## 2AC

### AT: Rubber Stamp (2ac)

#### Not a rubber stamp

Daskal, 13 [The Geography of the Battlefield: A Framework for Detention and Targeting Outside the 'Hot' Conflict Zone Jennifer Daskal American University Washington College of Law, April]

That said, there is a reasonable fear that any such court or review board will simply defer. In this vein, FISC’s high approval rate is cited as evidence that reviewing courts or review boards will do little more than rubber-stamp the Executive’s targeting decisions.180 But the high approval rates only tell part of the story. In many cases, the mere requirement of justifying an application before a court or other independent review board can serve as an internal check, creating endogenous incentives to comply with the statutory requirements and limit the breadth of executive action.181 Even if this system does little more than increase the attention paid to the stated requirements and expand the circle of persons reviewing the factual basis for the application, those features in and of themselves can lead to increased reflection and restraint.

### T

#### 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.

#### Statutory includes creation of courts

Runsforth, 12 [Copyright (c) 2012 Arizona Board of Regents Arizona Journal of International and Comparative Law Fall, 2012 Arizona Journal of International and Comparative Law 29 Ariz. J. Int'l & Comp. Law 623 LENGTH: 17997 words NOTE: THERE'S AN APP FOR THAT: IMPLICATIONS OF ARMED DRONE ATTACKS AND PERSONALITY STRIKES BY THE UNITED STATES AGAINST NON-CITIZENS, 2004-2012 NAME: Elinor June Rushforth\* BIO: \* J.D. candidate, University of Arizona, p. lexis]

The next level of review should be a statutorily created court that is the last stop on the targeted killing process. Though there may be some grumbling among judges and politicians about overextended courts and full dockets, national security concerns and the risk of lethal mistakes should outweigh reluctance to introduce an important check on targeted killing. The President, and perhaps Congress, could also be reluctant to allow courts into what they deem a core executive function. n198 Attorney General Eric Holder gave the public another piece of the Obama administration's targeted killing model when he claimed that the Constitution "guarantees due process, not judicial process" and that "due process [\*653] takes into account the realities of combat." n199 This signals to the public that the Obama administration will remain wary of any encroachment and that the imposition of judicial process on targeted killing would be fought.

#### Prefer it –

Over limiting – prohibitions dramatically over limit – skirts the core topic literature and evades questions of oversight – decimates AFF ground and innovation which are vital to the depth of education – err aff – no defense of binding restrictions and ESR drastically limits the topic

#### Predictability – exclusion flies in the face of the core meaning – turns limits by creating a faulty division of ground

#### Reasonability – competing interpretations are bad – causes a race to the bottom that destroys substantive debate

### K

#### Deploying apocalypticism effectively spurs action to save the environment – even if our rhetoric gets coopted it still solves

**Schatz 12** – director of debate at Binghamton University, not a flesh eater

(Joe Leeson, “The Importance of Apocalypse: The Value of End-Of-The-World Politics While Advancing Ecocriticism”, Journal of Ecocriticism 4(2) July 2012, dml)

Any hesitancy to deploy images of apocalypse out of the risk of acting in a biopolitical manner ignores how any particular metaphor—apocalyptic or not—always risks getting co-opted. It does not excuse inaction. Clearly hegemonic forces have already assumed control of determining environmental practices when one looks at the debates surrounding off-shore drilling, climate change, and biodiversity within the halls of Congress. “As this ideological quagmire worsens, urgent problems … will go unsolved … only to fester more ominously into the future. … [E]cological crisis … cannot be understood outside the larger social and global context … of internationalized markets, finance, and communications” (Boggs 774). If it weren’t for people such as Watson connecting things like whaling to the end of the world it wouldn’t get the needed coverage to enter into public discourse. It takes big news to make headlines and hold attention spans in the electronic age. Sometimes it even takes a reality TV show on Animal Planet. As Luke reminds us, “Those who dominate the world exploit their positions to their advantage by defining how the world is known. Unless they also face resistance, questioning, and challenge from those who are dominated, they certainly will remain the dominant forces” (2003: 413). Merely sitting back and theorizing over metaphorical deployments does a grave injustice to the gains activists are making on the ground. It also allows hegemonic institutions to continually define the debate over the environment by framing out any attempt for significant change, whether it be radical or reformist.

Only by jumping on every opportunity for resistance can ecocriticism have the hopes of combatting the current ecological reality. This means we must recognize that we cannot fully escape the master’s house since the surrounding environment always shapes any form of resistance. Therefore, we ought to act even if we may get co-opted. As Foucault himself reminds us, “instead of radial ruptures more often one is dealing with mobile and transitory points of resistance, producing cleavages in a society that shift about[.] … And it is doubtless the strategic codification of these points of resistance that makes a revolution possible, somewhat similar to the way in which the state relies on the institutional integration of power relationships. It is in this sphere of force relations that we must try to analyze the mechanisms of power” (96-97).

Here Foucault “asks us to think about resistance differently, as not anterior to power, but a component of it. If we take seriously these notions on the exercise and circulation of power, then we … open … up the field of possibility to talk about particular kinds of environmentalism” (Rutherford 296). This is not to say that all actions are resistant. Rather, the revolutionary actions that are truly resistant oftentimes appear mundane since it is more about altering the intelligibility that frames discussions around the environment than any specific policy change. Again, this is why people like Watson use one issue as a jumping off point to talk about wider politics of ecological awareness. Campaigns that look to the government or a single policy but for a moment, and then go on to challenge hegemonic interactions with the environment through other tactics, allows us to codify strategic points of resistance in numerous places at once. Again, this does not mean we must agree with every tactic. It does mean that even failed attempts are meaningful. For example, while PETA’s ad campaigns have drawn criticism for comparing factory farms to the Holocaust, and featuring naked women who’d rather go naked than wear fur, their importance extends beyond the ads alone6. By bringing the issues to the forefront they draw upon known metaphors and reframe the way people talk about animals despite their potentially anti-Semitic and misogynist underpinnings.

