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#### Advantage one is Drone Wars

#### Constraints influence global drone practices – the impact is global war

Dowd, 13 [Drone Wars: Risks and Warnings Alan W. Dowd, Alan W. Dowd writes on national defense, foreign policy, and international security. His writing has appeared in multiple publications including Parameters, Policy Review, The Journal of Diplomacy and International Relations, World Politics Review, American Outlook, The Baltimore Sun, The Washington Times, The National Post, The Wall Street Journal Europe, The Jerusalem Post, and The Financial Times Deutschland, Parameters 42(4)/43(1) Winter-Spring 2013]

In short, it seems Washington has been seduced by the Jupiter Complex. Being seen in such a light—as detached and remote in every sense of the word, especially in waging war—should give Americans pause. “Reliance on drone strikes allows our opponents to cast our country as a distant, high-tech, amoral purveyor of death,” argues Kurt Volker, former US ambassador to NATO. “It builds resentment, facilitates terrorist recruitment and alienates those we should seek to inspire.”40 Indeed, what appears a successful counterterrorism campaign to Americans may look very different to international observers. “In 17 of 20 countries,” a recent Pew survey found, “more than half disapprove of U.S. drone attacks targeting extremist leaders and groups in nations such as Pakistan, Yemen and Somalia.”41 Moreover, a UN official recently announced plans to create “an investigation unit” within the Human Rights Council to “inquire into individual drone attacks . . . in which it has been alleged that civilian casualties have been inflicted.”42 This is not to suggest that either side of the drone debate has a monopoly on the moral high ground; both have honorable motives. UCAV advocates want to employ drone technologies to limit US casualties, while UCAV opponents are concerned that these same technologies could make war too easy to wage. This underscores there exists no simple solution to the drone dilemma. Converting to a fully unmanned air force would be dangerous. Putting the UCAV genie back in the bottle, on the other hand, would be difficult, perhaps impossible. There are those who argue that it is a false dichotomy to say that policymakers must choose between UCAVs and manned aircraft. To be sure, UCAVs could serve as a complement to manned aircraft rather than a replacement, with pilots in the battlespace wielding UCAVs to augment their capabilities. That does not, however, appear to be where we are headed. Consider Admiral Mullen’s comments about the sunset of manned combat aircraft, the manned-versus-unmanned acquisition trajectories, the remote-control wars in Pakistan and Yemen and Somalia, and President Obama’s reliance on UCAVs. Earlier this year, for instance, when France asked for help in its counterassault against jihadists in Mali, Washington initially offered drones.43 The next president will likely follow and build upon the UCAV precedents set during the Obama administration, just as the Obama administration has with the UCAV precedents set during the Bush administration. Recall that the first shot in the drone war was fired approximately 11 years ago, in Yemen, when a CIA Predator drone retrofitted with Hellfire missiles targeted and killed one of the planners of the USS Cole attack. Given their record and growing capabilities, it seems unlikely that UCAVs will ever be renounced entirely; however, perhaps the use of drones for lethal purposes can be curtailed or at least contained. It is important to recall that the United States has circumscribed its own military power in the past by drawing the line at certain technologies. The United States halted development of the neutron bomb in the 1970s and dismantled its neutron arsenal in the 2000s; agreed to forswear chemical weapons; and renounced biological warfare “for the sake of all mankind.”44 That brings us back to The New York Times’ portrait of the drone war. Washington must be mindful that the world is watching. This is not an argument in defense of international watchdogs tying America down. The UN secretariat may refuse to recognize America’s special role, but by turning to Washington whenever civil war breaks out, or nuclear weapons sprout up, or sea lanes are threatened, or natural disasters wreak havoc, or genocide is let loose, it is tacitly conceding that the United States is, well, special. Washington has every right to kill those who are trying to kill Americans. However, the brewing international backlash against the drone war reminds us that means and methods matter as much as ends. Error War If these geo-political consequences of remote-control war do not get our attention, then the looming geo-strategic consequences should. If we make the argument that UCAV pilots are in the battlespace, then we are effectively saying that the battlespace is the entire earth. If that is the case, the unintended consequences could be dramatic. First, if the battlespace is the entire earth, the enemy would seem to have the right to wage war on those places where UCAV operators are based. That’s a sobering thought, one few policymakers have contemplated. Second, power-projecting nations are following America’s lead and developing their own drones to target their distant enemies by remote. An estimated 75 countries have drone programs underway.45 Many of these nations are less discriminating in employing military force than the United States—and less skillful. Indeed, drones may usher in a new age of accidental wars. If the best drones deployed by the best military crash more than any other aircraft in America’s fleet, imagine the accident rate for mediocre drones deployed by mediocre militaries. And then imagine the international incidents this could trigger between, say, India and Pakistan; North and South Korea; Russia and the Baltics or Poland or Georgia; China and any number of its wary neighbors. China has at least one dozen drones on the drawing board or in production, and has announced plans to dot its coastline with 11 drone bases in the next two years.46 The Pentagon’s recent reports on Chinese military power detail “acquisition and development of longer-range UAVs and UCAVs . . . for long-range reconnaissance and strike”; development of UCAVs to enable “a greater capacity for military preemption”; and interest in “converting retired fighter aircraft into unmanned combat aerial vehicles.”47 At a 2011 air show, Beijing showcased one of its newest drones by playing a video demonstrating a pilotless plane tracking a US aircraft carrier near Taiwan and relaying targeting information.48 Equally worrisome, the proliferation of drones could enable nonpower-projecting nations—and nonnations, for that matter—to join the ranks of power-projecting nations. Drones are a cheap alternative to long-range, long-endurance warplanes. Yet despite their low cost, drones can pack a punch. And owing to their size and range, they can conceal their home address far more effectively than the typical, nonstealthy manned warplane. Recall that the possibility of surprise attack by drones was cited to justify the war against Saddam Hussein’s Iraq.49 Of course, cutting-edge UCAVs have not fallen into undeterrable hands. But if history is any guide, they will. Such is the nature of proliferation. Even if the spread of UCAV technology does not harm the United States in a direct way, it is unlikely that opposing swarms of semiautonomous, pilotless warplanes roaming about the earth, striking at will, veering off course, crashing here and there, and sometimes simply failing to respond to their remote-control pilots will do much to promote a liberal global order. It would be ironic if the promise of risk-free war presented by drones spawned a new era of danger for the United States and its allies.

#### Unfettered drone prolif causes deterrence crises that lead to nuclear conflict and Indo-Pak war

Boyle, 13 [“The costs and consequences of drone warfare”, MICHAEL J. BOYLE, International Affairs 89: 1 (2013) 1–29, assistant professor of political science at LaSalle University]

The emergence of this arms race for drones raises at least five long-term strategic consequences, not all of which are favourable to the United States over the long term. First, it is now obvious that other states will use drones in ways that are inconsistent with US interests. One reason why the US has been so keen to use drone technology in Pakistan and Yemen is that at present it retains a substantial advantage in high-quality attack drones. Many of the other states now capable of employing drones of near-equivalent technology—for example, the UK and Israel—are considered allies. But this situation is quickly changing as other leading geopolitical players, **such as Russia and China**, are beginning rapidly **to develop and deploy drones** for their own purposes. While its own technology still lags behind that of the US, Russia has spent huge sums on purchasing drones and has recently sought to buy the Israeli-made Eitan drone capable of surveillance and firing air-to-surface missiles.132 China has begun to develop UAVs for reconnaissance and combat and has several new drones capable of long-range surveillance and attack under development.133 China is also planning to use unmanned surveillance drones to allow it to monitor the disputed East China Sea Islands, which are currently under dispute with Japan and Taiwan.134 Both Russia and China will pursue this technology and develop their own drone suppliers which will sell to the highest bidder, presumably with fewer export controls than those imposed by the US Congress. Once both governments have equivalent or near-equivalent levels of drone technology to the United States, they will be similarly tempted to use it for surveillance or attack in the way the US has done. Thus, through its own over-reliance on drones in places such as Pakistan and Yemen, the US may be hastening the arrival of a world where its qualitative advantages in drone technology are eclipsed and where this technology will be used and sold by rival Great Powers whose interests do not mirror its own. A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them. Another dimension of this problem has to do with the risk of accident. Drones are prone to accidents and crashes. By July 2010, the US Air Force had identified approximately 79 drone accidents.140 Recently released documents have revealed that there have been a number of drone accidents and crashes in the Seychelles and Djibouti, some of which happened in close proximity to civilian airports.141 The rapid proliferation of drones worldwide will involve a risk of accident to civilian aircraft, possibly producing an international incident if such an accident were to involve an aircraft affiliated to a state hostile to the owner of the drone. Most of the drone accidents may be innocuous, but some will carry strategic risks. In December 2011, a CIA drone designed for nuclear surveillance crashed in Iran, revealing the existence of the spying programme and leaving sensitive technology in the hands of the Iranian government.142 The expansion of drone technology raises the possibility that some of these surveillance drones will be interpreted as attack drones, or that an accident or crash will spiral out of control and lead to an armed confrontation.143 An accident would be even more dangerous if the US were to pursue its plans for nuclear-powered drones, which can spread radioactive material like a dirty bomb if they crash.144 Third, lethal drones create the possibility that the norms on the use of force will erode, creating a much more dangerous world and pushing the international system back towards the rule of the jungle. To some extent, this world is already being ushered in by the United States, which has set a dangerous precedent that a state may simply kill foreign citizens considered a threat without a declaration of war. Even John Brennan has recognized that the US is ‘establishing a precedent that other nations may follow’.145 **Given this precedent**, there is nothing to stop other states from following the American lead and using drone strikes to eliminate potential threats. Those ‘threats’ need not be terrorists, but could be others— dissidents, spies, even journalists—whose behaviour threatens a government. One danger is that drone use might undermine the normative prohibition on the assassination of leaders and government officials that most (but not all) states currently respect. A greater danger, however, is that the US will have normalized murder as a tool of statecraft and created a world where states can increasingly take vengeance on individuals outside their borders without the niceties of extradition, due process or trial.146 As some of its critics have noted, the Obama administration may have created a world where states will find it easier to kill terrorists rather than capture them and deal with all of the legal and evidentiary difficulties associated with giving them a fair trial.147 Fourth, there is a distinct danger that the world will divide into two camps: developed states in possession of drone technology, and weak states and rebel movements that lack them. States with recurring separatist or insurgent problems may begin to police their restive territories through drone strikes, essentially containing the problem in a fixed geographical region and engaging in a largely punitive policy against them. One could easily imagine that China, for example, might resort to drone strikes in Uighur provinces in order to keep potential threats from emerging, or that Russia could use drones to strike at separatist movements in Chechnya or elsewhere. Such behaviour would not necessarily be confined to authoritarian governments; it is equally possible that Israel might use drones to police Gaza and the West Bank, thus reducing the vulnerability of Israeli soldiers to Palestinian attacks on the ground. The extent to which Israel might be willing to use drones in combat and surveillance was revealed in its November 2012 attack on Gaza. Israel allegedly used a drone to assassinate the Hamas leader Ahmed Jabari and employed a number of armed drones for strikes in a way that was described as ‘unprecedented’ by senior Israeli officials.148 It is not hard to imagine Israel concluding that drones over Gaza were the best way to deal with the problem of Hamas, even if their use left the Palestinian population subject to constant, unnerving surveillance. All of the consequences of such a sharp division between the haves and have-nots with drone technology is hard to assess, but one possibility is that governments with secessionist movements might be less willing to negotiate and grant concessions if drones allowed them to police their internal enemies with ruthless efficiency and ‘manage’ the problem at low cost. The result might be a situation where such conflicts are contained but not resolved, while citizens in developed states grow increasingly indifferent to the suffering of those making secessionist or even national liberation claims, including just ones, upon them. Finally, drones have the capacity to strengthen the surveillance capacity of both democracies and authoritarian regimes, with significant consequences for civil liberties. In the UK, BAE Systems is adapting military-designed drones for a range of civilian policing tasks including ‘monitoring antisocial motorists, protesters, agricultural thieves and fly-tippers’.149 Such drones are also envisioned as monitoring Britain’s shores for illegal immigration and drug smuggling. In the United States, the Federal Aviation Administration (FAA) issued 61 permits for domestic drone use between November 2006 and June 2011, mainly to local and state police, but also to federal agencies and even universities.150 According to one FAA estimate, the US will have 30,000 drones patrolling the skies by 2022.151 Similarly, the European Commission will spend US$260 million on Eurosur, a new programme that will use drones to patrol the Mediterranean coast.152 The risk that drones will turn democracies into ‘surveillance states’ is well known, but the risks for authoritarian regimes may be even more severe. Authoritarian states, particularly those that face serious internal opposition, may tap into drone technology now available to monitor and ruthlessly punish their opponents. In semi-authoritarian Russia, for example, drones have already been employed to monitor pro-democracy protesters.153 One could only imagine what a truly murderous authoritarian regime—such as Bashar al-Assad’s Syria—would do with its own fleet of drones. The expansion of drone technology may make the strong even stronger, thus **tilting the balance of power in authoritarian regimes** **even more decisively towards** those who wield the coercive instruments of power and against those who dare to challenge them. Conclusion Even though it has now been confronted with blowback from drones in the failed Times Square bombing, the United States has yet to engage in a serious analysis of the strategic costs and consequences of its use of drones, both for its own security and for the rest of the world. Much of the debate over drones to date has focused on measuring body counts and carries the unspoken assumption that if drone strikes are efficient—that is, low cost and low risk for US personnel relative to the terrorists killed—then they must also be effective. This article has argued that such analyses are operating with an attenuated notion of effectiveness that discounts some of the other key dynamics—such as the corrosion of the perceived competence and legitimacy of governments where drone strikes take place, growing anti-Americanism and fresh recruitment to militant networks—that reveal the costs of drone warfare. In other words, the analysis of the effectiveness of drones takes into account only the ‘loss’ side of the ledger for the ‘bad guys’, without asking what America’s enemies gain by being subjected to a policy of constant surveillance and attack. In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States. Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156 A final, and crucial, step towards mitigating the strategic consequences of drones would be to develop internationally recognized standards and norms for their use and sale. It is not realistic to suggest that the US stop using its drones altogether, or to assume that other countries will accept a moratorium on buying and using drones. **The genie is out of the bottle**: drones will be a fact of life for years to come. What remains to be done is to ensure that their use and sale are transparent, regulated and consistent with internationally recognized human rights standards. The Obama administration has already begun to show some awareness that drones are dangerous if placed in the wrong hands. A recent New York Times report revealed that the Obama administration began to develop a secret drones ‘rulebook’ to govern their use if Mitt Romney were to be elected president.157 The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.

#### Indo Pak war causes extinction

Greg Chaffin 11, Research Assistant at Foreign Policy in Focus, July 8, 2011, “Reorienting U.S. Security Strategy in South Asia,” online: http://www.fpif.org/articles/reorienting\_us\_security\_strategy\_in\_south\_asia

The greatest threat to regional security (although curiously not at the top of most lists of U.S. regional concerns) is the possibility that increased India-Pakistan tension will erupt into all-out warthat could quickly escalate into a nuclear exchange. Indeed, in just the past two decades, the two neighbors have come perilously close to war on several occasions. India and Pakistan remain the most likely belligerents in the world to engage in nuclear war. Due to an Indian preponderance of conventional forces, Pakistan would have a strong incentive to use its nuclear arsenal very early on before a routing of its military installations and weaker conventional forces. In the event of conflict, Pakistan’s only chance of survival would be the early use of its nuclear arsenal to inflict unacceptable damage to Indian military and (much more likely) civilian targets. By raising the stakes to unacceptable levels, Pakistan would hope that India would step away from the brink. However, it is equally likely that India would respond in kind, with escalation ensuing. Neither state possesses tactical nuclear weapons, but both possess scores of city-sized bombs like those used on Hiroshima and Nagasaki. Furthermore, as more damage was inflicted (or as the result of a decapitating strike), command and control elements would be disabled, leaving individual commanders to respondin an environment increasingly clouded by the fog of war and decreasing the likelihood that either government (what would be left of them) would be able to guarantee that their forces would follow a negotiated settlement or phased reduction in hostilities. As a result any suchconflict would likely continue to escalateuntil one side incurred an unacceptable or wholly debilitating level of injury or exhausted its nuclear arsenal. A nuclear conflict in the subcontinentwould havedisastrous effects on the world as a whole. In a January 2010 paper published in Scientific American, climatology professors Alan Robock and Owen Brian Toon forecast the global repercussionsof a regional nuclear war. Their results are strikingly similar to those of studies conducted in 1980 that conclude that a nuclear war between the United States and the Soviet Union wouldresult in acatastrophic and prolonged nuclear winter,which could very well place the survival of the human race in jeopardy. In their study, Robock and Toon use computer models to simulate the effect of a nuclear exchange between India and Pakistan in which each were to use roughly half their existing arsenals (50 apiece). Since Indian and Pakistani nuclear devices are strategic rather than tactical, the likely targets would be major population centers. Owing to the population densities of urban centers in both nations, the number of direct casualties could climb as high as 20 million. The fallout of such an exchange would not merely be limited to the immediate area. First, the detonation of a large number of nuclear devices would propel as much as seven million metric tons of ash, soot, smoke, and debris as high as the lower stratosphere. Owing to their small size (less than a tenth of a micron) and a lack of precipitation at this altitude, ash particles would remain aloft for as long as a decade, during which time the world would remain perpetually overcast. Furthermore, these particles would soak up heat from the sun, generating intense heat in the upper atmosphere that would severely damage the earth’s ozone layer. The inability of sunlight to penetrate through the smoke and dust would lead toglobal cooling by as much as 2.3 degrees Fahrenheit. This shift in global temperature would lead to more drought, worldwide food shortages, and widespread political upheaval. Although the likelihood of this doomsday scenario remains relatively low, the consequences are dire enough to warrant greater U.S. and international attention. Furthermore, due to the ongoing conflict over Kashmir and the deep animus held between India and Pakistan, it might not take much to set them off. Indeed, following the successful U.S. raid on bin Laden’s compound, several members of India’s security apparatus along with conservative politicians have argued that India should emulate the SEAL Team Six raid and launch their own cross-border incursions to nab or kill anti-Indian terrorists, either preemptively or after the fact. Such provocative action could very well lead to all-out war between the two that couldquickly escalate.

#### Escalation uniquely likely now – no impact defense

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“This is a sad reality of India-Pakistan relations — whenever things are looking up, a saboteur tries to send all progress up in smoke.” The region has been on the boil **since** the **five** Indian **soldiers were killed** in an ambush in the Poonch sector of India-administered Kashmir last week. India said Pakistani soldiers were to blame, and Pakistan disavowed the attack. More from GlobalPost: 7 graphs that prove America is overrated The incident prompted a series of cross-border skirmishes that each country has accused the other of starting. It has all-but scuttled hopes that Sharif and his Indian counterpart, Manmohan Singh, will be able to resume peace negotiations anytime soon. The so-called composite dialogue dates back to January 2004. It was called off following the November 2008 Mumbai terrorist attack, which India believes were perpetrated with the aid of Pakistan's Inter-Services Intelligence agency. Until this week, the formal talks had been set to resume this month. Now even an informal meeting between Singh and Sharif on the sidelines of the September UN General Assembly is at risk. **The situation is scary, experts say**. Kashmir — a divided territory that both India and Pakistan claim as their own — was the cause of two of the three wars the two countries have fought since they attained independence from Britain in 1947. Now both New Delhi and Islamabad control numerous nukes; Pakistan has the world’s fastest growing arsenal. As the tit-for-tat bombardment continues, the shelling already marks the heaviest exchange since the ceasefire began in 2003, raising fears that the repeated violations will result in a complete breakdown of the truce. Signaling their concern about further escalation, both Washington and the UN have appealed for calm. But which side is responsible for starting the fire? What is the endgame? And how far will the flames spread before cooler heads prevail? Indian analysts remain convinced that Pakistan uses such shelling to provide cover for jihadi militants crossing the border to attack installations in India-administered Kashmir. By India's tally, there have already been 42 such ceasefire violations in 2013, compared with 28 in 2012, according to India Today. Meanwhile, this year 40 members of India's security forces in the area have been killed, compared with 17 the year before. For Indians looking to explain who broke the truce this time, that's a smoking gun. “If you just take the common sensical point of view, India has no interest [in breaking the ceasefire], because we are not sending in infiltrators under cover of fire,” said former Indian foreign secretary Kanwal Sibal. “We have no reason to fire unilaterally because what do we then hope to achieve? We don't score any points either bilaterally or internationally.” Pakistan-watchers, however, argue that its army no longer provides such support for jihadi groups, and hint that the ambush story may have been a ploy by India, or a local Indian commander, to trigger hostilities. Admitting that Pakistani generals “may have” helped jihadis cross into India in the past, for instance, Pakistan-born Shuja Nawaz, director of the South Asia Center at the Atlantic Council, said that policy was ended under former president General Pervez Musharraf, and it would be “surprising if it is being activated again.” Nawaz also questioned why India first called the alleged ambush an attack by “persons dressed in Pakistani uniforms” – only later referring to it as an army assault — and why top military officials allowed tempers to flare for two days before activating a hotline intended to defuse these situations. “What is surprising is that the Director General Military Operations did not activate the hotline till two days [after the alleged ambush]. Why?” said Nawaz. Experts agree it’s not likely that Sharif's civilian government officially sanctioned the alleged ambush of Indian soldiers. But it may well have had the active or tacit support of the military-intelligence combine, or “deep state,” that holds the real power in Pakistan. Moreover, though the ceasefire is expected to hold, the ambush and subsequent saber rattling in Pakistan certainly establishes that its new prime minister — for all his talk of peace — must overcome enormous obstacles in his own country before he can think of negotiating with India. “Overarching all this is the fact that during the election campaign, [Sharif] spoke about his desire to improve relations with India, and there was an exchange of special envoys pretty quickly,” said India's Sibal. “There was hope that he might be able to begin turning a new page. But under his watch all the wrong things are happening... Jihadi organizations [and] what they call the ‘deep state’ in Pakistan [i.e. the army and intelligence apparatus] seem to be at work.” While Sharif has continued to preach peace since his June election, his army and spy agency don't seem to be listening. That's because both have vested interests in stoking fears of an Indian attack — lest they face a sustained drive to curtail their powers, or, worse, a deep cut to the defense budget. On August 3, terrorists whom India claims have links to Pakistan's Inter-Services Intelligence agency (ISI) attacked the Indian consulate in Jalalabad, Afghanistan. Meanwhile, Islamabad allowed alleged terrorist Hafiz Saeed to lead Eid prayers before a massive throng at the Gaddafi stadium in Lahore on August 9. India and the US accuse him of leading of Lashkar-e-Taiba, and Indians accuse of masterminding the 2008 attacks on Mumbai; Washington DC has a $10 million bounty on his head. The Eid prayers were not a one-off. Saeed also led several thousand supporters in a Lahore parade on August 14, to mark Pakistan’s independence day. And amidst the shelling this week, Pakistan's finance minister announced that a plan to grant India “most favored nation” status – once viewed an easily attained step that would be good for both countries – is now off the table. “Neither side wants war nor does either profit from a conflict escalating beyond [Kashmir’s Line of Control]. Local commanders, especially newly posted ones to the region, flex their muscles. But this is a dangerous game,” said the Atlantic Council's Nawaz. Worse still, the game is set to grow more perilous with the approach of 2014 – when the rules will change, according to the Woodrow Wilson Center's Kugelman. The US withdrawal from Afghanistan will leave India and Pakistan contending for influence there, while the exit of US troops will again make India and Kashmir the number one target for Pakistan-based terrorist groups like Lashkar-e-Taiba. Meanwhile, in the face of continued provocations since the 2008 attacks on Mumbai, India's capacity for restraint may have reached its limits, Kugelman worries. And the election slated for May 2014 will put added pressure on Singh's government to take a hard line. “As India's election grows closer, any consequent LoC hostilities could conceivably lead to escalation,” Kugelman said. “And that's a scary thought.”

