the fervor of elites is not always matched by the willingness of the population to sacrifice. The expansive, messianic conception of the U.S. role in the world predominates in American thinking, but it is not without challenge. The image of the U.S. as a “shining city on a hill” is rarely disputed, but the need for the U.S. to engage in military conflict abroad to spread its principles does come into question when the costs become too high and the benefits are not apparent.24 After World War I the ideology of American mission was not strong enough to overcome the resistance of ordinary citizens at being conscripted to fight in distant conflicts overseas and political elites not yet accommodated to the multilateralism hegemony entails. Thus there was a period of renunciation of hegemonic ambitions. Certainly since World War II the missionary ideology has held sway among policymaking elites. However, the political unpopularity of the long Vietnam War and the second Iraq War show that the average American citizen does not share the elite’s taste for battle overseas if the sacrifice in blood and treasure becomes steep. There is a cycle of hegemonic overreach, political reaction to the costs of failed policies, and then rebuilding of the ideology of messianic intervention. American sense of exceptionalism does not disappear at any time during this process. However, in the reactive part of the cycle the “city on the hill” tends to try to turn inward, wanting more to avoid contamination from the impure world outside than to take on new challenges. But since that conception of America is not adequate to sustain U.S. hegemony, the sense of America’s world historic mission must be painstaking rebuilt through political rhetoric, spoon feeding the mass media the right pictures of the world, and infusing civil society with political messianism. Someday either the overreach may be too costly and/or the public resistance may be too great to effectively rebuild the American missionary ideology. But that day does not seem just around the corner. There is an even larger question than whether the U.S. will remain the hegemonic state within a western dominated system. How long will the West remain hegemonic in the global system?25 Since Spengler the issue of the decline of the West has been debated. It would be hard to question current western dominance of virtually every global economic, political, military, or ideological system today. In some ways the domination of the West seems even more firm than it was in the past because the West is no longer a group of fiercely competing states but a much more cohesive force. In the era of western domination, breakdown of the rule of each hegemonic state has come because of competition from powerful rival western states at the core of the system leading to system-wide war. The unique characteristic of the Cold War and particularly the post-Cold War system is that the core capitalist states are now to a large degree politically united and increasingly economically integrated. In the 21st century, two factors taking place outside the West seem more of a threat to the reproduction of the hegemony of the American state and the western system than conflict between western states: 1. resistance to western hegemony in the Muslim world and other parts of the subordinated South, and 2. the rise of newly powerful or reformed super states. Relations between the core and periphery have already undergone one massive transformation in the 20th century—decolonization. The historical significance of decolonization was overshadowed somewhat by the emergence of the Cold War and the nuclear age. Recognition of its impact was dampened somewhat by the subsequent relative lack of change of fundamental economic relations between core and periphery. But one of the historical legacies of decolonization is that ideological legitimation has become more crucial in operating the global system. The manufacture of some level of consent, particularly among the elite in the periphery has to some degree replaced brute domination. Less raw force is necessary but in return a greater burden of ideological and cultural legitimation is required. Now it is no longer enough for colonials to obey, willing participants must believe. Therefore, cultural and ideological challenges to the foundations of the liberal capitalist world view assume much greater significance. Thus the resurgence of Islamic fundamentalism, ethnic nationalism, and even social democracy in Latin America as ideologies of opposition have increasing significance in a system dependent on greater levels of willing consent. As Ayoob suggests, the sustained resistance within the Islamic world to western hegemony may have a “demonstration effect” on other southern states with similar grievances against the West.26 The other new dynamic is the re-emergence of great states that at one time or another have been brought low by the western hegemonic system. China, in recent centuries low on the international division of labor, was in some ways a classic case of a peripheral state, or today a semi-peripheral state. But its sheer size, its rapid growth, its currency reserves, its actual and potential markets, etc. make it a major power and a potential future counter hegemon. India lags behind China, but has similar aspirations. Russia has fallen from great power to semi-peripheral status since the collapse of the Soviet empire, but its energy resources and the technological skills of its people make recovery of its former greatness possible. No one knows exactly what the resurgence of Asia portends for the future. However, just as half a century ago global decolonization was a blow to western domination, so the shift in economic production to Asia will redefine global power relations throughout the 21st century. Classical theory of hegemonic cycle is useful if not articulated in too rigid a form. Hegemonic systems do not last forever; they do have a life span. The hegemonic state cannot maintain itself as the fastest growing major economy forever and thus eventually will face relative decline against some major power or powers. The hegemon faces recurrent challenges both on the periphery and from other major powers who feel constrained by the hegemon’s power or are ambitious to usurp its place. Techniques of the application of military force and ideological control may become more sophisticated over time, but so too do techniques of guerilla warfare and ideological forms of resistance such as religious fundamentalism, nationalism, and politicization of ethnic identity. World war may not be imminent, but wars on the periphery have become quite deadly, and the threat of the use of nuclear weapons or other WMD by the rising number of powers who possess them looms.

#### And, power projection solves every scenario for extinction

Brzezinski, John Hopkins American Foreign Policy professor, 2012

(Zbigniew, Strategic Vision: America and the Crisis of Global Power, google books, ldg)

An American decline would impact the nuclear domain most profoundly by inciting a crisis of confidence in the credibility of the American nuclear umbrella. Countries like South Korea, Taiwan, Japan, Turkey, and even Israel, among others, rely on the United States’ extended nuclear deterrence for security. If they were to see the United States slowly retreat from certain regions, forced by circumstances to pull back its guarantees, or even if they were to lose confidence in standing US guarantees, because of the financial, political, military, and diplomatic consequences of an American decline, then they will have to seek security elsewhere. That “elsewhere” security could originate from only two sources: from nuclear weapons of one’s own or from the extended deterrence of another power—most likely Russia, China, or India. It is possible that countries that feel threatened by the ambition of existing nuclear weapon states, the addition of new nuclear weapon states, or the decline in the reliability of American power would develop their own nuclear capabilities. For crypto-nuclear powers like Germany and Japan, the path to nuclear weapons would be easy and fairly quick, given their extensive civilian nuclear industry, their financial success, and their technological acumen. Furthermore, the continued existence of nuclear weapons in North Korea and the potentiality of a nuclear-capable Iran could prompt American allies in the Persian Gulf or East Asia to build their own nuclear deterrents. Given North Korea’s increasingly aggressive and erratic behavior, the failure of the six-party talks, and the widely held distrust of Iran’s megalomaniacal leadership, the guarantees offered by a declining America’s nuclear umbrella might not stave off a regional nuclear arms race among smaller powers. Last but not least, even though China and India today maintain a responsible nuclear posture of minimal deterrence and “no first use,” the uncertainty of an increasingly nuclear world could force both states to reevaluate and escalate their nuclear posture. Indeed, they as well as Russia might even become inclined to extend nuclear assurances to their respective client states. Not only could this signal a renewed regional nuclear arms race between these three aspiring powers but it could also create new and antagonistic spheres of influence in Eurasia driven by competitive nuclear deterrence. The decline of the United States would thus precipitate drastic changes to the nuclear domain. An increase in proliferation among insecure American allies and/or an arms race between the emerging Asian powers are among the more likely outcomes. This ripple effect of proliferation would undermine the transparent management of the nuclear domain and increase the likelihood of interstate rivalry, miscalculation, and eventually even perhaps of international nuclear terror. In addition to the foregoing, in the course of this century the world will face a series of novel geopolitical challenges brought about by significant changes in the physical environment. The management of those changing environmental commons—the growing scarcity of fresh water, the opening of the Arctic, and global warming—will require global consensus and mutual sacrifice. American leadership alone is not enough to secure cooperation on all these issues, but a decline in American influence would reduce the likelihood of achieving cooperative agreements on environmental and resource management. America’s retirement from its role of global policeman could create greater opportunities for emerging powers to further exploit the environmental commons for their own economic gain, increasing the chances of resource-driven conflict, particularly in Asia. The latter is likely to be the case especially in regard to the increasingly scarce water resources in many countries. According to the United States Agency for International Development (USAID), by 2025 more than 2.8 billion people will be living in either water-scarce or water-stressed regions, as global demand for water will double every twenty years.9 While much of the Southern Hemisphere is threatened by potential water scarcity, interstate conflicts—the geopolitical consequences of cross-border water scarcity—are most likely to occur in Central and South Asia, the Middle East, and northeastern Africa, regions where limited water resources are shared across borders and political stability is transient. The combination of political insecurity and resource scarcity is a menacing geopolitical combination. The threat of water conflicts is likely to intensify as the economic growth and increasing demand for water in emerging powers like Turkey and India collides with instability and resource scarcity in rival countries like Iraq and Pakistan. Water scarcity will also test China’s internal stability as its burgeoning population and growing industrial complex combine to increase demand for and decrease supply of usable water. In South Asia, the never-ending political tension between India and Pakistan combined with overcrowding and Pakistan’s heightening internal crises may put the Indus Water Treaty at risk, especially because the river basin originates in the long-disputed territory of Jammu and Kashmir, an area of ever-increasing political and military volatility. The lingering dispute between India and China over the status of Northeast India, an area through which the vital Brahmaputra River flows, also remains a serious concern. As American hegemony disappears and **regional competition intensifies**, disputes over natural resources like water have the potential to develop into full-scale conflicts. The slow thawing of the Arctic will also change the face of the international competition for important resources. With the Arctic becoming increasingly accessible to human endeavor, the five Arctic littoral states—the United States, Canada, Russia, Denmark, and Norway—may rush to lay claim to its bounty of oil, gas, and metals. This run on the Arctic has the potential to cause severe shifts in the geopolitical landscape, particularly to Russia’s advantage. As Vladimir Radyuhin points out in his article entitled “The Arctic’s Strategic Value for Russia,” Russia has the most to gain from access to the Arctic while simultaneously being the target of far north containment by the other four Arctic states, all of which are members of NATO. In many respects this new great game will be determined by who moves first with the most legitimacy, since very few agreements on the Arctic exist. The first Russian supertanker sailed from Europe to Asia via the North Sea in the summer of 2010.10 Russia has an immense amount of land and resource potential in the Arctic. Its territory within the Arctic Circle is 3.1 million square kilometers—around the size of India—and the Arctic accounts for 91% of Russia’s natural gas production, 80% of its explored natural gas reserves, 90% of its offshore hydrocarbon reserves, and a large store of metals.11 Russia is also attempting to increase its claim on the territory by asserting that its continental shelf continues deeper into the Arctic, which could qualify Russia for a 150-mile extension of its Exclusive Economic Zone and add another 1.2 million square kilometers of resource-rich territory. Its first attempt at this extension was denied by the UN Commission on the Continental Shelf, but it is planning to reapply in 2013. Russia considers the Arctic a true extension of its northern border and in a 2008 strategy paper President Medvedev stated that the Arctic would become Russia’s “main strategic resource base” by 2020.12 Despite recent conciliatory summits between Europe and Russia over European security architecture, a large amount of uncertainty and distrust stains the West’s relationship with Russia. The United States itself has always maintained a strong claim on the Arctic and has continued patrolling the area since the end of the Cold War. This was reinforced during the last month of President Bush’s second term when he released a national security directive stipulating that America should “preserve the global mobility of the United States military and civilian vessels and aircraft throughout the Arctic region.” The potentiality of an American decline could embolden Russia to more forcefully assert its control of the Arctic and over Europe via energy politics; though much depends on Russia’s political orientation after the 2012 presidential elections. All five Arctic littoral states will benefit from a peaceful and cooperative agreement on the Arctic—similar to Norway’s and Russia’s 2010 agreement over the Barents Strait—and the geopolitical stability it would provide. Nevertheless, political circumstances could rapidly change in an environment where control over energy remains Russia’s single greatest priority. Global climate change is the final component of the environmental commons and the one with the greatest potential geopolitical impact. Scientists and policy makers alike have projected catastrophic consequences for mankind and the planet if the world average temperature rises by more than two degrees over the next century. Plant and animal species could grow extinct at a rapid pace, large-scale ecosystems could collapse, human migration could increase to untenable levels, and global economic development could be categorically reversed. Changes in geography, forced migration, and global economic contraction layered on top of the perennial regional security challenges could create a geopolitical reality of unmanageable complexity and conflict, especially in the densely populated and politically unstable areas of Asia such as the Northeast and South. Furthermore, any legitimate action inhibiting global climate change will require unprecedented levels of self-sacrifice and international cooperation. The United States does consider climate change a serious concern, but its lack of both long-term strategy and political commitment, evidenced in its refusal to ratify the Kyoto Protocol of 1997 and the repeated defeat of climate-change legislation in Congress, deters other countries from participating in a global agreement. The United States is the second-largest global emitter of carbon dioxide, after China, with 20% of the world’s share. The United States is the number one per capita emitter of carbon dioxide and the global leader in per capita energy demand. Therefore, US leadership is essential in not only getting other countries to cooperate, but also in actually inhibiting climate change. Others around the world, including the European Union and Brazil, have attempted their own domestic reforms on carbon emissions and energy use, and committed themselves to pursuing renewable energy. Even China has made reducing emissions a goal, a fact it refuses to let the United States ignore. But none of those nations currently has the ability to lead a global initiative. President Obama committed the United States to energy and carbon reform at the Copenhagen Summit in 2009, but the increasingly polarized domestic political environment and the truculent American economic recovery are unlikely to inspire progress on costly energy issues. China is also critically important to any discussion of the management of climate change as it produces 21% of the world’s total carbon emissions, a percentage that will only increase as China develops the western regions of its territory and as its citizens experience a growth in their standard of living. China, however, has refused to take on a leadership role in climate change, as it has also done in the maritime, space, and cyberspace domains. China uses its designation as a developing country to shield itself from the demands of global stewardship. China’s tough stance at the 2009 Copenhagen Summit underscores the potential dangers of an American decline: no other country has the capacity and the desire to accept global stewardship over the environmental commons. Only a vigorous Unites States could lead on climate change, given Russia’s dependence on carbon-based energies for economic growth, India’s relatively low emissions rate, and China’s current reluctance to assume global responsibility. The protection and good faith management of the global commons—sea, space, cyberspace, nuclear proliferation, water security, the Arctic, and the environment itself—**are imperative to** the long-term growth of the global economy and **the continuation of** basic geopolitical **stability**. But in almost every case, the potential absence of constructive and influential US leadership would fatally undermine the essential communality of the global commons.     The argument that America’s decline would generate global insecurity, endanger some vulnerable states, produce a more troubled North American neighborhood, and make cooperative management of the global commons more difficult is not an argument for US global supremacy. In fact, the strategic complexities of the world in the twenty-first century—resulting from the rise of a politically self-assertive global population and from the dispersal of global power—make such supremacy unattainable. But in this increasingly complicated geopolitical environment, an America in pursuit of a new, timely strategic vision is crucial to helping the world avoid a dangerous slide into international turmoil.

#### Legitimacy of the drone program is critical internal link to drone operations-- key to allied and public support of US leadership.

Kennedy, Foreign Policy prof-Kings College, 13 (Greg, Professor of Strategic Foreign Policy at the Defence Studies Department, King's College London, Drones: Legitimacy and Anti-Americanism, http://www.strategicstudiesinstitute.army.mil/pubs/parameters/Issues/WinterSpring\_2013/3\_Article\_Kennedy.pdf)

The current debate over the legitimacy of America’s use of drones to deliver deadly force is taking place in both public and official domains in the United States and many other countries.5 The four key features at the heart of the debate revolve around: who is controlling the weapon system; does the system of control and oversight violate international law governing the use of force; are the drone strikes proportionate acts that provide military effectiveness given the circumstances of the conflict they are being used in; and does their use violate the sovereignty of other nations and allow the United States to disregard formal national boundaries? Unless these four questions are dealt with in the near future the impact of the unresolved legitimacy issues will have a number of repercussions for American foreign and military policies: “Without a new doctrine for the use of drones that is understandable to friends and foes, the United States risks achieving near-term tactical benefits in killing terrorists while incurring potentially significant longer-term costs to its alliances, global public opinion, the war on terrorism and international stability.”6 This article will address only the first three critical questions. The question of who controls the drones during their missions is attracting a great deal of attention. The use of drones by the Central Intelligence Agency (CIA) to conduct “signature strikes” is the most problematic factor in this matter. Between 2004 and 2013, CIA drone attacks in Pakistan killed up to 3,461—up to 891 of them civilians.7 Not only is the use of drones by the CIA the issue, but subcontracting operational control of drones to other civilian agencies is also causing great concern.8 Questions remain as to whether subcontractors were controlling drones during actual strike missions, as opposed to surveillance and reconnaissance activities. Nevertheless, the intense questioning of John O. Brennan, President Obama’s nominee for director of the CIA in February 2013, over drone usage, the secrecy of their controllers and orders, and the legality of their missions confirmed the level of concern America’s elected officials have regarding the legitimacy of drone use. Furthermore, perceptions and suspicions of illegal clandestine intelligence agency operations, already a part of the public and official psyche due to experiences from Vietnam, Iran-Contra, and Iraq II and the weapons of mass destruction debacle, have been reinforced by CIA management of drone capability. Recent revelations about the use of secret Saudi Arabian facilities for staging American drone strikes into Yemen did nothing to dissipate such suspicions of the CIA’s lack of legitimacy in its use of drones.9 The fact that the secret facility was the launching site for drones used to kill American citizens Anwar al-Awlaki and his son in September 2011, both classified by the CIA as al-Qaedalinked threats to US security, only deepened such suspicions. Despite the fact that Gulf State observers and officials knew about American drones operating from the Arabian peninsula for years, the existence of the CIA base was not openly admitted in case such knowledge should “ . . . damage counter-terrorism collaboration with Saudi Arabia.”10 The fallout from CIA involvement and management of drone strikes prompted Senator Dianne Feinstein, Chairwoman of the Senate Intelligence Committee, to suggest the need for a court to oversee targeted killings. Such a body, she said, would replicate the Foreign Intelligence Surveillance Court, which oversees eavesdropping on American soil.11 Most importantly, such oversight would go a long way towards allaying fears of the drone usage lacking true political accountability and legitimacy. In addition, as with any use of force, drone strikes in overseas contingency operations can lead to increased attacks on already weak governments partnered with the United States. They can lead to retaliatory attacks on local governments and may contribute to local instability. Those actions occur as a result of desires for revenge and frustrations caused by the strikes. Feelings of hostility are often visited on the most immediate structures of authority—local government officials, government buildings, police, and the military.12 It can thus be argued that, at the strategic level, drone strikes are fuelling anti-American resentment among enemies and allies alike. Those reactions are often based on questions regarding the legality, ethicality, and operational legitimacy of those acts to deter opponents. Therefore, specifically related to the reaction of allies, the military legitimacy question arises if the use of drones endangers vital strategic relationships.13 One of the strategic relationships being affected by the drone legitimacy issue is that of the United States and the United Kingdom. Targeted killing, by drone strike or otherwise, is not the sole preserve of the United States. Those actions, however, attract more negative attention to the United States due to its prominence on the world’s stage, its declarations of support for human rights and democratic freedoms, and rule-of-law issues, all which appear violated by such strikes. This complexity and visibility make such targeted killings important for Anglo-American strategic relations because of the closeness of that relationship and the perception that Great Britain, therefore, condones such American activities. Because the intelligence used in such operations is seen by other nations as a shared Anglo-American asset, the use of such intelligence to identify and conduct such killings, in the opinion of many, makes Great Britain culpable in the illegality and immorality of those operations.14 Finally, the apparent gap between stated core policies and values and the ability to practice targeted killings appears to be a starkly hypocritical and deceitful position internationally, a condition that once again makes British policymakers uncomfortable with being tarred by such a brush.15 The divide between US policy and action is exacerbated by drone technology, which makes the once covert practice of targeted killing commonplace and undeniable. It may also cause deep-rooted distrust due to a spectrum of legitimacy issues. Such questions will, therefore, undermine the US desire to export liberal democratic principles. Indeed, it may be beneficial for Western democracies to achieve adequate rather than decisive victories, thereby setting an example of restraint for the international order.16 The United States must be willing to engage and deal with drone-legitimacy issues across the entire spectrum of tactical, operational, strategic, and political levels to ensure its strategic aims are not derailed by operational and tactical expediency.