Michael Hardt and Antonio Negri’s theorization of the multitude serves as an excellent illustration of how utilizing the power of the master’s biopolitical tools can become powerful enough to deconstruct its house despite the risk of co-optation or backlash. For them, the multitude is defined by the growing global force of people around the world who are linked together by their common struggles without being formally organized in a hierarchal way. While Hardt and Negri mostly talk about the multitude in relation to global capitalism, their understanding of the commons and analysis of resistance is useful for any ecocritic. They explain,

[T]he multitude has matured to such an extent that it is becoming able, through its networks of communication and cooperation … [and] its production of the common, to sustain an alternative democratic society on its own. … Revolutionary politics must grasp, in the movement of the multitudes and through the accumulation of common and cooperative decisions, the moment of rupture … that can create a new world. In the face of the destructive state of exception of biopower, then, there is also a constituent state of exception of democratic biopolitics[,] … creating … a new constitutive temporality. (357)

Once one understands the world as interconnected—instead of constructed by different nation-states and single environments—conditions in one area of the globe couldn’t be conceptually severed from any other. In short, we’d all have a stake in the global commons. Ecocritics can then utilize biopolitics to shape discourse and fight against governmental biopower by waking people up to the pressing need to inaugurate a new future for there to be any future. Influencing other people through argument and end-of-the-world tactics is not the same biopower of the state so long as it doesn’t singularize itself but for temporary moments. Therefore, “it is not unreasonable to hope that in a biopolitical future (after the defeat of biopower) war will no longer be possible, and the intensity of the cooperation and communication among singularities … will destroy its [very] possibility” (Hardt & Negri 347). In the context of capitalism, when wealth fails to trickle down it would be seen as a problem for the top since it would stand testament to their failure to equitably distribute wealth. In the context of environmentalism, not-in-my-backyard reasoning that displaces ecological destruction elsewhere would be exposed for the failure that it is. There is no backyard that is not one’s own. Ultimately, images of planetary doom demonstrate how we are all interconnected and in doing so inaugurate a new world where multitudes, and not governments, guide the fate of the planet.

#### Only the perm removes critique from insulation – key to motivate action

**Schatz 12** – (Joe Leeson, “The Importance of Apocalypse: The Value of End-Of-The-World Politics While Advancing Ecocriticism”, Journal of Ecocriticism 4(2) July 2012, dml)

There are three things ecocriticism must keep in mind to retain its effectiveness in the poststructuralist era. First and foremost ecocritics must not allow their infighting over tactics and academic maneuvers to become debilitating. Ecocritics have enough on their plate fighting dominant political institutions. To never directly take up arms against ecologically destructive practices will merely cede potential avenues of resistance while we fight amongst ourselves. We must take from those ecocritics we partially disagree with what we can and then operate from a different platform so as to always be spectral in our resistance. Adopting varied tactics enables an ecological coalition centered on the connectedness that arises from the belief that we all have a shared stake in the planet. Awakening to our collective stake in the environment can overcome the illusionary boundaries of the nation-state, species, or even sentience. Every molecule of the Earth’s ecology is interconnected. When one part dies we all stand on the brink of extinction. For ecocriticism to embrace this interconnection it must not erect borders between different approaches so long as the foundation of the struggle is premised upon the commons of our universe. Unfortunately, “what characterizes much campus left discourse is a substitution of moral rhetoric about evil policies[, leaving] … absent … a sober reckoning with the preoccupations and opinions of the vast majority of Americans … who do not believe that the discourse of ‘anti-imperialism’ speaks to their lives” (Isaac). As a result, there is a need for ecocritics to not just speak to the choir that mostly already agrees with them. They must also speak to the populations who don’t intuitively see the link between imperialism, technology, and capitalism with environmental destruction. Apocalyptic rhetoric can do precisely that because of its underlying tenant of self-preservation.

The above point is absolutely crucial because ecocriticism cannot be effective if its focus never goes beyond the individual alone. No single person is the entire ecology so no individual can save it. While each individual undoubtedly impacts the environment and can cause change, no large scale transformation can take place if we never inspire collective action. In evolutionary terms, ideas, thoughts, and actions must be passed on in order to survive. For that to happen it takes a combined effort, even though it can start by a single mutation. Luke reminds us that

the typical consumer does not control the critical aspects of his or her existence[.] … The absurd claim that average consumers only need to shop, bicycle, or garden their way to an ecological future merely moves most of the responsibility and much of the blame away from the institutional centers of power whose decisions actually maintain the wasteful, careless ways of material exchange[. It also] … ignores how corporate capital, big government, and professional experts pushed the practices of … affluent society … as a political strategy to sustain economic growth, forestall mass discontent, and empower scientific authority. People did choose to live this way, but their choices were made from a very narrow array of alternatives presented to them as rigidly structured, prepackaged menus of very limited options. (Luke, 1997: 127-128)

In turn, ecocritics must not displace the blame away from current hegemonic structures by calling on individuals to act alone. Instead ecocriticism must articulate its arguments to influence change in both institutions of power and the very people whose mindsets make up the current collective. Many environmental groups have been able to do precisely that. For instance, “NGOs and social movements active in global civil society have … introduce[ed] … dystopian scenarios … as rhetorical devices that act as ‘wake-up calls’… to jolt citizens out of their complacency and … foster … public deliberation about the potential cataclysms facing humankind” (Kurasawa 464). Ecocritics must not cut down such NGOs for adopting end-of-the-world tactics even though their rhetoric might get co-opted when specific policies get enacted.

#### Not mutually exclusive yall

**Schatz 12** – director of debate at Binghamton University, not a flesh eater

(Joe Leeson, “The Importance of Apocalypse: The Value of End-Of-The-World Politics While Advancing Ecocriticism”, Journal of Ecocriticism 4(2) July 2012, dml)

Despite the merits of ontological ecocriticism, using it to prohibit ecocritical appeals for concrete action fractures a movement that should work in coalition. We should not approach our choices as an either/or situation. Strategies of direct action can be compatible with Heideggerian thought so long as we understand such action as always already inevitable and not a way to enframe others. Deploying apocalyptic threats can challenge hegemonic systems since they serve as a catalyst for evolving change instead of legislating it. In fact, “the pervasiveness of a dystopian imaginary can help notions of historical contingency and fallibilism gain traction against their determinist and absolutist counterparts. Once we recognize that the future is uncertain and that any course of action produces both unintended and unexpected consequences, the responsibility to face up to potential disasters … can act as catalysts for public debate and socio-political action, spurring citizens’ involvement in the work of preventive foresight” (Kurasawa 458).

Put plainly, we must understand any action in both its social and political dimensions. As the way we confront environmental challenges change so too does the conditions surrounding ecocriticism. To alter conditions in the political or social realm is always already to impact the other. This allows us to redeploy even problematic deployments in order to reshape the public debates surrounding ecological awareness.