#### Establishing a precedent of transparency and accountability spills over globally– a non-executive framework is key

Brooks 13 (Rosa, Professor of Law – Georgetown University Law Center, Bernard L. Schwartz Senior Fellow – New America Foundation, Former Counselor to the Undersecretary of Defense for Policy – Department of Defense, “The Constitutional and Counterterrorism Implications of Targeted Killing,” Testimony Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, 4-23, <http://www.judiciary.senate.gov/pdf/04-23-13BrooksTestimony.pdf>)

5. Setting Troubling International Precedents Here is an additional reason to worry about the U.S. overreliance on drone strikes: Other states will follow America's example, and the results are not likely to be pretty. Consider once again the Letelier murder, which was an international scandal in 1976: If the Letelier assassination took place today, the Chilean authorities would presumably insist on their national right to engage in “targeted killings” of individuals deemed to pose imminent threats to Chilean national security -- and they would justify such killings using precisely the same legal theories the US currently uses to justify targeted killings in Yemen or Somalia. We should assume that governments around the world—including those with less than stellar human rights records, such as Russia and China—are taking notice. Right now, the United States has a decided technological advantage when it comes to armed drones, but that will not last long. We should use this window to advance a robust legal and normative framework that will help protect against abuses by those states whose leaders can rarely be trusted. Unfortunately, we are doing the exact opposite: Instead of articulating norms about transparency and accountability, the United States is effectively handing China, Russia, and every other repressive state a playbook for how to foment instability and –literally -- get away with murder. Take the issue of sovereignty. Sovereignty has long been a core concept of the Westphalian international legal order.42 In the international arena, all sovereign states are formally considered equal and possessed of the right to control their own internal affairs free of interference from other states. That's what we call the principle of non-intervention -- and it means, among other things, that it is generally prohibited for one state to use force inside the borders of another sovereign state. There are some well-established exceptions, but they are few in number. A state can lawfully use force inside another sovereign state with that state's invitation or consent, or when force is authorized by the U.N. Security Council, pursuant to the U.N. Charter, 43 or in self-defense "in the event of an armed attack." The 2011 Justice Department White Paper asserts that targeted killings carried out by the United States don't violate another state's sovereignty as long as that state either consents or is "unwilling or unable to suppress the threat posed by the individual being targeted." That sounds superficially plausible, but since the United States views itself as the sole arbiter of whether a state is "unwilling or unable" to suppress that threat, the logic is in fact circular. It goes like this: The United States -- using its own malleable definition of "imminent" -- decides that Person X, residing in sovereign State Y, poses a threat to the United States and requires killing. Once the United States decides that Person X can be targeted, the principle of sovereignty presents no barriers, because either 1) State Y will consent to the U.S. use of force inside its borders, in which case the use of force presents no sovereignty problems or 2) State Y will not consent to the U.S. use of force inside its borders, in which case, by definition, the United States will deem State Y to be "unwilling or unable to suppress the threat" posed by Person X and the use of force again presents no problem. This is a legal theory that more or less eviscerates traditional notions of sovereignty, and has the potential to significantly destabilize the already shaky collective security regime created by the U.N. Charter.44 If the US is the sole arbiter of whether and when it can use force inside the borders of another state, any other state strong enough to get away with it is likely to claim similar prerogatives. And, of course, if the US executive branch is the sole arbiter of what constitutes an imminent threat and who constitutes a targetable enemy combatant in an illdefined war, why shouldn’t other states make identical arguments—and use them to justify the killing of dissidents, rivals, or unwanted minorities?

#### Legal constraints key --- institutionalizing clarity key to influence norms

HRI, 11 [Human Rights Institute, Targeting Operations with Drone Technology: Humanitarian Law Implications Background Note for the American Society of International Law Annual Meeting Human Rights Institute, Columbia Law School March 25, 2011, p. online]

While they disagree on important legal issues, critics and proponents alike share at least one significant concern: drones may be the future of warfare, and the U.S. may soon find itself “on the other end of the drone,” as other governments and armed non-state groups develop drone technology. Yet **discussions of** the legal constraints lag behind the rapid advances in technological capability and deployment. Even those who believe that the U.S. government’s use of drone technology is carefully calibrated to adhere to applicable law worry that other governments or non-state groups will cite the U.S. government’s silence on legal questions as justification to shirk from transparency about their practice or even openly flout the law. In this paper, we describe three questions arising from the U.S. government’s use of drone technology, focusing on ambiguities in the government’s position which scholars have debated: the scope of the armed conflict; who may be targeted; and the legal and policy implications of who conducts the targeting. These questions stem not so much from drone technology itself, but from the kind of warfare for which the U.S. is currently using drones. Scholars and experts have sharply disagreed about the answers to these questions, but it is telling that a core set of issues has emerged as the shared focus for individuals from across the ideological spectrum. Ambiguity on these core issues exists despite **the Administration’s efforts** to establish the legality of targeting practices—most notably, State Department Legal Adviser Harold Koh’s address at the 2010 annual meeting of the American Society of International Law. Some scholars laud Koh’s speech as divorcing the Administration from an approach that invokes the privileges of the law of war while dismissing the relevance of it duties and restraints. Observers have recognized that Koh’s address reflects the Administration’s desire to legitimize its policy through forthrightness about the constraints imposed by law. However, scholars disagree about the functional difference between the paradigm of the “global war against terrorism” and the Administration’s articulation, in a variety of fora, of an armed conflict against al Qaeda, the Taliban and associated forces. Some observers have argued that without further explanation, the Administration’s position confirms the relevancy of humanitarian law but leaves unanswered questions fundamental to assessing the legality of U.S. practice. We agree that where significant ambiguity exists, it leaves the U.S. government vulnerable to challenges about the sincerity of its commitment to the rule of law. In the near future, ambiguity may also weaken the government’s ability to argue for constraints on the practice of less law-abiding states. Clarity about U.S. legal standards and policy, as we describe in this paper, would not require disclosure of classified information about who is targeted, or intelligence sources and methods. We recognize that rules of engagement are classified and vary based on the theater of combat. Instead, we encourage clarification of the existence or character of legal justifications TARGETING WITH DRONE TECHNOLOGY: HUMANITARIAN LAW IMPLICATIONS HUMAN RIGHTS INSTITUTE, COLUMBIA LAW SCHOOL 3 and standards, and generic procedural safeguards, about which scholars and experts have debated. To be sure, not all the scholars and observers whose views we present believe that the government needs to disclose more information about its legal standards and procedures. Some have objected to court scrutiny of the government’s standards or justifications. Many observers are concerned that further government clarification would require divulging sensitive information, or at least information that the government has not historically made public. They point to the extent to which the questions we raise involve not just legal standards, but policy determinations. These observers’ concerns, and countervailing concerns about the expansive or unbounded scope of the armed conflict referenced by the Administration, require further discussion—one we attempt to set the foundation for, by identifying particular areas of ambiguity and debate. For some issues, scholars disagree with each others’ characterization of the government’s position. For other issues, they agree that the government’s position is unknown. On still other issues, the question of the government’s position is relegated to the background in favor of a highly contested debate among scholars and practitioners about the relevance of the law or the practicability of a legal standard. Yet in each case, disagreement among scholars underscores the need for clarity about the U.S. government’s position. U.S. legal standards and policies are a necessary starting point for discussions among scholars, yet they are such a “moving target”—or simply a target in the fog—that discussions can be expected to devolve to speculation. Disagreement among scholars, to some degree, reflects a necessarily myopic understanding of government policy. At least to that extent, the government non-disclosure may undermine the robustness of debate among scholars and practitioners about humanitarian law standards, and effectively halt sound legal analysis of U.S. practice. Limiting scholarly debate would be detrimental to the development of clear legal standards that aid, rather than undermine, U.S. armed forces charged with conducting targeting operations. Insofar as government non-disclosure prevents public or legal accountability, it also undermines the U.S. government’s message to the international community, so evident in Koh’s ASIL speech, of commitment to the rule of law.

### Adv 2

#### Advantage two is Legitimacy

#### Unrestrained drone use collapses global stability – harms US legitimacy

Kennedy, 13 [“Drones: Legitimacy and Anti-Americanism”, Greg Kennedy is a Professor of Strategic Foreign Policy at the Defence Studies Department, King's College London, based at the Joint Services Command and Staff College, Defence Academy of the United Kingdom, in Shrivenham, Parameters 42(4)/43(1) Winter-Spring 2013]

The exponential rise in the use of drone technology in a variety of military and non-military contexts represents a real challenge to the framework of established international law and it is both right as a matter of principle, and inevitable as a matter of political reality, that the international community should now be focusing attention on the standards applicable to this technological development, particularly its deployment in counterterrorism and counter-insurgency initiatives, and attempt to reach a consensus on the legality of its use, and the standards and safeguards which should apply to it.4 deliver deadly force is taking place in both public and official domains in the United States and many other countries.5 The four key features at the heart of the debate revolve around: who is controlling the weapon system; does the system of control and oversight violate international law governing the use of force; are the drone strikes proportionate acts that provide military effectiveness given the circumstances of the conflict they are being used in; and does their use violate the sovereignty of other nations and allow the United States to disregard formal national boundaries? Unless these four questions are dealt with in the near future the impact of the unresolved legitimacy issues will have a number of repercussions for American foreign and military policies: “Without a new doctrine for the use of drones that is understandable to friends and foes, the United States risks achieving near-term tactical benefits in killing terrorists while incurring potentially significant longer-term costs to its alliances, global public opinion, the war on terrorism and international stability.”6 This article will address only the first three critical questions. The question of who controls the drones during their missions is attracting a great deal of attention. The use of drones by the Central Intelligence Agency (CIA) to conduct “signature strikes” is the most problematic factor in this matter. Between 2004 and 2013, CIA drone attacks in Pakistan killed up to 3,461—up to 891 of them civilians.7 Not only is the use of drones by the CIA the issue, but subcontracting operational control of drones to other civilian agencies is also causing great concern.8 Questions remain as to whether subcontractors were controlling drones during actual strike missions, as opposed to surveillance and reconnaissance activities. Nevertheless, the intense questioning of John O. Brennan, President Obama’s nominee for director of the CIA in February 2013, over drone usage, the secrecy of their controllers and orders, and the legality of their missions confirmed the level of concern America’s elected officials have regarding the legitimacy of drone use. Furthermore, perceptions and suspicions of illegal clandestine intelligence agency operations, already a part of the public and official psyche due to experiences from Vietnam, Iran-Contra, and Iraq II and the weapons of mass destruction debacle, have been reinforced by CIA management of drone capability. Recent revelations about the use of secret Saudi Arabian facilities for staging American drone strikes into Yemen did nothing to dissipate such suspicions of the CIA’s lack of legitimacy in its use of drones.9 The fact that the secret facility was the launching site for drones used to kill American citizens Anwar al-Awlaki and his son in September 2011, both classified by the CIA as al-Qaeda-linked threats to US security, only deepened such suspicions. Despite the fact that Gulf State observers and officials knew about American drones operating from the Arabian peninsula for years, the existence of the CIA base was not openly admitted in case such knowledge should “ . . . damage counter-terrorism collaboration with Saudi Arabia.”10 The fallout from CIA involvement and management of drone strikes prompted Senator Dianne Feinstein, Chairwoman of the Senate Intelligence Committee, to suggest the need for a court to oversee targeted killings. Such a body, she said, would replicate the Foreign Intelligence Surveillance Court, which oversees eavesdropping on American soil.11 Most importantly, such oversight would go a long way towards allaying fears of the drone usage lacking true political accountability and legitimacy. In addition, as with any use of force, drone strikes in overseas contingency operations can lead to increased attacks on already weak governments partnered with the United States. They can lead to retaliatory attacks on local governments and may contribute to local instability. Those actions occur as a result of desires for revenge and frustrations caused by the strikes. Feelings of hostility are often visited on the most immediate structures of authority—local government officials, government buildings, police, and the military.12 It can thus be argued that, at the strategic level, drone strikes are fuelling anti-American resentment among enemies and allies alike. Those reactions are often based on questions regarding the legality, ethicality, and operational legitimacy of those acts to deter opponents. Therefore, specifically related to the reaction of allies, the military legitimacy question arises if the use of drones endangers vital strategic relationships.13 One of the strategic relationships being affected by the drone legitimacy issue is that of the United States and the United Kingdom. Targeted killing, by drone strike or otherwise, is not the sole preserve of the United States. Those actions, however, attract more negative attention to the United States due to its prominence on the world’s stage, its declarations of support for human rights and democratic freedoms, and rule-of-law issues, all which appear violated by such strikes. This complexity and visibility make such targeted killings important for Anglo-American strategic relations because of the closeness of that relationship and the perception that Great Britain, therefore, condones such American activities. Because the intelligence used in such operations is seen by other nations as a shared Anglo-American asset, the use of such intelligence to identify and conduct such killings, in the opinion those operations.14 Finally, the apparent gap between stated core policies and values and the ability to practice targeted killings appears to be a starkly hypocritical and deceitful position internationally, a condition that once again makes British policymakers uncomfortable with being tarred by such a brush.15 The divide between US policy and action is exacerbated by drone technology, which makes the once covert practice of targeted killing commonplace and undeniable. It may also cause deep-rooted distrust due to a spectrum of legitimacy issues. Such questions will, therefore, undermine the US desire to export liberal democratic principles. Indeed, it may be beneficial for Western democracies to achieve adequate rather than decisive victories, thereby setting an example of restraint for the international order.16 The United States must be willing to engage and deal with drone-legitimacy issues across the entire spectrum of tactical, operational, strategic, and political levels to ensure its strategic aims are not derailed by operational and tactical expediency.

#### Drone courts key to send an international signal of accountability

Epstein, 11 [Michael, Michigan State University College of Law “Targeted Killing Court: Why The United States Needs To Adopt International Legal Standards For Targeted Killings And How To Do So In A Domestic Court”, SSRN]

VI PROPOSED NEW U.S. LEGAL MECHANISM The Obama Administration has not indicated that it will halt or alter its current policy of targeted killings of al-Qaeda terrorists and other dangerous militants abroad using drones. In order to properly comport with international law and mitigate both domestic and world-wide criticism of the current targeted killing policy, the U.S. could adopt the targeted killing standard announced in PCATI. **Congress could enact,** and President Obamacould sign into law, a statute providing for rigorous judicial review of targeted killings as laid out in PCATI; a Targeted Killing Review Court (“TKR Court”). This would simultaneously comport with current IHL and IHR standards, provide limited but assured transparency to the international community that targeted killings are not “arbitrary extra-judicial executions,” and help to assure that U.S. forces acting abroad are being held accountable when they do carry out targeted killings. By incorporating the hybrid armed conflict and law enforcement standard of PCATI through this TKR Court, the Obama Administration could provide for meaningful judicial review under international law and ensure that military and intelligence agents are not acting with carte blanche approval to carry out targeted killings worldwide. While some scholars have proposed systems of public post-killing investigations of C.I.A. actions359

#### That bolsters legitimacy

Epstein, 11 [Michael, Michigan State University College of Law “Targeted Killing Court: Why The United States Needs To Adopt International Legal Standards For Targeted Killings And How To Do So In A Domestic Court”, SSRN]

Overall, I believe that the TKR Court provides for a rigid system of Article III judicial review; comports with standards of applicable domestic and international law; and provides a mechanism for both domestic and international accountability. VII. CONCLUSION One of the nicknames for U.S. drone strikes that have been adopted by tribesmen in Pakistan is “bangana” – the Pashto word for “thunderclap.”384 The civilians living in Pakistani tribal areas have every reason for equating Predator Drone strikes to thunder; the strikes come out of nowhere, and many of the tribesmen have no idea why they occur. Drone strikes in Pakistan alone have been estimated to have killed over 1,800 people; while these strikes are likely necessary and proportionate to the grave threat they pose, these attacks cannot continue without some measure of accountability. While military strikes resulting in civilian casualties in the past have been justified due to a lack of knowledge, drone technology has advanced to a point where the U.S. government can gather the exact numbers and identities of possible civilian casualties. When Betullah Mehsud was killed, the C.I.A. agents had been observing him for two hours, and were able to gather information about whose home he was staying at (his father-in-law’s); who was at the home with him (his wife, in-laws, and eight Taliban fighters); and his current state of health (he was receiving an intravenous drip to treat a kidney disease.) Such prior knowledge could surely have been properly scrutinized by a judge to determine whether or not a strike is proportionate or not within the two hours that that the Predator drone hung over Mehsud and observed him. In the context of all of the known facts and circumstances about Mehsud’s prior acts and threat to national security he likely posed, some sort of judicial review could help salvage our reputation abroad and at home.

#### Formal judicial oversight key – maintains resolve while signaling restraint

NYT, 10 [“Lethal Force under Law”, New York Times, <http://www.nytimes.com/2010/10/10/opinion/10sun1.html>]

The drone program has been effective, killing more than 400 Al Qaeda militants this year alone, according to American officials, but fewer than 10 noncombatants. But assassinations are a grave act and subject to abuse — and imitation by other countries. The government needs to do a better job of showing the world that it is acting in strict compliance with international law. The United States has the right under international law to try to prevent attacks being planned by terrorists connected to Al Qaeda, up to and including killing the plotters. But it is not within the power of a commander in chief to simply declare anyone anywhere a combatant and kill them, without the slightest advance independent oversight. The authorization for military force approved by Congress a week after 9/11 empowers the president to go after only those groups or countries that committed or aided the 9/11 attacks. The Bush administration’s distortion of that mandate led to abuses that harmed the United States around the world. The issue of who can be targeted applies directly to the case of Anwar al-Awlaki, an American citizen hiding in Yemen, who officials have admitted is on an assassination list. Did he inspire through words the Army psychiatrist who shot up Fort Hood, Tex., last November, and the Nigerian man who tried to blow up an airliner on Christmas? Or did he actively participate in those plots, and others? The difference is crucial. If the United States starts killing every Islamic radical who has called for jihad, there will be no end to the violence. American officials insist that Mr. Awlaki is involved with actual terror plots. But human rights lawyers working on his behalf say that is not the case, and have filed suit to get him off the target list. The administration wants the case thrown out on state-secrets grounds. The Obama administration needs to go out of its way to demonstrate that it is keeping its promise to do things differently than the Bush administration did. It must explain how targets are chosen, demonstrate that attacks are limited and are a last resort, and allow independent authorities to oversee the process. PUBLIC GUIDELINES The administration keeps secret its standards for putting people on terrorist or assassination lists. In March, Harold Koh, legal adviser to the State Department, said the government adheres to international law, attacking only military targets and keeping civilian casualties to an absolute minimum. “Our procedures and practices for identifying lawful targets are extremely robust,” he said in a speech, without describing them. Privately, government officials say no C.I.A. drone strike takes place without the approval of the United States ambassador to the target country, the chief of the C.I.A. station, a deputy at the agency, and the agency’s director. So far, President Obama’s system of command seems to have prevented any serious abuses, but the approval process is entirely within the administration. After the abuses under President Bush, the world is not going to accept a simple “trust us” from the White House. There have been too many innocent people rounded up for detention and subjected to torture, too many cases of mistaken identity or trumped-up connections to terror. Unmanned drones eliminate the element of risk to American forces and make it seductively easy to attack. The government needs to make public its guidelines for determining who is a terrorist and who can be targeted for death. It should clearly describe how it follows international law in these cases and list the internal procedures and checks it uses before a killing is approved. That can be done without formally acknowledging the strikes are taking place in specific countries. LIMIT TARGETS The administration should state that it is following international law by acting strictly in self-defense, targeting only people who are actively planning or participating in terror, or who are leaders of Al Qaeda or the Taliban — not those who raise funds for terror groups, or who exhort others to acts of terror. Special measures are taken before an American citizen is added to the terrorist list, officials say, requiring the approval of lawyers from the National Security Council and the Justice Department. But again, those measures have not been made public. Doing so would help ensure that people like Mr. Awlaki are being targeted for terrorist actions, not their beliefs or associations. A LAST RESORT Assassination should in every case be a last resort. Before a decision is made to kill, particularly in areas away from recognized battlefields, the government needs to consider every other possibility for capturing the target short of lethal force. Terrorists operating on American soil should be captured using police methods, and not subject to assassination. If practical, the United States should get permission from a foreign government before carrying out an attack on its soil. The government is reluctant to discuss any of these issues publicly, in part to preserve the official fiction that the United States is not waging a formal war in Pakistan and elsewhere, but it would not harm that effort to show the world how seriously it takes international law by making clear its limits. INDEPENDENT OVERSIGHT Dealing out death requires additional oversight outside the administration. Particularly in the case of American citizens, like Mr. Awlaki, the government **needs to employ some** due process before depriving someone of life. It would be logistically impossible to conduct a full-blown trial in absentia of every assassination target, as the lawyers for Mr. Awlaki prefer. But judicial review could still be employed. The government could establish a court like the Foreign Intelligence Surveillance Court, which authorizes wiretaps on foreign agents inside the United States. Before it adds people to its target list and begins tracking them, the government could take its evidence to this court behind closed doors — along with proof of its compliance with international law — and get the equivalent of a judicial warrant in a timely and efficient way. Congressional leaders are secretly briefed on each C.I.A. attack, and say they are satisfied with the information they get and with the process. Nonetheless, that process is informal and could be changed at any time by this president or his successors. Formal oversight is a better way of demonstrating confidence in American methods. Self-defense under international law not only shows the nation’s resolve and power, but sends a powerful message to other countries that the United States couples drastic action with careful judgment.

#### External court based oversight maintains legitimacy – key internal link to global stability

Knowles, 09 [Robert, Assistant Professor, NYU Law, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, p. lexis]

The hegemonic model also reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts. The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on, among other things, predictability. n422 G. John Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors: "The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability." n423 Stable interpretation of the law bolsters the stability of the system because other nations will know that they **can rely on** those **interpretations** and that there will be at least some degree of enforcement by the United States. At the same time, the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states." n424 The Bush Administration's detainee policy, for all of its virtues and faults, was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law. Indeed, the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy. The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436 Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view. In contrast, the President's (and Congress's) responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage, even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest." n438 At the same time, the enemy combatant cases make allowances for the executive branch's superior speed. The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy. n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440 The enemy combatant litigation also underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head. In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But in a hegemonic system, where governance depends on voluntary acquiesnce, the courts have a greater role to play. Rather than hobbling the exercise of foreign policy, the courts are a key form of "soft power." n442 As Justice Kennedy's majority opinion observed in Boumediene, courts can bestow external legitimacy on the acts of the political branches. n443 Acts having a basis in law are almost universally regarded as more legitimate than merely political acts. Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world." n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige. Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity. n447 The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony. In fact, the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States. n448 This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights. n449 Conclusion When it comes to the constitutional regime of foreign affairs, geopolitics has always mattered. Understandings about America's role in the world have shaped foreign affairs doctrines. But the classic realist assumptions that support special deference do not reflect the world as it is today. A better, more realist, approach looks to the ways that the courts can reinforce and legitimize America's leadership role. The Supreme Court's rejection of the government's claimed exigencies in the enemy combatant cases strongly indicates that the Judiciary is becoming reconciled to the current world order and is asserting its prerogatives in response to the fewer constraints imposed on the executive branch. In other words, the courts are moving toward the hegemonic model. In the great dismal swamp that is the judicial treatment of foreign affairs, this transformation offers hope for clarity: the positive reality of the international system, despite terrorism and other serious challenges, permits the courts to reduce the "deference gap" between foreign and domestic cases.

#### Prior, judicial oversight is key – informed and non-biased decision-making is vital to legitimacy

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

The relevance of these precedents to the targeting of citizens is clear: the constitutional right to due process is alive and well--regardless of geographic location. We now turn to what type of process is due.

III. BRING IN THE COURTS: BRINGING JUDICIAL LEGITIMACY TO TARGETED KILLINGS

The function of this Article is not to argue that targeted killing should be removed from the toolbox of American military options. Targeted killing as a military tactic is here to stay. n34 Targeting strikes have robust bipartisan political support and have become an increasingly relied upon weapon as the United States decreases its presence in Iraq and Afghanistan. n35 The argument being asserted here, therefore, is that in light of the protections the Constitution affords U.S. citizens, there must be a degree of inter-branch process when the government targets such individuals.

The current intra-executive process afforded to U.S. citizens is not only unlawful, but also dangerous. n36 Justice O'Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that an interrogator is not a neutral decision-maker as the "even purportedly fair adjudicators are disqualified by their interest in the controversy." n37 In rejecting the government's argument that a "separation of powers" analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O'Connor contended that, in times of conflict, the Constitution "most assuredly envisions a role for all three branches when individual liberties are at stake." n38 Similarly, Justice Kennedy was unequivocal in Boumediene about the right of courts to enforce the Constitution even in times of war. Quoting Chief Justice Marshall in Marbury v. Madison, n39 Kennedy argued that holding "that the political branches may switch the constitution on or off at will would lead to a regime in which they, not this Court, say 'what the law is.'" n40 This sentiment is very relevant to our targeted killing analysis: in the realm of targeted killing, where the deprivation is of one's life, the absence of any "neutral decision-maker" outside the executive branch is a clear violation of due process guaranteed by the Constitution.