#### Scenario 2- Counter-terrorism

#### US counter-terrorism efforts are failing. Overreliance on drones results in civilian deaths that cause blowback- terrorist groups use civilian deaths for recruitment and fundraising, their key strategies for resurgence.

Cronin, prof-GMU, 13 (Audrey Kurth, Professor of Public Policy at George Mason University and the author of How Terrorism Ends: Understanding the Decline and Demise of Terrorist Campaigns, “Why Drones Fail,” Foreign Affairs, Jul/Aug2013, Vol. 92, Issue 4)

Like any other weapon, armed drones can be tactically useful. But are they helping advance the strategic goals of U.S. counterterrorism? Although terrorism is a tactic, it can succeed only on the strategic level, by leveraging a shocking event for political gain. To be effective, counterterrorism must itself respond with a coherent strategy. The problem for Washington today is that its drone program has taken on a life of its own, to the point where tactics are driving strategy rather than the other way around. The main goals of U.S. counterterrorism are threefold: the strategic defeat of al Qaeda and groups affiliated with it, the containment of local conflicts so that they do not breed new enemies, and the preservation of the security of the American people. Drones do not serve all these goals. Although they can protect the American people from attacks in the short term, they are not helping to defeat al Qaeda, and they may be creating sworn enemies out of a sea of local insurgents. It would be a mistake to embrace killer drones as the centerpiece of U.S. counterterrorism. AL QAEDA'S RESILIENCE At least since 9/11, the United States has sought the end of al Qaeda -- not just to set it back tactically, as drones have surely done, but also to defeat the group completely. Terrorist organizations can meet their demise in a variety of ways, and the killing of their leaders is certainly one of them. Abu Sayyaf, an Islamist separatist group in the Philippines, lost its political focus, split into factions, and became a petty criminal organization after the army killed its leaders in 2006 and 2007. In other cases, however, including those of the Shining Path in Peru and Action Directe in France, the humiliating arrest of a leader has been more effective. By capturing a terrorist leader, countries can avoid creating a martyr, win access to a storehouse of intelligence, and discredit a popular cause. Despite the Obama administration's recent calls for limits on drone strikes, Washington is still using them to try to defeat al Qaeda by killing off its leadership. But the terrorist groups that have been destroyed through decapitation looked nothing like al Qaeda: they were hierarchically structured, characterized by a cult of personality, and less than ten years old, and they lacked a clear succession plan. Al Qaeda, by contrast, is a resilient, 25-year-old organization with a broad network of outposts. The group was never singularly dependent on Osama bin Laden's leadership, and it has proved adept at replacing dead operatives. Drones have inflicted real damage on the organization, of course. In Pakistan, the approximately 350 strikes since 2004 have cut the number of core al Qaeda members in the tribal areas by about 75 percent, to roughly 50-100, a powerful answer to the 2001 attacks they planned and orchestrated nearby. As al Qaeda's center of gravity has shifted away from Pakistan to Yemen and North Africa, drone strikes have followed the terrorists. In September 2011, Michael Vickers, the U.S. undersecretary of defense for intelligence, estimated that there were maybe four key al Qaeda leaders remaining in Pakistan and about ten or 20 leaders overall in Pakistan, Somalia, and Yemen. Drones have also driven down the overall level of violence in the areas they have hit. The political scientists Patrick Johnston and Anoop Sarbahi recently found that drone strikes in northwestern Pakistan from 2007 to 2011 resulted in a decrease in the number and lethality of militant attacks in the tribal areas where they were conducted. Such strikes often lead militants simply to go somewhere else, but that can have value in and of itself. Indeed, the drone threat has forced al Qaeda operatives and their associates to change their behavior, keeping them preoccupied with survival and hindering their ability to move, plan operations, and carry them out. The fighters have proved remarkably adaptable: a document found left behind in February 2013 by Islamist fighters fleeing Mali detailed 22 tips for avoiding drone attacks, including using trees as cover, placing dolls and statues outside to mislead aerial intelligence, and covering vehicles with straw mats. Nonetheless, the prospect of living under the threat of instant death from above has made recruitment more difficult and kept operatives from establishing close ties to local civilians, who fear they might also be killed. But the benefits end there, and there are many reasons to believe that drone strikes are undermining Washington's goal of destroying al Qaeda. Targeted killings have not thwarted the group's ability to replace dead leaders with new ones. Nor have they undermined its propaganda efforts or recruitment. Even if al Qaeda has become less lethal and efficient, its public relations campaigns still allow it to reach potential supporters, threaten potential victims, and project strength. If al Qaeda's ability to perpetuate its message continues, then the killing of its members will not further the long-term goal of ending the group. Not only has al Qaeda's propaganda continued uninterrupted by the drone strikes; it has been significantly enhanced by them. As Sahab (The Clouds), the propaganda branch of al Qaeda, has been able to attract recruits and resources by broadcasting footage of drone strikes, portraying them as indiscriminate violence against Muslims. Al Qaeda uses the strikes that result in civilian deaths, and even those that don't, to frame Americans as immoral bullies who care less about ordinary people than al Qaeda does. And As Sahab regularly casts the leaders who are killed by drones as martyrs. It is easy enough to kill an individual terrorist with a drone strike, but the organization's Internet presence lives on. A more effective way of defeating al Qaeda would be to publicly discredit it with a political strategy aimed at dividing its followers. Al Qaeda and its various affiliates do not together make up a strong, unified organization. Different factions within the movement disagree about both long-term objectives and short-term tactics, including whether it is acceptable to carry out suicide attacks or kill other Muslims. And it is in Muslim-majority countries where jihadist violence has taken its worst toll. Around 85 percent of those killed by al Qaeda's attacks have been Muslims, a fact that breeds revulsion among its potential followers. The United States should be capitalizing on this backlash. In reality, there is no equivalence between al Qaeda's violence and U.S. drone strikes -- under the Obama administration, drones have avoided civilians about 86 percent of the time, whereas al Qaeda purposefully targets them. But the foolish secrecy of Washington's drone program lets critics allege that the strikes are deadlier and less discriminating than they really are. Whatever the truth is, the United States is losing the war of perceptions, a key part of any counterterrorism campaign. Since 2010, moreover, U.S. drone strikes have progressed well beyond decapitation, now targeting al Qaeda leaders and followers alike, as well as a range of Taliban members and Yemeni insurgents. With its so-called signature strikes, Washington often goes after people whose identity it does not know but who appear to be behaving like militants in insurgent-controlled areas. The strikes end up killing enemies of the Pakistani, Somali, and Yemeni militaries who may not threaten the United States at all. Worse, because the targets of such strikes are so loosely defined, it seems inevitable that they will kill some civilians. The June 2011 claim by John Brennan, President Barack Obama's top counterterrorism adviser at the time, that there had not been a single collateral death from drone attacks in the previous year strained credulity -- and badly undermined U.S. credibility. The drone campaign has morphed, in effect, into remote-control repression: the direct application of brute force by a state, rather than an attempt to deal a pivotal blow to a movement. Repression wiped out terrorist groups in Argentina, Brazil, Peru, and tsarist Russia, but in each case, it sharply eroded the government's legitimacy. Repression is costly, not just to the victims, and difficult for democracies to sustain over time. It works best in places where group members can be easily separated from the general population, which is not the case for most targets of U.S. drone strikes. Military repression also often results in violence spreading to neighboring countries or regions, which partially explains the expanding al Qaeda footprint in the Middle East and North Africa, not to mention the Caucasus. KEEPING LOCAL CONFLICTS LOCAL Short of defeating al Qaeda altogether, a top strategic objective of U.S. counterterrorism should be to prevent fighters in local conflicts abroad from aligning with the movement and targeting the United States and its allies. Military strategists refer to this goal as "the conservation of enemies," the attempt to keep the number of adversaries to a minimum. Violent jihadism existed long before 9/11 and will endure long after the U.S. war on terrorism finally ends. The best way for the United States to prevent future acts of international terrorism on its soil is to make sure that local insurgencies remain local, to shore up its allies' capacities, and to use short-term interventions such as drones rarely, selectively, transparently, and only against those who can realistically target the United States. The problem is that the United States can conceivably justify an attack on any individual or group with some plausible link to al Qaeda. Washington would like to disrupt any potentially powerful militant network, but it risks turning relatively harmless local jihadist groups into stronger organizations with eager new recruits. If al Qaeda is indeed becoming a vast collective of local and regional insurgents, the United States should let those directly involved in the conflicts determine the outcome, keep itself out, provide resources only to offset funds provided to radical factions, and concentrate on protecting the homeland. Following 9/11, the U.S. war on terrorism was framed in the congressional authorization to use force as a response to "those nations, organizations, or persons" responsible for the attacks. The name "al Qaeda," which does not appear in the authorization, has since become an ill-defined shorthand, loosely employed by terrorist leaders, counterterrorism officials, and Western pundits alike to describe a shifting movement. The vagueness of the U.S. terminology at the time was partly deliberate: the authorization was worded to sidestep the long-standing problem of terrorist groups' changing their names to evade U.S. sanctions. But Washington now finds itself in a permanent battle with an amorphous and geographically dispersed foe, one with an increasingly marginal connection to the original 9/11 plotters. In this endless contest, the United States risks multiplying its enemies and heightening their incentives to attack the country.

#### And, lack of transparency to the drone program collapses allied cooperation on terrorism, which is critical to intelligence sharing.

Human Rights First 13 (How to Ensure that the U.S. Drone Program does not Undermine Human Rights BLUEPRINT FOR THE NEXT ADMINISTRATION, Updated April 13, http://www.humanrightsfirst.org/wp-content/uploads/pdf/blueprints2012/HRF\_Targeted\_Killing\_blueprint.pdf)

The Obama Administration has dramatically escalated targeted killing by drones as a central feature of its counterterrorism response. Over the past two years, the administration has begun to reveal more about the targeted killing program, including in a leaked Department of Justice White paper on targeted killing1 and in public remarks by several senior officials.2 While this information is welcome, it does not fully address our concerns. Experts and other governments have continued to raise serious concerns about:  The precedent that the U.S. targeted killing policy is setting for the rest of the world, including countries that have acquired or are in the process of acquiring drones, yet have long failed to adhere to the rule of law and protect human rights;  The impact of the drone program on other U.S. counterterrorism efforts, including whether U.S. allies and other security partners have reduced intelligence-sharing and other forms of counterterrorism cooperation because of the operational and legal concerns expressed by these countries;  The impact of drone operations on other aspects of U.S. counterterrorism strategy, especially diplomatic and foreign assistance efforts designed to counter extremism, promote stability and provide economic aid;  The number of civilian casualties, including a lack of clarity on who the United States considers a civilian in these situations; and  Whether the legal framework for the program that has been publicly asserted so far by the administration comports with international legal requirements. The totality of these concerns, heightened by the lack of public information surrounding the program, require the administration to better explain the program and its legal basis, and to carefully review the policy in light of the global precedent it is setting and serious questions about the effectiveness of the program on the full range of U.S. counterterrorism efforts. While it is expected that elements of the U.S. government’s strategy for targeted killing will be classified, it is in the national interest that the government be more transparent about policy considerations governing its use as well as its legal justification, and that the program be subject to regular oversight. Furthermore, it is in U.S. national security interests to ensure that the rules of engagement are clear and that the program minimizes any unintended negative consequences. How the U.S. operates and publicly explains its targeted killing program will have far-reaching consequences. The manufacture and sale of unmanned aerial vehicles (UAVs) is an increasingly global industry and drone technology is not prohibitively complicated. Some 70 countries already possess UAVs3 —including Russia, Syria and Libya4 —and others are in the process of acquiring them. As White House counterterrorism chief John Brennan stated: the United States is "establishing precedents that other nations may follow, and not all of them will be nations that share our interests or the premium we put on protecting human life, including innocent civilians."5 By declaring that it is in an armed conflict with al Qaeda’s “associated forces” (a term it has not defined) without articulating limits to that armed conflict, the United States is inviting other countries to similarly declare armed conflicts against groups they consider to be security threats for purposes of assuming lethal targeting authority. Moreover, by announcing that all “members” of such groups are legally targetable, the United States is establishing exceedingly broad precedent for who can be targeted, even if it is not utilizing the full scope of this claimed authority.6 As an alternative to armed conflict-based targeting, U.S. officials have claimed targeted killings are justified as self-defense responding to an imminent threat, but have referred to a “flexible” or “elongated” concept of imminence,7 without adequately explaining what that means or how that complies with the requirements of international law. In a white paper leaked to NBC news in February 2013, for example, the Department of Justice adopts what it calls a “broader concept of imminence” that has no basis in law. According to the white paper, an imminent threat need be neither immediate nor specific. This is a dangerous, unprecedented and unwarranted expansion of widely-accepted understandings of international law.8 It is also not clear that the current broad targeted killing policy serves U.S. long-term strategic interests in combating international terrorism. Although it has been reported that some high-level operational leaders of al Qaeda have been killed in drone attacks, studies show that the vast majority of victims are not high-level terrorist leaders.9 National security analysts and former U.S. military officials increasingly argue that such tactical gains are outweighed by the substantial costs of the targeted killing program, including growing antiAmerican sentiment and recruiting support for al Qaeda. 10 General Stanley McChrystal has said: “What scares me about drone strikes is how they are perceived around the world. The resentment created by American use of unmanned strikes ... is much greater than the average American appreciates.”11 The broad targeted killing program has already strained U.S. relations with its allies and thereby impeded the flow of critical intelligence about terrorist operations.12

#### Allied cooperation on intelligence is critical to effective counterterrorism

McGill and Gray 12 (Anna-Katherine Staser McGill, David H. Gray, “Challenges to International Counterterrorism Intelligence Sharing,” Global Security Studies, Summer 2012, Volume 3, Issue 3, http://globalsecuritystudies.com/McGill%20Intel%20Share.pdf)

In his article “Old Allies and New Friends: Intelligence-Sharing in the War on Terror”, Derek Reveron states “the war on terror requires high levels of intelligence to identify a threat relative to the amount of force required to neutralize it” as opposed to the Cold War where the opposite was true (455). As a result, intelligence is the cornerstone of effective counterterrorism operations in the post 9/11 world. Though the United States has the most robust intelligence community in the world with immense capability, skills, and technology, its efficiency in counterterrorism issues depends on coalitions of both traditional allies and new allies. Traditional allies offer a certain degree of dependability through a tried and tested relationship based on similar values; however, newly cultivated allies in the war on terrorism offer invaluable insight into groups operating in their own back yard. The US can not act unilaterally in the global fight against terrorism. It doesn’t have the resources to monitor every potential terrorist hide-out nor does it have the time or capability to cultivate the cultural, linguistic, and CT knowledge that its new allies have readily available. The Department of Defense’s 2005 Quadrennial Review clearly states that the United States "cannot meet today's complex challenges alone. Success requires unified statecraft: the ability of the U.S. government to bring to, bear all elements of national power at home and to work in close cooperation with allies and partners abroad" (qtd in Reveron, 467). The importance of coalition building for the war on terrorism is not lost on US decision-makers as seen by efforts made in the post 9/11 climate to strengthen old relationships and build new ones; however, as seen in the following sections, the possible hindrances to effective, long term CT alliances must also be addressed in order to sustain current operations.

#### And, Al-Qaeda is planning attacks on the US.

Byman, Brookings Fellow, 13 (Daniel, professor in the Security Studies Program of Georgetown University's School of Foreign Service and the research director of the Saban Center for Middle East Policy at the Brookings Institution, “Al Qaeda Is Alive in Africa,” Jan 17, http://www.foreignpolicy.com/articles/2013/01/17/al\_qaeda\_is\_alive\_in\_africa)

It has been over a year and a half since Osama bin Laden was killed in Abbottabad, Pakistan, but now it seems like al Qaeda is everywhere: from Algeria to Somalia, from Mali to Yemen, from Pakistan to Iraq. In July 2011, arriving in Afghanistan on his first trip as U.S. defense secretary, Leon Panetta said, "We're within reach of strategically defeating al Qaeda." But on Wednesday, Jan. 16, Panetta seemed to express a good deal less optimism, making clear that the Algerian hostage crisis currently unfolding was "an al Qaeda operation." So has al Qaeda really become this web of linked groups around the world pursuing a common jihad against the West? And what is the relationship between the al Qaeda core and its affiliate organizations? These are important questions; the debate about whether the United States should join the French and step up involvement against jihadi groups in Mali centers on these complicated ties. For while al Qaeda leader Ayman al-Zawahiri and his lieutenants in the Afghanistan-Pakistan area consume much of our thinking on al Qaeda, the United States is also fighting al Qaeda affiliates like al Qaeda in Iraq (AQI), the Yemen-based al Qaeda in the Arabian Peninsula (AQAP), and al-Shabab in Somalia, which is also linked to al Qaeda. In 2012, the United States conducted more drone strikes on AQAP targets than it did against al Qaeda core targets in Pakistan. In Mali, U.S. concern is heightened by reports that some among the wide range of local jihadi groups like Ansar Dine have ties to al Qaeda in the Islamic Maghreb (AQIM). If groups in Mali and other local fighters are best thought of as part of al Qaeda, then an aggressive effort is warranted. But if these groups, however brutal -- and despite the allegiances to the mother ship they claim -- are really only fighting to advance local or regional ambitions, then the case for direct U.S. involvement is weak. The reality is that affiliation does advance al Qaeda's agenda, but the relationship is often frayed and the whole is frequently far less than the sum of its parts. Al Qaeda has always sought to be a vanguard that would lead the jihadi struggle against the United States. Abdullah Azzam, one of the most influential jihadi thinkers and a companion of bin Laden, wrote, "Every principle needs a vanguard to carry it forward" and that this vanguard is a "solid base" -- a phrase from which al Qaeda draws its very name. At the same time, al Qaeda sought to support and unify local Muslim groups as they warred against apostate governments such as the House of Saud in Saudi Arabia and Hosni Mubarak's Egypt. Convincing local groups to fight under the al Qaeda banner seems to neatly combine these goals, demonstrating that the mother organization -- now under Zawahiri -- remains in charge, while advancing the local and regional agendas that the core supports. More practically, in the past, the al Qaeda core has offered affiliates money and safe haven. In Afghanistan, and to a lesser degree in Pakistan, jihadists from affiliated groups came to train and learn and proved far more formidable when they returned to their home war zones. They also returned with a more global agenda, advancing the core's mission of shaping the jihadi movement. It also gave the core a new zone of operational access to conduct terrorist attacks in other places. Perhaps most importantly, the core al Qaeda managed to change the nature of the affiliates' attacks, so that in addition to continuing to strike at local regime forces, they also select targets more in keeping with the core's anti-Western goals. AQIM's attack this week on Western tourists and foreign oil workers in Algeria mimics the change in strategy. AQAP has taken this one step further and gone after the United States outside its region, twice launching sophisticated attacks on U.S. civil aviation.