#### Apocalyptic rhetoric motivates action on climate change – it causes emancipation, not climate fatigue

Beck 10 (Ulrich, Professor of Sociology at University of Munich, the British Journal of Sociology Visiting Centennial Professor at the London School of Economics and Political Sciences, and, since 2009, Senior Loeb Fellow at the Harvard Design School, “Climate for Change, or How to Create a Green Modernity?”, Theory Culture Society 2010 27: 254)

Sixth thesis: The political explosiveness of global risks is largely a function of their (re-)presentation in the mass media. When staged in the media, global risks can become 'cosmopolitan events'. The presentation and visualization of manufactured risk makes the invisible visible. It creates simultaneity, shared involvement and shared suffering, and thereby creates the relevance for a global public. Thus cosmopolitan events are highly mediatized, highly selective, highly variable, highly symbolic local and global, public and private, material and communicative, reflexive experiences and blows of fate.¶ To understand this, we have to draw upon the picture of 'Mediapolis' so minutely and sensitively painted by Silverstone (2006) and the picture sketched much earlier by Dewey (1946). There Dewey defends the thesis that it is not actions but their consequences which lie at the heart of politics. Although he was not thinking of global warming, BSE or terrorist attacks, his theory can be applied perfectly to world risk society. A global public discourse does not arise out of a consensus on decisions, but rather out of disagreement over the consequences of decisions. Modern risk crises are constructed out of just such controversies over consequences. Although some insist on seeing an overreaction to risk, risk conflicts do indeed have an enlightening function. They destabilize the existing order but can also be seen as a vital step towards the construction of new institutions. Global risk has the power to confuse the mechanisms of organized irresponsibility and even to open them up for political action.¶ This view of 'enforced enlightenment' and 'cosmopolitan realism' opens up the possibility that the 'manufactured uncertainties' and 'manufactured insecurities' produced by world risk society prompt transnational reflexivity, global cooperation, coordinated responses against the background of 'cosmopolitan communities of risk', so the same processes may also prompt much else besides. My emphasis on staging follows from the fact that my central concept is not 'crisis' but 'new global risk'. Risks are, essentially, man-made, incalculable, uninsurable threats and catastrophes which are anticipated but which often remain invisible and therefore depend on how they become defined and contested in 'knowledge'. As a result their 'reality' can be dramatized or minimized, transformed or simply denied, according to the norms which decide what is known and what is not. They are, to repeat myself, products of struggles and conflicts over definitions within the context of specific relations of definitional power and the (in varying degrees successful) results of staging. If this is the core understanding of risk, then this means that we must attach major significance to media staging and acknowledge the potential political explosiveness of the media.¶ How does this correspond to empirical facts? As Cottle (2009) argues, the release in early 2007 of the latest International Panel on Climate Change report proved to be a transformative moment in the news career of climate change (IPCC, 2007). At first climate change featured relatively infrequently in scientifically framed news reports, then it was contested by a small group of news-privileged climate change sceptics, and finally it came of age as a widely recognized 'global risk' demanding responses from all the world's nations. If IPCC predictions and those of more recent scientific modelling come to pass over the next couple of decades, then climate change may yet prove to be the most powerful of forces summoning a civilizational community of fate into existence.¶ The Western news media's spectacular visualization of climate change, presenting dramatic and symbolic scenes collected from around the world, has undoubtedly helped to establish the latter's status as a widely recognized global challenge and serves to illuminate a third-generational modernity staged as global spectacle. Here the news media do not only function in terms of a global focusing of events; rather, the news media adopt a more performative stand, actively enacting certain issues as 'global risks'. Images which function in a more indexical sense to stand in for global processes of climate change now regularly feature across the news landscape. And here some sections of the news media have sought to champion climate change awareness, often through visually arresting images which aim to register the full force and threat produced by global warming around the world. In images such as these, the abstract science of climate change is rendered culturally meaningful and politically consequential; geographically remote spaces become literally perceptible, 'knowable' places of possible concern and action. This performative use of visual environmental rhetoric is not confined to selected newspapers; interestingly enough, it has become mainstream. In this way the threat and reality of global climate change has been 'brought home', especially in the West, as possibly 'the' global risk of the age.¶ On the other hand, the continuing pull of the national within the world's news formations and discourses cannot be underestimated. This is, of course, true in the case of wars. Wars continue to be reported through spectacles tinted by national interests. However, as climate change moves into a new phase of national and international contention, countries, corporations and citizens are also negotiating their respective roles and responsibilities, whether in respect of national policies of mitigation and adoption, or through governmental support of developing countries confronting the worst effects of global warming. Here, too, actions and reactions are often reported in and through national news prisms and frames of reference.¶ However, the narrative of global risk is misinterpreted as a narrative of the Western 'emergency imaginary' (Calhoun, 2004). It is not a 'singing into the apocalypse', and it is not simply a 'wake-up call to reality'. Rather it is about expectation and anticipation, it is about a narrative to dream differently. 'Emancipation' is the key word. Either the ecological concern manages to be at least as powerful as this hunger for modernization or it is condemned to repeated failure.

### CP

#### ( ) Perm – do both – double solvency and results in the cp. Obama would defer to *ex post* review in an emergency – allows for flexible and quick decisions.

#### ( ) Perm – do the cp – plan only commits to review, not prior review – it’s an example of the plan

#### ( ) Doesn’t solve –

#### a) It fails to set-up a legal framework – allowing the executive to fire-then-aim kills legitimacy and causes legal ambiguity – *ex ante* review is key

Crandall 12 (Carla, Law Clerk – Supreme Court of Missouri, “Ready…Fire…Aim! A Case for Applying American Due Process Principles Before Engaging in Drone Strikes,” Florida Journal of International Law, April, 24 Fla. J. Int'l L. 55, Lexis)

Despite the expanded use of drones, however, the legitimacy of these attacks remains unclear. Most commentators who have addressed the legitimacy of more general targeted killings have examined the issue within the framework of either international humanitarian law (IHL) or international human rights law (IHRL). n6 Those limited few who have [\*57] analyzed the subject through the lens of American due process have limited their scrutiny to the absence of post-deprivation rights. n7 They suggest, for instance, that the United States should implement some sort of Bivens-type action as a remedy for the survivors of erroneous drone strikes. n8

As this Article explains, however, none of these approaches yield wholly satisfactory answers as to which framework should govern the use of drones within the context of the war on terror. And though the idea that American due process principles ought to be applied **ex post** represents a significant contribution to the debate, it too ultimately falls flat. Indeed, such an approach unduly narrows the obligation of U.S. officials to the standard of readying, firing, and then aiming- requiring them to perform a detailed review of the strikes only after the fact. Instead, this Article argues that the United States ought to be held to a higher, ex ante standard-that of "aiming" before firing-and posits that such a standard is practically attainable.