Justices O'Connor and Kennedy are pointing to a dangerous institutional tension inherent in any intra-executive process regime. Targeting decisions are no different; indeed, the goal of those charged with targeting citizens like al-Awlaki is not to strike a delicate balance between security [\*444] and liberty but rather, quite single-mindedly, to prevent attacks on the United States. n41 In describing the precarious nature of covert actions, James Baker, a distinguished military judge, noted, "the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and informed accountable decision-making." n42 While Judge Baker concluded that these risks "magnify the importance of a meaningful process of ongoing executive appraisal," he overlooked the institutional tension, seized upon by Justices O'Connor and Kennedy, which would preclude the type of process that he was advocating. n43

Although there may be a role for Congress in such instances, a legislative warrant for specific cases would likely be cumbersome, carry significant security risks, and may violate the spirit of the Bill of Attainder Clause, which prohibits the legislature from performing judicial or executive functions. The current inter-branch process for covert actions, in which the President must make a finding and notify the leaders of Congress and the intelligence committees, is entirely ex post and also has not been proven to provide a meaningful check on executive power. n44 Moreover, most politicians are unqualified to make the necessary legal judgments that these situations require.

Solutions calling for the expatriation of citizens deemed to be terrorists are fraught with judicial complications and set very dangerous precedents for citizenship revocation. n45 Any post-deprivation process, such as a Bivens-style action, for a targeted attack would also be problematic. n46 Government officials charged with carrying out these attacks might be hesitant to do so if there were a threat of prosecution. Moreover, post-deprivation process for a target would be effectively meaningless in the wake of a successful attack.

[\*445] Rather, as recognized by the Founders in the Fourth Amendment, balancing the needs of security against the imperatives of liberty is a traditional role for judges to play. Two scholars of national security law recently highlighted the value of judicial inclusion in targeting decisions: "Judicial control of targeted killing could increase the accuracy of target selection, reducing the danger of mistaken or illegal destruction of lives, limbs, and property. Independent judges who double-check targeting decisions could catch errors and cause executive officials to avoid making them in the first place." n47 Judges are both knowledgeable in the law and accustomed to dealing with sensitive security considerations. These qualifications make them ideal candidates to ensure that the executive exercises constitutional restraint when targeting citizens.

Reforming the decision-making process for executing American citizens to allow for judicial oversight would restore the separation of powers framework envisioned by the Founders and increase democratic legitimacy by placing these determinations on steadier constitutional ground. For those fearful of judicial encroachment on executive war-making powers, there is a strong argument that this will actually strengthen the President and empower him to take decisive action without worrying about the judicial consequences. As Justice Kennedy put it, "the exercise of [executive] powers is vindicated, not eroded, when confirmed by the Judicial Branch." n48 Now, we will turn to what this judicial involvement would look like.

#### Legitimacy of U.S. hegemony’s key to global stability---prevents great power war

Fujimoto 12 (Kevin Fujimoto 12, Lt. Colonel, U.S. Army, January 11, 2012, “Preserving U.S. National Security Interests Through a Liberal World Construct,” online: <http://www.strategicstudiesinstitute.army.mil/index.cfm/articles/Preserving-US-National-Security-Interests-Liberal-World-Construct/2012/1/11>)

The emergence of peer competitors, not terrorism, presents the greatest long-term threat to our national security. Over the past decade, while the United States concentrated its geopolitical focus on fighting two land wars in Iraq and Afghanistan, China has quietly begun implementing a strategy to emerge as the dominant imperial power within Southeast Asia and the Indian Ocean. Within the next 2 decades, China will likely replace the United States as the Asia-Pacific regional hegemonic power, if not replace us as the global superpower.1 Although China presents its rise as peaceful and non-hegemonic, its construction of naval bases in neighboring countries and military expansion in the region contradict that argument. With a credible threat to its leading position in a unipolar global order, the United States should adopt a grand strategy of “investment,” building legitimacy and capacity in the very institutions that will protect our interests in a liberal global construct of the future when we are no longer the dominant imperial power. Similar to the Clinton era's grand strategy of “enlargement,”2 investment supports a world order predicated upon a system of basic rules and principles, however, it differs in that the United States should concentrate on the institutions (i.e., United Nations, World Trade Organization, ASEAN, alliances, etc.) that support a world order, as opposed to expanding democracy as a system of governance for other sovereign nations. Despite its claims of a benevolent expansion, China is already executing a strategy of expansion similar to that of Imperial Japan's Manchukuo policy during the 1930s.3 This three-part strategy involves: “(i) (providing) significant investments in economic infrastructure for extracting natural resources; (ii) (conducting) military interventions (to) protect economic interests; and, (iii) . . . (annexing) via installation of puppet governments.”4 China has already solidified its control over neighboring North Korea and Burma, and has similarly begun more ambitious engagements in Africa and Central Asia where it seeks to expand its frontier.5 Noted political scientist Samuel P. Huntington provides further analysis of the motives behind China's imperial aspirations. He contends that “China (has) historically conceived itself as encompassing a “‘Sinic Zone'. . . (with) two goals: to become the champion of Chinese culture . . . and to resume its historical position, which it lost in the nineteenth century, as the hegemonic power in East Asia.”6 Furthermore, China holds one quarter of the world's population, and rapid economic growth will increase its demand for natural resources from outside its borders as its people seek a standard of living comparable to that of Western civilization. The rise of peer competitors has historically resulted in regional instability and one should compare “the emergence of China to the rise of. . . Germany as the dominant power in Europe in the late nineteenth century.”7 Furthermore, the rise of another peer competitor on the level of the Soviet Union of the Cold War ultimately threatens U.S. global influence, challenging its concepts of human rights, liberalism, and democracy; as well as its ability to co-opt other nations to accept them.8 This decline in influence, while initially limited to the Asia-Pacific region, threatens to result in significant conflict if it ultimately leads to a paradigm shift in the ideas and principles that govern the existing world order. A grand strategy of investment to address the threat of China requires investing in institutions, addressing ungoverned states, and building legitimacy through multilateralism. The United States must build capacity in the existing institutions and alliances accepted globally as legitimate representative bodies of the world's governments. For true legitimacy, the United States must support these institutions, not only when convenient, in order to avoid the appearance of unilateralism, which would ultimately undermine the very organizations upon whom it will rely when it is no longer the global hegemon. The United States must also address ungoverned states, not only as breeding grounds for terrorism, but as conflicts that threaten to spread into regional instability, thereby drawing in superpowers with competing interests. Huntington proposes that the greatest source of conflict will come from what he defines as one “core” nation's involvement in a conflict between another core nation and a minor state within its immediate sphere of influence.9 For example, regional instability in South Asia10 threatens to involve combatants from the United States, India, China, and the surrounding nations. Appropriately, the United States, as a global power, must apply all elements of its national power now to address the problem of weak and failing states, which threaten to serve as the principal catalysts of future global conflicts.11 Admittedly, the application of American power in the internal affairs of a sovereign nation raises issues. Experts have posed the question of whether the United States should act as the world's enforcer of stability, imposing its concepts of human rights on other states. In response to this concern, The International Commission on Intervention and State Sovereignty authored a study titled, The Responsibility to Protect,12 calling for revisions to the understanding of sovereignty within the United Nations (UN) charter. This commission places the responsibility to protect peoples of sovereign nations on both the state itself and, more importantly, on the international community.13 If approved, this revision will establish a precedent whereby the United States has not only the authority and responsibility to act within the internal affairs of a repressive government, but does so with global legitimacy if done under the auspices of a UN mandate. Any effort to legitimize and support a liberal world construct requires the United States to adopt a multilateral doctrine whichavoidsthe precepts of the previous administration: “preemptive war, democratization, and U.S. primacy of unilateralism,”14 which have resulted in the alienation of former allies worldwide. Predominantly Muslim nations, whose citizens had previously looked to the United States as an example of representative governance, viewed the Iraq invasion as the seminal dividing action between the Western and the Islamic world. Appropriately, any future American interventions into the internal affairs of another sovereign nation must first seek to establish consensus by gaining the approval of a body representing global opinion, and must reject military unilateralism as a threat to that governing body's legitimacy. Despite the long-standing U.S. tradition of a liberal foreign policy since the start of the Cold War, the famous liberal leviathan, John Ikenberry, argues that “the post-9/11 doctrine of national security strategy . . . has been based on . . . American global dominance, the preventative use of force, coalitions of the willing, and the struggle between liberty and evil.”15 American foreign policy has misguidedly focused on spreading democracy, as opposed to building a liberal international order based on universally accepted principles that actually set the conditions for individual nation states to select their own system of governance. Anne-Marie Slaughter, the former Dean of the Woodrow Wilson School of Public and International Affairs, argues that true Wilsonian idealists “support liberal democracy, but reject the possibility of democratizing peoples . . .”16 and reject military primacy in favor of supporting a rules-based system of order. Investment in a liberal world order would also set the conditions for the United States to garner support from noncommitted regional powers (i.e., Russia, India, Japan, etc.), or “swing civilizations,” in countering China's increasing hegemonic influence.17 These states reside within close proximity to the Indian Ocean, which will likely emerge as the geopolitical focus of the American foreign policy during the 21st century, and appropriately have the ability to offset China's imperial dominance in the region.18 Critics of a liberal world construct argue that idealism is not necessary, based on the assumption that nations that trade together will not go to war with each other.19 In response, foreign affairs columnist Thomas L. Friedman rebukes their arguments, acknowledging the predicate of commercial interdependence as a factor only in the decision to go to war, and argues that while globalization is creating a new international order, differences between civilizations still create friction that may overcome all other factors and lead to conflict.20 Detractors also warn that as China grows in power, it will no longer observe “the basic rules and principles of a liberal international order,” which largely result from Western concepts of foreign relations. Ikenberry addresses this risk, citing that China's leaders already recognize that they will gain more authority within the existing liberal order, as opposed to contesting it. China's leaders “want the protection and rights that come from the international order's . . . defense of sovereignty,”21 from which they have benefitted during their recent history of economic growth and international expansion. Even if China executes a peaceful rise and the United States overestimates a Sinic threat to its national security interest, the emergence of a new imperial power will challenge American leadership in the Indian Ocean and Asia-Pacific region. That being said, it is more likely that China, as evidenced by its military and economic expansion, will displace the United States as the regional hegemonic power. Recognizing this threat now, the United States must prepare for the eventual transition and immediately begin building the legitimacy and support of a system of rules that will protect its interests later when we are no longer the world's only superpower.

#### The impact is global conflict escalation

Brooks, et al, 13 [Don't Come Home, America: The Case against Retrenchment Stephen G. Brooks [(bio)](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#back), G. John Ikenberry [(bio)](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#back) and William C. Wohlforth [(bio)](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#back), Stephen G. Brooks; G. John Ikenberry and William C. Wohlforth STEPHEN G. BROOKS is Associate Professor of Government at Dartmouth College. G. JOHN IKENBERRY is Albert G. Milbank Professor of Politics and International Affairs at Princeton University and Global Eminence Scholar at Kyung Hee University in Seoul. WILLIAM C. WOHLFORTH is Daniel Webster Professor of Government at Dartmouth College, International Security ¶ [Volume 37, Number 3, Winter 2012](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/toc/ins.37.3.html), p. Project Muse]

¶ Assessing the Security Benefits of Deep Engagement¶ Even if deep engagement's costs are far less than retrenchment advocates claim, they are not worth bearing unless they yield greater benefits. We focus here on the strategy's major security benefits; in the next section, we take up the wider payoffs of the United States' security role for its interests in other realms, notably the global economy—an interaction relatively unexplored by international relations scholars.¶ A core premise of deep engagement is that it prevents the emergence **of a far** [End Page 33] **more dangerous global security environment**. For one thing, as noted above, the United States' overseas presence gives it the leverage to **restrain partners** from taking provocative action. Perhaps more important, its core alliance commitments also deter states with aspirations to regional hegemony from contemplating expansion and make its partners more secure, reducing their incentive to adopt solutions to their security problems that threaten others and thus stoke security dilemmas. The contention that engaged U.S. power dampens the baleful effects of anarchy is consistent with influential variants of realist theory. Indeed, arguably the scariest portrayal of the war-prone world that would emerge absent the "American Pacifier" is provided in the works of John Mearsheimer, who forecasts dangerous multipolar regions replete with security competition, arms races, nuclear proliferation and associated preventive war temptations, regional rivalries, and even runs at regional hegemony and full-scale great power war.72¶ How do retrenchment advocates, the bulk of whom are realists, discount this benefit? Their arguments are complicated, but two capture most of the variation: (1) U.S. security guarantees are not necessary to prevent dangerous rivalries and conflict in Eurasia; or (2) prevention of rivalry and conflict in Eurasia is not a U.S. interest. Each response is connected to a different theory or set of theories, which makes sense given that the whole debate hinges on a complex future counterfactual (what would happen to Eurasia's security setting if the United States truly disengaged?). Although a certain answer is impossible, each of these responses is nonetheless a weaker argument for retrenchment than advocates acknowledge.¶ The first response flows from defensive realism as well as other international relations theories that discount the conflict-generating potential of anarchy under contemporary conditions.[73](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f73) Defensive realists maintain that the high expected [End Page 34] costs of territorial conquest, defense dominance, and an array of policies and practices that can be used credibly to signal benign intent, mean that Eurasia's major states could manage regional multipolarity peacefully without the American pacifier.¶ Retrenchment would be a bet on this scholarship, particularly in regions where the kinds of stabilizers that nonrealist theories point to—such as democratic governance or dense institutional linkages—are either absent or weakly present. There are three other major bodies of scholarship, however, that might give decisionmakers pause before making this bet. First is regional expertise. Needless to say, there is no consensus on the net security effects of U.S. withdrawal. Regarding each region, there are optimists and pessimists. Few experts expect a return of intense great power competition in a post-American Europe, but many doubt European governments will pay the political costs of increased EU defense cooperation and the budgetary costs of increasing military outlays.74 The result might be a Europe that is incapable of securing itself from various threats that could be destabilizing within the region and beyond (e.g., a regional conflict akin to the 1990s Balkan wars), lacks capacity for global security missions in which U.S. leaders might want European participation, and is vulnerable to the influence of outside rising powers.¶ What about the other parts of Eurasia where the United States has a substantial military presence? Regarding the Middle East, the balance begins to swing toward pessimists concerned that states currently backed by Washington—notably Israel, Egypt, and Saudi Arabia—might take actions upon U.S. retrenchment that would intensify security dilemmas. And concerning East Asia, pessimism regarding the region's prospects without the American pacifier is pronounced. Arguably the principal concern expressed by area experts is that Japan and South Korea are likely to obtain a nuclear capacity and increase their military commitments, which could stoke a destabilizing reaction from China. It is notable that during the Cold War, both South Korea and [End Page 35] Taiwan moved to obtain a nuclear weapons capacity and were only constrained from doing so by a still-engaged United States.[75](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f75)¶ The second body of scholarship casting doubt on the bet on defensive realism's sanguine portrayal is all of the research that undermines its conception of state preferences. Defensive realism's optimism about what would happen if the United States retrenched is very much dependent on its particular—and highly restrictive—assumption about state preferences; once we relax this assumption, then much of its basis for optimism vanishes. Specifically, the prediction of post-American tranquility throughout Eurasia rests on the assumption that security is the only relevant state preference, with security defined narrowly in terms of protection from violent external attacks on the homeland. Under that assumption, the security problem is largely solved as soon as offense and defense are clearly distinguishable, and offense is extremely expensive relative to defense. Burgeoning research across the social and other sciences, however, undermines that core assumption: states have preferences not only for security but also for prestige, status, and other aims, and they engage in trade-offs among the various objectives.76 In addition, they define security not just in terms of territorial protection but in view of many and varied milieu goals. It follows that even states that are relatively secure may nevertheless engage in highly competitive behavior. Empirical studies show that this is indeed sometimes the case.[77](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f77) In sum, a bet on a benign postretrenchment Eurasia is a bet that leaders of major countries will never allow these nonsecurity preferences to influence their strategic choices.¶ To the degree that these bodies of scholarly knowledge have predictive leverage, U.S. retrenchment would result in a significant deterioration in the security environment in at least some of the world's key regions. We have already [End Page 36] mentioned the third, even more alarming body of scholarship. Offensive realism predicts that the withdrawal of the American pacifier will yield either a competitive regional multipolarity complete with associated insecurity, arms racing, crisis instability, nuclear proliferation, and the like, or bids for regional hegemony, which may be beyond the capacity of local great powers to contain (and which in any case would generate intensely competitive behavior, possibly including regional great power war).¶ Hence it is unsurprising that retrenchment advocates are prone to focus on the second argument noted above: that avoiding wars and security dilemmas in the world's core regions is not a U.S. national interest. Few doubt that the United States could survive the return of insecurity and conflict among Eurasian powers, but at what cost? Much of the work in this area has focused on the economic externalities of a renewed threat of insecurity and war, which we discuss below. Focusing on the pure security ramifications, there are two main reasons why decisionmakers may be rationally reluctant to run the retrenchment experiment. First, overall higher levels of conflict make the world a more dangerous place. Were Eurasia to return to higher levels of interstate military competition, one would see overall higher levels of military spending and innovation and a higher likelihood of competitive regional proxy wars and arming of client states—all of which would be concerning, in part because it would promote a faster diffusion of military power away from the United States.¶ Greater regional insecurity could well feed proliferation cascades, as states such as Egypt, Japan, South Korea, Taiwan, and Saudi Arabia all might choose to create nuclear forces.78 It is unlikely that proliferation decisions by any of these actors would be the end of the game: they would likely generate pressure locally for more proliferation. Following Kenneth Waltz, many retrenchment advocates are proliferation optimists, assuming that nuclear deterrence solves the security problem.[79](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f79) Usually carried out in dyadic terms, the debate [End Page 37] over the stability of proliferation changes as the numbers go up. Proliferation optimism rests on assumptions of rationality and narrow security preferences. In social science, however, such assumptions are inevitably probabilistic. Optimists assume that most states are led by rational leaders, most will overcome organizational problems and resist the temptation to preempt before feared neighbors nuclearize, and most pursue only security and are risk averse. Confidence in such probabilistic assumptions declines if the world were to move from nine to twenty, thirty, or forty nuclear states. In addition, many of the other dangers noted by analysts who are concerned about the destabilizing effects of nuclear proliferation—including the risk of accidents and the prospects that some new nuclear powers will not have truly survivable forces—seem prone to go up as the number of nuclear powers grows.80 Moreover, the risk of "unforeseen crisis dynamics" that could spin out of control is also higher as the number of nuclear powers increases. Finally, add to these concerns the enhanced danger of nuclear leakage, and a world with overall higher levels of security competition becomes yet more worrisome.¶ The argument that maintaining Eurasian peace is not a U.S. interest faces a second problem. On widely accepted realist assumptions, acknowledging that U.S. engagement preserves peace dramatically narrows the difference between retrenchment and deep engagement. For many supporters of retrenchment, the optimal strategy for a power such as the United States, which has attained regional hegemony and is separated from other great powers by oceans, is offshore balancing: stay over the horizon and "pass the buck" to local powers to do the dangerous work of counterbalancing any local rising power. The United States should commit to onshore balancing only when local balancing is likely to fail and a great power appears to be a credible contender for regional hegemony, as in the cases of Germany, Japan, and the Soviet Union in the mid-twentieth century.¶ The problem is that China's rise puts the possibility of its attaining regional hegemony on the table, at least in the medium to long term. As Mearsheimer notes, "The United States will have to play a key role in countering China, because its Asian neighbors are not strong enough to do it by themselves."[81](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f81) [End Page 38] Therefore, unless China's rise stalls, "the United States is likely to act toward China similar to the way it behaved toward the Soviet Union during the Cold War."82 It follows that the United States should take no action that would compromise its capacity to move to onshore balancing in the future. It will need to maintain key alliance relationships in Asia as well as the formidably expensive military capacity to intervene there. The implication is to get out of Iraq and Afghanistan, reduce the presence in Europe, and pivot to Asia—just what the United States is doing.[83](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f83)¶ In sum, the argument that U.S. security commitments are unnecessary for peace is countered by a lot of scholarship, including highly influential realist scholarship. In addition, the argument that Eurasian peace is unnecessary for U.S. security is weakened by the potential for a large number of nasty security consequences as well as the need to retain a latent onshore balancing capacity that dramatically reduces the savings retrenchment might bring. Moreover, switching between offshore and onshore balancing could well be difficult.¶ Bringing together the thrust of many of the arguments discussed so far underlines the degree to which the case for retrenchment misses the underlying logic of the deep engagement strategy. By supplying reassurance, deterrence, and active management, the United States lowers security competition in the world's key regions, thereby preventing the emergence of a hothouse atmosphere for growing new military capabilities. Alliance ties dissuade partners from ramping up and also provide leverage to prevent military transfers to potential rivals. On top of all this, the United States' formidable military machine may deter entry by potential rivals. Current great power military expenditures as a percentage of GDP are at historical lows, and thus far other major powers have shied away from seeking to match top-end U.S. military capabilities. In addition, they have so far been careful to avoid attracting the "focused enmity" [End Page 39] of the United States.84 All of the world's most modern militaries are U.S. allies (America's alliance system of more than sixty countries now accounts for some 80 percent of global military spending), and the gap between the U.S. military capability and that of potential rivals is by many measures growing rather than shrinking.[85](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f85)¶ In the end, therefore, deep engagement reduces security competition and does so in a way that slows the diffusion of power away from the United States. This in turn makes it easier to sustain the policy over the long term.¶ The Wider Benefits of Deep Engagement¶ The case against deep engagement overstates its costs and underestimates its security benefits. Perhaps its most important weakness, however, is that its preoccupation with security issues diverts attention from some of deep engagement's most important benefits: sustaining the global economy and fostering institutionalized cooperation in ways advantageous to U.S. national interests.¶ Economic Benefits¶ Deep engagement is based on a premise central to realist scholarship from E.H. Carr to Robert Gilpin: economic orders do not just emerge spontaneously; they are created and sustained by and for powerful states.86 To be sure, the sheer size of its economy would guarantee the United States a significant role in the politics of the global economy whatever grand strategy it adopted. Yet the fact that it is the leading military power and security provider also enables economic leadership. The security role figures in the creation, maintenance, and expansion of the system. In part because other states—including all but one of the world's largest economies—were heavily dependent on U.S. security protection during the Cold War, the United States was able not only to foster the economic order but also to prod other states to buy into it and to support plans for its progressive expansion.[87](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f87) Today, as the discussion in the [End Page 40] previous section underscores, the security commitments of deep engagement support the global economic order by reducing the likelihood of security dilemmas, arms racing, instability, regional conflicts and, in extremis, major power war. In so doing, the strategy helps to maintain a stable and comparatively open world economy—a long-standing U.S. national interest.¶ In addition to ensuring the global economy against important sources of insecurity, the extensive set of U.S. military commitments and deployments helps to protect the "global economic commons." One key way is by helping to keep sea-lanes and other shipping corridors freely available for commerce.88 A second key way is by helping to establish and protect property/sovereignty rights in the oceans. Although it is not the only global actor relevant to protecting the global economic commons, the United States has by far the most important role given its massive naval superiority and the leadership role it plays in international economic institutions. If the United States were to pull back from the world, protecting the global economic commons would likely be much harder to accomplish for a number of reasons: cooperating with other nations on these matters would be less likely to occur; maintaining the relevant institutional foundations for promoting this goal would be harder; and preserving access to bases throughout the world—which is needed to accomplish this mission—would likely be curtailed to some degree.¶ Advocates of retrenchment agree that a flourishing global economy is an important U.S. interest, but they are largely silent on the role U.S. grand strategy plays in sustaining it.[89](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f89) For their part, many scholars of international political [End Page 41] economy have long argued that economic openness might continue even in the absence of hegemonic leadership.90 Yet this does not address the real question of interest: Does hegemonic leadership make the continuation of global economic stability more likely? The voluminous literature contains no analysis that suggests a negative answer; what scholars instead note is that the likelihood of overcoming problems of collective action, relative gains, and incomplete information drops in the absence of leadership.[91](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f91) It would thus take a bold if not reckless leader to run a grand experiment to determine whether the global economy can continue to expand in the absence of U.S. leadership.¶ Deep engagement not only helps to underwrite the global economy in a general sense, but it also allows the United States to structure it in ways that serve the United States' narrow economic interests. Carla Norrlof argues persuasively that America disproportionately benefits from the current structure of the global economy, and that its ability to reap these advantages is directly tied to its position of military preeminence within the system.92 One way this occurs is via "microlevel structuring"—that is, the United States gets better economic bargains or increased economic cooperation on some specific issues than it would if it did not play such a key security role. As Joseph Nye observes, [End Page 42] "Even if the direct use of force were banned among a group of countries, military force would still play an important political role. For example, the American military role in deterring threats to allies, or of assuring access to a crucial resource such as oil in the Persian Gulf, means that the provision of protective force can be used in bargaining situations. Sometimes the linkage may be direct; more often it is a factor not mentioned openly but present in the back of statesmen's minds."[93](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f93) Although Nye is right that such linkage will generally be implicit, extensive analyses of declassified documents by historians shows that the United States directly used its overseas security commitments and military deployments to convince allies to change their economic policies to its benefit during the Cold War.94¶ The United States' security commitments continue to bolster the pursuit of its economic interests. Interviews with current and past U.S. administration officials reveal wide agreement that alliance ties help gain favorable outcomes on trade and other economic issues. To the question, "Does the alliance system pay dividends for America in nonsecurity areas, such as economic relations?," the typical answer in interviews is "an unequivocal yes."[95](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f95) U.S. security commitments sometimes enhance bargaining leverage over the specific terms of economic agreements and give other governments more general incentives to enter into agreements that benefit the United States economically—two recent examples being the 2012 Korea-United States Free Trade Agreement (KORUS FTA) and the United States-Australia FTA (which entered into force in 2005).96 Officials across administrations of different parties stress that the desire of Korea and Australia to tighten their security relationships with the United States was a core reason why Washington was able to enter into free [End Page 43] trade agreements with them and to do so on terms favorable to U.S. economic interests. As one former official indicates, "The KORUS FTA—and I was involved in the initial planning—was attractive to Korea in large measure because it would help to underpin the US-ROK [South Korea] alliance at a time of shifting power in the region."[97](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f97) Korean leaders' interest in maintaining a strong security relationship with the United States, another former official stressed, made them more willing to be flexible regarding the terms of the agreement because "failure would look like a setback to the political and security relationship. Once we got into negotiations with the ROK, look at how many times we reneged even after we signed a deal. . . . We asked for changes in labor and environment clauses, in auto clauses and the Koreans took it all."98¶ U.S. security leverage is economically beneficial in a second respect: it can facilitate "macrolevel structuring" of the global economy. Macrolevel structuring is crucial because so much of what the United States wants from the economic order is simply "more of the same"—it prefers the structure of the main international economic institutions such as the World Trade Organization and the International Monetary Fund; it prefers the existence of "open regionalism" [99](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f99); it prefers the dollar as the reserve currency; and so on. U.S. interests are thus well served to the extent that American allies favor the global economic status quo rather than revisions that could be harmful to U.S. economic interests. One reason they are often inclined to take this approach is because of their security relationship with the United States. For example, interviews with U.S. officials stress that alliance ties give Washington leverage and authority in the current struggle over multilateral governance institutions in Asia. As one official noted, "On the economic side, the existence of the security alliance contributes to an atmosphere of trust that enables the United States and Japan to present a united front on shared economic goals—such as open markets and transparency, for example, through APEC [Asia-Pacific Economic Cooperation]."100 Likewise, Japan's current interest in the Trans-Pacific Partnership, the Obama administration's most important long-term economic initiative in East Asia, is widely understood to be shaped less by specific Japanese [End Page 44] economic interests than by the belief of Yoshihiko Noda's administration that it will strengthen alliance ties with the United States.[101](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f101) As one former administration official stressed, this enhanced allied interest in supporting U.S. favored economic frameworks as a means of strengthening security ties with the United States helps to ensure against any shift to "a Sino-centric/ nontransparent/more mercantilist economic order in Asia."102¶ The United States' security leverage over its allies matters even if it is not used actively to garner support for its conception of the global economy and other economic issues. This is perhaps best illustrated by the status of the dollar as the reserve currency, which confers major benefits on the United States.[103](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f103) For many analysts, the U.S. position as the leading superpower with worldwide security commitments is an important reason why the dollar was established as the reserve currency and why it is likely to retain this status for a long time.104 In the past, Washington frequently used direct security leverage to get its allies to support the dollar.[105](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f105) There are a number of subtler mechanisms, however, through which the current U.S. geopolitical position serves the same end. First, Kathleen McNamara builds on the logic of focal points to argue that the U.S. global military role bolsters the likelihood that the dollar will long continue to be the currency that actors converge upon as the "'natural' dominant currency."106 Second, Norrlof emphasizes the significance of a mechanism that U.S. officials also stress: the United States' geopolitical position gives it the ability to constrain certain forms of Asian regionalism that, if they were to eventuate, could help to promote movement away from the dollar. [107](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f107) Third, Adam Posen emphasizes that the EU's security dependence on the United States makes it less likely that the euro countries will develop a true [End Page 45] global military capacity and thus "that the dollar will continue to benefit from the geopolitical sources of its global role" in ways that the euro countries will never match.108¶ In sum, the United States is a key pillar of the global economy, but it does not provide this service for free: it also extracts disproportionate benefits. Undertaking retrenchment would place these benefits at risk.¶ Institutional Benefits¶ What goes for the global economy also applies to larger patterns of institutionalized cooperation. Here, too, the leadership enabled by the United States' grand strategy fosters cooperation that generates diffuse benefits for many states but often disproportionately reflects U.S. preferences. This basic premise subsumes three claims.¶ First, benefits flow to the United States from institutionalized cooperation to address a wide range of problems. There is general agreement that a stable, open, and loosely rule-based international order serves the interests of the United States. Indeed, we are aware of no serious studies suggesting that U.S. interests would be better advanced in a world that is closed (i.e., built around blocs and spheres of influence) and devoid of basic, agreed-upon rules and institutions. As scholars have long argued, under conditions of rising complex interdependence, states often can benefit from institutionalized cooperation.[109](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f109)¶ In the security realm, newly emerging threats arguably are producing a rapid rise in the benefits of such cooperation for the United States. Some of these threats are transnational and emerge from environmental, health, and resource vulnerabilities, such as those concerning pandemics. Transnational nonstate groups with various capacities for violence have also become salient in recent decades, including groups involved in terrorism, piracy, and organized crime.110 [End Page 46] As is widely argued, these sorts of nontraditional, transnational threats can be realistically addressed only through various types of collective action.[111](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f111) Unless countries are prepared to radically restrict their integration into an increasingly globalized world system, the problems must be solved through coordinated action. 112 In the face of these diffuse and shifting threats, the United States is going to find itself needing to work with other states to an increasing degree, sharing information, building capacities, and responding to crises.[113](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f113)¶ Second, U.S. leadership increases the prospects that such cooperation will emerge in a manner relatively favorable to U.S. interests. Of course, the prospects for cooperation are partly a function of compatible interests. Yet even when interests overlap, scholars of all theoretical stripes have established that institutionalized cooperation does not emerge effortlessly: generating agreement on the particular cooperative solution can often be elusive. And when interests do not overlap, the bargaining becomes tougher yet: not just how, but whether cooperation will occur is on the table. Many factors affect the initiation of cooperation, and under various conditions states can and have cooperated without hegemonic leadership.114 As noted above, however, scholars acknowledge that **the likelihood of cooperation drops in the absence of leadership**.¶ Finally, U.S. security commitments are an integral component of this leadership. Historically, as Gilpin and other theorists of hegemonic order have shown, the background security and stability that the United States provided facilitated the creation of multilateral institutions for ongoing cooperation across policy areas.[115](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f115) As in the case of the global economy, U.S. security provision [End Page 47] plays a role in fostering stability within and across regions, and this has an impact on the ability of states to engage in institutional cooperation. Institutional cooperation is least likely in areas of the world where instability is pervasive. It is more likely to flourish in areas where states are secure and leaders can anticipate stable and continuous relations—where the "shadow of the future" is most evident. And because of the key security role it plays in fostering this institutional cooperation, the United States is in a stronger position to help shape the contours of these cooperative efforts.¶ The United States' extended system of security commitments creates a set of institutional relationships that foster political communication. Alliance institutions are in the first instance about security protection, but they are also mechanisms that provide a kind of "political architecture" that is useful beyond narrow issues of military affairs. Alliances bind states together and create institutional channels of communication. NATO has facilitated ties and associated institutions—such as the Atlantic Council—that increase the ability of the United States and Europe to talk to each other and do business.116 Likewise, the bilateral alliances in East Asia also play a communication role beyond narrow security issues. Consultations and exchanges spill over into other policy areas.[117](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f117) For example, when U.S. officials travel to Seoul to consult on alliance issues, they also routinely talk about other pending issues, such as, recently, the Korea-United States Free Trade Agreement and the Trans-Pacific Partnership. This gives the United States the capacity to work across issue areas, using assets and bargaining chips in one area to make progress in another. It also provides more diffuse political benefits to cooperation that flow from the "voice opportunities" created by the security alliance architecture.118 The alliances provide channels and access points for wider flows of communication—and [End Page 48] the benefits of greater political solidarity and institutional cooperation that follow.¶ The benefits of these communication flows cut across all international issues, but are arguably enhanced with respect to generating security cooperation to deal with new kinds of threats—such as terrorism and health pandemics—that require a multitude of novel bargains and newly established procedures of shared responsibilities among a wide range of countries. With the existing U.S.-led security system in place, the United States is in a stronger position than it otherwise would be to strike bargains and share burdens of security cooperation in such areas. The challenge of rising security interdependence is greater security cooperation. That is, when countries are increasingly mutually vulnerable to nontraditional, diffuse, transnational threats, they need to work together to eradicate the conditions that allow for these threats and limit the damage. The U.S.-led alliance system is a platform with already existing capacities and routines for security cooperation. These assets can be used or adapted, saving the cost of generating security cooperation from scratch. In short, having an institution in place to facilitate cooperation on one issue makes it easier, and more likely, that the participating states will be able to achieve cooperation rapidly on a related issue.[119](http://muse.jhu.edu.proxy.lib.umich.edu/journals/international_security/v037/37.3.brooks.html#f119)¶ The usefulness of the U.S. alliance system for generating enhanced non-security cooperation is confirmed in interviews with former State Department and National Security Council officials. One former administration official noted, using the examples of Australia and South Korea, that the security ties "create nonsecurity benefits in terms of support for global agenda issues," such as Afghanistan, Copenhagen, disaster relief, and the financial crisis. "This is not security leverage per se, but it is an indication of how the deepness of the security relationship creates working relationships [and] interoperability that can then be leveraged to address other regional issues." This official notes, "We could not have organized the Core Group (India, U.S., Australia, Japan) in [End Page 49] response to the 2004 tsunami without the deep bilateral military relationships that had already been in place. It was much easier for us to organize with these countries almost immediately (within forty-eight hours) than anyone else for a large-scale humanitarian operation because our militaries were accustomed to each other."120¶ The United States' role as security provider also has a more direct effect of enhancing its authority and capacity to initiate institutional cooperation in various policy areas. The fact that the United States is a security patron of Japan, South Korea, and other countries in East Asia, for example, gives it a weight and presence in regional diplomacy over the shape and scope of multilateral cooperation not just within the region but also elsewhere. This does not mean that the United States always wins these diplomatic encounters, but its leverage is greater than it would be if the United States were purely an offshore great power without institutionalized security ties to the region.¶ In sum, the deep engagement strategy enables U.S. leadership, which results in more cooperation on matters of importance than would occur if the United States disengaged—even as it pushes cooperation toward U.S. preferences.