#### And, they’ll use nuclear and biological weapons

Allison, IR Director @ Harvard, 12 (Graham, Director, Belfer Center for Science and International Affairs; Douglas Dillon Professor of Government, Harvard Kennedy School, "Living in the Era of Megaterror", Sept 7, http://belfercenter.ksg.harvard.edu/publication/22302/living\_in\_the\_era\_of\_megaterror.html)

Forty years ago this week at the Munich Olympics of 1972, Palestinian terrorists conducted one of the most dramatic terrorist attacks of the 20th century. The kidnapping and massacre of 11 Israeli athletes attracted days of around-the-clock global news coverage of Black September’s anti-Israel message. Three decades later, on 9/11, Al Qaeda killed nearly 3,000 individuals at the World Trade Center and the Pentagon, announcing a new era of megaterror. In an act that killed more people than Japan’s attack on Pearl Harbor, a band of terrorists headquartered in ungoverned Afghanistan demonstrated that individuals and small groups can kill on a scale previously the exclusive preserve of states. Today, how many people can a small group of terrorists kill in a single blow? Had Bruce Ivins, the U.S. government microbiologist responsible for the 2001 anthrax attacks, distributed his deadly agent with sprayers he could have purchased off the shelf, tens of thousands of Americans would have died. Had the 2001 “Dragonfire” report that Al Qaeda had a small nuclear weapon (from the former Soviet arsenal) in New York City proved correct, and not a false alarm, detonation of that bomb in Times Square could have incinerated a half million Americans. In this electoral season, President Obama is claiming credit, rightly, for actions he and U.S. Special Forces took in killing Osama bin Laden. Similarly, at last week’s Republican convention in Tampa, Jeb Bush praised his brother for making the United States safer after 9/11. There can be no doubt that the thousands of actions taken at federal, state and local levels have made people safer from terrorist attacks. Many are therefore attracted to the chorus of officials and experts claiming that the “strategic defeat” of Al Qaeda means the end of this chapter of history. But we should remember a deeper and more profound truth. While applauding actions that have made us safer from future terrorist attacks, we must recognize that they have not reversed an inescapable reality: The relentless advance of science and technology is making it possible for smaller and smaller groups to kill larger and larger numbers of people. If a Qaeda affiliate, or some terrorist group in Pakistan whose name readers have never heard, acquires highly enriched uranium or plutonium made by a state, they can construct an elementary nuclear bomb capable of killing hundreds of thousands of people. At biotech labs across the United States and around the world, research scientists making medicines that advance human well-being are also capable of making pathogens, like anthrax, that can produce massive casualties. What to do? Sherlock Holmes examined crime scenes using a method he called M.M.O.: motive, means and opportunity. In a society where citizens gather in unprotected movie theaters, churches, shopping centers and stadiums, opportunities for attack abound. Free societies are inherently “target rich.” Motive to commit such atrocities poses a more difficult challenge. In all societies, a percentage of the population will be homicidal. No one can examine the mounting number of cases of mass murder in schools, movie theaters and elsewhere without worrying about a society’s mental health. Additionally, actions we take abroad unquestionably impact others’ motivation to attack us. As Faisal Shahzad, the 2010 would-be “Times Square bomber,” testified at his trial: “Until the hour the U.S. ... stops the occupation of Muslim lands, and stops killing the Muslims ... we will be attacking U.S., and I plead guilty to that.” Fortunately, it is more difficult for a terrorist to acquire the “means” to cause mass casualties. Producing highly enriched uranium or plutonium requires expensive industrial-scale investments that only states will make. If all fissile material can be secured to a gold standard beyond the reach of thieves or terrorists, aspirations to become the world’s first nuclear terrorist can be thwarted. Capabilities for producing bioterrorist agents are not so easily secured or policed. While more has been done, and much more could be done to further raise the technological barrier, as knowledge advances and technological capabilities to make pathogens become more accessible, the means for bioterrorism will come within the reach of terrorists. One of the hardest truths about modern life is that the same advances in science and technology that enrich our lives also empower potential killers to achieve their deadliest ambitions. To imagine that we can escape this reality and return to a world in which we are invulnerable to future 9/11s or worse is an illusion. For as far as the eye can see, we will live in an era of megaterror.

#### And, Nuclear terrorism attacks escalate and cause extinction.

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

#### And, Bioterror leads to extinction

Anders Sandberg 8, is a James Martin Research Fellow at the Future of Humanity Institute at Oxford University; Jason G. Matheny, PhD candidate in Health Policy and Management at Johns Hopkins Bloomberg School of Public Health and special consultant to the Center for Biosecurity at the University of Pittsburgh Medical Center; Milan M. Ćirković, senior research associate at the Astronomical Observatory of Belgrade and assistant professor of physics at the University of Novi Sad in Serbia and Montenegro, 9/8/8, “How can we reduce the risk of human extinction?,” Bulletin of the Atomic Scientists,<http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction>

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

#### Only judicial review provides the due process necessary to solve public confidence in targeting—key to viability of the program

Corey, Army Colonel, 12 (Colonel Ian G. Corey, “Citizens in the Crosshairs: Ready, Aim, Hold Your Fire?,” http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA561582)

Alternatively, targeted killing decisions could be subjected to judicial review. 103 Attorney General Holder rejected ex ante judicial review out of hand, citing the Constitution’s allocation of national security operations to the executive branch and the need for timely action.104 Courts are indeed reluctant to stray into the realm of political questions, as evidenced by the district court’s dismissal of the ACLU and CCR lawsuit. On the other hand, a model for a special court that operates in secret already exists: the Foreign Intelligence Surveillance Court (FISC) that oversees requests for surveillance warrants for suspected foreign agents. While ex ante judicial review would provide the most robust form of oversight, ex post review by a court like the FISC would nonetheless serve as a significant check on executive power.105 Regardless of the type of oversight implemented, some form of independent review is necessary to demonstrate accountability and bolster confidence in the targeted killing process. Conclusion The United States has increasingly relied on targeted killing as an important tactic in its war on terror and will continue to do so for the foreseeable future.106 This is entirely reasonable given current budgetary constraints and the appeal of targeted killing, especially UAS strikes, as an alternative to the use of conventional forces. Moreover, the United States will likely again seek to employ the tactic against U.S. citizens assessed to be operational leaders of AQAM. As demonstrated above, one can make a good faith argument that doing so is entirely permissible under both international and domestic law as the Obama Administration claims, the opinions of some prominent legal scholars notwithstanding. The viability of future lethal targeting of U.S. citizens is questionable, however, if the government fails to address legitimate issues of transparency and accountability. While the administration has recently made progress on the transparency front, much more remains to be done, including the release in some form of the legal analysis contained in OLC’s 2010 opinion. Moreover, the administration must be able to articulate to the American people how it selects U.S. citizens for targeted killing and the safeguards in place to mitigate the risk of error and abuse. Finally, these targeting decisions must be subject to some form of independent review that will both satisfy due process and boost public confidence.

#### Court action is key—using the legal process to protect constitutional rights is critical to counter-terrorism credibility and US soft power.

Sidhu, J.D, 11 (Dawinder S., J.D., The George Washington University; M.A., Johns Hopkins University; B.A., University of Pennsylvania. Mr. Sidhu is an attorney whose primary intellectual focus is the relationship between individual rights and heightened national security concerns, “JUDICIAL REVIEW AS SOFT POWER: HOW THE COURTS CAN HELP US WIN THE POST-9/11 CONFLICT,” NATIONAL SECURITY LAW BRIEF Vol 1, No 1, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1003&context=nslb>)

The legal principles established by the Framers and enshrined in the Constitution are a source of attraction only if we have meaningfully adhered to them in practice. Part II will posit that the Supreme Court’s robust evaluation of cases in the wartime context suggests that the nation has been faithful to the rule of law even in times of national stress. As support, this part will provide exam- ples of cases involving challenges to the American response to wars both before and after 9/11, the discussion of which will exhibit American respect for the rule of law. While the substantive results of some of these cases may be particularly pleasing to Muslims, for instance the extension of habeas protections to detainees in Guantánamo, 30 this part will make clear that it is the legal process—not substantive victories for one side or against the government—which is the true source of American legal soft power. If it is the case that the law may be an element of soft power conceptually and that the use of the legal process has refl ected this principle in practice, the conclusion argues that it would benefit American national security for others in the world to be made aware of the American constitutional framework and the judiciary’s activities related to the war. Such information would make it more likely that other nations and peoples, especially moderate Muslims, will be attracted to American interests. This Article thus reaches a conclusion that may seem counterintuitive—that the judicial branch, in the performance of its constitutional duty of judicial review, furthers American national security and foreign policy objectives even when it may happen to strike down executive or legislative arguments for expanded war powers to prosecute the current war on terror and even though the executive and legislature constitute the foreign policy branches of the federal government. In other words, a “loss” for the executive or legislature, may be considered, in truth, a reaffirmation of our constitutional system and therefore a victory for the entire nation in the neglected but necessary post-9/11 war of ideas. 31 As such, it is the central contention of this Article that the judicial branch is a repository of American soft power and thus a useful tool in the post-9/11 conflict

#### Judicial review is the only mechanism for creating transparency and reducing collateral damage – the executive alone can’t solve

Adelsberg 12 (Samuel S., \* J.D. Candidate 2013, Yale Law School, “Bouncing the Executive's Blank Check: Judicial Review and the Targeting of Citizens” Harvard Law & Policy Review 6 Harv. L. & Pol'y Rev. 437, Lexis)

[\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens. Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on steadier constitutional ground. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

### 2

#### Advantage \_\_\_- Modeling

#### US targeted killing policies are causing an international drones arms race. But, the mere existence of the technology doesn’t make instability inevitable—how the US uses its drones matters.

Farley, Ph.D. in Political Science, 11 (Robert, Assistant Professor at the Patterson School of Diplomacy and International Commerce at the University of Kentucky, Oct. 12, 2011, World Politics Review, “Over the Horizon: U.S. Drone Use Sets Global Precedent”, http://www.worldpoliticsreview.com/articles/10311/over-the-horizon-u-s-drone-use-sets-global-precedent)

Is the world about to see a "drone race" among the United States, China and several other major powers? Writing in the New York Times, Scott Shane argued that just such an arms race is already happening and that it is largely a result of the widespread use of drones in a counterterror role by the United States. Shane suggests that an international norm of drone usage is developing around how the United States has decided to employ drones. In the future, we may expect that China, Russia and India will employ advanced drone technologies against similar enemies, perhaps in Xinjiang or Chechnya. Kenneth Anderson agrees that the drone race is on, but disagrees about its cause, arguing that improvements in the various drone component technologies made such an arms race inevitable. Had the United States not pursued advanced drone technology or launched an aggressive drone campaign, some other country would have taken the lead in drone capabilities. So which is it? Has the United States sparked a drone race, or was a race with the Chinese and Russians inevitable? While there's truth on both sides, on balance Shane is correct. Arms races don't just "happen" because of outside technological developments. Rather, they are embedded in political dynamics associated with public perception, international prestige and bureaucratic conflict. China and Russia pursued the development of drones before the United States showed the world what the Predator could do, but they are pursuing capabilities more vigorously because of the U.S. example. Understanding this is necessary to developing expectations of what lies ahead as well as a strategy for regulating drone warfare. States run arms races for a variety of reasons. The best-known reason is a sense of fear: The developing capabilities of an opponent leave a state feeling vulnerable. The Germany's build-up of battleships in the years prior to World War I made Britain feel vulnerable, necessitating the expansion of the Royal Navy, and vice versa. Similarly, the threat posed by Soviet missiles during the Cold War required an increase in U.S. nuclear capabilities, and so forth. However, states also "race" in response to public pressure, bureaucratic politics and the desire for prestige. Sometimes, for instance, states feel the need to procure the same type of weapon another state has developed in order to maintain their relative position, even if they do not feel directly threatened by the weapon. Alternatively, bureaucrats and generals might use the existence of foreign weapons to argue for their own pet systems. All of these reasons share common characteristics, however: They are both social and strategic, and they depend on the behavior of other countries. Improvements in technology do not make the procurement of any given weapon necessary; rather, geostrategic interest creates the need for a system. So while there's a degree of truth to Anderson's argument about the availability of drone technology, he ignores the degree to which dramatic precedent can affect state policy. The technologies that made HMS Dreadnought such a revolutionary warship in 1906 were available before it was built; its dramatic appearance nevertheless transformed the major naval powers' procurement plans. Similarly, the Soviet Union and the United States accelerated nuclear arms procurement following the Cuban Missile Crisis, with the USSR in particular increasing its missile forces by nearly 20 times, partially in response to perceptions of vulnerability. So while a drone "race" may have taken place even without the large-scale Predator and Reaper campaign in Pakistan, Yemen and Somalia, the extent and character of the race now on display has been driven by U.S. behavior. Other states, observing the effectiveness -- or at least the capabilities -- of U.S. drones will work to create their own counterparts with an enthusiasm that they would not have had in absence of the U.S. example. What is undeniable, however, is that we face a drone race, which inevitably evokes the question of arms control. Because they vary widely in technical characteristics, appearance and even definition, drones are poor candidates for "traditional" arms control of the variety that places strict limits on number of vehicles constructed, fielded and so forth. Rather, to the extent that any regulation of drone warfare is likely, it will come through treaties limiting how drones are used. Such a treaty would require either deep concern on the part of the major powers that advances in drone capabilities threatened their interests and survival, or widespread revulsion among the global public against the practice of drone warfare. The latter is somewhat more likely than the former, as drone construction at this point seems unlikely to dominate state defense budgets to the same degree as battleships in the 1920s or nuclear weapons in the 1970s. However, for now, drones are used mainly to kill unpleasant people in places distant from media attention. So creating the public outrage necessary to force global elites to limit drone usage may also prove difficult, although the specter of "out of control robots" killing humans with impunity might change that. P.W. Singer, author of "Wired for War," argues that new robot technologies will require a new approach to the legal regulation of war. Robots, both in the sky and on the ground, not to mention in the sea, already have killing capabilities that rival those of humans. Any approach to legally managing drone warfare will likely come as part of a more general effort to regulate the operation of robots in war. However, even in the unlikely event of global public outrage, any serious effort at regulating the use of drones will require U.S. acquiescence. Landmines are a remarkably unpopular form of weapon, but the United States continues to resist the Anti-Personnel Mine Ban Convention. If the United States sees unrestricted drone warfare as being to its advantage -- and it is likely to do so even if China, Russia and India develop similar drone capabilities -- then even global outrage may not be sufficient to make the U.S. budge on its position. This simply reaffirms the original point: Arms races don't just "happen," but rather are a direct, if unexpected outcome of state policy. Like it or not, the behavior of the United States right now is structuring how the world will think about, build and use drones for the foreseeable future. Given this, U.S. policymakers should perhaps devote a touch more attention to the precedent they're setting.

#### Current overreliance on drones sets an international model for targeted killing without legal restraint- only external checks on the executive’s use of drones can create international norms of accountability and transparency

Brooks, Ph.D in Law @ Georgetown 4/23/13 (Rosa, Professor of Law, Georgetown University Law Center, “The Constitutional and Counterterrorism Implications of Targeted Killing Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights” <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1114&context=cong>)

Defenders of administration targeted killing policy acknowledge that the criteria for determining how to answer these many questions have not been made public, but insist that this should not be cause for concern. The Administration has reportedly developed a detailed “playbook” outlining the targeting criteria and procedures,40, and insiders insist that executive branch officials go through an elaborate process in which they carefully consider every possible issue before determining that a drone strike is lawful.41 No doubt they do, but this is somewhat cold comfort. Formal processes tend to further normalize once-exceptional activities -- and "trust us" is a rather shaky foundation for the rule of law. Indeed, the whole point of the rule of law is that individual lives and freedom should not depend solely on the good faith and benevolence of government officials. As with law of war arguments, stating that US targeted killings are clearly legal under traditional self-defense principles requires some significant cognitive dissonance. Law exists to restrain untrammeled power. It is no doubt possible to make a plausible legal argument justifying each and every U.S. drone strike -- but this merely suggests that we are working with a legal framework that has begun to outlive its usefulness. The real question isn't whether U.S. drone strikes are "legal." The real question is this: Do we really want to live in a world in which the U.S. government's justification for killing is so malleable? Setting Troubling International Precedents Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice. Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder. Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter,43 or in self-defense "in the event of an armed attack." The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an illdefined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

#### These conflicts could go nuclear- unfettered drone proliferation risks miscalculation and collapse of nuclear deterrence

Boyle, Ph.D. Polisci, 13 (Michael J, Assistant Professor of Political Science at La Salle University, Research Fellow at the Centre for the Study of Terrorism and Political Violence, “The costs and consequences of drone warfare”, http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89\_1/89\_1Boyle.pdf)

A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence. Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another. While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. **States may be more willing to engage in drone overflights** which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response. This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities. After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities. One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, **with** untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them.

#### Creating norms for legitimate drone use will work, the plan’s legal normative framework would allow the US to apply political pressure against those who flaunt the rules

Zenko, Council on Foreign Relations, 13 (Micah, Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR), previously worked at: Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department’s Office of Policy Planning, “Reforming US Drone Strike Policies”, Council on Foreign Relations Special Report No. 65, January 2013, pg. 24-25)

History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past. Furthermore, norms can deter states from acquiring new technologies.72 Norms—sometimes but not always codified as legal regimes—have dissuaded states from deploying blinding lasers and landmines, as well as chemical, biological, and nuclear weapons. A well-articulated and internationally supported normative framework, bolstered by a strong U.S. example, can shape armed drone proliferation and employment in the coming decades. Such norms would not hinder U.S. freedom of action; rather, they would internationalize already-necessary domestic policy reforms and, of course, they would be acceptable only insofar as the limitations placed reciprocally on U.S. drones furthered U.S. objectives. And even if hostile states do not accept norms regulating drone use, the existence of an international normative framework, and U.S. compliance with that framework, would preserve Washington’s ability to apply diplomatic pressure. Models for developing such a framework would be based in existing international laws that emphasize the principles of necessity, proportionality, and distinction—to which the United States claims to adhere for its drone strikes—and should be informed by comparable efforts in the realms of cyber and space. In short, a world characterized by the proliferation of armed drones—used with little transparency or constraint—would undermine core U.S. interests, such as preventing armed conflict, promoting human rights, and strengthening international legal regimes. It would be a world in which targeted killings occur with impunity against anyone deemed an “enemy” by states or nonstate actors, without accountability for legal justification, civilian casualties, and proportionality. Perhaps more troubling, it would be a world where such lethal force no longer heeds the borders of sovereign states. Because of drones’ inherent advantages over other weapons platforms, states and nonstate actors would be much more likely to use lethal force against the United States and its allies. Much like policies governing the use of nuclear weapons, offensive cyber capabilities, and space, developing rules and frameworks for innovative weapons systems, much less reaching a consensus within the U.S. government, is a long and arduous process. In its second term, the Obama administration has a narrow policy window of opportunity to pursue reforms of the targeted killings program. The Obama administration can proactively shape U.S. and international use of armed drones in nonbattlefield settings through transparency, self-restraint, and engagement, or it can continue with its current policies and risk the consequences. To better secure the ability to conduct drone strikes, and potentially influence how others will use armed drones in the future, the United States should undertake the following specific policy recommendations.

#### Judicial review of the military is collapsing now- judicial deference over targeted killing results in an unchecked executive.

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.