In doing so, the Article proceeds as follows. Part II describes the capabilities and current employment of drones and explains why **resolving the legitimacy of their use is so critical**. Specifically, it highlights that, despite the unsettled nature of the law in this area, targeted killings by drone strikes have increased exponentially in recent years-in some instances against arguably questionable targets. Part III examines current attempts to address the legitimacy of drone assaults and explains why they fail to adequately govern the use of these weapons. While this Part explores the applicability of IHRL and IHL, it does not undertake to resolve the debate as to which regime does or ought to apply to these operations. To the contrary, it argues that limitations within each framework have prevented consensus from forming around the applicability of either. Accordingly, U.S. officials [\*58] must arguably look to other sources to find guiding principles to legitimize targeted killings via drones. Though it is admittedly not entirely clear whether constitutional guarantees apply in the foreign locales where these strikes occur-or to the foreign nationals who are often their target-this Part proposes that American due process principles nevertheless ought to be invoked before such strikes occur, because failing to do so allows the executive to act with impunity in a legal void. Part IV argues that, in Hamdi v. Rumsfeld n9 and Boumediene v. Bush, n10 the Supreme Court signaled the process that may be due before drones are used to eliminate known terrorist targets. In extending the Hamdi and Boumediene analysis to targeted killings by drones, this Part also begins the inquiry into the procedural protections that due process may demand before U.S. officials engage in such actions. Part V concludes.

#### b) it still allows for the use of secret evidence which results in a high error rate – that’s McKelvey.

#### c) the cp stills destroys accountability and results in collateral damage – vote aff because of irreversibility

Crandall 12 (Carla, Law Clerk – Supreme Court of Missouri, “Ready…Fire…Aim! A Case for Applying American Due Process Principles Before Engaging in Drone Strikes,” Florida Journal of International Law, April, 24 Fla. J. Int'l L. 55, Lexis)

First, though it was noted above that the calculus is not solely governed by the degree of deprivation, clearly the consequences of a drone attack impose the severest sanction a state can levy against an individual. Accordingly, one might expect the U.S. government-whether actually required to do so or not-to at least be able to show that no added protections are necessary or feasible in the target selection process.

Government officials might support this claim, for instance, with a showing that, when a drone is used, there is no risk of erroneously depriving someone of his or her life. However, as discussed above, there is considerable reason to question an assertion that all persons on the U.S. kill-list qualify as legitimate drone targets. n161 Further, even granting as much would not necessarily prove dispositive in light of the massive collateral damage caused by drone strikes. n162 For these "collateral victims," there is of course an easy argument that their deprivation would be "erroneous."

Perhaps more significantly, though, Boumediene held that, in the face of the relatively lesser deprivation of detention, some procedural protections were not enough. n163 In other words, habeas review was deemed necessary because the procedural protections that were embodied in the CSRTs were insufficient to prevent an erroneous determination of a detainee's combatant status. Sources likewise indicate that because the process for placing individuals on the JIPTL is subject to abuse, there is a significant risk of erroneously classifying listed individuals as legitimate targets. n164 Accordingly, the arguable lack of any procedural protections for drone targets certainly seems inconsistent with Boumediene.

Finally, it is also worth emphasizing the obvious fact that, unlike an erroneous detention-as was the concern in both Hamdi and Boumediene-there is clearly no mechanism to reverse an error in drone targeting. It is arguable, in fact, that the only reason the Boumediene Court did not make a determination as to the general sufficiency of the CSRTs themselves is that habeas review was an available alternative to correct any insufficiencies that might flow from the tribunal's [\*84] proceedings. In contrast, **it is obviously not possible to retroactively correct an erroneous determination about the legitimacy of a drone strike**. **This reality alone arguably provides a** strong rationale **for** robust pre-strike review.

#### ( ) Links to the net-benefits –

a) politics – their link ev proves Obama hates ANY type of review mech – it’s a distinction without a difference

b) prez powers – if their solvency arg is true, Obama would still be worried about the threat of review and take a long time to make a decision

#### Only the plan’s review mechanism is meaningful

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/>)

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 executive power.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.

#### ( ) Also – the CP only reviews cases when a lawsuit is filed against a wrongful drone strike –

#### a) they can’t because they are DEAD

#### b) too many legal obstacles means the executive is functionally unrestrained

Murphy and Radsan – Their Author – 9 (Richard, AT&T Professor of Law – Texas Tech University School of Law, and Afsheen John, Professor – William Mitchell College of Law; Assistant General Counsel – Central Intelligence Agency, “Due Process and Targeted Killing of Terrorists,” Cardozo Law Review, November, 32 Cardozo L. Rev. 405, Lexis)

As to legal hurdles, Boumediene itself poses a **high one to lawsuits** by non-U.S. citizens for overseas attacks. Here we may seem to contradict our earlier insistence that Boumediene presupposes some form of constitutional protection worldwide for everyone.212 Yet Boumediene shows that the requirement of judicial process depends on a pragmatic analysis.213 As part of its balancing, Boumediene made clear that courts should favor the interests of American citizens and of others with strong connections to the United States.214 Although the Boumediene petitioners lacked the preference in favor of citizens, they persuaded a slim majority of the Court to extend constitutional habeas to non-resident aliens detained at Guantanamo. This result, however, took place under exceptional circumstances: among them, Guantanamo is de facto United States territory;215 the executive had held detainees there for years and claimed authority to do so indefinitely; and the Supreme Court doubted the fairness and accuracy of the CSRTs.216 Absent such circumstances, Boumediene leaves courts to follow their habit of deferring to the executive on national security. For targeted killing, that may mean cutting off non-citizens from American courts.