#### Independently, absent renewal of rule of law principles, multilateral cooperation to solve warming and disease is impossible

John G. Ikenberry 11, Albert G. Milbank Professor of Politics and International Affairs at Princeton, Spring, “A World of Our Making”, http://www.democracyjournal.org/20/a-world-of-our-making.php?page=all

Grand Strategy as Liberal Order Building American dominance of the global system will eventually yield to the rise of other powerful states. The unipolar moment will pass. In facing this circumstance, American grand strategy should be informed by answers to this question: What sort of international order would we like to see in place in 2020 or 2030 when America is less powerful? Grand strategy is a set of coordinated and sustained policies designed to address the long-term threats and opportunities that lie beyond the country’s shores. Given the great shifts in the global system and the crisis of liberal hegemonic order, how should the United States pursue grand strategy in the coming years? The answer is that the United States should work with others to rebuild and renew the institutional foundations of the liberal international order and along the way re-establish its own authority as a global leader. The United States is going to need to invest in alliances, partnerships, multilateral institutions, special relationships, great-power concerts, cooperative security pacts, and democratic security communities. That is, the United States will need to return to the great tasks of liberal order building. It is useful to distinguish between two types of grand strategy: positional and milieu oriented. With a positional grand strategy, a great power seeks to diminish the power or threat embodied in a specific challenger state or group of states. Examples are Nazi Germany, Imperial Japan, the Soviet bloc, and perhaps—in the future—Greater China. With a milieu-oriented grand strategy, a great power does not target a specific state but seeks to structure its general international environment in ways that are congenial with its long-term security. This might entail building the infrastructure of international cooperation, promoting trade and democracy in various regions of the world, and establishing partnerships that might be useful for various contingencies. My point is that under conditions of unipolarity, in a world of diffuse threats, and with pervasive uncertainty over what the specific security challenges will be in the future, this milieu-based approach to grand strategy is necessary. The United States does not face the sort of singular geopolitical threat that it did with the fascist and communist powers of the last century. Indeed, compared with the dark days of the 1930s or the Cold War, America lives in an extraordinarily benign security environment. Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics—these and other dangers loom on the horizon. Any of these threats could endanger Americans’ lives and way of life either directly or indirectly by destabilizing the global system upon which American security and prosperity depends. What is more, these threats are interconnected—and it is their interactive effects that represent the most acute danger. And if several of these threats materialize at the same time and interact to generate greater violence and instability, then the global order itself, as well as the foundations of American national security, would be put at risk. What unites these threats and challenges is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence—stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance. When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States can-not hide or protect itself from threats under conditions of rising security interdependence. It must get out in the world and work with other states to build frameworks of cooperation and leverage capacities for action against this unusually diverse, diffuse, and unpredictable array of threats and challenges. This is why a milieu-based grand strategy is attractive. The objective is to shape the international environment to maximize your capacities to protect the nation from threats. To engage in liberal order building is to invest in international cooperative frameworks—that is, rules, institutions, partnerships, networks, standby capacities, social knowledge, etc.—in which the United States operates. To build international order is to increase the global stock of “social capital”—which is the term Pierre Bourdieu, Robert Putnam, and other social scientists have used to define the actual and potential resources and capacities within a political community, manifest in and through its networks of social relations, that are available for solving collective problems. If American grand strategy is to be organized around liberal order building, what are the specific objectives and what is the policy agenda? There are five such objectives. First, the United States needs to lead in the building of an enhanced protective infrastructure that helps prevent the emergence of threats and limits the damage if they do materialize. Many of the threats mentioned above are manifest as socioeconomic backwardness and failure that cause regional and international instability and conflict. These are the sorts of threats that are likely to arise with the coming of global warming and epidemic disease. What is needed here is institutional cooperation to strengthen the capacity of governments and the international com-munity to prevent epidemics or food shortages or mass migrations that create global upheaval—and mitigate the effects of these upheavals if they occur. The international system already has a great deal of this protective infrastructure—institutions and networks that pro-mote cooperation over public health, refugees, and emergency aid. But as the scale and scope of potential problems grow in the twenty-first century, investments in these preventive and management capacities will also need to grow. Early warning systems, protocols for emergency operations, standby capacities, etc.—these safeguards are the stuff of a protective global infrastructure. Second, the United States should recommit to and rebuild its security alliances. The idea is to update the old bargains that lie behind these security pacts. In NATO, but also in the East Asia bilateral partner-ships, the United States agrees to provide security protection to the other states and brings its partners into the process of decision-making over the use of force. In return, these partners agree to work with the United States—providing manpower, logistics, and other types of support—in wider theaters of action. The United States gives up some autonomy in strategic decision-making, although it is more an informal restraint than a legally binding one, and in exchange it gets cooperation and political support. Third, the United States should reform and create encompassing global institutions that foster and legitimate collective action. The first move here should be to reform the United Nations, starting with the expansion of the permanent membership on the Security Council. Several plans have been proposed. All of them entail adding new members—such as Germany, Japan, India, Brazil, South Africa, and others—and reforming the voting procedures. Almost all of the candidates for permanent membership are mature or rising democracies. The goal, of course, is to make them stakeholders in the United Nations and thereby strengthen the primacy of the UN as a vehicle for global collective action. There really is no substitute for the legitimacy that the United Nations can offer to emergency actions—humanitarian interventions, economic sanctions, uses of force against terrorists, and so forth. Public support in advanced democracies grows rapidly when their governments can stand behind a UN-sanctioned action. Fourth, the United States should accommodate and institution-ally engage China. China will most likely be a dominant state, and the United States will need to yield to it in various ways. The United States should respond to the rise of China by strengthening the rules and institutions of the liberal international order—deepening their roots, integrating rising capitalist democracies, sharing authority and functional roles. The United States should also intensify cooperation with Europe and renew joint commitments to alliances and multilateral global governance. The more that China faces not just the United States but the entire world of capitalist democracies, the better. This is not to argue that China must face a grand counterbalancing alliance against it. Rather, it should face a complex and highly integrated global system—one that is so encompassing and deeply entrenched that it essentially has no choice but to join it and seek to prosper within it. The United States should also be seeking to construct a regional security order in East Asia that can provide a framework for managing the coming shifts. The idea is not to block China’s entry into the regional order but to help shape its terms, looking for opportunities to strike strategic bargains at various moments along the shifting power trajectories and encroaching geopolitical spheres. The big bargain that the United States will want to strike is this: to accommodate a rising China by offering it status and position within the regional order in return for Beijing’s acceptance and accommodation of Washington’s core strategic interests, which include remaining a dominant security provider within East Asia. In striking this strategic bargain, the United States will also want to try to build multilateral institutional arrangements in East Asia that will tie China to the wider region. Fifth, the United States should reclaim a liberal internationalist public philosophy. When American officials after World War II championed the building of a rule-based postwar order, they articulated a distinctive internationalist vision of order that has faded in recent decades. It was a vision that entailed a synthesis of liberal and realist ideas about economic and national security, and the sources of stable and peaceful order. These ideas—drawn from the experiences with the New Deal and the previous decades of war and depression—led American leaders to associate the national interest with the building of a managed and institutionalized global system. What is needed today is a renewed public philosophy of liberal internationalism—a shift away from neoliberal-ism—that can inform American elites as they make trade-offs between sovereignty and institutional cooperation. Under this philosophy, the restraint and the commitment of American power went hand in hand. Global rules and institutions advanced America’s national interest rather than threatened it. The alternative public philosophies that have circulated in recent years—philosophies that champion American unilateralism and disentanglement from global rules and institutions—did not meet with great success. So an opening exists for America’s postwar vision of internationalism to be updated and rearticulated today. The United States should embrace the tenets of this liberal public philosophy: Lead with rules rather than dominate with power; provide public goods and connect their provision to cooperative and accommodative policies of others; build and renew international rules and institutions that work to reinforce the capacities of states to govern and achieve security and economic success; keep the other liberal democracies close; and let the global system itself do the deep work of liberal modernization. As it navigates this brave new world, the United States will find itself needing to share power and rely in part on others to ensure its security. It will not be able to depend on unipolar power or airtight borders. It will need, above all else, authority and respect as a global leader. The United States has lost some of that authority and respect in recent years. In committing itself to a grand strategy of liberal order building, it can begin the process of gaining it back.

#### Warming causes extinction

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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 the world’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 ).

#### Diseases end civilization

David Quammen 12, award-winning science writer, long-time columnist for Outside magazine for fifteen years, with work in National Geographic, Harper's, Rolling Stone, the New York Times Book Review and other periodicals, 9/29, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. But conditions aren't always ordinary. Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. Aberrations occur. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis. It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century. Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals. Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years. Zoonotic pathogens can hide. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out. Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda. Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007. They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast." By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg. Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats. Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample. The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive." The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat. The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats. Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away. "It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars? In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - it might have burned through a much larger segment of humanity. One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. When the Next Big One comes, it will likely conform to the same perverse pattern as the 1918 influenza: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death. The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes airborne from one host to another. If HIV-1 could, you and I might already be dead. If the rabies virus could, it would be the most horrific pathogen on the planet. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best. Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918. It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another. Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people. "As long as H5N1 is out there in the world," Webster told me, "there is the possibility of disaster. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us." We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. We are an outbreak. And here's the thing about outbreaks: they end. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

#### The plan reverses otherwise inevitable presidential groupthink – judicial action key

Chehab, 12 [Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review]

The practical, pragmatic justification for the COAACC derives largely from considering social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147 Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153 Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making. D. THE NEED FOR ACCOUNTABILITY CHECKS To check the vices of groupthink and shortcomings of human judgment, the psychology literature emphasizes a focus on accountability mechanisms in which a better reasoned decision-making process can flourish.156 By serving as a constraint on behavior, “accountability functions as a critical norm-enforcement mechanism—the social psychological link between individual decision makers on the one hand and social systems on the other.”157 Such institutional review can channel recognition for the need by government decision-makers to be more self-critical in policy targeted killing designations, more willing to consider alternative points of view, and more willing to anticipate possible objections.158 Findings have also shown that ex ante awareness can lead to more reasoned judgment while also preventing tendentious and ideological inclinations (and political motivations incentivized and exploited by popular hysteria and fear).159 Requiring accounting in a formalized way prior to engaging in a targeted killing—by providing, for example, in camera review, limited declassification of information, explaining threat assessments outside the immediate circle of policy advisors, and securing meaningful judicial review via a COAACC-like tribunal—can promote a more reliable and informed deliberation in the executive branch. With process-based judicial review, the COAACC could effectively reorient the decision to target individuals abroad by examining key procedural aspects—particularly assessing the reliability of the “terrorist” designation—and can further incentivize national security policy-makers to engage in more carefully reasoned choices and evaluate available alternatives than when subject to little to no review.

#### Groupthink in the context of drones collapses Yemen

Farley, 12 [winter, 2012, South Texas Law Review, 54 S. Tex. L. Rev. 385, “Drones and Democracy: Missing Out on Accountability?” Benjamin R. Farley\* J.D. with honors, Emory University School of Law, 2011. Editor-in-Chief, Emory International Law Review, 2010-2011. M.A., The George Washington University Elliott School of International Affairs, 2007, p. lexis]

V. Conclusion: Unaccountable Uses of Force and High-Risk Policymaking Effective accountability mechanisms constrain policymakers' freedom to choose to use force by increasing the costs of use-of-force decisions and imposing barriers on reaching use-of-force decisions. The accountability mechanisms discussed here, when effective, reduce the likelihood of resorting to force (1) through the threat of electoral sanctioning, which carries with it a demand that political leaders explain their resort to force; (2) by limiting policymakers to choosing force only in the manners authorized by the legislature; and (3) by requiring policymakers to adhere to both domestic and international law when resorting to force and demanding that their justifications for uses of force satisfy both domestic and international law. When these accountability mechanisms are ineffective, the barriers to using force are lowered and the use of force becomes more likely. Use-of-force decisions that avoid accountability are problematic for both functional and normative reasons. Functionally, accountability avoidance yields increased risk-taking and increases the likelihood of policy failure. The constraints imposed by political, supervisory, fiscal, and legal accountability "make leaders reluctant to engage in foolhardy military expeditions... . If the caution about military adventure is translated into general risk-aversion when it comes to unnecessary military engagements, then there will likely be a distributional effect on the success rates of [democracies]." n205 Indeed, this result is predicted by the structural explanation of the democratic peace. It also explains why policies that rely on covert action - action that is necessarily less constrained by accountability mechanisms - carry an increased risk of failure. n206 Thus, although accountability avoidance seductively holds out the prospect of flexibility and freedom of action for policymakers, it may ultimately prove counterproductive. In fact, policy failure associated with the overreliance on force - due at least in part to lowered barriers from drone-enabled accountability avoidance - may be occurring already. Airstrikes are deeply unpopular in both Yemen n207 and Pakistan, n208 and although the strikes have proven critical [\*421] to degrading al-Qaeda and associated forces in Pakistan, increased uses of force may be contributing to instability, the spread of militancy, and the failure of U.S. policy objectives there. n209 Similarly, the success of drone [\*422] strikes in Pakistan must be balanced against the costs associated with the increasingly contentious U.S.-Pakistani relationship, which is attributable at least in part to the number and intensity of drone strikes. n210 These costs include undermining the civilian Pakistani government and contributing to the closure of Pakistan to NATO supplies transiting to Afghanistan, n211 thus forcing the U.S. and NATO to rely instead on several repressive central Asian states. n212 Arguably the damage to U.S.-Pakistan relations and the destabilizing influence of U.S. operations in Yemen would be mitigated by fewer such operations - and there would be fewer U.S. operations in both Pakistan and Yemen if U.S. policymakers were more constrained by use-of-force accountability mechanisms. From a normative perspective, the freedom of action that accountability avoidance facilitates represents the de facto concentration of authority to use force in the Executive Branch. While some argue that such concentration of authority is necessary or even pragmatic in the current international environment, n213 it is anathema to the U.S. constitutional system. Indeed, the founding generation's fear of foolhardy military adventurism is one reason for the Constitution's diffusion of use-of-force authority between Congress and the President. n214 That generation recognized that **a president vested with an** unconstrained **ability to go to war is** more likely to lead the nation into war.

