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### Allied Cooperation

#### Advantage 1 is Allied Cooperation –

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

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

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

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

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

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

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

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

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

#### NATO prevents global nuclear war

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

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

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

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

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

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

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

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

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

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

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

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

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

### Imminence

#### Advantage 2- Imminence:

#### Executive control over the definition of “imminence” makes its scope totally unlimited- makes drone overuse and abuse inevitable.

Greenwald 13 (Glenn, J.D. from NYU, award-winning journalist, February 5th, 2013, "Chilling legal memo from Obama DOJ justifies assassination of US citizens," www.theguardian.com/commentisfree/2013/feb/05/obama-kill-list-doj-memo)

4. Expanding the concept of "imminence" beyond recognition The memo claims that the president's assassination power applies to a senior al-Qaida member who "poses an imminent threat of violent attack against the United States". That is designed to convince citizens to accept this power by leading them to believe it's similar to common and familiar domestic uses of lethal force on US soil: if, for instance, an armed criminal is in the process of robbing a bank or is about to shoot hostages, then the "imminence" of the threat he poses justifies the use of lethal force against him by the police. But this rhetorical tactic is totally misleading. The memo is authorizing assassinations against citizens in circumstances far beyond this understanding of "imminence". Indeed, the memo expressly states that it is inventing "a broader concept of imminence" than is typically used in domestic law. Specifically, the president's assassination power "does not require that the US have clear evidence that a specific attack . . . will take place in the immediate future". The US routinely assassinates its targets not when they are engaged in or plotting attacks but when they are at home, with family members, riding in a car, at work, at funerals, rescuing other drone victims, etc. Many of the early objections to this new memo have focused on this warped and incredibly broad definition of "imminence". The ACLU's Jameel Jaffer told Isikoff that the memo "redefines the word imminence in a way that deprives the word of its ordinary meaning". Law Professor Kevin Jon Heller called Jaffer's objection "an understatement", noting that the memo's understanding of "imminence" is "wildly overbroad" under international law. Crucially, Heller points out what I noted above: once you accept the memo's reasoning - that the US is engaged in a global war, that the world is a battlefield, and the president has the power to assassinate any member of al-Qaida or associated forces - then there is no way coherent way to limit this power to places where capture is infeasible or to persons posing an "imminent" threat. The legal framework adopted by the memo means the president can kill anyone he claims is a member of al-Qaida regardless of where they are found or what they are doing. The only reason to add these limitations of "imminence" and "feasibility of capture" is, as Heller said, purely political: to make the theories more politically palatable. But the definitions for these terms are so vague and broad that they provide no real limits on the president's assassination power. As the ACLU's Jaffer says: "This is a chilling document" because "it argues that the government has the right to carry out the extrajudicial killing of an American citizen" and the purported limits "are elastic and vaguely defined, and it's easy to see how they could be manipulated."

#### This broad definition of imminence has increased the frequency of attacks and the scope of who can be targeted, which decreases the program’s effectiveness because it reduces the ratio of high-value decapitations to accidental kills

Hudson 11 (Leila Hudson is associate professor of anthropology and history in the School of Middle Eastern & North African Studies at the University of Arizona and director of the Southwest Initiative for the Study of Middle East Conflicts, “Drone Warfare: Blowback From the New American Way of War,” Middle East Policy, <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>)

The Bush administration's increased reliance on the program started in 2008; however, it is with the Obama administration that we see the most rapid proliferation of attacks. The final phase of the drone program is characterized by an even greater increase in attack frequency and an expansion of the target list to include targets of opportunity and unidentified militants of dubious rank — and funerals.12 As of May 2011, the CIA under the Obama administration has conducted nearly 200 drone strikes. This suggests that the drone target list now includes targets of opportunity, likely including some selected in consultation with the Pakistani authorities in order to facilitate the increasingly unpopular program. This development, in turn, has now decreased the effectiveness of the program when assessed in terms of the ratio of high-value to accidental kills. As Figure 2 shows, the steady increase in drone attacks conducted in Pakistan between 2004 and 2010 has resulted in a far higher number of deaths overall, but a lower rate of successful killings of high-value militant leaders who command, control and inspire organizations. If we define a high-value target as an organizational leader known to intelligence sources and the international media prior to attack and not someone whose death is justified with a posthumous militant status, we see fewer and fewer such hits — the alleged killing of al-Qaeda commander Ilyas al-Kashmiri in 2009 and again in June 2011 notwithstanding.13 Data analysis shows that at the beginning of the drone program (2002-04), five or six people were killed for each defined high-value target. As part of that high-value target's immediate entourage, they were much more likely to be militants than civilians. By 2010, one high-value target was killed per 147 total deaths. The increased lethality of each attack is due to larger payloads, broader target sets such as funeral processions, and probable new targeting guidelines (including targets of opportunity).14 Over time, these more deadly drone attacks have failed to effectively decapitate the leadership of anti-U.S. organizations but have killed hundreds of other people subsequently alleged to be militants; many were civilians.15 The rapidly growing population of survivors and witnesses of these brutal attacks have emotional and social needs and incentives to join the ranks of groups that access and attack U.S. targets in Afghanistan across the porous border. Drone attacks themselves deliver a politically satisfying short-term "bang for the buck" for U.S. constituencies ignorant of and indifferent to those affected by drone warfare or the phenomenon of blowback. In the Pakistani and Afghan contexts, they inflame the populations and destabilize the institutions that drive regional development. In addition to taking on an unacceptable and extrajudicial toll in human life, the drone strikes in unintended ways complicate the U.S. strategic mission in Afghanistan, as well as the fragile relationship with Pakistan. As a result, the U.S. military's counterinsurgency project in Afghanistan becomes a victim of the first two forms of blowback.

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

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

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

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

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

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

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

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

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

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

#### Miscalculation means this could escalate to nuclear winter and extinction- this answers their defense

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

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

### Plan

#### Plan:  The United States Federal Judiciary should conduct judicial ex post review of United States’ targeted killing operations, with liability falling on the government for any constitutional violation, on the grounds that the political question doctrine should not bar justiciability of cases against the military.

### Political Question Doctrine

#### Invocation of the political question doctrine in national security contexts unravels attempts to apply civilian justice to the military—line drawing fails, only a clear signal solves

Vladeck 12 (Stephen, Professor of Law and Associate Dean for Scholarship, American University,

Washington College of Law, “THE NEW NATIONAL SECURITY CANON,” June 14, http://www.aulawreview.org/pdfs/61/61-5/Vladeck.website.pdf)

But if what in fact has taken place over the last decade is a testament to a longer-term pattern, one that neither the political branches nor the Supreme Court disrupt in the near future, then we must confront a more alarming possibility: that as these “national security”-based exceptions increasingly become the rule in contemporary civil litigation against government officers—whether with regard to new “special factors” under Bivens, new bases for contractor preemption under Boyle, proliferation of the political question doctrine, or even more expansive reliance upon the qualified immunity defense—the line between the unique national security justifications giving rise to these cases and ordinary civil litigation will increasingly blur. Thus, wherever one comes down on the virtues and vices of this new national security canon, perhaps the most important point to take away is the need to carefully cabin its scope. Otherwise, exceptions articulated in the guise of such unique fact patternss could serve more generally to prevent civil liability for government misconduct and to thereby dilute the effectiveness of judicial review as a deterrent for any and all unlawful government action—not just those actions undertaken in ostensibly in defense of the nation.

#### And, the plan’s repudiation of the PQD will not be limited to targeted killing—judges will be able to apply that rationale in future cases

Tokaji 12 (Daniel, Professor in Law at The Ohio State University Michael E. Moritz College of Law, with Owen Wolfe†, BAKER, BUSH, AND BALLOT BOARDS: THE FEDERALIZATION OF ELECTION ADMINISTRATION, <http://law.case.edu/journals/lawreview/documents/62CaseWResLRev4.3.Tokaji.pdf>)

Bush can be understood as the new Baker, in the sense that it opened the federal courts to election administration litigation, just as its predecessor opened the federal courts to districting litigation. So as to avoid any misunderstanding, let us first state two qualifications to this claim. First, we are not talking about citation counts. Baker has been cited many times by the Supreme Court and the lower courts in subsequent years.49 By contrast, the Supreme Court has been exceedingly reluctant to cite Bush v. Gore, and there are not a huge number of lower court cases that have cited the case either.50 Second, we are not talking about the intent of the Supreme Court, which was quite different in these two sets of cases. The Baker Court was quite conscious of the fact that it was opening the door, if not the floodgates, to litigation over legislative districts.51 The Bush Court, by contrast, seemed intent on shutting the door behind it, by limiting the principle upon which it sought to rely. This is most clearly evident in the Court’s statement that: Our consideration is limited to the present circumstances, for the problem of equal protection in election processes generally presents many complexities. The question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections.52 Some commentators have criticized these sentences for being unprincipled, in the sense of declaring a rule of law good for one day only.53 We disagree. What the Court did instead was to (1) assert an equal protection principle established by cases like Baker and Reynolds, variously characterized as “equal weight” to each vote and “equal dignity” to each voter and as valuing one person’s vote over another by "arbitrary and disparate treatment";54 (2) apply this principle to a new context, namely the recounting of punch card ballots in the State of Florida;55 and (3) conclude that this process contravened this basic equal protection principle, without clearly specifying its precise boundaries.56 In other words, the Court applied an established principle to a new area of law without specifying the precise legal test or how it will apply to future cases.57 The wording may be different, but the mode of analysis is not that unusual. In this respect. Bush bears comparison to what the Court did when it decided Baker and later Reynolds. The Court was certainly aware that it was entering the political thicket in Baker.58 It may have had a general rule of law in mind, but it did not specify its precise boundaries. And while Reynolds (like Bush) relies on a vaguely stated principle of law, variously defined as "one person, one vote"59 and an "equally effective voice in the election of members of [the] state legislature,"60 it too does not define the exact boundaries of this principle. The Court in Reynolds was aware that it was entering a new area without precisely specifying the bounds of the new equal protection rule it articulated. This is evident in Chief Justice Earl Warren's notes on the case. These notes, in the Chiefs handwriting, include thirty- four numbered, single sentence points on seven sheets of paper.61 The first reads: "There can be no formula for determining whether equal protection has been afforded."62 Another note, number twenty, reads: "Cannot set out all possibilities in any given case."63 In other words, the Court that decided Baker and Reynolds—like the Court that decided Bush—rested on a somewhat imprecisely stated principle, allowing for refinement in future cases presenting different facts. This also shows up in Chief Justice Warren’s opinion for the Reynolds majority, which declines to say exactly how close to numerical equality districts much be: For the present, we deem it expedient not to attempt to spell out any precise constitutional tests. . . . Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment.64 And later: We do not consider here the difficult question of the proper remedial devices which federal courts should utilize in state legislative apportionment cases. Remedial techniques in this new and developing area of the law will probably often differ with the circumstances of the challenged apportionment and a variety of local conditions.65 The similarity to Bush’s language is striking—and given that Reynolds is one of just four equal protection cases cited in Bush, 66 one wonders whether it was conscious. The Court stated a broad principle, declined to state precisely the test it was applying, and bracketed other cases presenting different circumstances, reserving them for another day. Of course, the Reynolds Court did provide some clarity in the one person, one vote cases that followed. So far, the current Court has failed to provide comparable clarity for election administration cases since Bush. And, in fact, in the most prominent election administration case to have arisen since then, Crawford v. Marion County Election Board, 67 the Court did not cite Bush at all. Again, we are not arguing that there is an exact parallel between Baker and Bush. Our claim is more modest: that there is an important similarity between the two cases in that both set the stage for an increased federal role in their respective realms, redistricting and election administration. While the Supreme Court has avoided Bush v. Gore like the plague—as others have noted, it has become the Voldemort of Supreme Court cases, “the case that must not be named”68—that does not mean the case has been without an impact. Indeed, the Supreme Court’s clear distrust of state institutions in Bush69 (which is also implicit in Baker) has apparently trickled down to the rest of the federal courts, who are now taking a more active role in state election disputes. As Professor Samuel Issacharoff has put it, Bush v. Gore declared that “federal courts were open for business when it came to adjudicating election administration claims.”70 Lower courts “relaxed rules regarding standing, ripeness, and . . . justiciability”71 in order to hear more election disputes. They allowed these cases to go to the front of the queue, often deciding them on an expedited basis in the weeks preceding an election. In some areas, like voting technology, election litigation led to changes in how elections are run, even in the absence of a binding decision on the merits.72

#### Scenario 1- Civil Military Relations

#### Judicial review and ending deference is key to CMR- executive and congressional action is not sufficient to check the military