The state-secrets privilege poses another barrier to Bivens-style actions. This privilege allows the government to block the disclosure of information in court that would damage national security.217 It could prevent a case from proceeding in any number of ways. For instance, the government could block plaintiffs from accessing or using information needed to determine whether a Predator attack had a sound basis through human or technical sources of intelligence.218 By this trump card, the government could prevent litigation from seriously compromising intelligence sources and methods.219

### court legit

#### obvi no link, we’re the courts that create a court – this all about sup court

#### no i/l – cx devastating

#### no constitutional crisis

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]

Although the FISA Court and the NSA’s use of surveillance techniques under FISA have been recently challenged by the ACLU375, FISA has generally been upheld as being constitutional.376 FISA has been upheld not to violate Article III of the Constitution, the political question doctrine, or the separation of powers doctrine377; the disparate treatment of domestic and foreign targets under FISA has been upheld as rationally related to the purposes of acquiring information necessary to national defense and the conduct of foreign affairs.378 Specifically, FISA has been held to meet the warrant requirements under the Fourth Amendment by providing a neutral and detached judicial officer;379 and comport with due process when applications are properly made in accordance with the FISA procedures.380 While the National Security Agency (“NSA”)’s claim that the AUMF pre-empted the need to follow FISA procedures was held to violate the Constitution381

#### -- Court will avoid blame for the plan

Gibson and Caldiera 9 (James L., Professor of Government – Washington University and Fellow – Centre for Comparative and International Politics, and Gregory A., Distinguished University Professor in Political Communications and Policy Thinking – Ohio State University, Citizens, Courts, and Confirmations, http://press.princeton.edu/chapters/s8940.pdf)

Caldeira and Gibson (1995) further suggest that the legitimacy of courts is *not* undermined by the disagreeable opinions issued by the institutions. This is in part related to the ability to shirk responsibility for decisions by reference to the dictates of precedent. If more knowledgeable people are more likely to accept the theory of *stare decisis* and mechanical jurisprudence, just as they are more likely to be attentive to courts, then it follows that they are also more likely to be persuaded by the justices’ denials of responsibility for the decision. This argument stands in sharp contrast to the position of Grosskopf and Mondak 1998, who hypothesize a strong negativity bias in how citizens react to Supreme Court opinions. Such a bias implies that citizens hold the justices accountable for undesirable decisions. The extremely high level of legitimacy the Supreme Court enjoys (and has enjoyed for several decades—see Gibson 2007) seems to be incompatible with the Grosskopf/Mondak theory of negativity.

#### -- Controversial decisions boost legitimacy – positivity bias outweighs and turns any backlash into support

Gibson and Caldiera 9 (James L., Professor of Government – Washington University and Fellow – Centre for Comparative and International Politics, and Gregory A., Distinguished University Professor in Political Communications and Policy Thinking – Ohio State University, Citizens, Courts, and Confirmations, http://press.princeton.edu/chapters/s8940.pdf)

How is it that the United States Supreme Court avoided any harmful consequences of the election imbroglio? Again, Gibson, Caldeira, and Spence (2003a) have proffered an answer: the theory of positivity bias. According to this theory, discussed more completely below, anything that causes people to pay attention to courts—even controversies—winds up reinforcing institutional legitimacy through exposure to the legitimizing symbols associated with law and courts. The theory suggests a bias in favor of developing positive feelings for the institution, even during conflicts, and even among losers in such conflicts. While there are many elements to this theory, its central prediction is that legal controversies tend to reinforce judicial legitimacy by teaching the lesson that courts are different from the other institutions of the American democracy, and are therefore worthy of respect.

#### Overturning bad precedent increases support for the Court – the public cares about results, not process

Bradford 90 (C. Steven, Assistant Professor of Law – University of Nebraska College of Law, “Following Dead Precedent: The Supreme Court's Ill-Advised Rejection of Anticipatory Overruling”, Fordham Law Review, October, 59 Fordham L. Rev. 39, Lexis)

Another reason sometimes offered in support of horizontal stare decisis is that overruling prior decisions damages the public image of the courts. Justice Roberts argued that, if courts do not honor stare decisis,  [\*82]  "the more deplorable consequence will inevitably be that the administration of justice will fall into disrepute. Respect for tribunals must fall when the bar and the public come to understand that nothing that has been said in prior adjudication has force in a current controversy." **[229](http://www.lexis.com/research/retrieve?_m=ea16f1f316a0fba78327e7892fa252c9&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAA&_md5=93955de5d5b14a87600ba509a8cd4e24" \l "n229" \t "_self)** Some authorities have cited this concern as a reason for rejecting anticipatory overruling: "Any other rule would bog down the judicial processes hopelessly in those quagmires of uncertainty which would justly lay the District Courts open to the gravest public censure." **[230](http://www.lexis.com/research/retrieve?_m=ea16f1f316a0fba78327e7892fa252c9&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAA&_md5=93955de5d5b14a87600ba509a8cd4e24" \l "n230" \t "_self)** Whether the public perception argument has much weight, even in the horizontal context, is unclear. Actually doing justice may be more important than appearing to do justice if these two interests collide. However, because the rule of law and the ability to do justice are highly dependent upon public confidence in the legal system, the public image argument has some validity. Even accepting public perception as an important value, however, it is unclear that the public reacts negatively when a case is overruled. Public debate on the Supreme Court's recent flag-burning **[231](http://www.lexis.com/research/retrieve?_m=ea16f1f316a0fba78327e7892fa252c9&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAA&_md5=93955de5d5b14a87600ba509a8cd4e24" \l "n231" \t "_self)** and abortion **[232](http://www.lexis.com/research/retrieve?_m=ea16f1f316a0fba78327e7892fa252c9&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlb-zSkAA&_md5=93955de5d5b14a87600ba509a8cd4e24" \l "n232" \t "_self)** decisions shows that the general public tends to focus on results rather than process. If the new decision reaches a substantive result that people believe is good, they applaud the decision even if precedent is discarded. If the new decision reaches a substantive result that people believe is bad, they decry the decision even if the case results from a straightforward application of precedent. If outdated, socially unacceptable or logically questionable decisions are those most likely to be overruled or questioned by the Supreme Court, replacing such decisions with a more publicly acceptable rule should actually increase public respect for the system. The same may be said for a lower court that disregards a doubtful Supreme Court precedent.

#### -- Legitimacy resilient – history proves

Gibson and Caldiera 9 (James L., Professor of Government – Washington University and Fellow – Centre for Comparative and International Politics, and Gregory A., Distinguished University Professor in Political Communications and Policy Thinking – Ohio State University, Citizens, Courts, and Confirmations, http://press.princeton.edu/chapters/s8940.pdf)

Our contention, however, is that the effects of popular and unpopular decisions are asymmetrical. Popular decisions generate unadulterated support for the Court, just as they do for any institution. But the effects of unpopular decisions are discounted, both by processes of shirking and by association with the legitimizing symbols of judicial power. We acknowledge that the decline of institutional legitimacy could become a nonlinear, cascading process in the sense that as the Court’s reservoir of support becomes shallower, the impact of unpopular decisions grows. We know of no such cascade in American history, however.9 Our objective in this book is to determine whether politicized confirmation processes can have a delegitimizing effect on the Supreme Court by providing an image of the Court incompatible with the processes undergirding positivity theory.