#### Spills over to Horn of Africa

**Atarodi, 10** – Swedish Defence Research Agency (Alexander, “Yemen in Crisis – Consequences for the Horn of Africa,” <http://www.foi.se/upload/asia/FOI-R--2968--SE.pdf>)

Yemen will celebrate the 20th anniversary of national unification in 2010. But it will not be much of a celebration. Yemen, one of the world’s oldest civilizations, is experiencing severe difficulties and faces an uncertain future. Some of the problems are a violent Houthi rebel group in the north and increasing al-Qaeda activity. Furthermore, the country is the poorest in the Arab world as well as a haven for Islamic jihadists. These factors together have weakened Yemen and have resulted in a deteriorating security situation in the country. Currently Yemen is having myriad serious security problems such as arms- and human trafficking, piracy and terrorist activities. These are consequences of poor state control over Yemeni territory. Furthermore, deteriorating economic development has transformed the Yemeni economy into a war economy where different entrepreneurs are seeking to enrich themselves through illegal activities. This report, written during January and February 2010, will discuss some of the urgent issues facing the country. There are a couple of conclusions drawn from this report. One is that Yemen is not to be considered a failed state, at least not for now. However, the health of the Yemeni political, social and economic systems is getting continuously worse. If this trend is not reversed in the near future, the country is likely to follow the same path as Somalia, located just a short distance away across the Mandab Strait. If this happens, it will lead to further instability and strengthening of illegal and terrorist activities with enormous consequences for the Horn of Africa countries. Another conclusion is that Yemen needs international support (political and economical) to combat the political crisis in the country, to combat the widespread poverty and to promote economic development to improve the lives of the rapidly growing population.

#### The impact is global conflict

**Hedberg, 10** – Lt Col, US Navy, paper submitted in fulfillment of a MASTER OF ARTS IN SECURITY STUDIES (MIDDLE EAST, SOUTH ASIA, SUB-SAHARAN AFRICA) at the Naval Postgraduate School (Nicholas, “THE EXPLOITATION OF A WEAK STATE: AL-QAEDA IN THE ARABIAN PENINSULA IN YEMEN,” June, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA524655&Location=U2&doc=GetTRDoc.pdf>)

This chapter will address three major reasons why AQAP has come to the forefront of al-Qaeda in the Persian Gulf. At the heart of the problem is the fact that Yemen is a weak state and is unable to provide many basic social services to its populace, while at the same time, is either unwilling or unable to control the whole extent of its territory. The importance of Yemen in the fight against global terrorism cannot be underestimated as “Yemen has contributed fighters to all three generations of the global jihad,” and could soon become the next staging point for all major operations against the West.170 The United States cannot and should not try to solve this problem alone. The problem of terrorism in Yemen is an international threat that needs to be addressed by the leading powers in the world and, most importantly, by the Gulf Cooperation Council (GCC) countries. By studying the conditions that make Yemen a weak state, we can determine how to strengthen the state so that it can provide basic services to the majority of its people and eliminate the conditions that allow AQAP to recruit, train, and operate within Yemen.

A. PROBLEMS WITH WEAK STATES

Today, the United States is the world’s sole remaining superpower, and we no longer fear the threat from militaries of other world powers, but “rather transnational threats emanating from the world’s most poorly governed countries.”171 Tremendous attention has been given to weak and failing states in recent years because of their role in transnational terrorism. Weak and failing states, like Sudan and Afghanistan, have both harbored Osama bin Laden and his al-Qaeda leadership in the last two decades. From these locations, al-Qaeda has been able to conduct terrorist operations that have killed thousands of innocent people from the Middle East to Africa to the United States. Prior to 11 September 2001, policymakers viewed failing states strictly through a humanitarian lens, but this has changed and the leadership has been convinced that America is now more threatened by failing states than it is by conquering ones.172 Lately, weak and failing states have caused more worry and “anxiety about the spread of violent Islamic extremism and staging of terrorist attacks from ungoverned areas of such states has entered U.S. strategic thinking.”173 For the United States to combat the threat of weak and failing states such as Yemen, it must first understand the characteristics of weak states and why they are unable to provide the proper authority to thwart the threat of transnational terrorism.

Though attention to weak and failing states has increased, there is no universal definition or agreement on the number of these states in the world today. Failed states are commonly defined as those with the inability to achieve the characteristics described by Max Weber in his definition of a state. Failed states cannot “project or assert authority within their own borders, making them particularly susceptible to internal violence. They are often characterized by deteriorating living standards, corruption, a marked lack of civil society, and fewer services.”174 Terrorist groups are able to flourish in states that fall in this category because the state cannot or will not challenge the terrorist group. It can also be argued that weak states can pose just as much danger as failed states, as they have many of the same deficiencies. In most instances of weak and failing states, the state just does not have the capabilities to assert effective control over the entirety of its territory and this provides an ungoverned space where terrorist organizations can recruit, train, and conduct operations successfully.

There is no consensus on how many weak and failing states there are in the world today. The Commission on Weak States and U.S. National Security estimates that there are between 50 and 60; the United Kingdom’s Department for International Development classifies 46 nations as “fragile,” and the World Bank treats 30 countries in its LowIncome Under Stress program.175 The discrepancy in estimates shows the differences each have in defining weak and failing states, but what can be agreed upon is the fact that these states are major cause for concern because they can create a host of problems for the rest of the world. Weak and failing states create pockets that are susceptible to terrorism, WMD proliferation, crime, disease, energy insecurity, and regional instability.176 Each of these problems is not solely the problem of the individual state, but also threatens the security of the rest of the world. Weak and failing states provide bases for transnational criminal enterprises involved in the production, transit, or trafficking of drugs, weapons, and guns. They serve as important breeding grounds for new diseases and, because they lack the capacity to respond to the pandemic, endanger the rest of the world. Weak and failing states endanger energy security because reliance on these states increases the risk of interruption of supplies. These weak states also threaten the stability of the entire region as their conflicts can often spill into neighboring countries or induce external intervention.177 Although there is a range of problems that weak and failing states can cause for the rest of the world, none may be greater to the West than the threat of transnational terrorism.

There may not be a better example of a weak state today than Yemen. The Yemeni government faces a myriad of challenges that consume a tremendous amount of their resources, which prevent them from being able to effectively govern the whole of their territory. A nation-state exists to deliver political goods including, security, education, health services, economic opportunity, and environmental surveillance to its citizens.178 As discussed in Chapter IV, the Yemeni government is unable to provide many of the political goods that a state is supposed to provide for its people. The Yemeni economy is failing, unemployment rates are very high, the state is running out of water, there are not enough publicly run schools to support the population, malnutrition numbers are staggering, and the state is in the middle of fighting two separate conflicts against the Houthis in the north and secessionists in the south. This inability of the Yemeni government to govern effectively has produced a sense of illegitimacy that AQAP is using to help garner support in the country. Organizations such as AQAP

Are eager to step in and fill a void when the government is unable to provide its citizens with essential services. When such groups provide health, education, and protection services instead of or better than the government, they gain legitimacy, respect, and authority in the eyes of the public.179

Groups such Hizbullah in Lebanon, and Hamas in Gaza, have been successful in providing these essential services in the past and it has helped lead to their popularity in other areas. AQAP may not be as popular in Yemen as Hizbullah and Hamas are in their respective countries, but they are building strong relationships with the powerful Yemeni tribes who control large amounts of territory within Yemen.

Whereas it can be argued that violence is one of the outcomes of an organization in response “to an attempt to crush Islamic activism through broad repressive measures that leave few alternatives,” this study maintains that Yemen’s inability to provide proper goods and services allowed an already violent organization, AQAP, to recruit amongst a disgruntled population.180 The Yemeni state is going to continue to weaken as the economy worsens and what resources it has continue to go to combating the Houthis and southern secessionists. Its ability to govern the whole of the territory will continue to dwindle and AQAP is going to be there in the future, exploiting the weakness by operating freely in the ungoverned spaces, and recruiting the disenchanted population. The government cannot provide security throughout the country and cannot provide the proper social services that should be provided by an effective government. Yemen can be seen as the poster child for problems with weak and failing states. Although not a failed state, Yemen is a weak state, and the al-Qaeda organization has recognized the weakness, and will continue to utilize the safe haven provided to them as long as they are able to. Yemen’s weakness will continue to allow AQAP to operate, and if the al-Qaeda leadership on the Pakistan-Afghanistan borders is forced to flee, Yemen becomes the most logical stopping point for the next era of the transnational terrorist network.

### Plan

#### The United States Federal Government should create a federal court with jurisdiction over uninhabited aerial vehicle targeted killing.

### Solvency

#### Solvency!

#### Congressional action key to create a court with jurisdiction and to establish independent oversight – it’s effective

McKelvey, 11 [Benjamin, JD Candidate, Senior Editorial Board, Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>]

A. Option One: Congress Could Pass Legislation to Establish Screening and Oversight of Targeted Killing As the Aulaqi case demonstrates, any resolution to the problem of targeted killing would require a delicate balance between due process protections and executive power.204 In order to accomplish this delicate balance, Congress can pass legislation modeled on the Foreign Intelligence Surveillance Act (FISA) that establishes a federal court with jurisdiction over targeted killing orders, similar to the wiretapping court established by FISA.205 There are several advantages to a legislative solution. First, FISA provides a working model for the judicial oversight of real-time intelligence and national security decisions that have the potential to violate civil liberties.206 FISA also effectively balances the legitimate but competing claims at issue in Aulaqi: the sensitive nature of classified intelligence and national security decisions versus the civil liberties protections of the Constitution.207 A legislative solution can provide judicial enforcement of due process while also respecting the seriousness and sensitivity of executive counterterrorism duties.208 In this way, congress can alleviate fears over the abuse of targeted killing without interfering with executive duties and authority. Perhaps most importantly, a legislative solution would provide the branches of government and the American public with a clear articulation of the law of targeted killing.209 The court in Aulaqi began its opinion by explaining that the existence of a targeted killing program is no more than media speculation, as the government has neither confirmed nor denied the existence of the program.210 Congress can acknowledge targeted killing in the light of day while ensuring that it is only used against Americans out of absolute necessity.211 Independent oversight would promote the use of all peaceful measures before lethal force is pursued.212 i. FISA as an Applicable Model FISA is an existing legislative model that is applicable both in substance and structure.213 FISA was passed to resolve concerns over civil liberties in the context of executive counterintelligence.214 It is therefore a legislative response to a set of issues analogous to the constitutional problems of targeted killing.215 FISA also provides a structural model that could help solve the targeted killing dilemma.216 The FISA court is an example of a congressionally created federal court with special jurisdiction over a sensitive national security issue.217 Most importantly, **FISA works**. Over the years, the FISA court has proven itself capable of handling a large volume of warrant requests in a way that provides judicial screening without diminishing executive authority.218 Contrary to the DOJ’s claims in Aulaqi, the FISA court proves that independent judicial oversight is institutionally capable of managing real-time executive decisions that affect national security.219 The motivation for passing FISA makes this an obvious choice for a legislative model to address targeted killing. With FISA, Congress established independent safeguards and a form of oversight in response to President Nixon’s abusive wiretapping practices.220 The constitutional concern in FISA involved the violation of Fourth Amendment privacy protections by excessive, unregulated executivepower.221 Similarly, the current state of targeted killing law allows for executive infringement on Fifth Amendment due process rights. Although there is no evidence of abusive or negligent practices of targeted killing, the main purpose of congressional intervention is to ensure that targeted killing is conducted only in lawful circumstances after a demonstration of sufficient evidence. Finally, a FISA-style court is a potentially effective possibility because it would provide ex ante review of targeted killing orders, and the pre-killing stage is the only stage during which judicial review would be meaningful.222 In the context of targeted killing, due process is not effective after the decision to deprive an American of life has already been carried out. Pre-screening targeted killing orders is a critical component of judicial oversight. Currently, this screening is conducted by a team of attorneys at the CIA.223 Despite assurances that review of the evidence against potential targets is rigorous and careful, due process is best accomplished through independent judicial review.224 The FISA court provides a working model for judicial review of real-time requests related to national security.225 FISA also established the requisite level of probable cause for clandestine wiretapping and guidelines for the execution and lifetime of the warrant, whereas the legal standards used by the CIA’s attorneys are unknown.226 The only meaningful way to ensure that Americans are not wrongfully targeted with lethal force is to screen the evidence for the decision and to give ultimate authority to an impartial judge with no institutional connection to the CIA.

#### An executive lead role spurs mistrust and global opposition

Goldsmith, 13 [May 1st, Jack Goldsmith teaches at Harvard Law School and is a member of the Hoover Institution Task Force on National Security and Law. He is the author, most recently, of Power and Constraint, How Obama Undermined the War on Terror http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism]

And so Barack Obama greatly expanded the secret war that George W. Bush began. In the fall of 2009, Obama approved a "long list" of new CIA paramilitary operation proposals, as well as CIA requests for more armed drones, more spies, and larger targeting areas in Pakistan. "The CIA gets what it wants," said the president, approving the CIA requests, and conveying what Mazzetti thinks was his first-term attitude toward the Agency. The Department of Defense also got most of what it wanted. Obama approved an initiative by General David Petraeus to expand "military spying activities throughout the Muslim world," and gave special operations forces "even broader authorities to run spying missions across the globe" than they possessed under the Bush administration. Mazzetti describes Obama's souped-up secret war as "the way of the knife," a reference to Obama counterterrorism czar (and now CIA director) John Brennan's claim that the administration had replaced the "hammer" of large deployments with the "scalpel" of secret pinpoint missions. Its most famous use was the Abbottabad raid to kill bin Laden. But its most enduring legacy is Obama's significant expansion of the CIA and JSOC drone-strike campaign against Al Qaeda and affiliates, especially in Pakistan and Yemen. In 2009, the Obama administration conducted more drone strikes in those countries than the Bush administration had done in the seven years after 9/11; and to date, it has conducted almost nine times more drone strikes there than its predecessor. The administration's most controversial drone strike came against an American citizen, Anwar al-Awlaki, a leader of Al Qaeda in the Arabian Peninsula, the Yemeni organization responsible for the failed Detroit "underwear bomb" attack on Christmas in 2009 and other attempted attacks against the United States. Government lawyers gave the green light to kill al-Awlaki in 2010, but the administration had no idea where in Yemen he was. By 2011, the CIA and JSOC both had spies on the ground in Yemen and were "running two distinct drone wars," with different targeting lists, from bases in Saudi Arabia (for the CIA) and Ethiopia and Djibouti (for JSOC). In the fall of 2011, in part because of prior JSOC targeting mistakes and in part because of the CIA's extraordinary successes in Pakistan, Obama tasked the CIA alone with finding and killing al-Awlaki. On September 30, a CIA Reaper drone fired on a convoy near the Saudi Arabian desert and completed the mission. At the end of president Obama's first term, Mazzetti remarks, Americans seemed "little concerned about their government's escalation of clandestine warfare." By that point Obama's way of the knife had both decimated the senior leadership of Al Qaeda and reversed the Republicans' traditional advantage on national security. "Ask Osama bin Laden and the 22 out of 30 top Al Qaeda leaders who have been taken off the field whether I engage in appeasement," said the boastful president in December 2011, flicking away Republican charges that he was soft on terrorism. "Or whoever is left out there, ask them about that," he added. But in the last few months the Obama administration's secret war—and especially its drone program—have come under attack on multiple fronts. In 2011, The Washington Post reported the CIA's counterterrorism chief bragging of his Al Qaeda strikes that "we are killing these sons of bitches faster than they can grow them now." It is unclear whether this statement is true today. The core Al Qaeda organization appears debilitated. But its affiliate organizations are operating in Somalia, Yemen, and Iraq. And powerful new affiliates appear to be springing up elsewhere, including Al Qaeda in the Islamic Maghreb in post-Qaddafi North Africa, and the Al Nusra Front in revolutionary Syria. Secrecy is the essence of the type of war that Obama has chosen to fight. In this light, questions about the strategic success of Obama's drone campaign, and his secret war more generally, are growing. "We cannot kill our way to victory," former Congresswoman Jane Harman, who was a member of the House Intelligence Committee, testified in a counterterrorism hearing last month. General Stanley McChrystal, who presided over JSOC from 2003 to 2008, made a similar point in a recent interview in Foreign Affairs. The "danger of special operating forces," he noted, is that "you get this sense that it is satisfying, it's clean, it's low risk, it's the cure for most ills." But history provides no example of "a covert fix that solved a complex problem," he continued, adding that a too-heavy reliance on drone strikes is also "problematic" because "it's not a strategy in itself; it's a short-term tactic." One reason McChrystal questions the strategic efficacy of heavy reliance on drones is that "inhabitants of that area and the world have significant problems watching Western forces, particularly Americans, conduct drone strikes inside the terrain of another country." Last summer, Pew Research reported "considerable opposition" in "nearly all countries," and especially in predominantly Muslim countries, to Obama's drone program. It also found that Lebanon, Egypt, Jordan, and Pakistan now had a less favorable attitude toward the United States than at the end of the Bush administration. And a Gallup poll in February found that 92 percent of the people in Pakistan disapprove of the American leadership and 4 percent approve—historically bad numbers for the United States that are largely attributable to the way of the knife. These are discouraging numbers for a president who hoped to diminish the terrorism threat by establishing "a new beginning between the United States and Muslims ... based upon mutual interest and mutual respect," as Obama said in Cairo in 2009. The president added in that speech that the United States during the Bush era had acted "contrary to our ideals," and he pledged to "change course." But as the polls abroad show, Obama's change of course has not made the world think better of American ideals. Ben Emmerson, a United Nations special rapporteur on counter-terrorism and human rights, recently suggested that some American drone attacks might be war crimes. Since he launched an investigation in January, he has noted that most nations "heavily disput[e]" the legal theory underlying Obama's stealth wars, and concluded that American drone strikes violate Pakistan's sovereignty, contrary to international law. Most Americans are little interested in the popularity abroad of the way of the knife. To date, they very strongly support what they know about the president's drone campaign against foreign terrorist suspects. Support for targeting American citizens such as Anwar al-Awlaki, however, has dropped, and the focus on American citizens is affecting other elements of the way of the knife. In large part this has resulted from the administration's stilted explanations about the legal limits on killing Americans and the secret processes for placing American suspects on target lists. When a less-than-convincing Justice Department white paper on the topic leaked to the press in February, it stoked suspicions that the administration had big plans and something to hide. Questions grew when the administration continued to withhold legal memos from Congress, and when John Brennan danced around the issue during his confirmation hearings to be director of the CIA. Senator Rand Paul then cleverly asked Brennan whether the president could order a drone to kill a terrorist suspect inside the United States. When Brennan and Attorney General Eric Holder seemed to prevaricate, Paul conducted his now-famous filibuster. "I cannot sit at my desk quietly and let the president say that he will kill Americans on American soil who are not actively attacking the country," Paul proclaimed. The president never said, or suggested, any such thing. But with trust in Obama falling fast, Paul was remarkably successful in painting the secret wars abroad as a Constitution-defying threat to American citizens at home. Paul's filibuster attracted attention to the issue of drone attacks on Americans in the homeland. A more serious challenge to the president comes from growing concerns, including within his own party, about the legal integrity of his secret wars abroad. Anne-Marie Slaughter, a former senior official in Obama's State Department, recently gainsaid "the idea that this president would leave office having dramatically expanded the use of drones—including [against] American citizens—without any public standards and no checks and balances." Many in Congress want to increase the transparency of the processes and legal standards for placing a suspect (especially an American) on a targeting list, to tighten those legal standards (perhaps by recourse to a "drone court"), and to establish a more open accounting of the consequences (including civilian casualties) from the strikes. "This is now out in the public arena, and now it has to be addressed," Senator Dianne Feinstein, a Democrat, recently said. Others in Congress worry about the obsolescence of the legal foundation for the way of the knife: the congressional authorization, in 2001, of force against Al Qaeda. "I don't believe many, if any, of us believed when we voted for [the authorization] that we were voting for the longest war in the history of the United States and putting a stamp of approval on a war policy against terrorism that, 10 years plus later, we're still using," said Senator Richard Durbin, also a Democrat, in a Wall Street Journal interview. "What are the checks and balances of the system?" he asked. Senator John McCain, who led bipartisan efforts against what he saw as Bush-era legal excesses, is now focusing similar attention on Obama. "I believe that we need to revisit this whole issue of the use of drones, who uses them, whether the CIA should become their own air force, what the oversight is, [and] what the legal and political foundations [are] for this kind of conflict," he said last month. These are unhappy developments for the president who in his first inaugural address pledged with supercilious confidence that, unlike his predecessor, he would not expend the "rule of law" for "expedience's sake." Obama reportedly bristles at the legal and political questions about his secret war, and the lack of presidential trust that they imply. "This is not Dick Cheney we're talking about here," he recently pleaded to Democratic senators who complained about his administration's excessive secrecy on drones, according to Politico. And yet the president has ended up in this position because he committed the same sins that led Cheney and the administration in which he served to a similar place. The first sin is an extraordinary institutional secrecy that Obama has long promised to reduce but has failed to. In part this results from any White House's inevitable tendency to seek maximum protection for its institutional privileges and prerogatives. The administration's disappointing resistance to sharing secret legal opinions about the secret war with even a small subset of Congress falls into this category. Much of what the administrat-ion says about its secret war seems incomplete, self-serving, and ultimately non-credible. But the point goes deeper, for secrecy is the essence of the type of war that Obama has chosen to fight. The intelligence-gathering in foreign countries needed for successful drone strikes there cannot be conducted openly. Nor can lethal operations in foreign countries easily be acknowledged. Foreign leaders usually insist on non-acknowledgment as a condition of allowing American operations in their territories. And in any event, an official American confirmation of the operations might spark controversies in those countries that would render the operations infeasible. The impossible-to-deny bin Laden raid was a necessary exception to these principles, and the United States is still living with the fallout in Pakistan. 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 oftheseparation 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. Administration officials resist this route because they worry about the outcome of the public debate, and because the president is, as The Washington Post recently reported, "seen as reluctant to have the legislative expansion of another [war] added to his legacy." But the administration can influence the outcome of the debate only by engaging it. And as Mazzetti makes plain, the president's legacy already includes the dramatic and unprecedented unilateral expansion of secret war. What the president should be worried about for legacy purposes is that this form of warfare, for which he alone is today responsible, is increasingly viewed as illegitimate.

# 2ac

### AT: T Restriction

#### We meet – contextual ev

Guiora, 12 [Amos, Professor of Law, SJ Quinney College of Law, University of Utah, author of numerous books dealing with military law and national security including Legitimate Target: A Criteria-Based Approach to Targeted Killing, “Drone Policy: A Proposal Moving Forward,” <http://jurist.org/forum/2013/03/amos-guiora-drone-policy.php>]

To re-phrase, this strict scrutiny test seeks to strike a balance by enabling the state to act sooner but subjecting that action to significant restrictions. This paradigm would be predicated on narrow definitions of imminence and legitimate targets. Rather than enabling the consequences of the DOJ memo, the strict scrutiny test would ensure implementation of person-specific operational counterterrorism. That is the essence of targeted killing conducted in accordance with the rule of law and morality in armed conflict.

#### Counter interp – limitations or qualifications, not prohibitions

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

#### Restrict doesn’t mean prohibit

**Coffey, 82** - US Circuit Judge, dissenting (VICTOR D. QUILICI, ROBERT STENGL, et al., GEORGE L. REICHERT, and ROBERT E. METLER, Plaintiffs-Appellants, v. VILLAGE OF MORTON GROVE, et al., Defendants-Appellees Nos. 82-1045, 82-1076, 82-1132 UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT 695 F.2d 261; 1982 U.S. App. LEXIS 23560, lexis)

Pursuant to section 83, a municipality can enact an ordinance reasonably restricting or confining the use and possession of firearms. A municipality can also require registration of firearm ownership. What the legislature has authorized is limited regulation of firearm possession by local units of government, but not prohibition. Section 83 does not allow a municipality such as Morton Grove to categorically prohibit handgun possession. [\*\*35] To limit or restrict involves a circumscription which falls far short of an absolute prohibition.

"The words 'prohibit' and 'restrict' are not synonymous. They are not alike in their meaning in their ordinary use . . . . 'To restrict is to restrain within bounds; to limit; to confine and does not mean to destroy or prohibit.'"