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

In February 1958, Army Master Sergeant James B. Stanley, who was stationed at Fort Knox, Kentucky, volunteered to participate in a program to test the effectiveness of protective clothing and equipment against chemical warfare. Unknown to Stanley, he was secretly administered four doses of LSD as part of an Army plan to study the effects of the drug on human subjects. Stanley then allegedly began suffering from hallucinations and periods of memory loss and incoherence, which impaired his ability to perform military service and which led to his discharge from the Army and later a divorce from his wife. He discovered what he had undergone when the Army sent him a letter soliciting his cooperation in a study of the long-term effects of LSD on "'volunteers who participated' in the 1958 tests." After exhausting his administrative remedies, Stanley filed suit against the government in federal district court. 81 Stanley argued that in this case, his superiors might not have been superior military officers, as in Chappell, but rather civilians, and further that his injuries were not incident to military service, as in Feres, because his injuries resulted from secret experimentation. The federal district and appellate courts held that Stanley was not preempted by United States v. Chappell in asserting a claim under Bivens by limiting Chappell to bar actions against superior officers for wrongs that involve direct orders in the performance of military duties. In other words, the lower courts limited the reach of Chappell to only matters involving the performance of military duties and the discipline and order necessary to carry out such orders, which did not include surreptitious testing of dangerous drugs on military members. 82 The Supreme Court summarily disregarded the lower courts' attempt to differentiate the instant case from precedent because Stanley was on active duty and was participating in a "bona fide" Army program, therefore, his injuries were incident to service. With regard to the attempt to differentiate his case from Chappell, the Supreme Court conceded that some of the language in Chappell focusing on the officer-subordinate relationship would not apply to Stanley's case, but nevertheless ruled that the basis for Feres also applied and controlled in Bivens actions. Accordingly, the test was not [\*219] so much that an officer-subordinate relationship was involved, but rather an "incident to service" test. 83 The Court thus transplanted the Feres doctrine to govern and limit Bivens actions by military members. In overturning the lower courts' ruling, the Supreme Court again discussed the special factors that mandate hesitation of judicial interference. They also discussed the explicit constitutional assignment of responsibility to Congress of maintaining the armed forces in ruling that even this most egregious misconduct and complete lack of concern of human rights is not a basis upon which the pl–aintiff can seek damages in a court of law. Based upon this case and previous cases, military members are totally extricated from the general population and are subject to a lower standard that is not even contemplated for the remaining citizenry in matters of constitutional import. The Court expressly declined to adopt a test that would determine whether a case is cognizable based upon military discipline and decision making. Believing that such a test would be an intrusion of judicial inquiry into military matters, thereby causing problems by making military officers liable for explaining in court proceedings the details of their military commands and disrupting "the military regime," the Court adopted a virtual blanket of protection for military commanders. Because Congress had not invited judicial review by passing a statute authorizing such a suit by a military member, the Court was not going to intrude into military affairs left to the discretion of Congress. 84 In essence, the Court has constructed a military exception to the Constitution. Had the Court actually reviewed the facts presented by the cases discussed above, applied the tests that are normally applied to the type of cases presented, and then ruled in favor the military, they possibly still could have been criticized, but at least respected for actually conducting a meaningful judicial review of the presented cases. Completely changing constitutional principles in order to provide great deference with little to no inquiry is an abdication of the Court's responsibility and surrenders the rights of military members to the complete subjugation by Congress and the President. The question now presented is whether such an exception is appropriate in terms of civil-military relations. [\*220] The Efficacy of a Military Exception To The Constitution In Civil-Military Relations Does the lack of judicial protection strengthen or erode democratic civilian control at a time when some commentators express concern over the state of civil-military relations? The current hands-off approach by the judiciary in cases concerning or impacting military affairs presents a paradoxical dilemma for civil-military relations. Did the framers of the Constitution intend to establish civilian control over the military by giving plenary authority to two branches of the government to the exclusion of the third branch? 85 Can the military develop its own professionalism, which is essential to an objective civilian control, if the military is totally removed from society's system of judicial protection? Are the Foxes Going To Take Care Of The Hens When The Farmer Is Not Watching? On one hand, the eschewal of becoming involved in military affairs through judicial review of lawsuits concerning the military more completely subordinates the military to the constitutional authority of Congress and the President and, in essence, creates a "split Constitution." 86 The Congress and President thus can control the military virtually without concern about judicial interference, which will occur only under the most egregious circumstances, and can be assured that the military will not attempt to overturn their decisions and orders through judicial review 87 After all, should not the judiciary trust the Congress, a co-equal branch of government sworn, as is the judiciary, to uphold the Constitution? 88 On the other hand, the Constitution establishes certain basic rights for all Americans, regardless of position within society. In fact, the Constitution and laws that support the Constitution serve as the ultimate protector for the weakest of society who have no other means by which to thwart infringement of their rights. By the U.S. Supreme Court stating that the military is a separate society with specialized and complex concerns, and that the Constitution grants plenary authority over the military to the legislative and executive branches, military members are excluded from the protection of a society that depends upon their service. Moreover, they [\*221] are left to the mercy of a power that can act with impunity, notwithstanding Supreme Court prescription that the Congress and the President fulfill their awesome positions of trust in upholding the Constitution and subordinate laws to the greatest extent possible while acting to protect our national security through military affairs. By excluding military members from the same protections that their civilian counterparts enjoy, military members are subject to a much more severe form of government that does not contain the checks and balances that restrict government infringement upon rights. Would it indeed be so bad if the judiciary reviewed and decided lawsuits brought by military members on their merits? Would such oversight be an unreasonable intrusion wreaking havoc in the minds of military leaders? Have any such problems evolved in the federal government in the civilian sector where employees may file suits against the government in court? Empowering Objective Control By Removing Judicial Oversight The increase of the power exercised by the legislative and executive branches of our federal government by the decrease in the power of review by the judicial branch supports Professor Huntington's model of objective civilian control. 89 Rather than making the military a mirror of the state, such as in subjective control, the removal of judicial oversight provides the military with the autonomy to control their profession. At the same time, the total dependence of the military upon their civilian and military leaders as judge and jury creates an independent military sphere. Nevertheless, Huntington completely ignores the role of the judiciary in civil-military relations. Even when he addresses the separation of powers, which traditionally includes the relationship of the judiciary to the other branches, he only examines the role of the executive branch vis-a-vis the legislative branch. 90 The weakening of the influence of the judiciary over matters concerning the military produces an equivalent concomitant strengthening of the two primary branches of government charged with establishing, maintaining, and running the armed forces. More than merely strengthening the control by Congress and the President over the military, 91 the judiciary, in its current position, protects ~~her [\*222] sister~~ branches of government from outside interference of those who want to change or affect the military, such as those who seek judicial overturn of the DoD homosexual conduct policy, and from inside interference of those who seek to challenge the authority of their superiors. 92 In this vein, the judicial self-restraint in becoming an ombudsman for aggrieved military members who seek either damages, redress, or reversal of orders can be argued to produce a correlating increase in the strictness of good order and discipline of the armed forces. 93 Dissension is reduced to the point of a member either accepting the supremacy of those superior or separating from the military service for which they volunteered. The unquestioning loyalty produced squelches dissension within the military ranks and portrays the military as a single unit of uniformity committed to serving without question the national civilian leadership, thereby preserving the delicate balance between freedom and order. 94 In a speech on the Bill of Rights and the military at the New York University Law School in 1962, then-Chief Justice of the Supreme Court, Earl Warren, discussed how our country was created in the midst of deep and serious distrust of standing military forces. He then described the debate on how best to preserve civilian control of the military in the Constitution so that the military could never reverse its subordination to civilian authority. Finally, he declared that the military has embraced this concept as part of our rich tradition that "must be regarded as an essential constituent of the fabric of our political life." 95 Former Chief Justice Warren was correct that the military culture in the United States is completely imbued with the idea of civilian control. Recent events strongly evidence this core understanding of military members. When the Chief of Staff of the Air Force, General Fogelman, resigned from his position and retired because of a disagreement with the civilian Secretary of the Air Force over appropriate action to take in a particular case, he did so because he could do nothing else in protest. There is no doubt that Congress maintains and regulates the armed forces and that the President is Commander-in-Chief. Unfortunately, civilian control of the military has been confused with the non-interference with Presidential and Congressional control of the military, yet the Supreme Court is no less "civilian" than these other branches. Ironically, because of the [\*223] extensive delegation of authority from Congress and the President to the military hierarchy, the military itself has become all powerful in relation to its members. Unless the judiciary branch becomes involved, there is no civilian oversight of the military in the way it treats its members. This important civilian check on the military has been forfeited by the Court. With these realizations, the judiciary is wrong in avoiding inquiry into cases brought by military members. The military is not a complex, separate and distinct society. If it were, the danger of losing control would be greater. By characterizing it as such and giving the military leadership complete reign over subordinates in all matters, the judiciary ignores their responsibility to provide a check to military commanders and balance the rights of those subject to orders, which if not followed may lead to criminal charges. 96 A professional military, as envisioned by our nation's leaders and written about by Professor Huntington, can operate efficiently in a system that allows judicial review of actions brought by military members. Their professionalism will deter wrongs and will accept responsibility when wrongs are committed. Removing the military from the society that they serve by denying them judicial protection alienates the military and frustrates those who have no protection from wrongs other than the independent judiciary. The proper role of the judiciary in civil-military relations is to ensure that neither the legislative branch, the executive branch, nor the military violate their responsibility to care for and treat fairly the sons and daughters of our nation who volunteer for military service. When federal prisoners can file lawsuits for often frivolous reasons, but military members cannot enter a courtroom after being subjected to secret experimentation with dangerous, illegal drugs, something is wrong. When military members cannot seek redress even for discrimination or injury caused by gross negligence, civil-military relations suffer because the judiciary is not ensuring that the balance of power is not being abused.

CMR erosion collapses hegemony

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

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

Loss of mission effectiveness risks multiple nuclear wars

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

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

#### Advantage \_\_\_\_\_ is Warming –

#### The political question doctrine is killing climate litigation now

Koshofer 10/1/13 (Warren A., partner in the law firm of Michelman & Robinson, LLP and a member of the firm’s commercial and business litigation department, “Defending Climate Change Liability” <http://www.rmmagazine.com/2013/10/01/defending-climate-change-liability/>)

For almost a decade now, plaintiffs have tried to sue various industries for damages resulting from greenhouse gas emissions and climate change. In staving off such claims, defendants have employed two formidable primary defenses rooted in the doctrines of standing and political question. Through use of these and other defenses, defendants have been able to prevail time and again in climate change liability-related litigation. Flowing from Article III of the U.S. Constitution, the doctrine of standing limits the jurisdiction of federal courts to cases that, by necessity, must include: 1) an injury in fact to the plaintiff, 2) that was caused by the defendant, and 3) that is capable of being redressed by the court. If any of the conditions are not present, the plaintiff does not have standing to sue the defendant. The doctrine of standing thus focuses on whether there is a proper plaintiff before the court. The focus of the political question doctrine is different; it addresses whether a plaintiff presents a claim that can be adjudicated by the court without interfering with the business of any other branch or department of the U.S. government. Setting the stage for a defense rooted in the political question doctrine in climate change-related litigation was the 2007 U.S. Supreme Court decision in Massachusetts v. EPA. In that case, the Supreme Court ruled that the Environmental Protection Agency (EPA) is authorized to regulate greenhouse gas emissions through the Clean Air Act. Consequently, courts have since used the political question doctrine to bar plaintiff’s liability claims for damages allegedly resulting from climate change. For example, in 2011, the Supreme Court held in American Electric Power v. Connecticut that corporations cannot be sued for damages allegedly resulting from greenhouse gas emissions because, among other reasons, the Clean Air Act delegates the management of carbon dioxide and other greenhouse gas emissions to the EPA. Among the more noteworthy of the climate change litigation cases is Comer v. Murphy Oil. Brought by plaintiffs in the aftermath of Hurricane Katrina, Mississippi Gulf residents sued numerous energy companies alleging that their emissions of greenhouse gases exacerbated the severity of the hurricane. The district court dismissed the case, finding that the plaintiffs had no standing to bring the claims, which ranged from public and private nuisance to trespass and negligence to fraudulent misrepresentation and conspiracy. The plaintiffs tried to re-file the case, but it was dismissed by the U.S. Court of Appeals for the Fifth Circuit in May. The Supreme Court is currently considering a petition to review the case, but it is widely believed that there is little likelihood of the petition being granted. Part of this belief is rooted in the Supreme Court’s treatment of a another climate change litigation case. In Native Village of Kivalina v. ExxonMobil Corp., the Alaskan shore village of Kivalina sued a group of energy companies operating in the region, alleging that their greenhouse gas emissions were causing polar ice to melt, sea levels to rise and the shoreline land of the village to erode at a rapid pace. Similar to the Comer decision in 2012, a district court held that the plaintiffs lacked standing because they could not demonstrate that any of their alleged injuries could be traced back to the defendants’ actions. The U.S. Court of Appeals for the Ninth Circuit agreed, and also addressed the political question doctrine defense, ruling that, based on the Supreme Court precedent set in American Electric Power v. Connecticut, “We need not engage in complex issue and fact-specific analysis in this case, because we have direct Supreme Court guidance that has already determined that Congress has directly addressed the issue of domestic greenhouse gas emissions from stationary sources and has therefore displaced federal common law.” By all accounts, then, it seems the defendants in climate change litigation will continue to prevail in court. The bad news for defendants, however, is that climate change-related litigation still exists, and it is expensive to defend. Once named in climate change-related litigation, a defendant often turns to its commercial general liability insurer for defense and indemnification. The trouble is that the allegations made in climate change-related litigation do not always trigger an insurer’s defense and indemnification duties.

#### Climate change litigation is key to solving global warming – 3 warrants

Flynn 13 (James, J.D. Candidate, 2013, Georgia State University College of Law; Assistant Legislation Editor, Georgia State University Law Review; Visiting Student, Florida State University College of Law, “CLIMATE OF CONFUSION: CLIMATE CHANGE LITIGATION IN THE WAKE OF AMERICAN ELECTRIC POWER V. CONNECTICUT”, lexis, accessed 1/5/2014)

2. Turning Up the Heat on Congress: Litigating to Legislate The only solution to anthropogenic global warming is a concerted global effort. 264 Such an effort cannot succeed without the leadership, or at least support, of the United States. 265 Real change in the United States requires comprehensive legislation that covers all facets of global warming: greenhouse gas emissions, land use, efficiency, and sustainable growth. In addition to maximizing time until the EPA either issues regulations or is prevented from doing so by Congress, litigation advances the goal of such comprehensive legislation in three ways. First, litigation keeps the pressure on fossil fuel companies and other large emitters. Comprehensive legislation is a near impossibility as long as the largest contributors to global greenhouse gas emissions are able to exert powerful control over the nation's [\*862] energy policy and the climate change discussion. 266 While the companies have the financial resources to battle in court, it is imperative that advocates and states make them do so. One need only look at the tobacco litigation of the 1960s through the 1990s to understand that success against a major industry is possible. 267 Here, though, the stakes are even higher. The chances of obtaining a largescale settlement from the fossil fuel industry is likely smaller now that the Court has ruled that some federal common law nuisance claims are displaced, because lower courts may hold that nuisance claims for money damages are also displaced. 268 However, advocates of climate change legislation should keep trying to obtain such a settlement through other tort remedies. A substantially damaging settlement may encourage fossil fuel companies to reposition their assets into more sustainable technologies to avoid more settlements, thus minimizing future emissions. Alternatively, if the fossil fuel companies feel threatened enough, they may begin to use their clout to persuade Congress to pass comprehensive legislation to protect their industry from such wide-ranging suits. 269 Second, litigation keeps the issue in the public consciousness during a time when the media is failing at its responsibilities to the public. 270 The media's coverage of climate change has been both inadequate and misleading. 271 Indeed, some polls suggest Americans [\*863] believe less in climate change now than just a few years ago. 272 Litigation, especially high-profile litigation, forces the issue into the public sphere, even though it may receive a negative connotation in the media. The more the public hears about the issue, the greater chance that people will demand their local and state politicians take action. Finally, litigation sends a clear message to Congress that simple appeasements will not suffice. 273 Comprehensive legislation is needed--legislation that mandates consistently declining emissions levels while simultaneously propping up replacement sources of energy. 274 Fill-in measures, like the EPA's authority to regulate emissions from power plants, are not sufficient. Humans need energy, and there can be no doubt that we must strike a balance between energy needs and risks to the environment. Catastrophic climate change, however, is simply a risk that we cannot take; it overwhelms the short-term benefits we receive from the burning of fossil fuels. 275 Advocates and states must demonstrate to Congress [\*864] through continuing litigation that the issue is critical and that plaintiffs like those in Kivalina and Comer are suffering genuine losses that demand redress that current statutes do not currently provide. CONCLUSION American Electric proved less important for the precedent it set than for the questions it left unanswered. While courts wrestled over standing, the political question doctrine, and displacement in climate change nuisance cases in the years preceding American Electric, the Supreme Court relied only on the clear displacement path illuminated by its earlier decision in Massachusetts. While the decision in American Electric narrowed the litigation options that climate change advocates have at their disposal, it subtly sent a message to Congress that greater federal action is needed. In writing such a narrow ruling, Justice Ginsburg also sent a message to states and advocates--whether intentionally or not--that climate change litigation is not dead. Until Congress enacts comprehensive climate change legislation, global warming lawsuits will, and must, continue.

#### And climate litigation solves internationally – produces international norms and cooperation

Long 8 (Andrew Long, Professor of Law @ Florida Coastal School of Law “International Consensus and U.S. Climate Change Litigation,” 33 Wm. & Mary Envtl. L. & Pol'y Rev. 177)