[Continues – To Footnote]

9 In all of our thinking about these processes, we are much influenced by Roosevelt’s attacks on the Supreme Court in the 1930s. If an enormously popular president, stimulated to action by a continuous string of unpopular and crippling Supreme Court decisions, cannot succeed in changing the Court, it is difficult to imagine a scenario in which such attacks would succeed. At the same time, however, Gibson and Caldeira (1992) point to declining support for the Supreme Court among some segments of the African American community from roughly theWarren Court era to the Rehnquist Court, so clearly a diminution of Court support is possible. Gaining a greater understanding of the processes of change in Court support is precisely the objective of this book.

#### No environmental collapse

**Boucher 98** (Doug, "Not with a Bang but a Whimper," Science and Society, Fall, http://www.driftline.org/cgi-bin/archive/archive\_msg.cgi?file=spoon-archives/marxism-international.archive/marxism-international\_1998/marxism-international.9802&msgnum=379&start=32091&end=32412)

The political danger of catastrophism is matched by the weakness of its scientific foundation. Given the prevalence of the idea that the entire biosphere will soon collapse, it is remarkable how few good examples ecology can provide of this happening m **even on the scale of an ecosystem**, let alone a continent or the whole planet. Hundreds of ecological transformations, due to introductions of alien species, pollution, overexploitation, climate change and even collisions with asteroids, have been documented. They often change the functioning of ecosystems, and the abundance and diversity of their animals and plants, in dramatic ways. The effects on human society can be far-reaching, and often extremely negative for the majority of the population. But one feature has been a constant, nearly everywhere on earth: life goes on. Humans have been able to drive thousands of species to extinction, severely impoverish the soil, alter weather patterns, dramatically lower the biodiversity of natural communities, and incidentally cause great suffering for their posterity. They have not generally been able to prevent nature from growing back. As ecosystems are transformed, species are eliminated -- but opportunities are created for new ones. The natural world is changed, but never totally destroyed. Levins and Lewontin put it well: "The warning not to destroy the environment is empty: environment, like matter, cannot be created or destroyed. What we can do is replace environments we value by those we do not like" (Levins and Lewontin, 1994). Indeed, from a human point of view the most impressive feature of recorded history is that human societies have continued to grow and develop, despite all the terrible things they have done to the earth. Examples of the **collapse of civilizations** due to their over- exploitation of nature are few and far between. Most tend to be well in the past and poorly documented, and further investigation often shows that the reasons for collapse were fundamentally political.

#### Environment improving across the board

Hayward, 11 [Steven P, 2011 Almanac of Environmental Trends¶ by Steven F. Hayward¶ April 2011¶ ISBN-13: 978-1-934276-17-4, http://www.pacificresearch.org/docLib/20110419\_almanac2011.pdf]

Quick: What’s the largest public-policy success story in American society over the last generation? The dramatic reduction in the crime rate, which has helped make major American cities livable again? Or welfare reform, which saw the nation’s welfare rolls fall by more than half since the early 1990s? Both of these accomplishments have received wide media attention. Yet the right answer might well be the environment. As Figure 1 displays, the reduction in air pollution is comparable in magnitude to the reduction in the welfare rolls, and greater than the reduction in the crime rate—both celebrated as major public-policy success stories of the last two decades. Aggregate emissions of the six “criteria” pollutants1 regulated under the Clean Air Act have fallen by 53 percent since 1970, while the proportion of the population receiving welfare assistance is down 48 percent from 1970, and the crime rate is only 6.4 percent below its 1970 level. (And as we shall see, this aggregate nationwide reduction in emissions greatly understates the actual improvement in ambient air quality in the areas with the worst levels of air pollution.) Measures for water quality, toxic-chemical exposure, soil erosion, forest growth, wetlands, and several other areas of environmental concern show similar positive trends, as this Almanac reports. To paraphrase Mark Twain, reports of the demise of the environment have been greatly exaggerated. Moreover, there is good reason to believe that these kinds of improvements will be experienced in the rest of the world over the course of this century. We’ll examine some of the early evidence that this is already starting to occur. The chief drivers of environmental improvement are economic growth, constantly increasing resource efficiency, technological innovation in pollution control, and the deepening of environmental values among the American public that have translated to changed behavior and consumer preferences. Government regulation has played a vital role, to be sure, but in the grand scheme of things regulation can be understood as a lagging indicator, often achieving results at needlessly high cost, and sometimes failing completely. Were it not for rising affluence and technological innovation, regulation would have much the same effect as King Canute commanding the tides. INTRODUCTION introduction 3 figure 1 a comparison of crime rate, Welfare, and air Pollution, 1970–2007 -60.0% -40.0% -20.0% 0.0% 20.0% 40.0% 60.0% 1970 1975 1980 1985 1990 1995 2000 2005 2007 % of Population on Welfare Crime Rate (per 100,000 population) Aggregate Emissions Source: FBI Uniform Crime Reports, U.S. Department of Health and Human Services, EPA 4 Almanac of Environmental Trends The American public remains largely unaware of these trends. For most of the last 40 years, public opinion about the environment has been pessimistic, with large majorities—sometimes as high as 70 percent—telling pollsters that they think environmental quality in the United States is getting worse instead of better, and will continue to get worse in the future. One reason for this state of opinion is media coverage, which emphasizes bad news and crisis; another reason is environmental advocacy groups, for whom good news is bad news. As the cliche goes, you can’t sell many newspapers with headlines about airplanes landing safely, or about an oil tanker docking without a spill. Similarly, slow, long-term trends don’t make for good headline copy. INTRODUCTIONintroduction 5Improving Trends:Causes and ConsequencesMost environmental commentary dwells on the laws and regulations we have adoptedto achieve our goals, but it is essential to understand the more important role of technologyand economic growth in bringing about favorable environmental trends. Thebest way to see this is to look at some long-term trends in environmental quality thatpredate modern environmental legislation.To be sure, the earliest phases of the Industrial Revolution led to severe environmentaldegradation. But the inexorable process of technological innovation andthe drive for efficiency began to remedy much of this damage far earlier than iscommonly perceived. In addition, new technologies that we commonly regard as environmentally destructive often replaced older modes of human activity that were far worse by comparison. A good example is the introduction of coal for heating andenergy in Britain.