### AT: Mattei K 2ac

#### No movements against neoliberalism now

Jones 11—Owen, Masters at Oxford, named one of the Daily Telegraph's 'Top 100 Most Influential People on the Left' for 2011, author of "Chavs: The Demonization of the Working Class", The Independent, UK, "Owen Jones: Protest without politics will change nothing", 2011, [www.independent.co.uk/opinion/commentators/owen-jones-protest-without-politics-will-change-nothing-2373612.html](http://www.independent.co.uk/opinion/commentators/owen-jones-protest-without-politics-will-change-nothing-2373612.html)

My first experience of police kettling was aged 16. It was May Day 2001, and the anti-globalisation movement was at its peak. The turn-of-the-century anti-capitalist movement feels largely forgotten today, but it was a big deal at the time. To a left-wing teenager growing up in an age of unchallenged neo-liberal triumphalism, just to have "anti-capitalism" flash up in the headlines was thrilling. Thousands of apparently unstoppable protesters chased the world's rulers from IMF to World Bank summits – from Seattle to Prague to Genoa – and the authorities were rattled.¶ Today, as protesters in nearly a thousand cities across the world follow the example set by the Occupy Wall Street protests, it's worth pondering what happened to the anti-globalisation movement. Its activists did not lack passion or determination. But they did lack a coherent alternative to the neo-liberal project. With no clear political direction, the movement was easily swept away by the jingoism and turmoil that followed 9/11, just two months after Genoa.¶ Don't get me wrong: the Occupy movement is a glimmer of sanity amid today's economic madness. By descending on the West's financial epicentres, it reminds us of how a crisis caused by the banks (a sentence that needs to be repeated until it becomes a cliché) has been cynically transformed into a crisis of public spending. The founding statement of Occupy London puts it succinctly: "We refuse to pay for the banks' crisis." The Occupiers direct their fire at the top 1 per cent, and rightly so – as US billionaire Warren Buffett confessed: "There's class warfare, all right, but it's my class, the rich class, that's making war, and we're winning."¶ The Occupy movement has provoked fury from senior US Republicans such as Presidential contender Herman Cain who – predictably – labelled it "anti-American". They're right to be worried: those camping outside banks threaten to refocus attention on the real villains, and to act as a catalyst for wider dissent. But a coherent alternative to the tottering global economic order remains, it seems, as distant as ever. **¶** Neo-liberalism crashes around, half-dead, with no-one to administer the killer blow.**¶** There's always a presumption that a crisis of capitalism is good news for the left. Yet in the Great Depression, fascism consumed much of Europe. The economic crisis of the 1970s did lead to a resurgence of radicalism on both left and right. But, spearheaded by Thatcherism and Reaganism, the New Right definitively crushed its opposition in the 1980s.This time round, there doesn't even seem to be an alternative for the right to defeat. That's not the fault of the protesters. In truth, the left has never recovered from being virtually smothered out of existence. It was the victim of a perfect storm: the rise of the New Right; neo-liberal globalisation; and the repeated defeats suffered by the trade union movement.¶ But, above all, it was the aftermath of the collapse of Communism that did for the left. As US neo-conservative Midge Decter triumphantly put it: "It's time to say: We've won. Goodbye." From the British Labour Party to the African National Congress, left-wing movements across the world hurtled to the right in an almost synchronised fashion. It was as though the left wing of the global political spectrum had been sliced off. That's why, although we live in an age of revolt, there remains no left to give it direction and purpose.

#### Inequality down now

Perry 9 professor of economics and finance @ Univ of Michigan, M.A. and Ph.D @ George Mason University, MBA in finance from Curtis L. Carlson School of Management at the University of Minnesota, 12-1-2009 (Mark, “The Rich Are Getting Richer and the Poor Are Getting Richer”, <http://blog.american.com/?p=7694>, RBatra)

The U.S. Census Bureau recently released a study on the “Living Conditions in the United States, 2005” with detailed information on the “Percent of Households Reporting Consumer Durables,” and those percentages are displayed in the table below for: a) all U.S. households in 2005, b) households with income below the official poverty line in 2005, and c) all households in 1971.

Not surprisingly, the percentage of U.S. households owning basic home appliances increased between 1971 and 2005 for all appliances except traditional telephones, which have gradually been replaced by cell phones. Certain appliances such as air conditioning, clothes dryers, color TVs, and dishwashers that used to be luxury items owned by a minority of American households in 1971 became so affordable that by 2005 a large majority of households owned all of those appliances. And some household items such as microwave ovens, VCRs, computers, and cell phones that were virtually nonexistent in 1971 became so affordable by 2005 that more than two of every three American households owned those items.

But what is even more impressive is the comparison of the living standards of households living below the poverty line in 2005 to all U.S. households in 1971. By almost every measure of appliance ownership, poor American households in 2005 had much better living conditions than the average American household in 1971, since poor households in 2005 had much higher ownership rates for basic appliances like clothes dryers, dishwashers, color TVs, and air conditioners than all households did in 1971.

As economist Steve Horwitz commented recently about these improvements on the Austrian Economists blog, “Life for the average American is better today than 35 years ago, life for poor Americans is much better than it was 35 years ago, and poor Americans today largely live better than the average American did 35 years ago. Hard to square with a narrative of economic stagnation or decline.”

The reasons for the significant improvements in living standards over time for Americans at all income levels? Entrepreneurial innovation, technology improvements, supply-chain efficiencies, increases in productivity, and other market-based efficiencies that have continually driven prices lower and lower over time, measured in what is most important: our time and the amount of labor it takes to earn the money to purchase goods and services.

The chart below shows retail prices for 11 different household appliances in both 1973 (data here) and 2009 (data here), and the cost of purchasing those appliances measured by the number of “hours of work” at the average hourly wage in each year (BLS data here: $4.12 per hour in 1973 vs. $18.72 per hour in 2009). The chart shows the significant reductions in the real cost of basic household appliances between 1973 and today of from -50.7 percent for a basic kitchen stove (70.4 hours of work at the average wage in 1973 vs. 34.7 hours in 2009) to -83.5 percent for color TVs (97.1 hours in 1973 vs. 16 hours in 2009).

In total, to purchase all of those 11 basic household appliances in 1973, it would have taken 551.1 hours of work (13.8 weeks or 3.4 months) at the average hourly wage. To purchase those same 11 appliances in 2009, it would have only taken 171 hours of work (4.3 weeks or 1.1 month), a whopping 69 percent reduction in the number of hours worked. Or the typical worker in 1973 would have had to work from January 1 until the second week of April to earn enough income to purchase those 11 appliances (ignoring taxes), whereas a worker today would only have to work from January 1 until the first few days of February to earn enough income for those same appliances.

Bottom Line: As much as we hear reports about the decline in median income, economic stagnation, the disappearance of the middle class, and falling real wages, the data tell a much different story that can be summarized as follows: The rich in America are getting richer and the poor are getting richer.

#### No resource wars

**Salehyan 7** – Professor of Political Science at the University of North Texas. (Idean, 6-14 “The New Myth About Climate Change Corrupt, tyrannical governments—not changes in the Earth’s climate—will be to blame for the coming resource wars.” http://www.foreignpolicy.com/articles/2007/08/13/the\_new\_myth\_about\_climate\_change)

First, aside from a few anecdotes, there is little systematic empirical evidence that resource scarcity and changing environmental conditions lead to conflict. In fact, several studies have shown that an abundance of natural resources is more likely to contribute to conflict. Moreover, even as the planet has warmed, the number of civil wars and insurgencies has decreased dramatically. Data collected by researchers at Uppsala University and the International Peace Research Institute, Oslo shows a steep decline in the number of armed conflicts around the world. Between 1989 and 2002, some 100 armed conflicts came to an end, including the wars in Mozambique, Nicaragua, and Cambodia. If global warming causes conflict, we should not be witnessing this downward trend. Furthermore, if famine and drought led to the crisis in Darfur, why have scores of environmental catastrophes failed to set off armed conflict elsewhere? For instance, the U.N. World Food Programme warns that 5 million people in Malawi have been experiencing chronic food shortages for several years. But famine-wracked Malawi has yet to experience a major civil war. Similarly, the Asian tsunami in 2004 killed hundreds of thousands of people, generated millions of environmental refugees, and led to severe shortages of shelter, food, clean water, and electricity. Yet the tsunami, one of the most extreme catastrophes in recent history, did not lead to an outbreak of resource wars. Clearly then, there is much more to armed conflict than resource scarcity and natural disasters.

#### No environment impact

Veer 12(Pierre-Guy, Independent journalist writing for the Von Mises Institute, 5/2, “Cheer for the Environment, Cheer for Capitalism,” http://www.mises.ca/posts/blog/cheer-for-the-environment-cheer-for-capitalism/)

No Ownership, No Responsibility How can such a negligence have happened? It’s simple: **no one was the legitimate owner of the resources** (water, air, ground). When a property is state-owned – as was the case under communism – **government has generally little incentive to sustainably exploit it**. In communist Europe, governments wanted to industrialize their country in order, they hoped, to catch up with capitalist economies. Objectives were set, and they had to be met no matter what. This included the use of brown coal, high in sulfur and that creates heavy smoke when burned[4], and questionable farming methods, which depleted the soil. This lack of vision can also be seen in the public sector of capitalist countries. In the US, the Department of Defense creates more dangerous waste than the top five chemical product companies put together. In fact, pollution is such that cleanup costs are estimated at $20 billion. The same goes for agriculture, where Washington encourages overfarming or even farming not adapted for the environment it’s in[5]. Capitalism, the Green Solution In order to solve most of the pollution problems, there exists a simple solution: **laissez-faire capitalism, i.e.** **make sure property rights and profitability can be applied**. The latter helped Eastern Europe; when communism fell, capitalism made the countries seek profitable – and not just cheap – ways to produce, which greatly reduced pollution[6]. As for the former, it proved its effectiveness, notably with the Love Canal[7]. Property rights are also thought of in order to protect some resources, be it fish[8] or endangered species[9]. Why such efficiency? Because an owner’s self-interest is directed towards the maximum profitability of his piece of land. By containing pollution – as Hooker Chemicals did with its canal – he keeps away from costly lawsuit for property violation. At the same time, badly managed pollution can diminish the value of the land, and therefore profits. Any entrepreneur with a long-term vision – and whose property is safe from arbitrary government decisions – thinks about all that in order to protect his investment. One isn’t foolish enough to sack one’s property! In conclusion, I have to mention that I agree with environmentalists that it is importance to preserve the environment in order to protect mother nature and humans. However, I strongly disagree with their means, i.e. government intervention. Considering it very seldom has a long-term vision, it is the worst thing that can happen. In fact, one could says that most environmental disasters are, directly or indirectly, caused by the State, mainly by a lack of clear property rights. Were they clearer, they would let each and everyone of us, out of self-interest, protect the environment in a better manner. That way, everyone’s a winner.

#### Specifics key – the plan creates oversight that effectively restrains the executive – the alt doesn’t create sufficient restraint – their links reductionism takes out solvency

Duffy and Moore 10

Article: Neoliberalizing nature? Elephants as imperfect commodities Author: Duffy, R Journal: Antipode ISSN: 0066-4812 Date: 2010 Volume: 42 Issue: 3 Page: 742

Note: from 1 September 2012 I take up the post of Professor of Conservation Politics at the Durrell Institute of Conservation Ecology (DICE) in the School of Anthropology and Conservation, University of Kent.

I am Professor of International Politics, and I held posts at Edinburgh University and Lancaster University before joining Manchester in 2005. I take a deliberately interdisciplinary approach to understanding conservation; my work is located at the intersection between international relations, geography and sociology. My work examines the debates on global environmental governance, especially the roles of international NGOs, international treaties, international financial institutions and epistemic communities. I am particularly interested in how global environmental management regimes play out on the ground, how they are contested, challenged and resisted by their encounter at the local level. I focus on wildlife conservation, tourism and illicit trading networks to understand the local level complexities of global environmental management. I have undertaken a number of ESRC funded research projects on Peace Parks, gemstone mining and national parks,and on ecotourism (more details are under 'research interests'. My most recent book, Nature Crime: How We're Getting Conservation Wrong (Yale University Press, 2010) examines how global dynamics of wealth and poverty shape conservation outcomes. More information is on my personal wesbite 'Conservation Politics' <http://conservationpolitics.wordpress.com/>

However, it is critically important not to reify neoliberalism and ascribe it a greater level of coherence and dominance than it really deserves (Bakker 2005; Castree 2008a; Brenner and Theodore 2002; Mansfield 2004; McCarthy and Prudham 2004). Instead it is important to interrogate how neoliberalism plays out “on the ground”, to probe its complexities, unevenness and messiness (see Peck and Tickell 2002). In this paper we concentrate on comparing the practices of neoliberalism in order to draw out these messy entanglements; this demonstrates how neoliberalism can be challenged, resisted and changed by its encounter with nature (Bakker 2009; Castree 2008b:161). Therefore, we do not rehearse the well worn debates on definitions of neoliberalism, but rather take up the challenge of comparative research on “actually existing neoliberalisms”, which involves engaging with contextual embeddedness in order to complicate neat theoretical debates. As Brenner and Theodore (2002:356–358) suggest, to understand actually existing neoliberalism we must explore the path-dependent, contextually specific interactions between inherited regulatory landscapes and emergent forms of neoliberalism. As such, the neat lines and models generated via theoretical debates can be traced, refined, critiqued and challenged through engagement with specific case studies (Bakker 2009; Castree 2008b).

#### Western rule of law promotion is good and Mattei is wrong– no colonialist violence impact

May, 10 [The Rule of Law: its rhetoric and meaning in global politics Christopher May, Professor of Political Economy, Lancaster University, UK email: c.may@lancaster.ac.uk University of Sussex, Department of International Relations Research in Progress seminar, 15th March 2010]

This has not been passive nor reactive development but rather is linked to the professional project of lawyers to promote their expertise and skills (and to reify the law, to ensure it needs interpretation). Working in a long Western political tradition that has in one way or another promoted law as a technical ordering device to promote the good political life, lawyers have emphasised the specialist and technical character of their undertaking, and sought to maintain and increase social status by closely guarding entry to the profession. The professional project of lawyering has involved both the careful fostering of a closed group (the lawyers) alongside the promotion of their tool (law) as a solution to problems of order. Thus, one element for understanding the rise of the Rule of Law norm is to attribute at least part of the cause to the number of lawyers entering politics alongside a more general professionalization of the global polity which has moved legal forms of organisation to the forefront. The political selfmaintenance of the legal profession alongside a trend towards professionalization in modern society have reinforced each other to prompt the increasing normative deployment of the rule of law. However, the value of professions to politics is by no means uncontested; Perkin notes that the idea of a scarcity in expertise and professional service (driving the increase of value of the profession’s work) was firmly rejected by the new right in the UK and elsewhere in the 1980s (Perkin 1990: chapter 10). This gives one indication of why much of the work on Rule of Law has been driven by critical and oppositional groups of one sort or another. While the neo-liberal/new right agenda saw law (to simplify a little) as merely a thin procedural mechanism to deliver the order required for capitalist expansion, for those seeking to maintain professional norms the thicker Rule of Law was preferred as a conception of legal development that supports the values of social justice and fairness that continue to lie at the heart of the self-conception of various professions; self-conceptions maintained by the professionals' representative bodies acting in a guild like manner. If we accept that professionalization has played some role in the establishment of the rule of law as an overarching norm of politics, this cannot merely have happened spontaneously across the world. And indeed, we know that there have been, and continue to be, extensive programmes that seek to (re)establish the rule of law in developing countries, in post-conflict societies and elsewhere. Only in the post-colonial period did the form of legal re-engineering move from forced and imposed legal structures to a mode of co-development and assistance in the development of local legal regimes. Certainly, some might still regard this as a form of imperialism (see for instance Mattei and Nader 2008), **but there has been some semblance of political negotiation and flexibility, that was mostly absent in the imperial period.** Leaving aside the contentious history of law and development interventions in Latin America (see Gardner, 1980; Trubeck, 2006) it is perhaps little surprise that when legal education once again moved up the international political agenda, development and law assistance was relocated to a range of international organisations (including post-conflict UN Transitional Administrations), and became a key (mostly, but not exclusively regional) activity of the European Union.

#### Perm do the plan AND cast the ballot to fundamentally rethink the global promotion of Western law – dominant understandings are already normalized – if the alt can overwhelm the status quo the link to the plan is irrelevant -- the perm creates multiple meanings

May, 10 [The Rule of Law: its rhetoric and meaning in global politics Christopher May, Professor of Political Economy, Lancaster University, UK email: c.may@lancaster.ac.uk University of Sussex, Department of International Relations Research in Progress seminar, 15th March 2010]

The Rule of Law, then, may come to mean different things to different people, in different places, and as such the argument put forward by those who argue for a thin reading of the rule of law is that this is all we can hope for. Certainly we can identify where formalised law-like procedures obtain, but to ask more of our definition is to violate the key local dimension of law's rule; its connection to and with the society which it governs. However, for Bingham (and others who argue for the thick definition) this is no answer as the rule of law then becomes merely a mechanism that can deliver both justice and injustice. What is perhaps most interesting is that while we argue whether a thick Rule of Law or merely a thin rule of law is the marker of a democratic and liberal society, we seem to have moved beyond the point when we might ask: is there any other way of ruling society. The Rule of Law has become so tied up with the definition of the good society, we no longer seem to reflect on how the rule of law has itself become so central to (progressive) politics as to be beyond the question: how has this normative dominance happened? The Rule of Law has been so normalised to be beyond anything but reformist critique, and as such while Bingham's exploration is useful in presenting a nuanced and historical understanding of the norm, it leaves this political question both un-posed, and unanswered.

### AT: Flexibility DA

#### Flexibility is always possible even with legal constraints

**Holmes, 9 -** Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 97 Calif. L. Rev. 301, “In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, lexis)

Campaigners for executive discretion routinely invoke the imperative need for "flexibility" to explain why counterterrorism cannot be successfully conducted within the Constitution and the rule of law. But general rules and situation-specific improvisation, far from being mutually exclusive, are perfectly compatible. n18 There is no reason why mechanically following protocols designed to prevent harried nurses from negligently administering the wrong blood type should preclude the same nurses from improvising unique solutions to the unique problems of a particular trauma patient. Drilled-in emergency protocols provide a psychologically stabilizing floor, shared by co-workers, on the basis of which untried solutions can then be improvised. n19 In other words, there is no reason to assert, at least not as a matter of general validity, that the importance of flexibility excludes reliance on rules during emergencies, including national-security emergencies.

#### Secrecy inhibits decision-making and prevents adequate crisis response

**Holmes, 9 -** Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 97 Calif. L. Rev. 301, “In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, lexis)

To repeat, fear of transparency to Congress, the courts, the public, and the press can severely exacerbate problems of coordination and cooperation among the various agencies of the purportedly "unitary" executive. Excessive compartmentalization within the executive prevents knowledgeable experts ensconced in one executive agency from pointing out the flaws in the evidence being used by another executive agency to set national policy. This is especially dangerous in the face of a new and evolving threat, when useful knowledge about the threat's contours is likely to be dispersed among various agencies and not yet pooled. To [\*331] protect "the unity of the executive" from congressional and judicial meddling by clogging channels of communication and mutual self-correction within the executive makes little sense. In line with the Framers' intent to encourage thoughtful cooperation and information sharing among the semi-independent branches, checks and balances can make a positive contribution to national security by compelling the executive to submit to congressional scrutiny. When arguing that "Congressional oversight helps keep federal bureaucracies on their toes," n66 Lee Hamilton has in mind: "hearings, periodic reauthorization, personal visits by members or their staffs, review by the General Accounting Office (GAO), or inspectors general, subpoenas, and mandated reports or letters from the executive branch." n67 Such procedures have the downside of consuming precious time. But they also have the upside of maximizing the chances for a wide range of experts to be heard. n68 They can be enabling as well as disabling. "The purpose of oversight should not be to rein in the intelligence community ... . The basic purpose of oversight should be to ensure that the right people are getting the right information and analysis at the right time." n69 Left to itself, the executive branch often fails miserably at its task of coordinating agency-specific counterterrorism programs, a defect that can be mitigated, at least to some extent, by congressional performance audits. n70 No one thinks that legislative monitoring of executive action is especially well organized. Oversight committees have overlapping jurisdictions and are too specialized on single executive agencies to keep track of broader government policies. Nevertheless, as David Golove has remarked, constitutional checks and balances, when functioning properly, have sometimes allowed experts dispersed throughout the executive to break out of their "stovepipes" and communicate with each other through the oversight function. n71

[\*332]

#### Terrorism doesn’t require rapid decision-making

**Holmes, 9 -** Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 97 Calif. L. Rev. 301, “In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, lexis)

[\*310] Emergency-room emergencies are urgent even when they are perfectly familiar. Terrorists with access to weapons of mass destruction ("WMD"), by contrast, present a novel threat that is destined to endure for decades, if not longer. Such a threat is not an "emergency" in the sense of a sudden event, such as a house on fire, requiring genuinely split-second decision making, with no opportunity for serious consultation or debate. n20 Managing the risks of nuclear terrorism requires sustained policies, not short-term measures. This is feasible precisely because, in such an enduring crisis, national-security personnel have ample time to think and rethink, to plan ahead and revise their plans. In depicting today's terrorist threat as "an emergency," executive-discretion advocates almost always blur together urgency and novelty. This is a consequential intellectual fallacy. But it also provides an opportunity for critics of executive discretion in times of crisis. If classical emergencies, in the house-on-fire or emergency-room sense, turn out to invite and require rule-governed responses, then the justification for dispensing with rules in the war on terror seems that much more tenuous and open to question.

#### War on terror unwinnable – only a risk continuing makes terror worse

**Walt, 7/29/13** – Stephen, Robert and Renée Belfer professor of international relations at Harvard University (“'They're Baaack…': The Rebirth of al Qaeda?” Foreign Policy, http://walt.foreignpolicy.com/posts/2013/07/29/theyre\_baaackthe\_rebirth\_of\_al\_qaeda //Red)

Last Friday I posted an entry on America's "one-sided" war on terrorism, arguing that the country has focused enormous efforts on deterring, thwarting, or killing suspected terrorists and hardly any effort on removing the incentives or grievances that might make someone join a terrorist organization. The very same day, Bruce Riedel of the Brookings Institution posted an article on the Daily Beast, arguing that various **al Qaeda affiliates are making a significant comeback** in places like Iraq and Syria.

Precisely my point. Undoubtedly, some pundits will interpret Riedel's article as evidence that the United States should have been even more aggressive and should have stayed in Iraq or Afghanistan or Yemen or wherever for as long as it took. This argument overlooks the tremendous costs of these operations -- including their degrading effects on Army performance and morale -- as well as their **inherently self-defeating character**. Given that opposition to foreign occupation and interference is one of the prime motivations behind terrorist activity -- especially suicide bombings -- maintaining an extensive military footprint in the Arab and Islamic world is a recipe for endless war. Even more limited operations like drone strikes have been tactically effective but are strategically questionable, precisely because they give jihadi recruiters a constant pool of angry locals from which to draw and vindicate their claims that the United States is unalterably addicted to violent interference in their societies.

Indeed, the real lesson of Riedel's article is that **much of the so-called** "**war on terror**" **has been misguided to the point of foolishness**. It was both smart and necessary to go after al Qaeda in Afghanistan, but letting Osama bin Laden slip away at Tora Bora was a massive command failure. It was dumb to take on the task of nation-building in Afghanistan, and even dumber to invade Iraq in 2003. It was both immoral and counterproductive to torture captured terrorists (it tarnished America's image and didn't yield better intelligence) and obtuse not to rethink other aspects of the United States' Middle East policy. The post-9/11 TSA regime has been a colossal waste of resources that has added little to Americans' overall level of security. And vacuuming up gazillions of bytes of email and phone records merely proved that government agencies operating in secret will invariably grow like Topsy, without making Americans significantly safer. As Riedel suggests, **none of these activities has prevented al Qaeda and its copycats from making a comeback.**

What is needed is a much more fundamental rethinking of the entire anti-terrorism campaign. As I suggested last week, part of that rethink means asking whether the United States needs to do a lot more to discredit jihadi narratives, instead of persisting with policies that make the extremists' charges sound plausible to their audiences. A second part is to keep the jihadi threat in better perspective: They are a challenge, but **not a mortal threat** to Americans' way of life **unless the country reacts to them in ways that cause more damage** to its well-being and its values than they do. Sadly, a rational ranking of costs, benefits, and threats seems to be something that the U.S. foreign-policy establishment is largely incapable of these days.