1. Enhancing U.S. International Leadership In a time of unfavorable global opinion toward the United States, explicit judicial involvement with international norms will move the United States **closer to the international community** by acknowledging the relevance of international environmental norms for our legal system. As in other contexts, explicit **judicial internalization of climate change norms would "build**[ ] **U.S. 'soft power,**' [enhance] its moral authority, and strengthen[ ] U.S. capacity for global leadership"2 °3 on climate change, and other global issues. More specifically, domestic judicial consideration of the global climate regime would reaffirm that although the United States has rejected Kyoto, we take the obligation to respect the global commons seriously by recognizing that obligation as a facet of the domestic legal system. U.S. courts' overall failure to interact with the international climate regime, as in other issue areas, has "serious consequences for their roles in international norm creation."2" As judicial understandings of climate change law converge, the early and consistent contributors to the transnational judicial dialogue will likely play the strongest role in shaping the emerging international normative consensus.2"' As Justice L'Heureux- Dube of the Canadian Supreme Court noted in an article describing the decline of the U.S. Supreme Court's global influence, "[decisions which look only inward ... have less relevance to those outside that jurisdiction." °6 Thus, if U.S. courts hope to participate in shaping the normative position on climate change adopted by judiciaries throughout the world, explicit recognition of the relationship between domestic and international law is vital. With climate change in particular, norm development through domestic application should be an important aspect of global learning. The problem requires a global solution beyond the scope of any prior multilateral environmental agreements. This provides a situation in which U.S. judicial reasoning in applying aspects of climate regime thinking to concrete problems will fall into fertile international policy soil. Accordingly, the recognition of international norms in **domestic climate change litigation may play a strengthening role in the perception of U.S. leadership**, encourage U.S. development and exportation of effective domestic climate strategies, and promote international agreements that will enhance consistency with such approaches. In short, explicit judicial discussion of international climate change norms as harmonious with U.S. law can **enhance U.S. ability to regain** a **global leadership** position on the issue and, thereby, more significantly shape the future of the international climate regime. 2. Promoting the Effectiveness of the International Response Along with promoting U.S. interests and standing in the international community, climate change litigation has a direct role to play in developing the international regime if courts directly engage that regime." 7 Just as the United States as an actor may benefit from acknowledging and applying international norms, the regime in which the actions occur will benefit through application and acceptance. Indeed, a case such as Massachusetts v. EPA that directly engages only domestic law can nonetheless be understood to impact international lawmaking by considering its actors."' More important, however, will be cases in which the domestic judiciary gives life to international agreements through direct engagement-a "role [that] is particularly important as a check on the delegitimization of international legal rules that are not enforced."" 9 Assuming, as we must in the arena of climate change, that international law can only effect significant changes in behavior through penetration of the domestic sphere, domestic litigation that employs international law not only provides an instance in which the international appears effective but, more importantly, molds it into a shape that will enable further use in domestic cases or suggest necessary changes internationally. By engaging the international, domestic cases can also provide articulation for the norms that have emerged. The precise meaning of the UNFCCC obligation that nations take measures must be hammered out on the ground. In the United States, if Congress has not acted, it is appropriate for the courts to begin this process by measuring particular actions against the standard. 3. Encouraging Consistency in Domestic Law and Policy In the absence of national climate change law and policy, explicit discussion of international sources and norms in litigation will provide a well-developed baseline for a uniform judicial approach in the domestic realm. This could occur both within and beyond the United States. Within the United States, bringing international environmental law into the mix of judicial reasoning would provide common grounding that unifies the decisions and begins to construct a more systematic preference for development of an effective legal response to international threats. Specifically, if an international climate change norm is found relevant to interpretation of a domestic statute, reference will be appropriate to that norm when future questions of interpretation of the domestic statute arise.210 Thus, to the extent that climate change cases rely upon consensus concerning the scientific evidence of climate change, future cases should use that consensus as a measuring stick for claims of scientific uncertainty.2n The same can occur with norm development. For example, had the Court in Massachusetts tied its jurisdictional or substantive holding to an identifiable norm, the opinion would have greater clarity and value as a precedent in other contexts within the United States. Outside the United States, this approach would provide value to other, more transnationally oriented domestic courts.212 This would serve a norm entrepreneurship function and likely increase agreement among domestic courts on how to approach climate change issues raised under statutes designed for other purposes. 4. Enabling a Check at the Domestic-International Interface Finally, climate change litigation has something to offer for the growth of administrative law at the interface of domestic and international law. At least two points are noteworthy. First, U.S. courts can serve a unique function of providing legal accountability for U.S. failure to honor its UNFCCC commitments.213 Although this might be achieved implicitly, arguably the approach of Massachusetts, doing so explicitly would provide a check of a different magnitude. An explicit check here would serve the purposes identified above, as well as offering the practical benefit of increasing compliance. The dualist tradition, and perhaps concerns of domestic political backlash, weigh against grounding a decision solely in the UNFCC. However, looking to it as a major point in a narrative defining the development of a partly domestic obligation to take national action for the redress of climate change would serve the same beneficial purpose. This approach has the advantage of building a significant bridge over the dualist divide between domestic and international law without ripping the Court's analysis from traditional, dualist moorings. Pg. 212-216

#### Warming causes extinction

Don Flournoy 12, Citing Feng Hsu, PhD NASA Scientist @ the Goddard Space Flight Center and Don is a PhD and MA from UT, former Dean of the University College @ Ohio University, former Associate Dean at SUNY and Case Institute of Technology, Former Manager for University/Industry Experiments for the NASA ACTS Satellite, currently Professor of Telecommunications @ Scripps College of Communications, Ohio University, “Solar Power Satellites,” January 2012, Springer Briefs in Space Development, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleagues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of theworld’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010).

#### Warming is real and anthropogenic, need to cut emissions adaptation can’t solve. Our science is watertight and theirs is garbage.

Harvey 2013

Fiona, Guardian Environment Reporter, IPCC climate report: human impact is 'unequivocal', September 27 2013, http://www.theguardian.com/environment/2013/sep/27/ipcc-climate-report-un-secretary-general

World leaders must now respond to an "unequivocal" message from climate scientists and act with policies to cut greenhouse gas emissions, the United Nations secretary-general urged on Friday. Introducing a major report from a high level UN panel of climate scientists, Ban Ki-moon said, "The heat is on. We must act." The world's leading climate scientists, who have been meeting in all-night sessions this week in the Swedish capital, said there was no longer room for doubt that climate change was occurring, and the dominant cause has been human actions in pouring greenhouse gases into the atmosphere. In their starkest warning yet, following nearly seven years of new research on the climate, the Intergovernmental Panel on Climate Change (IPCC) said it was "unequivocal" and that even if the world begins to moderate greenhouse gas emissions, warming is likely to cross the critical threshold of 2C by the end of this century. That would have serious consequences, including sea level rises, heatwaves and changes to rainfall meaning dry regions get less and already wet areas receive more. In response to the report, the US secretary of state, John Kerry, said in a statement: "This is yet another wakeup call: those who deny the science or choose excuses over action are playing with fire." "Once again, the science grows clearer, the case grows more compelling, and the costs of inaction grow beyond anything that anyone with conscience or commonsense should be willing to even contemplate," he said. He said that livelihoods around the world would be impacted. "With those stakes, the response must be all hands on deck. It's not about one country making a demand of another. It's the science itself, demanding action from all of us. The United States is deeply committed to leading on climate change." In a crucial reinforcement of their message – included starkly in this report for the first time – the IPCC warned that the world cannot afford to keep emitting carbon dioxide as it has been doing in recent years. To avoid dangerous levels of climate change, beyond 2C, the world can only emit a total of between 800 and 880 gigatonnes of carbon. Of this, about 530 gigatonnes had already been emitted by 2011. That has a clear implication for our fossil fuel consumption, meaning that humans cannot burn all of the coal, oil and gas reserves that countries and companies possess. As the former UN commissioner Mary Robinson told the Guardian last week, that will have "huge implications for social and economic development." It will also be difficult for business interests to accept. The central estimate is that warming is likely to exceed 2C, the threshold beyond which scientists think global warming will start to wreak serious changes to the planet. That threshold is likely to be reached even if we begin to cut global greenhouse gas emissions, which so far has not happened, according to the report. Other key points from the report are: • Atmospheric concentrations of carbon dioxide, methane and nitrous oxide are now at levels "unprecedented in at least the last 800,000 years." • Since the 1950's it's "extremely likely" that human activities have been the dominant cause of the temperature rise. • Concentrations of CO2 and other greenhouse gases in the atmosphere have increased to levels that are unprecedented in at least 800,000 years. The burning of fossil fuels is the main reason behind a 40% increase in C02 concentrations since the industrial revolution. • Global temperatures are likely to rise by 0.3C to 4.8C, by the end of the century depending on how much governments control carbon emissions. • Sea levels are expected to rise a further 26-82cm by the end of the century. • The oceans have acidified as they have absorbed about a third of the carbon dioxide emitted. Thomas Stocker, co-chair of the working group on physical science, said the message that greenhouse gases must be reduced was clear. "We give very relevant guidance on the total amount of carbon that can't be emitted to stay to 1.5 or 2C. We are not on the path that would lead us to respect that warming target [which has been agreed by world governments]." He said: "Continued emissions of greenhouse gases will cause further warming and changes in all components of the climate system. Limiting climate change will require substantial and sustained reductions of greenhouse gas emissions." Though governments around the world have agreed to curb emissions, and at numerous international meetings have reaffirmed their commitment to holding warming to below 2C by the end of the century, greenhouse gas concentrations are still rising at record rates. Rajendra Pachauri, chair of the IPCC, said it was for governments to take action based on the science produced by the panel, consisting of thousands of pages of detail, drawing on the work of more than 800 scientists and hundreds of scientific papers. The scientists also put paid to claims that global warming has "stopped" because global temperatures in the past 15 years have not continued the strong upward march of the preceding years, which is a key argument put forward by sceptics to cast doubt on climate science. But the IPCC said the longer term trends were clear: "Each of the last three decades has been successively warmer at the Earth's surface than any preceding decade since 1850 in the northern hemisphere [the earliest date for reliable temperature records for the whole hemisphere]." The past 15 years were not such an unusual case, said Stocker. "People always pick 1998 but [that was] a very special year, because a strong El Niño made it unusually hot, and since then there have been some medium-sized volcanic eruptions that have cooled the climate." But he said that further research was needed on the role of the oceans, which are thought to have absorbed more than 90% of the warming so far. The scientists have faced sustained attacks from so-called sceptics, often funded by "vested interests" according to the UN, who try to pick holes in each item of evidence for climate change. The experts have always known they must make their work watertight against such an onslaught, and every conclusion made by the IPCC must pass scrutiny by all of the world's governments before it can be published. Their warning on Friday was sent out to governments around the globe, who convene and fund the IPCC. It was 1988 when scientists were first convened for this task, and in the five landmark reports since then the research has become ever clearer. Now, scientists say they are certain that "warming in the climate system is unequivocal and since 1950 many changes have been observed throughout the climate system that are unprecedented over decades to millennia." That warning, from such a sober body, hemmed in by the need to submit every statement to extraordinary levels of scrutiny, is the starkest yet. "Heatwaves are very likely to occur more frequently and last longer. As the earth warms, we expect to see currently wet regions receiving more rainfall, and dry regions receiving less, although there will be exceptions," Stocker said. Qin Dahe, also co-chair of the working group, said: "As the ocean warm, and glaciers and ice sheets reduce, global mean sea level will continue to rise, but at a faster rate than we have experienced over the past 40 years." Prof David Mackay, chief scientific adviser to the Department of Energy and Climate Change, said: "The far-reaching consequences of this warming are becoming understood, although some uncertainties remain. The most significant uncertainty, however, is how much carbon humanity will choose to put into the atmosphere in the future. It is the total sum of all our carbon emissions that will determine the impacts. We need to take action now, to maximise our chances of being faced with impacts that we, and our children, can deal with. Waiting a decade or two before taking climate change action will certainly lead to greater harm than acting now."

#### Warming will happen faster than they think, makes adaptation impossible and extinction likely.

Jamail 2013

Dahr, independent journalist, is the author of the just-published Beyond the Green Zone: Dispatches from an Unembedded Journalist in Occupied Iraq, citing tons of super qualified people, “The Great Dying” redux? Shocking parallels between ancient mass extinction and climate change, Salon, December 2013, http://www.salon.com/2013/12/17/the\_great\_dying\_redux\_shocking\_parallels\_between\_ancient\_mass\_extinction\_and\_climate\_change\_partner/

Climate-change-related deaths are already estimated at five million annually, and the process seems to be accelerating more rapidly than most climate models have suggested. Even without taking into account the release of frozen methane in the Arctic, some scientists are already painting a truly bleak picture of the human future. Take Canadian Wildlife Service biologist Neil Dawe, who in August told a reporter that he wouldn’t be surprised if the generation after him witnessed the extinction of humanity. All around the estuary near his office on Vancouver Island, he has been witnessing the unraveling of “the web of life,” and “it’s happening very quickly.” “Economic growth is the biggest destroyer of the ecology,” Dawe says. “Those people who think you can have a growing economy and a healthy environment are wrong. If we don’t reduce our numbers, nature will do it for us.” And he isn’t hopeful humans will be able to save themselves. “Everything is worse and we’re still doing the same things. Because ecosystems are so resilient, they don’t exact immediate punishment on the stupid.” The University of Arizona’s Guy McPherson has similar fears. “We will have very few humans on the planet because of lack of habitat,” he says. Of recent studies showing the toll temperature increases will take on that habitat, he adds, “They are only looking at CO2 in the atmosphere.” Here’s the question: Could some version of extinction or near-extinction overcome humanity, thanks to climate change — and possibly incredibly fast? Similar things have happened in the past. Fifty-five million years ago, a five degree Celsius rise in average global temperatures seems to have occurred in just 13 years, according to a study published in the October 2013 issue of the Proceedings of the National Academy of Sciences. A report in the August 2013 issue of Science revealed that in the near-term Earth’s climate will change 10 times faster than at any other moment in the last 65 million years. “The Arctic is warming faster than anywhere else on the planet,” climate scientist James Hansen has said. “There are potential irreversible effects of melting the Arctic sea ice. If it begins to allow the Arctic Ocean to warm up, and warm the ocean floor, then we’ll begin to release methane hydrates. And if we let that happen, that is a potential tipping point that we don’t want to happen. If we burn all the fossil fuels then we certainly will cause the methane hydrates, eventually, to come out and cause several degrees more warming, and it’s not clear that civilization could survive that extreme climate change.” Yet, long before humanity has burned all fossil fuel reserves on the planet, massive amounts of methane will be released. While the human body is potentially capable of handling a six to nine degree Celsius rise in the planetary temperature, the crops and habitat we use for food production are not. As McPherson put it, “If we see a 3.5 to 4C baseline increase, I see no way to have habitat. We are at .85C above baseline and we’ve already triggered all these self-reinforcing feedback loops.” He adds: “All the evidence points to a locked-in 3.5 to 5 degree C global temperature rise above the 1850 ‘norm’ by mid-century, possibly much sooner. This guarantees a positive feedback, already underway, leading to 4.5 to 6 or more degrees above ‘norm’ and that is a level lethal to life. This is partly due to the fact that humans have to eat and plants can’t adapt fast enough to make that possible for the seven to nine billion of us — so we’ll die.” If you think McPherson’s comment about lack of adaptability goes over the edge, consider that the rate of evolution trails the rate of climate change by a factor of 10,000, according to a paper in the August 2013 issue of Ecology Letters. Furthermore, David Wasdel, director of the Apollo-Gaia Project and an expert on multiple feedback dynamics, says, “We are experiencing change 200 to 300 times faster than any of the previous major extinction events.” Wasdel cites with particular alarm scientific reports showing that the oceans have already lost 40% of their phytoplankton, the base of the global oceanic food chain, because of climate-change-induced acidification and atmospheric temperature variations. (According to the Center for Ocean Solutions: “The oceans have absorbed almost one-half of human-released CO2 emissions since the Industrial Revolution. Although this has moderated the effect of greenhouse gas emissions, it is chemically altering marine ecosystems 100 times more rapidly than it has changed in at least the last 650,000 years.”) “This is already a mass extinction event,” Wasdel adds. “The question is, how far is it going to go? How serious does it become? If we are not able to stop the rate of increase of temperature itself, and get that back under control, then a high temperature event, perhaps another 5-6 degrees [C], would obliterate at least 60% to 80% of the populations and species of life on Earth.”

#### Litigation is sufficient to solve effective energy regulation on carbon emissions

Osofsky 11 (Hari M., Ph.D. in Law @ the University of Minnesota Law School, “The Role of Climate Change Litigation in Establishing the Scale of Energy Regulation,” Annals of the Association of American Geographers, 101:4, 775-782)

Implications of Rescaling Through Litigation for the Challenges of Energy Regulation This section draws from the legal dynamic federal- ism literature and the geography literature on scale to explore how the rescaling function of climate change litigation can assist with energy' regulation's challenges. These two streams of scholarship have significant syn- ergies. The dynamic federalism literature argues that models that create more fluid allocation of regulatory authority grapple with complex problems like energy and climate change more effectively than rigid demar- cations do (Osofsky 2005; Engel 2006; Ruhl and Sab- man 2010). The geography literature focusing on issues of fixity and fluidity in scale engages the complex re- lationships that cross-cut particular levels (Delaney C\* Leitner 1997; Swyngedouw 1997; Brenner 1998; Cox 1998; Judd 1998; Smith 1998; Martin 1999; Paasi 2004; Wood 2005; Osofsky 2009, 2010a). Cox's exploration of a network theory of scale, in particular, helps to cap- ture the dynamic nature of relationships among the ties to a particular level and movement among levels (Cox 1998; Osofsky 2009). These dual insights regarding the need for fluid reg- ulatory approaches and the cross-scalar quality of be- havior taking place at particular levels illuminate the role that this litigation does and can play in advanc- ing more effective energy regulation. First, litigation provides a mechanism for bringing greater fluidity into legal interactions, which helps create needed move- ment across scales and spaces (Osofsky 2009, 2010a). Although the four case examples varied significantly, they all provided opportunities for scalar contestation among a wide range of actors and a moment at which legal scale disputes were resolved. Although this reso- lution might not always favor the proregulatory stance, as it did in these four cases, litigation's opportunity for contestation helps to overcome the scalar and spatial fixity of law that makes effective energy regulation so difficult. Second, the lawsuits allow for simultaneous inter- actions within and across levels of governance. In so doing, they create regulatory diagonals that assist in reordering a landscape dominated by horizontal inter- actions at a particular level and vertical interactions among key actors and institutions at different levels. As the four case examples demonstrate, these diag- onal interactions vary in different lawsuits and over time along the dimensions of size (large vs. small), axis (vertical vs. horizontal), hierarchy (top-down vs. bottom-up), and cooperativeness (cooperation vs. con- flict). For example, the first two conflicts evolved from small-scale actors uniting horizontally and pushing in a conflictual fashion vertically from the bottom up for legal change into larger scale, top-down, coopera- tive policy scheme (Osofsky forthcoming). This evolv- ing diagonal regulatory function makes these lawsuits a helpful tool in crafting more effective cross-cutting regulation. Moreover, the fluidity and diagonal interactions that these lawsuits bring to energy' regulation have broader implications for future executive and legislative action. The Obama administration has continuing opportu- nities as it attempts to green energy policy to create lawmaking processes that maximize fluidity and possi- bilities for diagonal interactions. It has already made strides on this score, such as through the process it used to craft the National Program or through the Clean Energy Leadership Group the EPA has established, but further opportunities abound (Osofsky forthcoming). Law and geography analyses, like the one in this arti- cle, help to frame how such approaches might be crafted most effectively within the constraints of law's fixity. Geography's deep engagement of fixity and fluidity, to- gether with dynamic federalism's rigorous exploration of institutional possibilities, can provide the basis for creative, cross-cutting policy approaches that engage the complexities of scale. Such creativity is needed in the face of the significant challenges facing green energy regulation.