### DA

#### No econ impact – empirics

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

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

#### Won’t pass – base opposition and no moderates

**Gandelman, 9/18/13** – (Joe, “Republicans all in: government shutdown by Repubicans virtually certain” <http://themoderatevoice.com/186749/republicans-all-in-government-shutdown-by-repubicans-virtually-certain/>)

It’s going to happen. You can bet on it. Republicans now seem all in – despite some pesky noises from they-must-be-RINO websites such as the Wall Street Journal and the National Review about the dangers — to set the stage for a government shut down. And don’t be surprised if it then gets worse and House Republicans engineer a default on the debt ceiling as well:

House Republicans are moving forward with a government funding bill that would defund ObamaCare.

The legislation is a nod to House conservatives, some of whom quickly backed the plan.

But Senate Democrats and the White House have promised to reject any legislation that would defund the healthcare law, meaning the legislation won’t move farther than the House.

Unless the House and Senate can agree on legislation and get it to the White House by Oct. 1, the government will shut down at that time.

Basically, the GOP House leadership is politically twerking its powerful Tea Party sympathetic members. But the consquences to many Americans that even a brief shutdown would bring could be huge.

And who says this will necessarily be a brief shutdown?

The House measure would keep the government funded through Dec. 15 at the current $986 billion spending rate, rather than the lower $967 billion level called for in the 2011 Budget Control Act.

GOP leaders also announced Wednesday that they will condition a debt ceiling increase on a one-year delay of ObamaCare, approval of the Keystone XL pipeline and an outline for tax reform.

In other words:

Republicans are going to use political extortion — hurting the United States’s economy — if they can’t get policies that they are unable to get by winning elections or putting together coalitions in Congress. It’s a tough choice for Barack Obama and the Democrats: if this is allowed to happen it will fundamentally change the form of American democracy.

Republican Study Committee Chairman Steve Scalise (R-La.) said he was on board with the plan despite the higher spending level.

“This reflects the principles we’ve been pushing for,” he said. “We want to address ObamaCare directly in the CR. We want to address ObamaCare in the debt ceiling and this keeps both of those moving.”

Yes — in a way unprecedented in American democracy. And:

Rep. Tom Graves (R-Ga.), who authored a one-year CR that would increase defense spending while defunding ObamaCare, said he would vote for the new Boehner plan.

“It’s a step in the right direction,” Graves said. “The American people should view this as a victory.”

I agree with Booman: there is a notable lack of adults in the Republican room, and a notably large number of conservative talk show host followers and Tea Party members. Booman:

It’s a two-pronged approach. On the continuing resolution (CR) to fund the government, the Republicans will limit the funding to December 15th. The funding level will be slightly above what the Budget Control Act of 2011 calls for. And it will defund ObamaCare.

On the debt ceiling, they will have a separate vote that will delay ObamaCare for a year, authorize the Keystone XL pipeline, and provide an outline for tax reform.

Their hope is that they can successfully pass the buck to Republican senators who will be expected to sustain a filibuster against any CR or debt ceiling hike that includes money for health care.

It really doesn’t matter whether the Senate Republicans go along with the plan or not, because the government will shut down either way and we will default on our debts either way.

The pressure on Republican senators will be intense, but they’d rather let the House take the blame for the catastrophe.

The fact that the Senate Minority Leader, Mitch McConnell, is facing a primary challenge from his right makes it unlikely that he will ride to the House’s rescue this time around. If we’re hoping for adult leadership in the Senate, it will have to come from a rump of moderate Republican senators that doesn’t seem to exist.

#### PC isn’t key to the debt ceiling

**Klein, 9/18/13 -** columnist at the Washington Post, as well as a contributor to MSNBC. His work focuses on domestic and economic policymaking,(Ezra, Washington Post, “The White House doesn’t think it can prevent a government shutdown” <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/09/18/the-white-house-doesnt-think-it-can-prevent-a-government-shutdown/>)

And there is a difference between 2011 and 2013. Two of them, in fact.

1) In 2011, the White House knew whom to deal with. Back then, House Speaker John Boehner actually did seem reasonably in sync with his party on these issues, and so the White House was able to negotiate with Republican leadership on a deal. Today, the relevant negotiations are happening in the Republican Party, with GOP leadership trying to fight conservatives who want to shut down the government, and no one knows who actually has the power to cut and close a deal.

2) In 2011, the White House was willing to deal. The White House believed, in its gut, that Republicans had been given a mandate in the 2010 elections to extract exactly the kind of concessions they were demanding. In addition, the White House believed President Obama would be a likelier bet for reelection if he could cut a "grand bargain" with the newly resurgent Republicans, taking their key issue away from them.

This year, it's the White House that won the last election, and so they see no popular legitimacy behind Republican demands. In addition, they are deeply, fervently committed to the proposition that they will never again negotiate around the debt ceiling, as that's a tactic history will judge them harshly for repeatedly enabling. So even if Boehner could cut a deal on the debt ceiling, the White House isn't open to negotiating.

All of which helps explain the White House's more alarmist communications strategy. In 2011, the White House was confident they could cut a deal with Republicans and, in some ways, eager to do so. That gave them a sense of control over the situation.

This year, they're not willing to cut a deal with the Republicans on the debt ceiling, and they're not sure the Republicans can cut a deal with themselves on funding the government, all of which means the White House doesn't have much control over this situation. That's why they're trying to worry business and Wall Street and other outside actors who could put pressure on the GOP.

#### 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.

#### The budget fight comes before the debt ceiling and costs capital

**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)

With war against Syria averted, or perhaps postponed, U.S. President Barack Obama can turn again to September's anticipated battles against his still-implacable Republican opponents.

Looming is a Sept. 30 deadline for Congress to fund ongoing government operations - everything from food stamps to new bullets - and a showdown is shaping up between a weakened President and Republicans riven by their own divisions.

Then, some time in October, the U.S. Treasury will face another crisis as it reaches its borrowing limit. Without an increase, which some Republicans want to block, the U.S. government could face default. Meanwhile, hopes for progress on major policy initiatives such as immigration reform, long expected to be the big legislative issue this fall, are fading.

As hostile as relations are, some observers suggest the averted showdown over Syria - it's now widely accepted that Congress would have rejected Mr. Obama's call for an authorization of force had it gone to a vote - didn't make things any worse.

"We don't know what September would have looked like in the absence of the Syria issue, but my guess is that it would have looked an awful lot like it looks today," said Sarah Binder, a senior fellow at the Brookings Institution, which watches Congress closely.