#### Combined probability approaches zero

**Schneidmiller 9** (Chris, Experts Debate Threat of Nuclear, Biological Terrorism, 13 January 2009, http://www.globalsecuritynewswire.org/gsn/nw\_20090113\_7105.php, AMiles)

There is an "almost **vanishingly small" likelihood** that terrorists would ever be able to acquire and detonate a nuclear weapon, one expert said here yesterday (see GSN, Dec. 2, 2008). In even the most likely scenario of nuclear terrorism, there are 20 barriers between extremists and a successful nuclear strike on a major city, said John Mueller, a political science professor at Ohio State University. The process itself is seemingly straightforward but exceedingly difficult -- buy or steal highly enriched uranium, manufacture a weapon, take the bomb to the target site and blow it up. Meanwhile, variables strewn across the path to an attack would increase the complexity of the effort, Mueller argued. Terrorists would have to bribe officials in a state nuclear program to acquire the material, while avoiding a sting by authorities or a scam by the sellers. The material itself could also turn out to be bad. "Once the purloined material is purloined, [police are] going to be chasing after you. They are also going to put on a high reward, extremely high reward, on getting the weapon back or getting the fissile material back," Mueller said during a panel discussion at a two-day Cato Institute conference on counterterrorism issues facing the incoming Obama administration. Smuggling the material out of a country would mean relying on criminals who "are very good at extortion" and might have to be killed to avoid a double-cross, Mueller said. The terrorists would then have to find scientists and engineers willing to give up their normal lives to manufacture a bomb, which would require an expensive and sophisticated machine shop. Finally, further technological expertise would be needed to sneak the weapon across national borders to its destination point and conduct a successful detonation, Mueller said. Every obstacle is "difficult but not impossible" to overcome, Mueller said, putting the chance of success at no less than one in three for each. The likelihood of successfully passing through each obstacle, in sequence, would be roughly one in 3 1/2 billion, he said, but for argument's sake dropped it to 3 1/2 million. "It's a total gamble. This is a very expensive and difficult thing to do," said Mueller, who addresses the issue at greater length in an upcoming book, Atomic Obsession. "So unlike buying a ticket to the lottery ... you're basically putting everything, including your life, at stake for a gamble that's maybe one in 3 1/2 million or 3 1/2 billion." Other scenarios are even less probable, Mueller said. A nuclear-armed state is "exceedingly unlikely" to hand a weapon to a terrorist group, he argued: "States just simply won't give it to somebody they can't control." Terrorists are also not likely to be able to steal a whole weapon, Mueller asserted, dismissing the idea of "loose nukes." Even Pakistan, which today is perhaps the nation of greatest concern regarding nuclear security, keeps its bombs in two segments that are stored at different locations, he said (see GSN, Jan. 12). Fear of an "extremely improbable event" such as nuclear terrorism produces support for a wide range of homeland security activities, Mueller said. He argued that there has been a major and costly overreaction to the terrorism threat -- noting that the Sept. 11 attacks helped to precipitate the invasion of Iraq, which has led to far more deaths than the original event. Panel moderator Benjamin Friedman, a research fellow at the Cato Institute, said academic and governmental discussions of acts of nuclear or biological terrorism have tended to focus on "worst-case assumptions about terrorists' ability to use these weapons to kill us." There is need for consideration for what is probable rather than simply what is possible, he said. Friedman took issue with the finding late last year of an experts' report that an act of WMD terrorism would "more likely than not" occur in the next half decade unless the international community takes greater action. "I would say that the report, if you read it, actually offers no analysis to justify that claim, which seems to have been made to change policy by generating alarm in headlines." One panel speaker offered a partial rebuttal to Mueller's presentation. Jim Walsh, principal research scientist for the Security Studies Program at the Massachusetts Institute of Technology, said he agreed that nations would almost certainly not give a nuclear weapon to a nonstate group, that most terrorist organizations have no interest in seeking out the bomb, and that it would be difficult to build a weapon or use one that has been stolen.

### 2ac – shutdown

#### No compromise

**Sullivan, 9/19**/13 (Sean, “Boehner Agonistes (again)” Washington Post, <http://www.washingtonpost.com/blogs/the-fix/wp/2013/09/18/boehner-agonistes-again/?tid=pm_politics_pop>)

In all likelihood, the Senate would pass a CR that doesn’t defund Obamacare. The idea then could be for House GOP leaders to urge conservative members to suck it up, support such a plan, and live to fight another day — more specifically during the debate over the debt ceiling, which will culminate sometime next month.

But that presupposes that the most conservative members of the House — call them the cast-iron conservatives — will go along. And that’s a big ask — probably too big an ask.

Why? Three reasons.

One, these conservatives have already demonstrated a willingness to buck leadership. Two, many of them view this as the last best chance to derail Obamacare, given imminent implementation dates. Three, their biggest political concerns are primary challenges and the ire of conservative groups who also want to shred Obamacare at all costs. A “we-tried-once-so-now-let’s-back-away” posture won’t ease any of their political pressures.

What’s more, in order for a budget strategy to really be tested, it must be drawn out to the last moment. These negotiations have increasingly become blinking contests, and Defund Obamacare advocates aren’t going to be happy until Senate Democrats are faced with a choice between a government shutdown and defunding Obamacare. Anything else will be seen as a token effort.

#### It’s temporary and empirically no impact

**Taylor, 9/19/13** (Andrew, Associated Press, “Here's the truth: The government doesn't shut down” <http://www.wtnh.com/news/politics/heres-the-truth-the-government-doesnt-shut-down-nd13-jgr>)

From a practical perspective, shutdowns usually aren't that big a deal. They happened every year when Jimmy Carter was president, averaging 11 days each. During President Reagan's two terms, there were six shutdowns, typically just one or two days apiece. Deals got cut. Everybody moved on.

In 1995-96, however, shutdowns morphed into political warfare, to the dismay of Republicans who thought they could use them to drag Clinton to the negotiating table on a balanced budget plan.

Republicans took a big political hit, but most Americans suffered relatively minor inconveniences like closed parks and delays in processing passport applications. Some 2,400 workers cleaning up toxic waste sites were sent home, and there were short delays in processing veterans' claims.

Under a precedent-setting memorandum by Reagan budget chief David Stockman, federal workers are exempted from furloughs if their jobs are national security-related or if they perform essential activities that "protect life and property."

#### No war scenario

Daniel W. Drezner 12, Professor, The Fletcher School of Law and Diplomacy, Tufts University, October 2012, “The Irony of Global Economic Governance: The System Worked,” <http://www.globaleconomicgovernance.org/wp-content/uploads/IR-Colloquium-MT12-Week-5_The-Irony-of-Global-Economic-Governance.pdf>

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder.

The **aggregate data** suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40

None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, **the proper comparison** is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

#### Plan bipartisan

Atehortua, 13 [Julian Atehortua, a Crimson editorial writer, is an economics concentrator in Leverett House, <http://www.thecrimson.com/article/2013/2/12/drone-legal-basis/>]

Of course, any international deal would be far easier if the United States were to first develop legal guidelines of its own, which could possibly serve as a framework for international negotiations. The U.S. needs to develop an effective balance between efficient systems of eliminating targets and respect for the constitutional rights of terrorists, whatever they may be. Setting current legal issues aside, it is clear that Americans support the use of drone strikes to target terrorists. However, it is also clear that bipartisan support does exist for its regulation. Though neither Democrats nor Republicans will support total prohibition on the use of armed drones, both would support regulations on their use against American citizens, specifically through judicial or congressional oversight of the program.

#### No PC

**Rogers, 9/17/13** (Ed, “The Insiders: Stubborn facts and bothersome polls” Washington Post, <http://www.washingtonpost.com/blogs/post-partisan/wp/2013/09/17/the-insiders-stubborn-facts-and-bothersome-polls/>)

Obama was also dealt an embarrassing blow this week as Larry Summers withdrew his name from consideration for Federal Reserve Chairman. I wasn’t even for Summers getting the job, but this was another telling sign that the president lacks any political capital on the Hill — among members of either party. If he wasn’t so weak, he might have gotten his pick for the Fed, but as it is, he must defer to the loud voices making demands. The president does not have any influence with members of Congress now, and he isn’t going to have any going forward. I think it’s safe to say he cannot take a leadership role in the looming debt ceiling and budget battles. ‎

#### Plan gives Obama a high-profile win – without one his agenda is tanked

**Lawrence, 9/17/13 -** national correspondent at National Journal.(Jill, “Obama Says He’s Not Worried About Style Points. He Should Be.” National Journal, <http://www.nationaljournal.com/whitehouse/obama-says-he-s-not-worried-about-style-points-he-should-be-20130917>)

In some ways Obama's fifth year is typical of fifth years, when reelected presidents aim high and often fail. But in some ways it is atypical, notably in the number of failures, setbacks, and incompletes Obama has piled up. Gun control and immigration reform are stalled. Two Obama favorites withdrew their names as potential nominees in the face of congressional opposition – Susan Rice, once a frontrunner for secretary of state, followed by Larry Summers, a top candidate to head the Federal Reserve. Secretary of State John Kerry's possibly offhand remark about Assad giving up his chemical weapons, and Putin's jump into the arena with a diplomatic proposal, saved him from almost certain defeat on Capitol Hill. Edward Snowden set the national security establishment on its heels, then won temporary refuge from … Putin. It's far from clear how that will be resolved.

And that's as true for the budget and debt-limit showdowns ahead.

Some of Obama's troubles are due to the intransigence of House conservatives, and some may be inevitable in a world far less black and white than the one Reagan faced. But the impression of ineffectiveness is the same.

"People don't like it when circumstances are dictating the way in which a president behaves. They want him to be the one in charge," says Dallek, who has written books about nine presidents, including Reagan and Franklin Roosevelt. "It's unfair… On the other hand, that's what goes with the territory. People expect presidents to be in command, and they can't always be in command, and the public is not forgiving."

Obama's job approval numbers remain in the mid-40s. The farther they fall below 50 percent, history suggests, the worse he can expect Democrats to do in the midterm House and Senate elections next year. Obama would likely be in worse trouble with the public, at least in the short term, if he had pushed forward with a military strike in Syria. In fact, a new Pew Research Center poll shows 67 percent approve of Obama's switch to diplomacy. But his journey to that point made him look weak and indecisive.

Indeed, the year's setbacks are accumulating and that is dangerous for Obama.

"At some point people make a collective decision and they don't listen to the president anymore. That's what happened to both Jimmy Carter and George W. Bush," Cannon says. "I don't think Obama has quite gone off the diving board yet in the way that Carter or Bush did … but he's close to the edge. He needs to have some successes and perceptions of success."

#### PC fails

**Koring, 9/16/13** (Paul, The Globe and Mail (Canada), “Obama faces fall clash with Congress;

Despite averting military action in Syria, U.S. President fights plunging approval ratings and feuding Republicans on Capitol Hill” lexis)

The President's handling of Syria has hurt him, according to some. Mr. Obama "seems to be very uncomfortable being commander-in-chief of this nation," said Senator Bob Corker, a Tennessee Republican, adding it left the President "a diminished figure here on Capitol Hill."

Americans strongly opposed military intervention in Syria, but they still want their presidents to command global respect. Mr. Obama's embrace of Russian help on Syria may enhance his image internationally as a conciliator, but, at home, it can be seen as seen as weak - or vacillating. Americans want their presidents to speak softly and carry a big stick, even if they are also weary of overseas wars.

In turn, despite the President's impressive oratory, he may be wearing out his bully pulpit. Powerful speeches have failed, so far - on gun control, budget reform and immigration - and now the President has spent more scarce second-term political capital wooing congressional leaders on Syrian strikes that may never materialize. The mood is ugly on Capitol Hill and it's made worse by warnings that delays and the time spent talking about Syria may cost members the week off they had planned starting Sept 23.

With the President's approval rating plunging - and backing for "Obamacare" slipping below 40 per cent - the right wing of the Republican party is seeking ways to "defund" the ambitious health-care program. The most recent Pew Research Center poll, published last week, put the President's approval at 44 per cent, down 11 points over a year ago.

On Capitol Hill, it's a three-cornered fight, with Mr. Obama facing off against the Republican-dominated House of Representatives, and the Republicans in Congress bitterly divided over whether it's worth pushing the nation over a fiscal cliff to drive a stake into the President's health-care program.

Everyone has an eye on the 2014 elections and frustrations are threatening to boil.

#### Energy floor debates pound the DA

Amy Harder 9/12, and Clare Foran, National Journal, "The Energy Debate That Wasn't", 2013, www.nationaljournal.com/daily/the-energy-debate-that-wasn-t-20130912?mrefid=mostViewed

The second day of the Senate's first floor debate on an energy bill in six years was marked by obstruction, opposition, and frustration.¶ Sen. David Vitter, R-La., held firm in his refusal to allow debate to move forward to an energy-efficiency bill until Senate leaders agree on a time to vote on his amendment related to President Obama's health care law. Vitter first interfered with the energy debate Wednesday afternoon, shortly after Senate Majority Leader Harry Reid, D-Nev., moved to the bill in place of the Syria resolution that was put on hold.¶ Vitter's stance put an uncontroversial measure with broad support on a difficult legislative obstacle course.¶ "Senators who have talked about energy policy for years and years now say they want to have their issues that are unrelated to energy advance today, even though they have the potential to undermine this bill," Senate Energy and Natural Resources Chairman Ron Wyden, D-Ore., said on the floor, showing clear frustration. "I don't know how that adds up, if you give a lot of speeches at home about sensible energy policy and then take steps to undermine it."¶ Wyden didn't name any names, but he didn't have to.¶ "Since they were all directed at my activity, I want to respond," said Vitter just moments after Wyden concluded his comments. "I have nothing against this bill, I applaud that work. I did hear a lot this summer—quite frankly, I didn't hear about this bill or any provision of this bill. But I'm not denigrating it."¶ Vitter isn't the only Republican seeking to pivot the debate. Senate Minority Leader Mitch McConnell, R-Ky., also filed an amendment to the energy bill seeking to delay a key part of Obamacare. He spoke about the amendment Thursday morning but didn't mention the energy bill at all.¶ A number of other Republican senators also used floor time to voice opposition to the health care law, including John Barrasso of Wyoming, Dan Coats of Indiana, and Jeff Flake of Arizona.¶ Among the GOP voices, Vitter's was the loudest. Whether senators will actually get to debate energy—even controversial issues like the Keystone XL pipeline and climate-change regulations—now hinges on whether Vitter either backs down from his amendment or comes to an agreement with Senate leaders on another path to vote on it down the road.¶ Even if a deal is reached with Vitter, more obstacles await. Sens. John Hoeven, R-N.D., and Mary Landrieu, D-La., introduced an amendment Thursday that would declare the Keystone pipeline to be in the national interest. A decision on a permit for the controversial project is still pending at the State Department.¶ On another thorny issue, Sens. Joe Donnelly, D-Ind., and Roy Blunt, R-Mo., introduced an amendment that would ban the Environmental Protection Agency from requiring costly carbon-capture and sequestration technology to be used in order to comply with climate-change regulations. The amendment would instead require the EPA to develop technology standards for different fuels and different sources of emissions.¶ Barrasso is also pushing an amendment to block the agency's upcoming climate rules unless they are approved by Congress. The EPA is expected to issue regulations limiting carbon emissions for new power plants very soon.

### AT: ESR

#### Future presidents prevent solvency

Harvard Law Review 12, "Developments in the Law: Presidential Authority," Vol. 125:2057, www.harvardlawreview.org/media/pdf/vol125\_devo.pdf

The recent history of signing statements demonstrates how public opinion can effectively check presidential expansions of power by inducing executive self-binding. It remains to be seen, however, if this more restrained view of signing statements can remain intact, for **it relies on the promises of one branch — indeed of one person — to enforce and maintain the separation of powers**. To be sure, President Obama’s guidelines for the use of signing statements contain all the hallmarks of good executive branch policy: transparency, accountability, and fidelity to constitutional limitations. Yet, in practice, this apparent constraint (however well intentioned) may amount to little more than voluntary self-restraint. 146 Without a formal institutional check, it is unclear what mechanism will prevent the next President (or President Obama himself) from reverting to the allegedly abusive Bush-era practices. 147 Only time, and perhaps public opinion, will tell.

#### Links to politics and prez powers

Scheir 2011

Steven E., Professor of Political Science at Carleton College in Northfield, Minnesota The Contemporary Presidency: The Presidential Authority Problem and the Political Power Trap Presidential Studies Quarterly [Volume 41, Issue 4,](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/psq.2011.41.issue-4/issuetoc)pages 793–808, December 2011

So the “presidential authority problem” has several parts. Authority among elites faces limits due to the institutional thickening in national government. Authority among the public and in Congress suffers from the lessening of presidential political capital detailed in this article. Political authority, according to Skowronek, is designated in advance, works through institutions, and has enforceable mandates and perceptions ([Orren and Skowronek 2004](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b35), 125). The decline in presidential political capital means that nowadays such traits are hard for presidents to come by. Advance designations frequently vanish among American governing elites and the mass public. Institutions are less “workable” for presidents. Mandates and perceptions are now evanescent, much less enforceable. This leads to a “presidential power trap.” Maintaining authority is hard and frustrating work, and in seeking to maintain it, presidents encounter widespread constraints. Yet the modern presidency grants an incumbent many formal powers over executive branch administration, foreign, and national security policy. The power is there, if the authority is not. So why not use the power—via unilateral decisions, signing statements and executive orders—while you have it, if authority is so hard to garner? The risk is that by using such powers, a president effectively destroys his authority. Richard Nixon's presidency, with its constitutional violations, is the signal example of this, but one can find evidence of the authority problem and power trap among other recent presidencies. Carter took his authority for granted, ignoring the maintenance of its elite and mass aspects, and paid the price. Reagan gradually relied more on executive power as authority problems grew, leading to the Iran-Contra imbroglio. George H. W. Bush exerted war powers but never found a stable basis in political authority. Clinton usually suffered an authority shortage and found his use of powers under steady political attack. George W. Bush's use of war powers destroyed his authority during his second term. Presidential efforts to increase their powers have drawn scholarly attention. As William Howell noted regarding these efforts, “almost all the trend lines point upward” ([Howell 2005](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b22), 417). A recent manifestation of increasing power claims is the theory of the unitary executive introduced during the Reagan presidency and repeatedly asserted by George W. Bush. Exponents Steve Calabresi and John Yoo argue the Constitution “gives presidents the power to control their subordinates by vesting all of the executive power in one, and only one, person: the president of the United States” ([Calabresi and Yoo 2008](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b9), 4). Thus Congress's power to interfere with executive branch decisions is quite limited, and the president has total control of all executive agencies within limits set by Congress. Several legal and presidential scholars have argued this theory gives too much rein to unilateral presidential action in a way that threatens the constitutional separation of powers and individual liberty (for example, [Fisher 2010](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b16), [Matheson 2009](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b28), [Rudalevig 2006](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b41)). Accompanying the unitary executive theory in the second Bush administration was an aggressive use of signing statements, presidential memoranda, and executive orders. Ambitious claims of unilateral presidential power have ominous implications: “The assertion by the executive that it alone has the authority to interpret the law and that it will enforce the law at its own discretion threatens the constitutional balance set up by the Constitution” ([Pfiffner 2008](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b38), 227). Barack Obama and the Power Trap It is in the context of such controversies that Obama serves as president and continues to use unilateral tools when they prove convenient. Though he has publicly disavowed the theory of the unitary executive, like his recent predecessors he has made unilateral policy via executive order, presidential memoranda, and signing statements ([Schier 2011](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b45)). Upon taking office in 2009, Obama's executive orders reversed his predecessor's policies on U.S. government support for international family planning organizations, union organizing, and terrorist interrogation techniques. Another executive order secured passage of his landmark health care reform in early 2010. The order, banning the use of federal funds for abortion, secured the vital support of a group of antiabortion House Democrats. Obama employed presidential memoranda to order his energy secretary to formulate higher fuel efficiency standards for automobiles and energy efficiency standards for appliances ([Schier 2011](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b45)). In 2009, two of Obama's signing statements drew strong protests from Congress. In the statements, the president indicated he would not enforce certain provisions of the law with which he disagreed ([Weisman 2009](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b53), [Associated Press 2009](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b5)). This stance echoed the approach of his predecessor, George W. Bush ([Schier 2008](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b44)). The ensuing uproar caused the administration to declare it would no longer issue such policy declarations in signing statements but would instead quietly disregard enforcement of laws it found unconstitutional ([Savage 2010](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b42)). In May 2011, Obama ignored requirements of the War Powers Resolution regarding his military incursion into Libya. The use of force occurred without prior consultation of Congress as required by the resolution. The administration also ignored the resolution's provision that Congress approve the use of the military within 60 days of their initial engagement in conflict until after the deadline had passed ([Ackerman and Hathaway 2011](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b3)). Obama initially enjoyed strong public approval but his job approval gradually sank, in part because of continuing slow economic growth and high unemployment. His impressive successes with Congress in 2009 and 2010 also accompanied a shift in the public mood against him, evident in the rise of the Tea Party movement and the large GOP gains in the 2010 elections. During 2009, [James Stimson (2011](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b51)) calculated the public mood shifted −.88 against Obama's policies. In comparison, the public's notable move against Obama's policy position was greater than that registered during the JFK, LBJ, and the first Bush presidencies. It also exceeded mood shifts during Clinton's second term and during either of the second Bush's two terms. By mid-2011 Obama's job approval had slipped well below its initial levels, and Congress was proving increasingly intransigent. In the face of declining public support and rising congressional opposition, Obama, like his predecessors when faced with similar circumstances, continued to resort to the energetic use of executive power. Declining political capital, rising authority problems, and accompanying assertions of executive power—we have seen this movie before. Obama thus faces an authority problem and a power trap. Only by solving the former is he likely to avoid the latter. Presidents in recent years have been unable to prevent their authority—evident in their political capital—from eroding. When it did, their power assertions often got them into further political trouble. None of his post-1965 predecessors solved the political authority problem. It is the central political challenge confronted by modern presidents, and now by Obama.

#### Administration not viewed as credible – SOP and Congressional acquiescence key

Goldmsith, 13 [Jack Goldsmith is the Henry L. Shattuck Professor at Harvard Law School, where he teaches and writes about national security law, presidential power, cybersecurity, international law, internet law, foreign relations law, and conflict of laws. Before coming to Harvard, Professor Goldsmith served as Assistant Attorney General, Office of Legal Counsel from 2003–2004, and Special Counsel to the Department of Defense from 2002–2003. Professor Goldsmith is a member of the Hoover Institution Task Force on National Security and Law, “ Why the Administration Needs to Get Congress on Board for Its Stealth War” <http://www.lawfareblog.com/2013/03/why-the-administration-needs-to-get-congress-on-board-for-its-stealth-war/>]

I disagree with Steve’s claim that we don’t know how the government conceives of its authority or the limits on it. The administration has told us a lot about that – in speeches, papers, leaks, and more, though of course it could give us much more detail. Steve correctly says we needn’t trust the government’s words. But note that Steve’s proposed remedy is “a more comprehensive public defense by the Executive Branch.” To which one can ask: Why should we trust the words of a more comprehensive public defense? Public skepticism about the administration’s drone program has grown in step with its public defenses. I think the administration made a big mistake in thinking that unilateral disclosures alone — in speeches, white papers, controlled leaks to authors and journalists, and other “public defenses” – would legitimate its policies. The reason is precisely what Steve puts his finger on: Outsiders needn’t trust Executive branch representations, and over time they won’t trust its representations if that is all the information they have on a matter they care about, especially on an issue as fraught as executive authority to kill an American citizen. This is where separations of powers can help. One way to make the president’s secret actions and decisions and authorities legitimate and credible is to have an adversarial institution look at and pass on them. GTMO detentions became more legitimate and less controversial after another branch of government, the judiciary, looked at them and largely agreed with the executive’s assessment. I don’t think judicial review is even conceivably available for most of our stealth war. But congressional review is. As I once wrote: [A] different adversarial branch of government — Congress — can play an analogous role. The congressional intelligence and arms services committees know a lot about the president’s targeting policies, and have gone along with the president’s actions. These committees could (without revealing sensitive information) do more to enhance the president’s credibility by stating publicly — and preferably in a bipartisan fashion — that they have monitored the president’s high-value targeting decisions and find them, and the facts and processes on which they are based, to be sound. Having the intelligence committees publicly on board helps, but what the administration really needs now is to have Congress on board. The only way to legitimate the administration’s stealth war tactics, and to stop the growing bipartisan sniping at and distrust of them (which will only grow and grow if not addressed), is to make Congress vote on them and get behind them. The administration should ask for a comprehensive authorization for the tactics it is now deploying in the “war on terrorism.” I know, this approach is risky; secrets can spill out; Congress might give too much or too little authority; and the administration will be tagged with the legacy of making war permanent. There are plenty of excuses for not forging congressional approval, all of them premised on short-term thinking and a remarkable paucity of executive branch leadership. At some point soon the pain of not engaging Congress will be greater than the pain of engaging Congress, and at that point the administration will wish it had gone to Congress sooner.