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## \*\*\*NATO

#### Interoperability within NATO ensures global trade and prevents cyber attacks

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

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

#### Cyber causes nuclear war

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

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

## \*\*\*Warming

#### Warming suppresses plant growth and reduces crop yield --- turns their impacts --- best system analysis proves

Yan et. al. 11—The CAS/Shandong Provincial Key Laboratory of Coastal Environmental Process, Yantai Institute of Coastal Zone Research, Chinese Academy of Sciences (CAS), Yantai, China & Professor @ State Key Laboratory of Crop Biology, Shandong Agriculture University, Tai'an, China—AND P. Chen, The CAS/Shandong Provincial Key Laboratory of Coastal Environmental Process, Yantai Institute of Coastal Zone Research, Chinese Academy of Sciences (CAS), Yantai, China & Professor @ The Graduate University of Chinese Academy of Sciences (CAS), Beijing, China—AND H. Shao, The CAS/Shandong Provincial Key Laboratory of Coastal Environmental Process, Yantai Institute of Coastal Zone Research, Chinese Academy of Sciences (CAS), Yantai, China & Professor @ Institute of Life Sciences, Qingdao University of Science & Technology, Qingdao, China—AND S. Zhao, State Key Laboratory of Crop Biology, Shandong Agriculture University, Tai'an, China—AND L. Zhang, L. Zhang, and G. Xu, The CAS/Shandong Provincial Key Laboratory of Coastal Environmental Process, Yantai Institute of Coastal Zone Research, Chinese Academy of Sciences (CAS), Yantai, China—AND J. Sun, The CAS/Shandong Provincial Key Laboratory of Coastal Environmental Process, Yantai Institute of Coastal Zone Research, Chinese Academy of Sciences (CAS), Yantai, China and Professor @ The Graduate University of Chinese Academy of Sciences (CAS), Beijing, China (K, “Responses of Photosynthesis and Photosystem II to Higher Temperature and Salt Stress in Sorghum,” Journal of Agronomy and Crop Science, Vol. 198, Iss. 3, Wiley Library, DA: 6/25/2012//JLENART)

Owing to greenhouse effect, global surface temperature is predicted to continue to increase in the future (IPCC, 2007). Elevated temperature suppresses plant growth and reduces crop yield, which can aggravate the food crisis in the world, particularly in the developing countries (Battisti and Naylor 2009, Prasad et al. 2011). Photosynthesis is highly sensitive to high temperature, and PSII is considered as the most heat-sensitive component of the photosynthetic apparatus (Berry and Bjorkman 1980, Haldimann and Feller 2004, Dias et al. 2011). PSII, as a subtle and complex system, consists of antenna pigment, reaction centre, oxygen-evolving complex in the donor side and electron transport in the acceptor side, and all these components tend to be damaged under high temperature (Wahid et al. 2007, Allakhverdiev et al. 2008). Recently, JIP test has been recognized as a powerful and acute tool to investigate the behaviour of PSII in crops under environmental stress (Yang et al. 2007, Rapacz et al. 2008, 2010, Yan et al. 2008, Li et al. 2009). It was shown by using JIP test that components of PSII possessed different heat sensitivity (Wen et al. 2005, Jiang et al. 2006, Li et al. 2009, Mathur et al. 2011, Yan et al. 2011).

#### Warming stops photosynthesis and destroys carbon sinks --- that destroys any benefits of CO2 on agriculture

Cox et. al. 11—head of climate, chemistry, and ecosystems at the Hadley Centre for Climate Prediction and Research, the Met Office, in Exeter, UK—AND Richard A. Betts, Head of the Climate Impacts strategic area at the Met Office Hadley Centre in Exeter, UK—AND Chris D. Jones, worker at Met Office Hadley Center in Exeter, UK—AND Steven A. Spall, worker at Met Office Hadley Center in Exeter, UK—AND Ian D. Totterdell, worker at Met Office Hadley Center in Exeter, UK (Peter, “Acceleration of Global Warming due to Carbon-Cycle Feedbacks in a Coupled Climate System,” *The Warming Papers*, edited by David Archer and Raymond Pierrehumbert, Google Books, DA: 6/24/2012//JLENART)

The simulated atmospheric CO2 diverges much more rapidly from the standard IS92a concentration scenario in the future. First, vegetation carbon in South America begins to decline, as a drying and warming of Amazonia initiates loss of forest (Fig. 4a). This is driven purely by climate change, as can be seen by comparing the fully coupled run (red lines) to run without global warming (blue lines). The effects of anthropogenic deforestation on land-cover are neglected in both cases. A second critical point is reached at about 2050, when the land biosphere as a whole switches from being a weak sink for CO2 to being a strong source (Fig. 2). The reduction in terrestrial carbon from around 2050 onward is associated with a widespread climate-driven loss of soil carbon (Fig. 4b). An increase in the concentration of atmospheric CO2 alone tends to increase the photosynthesis and thus terrestrial carbon storage, provided that other resources are not limiting. However, plant maintenance and soil respiration rates both increase with temperature. As a consequence, climate warming (the indirect effect of a CO2 increase) tends to reduce terrestrial carbon storage, especially in the warmer regions where an increase in temperature is not beneficial for photosynthesis. At low CO2 concentrations the direct effect of CO2 dominates, and both vegetation and soil carbon increase with atmospheric CO2. But as CO2 increases further, terrestrial carbon begins to decrease, because the direct effect of CO2 on photosynthesis saturates but the specific soil respiration rate continues to increase with temperature. The transition between these two regimes occurs abruptly at around 2050 in this experiment (Figure 4b). The carbon stored on land decreases by about 170Gt C from 2000 to 2100, accelerating the rate of atmospheric CO2 increase over this period.

## \*\*\*Offcase

### 2AC T Restrictions

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

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

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

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

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

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

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

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

553 U.S. 723.

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

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

That’s why, even though [I disagree](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) with the [DOJ white paper](http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf) that ex ante review would present a nonjusticiable political question, I actually agree that courts are ill-suited to hear such cases–not because, as the white paper suggests, they lack the power to do so, but because, in most such cases, they would lack the competence to do so. **III. Drone Courts and the Legitimacy Problem** That brings me to perhaps the biggest problem we should all have with a “drone court”–the extent to which, even if one could design a legally and practically workable regime in which such a tribunals could operate, its existence would put irresistible pressure on federal judges to sign off even on those cases in which they have doubts. As a purely practical matter, it would be next to impossible meaningfully to assess imminence, the existence of less lethal alternatives, or the true nature of a threat that an individual suspect poses ex ante. Indeed, it would be akin to asking law enforcement officers to obtain judicial review before they use lethal force in defense of themselves or third persons–when the entire legal question turns on what was actually true in the moment, as opposed to what might have been predicted to be true in advance. At its core, that’s why the analogy to search warrants utterly breaks down–and why it would hardly be surprising if judges in those circumstances approved a far greater percentage of applications than they might have on a complete after-the-fact record. Judges, after all, are humans. In the process, the result would be that such ex ante review would do little other than to add legitimacy to operations the legality of which might have otherwise been questioned ex post. Put another way, ex ante revew in this context would most likely lead to a more expansive legal framework within which the targeted killing program could operate, one sanctioned by judges asked to decide these cases behind closed doors; without the benefit of adversary parties, briefing, or presentation of the facts; and with the very real possibility that the wrong decision could directly lead to the deaths of countless Americans. Thus, even if it were legally and practically possible, a drone court would be a very dangerous idea. **IV. Why Damages Actions Don’t Raise the Same Legal Concerns** At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I actually think virtually all of these concerns could be mitigated. For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. Re: adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief (more on that below), it’s hard to see any pure Article III problem with such a suit for retrospective relief. As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what [Tennessee v. Garner](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, [it demonstrates that](http://www.brookings.edu/research/reports/2011/05/guantanamo-wittes) judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances–albeit not always ideally–the government’s interest in secrecy with the detainee’s ability to contest the evidence against him. Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures, so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. More to the point, it should also follow that courts would be far more able to review the questions that will necessary be at the core of these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight–removed from the pressures of the moment and with the benefit of the dispassionate distance on which judicial review must rely. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc. And in addition to the substantive questions, it will also be much easier for courts to review the government’s own procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go along way toward proving the lawfulness vel non of an individual strike… To be sure, there are a host of legal doctrines that would get in the way of such suits–foremost among them, [the present judicial hostility](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=471&invol=1) to causes of action under [*Bivens*](http://supreme.justia.com/cases/federal/us/403/388/case.html); the state secrets privilege; and official immunity doctrine. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that [immunity is constitutionally grounded](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0457_0731_ZS.html)), each of these concerns can be overcome by statute–so long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and official immunity doctrine; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many–if not most–of these cases, these legal issues would be overcome. **V. Why Damages Actions Aren’t Perfect–But Might Be the Least-Worst Alternative** Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists. Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. That said, there are two enormous upsides to damages actions that, in my mind, make them worth it–even if they are deeply, fundamentally flawed: First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability–and, as importantly, precedent–such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution requires at least some form of judicial process–and, compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to get all of the relevant constituencies to the table. That’s a very long way of reiterating what I wrote in [my initial response](http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/) to the DOJ white paper, but I end up in the same place: If folks really want to provide a judicial process to serve as a check on the U.S. government’s conduct of targeted killing operations, this kind of regime, and not an ex ante “drone court,” is where such endeavors should focus.

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

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

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

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

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

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

#### Prefer our interpretation –

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

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

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

### 2AC Transparency

#### No solvency –

#### A. Allies – they don’t want transparency – just a reduced standard of imminence – only Judicial Review solves – that’s 1AC Goldstein and Dworkin

#### B. Imminence – the counterplan just justifies the current standards of imminence – transparency doesn’t check it – that checks broad use of targeted killing that results in civilian casualties and Pakistan instability

#### C. PQD – their second plank doesn’t use the PQD as grounds for litigating targeted killing remedies, but instead uses special factors – line drawing on the political question doctrine unravels attempts to apply civil suits to the military- 1AC Vladeck evidence

#### Limited and confusing precedent means no future application of the CP- cant solve CMR or our add ons

Hansford and Spriggs 06 (Thomas G. Hansford, Department of Government and International Studies, University of South Carolina, and James, Department of Political Science, University of California, Davis, “The Politics of Precedent on the U.S. Supreme Court,” google books p 6)

Broadly speaking, the Court's legal interpretation of precedent takes¶ two forms; and it is these two forms of interpretation on which this book¶ will primarily focus. First, the Court can interpret a precedent positively¶ by relying on it as legal authority (Aldisert 1990; Baum 2001,142; Freed¶ 1996; Johnson 1985, 1986; McGuire and MacKuen 2001). When doing¶ so, for example, the Court can follow the precedent by indicating that it¶ is controlling or determinative for a dispute. The positive interpretation¶ of precedent thus involves the Court's explicit reliance on the case for at¶ least part of its justification for the outcome in the dispute before it. This¶ treatment of precedent can invigorate its legal authority and possibly ex-pand its scope.¶ Second, the Court can negatively interpret a precedent by restricting its reach or calling into question its continuing importance. The Court can,¶ for example, distinguish a precedent by finding it inapplicable to a new¶ factual situation, limit a case by restating the legal rule in a narrower¶ fashion, or even overrule a case and declare that it is no longer binding¶ law (see Baum 2001, 142; Gerhardt 1991, 98-109; Johnson 1985, 1986;¶ Maltz 1988, 382-88; Murphy and Pritchett 1979, 491-95). With this¶ kind of interpretation, the Court expresses some level of disagreement¶ with the precedent and, as a result, may undercut the legal authority of a precedent and diminish its applicability to other legal disputes.

#### Permutation do both

#### Conditionality is a voting issue – no risk nature of the advocacies skews 2AC strategy and it promotes argumentative irresponsibility killing real world decision-making skills

#### cherry-picking dooms transparency efforts—no one will believe the CP because the executive continuously cherry picks releasing its legal rationales.

Jaffer 10-7-13 (Jameel, Selective Disclosure About Targeted Killing, Oct 7, http://justsecurity.org/2013/10/07/selective-disclosure-targeted-killing/)

For several years, the ACLU has been pressing the Obama administration to be more transparent about the targeted-killing program. I’m starting to wonder whether it understands what we mean. Last week, I argued a case before the Second Circuit involving the secrecy surrounding the program. The case involves a Freedom of Information Act request filed by the ACLU two years ago for records about the government’s killing of three Americans in Yemen. The CIA initially claimed it couldn’t disclose whether it had records responsive to the request without compromising national security. Later the CIA acknowledged that it had responsive records but argued that national-security concerns precluded it from enumerating or describing them. Earlier this year, the district court observed that the CIA’s so-called “no-number no-list” response was the stuff of Alice in Wonderland—but then ruled for the CIA anyway. In our appeal brief, we point to the many instances in which senior government officials have discussed the targeted killing program publicly. In media interviews and speeches, we write, officials have defended the program’s legality, effectiveness, and necessity. They’ve dismissed concerns about civilian casualties. And through not-for-attribution interviews with reporters, they’ve engaged in what one appeals-court judge called “a pattern of strategic and selective leaks at the highest level of government.” We argue that the administration shouldn’t be permitted to pretend that everything about the program is a secret while its most senior officials conduct a public-relations campaign about it. At oral argument last week, though, the government’s attorney turned our argument on its head. The disclosures cited by the ACLU, she said, were evidence that the government had made a genuine effort to be transparent about the targeted-killing program. By pointing to those disclosures, she said, the ACLU was trying to penalize the government for having been as transparent as it had been. (I’m paraphrasing because I don’t yet have the transcript.) The government’s attorney also warned the court against requiring the government to disclose more. If the court held that the government couldn’t disclose some information about a subject without waiving its right to withhold other information, she argued, the government would hesitate before releasing anything at all. The government fundamentally misunderstands our complaint—or it understands only half of it. Our complaint isn’t just that government officials are keeping too much information secret, though they are. It’s also that the government is releasing information selectively—that it’s cherry-picking its disclosures in a way that misleads the public about the targeted-killing program’s scope and nature and implications. Government officials release information about the killing of suspected terrorists but withhold information about bystander casualties. They tell the public that lethal force is used only when capture is infeasible, but they decline to say how feasibility is assessed. They release a Cliffs Notes version of their legal theory, but not the legal memos—let alone the factual ones—on the basis of which the killings actually take place. They release facts meant to reassure, but they withhold facts that might unsettle. Of course there’s nothing new about this kind of thing. Governments prefer to release information that presents their actions in a flattering light and suppress information that doesn’t. But this is why we have the FOIA. The Obama administration suggests that the FOIA is concerned only with excessive secrecy, but while the Congress that enacted the statute in 1966 was concerned with “transparency” in the narrow sense of that word, it was at least as troubled by selective disclosure. Here is the House Republican Policy Committee’s statement in support of the Act: In this period of selective disclosures, managed news, half-truths, and admitted distortions, the need for this legislation is abundantly clear. High officials have warned that our Government is in grave danger of losing the public’s confidence both at home and abroad. The credibility gap that has affected the Administration’s pronouncements on domestic affairs and Vietnam has spread to other parts of the world. The on-again, off-again, obviously less-than-truthful manner in which the reduction of American forces in Europe has been handled has made this country the subject of ridicule and jokes. “Would you believe?” has now become more than a clever saying. It is a legitimate inquiry. Americans have always taken great pride in their individual and national credibility. We have recognized that men and nations can be no better than their word. This legislation will help to blaze a trail of truthfulness and accurate disclosure in what has become a jungle of falsification, unjustified secrecy, and misstatement by statistic. Representative Donald Rumsfeld of Illinois, a champion of the proposed law, set expectations slightly lower but explained the law’s aims similarly: Certainly it has been the nature of Government to play down mistakes and to promote successes. This has been the case in past administrations. Very likely this will be true in the future. . . . [This bill] will not change this phenomenon. Rather, the bill will make it considerably more difficult for secrecy-minded bureaucrats to decide arbitrarily that the people should be denied access to information on the conduct of Government or how an individual Government official is handling his job. (Citations and a fuller discussion of the legislative history can be found at pages 17-19 of this brief.) The point is obvious: disclosure and transparency can be two very different things. If the government discloses that it doesn’t engage in “torture” but suppresses the memos that redefine the term, the disclosure hasn’t served transparency but undermined it. The same is true if the government discloses (or celebrates) the killing of “militants” but refuses to release information about the killing of innocent bystanders. Perhaps these disclosures shouldn’t be thought of as disclosures at all. If they’re disclosures, they’re disclosures that misinform or mislead rather than enlighten.