#### The United States model is modeled internationally – deference to the executive causes judicial inaction – independence is key to prop up the rule of law

Krotoszynski 9, John C. Stone Chair, Director of Faculty Research, and Professor of Law, University of Alabama School of Law

[2009, Ronald J. Krotoszynski is a John C. Stone Chair, Director of Faculty Research, and Professor of Law, University of Alabama School of Law, “The Perils and the Promise of Comparative Constitutional Law: The New Globalism and the Role of the United States in Shaping Human Rights”, 61 Ark. L. Rev. 603]

In thinking about the reality and effects of the new globalism, we should be proactive and thoughtful. This means defending our values, even if they appear exceptionalist from a global or comparative perspective, as much, if not more, than modifying our legal rules to square them with foreign views. Just because Germany has a different rule does not imply that the German rule is better, or a better rule for the United States. That said, we do need to at least think about the possibility that things could be different than they are presently. The fact that other democratic societies value rights more, or less, highly than we do should at least make us pause. It seems rude either to pretend these differences do not exist or, worse yet, that these differences simply do not matter. As I have observed in another context, "[A] circular jurisprudence that posits its own conclusions as justifications is intellectually indefensible." n52 The alternative to active global engagement, attempting to maintain a kind of intellectual isolationism, is neither attractive nor feasible because ideas travel faster and more easily than superbugs. We should be just as actively concerned and engaged about the transnational marketplace of ideas as we are about the transnational sale of pet food, lead-painted toys, or the safety of air travel. As scholars like Anne-Marie Slaughter and Harold Koh have suggested, it is not a question of whether transnational legal rules will develop - it is a question of how they will develop and the role that the United States will play in their [\*617] development. n53 In the case of freedom of expression, foreign law is very different, in myriad ways, and the United States contributes to the global discussion of this human right as much by refusing to get with the program as it would by redefining domestic First Amendment law to bring it into conformity with prevailing foreign attitudes. The development of new global legal understandings of fundamental human rights is not limited to courts. Courts are not the only source of transnational understanding of human rights, as the behavior of Congress and the executive branch also signals the content and scope of our commitment to human rights. To say that we oppose torture generally but not in the specific context of the war on terrorism has the effect of undermining the norm against torture as inconsistent with fundamental human rights. Similarly, holding persons in indefinite detention, without access to lawyers or judicial process sends a very mixed message. When the Soviet government engaged in this sort of behavior, the United States denounced it. n54 Our credibility in arguing for a right to a fair trial by an impartial tribunal, to the assistance of counsel, and to the right to be free of unreviewed (and unreviewable) executive detention has taken a hit lately. Our behavior and our practices have the effect of modeling acceptable government practices, whether we wish them to have that effect or not. We should be cautious in accepting an argument that observance of the rule of law lies within the discretion of the executive branch of government. It is said that "as one sows, so shall one reap." n55 The new legal globalism will reflect this truism. Simply put, if we ever had the luxury of saying one thing while doing another, that time has come and gone. The best way of convincing others that they must observe a particular human right would be that we observe it ourselves as a matter of course. Thus, the process of exporting legal rules is not solely a job for the judiciary, nor should it be. [\*618] V. AMERICAN CONTRIBUTIONS Over the last 200 years, the United States has been remarkably successful at exporting its legal ideas. Since World War II, the notion of limited government, checked by a written constitution with judicially enforceable rights, has become the most commonly accepted model of legitimate government. n56 The old British model of parliamentary supremacy, as a means of securing democratic control, has fallen into something of a rut. n57 The modern trend has been entirely in favor of judicial review (judicial supremacy, some might say) with democratically elected legislatures being limited by enumerated constitutional rights. n58 The separation of powers is another structural innovation of the United States that has proven quite popular. The British model of legislative, executive, and judicial power all being vested in a single body (like the Parliament) no longer seems a successful way to run a railroad. Although parliamentary systems remain popular, and involve the merger of executive and legislative power, the structural separation of courts has become a standard feature of modern democracies. In this sense, the separation of powers has become the global norm rather than the exception. Federalism provides a third major contribution to constitutionalism that the United States pioneered and which has achieved substantial adoption abroad. In a nation featuring ethnic, religious, or cultural differences, federalism provides a means of securing some measure of local autonomy that can accommodate these differences. Additionally, even in the contemporary United Kingdom, federalism has found a foothold, with local parliaments now sitting for Scotland, Wales, and Northern Ireland, and plans for an English Parliament. n59 The European Union itself represents a federalism solution to [\*619] the problem of a divided, and less efficient, Europe. By dividing power among various levels of government, centralization can coexist with local autonomy and choice. Judicial review, the separation of powers, and federalism are all contributions that the United States has made to constitutional democracy. Indeed, it would not be an overstatement to suggest that the American model of constitutionalism is to modern government as the Microsoft Corporation's "Windows" operating system is to computing. Having had so much success in defining the institutions and structures of a just government with reference to the structures and doctrines reflected in our own Constitution, why should we fear the outcome of constructive engagement with the world? n60 In this regard, it bears noting that our own framers, meeting in Philadelphia during the summer of 1787, were themselves very familiar with government structures dating back to ancient Rome and Athens. The Framers consciously considered various constitutional arrangements, including those of Great Britain, but also of Athens, Sparta, and Rome. n61 To be sure, the Framers did not overtly borrow any particular constitutional system, but developed one of their own self-styled a new order for the ages ("novus ordo seclorum"). Given this history of familiarity with comparative constitutional law, the success of American constitutional innovations, and the stakes, why should we shrink from engaging the world in defense of our domestic conception of fundamental human rights? VI. CONCLUSION We must recognize that we will participate in the new legal globalism whether we choose to be active participants in the process or passive recipients of the results. If the United States wants to impact the content of emerging human-rights norms, we need to join the conversation, even if we do so as defenders [\*620] (or exporters) of our legal norms. n62 The alternative, a kind of default, will simply mean that the United States has less impact on the development and content of both emerging legal systems and the scope and content of transnational human rights. n63 To engage the world does not require the United States to abandon its own idiosyncratic legal values, any more than consideration of American legal norms requires the Supreme Court of Canada or the German Federal Constitutional Court to abdicate responsibility for articulating and enforcing local legal imperatives.

And, Russia specifically models the US rule of law

Austein-IIP Digital-3/20/08 US EMBASSY

U.S. Legal System Serves as Model for Russian Courts

<http://iipdigital.usembassy.gov/st/english/article/2008/03/20080320125020hmnietsua0.8971521.html#axzz2OiR7vBdr>

Washington – In the years since the end of the Soviet Union, Russia's judicial system continuously has incorporated new democratic reforms, thanks in part to the help of legal professionals in the United States. Since 1988, the Russian American Rule of Law Consortium (RAROLC,) a not-for-profit organization, has sought to help Russia transform its judiciary into a free and transparent system. By arranging partnerships between state judicial professionals in the United States and those working in local judiciaries in parts of Russia, RAROLC has helped Russian legal institutions implement reforms by using the American legal system as a model. These partnerships have encouraged Russian legal institutions to improve their courts and law schools by implementing democratic reforms. As participants in these partnerships, Russian judicial leaders have been able to visit the United States and watch the American judicial system in action and meet with U.S. judges.

#### Investor agree – weak rule of law and regulatory enforcement is the number one deterrent to investment in the status quo – that critical to solving growth

RIA 6/24/2013 (largest news agencies in Russia, <http://en.rian.ru/analysis/20130624/181852554.html>, http://en.rian.ru/analysis/20130624/181852554.html)

Long-Term Thorny Problems Persist While huge infrastructure projects are traditionally used by governments seeking to stimulate economic growth, simply throwing money at the problem will not necessarily catalyze investment, particularly foreign investment, delegates at the gathering said. A number of investors pointed out that longstanding concerns – like insufficient rule of law, endemic corruption, ineffective regulation and a lack of transparency – have yet to be addressed in full, so that those working in Russia can feel confident and protected. “We need support from government, but we need support from government within clear parameters,” Martin Stanley, an executive in charge of infrastructure investment at Macquarie, which has $630 million under management in Russia and $100 billion worldwide, said Friday during a panel discussion. “We don’t want overweening government support; otherwise, that will squeeze out private capital… We need a clear, sustainable and predictable regulatory system.” Others agreed. Asked at a panel discussion Saturday to identify the three most important requirements for foreign investors, the head of the American Chamber of Commerce, Andrew Somers, replied: “predictability, predictability, predictability.” The investment climate has improved over the last decade, he added, but “the image of Russia is still poor in terms of predictability and arbitrary administrative rulings.” Slow Growth, Sliding Commodity Prices Prompting Pessimism Investment in the Russian economy is now flat-lining. Investment growth fell from 13 percent in the first six months of 2012 to 0 percent in the first five months of this year, outgoing Minister of Economic Development Andrei Belousov said Thursday. A particular deterrent for investors has been Russia’s slowing economic growth, which fell year on year to 3.4 percent in 2012 from 4.3 percent in 2011, with officials cutting their 2013 growth predictions earlier this year from 3.6 percent to 2.4 percent. “When you have declining growth rates, the situation is not getting better,” said Frank Schauff, the head of the Association of European Businesses, after Putin’s speech, pointing out that conditions are worse this year than last year. Although Russian officials deny the investment climate is deteriorating, they too acknowledged gathering economic problems. “With a low rate of economic growth, we are on the edge: Production capacity is almost full, and unemployment is at a low level,” Finance Minister Anton Siluanov told reporters. “Private investment is essential to increase the rate of economic growth.” A sputtering economy is new political territory for President Putin, who enjoyed a halcyon period of rising oil prices and high growth rates during his first two terms as president – allowing him to finance large increases in social spending. He used his keynote speech in St. Petersburg on Friday to highlight the economic headwinds, which he attributed to steadily falling commodity prices. “For many years we lived in a situation of furious, almost unstoppable, increases in the price of our exports,” Putin told delegates. “Now that trend is no more, and there are no easy decisions, and there is no magic wand.”

#### Russian economic decline results in nuclear conflict – political instability and loose nuclear weapons

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.

Review by itself is insufficient---the court has to go it alone

Reinhardtt, Federal Judge, 06 (Stephen, Judge, U.S. Court of Appeals for the Ninth Circuit, THE JUDICIAL ROLE IN NATIONAL SECURITY, April 22, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/volume86n5/documents/REINHARDTv.2.pdf>)

Another possible threat to judicial independence involves the position taken by the administration regarding the scope of its war powers. In challenging cases brought by individuals charged as enemy combatants or detained at Guantanamo, the administration has argued that the President has “inherent powers” as Commander in Chief under Article II and that actions he takes pursuant to those powers are essentially not reviewable by courts or subject to limitation by Congress.7 The administration’s position in the initial round of Guantanamo cases was that no court anywhere had any jurisdiction to consider any claim, be it torture or pending execution, by any individual held on that American base, which is located on territory under American jurisdiction, for an indefinite period.8 The executive branch has also relied on sweeping and often startling assertions of executive authority in defending the administration’s domestic surveillance program, asserting at times as well a congressional resolution for the authorization of the use of military force. To some extent, such assertions carry with them a challenge to judicial independence, as they seem to rely on the proposition that a broad range of cases – those that in the administration’s view relate to the President’s exercise of power as Commander in Chief (and that is a broad range of cases indeed) – are, in effect, beyond the reach of judicial review. The full implications of the President’s arguments are open to debate, especially since the scope of the inherent power appears, in the view of some current and former administration lawyers, to be limitless. What is clear, however, is that the administration’s stance raises important questions about how the constitutionally imposed system of checks and balances should operate during periods of military conflict, questions judges should not shirk from resolving.

## \*\*\*2AC

### 2AC Hege Bad – Cbalance

#### No nuclear counterbalancing and the U.S> is critical to compliance on multilateralism

**Brooks et al., Dartmouth government professor, 2013**

(Stepehn, John and William, “Don't Come Home, America: The Case against Retrenchment”, International Security, 37.3, project muse, ldg)

Some advocates of retrenchment suggest that deep engagement in the security affairs of the world's key regions "prompts other states to balance against U.S. power however they can."29 Such counterbalancing could take the form of alliance formation (institutionalized interstate security cooperation against the United States that would not occur if America retrenched), "internal balancing" (the conversion of latent capacity into military power that would not occur if the United States retrenched), or "soft balancing" (the use of institutions and other nonmilitary means to hamstring U.S. policy that would not occur if the United States retrenched). It is now generally understood that the current grand strategy of deep engagement runs no risk of generating "hard" counterbalancing. When properly specified, realist balance of power theory does not predict counterhegemonic balancing against the United States: the conditions that sparked internal and external counterbalancing against past leading states—notably the existence of contiguous peer rival great powers—do not apply.30 Moreover, recent scholarship [End Page 20] strongly supports the proposition that the deep engagement strategy—and the maintenance of the formidable military power that underwrites it—slows rather than hastens the speed at which capabilities might diffuse to a more balanced distribution. As we argue below, securing partners and allies in key regions reduces their incentives to generate military capabilities.31 Less often noted is that these same security guarantees provide leverage to prevent U.S. allies—which comprise the majority of the most modern and effective militaries in the world—from transferring military technologies and production techniques to potential rivals. The U.S. dominance of the high-end defense industry also allows Washington to trade access to its defense market for compliance on key security issues, such as technology transfers to potential geopolitical opponents.32 The embargo on military sales to China—in place since 1989—is a case in point. More generally, recent years have witnessed an outpouring of scholarship directly refuting the proposition forwarded by many retrenchment proponents that U.S. military preeminence sparks a diffusion of military power. On the contrary, there are many settings in which the first mover's military innovations are unlikely to be adopted successfully by potential rivals.33 Path dependence, scale economies, learning effects regarding production techniques, and barriers to entry in the production of high-end military power make the maintenance of unmatched capabilities far easier than many retrenchment advocates suggest—particularly in today's environment in which modern weaponry is so much more complex both to produce and to use than in past eras.34 A United States less committed to global leadership with a less [End Page 21] dominant military posture would have far less capacity to control the diffusion of military power. Concerning balance of threat theory, its author, Stephen Walt, concludes that because of the numerous systemic factors that mitigate other powers' perceptions of U.S. threats to their security, the United States would have to "have the same expansionist ambitions [as] Napoleonic France, Wilhelmine and Nazi Germany, or the Soviet Union" to spark a hard balancing coalition.35 Expanding the theoretical lens to encompass domestic and international institutions only strengthens the case. Deep engagement allows the United States to institutionalize its alliances and wrap its hegemonic rule in a rules-based order. The result is to make the U.S. alliance system—especially among its core liberal members—far more robust and harder to challenge than if the United States were to disengage.36 Needless to say, the evidence is perfectly consistent with this near consensus regarding the nature of balancing in today's system. The United States has pursued a grand strategy of deep engagement in a unipolar setting for twenty years. For at least a portion of his eight-year administration, George W. Bush followed a more "unilateral" foreign policy that many scholars (critics and defenders of deep engagement alike) saw as being far more threatening to other states.37 Yet multiple, comprehensive analyses find no evidence of external or internal balancing by major powers.38 Because it is a slippery concept that is difficult to distinguish from standard diplomatic bargaining and competition, soft balancing is harder to evaluate.39 [End Page 22] Case studies of headline episodes widely seen as soft balancing fail to find much evidence that balancing dynamics were really in play.40 Michael Beckley's efforts to evaluate quantitative indicators (voting patterns at the United Nations, arms sales to U.S. adversaries, and foreign public opinion) also show no consistent trend other than evidence of political resistance to the U.S. invasion of Iraq in 2003.41 For the purposes of assessing U.S. grand strategy, however, the most important point about soft balancing is that it is defined in a way guaranteed to miss the real question: Does the current grand strategy give the United States or its potential adversaries more soft balancing-style leverage? Almost all definitions of soft balancing are about actions below the significance of hard balancing that other states can take to constrain the United States. They focus on the use of international institutions and coordinated action to restrain the United States, in part by denying it legitimacy.42 Yet, precisely the same tools are available to the United States: it too can use international institutions and undertake coordinated actions to constrain other powers. In this sense, the United States is "soft balancing" other states all the time.43 F

#### Blowback inevitable – only deterrence solves

**Drezner, Tufts international politics professor, 2009**

(Daniel, “The False Hegemon”, 7-15, <http://www.nationalinterest.org/Article.aspx?id=21858>, ldg)

The rest of the world certainly seems to treat America as the hegemonic power, for good or ill. According to the New York Times, Latin America is waiting for the United States to break the deadlock in Honduras. Vladimir Putin is incapable of giving a foreign-policy speech in which he does not blast American hegemony as the root of all of Russia’s ills. While Chinese officials talk tough about ending the dollar’s reign as the world’s reserve currency, its leaders also want America to solve the current economic crisis and to take the lead on global warming in the process. It’s not just foreign leaders who are obsessed with American hegemony. Last week, in an example of true hardship duty, I taught a short course in American foreign policy at the Barcelona Institute for International Studies. The students in my class represented a true cross section of nationalities: Spaniards, Germans, Brits, Estonian, Chinese, Vietnamese, Indian, Thai, Ghanaian, Kenyan, Turkish, Belgian, Mexican, Nicaraguan and, yes, even Americans. I cannot claim that my students represent a scientific cross section of non-Americans (one of them complained that I did not rely on Marxism as a structural explanation for American foreign policy). Still, by and large the students were bright, well informed about world affairs and cautiously optimistic about President Obama. That said, a persistent trend among my students was their conviction that the U.S. government was the world’s puppeteer, consciously manipulating every single event in world politics. For example, many of them were convinced that George W. Bush ordered Georgian President Mikheil Saakashvili to precipitate last year’s war with Russia. The Ghanaian students wanted to know why Obama visited their country last week. The standard “promotion of good democratic governance” answer did not satisfy them. They were convinced that there had to be some deeper, potentially sinister motive to the whole enterprise. Don’t even ask what they thought about the reasons behind the war in Iraq. To be sure, the United States is a powerful actor; the government is trying to influence global events (and Americans are not immune to their own misperceptions). And good social scientists should always search for underlying causes and not take rhetoric at face value. Nevertheless, the belief in an all-powerful America hatching conspiracies left and right frequently did not jibe with the facts. For many of these students, even apparent policy mistakes were merely examples of American subterfuge. Ironically, at the moment when many Americans are questioning the future of U.S. hegemony, many non-Americans continue to believe that the U.S. government is diabolically manipulating events behind the scenes. Going forward, the persistence of anti-Americanism in the age of Obama might have nothing to do with the president, or his rhetoric or even U.S. government actions. It might, instead, have to do with the congealed habits of thought that place the United States at the epicenter of all global movings and shakings. The tragedy is that such an exaggerated perception of American power and purpose is occurring at precisely the moment when the United States will need to scale back its global ambitions. Indeed, the external perception of U.S. omnipresence will make the pursuit of a more modest U.S. foreign policy all the more difficult. The Obama administration has consciously adopted a more modest posture in the hopes of improving America’s standing abroad. If the rest of the world genuinely believes that the United States causes everything, however, then the attempt at modesty will inevitably fail.

### 2AC Multilat

#### Hegemony key to multilateralism-empirically proven

**Smith, Tufts political science professor, 2009**

(Tony, “The Crisis of American Foreign Policy: Wilsonianism in the Twentieth First Century”, pg 63, ldg)

Wilson recognized that the relative power position of the United States meant it had a leadership role to play in world affairs. Multilateralism thus needed to be inspired and maintained by vigilant American participation. The failure of the League of Nations in the 1930s was the inevitable outcome of a system of international order where America was absent. In the aftermath of World War II, it was abundantly clear to leaders in the world democracies that the United States alone had the power to coordinate what was understandably called “the free world” for the sake of its common peace and prosperity. Multilateralism (be it in the creation of the Bretton Woods system, the United Nations, or NATO, for example) was therefore a product of America’s relative power position after 1945. Such a system of international institutions could not have come about without such a preponderance of power. Here was the meaning of Secretary Albright’s baptism of the United States as “the indispensable nation,” the only power capable of effectively organizing what she labeled “muscular multilateralism.” It is no accident that Albright was also the author of the concept of a “Community of Democracies,” one presumable to take form and direct itself under the sway of her “indispensable nation.” Albright understood that muscular multilateralism would contribute to American hegemonism and would be impossible without it. Thus, to suggest that multilateralism is a concept more fundamental than democratization to the Wilsonian project seems to be obviously mistaken given the need for democratic participation in such an international regime to make it successful in the first place. Moreover, to imply that unilateralism and multilateralism are somehow polar opposites is to misunderstand the nature of the latter concept as it emerged after 1945 (and indeed as it was understood by Wilson). “Multilateralism” was, and remains, a code word for American hegemony. Such a form of leadership was a necessary, if not sufficient, condition of a Wilsonian world order and would remain so for a goodly length of time into the future. As the structure of world politics changed after the Cold War, so to did the relative meaning of multilateralism as an operative feature of American foreign policy. In time, it came to mean that America’s allies would be force multipliers as they helped bear the burden of decisions made in Washington as it pushed abroad the perimeter of the world of market democracies.