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### AT: T Prohibition 1ar

#### A restriction on war powers authority limits Presidential discretion

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### A restriction is a limitation on action

**Barbadoro, 2k** – Chief Judge, US District Court for New Hampshire (Tommy Hilfiger Retail, Inc. v. North Conway Outlets LLC Civil No. 99-C-147-B UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE 2000 DNH 38; 2000 U.S. Dist. LEXIS 1448, lexis)

Assuming without deciding that Hilfiger has proffered a plausible construction of the term "governmental restrictions" it interpretation is by no means the only plausible construction. A commonly accepted dictionary definition of "restriction" is "something that restricts; a restrictive condition or regulation; limitation." Random House Unabridged Dictionary 1642 (2d ed. 1993). To "restrict" means "to confine or keep within limits, as of space, action, choice, intensity, or quantity." Id. A governmental restriction, therefore, reasonably can be understood as any limitation on action, or restrictive condition, imposed by the government that prevents NCO from completing construction. The context in which the term is used in the lease gives no hint that the parties intended a more restrictive interpretation.

#### Restricting authority means limiting within bounds – it’s distinct from regulating authority

**Erwin, 13 –** Judge for the Supreme Court of Indiana (Curless et al. v. Watson. No. 22,422. SUPREME COURT OF INDIANA 180 Ind. 86; 102 N.E. 497; 1913 Ind. LEXIS 99 June 27, 1913, Filed, lexis)

In the section of the Constitution referring to circuit courts, there is this provision, as follows: HN13Go to this Headnote in the case."The circuit court shall consist of one judge, and shall have such civil and criminal jurisdiction as may be prescribed by law." § 8, Art. 7, Constitution. HN14Go to this Headnote in the case.In the section relating to justices of the peace, the Constitution provides, "They shall continue in office four years and their powers and duties shall be prescribed by law." In these last two sections mentioned, it was intended that the legislature should fix the jurisdiction of circuit courts and justices of the peace; and if the same provision had been intended, by the framers of the Constitution, as to the jurisdiction of the Supreme Court, they would have so expressed it. [\*\*502] It is contended that the power to regulate and restrict the Supreme Court, in appeals, gives the legislature the right to take away the final jurisdiction of appeals, and bestow it upon whomsoever it may see fit. "Restriction" as defined [\*\*\*20] by Webster, is the act of restricting, confining or limiting; the state of being restricted, limited or confined within bounds. "Regulation" is defined, by the same authority, as the act of regulating; the act of reducing to order or of disposing in accordance with rule or established custom; a rule, order or direction from a superior [\*99] or competent authority; a governing or prescribing a course of action. And while the legislature may withhold from this court jurisdiction in certain cases, it cannot confer final jurisdiction upon any other tribunal "To hear and determine the questions of law arising upon the face of the record without any evidence to substantiate it," and make its actions final. While the legislature may regulate and restrict the Supreme Court, as to how it may take jurisdiction, it cannot take away from the court the jurisdiction over this particular subject, granted by the Constitution, and bestow it upon any other tribunal, and a legislative enactment, which seeks to do so is contrary to the Constitution. The legislature has the undoubted right to regulate appeals, but the power to regulate does not give authority to take away, or bestow it upon another [\*\*\*21] tribunal.

#### A restriction undermines the executive’s freedom of action

**Weisselberg, 95** - Clinical Professor, University of Southern California Law Center (Charles, “THE EXCLUSION AND DETENTION OF ALIENS: LESSONS FROM THE LIVES OF ELLEN KNAUFF AND IGNATZ MEZEI” 143 U. Pa. L. Rev. 933, lexis)

A more troublesome criticism is that bringing all immigrants within the reach of the Due Process Clause, and affording judicial review, would diminish the executive's power over foreign affairs. Some have asserted that laws relating to aliens are inextricably linked to foreign affairs and that the courts cannot decide such questions without hindering our ability to function in the community of nations. n378 This assertion has some merit, but it is vastly overstated. n379 By definition, any restriction placed upon the executive lessens the government's ability to act. Requiring the executive to comply with international human rights norms is a restriction on the government's power. Yet, not every restriction on executive power is necessarily undesirable.

## Ptx

### 1ar – shutdown inevitable

#### reid strips healthcare and that causes deadlock

**Peterson, 9/19/13** (Kristina, Wall Street Journal, Funding Fight Boosts Odds of Shutdown, <http://blogs.wsj.com/washwire/2013/09/19/boehner-gop-has-no-interest-in-letting-u-s-default-on-debt/>)

A Republican bill that would fund the government for the first 2 1/2 months of the fiscal year while barring spending for the health-care law is expected to pass the House Friday. But a likely bitter fight in the Senate increases the odds of a partial government shutdown in less than two weeks.

Speaker John Boehner (R., Ohio) predicted “a big victory” for the legislation in the House while Senate Majority Leader Harry Reid (D., Nev.) made clear he was as determined as the GOP to play hardball on the funding bill, which is needed to keep many government operations open after the start of the new fiscal year on Oct. 1.

The debate in the Senate will be protracted and bitter. Mr. Reid has promised to strip out provisions of the bill undercutting the health-care law and is confident he has the votes to do so. Asked if he was prepared to endure a government shutdown to protect the health-care law, he told reporters “yes.”

“Any bill that defunds Obamacare is dead,” Mr. Reid said. “It is a waste of time.”

But Sen. Ted Cruz (R., Texas), the tea-party favorite who has championed the “defund Obamacare” campaign along with his ally Sen. Mike Lee (R., Utah), promised to filibuster the bill if it includes any funding for the health-care law.

#### The House won’t pass a Senate version that removes health care – conservatives will revolt

**Lauter, 9/19/13** (David, Los Angeles Times, “Government shutdown is no idle threat” <http://www.latimes.com/nation/la-na-government-shutdown-20130920,0,4780856,full.story>)

Faced with those pressures, Boehner earlier this week yielded to the demands from his right and agreed to bring a bill to the floor that would fund the government but block money to implement the healthcare law. If it passes, as expected, the measure will go to the Senate, where it is all but certain to be rejected, probably late next week. That would leave Congress stalemated as the deadline approaches.

Boehner seems to hope that at that point conservatives would relent, allow a money bill to pass and push the confrontation off until the debt ceiling deadline. GOP strategists think they would have greater leverage with the White House with the threat of a default that could damage the economy.

But throughout the year, Boehner and his leadership team have misjudged the willingness of the most conservative Republicans to go along with the leadership's plans. Some are tired of postponing the battle. Some fear the GOP leadership will abandon them in a higher-stakes standoff over the debt ceiling. They believe they would do better to fight now, not later.

#### Shutdown inevitable

**Scheiber, 9/15/13 -** senior editor at The New Republic(Noam, “This Time There Really Will Be a Government Shutdown And that's not all bad” New Republic, <http://www.newrepublic.com/article/114728/boehner-and-obama-cant-avoid-government-shutdown>)

Suffice it to say, it’s hard to do a deal when the only thing the other guy wants is the one thing you can’t give him. This null set scenario is, unfortunately, precisely where we find ourselves in the debate over funding the government beyond September 30th. House Republicans are insisting that any funding measure simultaneously de-fund Obamacare, while Democrats have rightly proclaimed this idea preposterous. And there appears to be no wiggle room in the GOP position. According to The Wall Street Journal, when Senate Majority Leader Harry Reid asked House Speaker John Boehner what else on the entire planet the GOP could accept—a lifetime supply of Slim Jims, say, or maybe a warehouse full of Kiefer Sutherland-autographed “24” box sets—Boehner told him there was nothing.

Even so, if this were the only obstacle to an agreement, we might still avoid a government shutdown. After all, we’ve been in situations before where the null-set logic looked ironclad, only to have one side or the other back down at the last minute. Back in 2011, Republicans agreed to a debt-ceiling increase in exchange for Obama’s embrace of the sequester, which averted a debt default that looked imminent. At the end of last year, Republicans allowed taxes to rise on the highest income earners to avoid going over the dreaded fiscal cliff.

What makes this time is different is that, in addition to having carved out hardline positions, neither side has an incentive to back down. In 2011, Obama was willing to give on his demand that revenue increases accompany spending cuts because he understood the apocalyptic consequences of failing to raise the debt ceiling. In late 2012, Republicans knew that the alternative to a small tax increase was for taxes to rise automatically by a much larger amount. This time, on the other hand, every party to the negotiation has reason to welcome the government shutdown that would result if they can’t reach a deal.

Start with the White House, which has been annoyingly open to concessions even when it has all the leverage. In my own conversations with White House officials (and people close to them) over the past few months, I’ve picked up a clear willingness to allow a shutdown if Republicans refuse to budge. This is unlike 2011, the last time the White House faced a shutdown situation. Back then, a well-connected former administration official told me recently, “the political strategists wanted a deal. [Senior adviser David] Plouffe wanted a deal . . . to increase our numbers with independents.” This time, according to this source, “There’s no constituency for caving.”

That jibes with the change of heart I’ve detected when speaking directly to White House officials. In 2011, they were queasy about the risks a shutdown posed to the rickety economy, which could ultimately hurt the president. This year, they believe a shutdown would strengthen their hand politically, which is almost certainly true given the public outrage that would rain down on Republicans. One official pointed out that the pressure for spending cuts has subsided with the deficit falling so rapidly on its own.

Of course, the president himself isn’t the toughest negotiator in the world. You can’t rule out the possibility that the White House will blink when the deadline gets close. At the very least, one can imagine Obama signing a short-term government funding measure (known as a continuing resolution) that leaves the automatic sequester cuts in place so long as it doesn’t touch Obamacare. But even if he were inclined to do this, Congressional Democrats seem less willing to support him than in the past. They believe they can demand much more in exchange for saving the GOP from a shutdown. “Our leadership thinks the time has come to draw a line in the sand, not do a short-term extension,” a senior Democratic Hill aide told Politico last week. “They’re ready for a flash and a pop.” Bottom line: Democrats across the board are more willing to broach a shutdown than at any other time during the past three years.

Next there are the Tea Partiers, who give every indication of wanting a shutdown, too. Unlike mainstream Republicans, who appreciate the damage a shutdown would inflict on their party, the Tea Partiers consider it win-win. A shutdown would mean they forced their leadership to stand up to Obama, which plays well in their districts and the various organs of the conservative movement. And when the GOP inevitably bowed to public opinion and sued for peace, the Tea Partiers would be able to accuse their weak-kneed leadership of caving, thereby enhancing their status within the party. Politico reports that the so-called Senate Conservative Fund, a group that successfully lobbied against Boehner’s attempted quashing of the Obamacare defunding idea, has plans to raise another $50,000 to stop any future deal. No surprise there.

That leaves the final and arguably most consequential player in this drama: Boehner himself. Throughout his tenure as speaker, Boehner has had to divine a path between the apocalyptic impulses of his members and the political disaster that would attend their preferred apocalypse (shutdown, debt default, fiscal cliff dive). All the criticism of him notwithstanding, I think he’s done a pretty masterful job at this.

His general m.o. has been to translate the will of his rank-and-file into a ludicrously extreme opening position, which promptly gets laughed off stage by either the Democrats who control the White House and Senate, or the public, which pans it.1 At that point, the White House opts to negotiate with Boehner’s Senate counterpart, Mitch McConnell. Once they agree to a deal, Boehner shuffles before his caucus to explain that House Republicans held out as long as they could, but the White House and Senate Republicans have backed them into a corner. This buys him enough sympathy to bring the White House-McConnell deal to the House floor, where it passes with help from Democrats and the tacit acceptance of conservatives.

The problem this time is that the White House hasn’t really been negotiating with Senate Republicans, partly because McConnell is facing a right-wing primary challenge and has no political interest in compromising, partly because McConnell’s Senate colleagues also worry about the wrath of the Tea Party, and partly because (as noted above) the White House doesn’t feel any particular urgency about reaching a deal. Unless this changes—and so far there’s been little indication that it will—there’s no way for Boehner to employ his usual theatrics. He can’t tell his troops that he fought hard for their position until the bitter end, when Senate Republicans isolated them, because Senate Republicans haven’t done anything.

Deprived of his usual cover story, Boehner is simply flailing. When a reporter asked Boehner last week if he has a new idea for getting the House out of its jam, he responded: “Do you have an idea? They’ll [conservatives will] just shoot it down anyway.” To date, he hasn’t even been able to persuade conservatives to delay the Obamacare fight until the debt ceiling showdown, where the terrain is marginally more favorable to the GOP.2

### 1ar – no impact

#### There’s no impact to a shutdown aside from furloughs because it’s temporary

**Taylor, 9/19/13** (Andrew, Associated Press, “The truth: Government doesn't shut down” <http://www.dailycamera.com/top-business/ci_24136080/truth-government-doesnt-shut-down>)

Here's the truth about a government "shutdown." The government doesn't shut down.

So the world won't end if a dysfunctional Washington can't find a way to pass a funding bill before the new budget year begins on Oct. 1.

Social Security checks will still go out. Troops will remain at their posts. Doctors and hospitals will get their Medicare and Medicaid reimbursements. In fact, virtually every essential government agency, like the FBI, the Border Patrol and the Coast Guard, will remain open. Furloughed federal workers probably would get paid, eventually. Transportation Security Administration officers would continue to man airport checkpoints.

### Link Turn

#### Political capital is key to drumming up public support to pressure the GOP

**Meet the Press, 9/15/13** (NBC News, lexis) **Woodward = Bob Woodward, investigative journalist.**

GREGORY: Well, we`ll see.

But I want to bring up a point with about a minute left. You know, Syria is now going to get mired in whether this agreement is lived up to or not. We`ve got a budget battle that`s brewing again with the debt ceiling.

But, you think this is the next crisis that Obama is facing with Congress. Are we going to raise the debt ceiling? Will he negotiate? He says...

WOODWARD: And this is really serious. Back in 2011, when the crisis visited them, the Secretary of the Treasury Tim Geithner was running around and saying if we don`t fix this, we could trigger a depression worse than the 1930s. And when I talked to Obama about this, he said, it was the most intense three weeks of his presidency. More than Osama bin Laden and so forth.

So -- and the Republicans are out here, a group of them in the House, essentially using extortion and blackmail methods to say, if we don`t defund Obamacare we`re not going to do the routine things of government.

PARKER: Well, we`re at a game of chicken at this point. And they are not -- no one thinks they`re going to defund Obama, not even the people pushing for it.

And at some point, you know, the Republicans are going to have to blink and they`re going to fund it. If they pass a bill that doesn`t include funding for Obamacare, then the Senate won`t pass the bill and, you know, somebody`s got to blink. We`re not going to shut down government. We can`t.

NAVARRO: But let`s be I think fair to the Republicans here. It`s not all Republicans saying let`s shut down the government if we don`t defund Obamacare. So I don`t think it`s fair to paint it as the Republicans, because the Republicans that have been here today, including John McCain, have been very much against this and saying...

WOODWARD: Yes, it`s the 40 extremists that`s who`s doing it.

PARKER: The insane caucus.

WOODWARD: You used it.

GREGORY: We`ll leave it there.

NAVARRO: You`re going to get a lot of flak from mental health advocates.

PARKER: Never had that happen.

GREGORY: All right, thank you all very much. We`ll leave it there.

Coming up next the future of our economy five years after the biggest financial crisis since the Great Depression. Among our guests, former Treasury Secretary Hank Paulson and CNBC`s Maria Bartiromo along with former Congresswoman Barney Frank on where we are five years later.

First our political collector Chuck Todd will be along with his "First Read Sunday." What to look for in the week ahead in politics. Back here in just a moment.

GREGORY: We`re back with more politics. Our political director Chuck Todd with his "First Read Sunday."

We just talked about the debt ceiling business. You`re looking at it this, this week. That of our poll.

CHUCK TODD, NBC NEWS CORRESPONDENT: We did. And we have a poll and we show the initial gauge of the public, the default position is don`t raise it. Look at this, 44 percent say no, 22 percent say yes. The White House pushing back on this poll saying you have to explain it to the people.

Well, this is the exact same place the debt ceiling was in April 2011.

Now, by the time if hit a crisis point, more of the public moved into in favor of raising the debt ceiling, but what this shows is the president has to use political capital and time to flip these numbers. It`s going to be a lot of work.

## cp

### Drone Prolif (1ar)

#### Only congress solves

Alston, 11 [Copyright © 2011 President and Fellows of Harvard College. All Rights Reserved. Harvard National Security Journal 2011 Harvard National Security Journal 2 Harv. Nat'l Sec. J. 283 LENGTH: 71239 words ARTICLE: The CIA and Targeted Killings beyond Borders NAME: Philip Alston \* BIO: \* John Norton Pomeroy Professor of Law, New York University School of Law. P. lexis]

This Article focuses on the accountability of the Central Intelligence Agency (CIA) in relation to targeted killings, under both United States law and international law. As the CIA, often in conjunction with Department of Defense (DOD) Special Operations forces, becomes more and more deeply involved in carrying out extraterritorial targeted killings both through kill/capture missions and drone-based missile strikes in a range of countries, the question of its compliance with the relevant legal standards becomes ever more urgent. Assertions by Obama administration officials, as well as by many scholars, that these operations comply with international standards are undermined by the total absence of any forms of credible transparency or verifiable accountability. The CIA’s internal control mechanisms, including its Inspector-General, have had no discernible impact; executive control mechanisms have either not been activated at all or have ignored the issue; congressional oversight has given a ‘free pass’ to the CIA in this area; judicial review has been effectively precluded; and external oversight has been reduced to media coverage which is all too often dependent on information leaked by the CIA itself. As a result, there is no meaningful domestic accountability for a burgeoning program of international killing. This in turn means that the United States cannot possibly satisfy its obligations under international law to ensure accountability for its use of lethal force, either under IHRL or IHL**. The result is the steady undermining of** the international rule of law, and the setting of **legal precedents which will inevitably come back to haunt the United States** before long when invoked by other states with highly problematic agendas.

### Legitimacy (1ar)

#### Executive action alone doesn’t solve --- doesn’t provide sufficient reassurances

McKelvey, 11 [Benjamin, JD Candidate, Senior Editorial Board, Vanderbilt Journal of Transnational Law, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, November, 44 VAND. J. TRANSNAT'L L. 1353, <http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/>]

The Obama Administration’s Reassurances Are Circular and Unsatisfactory The Obama Administration has addressed the controversy over targeted killing in an effort to assuage concerns over the program’s constitutionality, including concerns over due process protections.162 However, the Administration’s explanations do little but reiterate the gaping hole in guaranteed due process protections if Americans are targeted with lethal force.163 In fact, the Administration’s attempts to justify the current response emphasize the desperate need for a clear articulation of the law and a mechanism for constitutional safeguards.164 Harold Koh, the Legal Adviser to the Department of State, addressed the criticisms of targeted killing in a speech at the Annual Meeting of the American Society of International Law in March 2010.165 Koh addressed the concern that “the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing.”166 First, he asserted that a state engaged in armed conflict is not required to provide legal process to military targets.167 Koh then attempted to reassure the critics of targeted killing that the program was conducted responsibly and with precision.168 He said that the procedures for identifying targets for the use of lethal force are “extremely robust,” without providing any explanation or details to substantiate this claim.169 He then argued that “[i]n my experience, the principles of proportionality and distinction . . . are implemented rigorously throughout the planning and execution of lethal operations to ensure that such operations are conducted in accordance with international law.”170 Koh dismissed constitutional claims over targeted killing by simply suggesting that the program is legal and responsible.171 But this response only begs the question over targeted killing: what mechanisms are in place to prevent the unsafe and irresponsible use of this extraordinary power? Asserting that the program is legal and responsible without substantiating this assertion rests on notions of blind faith in executive prudence and responsibility, and provides no grounds for reassurance.172 The Obama Administration’s assurances regarding the targeted killing program are unsatisfactory because they fail to address the primary concern at issue: the possibility that an unchecked targeted killing power within the Executive Branch is an invitation for abuse.1 73 Without some form of independent oversight, there is no mechanism for ensuring the accurate and legitimate use of targeted killings in narrowly tailored circumstances.174

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#### Executive action alone doesn’t solve --- not viewed as credible absent a concrete mechanism

Wexler, 13 [The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests, Lesley Wexler, Professor of Law and Thomas A. Mengler Faculty Scholar, 3rd Speaker and semifinalist 1998 National Debate Tournament, p. SSRN]

4.4 The Underwhelming May Revolution In 2013, the President began speaking directly about drone[s] and emphasizing the importance not only of transparency, but also accountability. In February 2013, Obama pledged in his State of the Union address and in a follow up google “fireside chat,”158 to continue congressional oversight and make compliance efforts more transparent. In May 2013, he gave a widely touted counterterror ism speech, codified key elements of targeted killing policy standards and procedures,159 and de-classified information regarding strikes on American citizens.160 This trio of events reiterated sever-al constraints on U.S. behavior that exceed IHL requirements including: a binding policy preference for capture over kill, the limit of lethal force to targets that pose a continuing, imminent threat to U.S. persons,” and “near-certainty that no civilians will be killed or injured” before a strike is cleared. Other notable revelations include the strong rejection of military age males as a legitimate signature for strikes.161 Both his speech and a contemporaneous letter from the Attorney General explained when U.S. citizens may lawfully be targeted outside the United States and provided a specific justification for why al-Aulaqi was targeted.162 Some, including U.N. Special Rapporteur Ben Emmerson believe these May activities indicate a fundamental shift in favor of transparency and accountability.163 Yet many remain skeptical of this seeming May Revolution in the executive branch’s approach to the war on terror. It is not clear that either the goal of transparency or accountability have been significantly advanced. As described above, previous administration speeches had already outlined most of the details. Even the new information is fairly thin in terms of providing any real sense to the public of what the rules are or whether the U.S. complies with them. For instance, the Presidential Policy Guidance only provides key elements of the significantly more detailed legal and policy guidance provided to Congress.164 Nowhere in that guidance or the speech is there an outline of any post-strike review. While Obama’s speech indicated his ongoing consideration of drone courts and an independent oversight board in the executive branch, he provided no detail as to whether the administration would ultimately adopt either of these accountability mechanisms. So many important questions raised earlier remain unanswered after the May actions. We now know that being a military aged male is an insufficient signature, but what signatures are used for signatures strikes and how are they justified as legally adequate? We now know that there should be a near certainty of no civilian casualties, but what are the government’s civilian casualty estimates? Relatedly, how does the United States assess the status of individuals once deceased? What retrospective accountability mechanisms are in place? Has the government determined that any strikes it engaged in violated IHL? Are the enhanced roles of the Congress and the NCTC having specific effects on drone policy? Are they making the policy more compliant? Yet these May activities still matter. For one, they implicate the synergistic relationship be-tween the executive and judicial branch. Just as this chapter has argued that the courts and threat of courts may help spur executive action, that executive action in turn influences and may facilitate the courts’ activities. Mere hours after the May acknowledgement of the government’s responsibility for the strikes killing al-Aulaqi and other Americans, Judge Collyer ordered the government to file a memorandum explaining the relevance of the information to the Al-Aulaqi v Panetta litigation. Sim-ilarly, the government’s brief in another FOIA case on appeal in the Second district grapples with the implications of the President’s acknowledgement of drone strikes.165 In addition to influencing this suit, I predict a new round of FOIA requests for the fuller version of the Presidential Policy Guidelines and other details referenced during the May activities. And the back and forth will con-tinue. Conclusion When the executive branch began deploying drones to engage in targeted killings, the public knew virtually nothing about these activities or how or whether they fit within the IHL framework. In the early stages of the war on terror, both the public and Congress accepted the executive branch’s behavior with few questions. But as the number of strikes and fatalities began to mount, calls for transparency and accountability grew louder. The American people wanted assurances that the executive branch was acting consistent with the Constitution and to a lesser extent consistent with IHL. Journalists and civil rights groups used litigation as part of a larger strategy to force transparency and accountability. Some lawsuits seek a ruling that targeted killings outside of Afghanistan are not part of an armed conflict, while others attempt to force the government to relinquish documents under FOIA. Others threaten to authorize courts to deny listings or provide damages. The evocation of courts in these various ways plays an important role in encouraging greater accountability and transparency. With each FOIA request or damage suit filed, concerned parties can keep public and congressional attention focused on targeted killings. With each denial, they can push back against the lack of transparency and accountability, forcing the executive branch to recalibrate its response. Given the historically limited role of U.S. courts in the interpretation and application of IHL norms, this ongoing role of the courts is a modest but important one. As shown here, the executive branch has in fact become more responsive. This approach of speeches, leaks, and information about oversight and reforms does mark a step forward. But ultimately, while advocates are using courts to highlight questions about the proper application of IHL, judges themselves seem reluctant to directly apply IHL norms in this area and the future prospect for such rulings seem quite dim.166