#### Either the counterplan opens up debate over imminence, hostilities and associated forces which means they link to warfighting or it doesn’t increase transparency

Knuckley 10-1-13 (Sarah Knuckey is Director of the Project on Extrajudicial Executions at New York University School of Law, and a Special Advisor to the UN Special Rapporteur on extrajudicial execution, “Transparency on Targeted Killings: Promises Made, but Little Progress,” http://justsecurity.org/2013/10/01/transparency-targeted-killings-promises-made-progress/)

Since President Barack Obama’s May 2013 counter-terrorism speech, attention to and criticism of US targeted killings practice and policy has notably dropped off inside the US. But the secrecy that drove criticism of the program still exists today in key legal, policy, factual, and process areas. This post outlines the focus of criticism in early 2013, the government’s response, and the core areas of continuing secrecy. Early 2013: Growing Pressure for More Transparency Public criticism of the targeted killing program had its peak in February-May this year. The burst of attention followed years of work and advocacy by many actors in the US and abroad, much of which was directed at the program’s excessive secrecy. By early 2013, the US targeted killing program’s lack of transparency had become the central and most widely shared criticism, uniting diverse actors with otherwise conflicting views of the program’s ethics, legality, and strategic effectiveness. Amidst this unprecedented intensive focus on drone strikes by the press, members of Congress, and American public, President Obama pledged in his February 2013 State of the Union address to be “more transparent to the American people and to the world” about the US targeted killings program. Following further NGO pressure for more transparency, the promise was repeated in April by National Security Council spokesperson Caitlin Hayden, who added that while sensitive operational details would not be discussed, explaining drone policies was something to which the Administration was “committed,” and would do “as soon as we can.” More specifically, John Brennan, during his nomination for the position of CIA Director, stated that he believed – “in the interest of transparency” – that the US “should acknowledge” if it kills “the wrong person,” and he stressed the seriousness with which government post-strike assessments of civilian harm were pursued. As public and political pressure continued to build, White House officials announced that President Obama would give a major counter-terrorism speech at the end of May. Many close observers hoped the speech would mark a significant turning point, and that the President would at last lay out the program’s basic facts, legal authorities, and policies. The President’s May 2013 speech did directly address the targeted killings program, arguing in broad terms that it is legal, effective, wise, and moral. Concurrently, the government also took two important concrete transparency steps. First, Attorney General Eric Holder published a letter acknowledging that four US citizens had been killed, and provided some information about why the US believed it was lawful to target one of those citizens, Anwar al-Alwaki. Second, the government published Presidential Policy Guidance on targeted killings, briefly setting out policies (not law) for when the US could target individuals outside areas of “active hostilities.” The Policy Guidance states that strikes are not carried out unless there is a “near-certainty” of no civilian harm, a standard also referred to in the President’s speech (and hinted at in earlier Brennan statements). Shortly afterwards, Secretary of State John Kerry stated that the US simply does “not fire” if it concludes that there would be collateral harm. Some interpreted these efforts and the President’s speech to mark the beginning of improved transparency. But despite transparency promises and expectations, many of the same, core concerns regarding undue secrecy remain. The President’s speech, the Policy Guidance, and Holder’s letter – because of textual ambiguities within each, and combined with events since – have largely failed to address these longstanding concerns, and in some important respects aggravated them.Continuing Secrecy on Core Issues Key areas in which transparency has not yet been forthcoming include: Who can be killed, where, and on what basis. Demands for legal and policy information on who and when the US believes it can kill have long been at the center of calls for more transparency. Senior US officials, before 2013, delivered important speeches outlining the government’s views on the applicable legal frameworks for targeting. But the speeches lacked detail, and left crucial legal questions unanswered. Legal concepts key to understanding the scope of US targeting – like “imminence,” “associated forces,” and “directly participating in hostilities” – remain unclear (see this and this). The relevant legal memos have still not been published, even in redacted form. In addition, although President Obama’s speech and the published Policy Guidance set out strict rules for the use of force – stricter, in numerous respects, than the laws of war – they are not legally binding, and we do not know when they began to apply, or when the strict policy limits on killing may be relaxed (and if we will ever be told when they are). And, crucially, we don’t know where the new guidelines actually apply (original assumptions by many outside government that they applied in Pakistan were later called into question). Since Obama’s May 2013 speech, confusion about who can be targeted has at times increased (e.g. a “senior American official” stated in August that a security threat had “expanded the scope” of who could be targeted in Yemen). Basic program facts, overall casualties, and statistical strike information. The President admitted in his May speech that some civilian casualties have occurred. But the government refuses to release even basic statistical information about the numbers of strikes or of those killed, or to disclose its own civilian casualty estimates, or strike locations. Specific strikes. The US continues to say nothing at all, officially, about the facts of most strikes. When questioned about specific strikes since May 2013, senior officials have generally continued simply to decline to comment, refusing even to acknowledge whether the US was involved. Given that the US publicly acknowledged in 2012 that it uses force in Yemen, it is not clear why the US continues to refuse to provide details on, at least, Yemen strikes. During the July-August 2013 surge in Yemen strikes, public information (limited as it was) came largely from news reports quoting anonymous US and Yemeni officials. Adding to confusion, the accounts in different outlets at times appeared contradictory (compare NYT, NBC, and ABC). Reports of civilian casualties called into question the government’s “near-certainty” standard, but were left unaddressed by officials. And although President Obama stated that the declassified information in Holder’s letter was to “facilitate transparency,” the letter does not explain why US citizens Samir Khan, Abdulrahman al-Awlaki, and Jude Kenen Mohammed were killed, saying only that they were “not specifically targeted.” Civilian harm – investigations, acknowledgment, redress. There has been no public information on any government efforts this year to acknowledge civilian harm and provide redress. I have previously listed just some of the strikes that raise particular concerns, none of which have been publicly acknowledged by the government; nor have the findings of any government investigations been released. And despite assurances about post-strike investigations, I am not aware of US officials seeking testimony from alleged victims, their lawyers, or from NGOs or journalists who have investigated specific strikes. Transfer to DOD. Despite expectations in May 2013 that Administration efforts to promote transparency would include moving the program from the CIA to DOD, one of the last officials to publicly address this said that it may not happen “for years.” The US government’s public statements and limited disclosures to date have been welcome steps towards transparency. But they fall far short of what is necessary, and important core questions remain unanswered.Last week, I posted on some of the targeted killings related advocacy efforts taking place over the next few months. Those include the possible visit of alleged drone strike victims (currently on hold because their lawyer’s visa application to the US has not been approved), and major NGO and UN reports expected in the weeks ahead. As these put the spotlight back on the program, raising specific and credible concerns about individuals strikes, the government should renew its commitment to transparency and outline the tangible steps it will now take to be more transparent to the American people and the world.

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

Times Tribune 11/24/13

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

Sonar tests hazardous to sea life

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

#### That results in submarine hulls to collapse

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

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

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

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

#### That triggers accidential nuclear war

Wallace-Poli Sci, University of British Columbia-95

Submarine Proliferation and Regional Conflict

Journal of Peace Research vol 32 no 1

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

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

### 2AC China DA

#### No link – the CCP would not allow a political crisis to ensue because the U.S. restricted its targeted killing program – they have no spillover evidence

#### No link – their evidence isn’t in the context of the plan – reject it because there is a lack of specificity

#### No unique link – judicial intervention high now

Kent, Constitutional Law prof, 10-8-13 (Andrew, Faculty Advisor-Center on National Security at

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

But the refusal to allow Bivens damages remedies in these national security cases is exceptional in another sense: the Supreme Court has never been more assertive in adjudicating national security and foreign relations issues than it has in recent years. The last decade saw the executive lose (or have its legal arguments offered as amicus curiae rejected) time after time in Supreme Court cases concerning questions judicial power and justiciability in foreign relations and national security.11 In the most high profile of these cases, the ones concerning the post-9/11 war on terror, the Court emphatically asserted its authority and rejected or ignored the notion that deference to the executive was appropriate because of the national security or foreign affairs dimensions of the disputes.12 In these war-on-terror cases as well as in other national security or foreign relations contexts, the Supreme Court has ruled repeatedly against the executive and, in so doing, approved judicial review of the executive’s national security actions, in suits where plaintiffs sought prospective, injunctive-type remedies against the government.13 Remedies of that type are typically thought to involve much more judicial intrusion into executive functioning than would a retrospective award of money damages,14 and in some instances injunctive-type remedies were implied by the courts from a jurisdictional statute or said to be required by the Constitution itself, rather than being expressly created by Congress. In addition, the war-on-terror decisions in Rasul, Hamdi, Hamdan and Boumediene were intended by the Court to have, and did in fact have, enormously significant practical effects—restructuring the worldwide interrogation, detention and military commission policies of the executive branch.15 The many critics who think the judiciary has not done enough to remedy perceived excesses in the war-on-terror are missing the larger picture of unprecedented judicial assertiveness and effectiveness.16

#### Li can’t engage in economic reform – political restrictions

Pesek 7/18/13 (William, staffwriter, “The Myth of China’s Economic Reform” <http://www.bloomberg.com/news/2013-07-18/the-myth-of-china-s-economic-reform.html>)

Only after a big default or two will markets begin to price Chinese risk appropriately, allowing Beijing to liberalize interest rates. Is Li willing to accept the consequences -- turmoil in markets, mass unemployment and credit downgrades? That’s nothing compared to the third test: inviting the Communist Party’s wrath. There’s ample reason to doubt Li’s doctorate in economics will help him navigate Beijing’s cutthroat politics. If you think Abe faces resistance from vested interests, imagine what awaits Li as he tries to get Communist Party power brokers, ambitious regional leaders, a vast network of state-owned companies and the Chinese people to make sacrifices. Li must take on thousands of party stalwarts who make millions, or billions, of dollars from dodgy land grabs, insider trading and old-fashioned rent-seeking. Politics will stymie Li’s every effort to reduce the state’s role in the economy and create the vibrant private sector China needs in order to thrive. We’ll have a sense of whether he’s serious when the number of unnamed-source gripes in the official media starts to spike.

#### Deleveraging in the short term means Likonomics fails and their impact is inevitable

Kee 7/1/13 (Koon B., an internationally-featured investor rooted in the principles of value investing for over a decade as a fund manager and analyst in the Asian capital markets. He was a fund manager and head of research/analyst at a Singapore-based investment management organization dedicated to the craft of value investing in Asia, “Likonomics: what’s not to like. Likonomics stands for: No stimulus, Deleveraging, Structural reform” <http://bambooinnovator.com/2013/07/02/likonomics-whats-not-to-like-likonomics-stands-for-no-stimulus-deleveraging-structural-reform/>)

The three Barclays economists argue that Likonomics will be good for China over the long run, helping it to sustain a growth rate of 6-8% over the next decade. But Likonomics also poses some short-term risks, they argue. The combination of rebalancing and deleveraging could temporarily drag quarterly growth down to 3% or below at some point over the next three years. If so, Likonomics will feel more like Lakonomics.

#### China and Li are no longer engaging in Likonomics – they are continuing stimulus spending

Stephen 9/15/13 (Craig, staffwriter, “Are China reform hopes fizzling out?” <http://www.marketwatch.com/story/are-china-reform-hopes-fizzling-out-2013-09-15>)

Recent policy moves suggest a familiar pattern of backtracking on reform as the party moves to crack down on dissent and fails to dislodge the state’s tight grip on the economy. For all the recent talk about new free trade zones, free expression is being rolled back with a new zeal. A campaign against rumormongers has seen hundreds of people detained for posting unverified or critical information on their web microblogs. China’s courts have now said users would be held criminally accountable for critical posts that were viewed more than 5,000 times or shared 500 times and could face a three-year jail term. This draconian act suggests a leadership that is not confident it has established a power base or is able to push on with reform. One policy initiative, which has come with much fanfare has been the establishment of a free trade zone in Shanghai. This was meant to accelerate Shanghai’s arrival as a financial center and China’s wider moves at financial reform as interest rates are deregulated and the yuan is allowed to trade freely. But as the countdown to its official opening later this month draws closer, expectations are fast being scaled back. Over the weekend, a former vice-governor of China’s central bank cautioned that the Shanghai free trade zone should not spearhead interest rate liberalization as speculators could exploit this. Analysts are also downplaying its significance. Capital Economics says the Shanghai experiment is worth watching but not a game changer — it still expects reforms will be rolled out over years rather than a “big bang.” It is possible to see a pattern developing of bold rhetoric being followed by much more cautious actual policy. Another example is an effort to tackle pollution, which earlier this year had become a symbol of China’s broken model of development as entire cities blanketed in smog came to standstill. Last week, the State Council announced new pollution guidelines but they look unlikely to make much of a dent in limiting coal usage. These included a pledge to reduce coal usage from around 67% of the energy mix to 65% by 2017. Reports suggest after months of wrangling, the final commitment was watered-down as provinces were unable to accept the lower growth that would go with less coal-fired power production. The choice not to sacrifice growth for better air quality can perhaps be traced back to the “Li Keqiang put,” where the Premier said China would do what it takes to maintain this year’s growth at 7.5%. Up until this point it appeared China was ready to face financial austerity, reform and lower growth in order to steer the economy away from an addiction to debt-fueled growth. This policy was named “Likonomics” and appeared after what looks like a misreading of June’s spike in Chinese interbank rates. As the government explained the surge in rates was an intentional policy to impose financial discipline, many interpreted it as part of a wider policy. The government had now taken heed of numerous warnings that credit in the economy had reached unsustainable levels. Yet it always seemed a stretch that authorities would use interbank rates as a tool to rein in financial excess, given the potential for it to spiral out of control. The freezing in the interbank market was, after all, such a big part of the last global financial crisis. The suspicion remained that China had been caught out by its efforts at incremental financial reform. By allowing de facto interest-rate liberalization through wealth management products and at the same time introducing yuan trade settlement, the unintended consequence was a surge in a speculative yuan carry trade through funds disguised as fake exports. The crackdown on higher-interest wealth management products and unwind of this trade as the Fed flagged its tapering policy looks a more likely explanation as hot money exited. Since then, it appears policy has retreated to the default position of more lending and spending on infrastructure and heavy industry. In August, the broadest measure of new credit nearly doubled over July. This has, however, shown up in perkier growth — electricity consumption, industrial activity and property prices are again accelerating in the past month. Perhaps the best explanation of policy is it is designed to balance Xi Jinping’s grip on power rather than balance the economy. Buying into that looks a risky proposition for investors.