### 2AC T

Judicial review over targeted killing is an on face restriction of executive authority

McKelvey-JD Candidate Vandy-11 44 Vand. J. Transnat'l L. 1353

NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power

B. The Aulaqi Case in Federal Court In August 2010, Nasser al-Aulaqi, Anwar's father, filed suit in the District Court for the District of Columbia requesting an injunction against the targeted killing of his son. 36 Represented by the American Civil Liberties Union (ACLU), Nasser al-Aulaqi claimed that outside of the zone of armed conflict, the targeted killing of an American citizen represents an extrajudicial killing without due process of law. 37 The claim stated that under customary international law, the only circumstances allowing an exception to this general rule are those presenting a "concrete, specific, and imminent threat of death or serious physical injury." 38 The targeted killing of an American citizen outside of these circumstances is a violation of the Fourth and Fifth Amendments. 39 The complaint asserted three constitutional challenges to the targeted killing program. 40 By targeting an American for an extrajudicial killing outside of circumstances that present concrete, specific, and imminent threats of harm, the government had violated Aulaqi's Fourth Amendment right to be free from unreasonable seizure and his Fifth Amendment right not to be deprived of life without due process of law. 41 In addition, by refusing to disclose the standards used in determining that Aulaqi should be targeted for extrajudicial killing, the government violated the Fifth Amendment's notice requirement. 42 The complaint further asserted that by claiming this broad and unreviewable power, the Executive Branch permitted itself to conduct at-will extrajudicial killings of Americans, in secret, without any notice. 43 In the suit - filed against President Obama, then-Defense Secretary Robert Gates, and then-Director of the CIA Leon Panetta 44 - Nasser al-Aulaqi requested several forms of relief to [\*1360] prevent the targeted killing of his son. 45 He requested a preliminary injunction against the order to pursue Anwar al-Aulaqi with lethal force, and declaratory relief requiring the government to disclose the standards used for placing people on the targeted killing list. 46 In its brief in response, the DOJ moved for summary judgment on several alternative grounds, with emphasis on standing, the political question doctrine, and the state secrets privilege. 47 The DOJ argued that Nasser al-Aulaqi did not meet the requirements for next-friend standing for two reasons. 48 First, Aulaqi was not denied access to the courts. 49 Rather, Aulaqi seemed to be hiding in Yemen of his own accord. 50 Second, there was no evidence that Aulaqi desired to raise these claims in court to challenge the government's authority to conduct an extrajudicial killing against him. 51 Therefore, Nasser al-Aulaqi did not demonstrate that he was representing his son's interests or purpose. 52 The DOJ also challenged Nasser al-Aulaqi's complaint on grounds of executive authority, arguing that litigating this matter would violate established boundaries in the separation of judicial and executive power. 53 First, the government asserted that the decision to target Anwar al-Aulaqi was a nonjusticiable political question, and that conducting judicial review of this decision would require an infringement on textually committed executive authority. 54 Second, the government invoked the state secrets privilege, a rarely used but mostly successfully employed doctrine claiming that certain issues cannot be litigated because litigating them would require the disclosure of classified intelligence. 55 According to the state secrets doctrine, classified information cannot be disclosed through discovery and public trial because it would threaten national security and disrupt the Executive's ability to discharge its constitutional obligations. 56 The district court granted the defendant's motion to dismiss in December 2010. 57 The court held that Nasser al-Aulaqi did not have [\*1361] standing to raise these constitutional claims on his son's behalf. 58 By ruling on standing grounds the court focused on a narrow legal doctrine and avoided confrontation with the larger, more controversial issues in the suit. 59 However, the court also expressed discomfort with the outcome and its potential implications on due process rights and executive power. 60

#### 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.

#### Counter-interpretation – authority is distinct from policy – authority is a question of jurisdiction – the plan restricts executive jurisdiction by applying judicial due process

Dictionary.com no date cited

http://dictionary.reference.com/browse/authority

au·thor·i·ty [uh-thawr-i-tee, uh-thor-] Show IPA noun, plural au·thor·i·ties. 1. the power to determine, adjudicate, or otherwise settle issues or disputes; jurisdiction; the right to control, command, or determine. 2. a power or right delegated or given; authorization: Who has the authority to grant permission?

#### Prefer our interpretation –

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

#### B. Aff ground – “Ban the Policy” affs are solved by agent counterplans – err aff because the range of good affs is small this year and the neg is strapped with many generics

#### Reasonability – competing interpretations crushes substance privileging T debates over war powers – good is good enough when our aff is predicted and grounded in the literature

#### --The Executive would effectively challenge the counterplan in Court

McKelvey-JD Candidate Vandy-11 44 Vand. J. Transnat'l L. 1353

NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power

Alternatively, Congress could pass legislation that explicitly prohibits the targeted killing of Americans unless the circumstances present a concrete threat of imminent danger.236 As the analysis in Part II.A indicates, targeted killing is a premeditated offensive military strategy, not a defensive practice.237 Congress could exercise its own constitutional powers as the war-making body of government to ensure that no American may be targeted for extrajudicial lethal force by the Executive Branch.238 Similarly, Congress could amend the AUMF to include a prohibition of the targeted killing of Americans.239 Although this has the potential to limit the military in counterterrorism measures in circumstances such as the Aulaqi case, it would emphasize congressional commitment to fundamental constitutional rights even in the face of terrorist threats.240 The irony of the Aulaqi case is that based on the publicly available evidence, there is good reason to believe the DOJ’s assertion that Anwar al-Aulaqi presented significant danger to the country.241 But allowing the president to target Aulaqi for extrajudicial killing presents its own danger, as it establishes a broad and unreviewable killing power with potential for error and abuse.242 Americans must have more reassurance that the powers of the Executive Branch are limited and reasonable. Although a legislative solution is appealing given the success of the analogous FISA court, a statutory ban on the targeted killings of Americans is certainly the preferable option. When a government unilaterally assassinates one of its own citizens in circumvention of civil liberties, this raises profound questions about the legitimacy of that government, especially in a representative democracy. It also stands in contradiction to the American constitutional legacy, in which separate but coequal branches of government were created primarily to limit the possibility of tyranny and other government abuses of power. A congressional ban on the targeted killing of Americans would represent a legislative rebuke of executive excesses in protection of fundamental civil liberties. Congressional action of any kind, however, faces a very serious hurdle: as the DOJ made clear in the Aulaqi case, the executive branch position is that any infringement on the President's targeted killing authority is simply unconstitutional. Yet if congress were to prohibit targeted killing and a court found that such a law is an unconstitutional infringement on executive authority, there is still another and perhaps final option. In the event that a federal court interprets the constitution to actually permit the targeted killing of Americans by the Executive Branch, then it would be necessary to fix this constitutional flaw. A constitutional amendment prohibiting the practice of targeted killing would thus permanently extinguish the concerns over targeted killing. 243

#### --Can’t solve –

#### A. Court will ignore Congress

Devins, Law Prof- William&Mary, 12 (Neal, Professor of Law and Professor of Government, William & Mary Law School, PARTY POLARIZATION AND JUDICIAL REVIEW: LESSONS FROM THE AFFORDABLE CARE ACT†, http://www.law.northwestern.edu/lawreview/v106/n4/1821/LR106n4Devins.pdf)

Lawmakers have little incentive to independently interpret the Constitution. In particular, while all members of Congress have a stake in preserving Congress’s institutional authority to independently interpret the Constitution, lawmaker desires to seek reelection, gain status within their party, and serve interest group constituents overwhelm this “collective good.”65 In particular, a lawmaker who invests in constitutional interpretation “loses time for fundraising, casework, media appearances, and obtaining particularized spending projects in her district; she will thus be at a disadvantage [when seeking reelection].”66 In explaining why “Congress is designed to pass over constitutional questions,” former Congressman and D.C. Circuit Judge Abner Mikva remarked that “the constitutional principles involved in a bill, unlike its merits, are generally abstract, unpopular, and fail to capture the imagination of either the media or the public. The Constitution is often portrayed as an obstacle to a better society by Congressmen forced to confront its limitations.”67 Academic studies of lawmaker interest in constitutional interpretation bear this out. Consider, for example, the complementary work of Mitch Pickerell, Keith Whittington, and Bruce Peabody. Pickerell’s study of constitutional deliberation in Congress demonstrates that lawmakers typically advance a positive legislative agenda and, consequently, rarely have reason to discuss potential constitutional limitations; instead, lawmakers “first take their position on legislation based on their policy preferences, and then use all arguments possible to support that position.”68 Whittington likewise calls attention to how it is that lawmakers benefit by making judgmental statements pleasing to voters and other constituents.69 In particular, lawmakers “can always take credit for voting the right way on the issue” and, as such, are unlikely to raise constitutional or other objections that cut against such “position-taking” behavior.70 Peabody’s study (surveying lawmakers’ attitudes towards Court–Congress relations) highlights two related phenomena, namely, (1) the legal issues that matter to lawmakers concern “local and electorally salient matters” and (2) more than 70% of lawmaker respondents said the courts should give little or no weight to congressional judgments about the constitutionality of legislation.71 In other words, lawmakers care about reelection; they do not defend their institutional prerogatives to interpret the Constitution but, instead, defer to the courts.72

#### D. Public won’t trust congress – perception of corruption

Sager 6/16/2013 (Josh, “Congress’s Public Opinion Problem”, http://theprogressivecynic.com/2013/06/16/congresss-public-opinion-problem/)

According to a recent Gallup poll, the United States Congress currently has a 10% positive approval rating and an 83% disapproval rating. Approval ratings are essentially the same across all partisan affiliations (ranging from 9% approval from Democrats to 11% approval from Independents). These amazingly low polling ratings are tied for the record low in all of the 38 years that Gallup has been doing public-approval polling. While the Gallup pollsters admit that it is very difficult to attribute a single cause for this low approval rating, they theorized that it could be related to a combination of a poor economy and the currently divided government (Republicans controlling the House while Democrats control the Senate and presidency). In a follow-up poll by Gallup, they attempted to determine the reasons as to why the American people have lost faith in their federal legislature. Using an open-ended poll, Gallup asked a second group of Americans to list the reasons why they have lost faith in Congress—the results were largely unsurprising. By a wide margin, the American people listed “party gridlock” and “not getting anything done” In all due respect to the Gallup follow-up poll, I think that their open-ended follow-up failed to identify a very important meta-issue that could describe the low approval of Congress. The meta-issue of corruption due to campaign finance deregulation is a long-term background issue that has the potential to corrode public trust more subtly than a single act. Some issues are simply so pervasive that people take them for granted; people accept the situation as the status quo and the may not like it, but they are unlikely to point to it in such an open poll (they focus in the acute issues). The Perception of Corruption For years, the American government has had an increasing problem of being seen as corrupt or catering to special interests—the decision of Citizens United and the birth of the Super-PAC only accelerated this trend. When people see corporations and individuals handing out thousands, if not millions, of dollars to fund campaigns, they very-rightly have worries that such money will corrupt their politicians. Correlating well with Congress’s 10% approval rating, recent polls have indicated that approximately 90% of the American people believe that there is too much money in our politics. Given the similar results of these polls, it is entirely possible that many of the same people who believe that money has bought our politicians dislike the politicians who they see as corrupt. It stands to reason that somebody who believes that their politicians are being corrupted will have an overall negative view of the institutions that they see as corrupt. People may not immediately identify this as the root cause of their malaise—the symptoms are often more memorable than the underlying disease—but the fact remains that a statistically identical percentage of the American people have a low opinion of Congress and believe that Washington has been corrupted by money. Put plainly, the erosion of campaign finance laws brings about distrust in the public of their elected officials. This distrust has erupted in protests over the last few years, including both the right wing Tea Party and the left-leaning Occupy protests, and—in my opinion—has led to people losing faith in Congress. Just as how Gallup’s poll shows how people on both ends of the political spectrum have lost faith in Congress, people on both end of the political spectrum have begun to protest the perception of corruption in Washington. While there is no concrete evidence proving that campaign finance deregulation led corruption has led to the collapse of faith in Congress, the data shows a remarkable correlation. More study is certainly needed on whether this specific correlation is actually causation, but the theoretical evidence does show that this causation is both realistic and likely—multiple studies demonstrate how perceived corruption corrodes public trust in government, regardless of partisan affiliation. Conclusion Even if it is proven that campaign finance deregulation is a major causal factor in the decay of trust in Congress, there is little that the legislature can do to mitigate the problem. The Buckley v. Valeo SCOTUS decision ruled that money is speech, while the Citizens United v. FEC decision ruled that corporations can “speak” using their money in the political arena. As these decisions are binding, the legislature is unable to mitigate this corruption without passing a Constitutional amendment (which is difficult in the best of times, never mind that fact that corrupt politicians are unlikely to vote for an amendment which will stop their corruption). If my argument in this matter is correct, it is unlikely that Congress will be able to break out of its approval quagmire and return to a legislature that has high approval ratings in the near future—the inertia is on the wrong side of change and the perception of corruption is here to stay for the foreseeable future.

### 2AC Politics

#### 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.

#### More evidence – Obama doesn’t get the blame from court action

Sanger-Katz 12 (Margot, healthcare correspondent for the National Journal, Poll: No Blame if Court Nixes Health Care Law, June 5, http://www.nationaljournal.com/daily/poll-no-blame-if-court-nixes-health-care-law-20120605)

Even though President Obama fought for passage of the landmark 2010 health care law, very small minorities say their attitudes about him would change one way or the other should the Supreme Court strike down the law that is so often referred to as “Obamacare.” Two-thirds of those surveyed in a new public-opinion poll said that their respect for Obama would be unchanged if the Supreme Court struck down his signature legislative achievement. Fourteen percent said they would respect Obama more under such a scenario, while 15 percent said they would respect him less. That trend was consistent across the political spectrum—similar proportions of Republicans, Democrats, and independents said they would be unmoved, despite the pundits’ speculation that a Court decision declaring the Affordable Care Act unconstitutional in part or in its entirety might alter public opinion toward the president. The nonplussed attitude also held across nearly all age, income, regional, and racial categories, with at least 60 percent of each surveyed group saying that the ruling would have no impact on their view of the president.

#### No link – the plan is the D.C. circuit 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.

#### --District court controversial now—EPA rulings

Adler, prof of law at Case Western Reserve University, 8/18/13 (Jonathan H., Director of the Center for Business Law and Regulation, JD from George Mason, “Is the DC Circuit a “Broken Circuit”?”, http://www.volokh.com/2013/08/18/is-the-d-c-circuit-a-broken-circuit/)

Earlier this summer, the Environmental Law Institute’s Environmental Forum featured a cover story on the U.S. Court of Appeals for the D.C. Circuit by Doug Kendall and Simon Lazarus of the Constitutional Accountability Center entitled “Broken Circuit.” As the sub-head promised, this article made the case that “A new breed of activism on the Court of Appeals for the D.C. Circuit — for environmental cases second in importance only to the Supreme Court and the central venue for high-profile lawsuits — threatens decades of progress.” The Forum also included my brief counterpoint essay, “The D.C. Circuit Is Hardly in Crisis.” This short piece was intended as a response to the Kendall-Lazarus piece though, as is the Environmental Forum‘s usual practice, I had to write my piece without having seen the article to which it was responding. The Kendall-Lazarus article makes several conventional points. It noted that the D.C. Circuit is of particular importance in environmental law because it hears the lion’s share of challenges to federal regulatory programs. This is both because of its location and because, under some statutes, the D.C. Circuit has special or even exclusive jurisdiction over petitions challenging agency rules. One consequence is that the D.C. Circuit has been the locus of controversy. Senators and activist groups tend to pay more attention to D.C. Circuit nominees than to those for other circuits. Thus it is no surprise that the first appellate judicial nominee ever defeated by a filibuster (Miguel Estrada) was a D.C. Circuit nominee, as was one of President Obama’s nominees who Republican Senators successfully blocked. The Kendall-Lazarus article repeats Washington Post columnist Steven Pearlstein’s charge that the D.C. Circuit is dominated by ”a new breed of activist judges [who] are waging a determined and largely successful war on federal regulatory agencies.” This is just silly. To support this claim, the article notes that the D.C. Circuit’s hawkish view of standing is often an obstacle to environmentalist plaintiffs who seek to challenge EPA rules and that a divided panel of the D.C. Circuit struck down the Obama EPA’s Cross-State Air Pollution Rule in EME Homer City Generation v. EPA . Yet as the article notes, the Bush EPA had it’s cross-state rule struck down too and the EPA’s most costly and controversial rules — those applying the Clean Air Act to greenhouse gases — have sailed through the court. Indeed, it is the very same standing rules about which Kendall and Lazarus complain that helped the EPA prevail in the challenge to its Tailoring Rule. Industry groups have hit a standing wall in other cases as well, and the only successful challenge to an EPA greenhouse gas rule thus far was brought by environmental groups seeking more stringent regulation. As I note in my Environmental Forum essay: While the Obama administration has had its share of losses, the Obama EPA’s decisions have fared slightly better than those of the Bush EPA. In addition to the prior administration’s effort to address interstate air pollution, the D.C. Circuit also struck down the Bush EPA’s mercury emission regulations and efforts to reform New Source Review — all of which were lambasted by environmentalists as overly lax. At the same time, environmentalist litigants and others seeking more stringent application of the CAA have prevailed against the agency at a higher rate than those seeking regulatory relief. This is hardly what one would expect from an ideologically oriented, anti-regulatory court. While not particularly hostile to regulation, the D.C. Circuit has a well-deserved reputation for subjecting agency action to exacting scrutiny. Much of what the D.C. Circuit does involves no more than questioning whether agency actions conform with relevant statutory requirements. In many cases, this is enough to set aside agency action. As D.C. Circuit Judge David Tatel explained in a 2009 speech to the Environmental Law Institute, “You’d be surprised how often agencies don’t seem to have given their authorizing statutes so much as a quick skim.” Agency officials no doubt chafe against judicial review when it prevents them from adopting desired polices, but it’s a mistake to confuse active judicial review with “judicial activism” or an anti-regulatory bias. Throw non-environmental cases into the mix, and the bottom line remains the same. Agencies tend to win in the D.C. Circuit so long as they abide by the relevant statutory limits and engage in reasoned decision-making. Yes the D.C. Circuit occasionally issues a particularly aggressive opinion (e.g. Noel Caning), but overall the Court is hardly anti-regulatory. The D.C. Circuit was not the only court to rule against the President’s recess appointments to the NLRB and, as readers may recall, the D.C. Circuit rejected constitutional challenges to the PPACA. Since Kendall and Lazarus wrote their article, the Senate unanimously confirmed Sri Srinivasan to the D.C. Circuit, giving the court eight full-time judges — four nominated by Republicans and four nominated by Democrats — in addition to the six judges on “senior status,” all of whom continue to hear cases. President Obama has made nominations to fill the remaining three vacancies on the court, and the Senate should consider these nominations in due course, but the D.C. Circuit is hardly but understaffed. There are three dozen vacancies classified as “judicial emergencies” according to the Federal Judicial Center, seven of which are on circuit courts of appeals. None are in the D.C. Circuit, however (and only three have pending nominees). Judicial vacancies should be filled and a President’s judicial nominees should in most cases be confirmed — but the D.C. Circuit is not the court with the greatest need. President Obama has prioritized his D.C. Circuit nominees because he’s hoping to influence the ideological orientation of that court, not to address the problem of judicial vacancies. For more on the D.C. Circuit and its history, check out Adam White’s article in The Weekly Standard. It provides more useful background on the court and the controversy it engenders.

#### ---targeted killing restrictions now- saying the CIA cannot deny its involvement in the drone program

Jaffer 13 (Jameel Jaffer, Deputy Legal Director, ACLU, “What the Government Should Disclose About Its Targeted Killing Program,” https://www.aclu.org/blog/national-security/what-government-should-disclose-about-its-targeted-killing-program)

The U.S. Court of Appeals for the D.C. Circuit recently ruled that the Central Intelligence Agency may no longer refuse to acknowledge something that everyone knows to be true: the agency has "an interest" in the use of drones to carry out targeted killings. The CIA is unaccustomed to courts rejecting its secrecy claims, but in asking the courts to pretend that the agency might have no connection whatsoever to the targeted killing program, the agency dramatically overreached. Unsurprisingly, the appeals court was unwilling to give its "imprimatur to a fiction of deniability that no reasonable person would regard as plausible."