#### Predictions of CCP collapse are always wrong

**Bell, Tsinghua International Political Philosophy professor, 2012**

(Daniel, “Why China Won't Collapse (Soon)”, 7-9, <http://www.huffingtonpost.com/daniel-a-bell/chinese-government-legitimacy_b_1658006.html>, DOA: 3-13-13, ldg)

Or so we are told. Such predictions about the collapse of China's political system have been constantly repeated since the suppression of the pro-democracy uprisings in 1989. But the system didn't collapse then, and it won't collapse now. The key reason such dire predictions are taken seriously -- especially in the West -- is that non-democratic regimes are seen to lack legitimacy. A political regime that is morally justified in the eyes of the people must be chosen by the people. In the case of China, the political leadership is a self-selected elite. Such mode of rule is fragile, as the Arab Spring has shown. But this view assumes the people are dissatisfied with the regime. In fact, the large majority of Chinese people support the single-party state structure. Since the 1990s, scholars in the West and China have carried out many large scale surveys into the legitimacy of Chinese political power and by now they have virtually arrived at a consensus: the degree of legitimacy of the Chinese political system is very high. Surveys have been modified to prevent people from telling lies and the results are always the same. To the extent there is dissatisfaction, it is largely directed at the lower levels of government. The central government is viewed as the most legitimate part of the Chinese political apparatus. How can it be that the Chinese government managed to achieve a high level of political legitimacy without adopting free and fair competitive elections for the country's leaders? However paradoxical it may sound to Westernears, the Chinese government has succeeded by drawing upon sources of non-democratic legitimacy. The first source of non-democratic legitimacy can be termed performance legitimacy, meaning that the government's first priority should be the material well-being of the people. This idea has long roots in China -- Confucius himself said the government should make the people prosperous -- and the Chinese Communist Party has also put poverty alleviation at the top of its political agenda. Hence, the government derives much, if not most, of its legitimacy by its ability to provide for the material welfare of Chinese citizens. It has substantially increased the life expectancy of Chinese people, and the reform era has seen perhaps the most impressive poverty alleviation achievement in history, with several hundred million people being lifted out of poverty. The second source of non-democratic legitimacy can be termed political meritocracy: the idea that political leaders should have above average ability to make morally informed political judgments.It too has deep historical roots. In Imperial China, scholar-officials proved their ability in a fair and open examination system, and consequently they were granted uncommon (by Western standards) amounts of respect, authority, and legitimacy. Political surveys have shown that Chinese still endorse the view that it is more important to have high-quality politicians who care about the people's needs than to worry about procedural arrangements ensuring people's rights to choose their leaders. In recent decades, the Chinese Communist Party has increased its legitimacy by transforming itself into a more meritocratic political organization, with renewed emphasis on examinations and education as criteria for political leadership. The third source of non-democratic legitimacy is nationalism. An important part of legitimacy can be termed "ideological legitimacy": the regime seeks to be seen as morally justified in the eyes ofthe people by virtue of certain ideas that it expresses in its educational system, political speeches, and public policies. The CCP was of course founded on Marxist principles, but the problem is that few believe in the communist ideal anymore. Hence, the regime has increasingly turned to nationalism to secure "ideological legitimacy". Nationalism has more recent roots in China: in Imperial China, the political elites tended to view their "country" as the center of the world. But this vision collapsed when China was subject to the incursions of Western colonial powers in the mid-twentieth century, leading to a "century of humiliation" at hands of foreign powers. The CCP put a symbolic end to abuse and bullying by foreign powers with the establishment of a relatively secure state in 1949 and it constantly reminds Chinese of its function as protector of the Chinese nation. In short, it should not be surprising that the CCP is widely seen to be legitimate in the eyes of the people, and barring unforeseen events there is no reason to expect imminent collapse of the regime. But the key word is "imminent". In the absence of substantial political reform, China'snon-democratic sources of political legitimacy may not be sustainable in the long term.

#### No lashout

**Gilley, New School international affairs professor, 2005**

(Bruce, China's Democratic Future: How It Will Happen and Where It Will Lead, pg 114-5, ldg)

More ominous as a piece of "last ditchism" would be an attack on Taiwan. U.S. officials and many overseas democrats believe that there is a significant chance of an attack on Taiwan if the CCP is embattled at home. Indeed, China's strategic journals make frequent reference to this contingency: "The need for military preparations against Taiwan is all the more pressing in light of China's growing social tensions and unstable factors which some people, including the U.S. might take advantage of under the flag of 'humanism' to paralyze the Chinese government," one wrote. Such a move would allow the government to impose martial law on the country as part of war preparations, making the crushing of protest easier. It would also offer the possibility, if successful, of CCP survival through enhanced nationalist legitimacy. Yet the risks, even to a dying regime, may be too high. An unprovoked attack on Taiwan would almost certainly bring the U.S. and its allies to the island's rescue. Those forces would not stop at Taiwan but might march on Beijing and oust the CCP, or attempt to do so through stiff sanctions, calling it a threat to regional and world peace. Such an attack might also face the opposition of the peoples of Fujian, who would be expected to provide logistical support and possibly bear the worst burdens of war. They, like much of coastal China, look to Taiwan for investment and culture and have a close affinity with the island. As a result, there are doubts about whether such a plan could be put into action. A failed war would prompt a Taiwan declaration of independence and a further backlash against the CCP at home, just as the May Fourth students of 1919 berated the Republican government for weakness in the face of foreign powers. Failed wars brought down authoritarian regimes in Greece and Portugal in 1974 and in Argentina in 1983. Even if CCP leaders wanted war, it is unlikely that the PLA would oblige. Top officers would see the disastrous implications of attacking Taiwan. Military caution would also guard against the even wilder scenario of the use of nuclear weapons against Japan or the U. S**.** At the height of the Tiananmen protests it appears there was consideration given to the use of nuclear weapons in case the battle to suppress the protestors drew in outside Countries .41 But even then, the threats did not appear to gain even minimal support. In an atmosphere in which the military is thinking about its future, the resort to nuclear confrontation would not make sense.

#### Protests don’t threaten the system

**Hao, China Dialogue, 1-30-2013**

(Tang, “China's street protests won't change failing system”, <http://www.chinadialogue.net/article/show/single/en/5660-China-s-street-protests-won-t-change-failing-system>, ldg)

Of course, there are also problems. Mass movements can radicalise. The speed of microblogs and the ease with which they bring people together allows for personal and emotional reactions to be exaggerated. Irrational ideas are easily spread and emboldened. And the decentralised nature of these discussions makes it harder to control public opinion. More important is the fact that, no matter how loud these protests are, they don’t change the system. Many projects have been stopped due to mass protests, but decision-making methods stay the same, as does the power of developers. China’s so-called environmental movement looks passive – it is dependent on how the government reacts. If the reaction is poor, so will be the outcomes for the movement. You could say that the quality of China’s environmental movement depends on the quality of its participants, while its outcome depends on the quality of government. This way of protecting the environment offers no guarantees. The good news is that these campaigns show the Chinese people are getting more involved in the environment. I hope grassroots participation can help to trigger true reform of the system.

### 2AC Flex

#### No link – all of their evidence doesn’t speak to restrictions on targeted killing or judicial review – so any other war powers restriction should trigger the link – judicial intervention now

Kent, Constitutional Law prof, 10-8-13 (Andrew, Faculty Advisor-Center on National Security at

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

But the refusal to allow Bivens damages remedies in these national security cases is exceptional in another sense: the Supreme Court has never been more assertive in adjudicating national security and foreign relations issues than it has in recent years. The last decade saw the executive lose (or have its legal arguments offered as amicus curiae rejected) time after time in Supreme Court cases concerning questions judicial power and justiciability in foreign relations and national security.11 In the most high profile of these cases, the ones concerning the post-9/11 war on terror, the Court emphatically asserted its authority and rejected or ignored the notion that deference to the executive was appropriate because of the national security or foreign affairs dimensions of the disputes.12 In these war-on-terror cases as well as in other national security or foreign relations contexts, the Supreme Court has ruled repeatedly against the executive and, in so doing, approved judicial review of the executive’s national security actions, in suits where plaintiffs sought prospective, injunctive-type remedies against the government.13 Remedies of that type are typically thought to involve much more judicial intrusion into executive functioning than would a retrospective award of money damages,14 and in some instances injunctive-type remedies were implied by the courts from a jurisdictional statute or said to be required by the Constitution itself, rather than being expressly created by Congress. In addition, the war-on-terror decisions in Rasul, Hamdi, Hamdan and Boumediene were intended by the Court to have, and did in fact have, enormously significant practical effects—restructuring the worldwide interrogation, detention and military commission policies of the executive branch.15 The many critics who think the judiciary has not done enough to remedy perceived excesses in the war-on-terror are missing the larger picture of unprecedented judicial assertiveness and effectiveness.16

#### 1AC Watson says commanders adapt to litigation quickly which allows for continuous flexibility – no interim slowdown in operations

#### Warming turns warfighting

American Security Project, Non-partisan New York based think tank, Climate Security Report: Part III Climate Change and the Homeland, http://americansecurityproject.org/reports/2012/csr-part-three-climate-change-the-homeland/

Climate change not only affects our security through its impacts on the economy and our physical infrastructure (roads, bridges, airports, etc.); it also can also affect domestic and international military bases as flooding, drought and extreme weather events intensify. Physical changes to the environment may disrupt U.S. military capabilities and facilities, such as military training ranges or bases.1 According to the U.S. Department of Defense (DoD) 2010 Quadrennial Defense Review, there are a number of US military installations that are already at risk. The report says: “In 2008, the National Intelligence Council [NIC] judged that more than 30 U.S. military installations were already facing elevated levels of risk from rising sea levels. DoD’s operational readiness hinges on continued access to land, air, and sea training and test space.”2 Although sea-level rise is a major concern, other environmental threats must be taken into consideration in order to keep our military installments safe and secure. We tend to look at environmental threats on an individual, case-by-case basis, which does not take the plethora of threats into account. According to Cleo Paskal, “The NIC’s 2008 focus was primarily sea level rise. However, considering flooding threats alone, coastal sites may be affected by sea level rise, but also subsidence, river flooding, unusually heavy rainfall, and dam bursts.”3 In order to prepare our military installments for the effects of climate change, we must not make a one-dimensional risk assessment but instead, prepare for multiple types of environmental threats such as flooding from extreme weather, droughts and civil unrest related to food and water insecurity. According to the U.S. Department of Defense 2012 Base Structure Report, the United States military manages property in all 50 states, 7 U.S. territories and 40 foreign countries, comprising almost 300,000 individual buildings around the globe.4 These buildings are valued at $590 billion. The Army alone has over 14 million acres of property, 2000 installations and 12,000 historical structures.5 As the effects of climate change increase in many parts of the world, our investments and structures may be at risk of severe damage. Environmental threats to domestic U.S. military bases pose as much of a physical threat as they do an economic threat. In 1992, Hurricane Andrew nearly wiped out Homestead Air Force Base in Florida and Hurricane Katrina destroyed 95% of Keesler Air Force Base in Mississippi. Both of these bases were rebuilt, but it took millions of dollars to do so. Military bases in the U.S. are important for driving local economies and when they are destroyed by natural disasters, there is a ripple effect economically in the region. Environmental threats to international U.S. military installments have more strategic implications. For example, the island of Diego Garcia in the Indian Ocean is a critical logistics hub for US and British forces in the Middle East. It also houses Air Force Satellite Control Network equipment that is used to control the GPS constellation.6 The island is extremely vulnerable to the effects of climate change because it is just one meter above sea-level. If the island is flooded or inundated completely, the US will lose a strategically vital installation in the most tumultuous region in the world. Climate change poses costly threats to our domestic installations and potentially destabilizing threats to our international installations that hold strategic importance to the U.S. military. In order to prepare for these changes and to secure our military investments worldwide, the U.S. must invest in low-cost adaptation options, which are effective and multidimensional.

#### Allied cooperation turns terrorism

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.

#### Restrictions on targeted killing don’t spill over to all war powers

Brooks, prof of Law @ Georgetown, 13 (Rosa, Senior Fellow at the New America Foundation, “The Constitutional and Counterterrorism Implications of Targeted Killing”, Testimony Before the Senate, April 23, 2013, http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf)

It is also worth noting that the practical concerns militating against justiciability in the context of traditional wartime situations do not exist to the same degree here. On traditional battlefields, imposing due process or judicial review requirements on targeting decisions would be unduly burdensome, as many targeting decisions must be made in situations of extreme urgency. In the context of targeted killings outside traditional battlefields, this is rarely the case. While the window of opportunity in which to strike a given target may be brief and urgent, decisions about whether an individual may lawfully be targeted are generally made well in advance.

#### Ex post review solves flexibility and speed

Mohamed 2/6/13 (Faisel G., He is a Professor in the Department of English of the University of Illinois at Urbana-Champaign, where he also holds appointments in the Unit for Criticism and Interpretive Theory and the Center for South Asian and Middle Eastern Studies, “The Targeted Killing Memo: What the U.S. Could Learn From Israel” <http://www.huffingtonpost.com/feisal-g-mohamed/the-targeted-killing-memo_b_2634078.html>)

Well, you may say, what's the alternative? In fact there is an alternative that a careful legal brief would have noted: the Supreme Court of Israel's 2005 decision in Public Committee Against Torture in Israel [PCATI] v. Government of Israel (HCJ 769/02). Citing the European Court of Human Rights decision in McCann v. United Kingdom (21 ECHR 97 GC), the Israeli court concludes that while a targeted killing is a military matter in its planning and execution, the courts must be free to conduct post-operational judicial review. This would shed light on the internal deliberations leading up to the targeted killing, assuring sound evidentiary procedures and the absence of a reasonable alternative to the killing. While that remains a form of due process that is less than ideal for the defendant, who is dead when his day in court arrives, it at least exposes military and governmental decision-makers to judicial scrutiny.

#### Too much flexibility kills warfighting

Deborah N. Pearlstein 9, lecturer in public and international affairs, Woodrow Wilson School of Public & International Affairs, July 2009, "Form and Function in the National Security Constitution," Connecticut Law Review, 41 Conn. L. Rev. 1549, lexis nexis

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disaster [sic] response." n198 In this sense, **a decisionmaker with absolute flex**ibility **in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance**.¶ **Examples of excessive flexibility producing adverse consequences are ample**. Following Hurricane **Katrina**, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors **replacing those rules with more than the most general guidance about custodial intelligence collection.** available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200¶ Or **consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib**. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.¶ In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, **investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without** n205 As one Army General later investigating the abuses noted: "**By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved**." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The **uncertain effect of broad, general guidance**, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208¶ Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But **such findings should at least call into question the inclination to simply maximize flex**ibility **and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise**. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are **nuclear and biological terrorism**, involving highly technical information about weapons acquisition and deployment, a security policy **structure based on nothing more than general popular mandate and political instincts is unlikely to suffice**; **a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement**. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such **structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.**

#### Courts don’t stifle anti-terrorism efforts

Coughenour 08 (John C. , The Right Place to Try Terrorism Cases, July 27, 2008, http://articles.washingtonpost.com/2008-07-27/opinions/36772256\_1\_terrorism-trials-district-court-federal-courts)

I have spent 27 years on the federal bench. In particular, my experience with the trial of Ahmed Ressam, the "millennium bomber," leads me to worry about Attorney General Michael Mukasey's comments last week, urging Congress to pass legislation outlining judicial procedures for reviewing Guantanamo detainees' habeas petitions. As constituted, U.S. courts are not only an adequate venue for trying terrorism suspects but are also a tremendous asset in combating terrorism. Congress risks a grave error in creating a parallel system of terrorism courts unmoored from the constitutional values that have served our country so well for so long. I have great sympathy for those charged with protecting our national security. That is an awesome responsibility. But this is not a choice between the existential threat of terrorism and the abstractions of a 200-year-old document. The choice is better framed as: Do we want our courts to be viewed as another tool in the "war on terrorism," or do we want them to stand as a bulwark against the corrupt ideology upon which terrorism feeds? Detractors of the current system argue that the federal courts are ill-equipped for the unique challenges that terrorism trials pose. Such objections often begin with a false premise: that the threat of terrorism is too great to risk an "unsuccessful" prosecution by adhering to procedural and evidentiary rules that could constrain prosecutors' abilities. This assumes that convictions are the yardstick by which success is measured. Courts guarantee an independent process, not an outcome. Any tribunal purporting to do otherwise is not a court. Critics raise more-legitimate concerns about whether judges have sufficient expertise over the subject matter of terrorism trials and whether the courts can adequately safeguard classified information. The truth is that judges are generalists. Just as they decide cases as varied as employment discrimination and bank robbery, they are capable of negotiating the complexities of terrorism trials. Last month in Boumediene v. Bush, the Supreme Court confirmed its confidence in the capability of federal courts. The justices explicitly rejected an attempt to carve away an area of federal court jurisdiction in service of the war against terrorism, saying: "We recognize, however, that the Government has a legitimate interest in protecting sources and methods of intelligence gathering; and we expect that the District Court will use its discretion to accommodate this interest to the greatest extent possible. . . . These and the other remaining questions are within the expertise and competence of the District Court to address in the first instance." As for protecting classified information, courts are guided by the Classified Information Procedures Act, which played a prominent role during the trial of Ressam in my courtroom in 2001. I found the act's extensive protections to be more than adequate, but I also think that any shortcoming in the law can and should be addressed by further revision rather than by undermining the judiciary.