#### --Court ruling against Obama commander-in-chief powers now—Yucca and immigration

Judicial Watch 8-14 (Fed Appeals Court Rules Obama is “Flouting the Law”, http://www.judicialwatch.org/blog/2013/08/fed-appeals-court-rules-obama-is-flouting-the-law/)

A federal appellate court has blasted President Obama for using executive authority to ignore the law, a talent that the commander-in-chief has become well known for in many areas especially immigration. This particular case involves a proposed nuclear waste dump in Yucca Mountain Nevada. President Obama and his pal, Nevada Senator Harry Reid, want to kill the project, which has already cost U.S. taxpayers an astounding $15 billion, according to various federal audits. So, Obama is using a federal agency with presidential appointees, the Nuclear Regulatory Commission (NRC), to nix the dump site. As per the commander-in-chief, the NRC has declined to conduct the statutorily mandated Yucca Mountain licensing process. This essentially destroys the project, which the U.S. government has been working on since the early 1980s to be the nation’s sole repository for high-level nuclear waste. In 2010, the NRC, then led by Obama appointee Gregory Jaczko, ordered the licensing process terminated. Whether you are for or against the Nevada nuclear waste project is irrelevant. The issue here is a strong-armed commander-in-chief abusing his power to disregard the law. This creates a dangerous precedent and clearly threatens the separation of powers that keep government in check with balance. A federal appellate court confirms in a 29-page ruling issued this week. The administration “is simply flouting the law,” according to the U.S. Court of Appeals for the District of Columbia ruling, which made clear in its decision that the order to halt the Yucca Mountain licensing process is not supported by the law. “It is no overstatement to say that our constitutional system of separation of powers would be significantly altered if we were to allow executive and independent agencies to disregard federal law in the manner asserted in this case by the Nuclear Regulatory Commission,” the ruling says. President Obama received a similar spanking for his backdoor amnesty initiative from a different federal court just a few weeks ago. That case involves a lawsuit brought by 10 Immigration and Customs Enforcement (ICE) agents opposed to implementing Obama’s amnesty, known as Deferred Action for Childhood Arrivals (DACA). Obama blew off Congress and issued DACA via executive order to allow illegal immigrants 30 and younger to remain in the U.S. and obtain work permits if they entered the country as children (“through no fault of their own,” as Homeland Security Secretary Janet Napolitano loves to say). A federal court in Texas, where the agents’ case was heard, ruled that the policy is “contrary to congressional mandate.”

#### Syria triggered the link – executive incompetence

Hunt 9/15/13 (Albert, staffwriter, “Obama’s Syria Meanderings Border on Incompetence” <http://www.bloomberg.com/news/2013-09-15/obama-s-syria-meanderings-border-on-incompetence.html>)

President Barack Obama risks getting stuck with a rap as toxic as an unpopular war or a troubled economy: incompetence. The president may escape collateral damage if the ambitious deal reached Sept. 14 between the U.S. and Russia holds and Syria relinquishes its chemical weapons. Despite the conventional wisdom, Obama did a pretty good job last week of threading the needle between the imperative to respond to the gassing of civilians by President Bashar al-Assad’s regime and the overwhelming desire of Americans not to get bogged down in another fight. The White House says that what matters is the outcome, not the process. Yet the administration’s overall handing of the Syrian situation, particularly in the last two weeks, has friends and foes shaking their heads. The U.S. government’s response has been anything but measured, coherent and purposeful. It’s hard to argue with Republican Senator John McCain of Arizona that this performance “makes you a little queasy.” This criticism follows earlier complaints, often from Democrats, about the White House’s miscalculations in dealing with irrational Republican demands on debt and deficit issues, and the unwillingness of the president to seek counsel beyond his small comfort zone.

#### No deal – Cruz will prevent passage in the Senate and Obama refuses to compromise

Clark 9/22 (Meredith, “Tick tock, Obama’s not afraid of GOP budget clock”, http://tv.msnbc.com/2013/09/22/obama-we-will-not-negotiate-over-debt-ceiling/)

President Obama pushed back hard Saturday against the most recent round of Republican efforts to undermine the Affordable Care Act by threatening a possible government shutdown on October 1st. “Some of them are actually willing to see the United States default on its obligations and plunge this country back into a painful recession if they can’t deny the basic security of health care to millions of Americans,” Obama said of Republicans in a speech to the Congressional Black Caucus. The president vowed that he would not compromise with Republicans seeking to defund Obamacare. “We will not negotiate over whether or not America should keep its word and meet its obligations. We’re not going to allow anyone to inflict economic pain on millions of our own people just to make an ideological point. And those folks are going to get some health care in this country—we’ve been waiting 50 years for it,” he said. The GOP needs to “stop governing by crisis and start focusing on what really matters,” like jobs and curbing rampant gun violence, Obama said. House Minority Leader Nancy Pelosi also criticized her Republican colleagues for their insistence on continued budget cuts. “The cupboard is bare,” she said on CNN Sunday. The push to tie a budget resolution essential for the government to function to defunding Obamacare amounts to “legislative arson” on the part of the House’s most radical wing, she said. Texas Senator Ted Cruz, who has staked out a vocal and extreme position within the Republican party, confirmed to Fox News on Sunday that he would oppose any attempt to move the bill through the Senate, and that any support for Obamacare, even procedural, is a vote for ”this train wreck that is Obamacare.” Cruz will need fellow Republicans to follow his lead, but his leadership style has alienated colleagues, prompting Fox News host Chris Wallace to point out, “Senator, I think it’s fair to say that you have ticked off a whole bunch of your fellow Republicans who feel that you’ve gotten them into this fight without an end game, without a strategy.” Democratic Senator Claire McCaskill of Missouri accused Cruz of making this stand to increase his chances in a future presidential bid and compared GOP leaders to angry toddlers. “I cannot believe that they are gonna throw a tantrum and throw the American people and our economic recovery under the bus,” she said Sunday. Obama made a brief phone call to House Speaker John Boehner late Friday night to let him know there would be no negotiations over the debt limit.

#### Ex post review is popular

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

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

#### Winners win

Dickerson 1/18/13 (John, Slate, Go for the Throat!, www.slate.com/articles/news\_and\_politics/politics/2013/01/barack\_obama\_s\_second\_inaugural\_address\_the\_president\_should\_declare\_war.single.html)

On Monday, President Obama will preside over the grand reopening of his administration. It would be altogether fitting if he stepped to the microphone, looked down the mall, and let out a sigh: so many people expecting so much from a government that appears capable of so little. A second inaugural suggests new beginnings, but this one is being bookended by dead-end debates. Gridlock over the fiscal cliff preceded it and gridlock over the debt limit, sequester, and budget will follow. After the election, the same people are in power in all the branches of government and they don't get along. There's no indication that the president's clashes with House Republicans will end soon. Inaugural speeches are supposed to be huge and stirring. Presidents haul our heroes onstage, from George Washington to Martin Luther King Jr. George W. Bush brought the Liberty Bell. They use history to make greatness and achievements seem like something you can just take down from the shelf. Americans are not stuck in the rut of the day. But this might be too much for Obama’s second inaugural address: After the last four years, how do you call the nation and its elected representatives to common action while standing on the steps of a building where collective action goes to die? That bipartisan bag of tricks has been tried and it didn’t work. People don’t believe it. Congress' approval rating is 14 percent, the lowest in history. In a December Gallup poll, 77 percent of those asked said the way Washington works is doing “serious harm” to the country. The challenge for President Obama’s speech is the challenge of his second term: how to be great when the environment stinks. Enhancing the president’s legacy requires something more than simply the clever application of predictable stratagems. Washington’s partisan rancor, the size of the problems facing government, and the limited amount of time before Obama is a lame duck all point to a single conclusion: The president who came into office speaking in lofty terms about bipartisanship and cooperation can only cement his legacy if he destroys the GOP. If he wants to transform American politics, he must go for the throat. President Obama could, of course, resign himself to tending to the achievements of his first term. He'd make sure health care reform is implemented, nurse the economy back to health, and put the military on a new footing after two wars. But he's more ambitious than that. He ran for president as a one-term senator with no executive experience. In his first term, he pushed for the biggest overhaul of health care possible because, as he told his aides, he wanted to make history. He may already have made it. There's no question that he is already a president of consequence. But there's no sign he's content to ride out the second half of the game in the Barcalounger. He is approaching gun control, climate change, and immigration with wide and excited eyes. He's not going for caretaker. How should the president proceed then, if he wants to be bold? The Barack Obama of the first administration might have approached the task by finding some Republicans to deal with and then start agreeing to some of their demands in hope that he would win some of their votes. It's the traditional approach. Perhaps he could add a good deal more schmoozing with lawmakers, too. That's the old way. He has abandoned that. He doesn't think it will work and he doesn't have the time. As Obama explained in his last press conference, he thinks the Republicans are dead set on opposing him. They cannot be unchained by schmoozing. Even if Obama were wrong about Republican intransigence, other constraints will limit the chance for cooperation. Republican lawmakers worried about primary challenges in 2014 are not going to be willing partners. He probably has at most 18 months before people start dropping the lame-duck label in close proximity to his name. Obama’s only remaining option is to pulverize. Whether he succeeds in passing legislation or not, given his ambitions, his goal should be to delegitimize his opponents. Through a series of clarifying fights over controversial issues, he can force Republicans to either side with their coalition's most extreme elements or cause a rift in the party that will leave it, at least temporarily, in disarray.

#### Political capital fails to influence the agenda

Hughes 9/11(Brian, Washington Examiner, “Syria push imperils Obama's fall agenda,” <http://washingtonexaminer.com/syria-push-imperils-obamas-fall-agenda/article/2535611)>

The Syria debate highlighted tensions between the president and Democratic lawmakers, with many of his party’s most liberal members failing to rally behind him in the foreign policy debate. Even many from both parties who backed him on Syria suggested the president had poorly managed the effort to sway congressional support. Rep. Adam Kinzinger, R-Ill., said he had offered to help the White House rally support on Syria and never heard back. Many on both sides of the aisle now wonder how Obama will refine his effort to reach out to lawmakers in the domestic fights ahead. White House officials have long scoffed at the notion that Obama could enhance his political clout by fostering better personal relationships with lawmakers. They say that a round of golf, dinner diplomacy or extensive presidential backslapping will do little to help push the president’s agenda in the GOP-controlled House.But if Obama’s muddled Syria message proved anything, it’s that that he still doesn’t have the level of pull needed on Capitol Hill to force skittish Democrats to get in line or reachable Republicans to buck their party base. Carney on Wednesday sidestepped questions about whether the Syria debate had weakened Obama’s standing. “I'm not going to make a political assessment," he said. Time is working against White House efforts to regain any leverage, though. Congress has just six working days left in September to pass a continuing resolution to keep the government funded. That will coincide with the government reaching its borrowing capacity in October and a possible default on its debt. The White House is banking that Republican infighting over government funding will aid their cause. House leadership is pushing back a vote on keeping the government funded until next week. Many conservative lawmakers and outside groups want to use the bill to defund Obamacare. House GOP leaders, though, are trying to win votes for a plan that would fund the government through mid-December, forcing the Senate to vote first on cutting money for healthcare reform.

#### Debt ceiling won’t collapse the economy - empirics

Michael Tanner 11, National Review, “No Surrender on Debt Ceiling”, Jan 19, <http://www.nationalreview.com/articles/257433/no-surrender-debt-ceiling-michael-tanner>

Of course the Obama administration is already warning of Armageddon if Congress doesn’t raise the debt ceiling. Certainly it would be a shock to the economic system. The bond market could crash. The impact would be felt at home and abroad. But would it necessarily be worse than the alternative? While Congress has never before refused to raise the debt ceiling, it has in fact frequently taken its time about doing so. In 1985, for example, Congress waited nearly three months after the debt limit was reached before it authorized a permanent increase. In 1995, four and a half months passed between the time that the government hit its statutory limit and the time Congress acted. And in 2002, Congress delayed raising the debt ceiling for three months. It took three months to raise the debt limit back in 1985 as well. In none of those cases did the world end. More important, what will be the consequences if the U.S. government fails to reduce government spending? What happens if we raise the debt ceiling then continue merrily on our way spending more and running up ever more debt? Already Moody’s and Standard & Poor’s have warned that our credit rating might be reduced unless we get a handle on our national debt. We’ve heard a lot recently about the European debt crisis, but, as one senior Chinese banking official recently noted, in some ways the U.S. financial position is more perilous than Europe’s. “We should be clear in our minds that the fiscal situation in the United States is much worse than in Europe,” he recently told reporters. “In one or two years, when the European debt situation stabilizes, [the] attention of financial markets will definitely shift to the United States. At that time, U.S. Treasury bonds and the dollar will experience considerable declines.” Moreover, unless we do something, federal spending is on course to consume 43 percent of GDP by the middle of the century. Throw in state and local spending, and government at all levels will take 60 cents out of every dollar produced in this country. Our economy will not long survive government spending at those levels.

### 2AC XO

#### --Permute- do both- shields the link to the NB- the court would just be complying with the CP

#### --Permute- do the CP—the plan just says the judiciary should conduct review, the CP has the executive branch tell the court to review—doesn’t sever

#### --Links to politics

Wetzel-JD Candidate Valpo-7 42 Val. U.L. Rev. 385

NOTE: BEYOND THE ZONE OF TWILIGHT: HOW CONGRESS AND THE COURT CAN MINIMIZE THE DANGERS AND MAXIMIZE THE BENEFITS OF EXECUTIVE ORDERS

C. Framing the Debate: Congress Must Critique Executive Orders in Terms of the Power Itself, not the President Exercising the Power Executive orders are often debated in highly politicized atmospheres, with loyalty following party lines and attacks centering [\*429] less on the merits of an order and more on a specific President. 187 Rather than debating whether Presidents ought to have the power to issue binding orders at all, members of Congress simply attack the individual President who issued the order. 188 For this reason, abusive orders are more associated with the President who issued the order than with the institution of executive orders. 189 In the future, if Congress wishes to restrain the President's ability to issue executive orders, it should frame the debate in terms of the power itself, not the President exercising the power. By questioning the practice of issuing executive orders Congress would, in turn, focus the media and the public debate upon the great power that executive orders grant Presidents, resulting in increased oversight. Such increased oversight into executive orders would still allow the President the power to issue important and expedient orders, while making it less likely that an order will be used for Presidential abuse and tyranny.

#### --Doesn’t solve the case—

#### A. Judicial Review – critical to US credibility and trust in our counter-terrorism programs – only way the drone program won’t collapse – that’s Sidhu and Corey

#### B. The counterplan is the “trust us doctrine” – 1AC Brooks evidence says only external checks on the president will fix the credibility gap in US operations since this doctrine has empirically failed

#### C. Collateral damage – only judicial review stops it through double-checking drone strikes – civilian casualties cause drone program rollback – that’s Adelsburg and Zenko

#### D. Judicial independence – its collapsing now – only independent judicial review solves to promote rule of law globally and solve Russian economic decline

--Executive order counterplan is a voting issue – undermines the literature base the topic was written around, destroys aff ground by using fiat to skirt core solvency comparisons and trivializes topic education by overlimiting the base of affirmatives

#### --No solvency – XO isn’t binding – can be modified in secret

Dreyfuss 12 (Mike Dreyfuss is a Candidate for Doctor of Jurisprudence, “My Fellow Americans, We Are Going to Kill You: The Legality of Targeting and Killing U.S. Citizens Abroad,” http://www.vanderbiltlawreview.org/content/articles/2012/01/Dreyfuss\_65\_Vand\_L\_Rev\_249.pdf)

Notwithstanding any of the above, the President can revoke or modify Executive Order 12,333 by issuing a new executive order. Executive orders do not bind executive practice any more than the President wants them to, and the President can keep executive orders secret if he so chooses.40 Typically, new executive orders have to be published in the Federal Register. 41 However, when the President determines that as a result of an attack or a threatened attack on the United States, publication would be impracticable or would not “give appropriate notice to the public,” the President can suspend this filing requirement.42 So while targeted killing is distinct from assassination and, under currently published laws, must be distinct to be legal, the distinction matters little. Even classifying all targeted killings as assassinations within the meaning of Executive Order 12,333 would be of little practical importance, as any President who wished to continue the programs could secretly modify the order to carve out an exception for whatever activities he wished to conduct.

#### OLC rubber stamps and not accountable---external oversight key—(their text does NOT remedy this)

Ilya **Somin 11**, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/

But I am more skeptical than Balkin that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president **can almost always find** respectable lawyers within his administration who will tell him that **any policy he** really **wants** to undertake is constitutional. Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and from State Department Legal Adviser Harold Koh. Bush, of course, got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration **lawyers want to tell their political masters what they want to hear**. It also arises from the understandable fact that administrations tend to appoint people who **share the president’s** ideological **agenda and approach** to constitutional interpretation. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough consultation with executive branch lawyers can prevent the president from undertaking actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, for the foreseeable future, the main constraints on unconstitutional presidential activity **must come from** **outside executive branch** – that is, from Congress, the courts, and public opinion. These constraints are highly imperfect. But they do impose **genuine costs** on presidents who cross the line. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

#### DOJ plank fails because of path dependence—if it solves, it would drain Obama’s political capital\*\*

Dalal 13 (Anjali Dalal\*, Resident Fellow, Information Society Project, Yale Law School, ADMINISTRATIVE CONSTITUTIONALISM AND THE RE-ENTRENCHMENT OF SURVEILLANCE CULTURE, http://www.utexas.edu/law/journals/tlr/sources/Volume%2091/Issue%207/Metzger/Metzger.fn053.Dalat.AdministritiveConstitutionalism.pdf)

It is helpful to tease out the two mechanisms that I argue can carry a norm from suggested to entrenched: path dependency and historical practice. Path dependency is motivated by the fact that change does not come easily in Washington. As President Obama realized in his first term, change requires much more than the support of the electorate. It also requires political will and political capital. Path dependency captures the instincts of government officials to opt for the path of least resistance – to pick their political battles wisely. Even if the Department of Justice was suddenly overtaken by the spirit of Edward Levi, the battle to reverse course would be a difficult one. In its corner, it would have the underrepresented and underfunded activist groups trying to expose and protest the surveillance culture we live in. Against it, would be the powerful defense contractor lobby and the national security war hawks that would argue that country’s security was compromised as a consequence.

#### The OLC circumvents the spirit of publishing memos by delaying them and finding the obscurest outlet possible—their author

Pillard 2005 – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

The SG's Office now has a publicly accessible, searchable database with all its briefs, and all arguments to and decisions of the Supreme Court are made public and routinely covered by the national news media. When it comes to public scrutiny, the larger problem lies with OLC, whose opinions typically relate to actions under consideration but not yet taken, and are therefore covered by deliberative-process privilege. Compare the secrecy of the OLC torture memo before it was leaked with the public scrutiny of the SG's positions in the recent detainee cases.22 ' Harold Koh identifies as one of OLC's major problems this "opacity" of its work, "namely, the danger that it will support political action with a legal opinion that cannot be publicly examined or tested."2'22 Koh's proposed corrective - broad publication of OLC opinions - proves elusive in practice. OLC seeks to publish some opinions after the immediate issues are no longer hot. But Koh relates chilling examples of OLC's opacity in his litigation over the fate of Haitian refugees interdicted ten miles off the United States coast and repatriated to Haiti without due process. One "public" OLC opinion explaining that the president had extended the United States' territorial waters from three to twelve miles offshore was printed only in "an obscure law review called the Territorial Sea Journal" that Koh, by sheer happenstance, saw mentioned in a draft of a symposium paper.223 Koh then filed suit arguing that the refugees were entitled to due process, relying on publicly available OLC opinions on the due process rights of refugees, only later to discover when confronted with a motion for hefty Rule 11 sanctions that OLC had secretly overruled its earlier opinions in an unpublished opinion letter during the course of another refugee litigation. In the ensuing decade, publication of OLC constitutional advice remains spotty.