#### No nuclear terrorism

**Bergen, New York University’s Center on Law and Security fellow, 2010**

(Peter, “Reevaluating Al-Qa`ida’s Weapons of Mass Destruction Capabilities,” CTC Sentinel, September, http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=122242, ldg)

Bin Ladin’s and al-Zawahiri’s portrayal of al-Qa`ida’s nuclear and chemical weapons capabilities in their post-9/11 statements to Hamid Mir was not based in any reality, and it was instead meant to serve as psychological warfare against the West. There is no evidence that al-Qa`ida’s quest for nuclear weapons ever went beyond the talking stage. Moreover, al-Zawahiri’s comment about “missing” Russian nuclear suitcase bombs floating around for sale on the black market is a Hollywood construct that is greeted with great skepticism by nuclear proliferation experts. This article reviews al-Qa`ida’s WMD efforts, and then explains why it is unlikely the group will ever acquire a nuclear weapon. Al-Qa`ida’s WMD Efforts In 2002, former UN weapons inspector David Albright examined all the available evidence about al-Qa`ida’s nuclear weapons research program and concluded that it was virtually impossible for al-Qa`ida to have acquired any type of nuclear weapon.8 U.S. government analysts reached the same conclusion in 2002.9 There is evidence, however, that al-Qa`ida experimented with crude chemical weapons, explored the use of biological weapons such as botulinum, salmonella and anthrax, and also made multiple attempts to acquire radioactive materials suitable for a dirty bomb.10 After the group moved from Sudan to Afghanistan in 1996, al-Qa`ida members escalated their chemical and biological weapons program, innocuously code-naming it the “Yogurt Project,” but only earmarking a meager $2,000-4,000 for its budget.11 An al-Qa`ida videotape from this period, for example, shows a small white dog tied up inside a glass cage as a milky gas slowly filters in. An Arabic-speaking man with an Egyptian accent says: “Start counting the time.” Nervous, the dog barks and then moans. After struggling and flailing for a few minutes, it succumbs to the poisonous gas and stops moving. This experiment almost certainly occurred at the Darunta training camp near the eastern Afghan city of Jalalabad, conducted by the Egyptian Abu Khabab.12 Not only has al-Qa`ida’s research into WMD been strictly an amateur affair, but plots to use these types of weapons have been ineffective. One example is the 2003 “ricin” case in the United Kingdom. It was widely advertised as a serious WMD plot, yet the subsequent investigation showed otherwise. The case appeared in the months before the U.S.-led invasion of Iraq, when media in the United States and the United Kingdom were awash in stories about a group of men arrested in London who possessed highly toxic ricin to be used in future terrorist attacks. Two years later, however, at the trial of the men accused of the ricin plot, a government scientist testified that the men never had ricin in their possession, a charge that had been first triggered by a false positive on a test. The men were cleared of the poison conspiracy except for an Algerian named Kamal Bourgass, who was convicted of conspiring to commit a public nuisance by using poisons or explosives.13 It is still not clear whether al-Qa`ida had any connection to the plot.14 In fact, the only post-9/11 cases where al-Qa`ida or any of its affiliates actually used a type of WMD was in Iraq, where al-Qa`ida’s Iraqi affiliate, al-Qa`ida in Iraq (AQI), laced more than a dozen of its bombs with the chemical chlorine in 2007. Those attacks sickened hundreds of Iraqis, but the victims who died in these assaults did so largely from the blast of the bombs, not because of inhaling chlorine. AQI stopped using chlorine in its bombs in Iraq in mid-2007, partly because the insurgents never understood how to make the chlorine attacks especially deadly and also because the Central Intelligence Agency and U.S. military hunted down the bomb makers responsible for the campaign, while simultaneously clamping down on the availability of chlorine.15 Indeed, a survey of the 172 individuals indicted or convicted in Islamist terrorism cases in the United States since 9/11 compiled by the Maxwell School at Syracuse University and the New America Foundation found that none of the cases involved the use of WMD of any kind. In the one case where a radiological plot was initially alleged—that of the Hispanic-American al-Qa`ida recruit Jose Padilla—that allegation was dropped when the case went to trial.16 Unlikely Al-Qa`ida Will Acquire a Nuclear Weapon Despite the difficulties associated with terrorist groups acquiring or deploying WMD and al-Qa`ida’s poor record in the matter, there was a great deal of hysterical discussion about this issue after 9/11. Clouding the discussion was the semantic problem of the ominous term “weapons of mass destruction,” which is really a misnomer as it suggests that chemical, biological, and nuclear devices are all equally lethal. In fact, there is only one realistic weapon of mass destruction that can kill tens or hundreds of thousands of people in a single attack: a nuclear bomb.17 The congressionally authorized Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism issued a report in 2008 that typified the muddled thinking about WMD when it concluded: “It is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013.”18 The report’s conclusion that WMD terrorism was likely to happen somewhere in the world in the next five years was simultaneously true but also somewhat trivial because terrorist groups and cults have already engaged in crude chemical and biological weapons attacks.19 Yet **the prospects of** al-Qa`ida or indeed **any** other **group having access to** a true WMD—**a nuclear device**—**is near zero** for the foreseeable future. If any organization should have developed a serious WMD capability it was the bizarre Japanese terrorist cult Aum Shinrikyo, which not only recruited 300 scientists—including chemists and molecular biologists—but also had hundreds of millions of dollars at its disposal.20 Aum embarked on a large-scale WMD research program in the early 1990s because members of the cult believed that Armageddon was fast-approaching and that they would need powerful weapons to survive. Aum acolytes experimented with anthrax and botulinum toxin and even hoped to mine uranium in Australia. Aum researchers also hacked into classified networks to find information about nuclear facilities in Russia, South Korea and Taiwan.21 Sensing an opportunity following the collapse of the Soviet Union, Aum recruited thousands of followers in Russia and sent multiple delegations to meet with leading Russian politicians and scientists in the early 1990s. The cult even tried to recruit staff from inside the Kurchatov Institute, a leading nuclear research center in Moscow. One of Aum’s leaders, Hayakawa Kiyohide, made eight trips to Russia in 1994, and in his diary he made a notation that Aum was willing to pay up to $15 million for a nuclear device.22 Despite its open checkbook, Aum was never able to acquire nuclear material or technology from Russia even in the chaotic circumstances following the implosion of the communist regime.23 In the end, Aum abandoned its investigations of nuclear and biological weapons after finding them too difficult to acquire and settled instead on a chemical weapons operation, which climaxed in the group releasing sarin gas in the Tokyo subway in 1995. It is hard to imagine an environment better suited to killing large numbers of people than the Tokyo subway, yet only a dozen died in the attack.24 Although Aum’s WMD program was much further advanced than anything al-Qa`ida developed, even they could not acquire a true WMD. It is also worth recalling that Iran, which has had an **aggressive and well-funded nuclear program for almost two decades**, is still some way from developing a functioning nuclear bomb. Terrorist groups simply do not have the resources of states. Even with access to nuclear technology, it is next to impossible for terrorist groups to acquire sufficient amounts of highly enriched uranium (HEU) to make a nuclear bomb. The total of all the known thefts of HEU around the world tracked by the International Atomic Energy Agency between 1993 and 2006 was just less than eight kilograms, well short of the 25 kilograms needed for the simplest bomb;25 moreover, none of the HEU thieves during this period were linked to al-Qa`ida. Therefore, even building, let alone detonating, the simple, gun-type nuclear device of the kind that was dropped on Hiroshima during World War II would be extraordinarily difficult for a terrorist group because of the problem of accumulating sufficient quantities of HEU. Building a radiological device, or “dirty bomb,” is far more plausible for a terrorist group because acquiring radioactive materials suitable for such a weapon is not as difficult, while the construction of such a device is orders of magnitude less complex than building a nuclear bomb. Detonating a radiological device, however, would likely result in a relatively small number of casualties and should not be considered a true WMD.

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## Sonar

#### Sonar results in extinction

Cousteau-Ocean Futures Society-13

http://www.divermag.com/protecting-the-songs-of-the-sea/

Protecting the Songs of the Sea

The sea is not a silent world. There are songs in the ocean that must be heard. Some are just whispers, but meaningful ones. Listen to the diverse repertoire of sounds and songs as you dive beneath the surface of the sea. The haunting calls of the blue whales can travel across thousands of miles of ocean. This is only one of many songs of the seas, including passionate arias of humpback whales, the staccato survey of the dolphin and the territorial pounding of the drum fish. It is a world of aquatic operas, where animals must make sense of the sounds to find food and each other, and to avoid danger. Acoustic Holocaust But now the ocean is threatened by what has been called an “acoustic holocaust”: the blasting of the sea with sound. In addition to the high-intensity, mid-range sounds that military operations already produce, Navies of the world are now experimenting with Low Frequency Active sonar system (LFA). LFA generates extremely loud sounds to detect silent submarines at great distances. These sounds can flood entire ocean basins. Scientists claim that the noise from a single LFA test off of California coast was detected across the entire North Pacific Basin. Recent controversy also has been brewing off the central coast of California. Proposed underwater seismic testing on California’s Diablo Canyon Nuclear Power Plant has prompted widespread concern about the issue of global high-energy seismic testing and the implications of increasing noise pollution in the world’s oceans. The Diablo Canyon Nuclear Power Plant is an electricity-generating nuclear power plant that provides energy to nearly three million California residents. Built in the early 1970s along a geological fault line, the power plant has had a long history of controversy with respect to both environmental impact and residential safety. Numerous new fault lines running both onshore and offshore to the Diablo Canyon power plant have been identified, some as recently as 2008. After the devastating 2011 Fukushima earthquake and subsequent power plant failure, concerns have increased over the safety and necessity of the Diablo Canyon power plant. In an attempt to mitigate concerns, owners of the Diablo Canyon power plant, the Pacific Gas and Electric Company (PG&E), have chosen to mount an extensive seismic testing survey in the hopes of obtaining detailed 3D images of the fault zones near the plant. PG&E plans to submerge underwater air cannons that will detonate blasts of 250 decibels every 10 to 20 seconds in three areas of the Pacific over 33 days. These blasts are equivalent to the detonation of an atomic bomb and will kill or otherwise impact tens of thousands of marine animals, including Pacific Gray Whales. Considering the extent to which the marine world uses sound, particularly the twenty-five species of marine mammals that reside within California’s coastal waters, the air cannon blasts will have detrimental effects to animals within 250 square nautical miles of each of the air cannon sites. Whales, dolphins, porpoises, seals and sea lions that are not killed by the immediate blast will likely suffer slow deaths, as impairment to their extremely sensitive hearing will result in an inability to find food or navigate underwater. I have spent a great deal of time studying and learning about the lives of gray whales with my Ocean Futures Society team. Once hunted to the brink of extinction, these amazing animals have been able to recover, and now thrive within California’s waters. Ocean Futures Society, in co-production with KQED, spent a year filming gray whales for the PBS Special, ‘Gray Whale Obstacle Course’. This special offers insight into the lives of these beautiful animals. However, high energy seismic testing poses a huge risk to these whales, and all others that inhabit our coastal waters.The desire to produce more energy from oil and gas deposits beneath the sea floor has led large energy corporations to extend their search further into the ocean. As a result, high-energy seismic testing has become increasingly common throughout the ocean, and international concern about the potentially harmful effects on marine life has increased. Physical Trauma With the dawn of the industrial age and the subsequent spread of globalization, humans have been filling the oceans with more noise than ever before. The massive increase in the amount of commercial shipping traffic, high-energy seismic testing for underwater oil and gas reserves, as well as the military’s use of Low Frequency Active (LFA) sonar, have impacted and killed thousands of whales and dolphins throughout the world already. Locations as wide spread as the Bahamas, the Canary Islands, and Norway have all seen deaths that have been directly attributed to the use of high-intensity seismic testing or military sonar, as these animals have been found with trauma or brain injuries consistent with high-impact sounds. Numerous studies have also found bubbles in the tissues of beached whales and dolphins following exposure to active sonar testing and scientists suggest that the booming and explosive sounds of high-energy testing may be causing frightened marine mammals to ascend quickly to the surface, making them vulnerable to the harmful effects of decompression sickness and deadly gas bubbles in their bodies. Sound, which travels five times faster in water than in air, is one of the most vital and valuable sensory abilities used by marine mammals in the ocean. Many rely extensively on sound to hunt, navigate, and otherwise communicate with one another underwater. Sperm whales, for example, utilize their massive bulbous heads to emit low-frequency clicking noises to locate their prey thousands of feet below the surface. The increasing use of naval sonar and other high-energy testing by humans greatly interferes with the whale’s ability to hunt. Examination of the ear bones of dead sperm whales have been shown to contain pits and lesions, which have led scientists to believe that these animals likely suffered chronic decompression sickness during the course of their lives. After being on the brink of extinction from whalers in the 18th century, sperm whales, like the Gray whale and most other whale species, have slowly been making a comeback. The continued use of high-energy testing seriously threatens the future of these magnificent animals. Instant Devastation Fisheries around the world have also felt the devastating consequences of high-energy testing in the ocean. After a single air cannon array, fisheries along the Norwegian coast saw a 40% to 80% plummet in Pacific cod and haddock fisheries and had to seek monetary compensation in the wake of the noxious testing. Seismic testing has also been proposed along the U.S. east coast, and fears from commercial and recreational fisherman continue as the testing could have detrimental effects on the sustainability of their fisheries. Eve of Destruction Across the world, scientists are aiming to better understand the impact of high-intensity testing on the future of marine mammals, fish and other valuable organisms in our seas. High-intensity sonar, seismic air guns, and explosions related to industrial or military activities are the some of the loudest sounds humans have ever created. They threaten the sustainability of life in the ocean. The high-energy seismic testing proposed by the Diablo Canyon Power Plant poses an enormous risk to the lives of thousands of marine animals along California’s central coast and serves to illustrate the danger of allowing destructive high-intensity testing to continue. The enormous amount of noise pollution we are pumping into the ocean has far-reaching consequences, not only for the marine mammals, fish, and other organisms of the sea, but also for the entire marine ecosystem as a whole. It is our responsibility as citizens and stewards of our water planet to let our voices be heard in opposition against these destructive practices.

## No link

### T/ China

#### Climate change poses multiple risks to Chinese stability, stresses cross-strait tensions.

Yi-Yuan 2010

Su. Assistant Professor Department of Finance and Economic Law Hsin-Kuo University of Management Tai-Nan, Taiwan Climate Change Impacts on Taiwan’s security 3-2-2010 http://www.mcsstw.org/www/research2.php?article\_id=328&keyword=mcss\_commentary

China is fragile democracy and politically unstable with separatist movements of Tibet and Xin-Jiang. The country is both vulnerable to climate change and important for climate change. The drought conditions or desertification might cause large-scale refugees and population displacement which will further destabilize China. If the local government provided weak response to a future weather disaster, this could encourage separatist or radicals to challenge or attack the government.

Such tensions might have influences on its policy to Taiwan and United States. China is also vulnerable to the consequences of potential water shortage and storm damage along its densely populated coast. The immense human costs of extreme weather events in cities such as Shanghai or Guangzhou could damage China’s industrial production capacities, which involved many Taiwanese investments and facilities, and ports, with humongous effects on global trading and economy. Devastating floods or storm in China could send tens of thousands of environment refugees cross the border to Taiwan, Japan or its neighbor countries, potentially leading to tensions between the refugees and recipient communities in these countries. Such mass migration or displacement might increase the tensions within Taiwan and also between Strait. The areas are vulnerable to flood and storm in China can also exacerbate the pandemic diseases, which could contribute conflict over scare resources. Such conflicts might spillover effects on Taiwan or its neighbor states.

#### Prolif is inevitable- no one models US restraint

**Etzioni, George Washington IR professor, 2013**

(Amitai, “the Great Drone Debate”, March-April, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>, ldg)

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage. Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of selfconstraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

#### Authoritarian states don’t follow norms — their “US justifies others” arg is naive

John O. McGinnis 7, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to adopt our good norms and avoid our bad ones.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover." They would have adopted the same rules, anyway. The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

## Warming

### Co2 Yes

#### Can’t adapt – must abide by the precautionary principle. If anything the risks are understated.

Rahmstorf 2013

Stefan, Professor of Oceanography at Potsdam University, member of the Advisory Council on Global Change of the German government and of the Academia Europaea. He is a lead author of the paleoclimate chapter of the 4th assessment report of the IPCC. The new IPCC climate report 9-27-13 http://www.realclimate.org/index.php/archives/2013/09/the-new-ipcc-climate-report/

Global warming It is now considered even more certain (> 95%) that human influence has been the dominant cause of the observed warming since the mid-20th century. Natural internal variability and natural external forcings (eg the sun) have contributed virtually nothing to the warming since 1950 – the share of these factors was narrowed down by IPCC to ± 0.1 degrees. The measured temperature evolution is shown in the following graph. Those who have these data before their eyes can recognise immediately how misguided the big media attention for the “wiggles” of the curves towards the end has been. Short-term variations like this have always existed, and they always will. These are mostly random, they are (at least so far) not predictable, and the IPCC has never claimed to be able to make predictions for short periods of 10-15 years, precisely because these are dominated by such natural variations. The last 30 years were probably the warmest since at least 1,400 years. This is a result from improved proxy data. In the 3rd IPCC report this could only be said about the last thousand years, in the 4th about the last 1,300 years. The future warming by 2100 – with comparable emission scenarios – is about the same as in the previous report. For the highest scenario, the best-estimate warming by 2100 is still 4 °C (see the following chart). What is new is that IPCC has also studied climate mitigation scenarios. The blue RCP2.6 is such a scenario with strong emissions reduction. With this scenario global warming can be stopped below 2 ° C. A large part of the warming will be irreversible: from the point where emissions have dropped to zero, global temperature will remain almost constant for centuries at the elevated level reached by that time. (This is why the climate problem in my opinion is a classic case for the precautionary principle.) Sea-level rise Sea levels are rising faster now than in the previous two millennia, and the rise will continue to accelerate – regardless of the emissions scenario, even with strong climate mitigation. (This is due to the inertia in the system.) The new IPCC scenarios to 2100 are shown the following graph. This is perhaps the biggest change over the 4th IPCC report: a much more rapid sea-level rise is now projected (28-98 cm by 2100). This is more than 50% higher than the old projections (18-59 cm) when comparing the same emission scenarios and time periods. With unabated emissions (and not only for the highest scenario), the IPCC estimates that by the year 2300 global sea levels will rise by 1-3 meters. [Correction: the document actually says: "1 m to more than 3 m"] Already, there are likely more frequent storm surges as a result of sea level rise, and for the future this becomes very likely. Land and sea ice Over the last two decades, the Greenland and Antarctic ice sheets have been losing mass, glaciers have continued to shrink almost worldwide, and Arctic sea ice and Northern Hemisphere spring snow cover have continued to decrease in extent. The Greenland ice sheet is less stable than expected in the last report. In the Eemian (the last interglacial period 120,000 years ago, when the global temperature was higher by 1-2 °C) global sea level was 5-10 meters higher than today (in the 4th IPCC report this was thought to be just 4-6 meters). Due to better data very ​​high confidence is assigned to this. Since a total loss of the Greenland ice sheet corresponds to a 7 meters rise in sea level, this may indicate ice loss from Antarctica in the Eemian. In the new IPCC report the critical temperature limit at which a total loss of the Greenland ice sheet will occur is estimated as 1 to 4°C of warming above preindustrial temperature. In the previous report that was still 1.9 to 4.6 °C – and that was one of the reasons why international climate policy has agreed to limit global warming to below 2 degrees. With unabated emissions (RCP8.5) the Arctic Ocean will likely become virtually ice-free in summer before the middle of the century (see figure). In the last report, this was not expected until near the end of the century. Rainfall The IPCC expects that dry areas become drier due to global warming, and moist areas even wetter. Extreme rainfall has likely already been increasing in North America and Europe (elsewhere the data are not so good). Future extreme precipitation events are very likely to become more intense and more frequent over most land areas of the humid tropics and mid-latitudes. Oceans At high emissions (red scenario above), the IPCC expects a weakening of the Atlantic Ocean circulation (commonly known as the Gulf Stream system) by 12% to 54% by the end of the century. Last but not least, our CO2 emissions not only cause climate change, but also an increase in the CO2 concentration in sea water, and the oceans acidify due to the carbonic acid that forms. This is shown by the measured data in the graph below. Conclusion The new IPCC report gives no reason for complacency – even if politically motivated “climate skeptics” have tried to give this impression ahead of its release with frantic PR activities. Many wrong things have been written which now collapse in the light of the actual report. The opposite is true. Many developments are now considered to be more urgent than in the fourth IPCC report, released in 2007. That the IPCC often needs to correct itself “upward” is an illustration of the fact that it tends to produce very cautious and conservative statements, due to its consensus structure – the IPCC statements form a kind of lowest common denominator on which many researchers can agree. The New York Times has given some examples for the IPCC “bending over backward to be scientifically conservative”. Despite or perhaps even because of this conservatism, IPCC reports are extremely valuable – as long as one is aware of it.

### Oxygen

#### Ruins the oceans----that’s Flourney----turns oxygen

Sify 2010 – Sydney newspaper citing Ove Hoegh-Guldberg, professor at University of Queensland and Director of the Global Change Institute, and John Bruno, associate professor of Marine Science at UNC (Sify News, “Could unbridled climate changes lead to human extinction?”, <http://www.sify.com/news/could-unbridled-climate-changes-lead-to-human-extinction-news-international-kgtrOhdaahc.html>

The findings of the comprehensive report: 'The impact of climate change on the world's marine ecosystems' emerged from a synthesis of recent research on the world's oceans, carried out by two of the world's leading marine scientists. One of the authors of the report is Ove Hoegh-Guldberg, professor at The University of Queensland and the director of its Global Change Institute (GCI). 'We may see sudden, unexpected changes that have serious ramifications for the overall well-being of humans, including the capacity of the planet to support people. This is further evidence that we are well on the way to the next great extinction event,' says Hoegh-Guldberg. 'The findings have enormous implications for mankind, particularly if the trend continues. The earth's ocean, which produces half of the oxygen we breathe and absorbs 30 per cent of human-generated carbon dioxide, is equivalent to its heart and lungs. This study shows worrying signs of ill-health. It's as if the earth has been smoking two packs of cigarettes a day!,' he added. 'We are entering a period in which the ocean services upon which humanity depends are undergoing massive change and in some cases beginning to fail', he added. The 'fundamental and comprehensive' changes to marine life identified in the report include rapidly warming and acidifying oceans, changes in water circulation and expansion of dead zones within the ocean depths. These are driving major changes in marine ecosystems: less abundant coral reefs, sea grasses and mangroves (important fish nurseries); fewer, smaller fish; a breakdown in food chains; changes in the distribution of marine life; and more frequent diseases and pests among marine organisms. Study co-author John F Bruno, associate professor in marine science at The University of North Carolina, says greenhouse gas emissions are modifying many physical and geochemical aspects of the planet's oceans, in ways 'unprecedented in nearly a million years'. 'This is causing fundamental and comprehensive changes to the way marine ecosystems function,' Bruno warned, according to a GCI release. These findings were published in Science

#### And we're reaching a tipping point, uncontrolled warming will annihilate human life if we allow the oceans to continue absorbing CO2.

Reuters 2010 "Oceans Choking on CO2, Face Deadly Changes: Study" http://www.reuters.com/article/idUSTRE65H0LI20100618?feedType=RSS&feedName=environmentNews&utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+reuters%2Fenvironment+%28News+%2F+US+%2F+Environment%29

Oceans were rapidly warming and acidifying, water circulation was being altered and dead zones within the ocean depths were expanding, said the report. There has also been a decline in major ocean ecosystems like kelp forests and coral reefs and the marine food chain was breaking down, with fewer and smaller fish and more frequent diseases and pests among marine organisms. "If we continue down this pathway we get into conditions which have no analog to anything we've experienced," said Hoegh-Guldberg, director of the Global Change Institute at The University of Queensland. Hoegh-Guldberg said oceans were the Earth's "heart and lungs", producing half of the world's oxygen and absorbing 30 percent of man-made carbon dioxide. "We are entering a period in which the very ocean services upon which humanity depends are undergoing massive change and in some cases beginning to fail," said Hoegh-Guldberg. "Quite plainly, the Earth cannot do without its ocean. This is further evidence that we are well on the way to the next great extinction event." More than 3.5 billion people depend on the ocean for their primary source of food and in 20 years this number could double, the report's authors say. The world's climate has remained stable for several thousand years, but climate change in the past 150 years is now forcing organisms to change rapidly -- changes that through evolution would normally take a long time, said the report. "We are becoming increasingly certain that the world's marine ecosystems are approaching tipping points. These tipping points are where change accelerates and causes unrelated impacts on other systems," said co-author marine scientist John F. Bruno at the University of North Carolina. Last week, the head of the United Nations Environment Program, Achim Steiner, said it was crucial the world responded to the loss of coral reefs, forests and other ecosystems "that generate multi-trillion dollar services that underpin all life-including economic life-on Earth".

### AG

#### High-precipitation events decreases productivity of agriculture --- water early in the season decreases water at other times --- it also biologically alters crops which decreases their quality and increases the potential of disease

Hatfield et. al. 11—Laboratory Director @ National Laboratory for Agriculture and the Environment (Ames, IA)—AND K.J. Boote, Professor of Agronomy @ UFlorida—AND B.A. Kimball, worker @ USDA-ARS, U.S. Arid-Land Agricultural Research Center—AND L.H. Ziska, worker @ USDA Crop Systems and Global Change Lab—AND R. C. Izaurralde, Professor @ Joint Global Change Research Institute, Pacific Northwest National Lab @ UMaryland—AND D. Ort, USDA/ARS, Photosynthesis Research Unit and Professor @ UIllinois—AND A.M. Thomson, Joint Global Change Research Institute, Pacific Northwest National Lab. @ UMaryland—AND D. Wolfe, Professor of Horticulture @ Cornell University (J.L, “Climate Impacts on Agriculture: Implications for Crop Production,” Agronomy Journal, Vol. 103, Iss. 2, March 2k11, American Society of Agronomy, DA: 6/25/2012//JLENART)

The prediction of an increase in the frequency of high-precipitation events (e.g., >5 cm in 48 h) may be of great concern in many parts of the United States equally as drought because of the inability of the soil to maintain infiltration rates high enough to absorb high-intensity rainfall events (Hayhoe et al., 2007). This trend is projected to apply for many regions (Lettenmaier et al., 2008). Excessive rainfall during the spring planting season could cause delays creating a risk for both productivity and profitability for agronomic crops (Rosenzweig et al., 2002) as well as high value horticultural crops such as melon (Cucumis melo), sweet corn (Zea mays L. var. rugosa), and tomato (Lycopersicon esculentum L.) for which premiums are often paid for early season production. Crop losses associated with anoxia, increases to susceptibility to root diseases, increases in soil compaction (due to use of heavy farm equipment on wet soils), and more runoff and leaching of nutrients and agricultural chemicals into ground- and surface-waters may occur as the result of excess soil water and field flooding during the early growing season. The shift in the rainfall distribution because of high precipitation events could increase the likelihood of water deficiencies at other times because of the changes in rainfall frequency (Hatfield and Prueger, 2004). Increases in heavy rainfall due to more intense storms and associated turbulence and wind gusts, increase the potential for lodging of crops. Delayed harvest or excessive rainfall during harvest time increases the potential for decreasing quality of many crops and potential for disease infestation on grains.

Concedes sinks and burps

#### Empirically temperature increases cause methane burp

Grush 2011

Loren, Mass Extinction Caused by Deadly 'Earth Burp', 7-21-2011, Fox News, http://www.foxnews.com/scitech/2011/07/21/mass-extinction-caused-by-earths-burp/

Micha Ruhl and researchers from the Nordic Center for Earth Evolution at the University of Copenhagen in Denmark have found that the mass extinction of half of Earth’s marine life over 200 million years ago was likely the result of a giant release of carbon methane in the atmosphere. This massive methane “burp” led to an increase in atmospheric temperature around the globe -- and organisms and ecosystems were simply unable adapt to their hotter environment. “We measured the isotopes of carbon in plants, from before the mass extinction event and then after the mass extinction. We found two different types of carbons and the molecules that were produced during that event,” Micha Ruhl told FoxNews.com. “So we started thinking of other sources of carbon that could have changed the atmosphere.” The original theory blamed the extinction and atmospheric change on carbon released during a period of intense volcanism -- a large surge in volcanic activity brought about by continental shift when Pangaea broke apart. But Ruhl and his partners discovered that this volcanic episode occurred 600,000 years prior to the end of the Triassic Period. The mass extinction occurred only 20,000 to 40,000 years prior. Extensive calculations and research by Ruhl’s team revealed that the burp pumped over 12,000 gigatons of methane into the atmosphere during the final years of the Triassic. While volcanism was revealed not to have caused the extinction itself, the researchers believe that the volcanoes indirectly set the events in motion by triggering the methane release. “A small release of carbon dioxide from volcanism initiated global warming of the atmosphere, increasing temperatures in the oceans,” Ruhl told FoxNews.com. “Methane is stored in the sea floor -- it’s a molecule which is caught in some kind of ice structure. As soon as the temperatures got above a certain threshold, the ice melted and that methane was released.” For those unconcerned with an event hundreds of millions of years in the past, Ruhl’s research is a little more than a history lesson. Ruhl argues that better understanding the Triassic period extinction could help with further research in the field of climate change. “People are worried nowadays that the release of carbon dioxide from fossil fuel burning could melt glaciers in the same way,” Ruhl told FoxNews.com. “That’s the big question of course" -- and a big leap to make.

#### Climate change causes grasslands to overtake forests – wildfire-too much of the wrong abundance

Cocke 2008

William, National Geographic News, Will Grasslands Overtake U.S. Forests Due to Warming? 8-6-2008 http://news.nationalgeographic.com/news/2008/08/080806-grasslands.html

An unstable climate would prove fatal to certain types of trees and advantageous for short-lived plants, such as grasses. The buildup of combustible plant material caused by long, wet periods followed by extended droughts may increase the size and frequency of wildfires, Notaro said. The combination of fire and drought, coupled with extreme temperature swings, favors certain types of trees, as well as grass. "The evergreen tree tends not to do as well with larger variability," Notaro said. "Part of the reason is, if you kill an evergreen tree, it takes a long time to grow back compared to a grass or even a deciduous tree." Deciduous trees limit water loss by shedding their leaves, whereas evergreens, which need to keep their needles year-round, are sensitive to water loss, particularly during the winter months. By favoring the expansion of grasses over woody plants, less consistent climate patterns over time could reduce total global vegetation cover, Notaro said. Shifting Boundaries In the central U.S. an ecotone marks the transition from grasslands and prairies to the west and forests to the east. The current boundary exists largely because the western climate is more extreme—varying throughout the year between hot and cold, and wet and dry. "If there was no variability, then the whole forest in the eastern United States would shift into the central United States," Notaro said. Over the course of decades, if global warming causes extreme weather, as expected, the opposite will occur: Grasses, which go dormant during drought and thrive after fire, would move east to exploit the habitat of trees that are unable to compete for scarce resources and ravaged by wildfires. The ecotone transition from closed forest to open canopy is, by nature, highly variable, said Ronald P. Neilson, a scientist with the U.S. Forest Service in Corvallis, in Oregon. An increasingly extreme climate "would tend to push the ecosystem to a lower density of overstory [forest canopy] and a more open type of a system," said Neilson, who is not involved with the new study.