### 2AC K

#### The role of the ballot is to debate the merits of federal government action on restricting the presidents war power authority – only predictable and limiting standard that promotes clash and checks the negative’s capacity to read infinite critical frameworks that undermine particular artifacts in the 1AC

#### Consequentialism first; their ethics claims are shirk responsibility allowing infinite violence

Williams 2000 (Michael, Professor of International Politics at the University of Wales—Aberystwyth,

The Realist Tradition and the Limits of International Relations, p. 174-176)

A commitment to an ethic of consequences reflects a deeper ethic of criticism, of ‘self-clarification’, and thus of reflection upon the values adopted by an individual or a collectivity. It is part of an attempt to make critical evaluation an intrinsic element of responsibility. Responsibility to this more fundamental ethic gives the ethic of consequences meaning. Consequentialism and responsibility are here drawn into what Schluchter, in terms that will be familiar to anyone conversant with constructivism in International Relations, has called a ‘reflexive principle’. In the wilful Realist vision, scepticism and consequentialism are linked in an attempt to construct not just a more substantial vision of political responsibility, but also the kinds of actors who might adopt it, and the kinds of social structures that might support it. A consequentialist ethic is not simply a choice adopted by actors: it is a means of trying to foster particular kinds of self-critical individuals and societies, and in so doing to encourage a means by which one can justify and foster a politics of responsibility. The ethic of responsibility in wilful Realism thus involves a commitment to both autonomy and limitation, to freedom and restraint, to an acceptance of limits and the criticism of limits. Responsibility clearly involves prudence and an accounting for current structures and their historical evolution; but it is not limited to this, for it seeks ultimately the creation of responsible subjects within a philosophy of limits. Seen in this light, the Realist commitment to objectivity appears quite differently. Objectivity in terms of consequentialist analysis does not simply take the actor or action as given, it is a political practice — an attempt to foster a responsible self, undertaken by an analyst with a commitment to objectivity which is itself based in a desire to foster a politics of responsibility. Objectivity in the sense of coming to terms with the ‘reality’ of contextual conditions and likely outcomes of action is not only necessary for success, it is **vital for self-reflection**, for sustained engagement with the practical and ethical adequacy of one’s views. The blithe, self-serving, and uncritical stances of abstract moralism or rationalist objectivism avoid self-criticism by refusing to engage with the intractability of the world ‘as it is’. **Reducing the world** to an expression of their theoretical models, political platforms, or ideological programmes, they fail to engage with this reality, and thus avoid the process of self-reflection at the heart of responsibility. By contrast, Realist objectivity takes an engagement with this intractable ‘object’ that is not reducible to one’s wishes or will as a necessary condition of ethical engagement, self-reflection, and self-creation.7 Objectivity is not a naïve naturalism in the sense of scientific laws or rationalist calculation; it is a necessary engagement with a world that eludes one’s will. A recognition of the limits imposed by ‘reality’ is a condition for a recognition of one’s own limits — that **the world is not simply an extension of one’s own will.** But it is also a challenge to use that intractability as a source of possibility, as providing a set of openings within which a suitably chastened and yet paradoxically energised will to action can responsibly be pursued. In the wilful Realist tradition, the essential opacity of both the self and the world are taken as limiting principles. Limits upon understanding provide chastening parameters for claims about the world and actions within it. But they also provide challenging and creative openings within which diverse forms of life can be developed: the limited unity of the self and the political order is the **precondition for freedom**. The ultimate opacity of the world is not to be despaired of: it is a condition of possibility for the wilful, creative construction of selves and social orders which embrace the diverse human potentialities which this lack of essential or intrinsic order makes possible.8 But it is also to be aware of the less salutary possibilities this involves. Indeterminacy is not synonymous with absolute freedom — it is both a condition of, and imperative toward, responsibility.

#### The Case is a DA to the alternative which would collapse support for drones-Our Overstretch advantage impacts that in global challengers and nuclear war---also power projection is a hedge against all of their terminal impacts.

#### Rejection of norms and drone legitimacy turns their impact-only a world where the US is credible can it manage spiraling arms racing and instability resulting in global war

#### Can’t turn the case-the political nature of the law is our argument-the plan is important for legitimizing the drone program and US overall credibility on the global stage

#### Distinctions between terrorists and combatant or civilian are vital to understanding violence—abandoning them justifies more terror and collapses into relativist nihilism

Elshtain 3 **–** professor of social and political ethics, Chicago (Jean, Thinking About September 11, http://www.aft.org/pubs-reports/american\_educator/summer2003/sept11.html, AG)

In a situation in which noncombatants are deliberately targeted and the murder of the maximum number of noncombatants is the explicit aim, using terms like "fighter" or "soldier" or "noble warrior" is not only beside the point but pernicious. Such language collapses the distance between those who plant bombs in cafés or fly civilian aircraft into office buildings and those who fight other combatants, taking the risks attendant upon military forms of fighting. There is a nihilistic edge to terrorism: It aims to destroy, most often in the service of wild and utopian goals that make no sense at all in the usual political ways. The distinction between terrorism, domestic criminality, and what we might call "normal" or "legitimate" war is vital to observe. It helps us to assess what is happening when force is used. This distinction, marked in historic, moral, and political discourses about war and in the norms of international law, seems lost on those who call the attacks of September 11 acts of "mass murder" rather than terrorism and an act of war under international law. It is thus both strange and disheartening to read the words of those distinction-obliterators for whom, crudely, a dead body is a dead body and never mind how it got that way. Many of these same individuals would, of course, protest vehemently, and correctly, were commentators, critics, and political actors to fail to distinguish between the great world religion that is Islam and the terrorists who perpetrated the events of September 11. One cannot have it both ways, however, by insisting on the distinctions one likes and heaping scorn on those who put pressure on one’s own ideological and political commitments. If we could not distinguish between a death resulting from a car accident and an intentional murder, our criminal justice system would fall apart. And if we cannot distinguish the killing of combatants from the intended targeting of peaceable civilians and the deliberate and indiscriminate sowing of terror among civilians, we live in a world of moral nihilism. In such a world, everything reduces to the same shade of gray and we cannot make distinctions that help us take our political and moral bearings. The victims of September 11 deserve more from us.

#### No risk of endless warfare – their impact is made up

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

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

#### Dismissing our reforms as tokenism creates a precedent that will be used by future presidents to implement more violent policies---creating norms within the rule of law is good.

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

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

#### The state of exception can be contained---no impact

Jennifer Mitzen 11, PhD, University of Chicago, Associate Professor of Political Science at Ohio State University, Michael E. Newell, “Crisis Authority, the War on Terror and the Future of Constitutional Democracy,” PDF

But what Agamben has potentially overlooked is the conversation between the government, public and media concerning the state of exception. Waever’s desecuritization theory tells us that it is possible for continued debate and media coverage to desecuritize a threat in whole or in part (Waever, 1995). As the War on Terror progressed, more academics and government officials began to speak out against the usefulness of interrogations, the reality of the terrorist threat and the morality of the administration’s policies. Some critics suggested that the terrorist threat was not as imminent as the Administration made it appear, and that “…fears of the omnipotent terrorist…may have been overblown, the threat presented within the United States by al Qaeda greatly exaggerated” (Mueller, 2006). Indeed, as Mueller points out, there have been no terrorist attacks in the United States five years prior and five years after September 11th. The resignation of administration officials, such as Jack Goldsmith, who, it was later learned, sparred with the administration over Yoo’s torture memos, their wiretapping program and their trial of suspected terrorists also contributed to this shift in sentiment (Rosen, 2007). The use of the terms “torture,” and “prisoner abuse,” that began to surface in critical media coverage of the War on Terror framed policies as immoral. As the public gradually learned more from media coverage, academic discourse, and protests from government officials, the administration and its policies saw plummeting popularity in the polls. Two-thirds of the country did not approve of Bush’s handling of the War on Terror by the end of his presidency (Harris Poll) and as of February 2009 two-thirds of the country wanted some form of investigation into torture and wiretapping policies (USA Today Poll, 2009).¶ In November 2008 a Democratic President was elected and Democrats gained substantial ground in Congress partly on promises of changing the policies in the War on Terror. Republican presidential nominees, such as Mitt Romney, who argued for the continuance of many of the Bush administration’s policies in the War on Terror, did not see success at the polls. Indeed, this could be regarded as Waever’s “speech-act failure” which constitutes the moment of desecuritization (Waever, 1995). In this sense, Agamben’s warning of “pure de-facto rule” in the War on Terror rings hollow because of one single important fact: the Bush administration peacefully transferred power to their political rivals after the 2008 elections. The terrorist threat still lingers in the far reaches of the globe, and a strictly Agamben-centric analysis would suggest that the persistence of this threat would allow for the continuance of the state of exception. If Agamben was correct that the United States was under “pure de-facto rule” then arguably its rulers could decide to stay in office and to use the military to protect their position. Instead, Bush and his administration left, suggesting that popular sovereignty remained intact.

#### A violent war on terror is the only way to solve—nonviolent solutions empirically fail

Hanson 10—Senior Fellow, Hoover. Former visiting prof, classics, Stanford. PhD in classics, Stanford (Victor Davis, The Tragic Truth of War, 19 February 2010, http://www.victorhanson.com/articles/hanson021910.html)

Victory has usually been defined throughout the ages as forcing the enemy to accept certain political objectives. “Forcing” usually meant killing, capturing, or wounding men at arms. In today’s polite and politically correct society we seem to have forgotten that nasty but eternal truth in the confusing struggle to defeat radical Islamic terrorism. What stopped the imperial German army from absorbing France in World War I and eventually made the Kaiser abdicate was the destruction of a once magnificent army on the Western front — superb soldiers and expertise that could not easily be replaced. Saddam Hussein left Kuwait in 1991 when he realized that the U.S. military was destroying his very army. Even the North Vietnamese agreed to a peace settlement in 1973, given their past horrific losses on the ground and the promise that American air power could continue indefinitely inflicting its damage on the North. When an enemy finally gives up, it is for a combination of reasons — material losses, economic hardship, loss of territory, erosion of civilian morale, fright, mental exhaustion, internal strife. But we forget that central to a concession of defeat is often the loss of the nation’s soldiers — or even the threat of such deaths. A central theme in most of the memoirs of high-ranking officers of the Third Reich is the attrition of their best warriors. In other words, among all the multifarious reasons why Nazi Germany was defeated, perhaps the key was that hundreds of thousands of its best aviators, U-boaters, panzers, infantrymen, and officers, who swept to victory throughout 1939–41, simply perished in the fighting and were no longer around to stop the allies from doing pretty much what they wanted by 1944–45. After Stalingrad and Kursk, there were not enough good German soldiers to stop the Red Army. Even the introduction of jets could not save Hitler in 1945 — given that British and American airmen had killed thousands of Luftwaffe pilots between 1939 and 1943. After the near destruction of the Grand Army in Russia in 1812, even Napoleon’s genius could not restore his European empire. Serial and massive Communist offensives between November 1950 and April 1951 in Korea cost Red China hundreds of thousands of its crack infantry — and ensured that, for all its aggressive talk, it would never retake Seoul in 1952–53. But aren’t these cherry-picked examples from conventional wars of the past that have no relevance to the present age of limited conflict, terrorism, and insurgency where ideology reigns? Not really. We don’t quite know all the factors that contributed to the amazing success of the American “surge” in Iraq in 2007–08. Surely a number of considerations played a part: Iraqi anger at the brutish nature of al-Qaeda terrorists in their midst; increased oil prices that brought massive new revenues into the country; General Petraeus’s inspired counterinsurgency tactics that helped win over Iraqis to our side by providing them with jobs and security; much-improved American equipment; and the addition of 30,000 more American troops. But what is unspoken is also the sheer cumulative number of al Qaeda and other Islamic terrorists that the U.S. military killed or wounded between 2003 and 2008 in firefights from Fallujah to Basra. There has never been reported an approximate figure of such enemy dead — perhaps wisely, in the post-Vietnam age of repugnance at “body counts” and the need to create a positive media image. Nevertheless, in those combat operations, the marines and army not only proved that to meet them in battle was a near death sentence, but also killed thousands of low-level terrorists and hundreds of top-ranking operatives who otherwise would have continued to harm Iraqi civilians and American soldiers. Is Iraq relatively quiet today because many who made it so violent are no longer around? Contemporary conventional wisdom tries to persuade us that there is no such thing as a finite number of the enemy. Instead, killing them supposedly only incites others to step up from the shadows to take their places. Violence begets violence. It is counterproductive, and creates an endless succession of the enemy. Or so we are told. We may wish that were true. But military history suggests it is not quite accurate. In fact, there was a finite number of SS diehards and kamikaze suicide bombers even in fanatical Nazi Germany and imperial Japan. When they were attrited, not only were their acts of terror curtailed, but it turned out that far fewer than expected wanted to follow the dead to martyrdom. The Israeli war in Gaza is considered by the global community to be a terrible failure — even though the number of rocket attacks against Israeli border towns is way down. That reduction may be due to international pressure, diplomacy, and Israeli goodwill shipments of food and fuel to Gaza — or it may be due to the hundreds of Hamas killers and rocketeers who died, and the thousands who do not wish to follow them, despite their frequently loud rhetoric about a desire for martyrdom. Insurgencies, of course, are complex operations, but in general even they are not immune from eternal rules of war. Winning hearts and minds is essential; providing security for the populace is crucial; improving the economy is critical to securing the peace. But all that said, we cannot avoid the pesky truth that in war — any sort of war — killing enemy soldiers stops the violence. For all the much-celebrated counterinsurgency tactics in Afghanistan, note that we are currently in an offensive in Helmand province to “secure the area.” That means killing the Taliban and their supporters, and convincing others that they will meet a violent fate if they continue their opposition. Perhaps the most politically incorrect and Neanderthal of all thoughts would be that the American military’s long efforts in both Afghanistan and Iraq to kill or capture radical Islamists has contributed to the general safety inside the United States. Modern dogma insists that our presence in those two Muslim countries incited otherwise non-bellicose young Muslims to suddenly prefer violence and leave Saudi Arabia, Yemen, or Egypt to flock to kill the infidel invader. A more tragic view would counter that there was always a large (though largely finite) number of radical jihadists who, even before 9/11, wished to kill Americans. They went to those two theaters, fought, died, and were therefore not able to conduct as many terrorist operations as they otherwise would have, and also provided a clear example to would-be followers not to emulate their various short careers. That may explain why in global polls the popularity both of bin Laden and of the tactic of suicide bombing plummeted in the Middle Eastern street — at precisely the time America was being battered in the elite international press for the Iraq War. Even the most utopian and idealistic do not escape these tragic eternal laws of war. Barack Obama may think he can win over the radical Islamic world — or at least convince the more moderate Muslim community to reject jihadism — by means such as his Cairo speech, closing Guantanamo, trying Khalid Sheikh Mohammed in New York, or having General McChrystal emphatically assure the world that killing Taliban and al-Qaeda terrorists will not secure Afghanistan. Of course, such soft- and smart-power approaches have utility in a war so laden with symbolism in an age of globalized communications. But note that Obama has upped the number of combat troops in Afghanistan, and he vastly increased the frequency of Predator-drone assassination missions on the Pakistani border. Indeed, even as Obama damns Guantanamo and tribunals, he has massively increased the number of targeted assassinations of suspected terrorists — the rationale presumably being either that we are safer with fewer jihadists alive, or that we are warning would-be jihadists that they will end up buried amid the debris of a mud-brick compound, or that it is much easier to kill a suspected terrorist abroad than detain, question, and try a known one in the United States. In any case, the president — immune from criticism from the hard Left, which is angrier about conservative presidents waterboarding known terrorists than liberal ones executing suspected ones — has concluded that one way to win in Afghanistan is to kill as many terrorists and insurgents as possible. And while the global public will praise his kinder, gentler outreach, privately he evidently thinks that we will be safer the more the U.S. marines shoot Taliban terrorists and the more Hellfire missiles blow up al-Qaeda planners. Why otherwise would a Nobel Peace Prize laureate order such continued offensive missions? Victory is most easily obtained by ending the enemy’s ability to resist — and by offering him an alternative future that might appear better than the past. We may not like to think all of that entails killing those who wish to kill us, but it does, always has, and tragically always will — until the nature of man himself changes.

#### Legal restraints work---exception theory is self-serving and wrong

William E. Scheuerman 6, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices in order then to argue against legal or juridical solutions to them. The claim also suffers from a certain vagueness and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, legal devices have undoubtedly played a positive role in taming or at least minimizing the potential dangers of harsh political antagonisms. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, it is by no means self-evident that trying to give coherent legal form to a transitional political and social moment is always doomed to fail. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, the general trend towards extending basic protections to non-state actors is plausibly interpreted in a more positive – and by no means incoherent – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet one possible resolution of the dilemma he describes would be to figure how to reform the process whereby rules of war are adapted to novel changes in military affairs in order to minimize the danger of anachronistic or out-of-date law. Instead, Schmitt simply employs the dilemma of legal obsolescence as a battering ram against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

#### No alternative to the law/legal system---other ideas bring more inequality and abuse

Jerold S. Auerbach 83, Professor of History at Wellesley, “Justice Without Law?”, 1983, p. 144-146

As cynicism about the legal system increases, so does enthusiasm for alternative dispute-settlement institutions. The search for alternatives accelerates, as Richard Abel has suggested, "when some fairly powerful interest is threatened by an increase in the number or magnitude of legal rights.\*'6 Alternatives are designed to provide a safety valve, to siphon discontent from courts. With the danger of political confrontation reduced, the ruling power of legal institutions is preserved, and the stability of the social system reinforced. Not incidentally, alternatives prevent the use of courts for redistributive purposes in the interest of equality, by consigning the rights of disadvantaged citizens to institutions with minimal power to enforce or protect them. It is, therefore, necessary to beware of the seductive appeal of alternative institutions. They may deflect energy from political organization by groups of people with common grievances; or discourage effective litigation strategies that could provide substantial benefits. They may, in the end, create a two-track justice system that dispenses informal "justice" to poor people with "small" claims and "minor" disputes, who cannot afford legal services, and who are denied access to courts. (Bar associations do not recommend that corporate law firms divert their clients to mediation, or that business deductions for legal expenses—a gigantic government subsidy for litigation—be eliminated.) Justice according to law will be reserved for the affluent, hardly a novel development in American history but one that needs little encouragement from the spread of alternative dispute-settlement institutions.¶ It is social context and political choice that determine whether courts, or alternative institutions, can render justice more or less accessible—and to whom. Both can be discretionary, arbitrary, domineering—and unjust. Law can symbolize justice, or conceal repression. It can reduce exploitation, or facilitate it. It can prohibit the abuse of power, or disguise abuse in procedural forms. It can promote equality, or sustain inequality. Despite the resiliency and power of law, it seems unable to eradicate the tension between legality and justice: even in a society of (legal) equals, some still remain more equal than others. But diversion from the legal system is likely to accentuate that inequality. Without legal power the imbalance between aggrieved individuals and corporations, or government agencies, cannot be redressed. In American society, as Laura Nader has observed, "disputing without the force of law ... [is| doomed to fail."7 Instructive examples document the deleterious effect of coerced informality (even if others demonstrate the creative possibilities of indigenous experimentation). Freed slaves after the Civil War and factory workers at the turn of the century, like inner-city poor people now, have all been assigned places in informal proceedings that offer substantially weaker safeguards than law can provide. Legal institutions may not provide equal justice under law, but in a society ruled by law it is their responsibility.¶ It is chimerical to believe that mediation or arbitration can now accomplish what law seems powerless to achieve. The American deification of individual rights requires an accessible legal system for their protection. Understandably, diminished faith in its capacities will encourage the yearning for alternatives. But the rhetoric of "community" and "justice" should not be permitted to conceal the deterioration of community life and the unraveling of substantive notions of justice that has accompanied its demise. There is every reason why the values that historically are associated with informal justice should remain compelling: especially the preference for trust, harmony, and reciprocity within a communal setting. These are not, however, the values that American society encourages or sustains; in their absence there is no effective alternative to legal institutions.¶ The quest for community may indeed be "timeless and universal."8 In this century, however, the communitarian search for justice without law has deteriorated beyond recognition into a stunted off-shoot of the legal system. The historical progression is clear: from community justice without formal legal institutions to the rule of law, all too often without justice. But injustice without law is an even worse possibility, which misguided enthusiasm for alternative dispute settlement now seems likely to encourage. Our legal culture too accurately expresses the individualistic and materialistic values that most Americans deeply cherish to inspire optimism about the imminent restoration of communitarian purpose. For law to be less conspicuous Americans would have to moderate their expansive freedom to compete, to acquire, and to possess, while simultaneously elevating shared responsibilities above individual rights. That is an unlikely prospect unless Americans become, in effect, un-American. Until then, the pursuit of justice without law does incalculable harm to the prospect of equal justice.

#### Rejecting sovereignty exacerbates inequalities and prevents emancipation

Tara McCormack 10, Lecturer in International Politics at the University of Leicester, PhD in IR from the University of Westminster, “Critique, Security and Power: The Political Limits to Emancipatory Approaches,” p139, google books

Critics of critical and emancipatory theory have raised pertinent problems in terms both of the idealism of critical approaches and their problematic relationship to contemporary liberal intervention. Critical theorists themselves are aware that their prescriptions seem to be hard to separate from contemporary discourses and practices of power, yet critical theorists do not seem to be able to offer any understanding of why this might be. However, the limitations to critical and emancipatory approaches cannot be overcome by distinguishing themselves from liberal internationalist policy. In fact a closer engagement with contemporary security policies and discourse would show the similarities with critical theory and that both suffer from the same limitations.¶ The limitations of critical and emancipatory approaches are to be found in critical prescriptions in the contemporary political context. Jahn is right to argue that critical theory is idealistic, but this needs to be explained why. Douzinas is right to argue that critical theory becomes a justification for power and this needs to be explained why. The reasons for this remain undertheorised. I argue here that critical and emancipatory approaches lack a fundamental understanding of what is at stake in the political realm. For critical theorists the state and sovereignty represent oppressive structures that work against human freedom. There is much merit to this critique of the inequities of the state system. However, the problem is that freedom or emancipation are not simply words that can breathe life into international affairs but in the material circumstances of the contemporary world must be linked to political constituencies, that is men and women who can give content to that freedom and make freedom a reality. ¶ Critical and emancipatory theorists fail to understand that there must be a political content to emancipation and new forms of social organisation. Critical theorists seek emancipation and argue for new forms of political community above and beyond the state, yet there is nothing at the moment beyond the state that can give real content to those wishes. There is no democratic world government and it is simply nonsensical to argue that the UN, for example, is a step towards global democracy. Major international institutions are essentially controlled by powerful states. To welcome challenges to sovereignty in the present political context cannot hasten any kind of more just world order in which people really matter (to paraphrase Lynch). Whatever the limitations of the state, and there are many, at the moment the state represents the only framework in which people might have a chance to have some meaningful control over their lives.

#### ---Ontological questioning is by definition unending and causes paralysis in the face of oppression.

Levinas & Nemo 1985

Emmanuel, professor of philosophy, and Philippe, professor of new philosophy, Ethics and Infinity, pg. 6-7

Are we not in need of still more precautions? Must we not step back from this question to raise another, to recognize the obvious circularity of ask­ing what isthe “What is . .?“ question? It seems to beg the question. Is our new suspicion, then, that Heidegger begs the question of metaphysics when he asks “What is poetry?” or “What is thinking?”? Yet his thought is insistently anti-metaphysical. Why, then, does he retain the metaphysical question par excellence? Aware of just such an objection, he pro­poses, against the vicious circle of the *petitio principi,* an alternative, productive circularity: hermeneutic questioning. To ask “What is. . .?“ does not partake of onto-theo-logy if one acknowledges (1) that the answer can never be fixed absolutely, but calls essen­tially, endlessly, for additional “What is . . .?“ ques­tions. Dialectical refinement here replaces vicious circularity. Further, beyond the openmindedness called for by dialectical refinement, hermeneutic questioning (2) insists on avoiding subjective impositions, on avoid­ing reading into rather than harkening to things. One must harken to the things themselves, ultimately to being, in a careful attunement to what is. But do the refinement and care of the herme­neutic question — which succeed in avoiding onto­theo-logy succeed in avoiding all viciousness? Certainly they convert a simple fallacy into a produc­tive inquiry, they open a path for thought. But is it not the case that however much refinement and care one brings to bear, to ask what something is leads to asking what something else is, and so on and so forth, ad infinitum*?* What is disturbing in this is not so much the infinity of interpretive depth, which has the virtue of escaping onto-theo-logy and remaining true to the way things are, to the phenomena, the coming to be and passing away of being. Rather, the problem lies in the influence the endlessly open horizon of such thinking exerts on the way of such thought. That is, the problem lies in what seems to be the very virtue of hermeneutic thought, namely, the doggedness of the “What is . . .?“ question, in its inability to escape itself, to escape being and essence.

#### ---The alternative’s rejection of human progress results in human extinction.

Faye 2009

Emmanuel, Associate Professor at the University Paris Ouest–Nanterre La Défense, translated into English by Michael B. Smith, Professor Emeritus of French and Philosophy at Berry College and translator of numerous philosophical works into English, *Heidegger, the introduction of Nazism into philosophy in light of the unpublished seminars of 1933-1935*, pg. 322

The völkisch and fundamentally racist principles Heidegger's Gesamtausgabe transmits strive toward the goal of the eradication of all the intellectual and human progress to which philosophy has contributed. They are therefore as destructive and dangerous to current thought as the Nazi movement was to the physical existence of the exterminated peoples. Indeed, what can be the result of granting a future to a doctrine whose author desired to become the "spiritual Fuhrer" of Nazism, other than to pave the way to the same perdition? In that respect, we now know that Martin Heidegger, in his unpublished seminar on Hegel and the state, meant to make the Nazi domination last beyond the next hundred years. If his writings continue to proliferate without our being able to stop this intrusion of Nazism into human education, how can we not expect them to lead to yet another translation into facts and acts, from which this time humanity might not be able to recover? Today more than ever, it is philosophy's task to work to protect humanity and alert men's minds; failing this, Hitlerism and Nazism will continue to germinate through Heidegger's writings at the risk of spawning new attempts at the complete destruction of thought and the extermination of humankind.

## \*\*\*1AR

### No uq

#### All their turns are inevitable – zero chances of willful US restraint – we’ll inevitably be engaged globally – the only question is effectiveness

Horowitz and Shalmon 9 Michael C, Professor of Political Science @ University of Pennsylvania and Dan A, Senior Analyst @ Lincoln Group LLC, “The Future of War and American Military Strategy,” Spring, Orbis

It is important to recognize at the outset two key points about United States strategy and the potential costs and benefits for the United States in a changing security environment. First, the United States is very likely to remain fully engaged in global affairs. Advocates of restraint or global withdrawal, while popular in some segments of academia, remain on the margins of policy debates in Washington D.C. This could always change, of course. However, at present, it is a given that the United States will define its interests globally and pursue a strategy that requires capable military forces able to project power around the world. Because “indirect” counter-strategies are the rational choice for actors facing a strong state's power projection, irregular/asymmetric threats are inevitable given America's role in the global order.24

### Asia

#### Hegemony solves Asian war

**White, Australian National University strategic studies profess, 2008**

(Hugh, “Why War in Asia Remains Thinkable”, June, <http://www.iiss.org/conferences/global-strategic-challenges-as-played-out-in-asia/asias-strategic-challenges-in-search-of-a-common-agenda/conference-papers/fifth-session-conflict-in-asia/why-war-in-asia-remains-thinkable-prof-hugh-white/>, ldg)

It can help to start by thinking about the sources of the remarkable peace that has characterized East Asia in recent decades. As Rich Armitage said over lunch yesterday, it has been the best thirty to thirty-five years in Asia’s long history. The foundation of that peace has been a remarkable set of relationships between the US, China and Japan that arose at the end of the Vietnam War, and which I call the Post-Vietnam Order. The heart of that order was a posture of double assurance provided by the US to the other two powers. The US has simultaneously assured China about its security from Japan, and Japan about its security from China. Obviously, but crucially, US primacy was the absolute core of this order.

### A2: Terrorism Turn

#### Multipolarity won’t solve the turns-US power is necessary.

**Brooks and Wohlforth, government professors at Dartmouth, 2002**

(Stephen and William, “American Primacy in Perspective”, Foreign Affairs; Jul/Aug2002, Vol. 81 Issue 4, p20-33, 14p, ebsco, ldg)

Some might question the worth of being at the top of a unipolar system if that means serving as a lightning rod for the world's malcontents. When there was a Soviet Union, after all, it bore the brunt of Osama bin Laden's anger, and only after its collapse did he shift his focus to the United States (an indicator of the demise of bipolarity that was ignored at the time but looms larger in retrospect). But terrorism has been a perennial problem in history, and multipolarity did not save the leaders of several great powers from assassination by anarchists around the turn of the twentieth century. In fact, a slide back toward multipolarity would actually be the worst of all worlds for the United States. In such a scenario it would continue to lead the pack and serve as a focal point for resentment and hatred by both state and nonstate actors, but it would have fewer carrots and sticks to use in dealing with the situation. The threats would remain, but the possibility of effective and coordinated action against them would be reduced.

### Multipolarity Bad – 1AR

#### Multipolarity fails- no one steps up to assume power and no cooperation, causes great power war

**Khalilzad, CSIS counselor, 2012**

(Zalmay, “It’s Foreign Affairs, Stupid”, 7-16, <http://nationalinterest.org/commentary/its-foreign-affairs-stupid-7195>, ldg)

In the near term, lackluster growth and ballooning deficits mean fewer resources for national security, including defense, diplomacy, foreign assistance and development. Economic challenges and dissatisfaction with the Iraq and Afghanistan wars are prompting Americans to turn inward. Pressure to reduce the international burden is growing even as U.S. influence is declining. What is worse, these domestic constraints arise at a time when problematic trends abroad are limiting our options or creating greater demands for U.S. action. Consider some key challenges: first, traditional U.S. allies seem less and less willing to step up to mutual-defense needs. The United States has complained for decades about Europe’s underinvestment in its defense and its lagging contribution to joint efforts. As the Europeans renegotiate their political and economic priorities amid the current fiscal and monetary crisis, NATO countries are likely to spend even less on defense or new NATO missions. European defense spending fell by close to 2 percent in 2011, with countries hit hardest by the sovereign debt crisis seeing more drastic cuts: Greece, 26 percent since 2008; Spain, 18 percent; Italy, 16 percent; and Ireland, 18 percent. By 2015, Britain and Germany, two of the top three European defense spenders along with France, plan cuts of 7.5 percent and 10 percent, respectively. France, if its withdrawal from Afghanistan is any indication, also will retrench in the coming years under its new socialist leadership. In Asia, meanwhile, our strongest ally, Japan, is suffering from political gridlock and a crisis of confidence following the tsunami, nuclear accident and rapid rise of its regional rivals, particularly China. Second, the United States cannot rely instead on emerging powers as they do not share, for the most part, U.S. views across a range of international-security issues. Rising powers such as China, India, Brazil, Turkey and Indonesia leverage their economic growth to modernize their militaries, press regional claims and demand greater representation in international bodies. But they don’t see themselves as stakeholders in the American-led international order. Rather, they show little inclination to share in the burdens of providing the collective goods needed to maintain security, enable global commerce and make international institutions work. The United States should seek cooperation with emerging powers on issues of mutual interest, but the absence of strategic like-mindedness will inhibit the emergence of fully integrated alliances. The divergence of interest among great and rising powers thwarts agreement on matters of substance at bodies such as the G-20. Third, key regions are experiencing destabilizing transitions, particularly in the greater Middle East. The transnational terrorist threat from the Afghanistan-Pakistan region endures. Iran’s nuclear program threatens a cascade of proliferation. Prospects are real for a sectarian war between Sunni and Shia forces in Iraq, Syria and the Gulf, fueled by regional powers such as Iran, Saudi Arabia and Turkey. The most significant great powers outside the region—America, Europe, Russia, China and India—can’t agree on how to address these challenges. The United States cannot afford to be indifferent to these problems, yet it lacks the resources to address them. The country’s fiscal health must be its top priority. Continuing with low growth and large deficits while economically dynamic rising powers expand their military capabilities will undercut U.S. leadership over time. These trends would culminate in a multipolar world like that of the nineteenth and the first half of the twentieth centuries. A multipolar world would increase the likelihood of war among major powers. The lesson of the twentieth century is that nothing is more expensive than such conflicts. So addressing the economic underpinnings of U.S. power is vital.

### 1AR Yucca

#### Obama just lost a major ruling on Yucca—sets the tone for a FLOOD of future rulings against him.

Masters 8-14 (Craig, Northern Colorado Gazette, http://www.greeleygazette.com/press/?p=22923)

In the state where card games are big money, two Nevada judges have called a spade a spade in ruling that Obama does not have the Constitutional authority to change law to suit his political agenda. This ruling could mark the beginning of a flood of rulings that will reverse administration imposed laws and re-establish the Separation of Powers clause of the Constitution. Tuesday, August 12, a federal appeals court in Nevada ruled the Nuclear Regulatory Commission (NRC) violated the law in following orders by the Obama administration to shut down the Yucca Mountain nuclear waste disposal site. The majority opinion of the three judge panel stated that the NRC was “simply flouting the law.” The majority ruling of Judges A. Raymond Randolph and Brett M. Kavanaugh directly addressed the practice of the Obama administration to pick and choose which laws to enforce, which to ignore and which to change to be in line with the ideology of the president.

### AT: GOP Backlash Link

#### The GOP likes it when Obama loses at the Court- NLRB proves.

Forbes 13 (Rick Ungar is a contributor to Forbes.com and the Washington Monthly where he writes on American health care policy and politics, Court Slaps Down Obama On NLRB Appointments-Decision Could Invalidate Hundreds Of Labor Decisions, Jan 25, http://www.forbes.com/sites/rickungar/2013/01/25/court-slaps-down-obama-on-nlrb-appointments-decision-could-invalidate-hundreds-of-labor-decisions/)

The Washington DC Court of Appeals has dealt the Obama administration an embarrassing blow by ruling that the President’s appointment of three members to the National Labor Relations Board was an unconstitutional exercise of presidential power.¶ The matter stems back to January 4, 2012, when President Obama appointed the new NLRB members—along with the appointment of Richard Cordray to head up the Consumer Financial Protection Bureau—while the Senate was away on its Christmas holiday. In making the appointments, the administration took the position that the Senate was in recess—thereby making it proper for the President to exercise his right to make recess appointments that are not subject to Senate confirmation.¶ However, the Court agreed with the argument put forth by a Washington state family owned business seeking to invalidate an NLRB ruling that went against the company. The company argued that, as the Senate was not technically in recess at the time of the appointments, the board had not been legally constituted and that a quorum did not exist. As such, any decision the board reached would be invalid.¶ Here’s how it all went down—¶ Senate Republicans had been working for months to deny Obama the ability to make the three appointments to the NLRB, effectively shutting down the board which Republicans believe favors labor in the disagreements that come before the panel.¶ Knowing the President would take advantage of any Senate recess to appoint his choices to the board through his constitutional power to make recess appointments—thereby putting the NLRB back into action—Republican members of the Senate sought to technically keep the doors open by gaveling sessions in and out every few days, even though there were no senators around and no business was being transacted. By keeping the Senate in “pro forma” session, the result would be to block Obama’s opportunity to make any recess appointments.¶ The President took the view that any effort to ‘technically’ keep the Senate in session was superseded by the fact that the Senate was, in reality, in recess.¶ The three judge Court of Appeals panel, all appointed by Republican presidents, disagreed with the President, holding that “Either the Senate is in session, or it is in the recess. If it has broken for three days within an ongoing session, it is not in ‘the Recess.’”¶ The court additionally held that the president could only fill vacancies with the recess appointment procedure if the openings arise when the Senate is in an official recess, which the court defined as the once-a-year break between sessions of Congress.¶ While the Administration has promised to appeal the decision to the United States Supreme Court, should the ruling be upheld, all decisions reached by the labor board since January, 2012 would be held to be invalid, creating a serious mess for the administration. Additionally, with only one remaining member of the National Labor Relations Board duly appointed and confirmed, the panel’s work would come to a complete halt pending appointment of new board members—appointments that are sure to test the new Senate filibuster rules put into effect this week.¶ Needless to say, Senate Republicans are ecstatic as demonstrated by GOP Minority Leader Mitch McConnell who said in a statement, “The D.C. Circuit Court today reaffirmed that the Constitution is not an inconvenience but the law of the land.” Additional Republican Senators have demanded that the Obama appointees on the NLRB resign at once, thus putting the board out of business.

### Don’t Link

#### Court decisions aren’t controversial.

O’Brien, prof- Virginia 00 (David O’Brien, Professor of Government and Foreign Affairs at the University of Virginia, Storm Center: The Supreme Court in American Politics, 2000, p. 348)

Most of the Court’s decisions attract s neither media nor widespread public attention. The public tends to identify with the Court’s institutional symbol as a temple of law rather than of politics—impartial and removed from the pressures of special partisan interests.

#### The court provides political cover- they get the blame not Obama.

Zotnick, law prof- RWU, 04

David M. Zlotnick, associate professor of law at the Roger Williams University School of Law, visiting professor of law at Washington College, Spring 2004, Roger Williams University Law Review, 9 Roger Williams U. L. Rev. 645, p. 684

On the federal level, the time has come to listen to the voices of reason. In a democracy that claims much of its strength from the power of an independent judiciary, we must heed the moment when its judges proclaim that democratically made laws are nevertheless morally flawed. While by rule and role, many judges feel compelled to restrain their voices, even small efforts may matter. Like the "Whos" of "Whoville" in the Dr. Suess classic, n196 sometimes all it takes is one more voice. Now that the Justices of the Supreme Court are weighing in more forcefully, these voices of conscience may be heard above the din of political posturing. Perhaps, too, these judicial voices will provide political cover to a courageous politician of either party willing to take on this issue. n197 Until that day, however, sentencing under the dual mandatory minimum and Guidelines regimes continues with prosecutors essentially serving as both partisan and judge. To federal judges, chosen for their experience and judgment, this makes a travesty of the justice they have sworn to uphold.

#### Court decisions shield presidents’ political capital

Altmann 2007 (Jennifer Greenstein, assistant editor at the Princeton Weekly Bulletin, News At Princeton, http://www.princeton.edu/main/news/archive/S18/17/72G06/?section=featured)

In his new book, "Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court and Constitutional Leadership in U.S. History," Whittington argues that in recent years the court has become the key player in an important political tussle: Who has the final say in constitutional matters? Whittington asserts that the court has become the final arbiter, but that status did not result from a power grab by the court. Its power, remarkably, has come from politicians, who have pushed onto the court the responsibility for making final rulings on constitutional matters because, paradoxically, it benefits the politicians. "Presidents are mostly deferential to the court," said Whittington. "They have pushed constitutional issues into the courts for resolution and encouraged others to do the same. That has led to an acceptance of the court's role in these issues." It seems counterintuitive that politicians would want to defer to the court on some of the most high-stakes decisions in government, but Whittington has found that they do so because the court often rules in the ways that presidents want — and provides politicians with the political cover they need. In 1995, the Clinton administration faced a proposal from the Senate to regulate pornography on the Internet. The president thought the bill was unconstitutional, but he didn't want to risk appearing lenient on such a hot-button issue right before he was up for re-election, Whittington said. Clinton signed the legislation with the hope that the Supreme Court would strike it down as unconstitutional, which it later did.

### Plan Drop in DC Circuit Bucket

#### **The plan is a drop in the bucket --**

#### **A. The DC Circuit has 1,500 pending cases alone – no individual case will sway**

Gordon, Senior Legislative Counsel, 7/31/2013 (Paul, People for the American Way, “Large and Diverse Group Urges Senators Not to Block DC Circuit Votes”, http://blog.pfaw.org/content/large-and-diverse-group-urges-senators-not-block-dc-circuit-votes)

In fact, the court has many more pending cases now than it did when the Senate confirmed George W. Bush nominees Janice Rogers Brown and Thomas Griffith to the 10th and 11th seats in 2005: According to the Administrative Office of United States Court, the D.C. Circuit had 1,456 pending cases as of March 31, 2013, as opposed to only 1,313 pending cases in May of 2005 when Brown and Griffith were confirmed The letter also explains that the DC Circuit's caseload is actually much heavier than numbers alone might suggest, due to the uniquely complex and challenging nature of the cases that it hears. Tomorrow, the Judiciary Committee will vote on Patricia Millett, the first of President Obama's three nominees. That may give us a sense as to how willing senators are to listen to the clearly expressed wish of the American people to put politics aside and allow our nation's courts to function properly.