"These divisions over spending and size of government have been with us all along, and the [Republican] opposition to Obama has been quite strong all along. ... Set aside the issue of Syria, and really nothing has changed."

#### New EPA regulations causing a Congressional backlash now

**Davenport, 9/20/13** (Carol, “White House Rolls Out Tough New Climate-Change Rules” National Journal, <http://www.nationaljournal.com/energy/white-house-rolls-out-tough-new-climate-change-rules-20130920>)

In his January State of the Union address, President Obama urged Congress to take action to stop global warming. But he warned, "If Congress won't act soon to protect future generations, I will."

He's following through on that pledge. Friday morning, the Environmental Protection Agency will release a draft regulation to limit carbon pollution from coal-fired power plants, the nation's chief source of global warming emissions.

The draft regulation is the first of four major regulatory steps the EPA will take to create a significant body of action on climate change before Obama leaves office. The president views these regulations as his global-warming legacy. The coal industry and its friends in Congress view them as a declaration of war.

The rule was met with cheers from environmental groups, but will encounter a barrage of legal, legislative and political attacks, chiefly from Republicans and coal supporters, who contend he climate regulations represent overreach by the executive branch, and that they will kill jobs, wage "war on coal," raise electricity costs, and damage the economy.

The draft rule requires that all new coal plants built in the U.S. limit their emissions to less than 1,100 pounds of carbon pollution per megawatt-hour—just over half the carbon pollution now produced by a typical coal-powered plant. The draft is an update of a proposal the EPA released in 2012, which was met with outrage by the coal industry. That rule required new coal and gas plants to maintain emissions levels of 1,000 pounds of carbon pollution per megawatt-hour. After meeting with power companies and coal groups and taking into account 2.5 million public comments, the Obama EPA's new draft rule allows coal plants to emit 10 percent more carbon emissions.

EPA lawyers also worked to legally bulletproof the rule, which coal industry lawyers intend to challenge in court. However, despite the slightly looser carbon limits of the new rule, owners of coal plants will still have to install expensive "carbon capture and sequestration" technology. While the technology, which traps carbon pollution and injects it underground before it spews out of smokestacks, is commercially available, it could cost power companies billions of dollars to install.

Instead, it's expected that power companies will simply invest in generating electricity from other, less-polluting forms of electricity, chiefly natural gas, which emits just half the carbon pollution of coal, but also wind, solar, and nuclear energy. As it happens, the climate rules coincide with a market shift from coal to natural gas. Thanks to the recent boom in production of cheap natural gas, electric utilities have stopped investing in new coal plants, and are already investing in building new natural-gas plants.

But electric utilities that rely heavily on coal are still uneasy about the new rule. American Electric Power, an Ohio-based utility that owns one of the nation's largest fleets of coal-fired power plants, stopped building new coal plants before the regulation came out. "We have no current plans to build any new coal-fueled power plants both because we don't need additional generation, and it would be difficult to make an economic case for coal with today's low natural-gas prices," wrote Melissa McHenry, a spokeswoman for the company, in an e-mail. But she added, "If we value maintaining fuel diversity as a nation, a proposed rule that effectively eliminates coal as an option for new power plants is a serious concern, particularly if today's plentiful supply of low-cost natural gas can't be maintained."

Meanwhile, Friday's action sets the stage for an increasingly aggressive set of EPA climate regulations on coal plants. Following this step, EPA will start drafting a far more controversial regulation, requiring cuts in carbon pollution from existing coal plant—a measure that could lead to closure of current plants. Obama has told the agency to propose that rule by June 2014. By June 2015, just six months before Obama leaves office, the EPA is expected to issue final versions of the regulations on new and existing plants. Those could, in the years that follow, freeze construction of new coal plants, lead to closures of existing plants, and further drive the electricity market toward lower-carbon forms of new electricity. So while today's draft rule is significant, it's just the first step in the administration's plan to issue the high-impact final rules in the waning months of the Obama administration.

The coal lobby and its allies in Congress have preemptively attacked the rule. On Thursday, Rep. Ed Whitfield, a Kentucky Republican and chairman of the House Energy and Commerce subcommittee that oversees energy and climate policy, called EPA Administrator Gina McCarthy and Energy Secretary Ernest Moniz before his panel, and slammed the climate rules.

#### 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.

## 1AR

### Topicality cards

#### We meet statutory

Runsforth, 12 [Copyright (c) 2012 Arizona Board of Regents Arizona Journal of International and Comparative Law Fall, 2012 Arizona Journal of International and Comparative Law 29 Ariz. J. Int'l & Comp. Law 623 LENGTH: 17997 words NOTE: THERE'S AN APP FOR THAT: IMPLICATIONS OF ARMED DRONE ATTACKS AND PERSONALITY STRIKES BY THE UNITED STATES AGAINST NON-CITIZENS, 2004-2012 NAME: Elinor June Rushforth\* BIO: \* J.D. candidate, University of Arizona, p. lexis]

The next level of review should be a statutorily created court that is the last stop on the targeted killing process. Though there may be some grumbling among judges and politicians about overextended courts and full dockets, national security concerns and the risk of lethal mistakes should outweigh reluctance to introduce an important check on targeted killing. The President, and perhaps Congress, could also be reluctant to allow courts into what they deem a core executive function. n198 Attorney General Eric Holder gave the public another piece of the Obama administration's targeted killing model when he claimed that the Constitution "guarantees due process, not judicial process" and that "due process [\*653] takes into account the realities of combat." n199 This signals to the public that the Obama administration will remain wary of any encroachment and that the imposition of judicial process on targeted killing would be fought.

#### 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.

w/m – plan text MANDATES CHANGE OF JURISDICTION

#### We meet --- the plan establishes a statute for the review process, that’s T

Julian Davis Mortenson 11, Assistant Professor, University of Michigan Law School, “Review: Executive Power and the Discipline of History Crisis and Command: The History of Executive Power from George Washington to George W. Bush John Yoo. Kaplan, 2009. Pp vii, 524,” Winter 2011, University of Chicago Law Review 78 U. Chi. L. Rev. 377

At least two of Yoo's main examples of presidential power are actually instances of presidential deference to statutory restrictions during times of great national peril. The earliest is Washington's military suppression of the Whiskey Rebellion (III, pp 66-72), a domestic disturbance that Americans viewed as implicating adventurism by European powers and threatening to dismember the new nation. n60 The Calling Forth Act of 1792 n61 allowed the President to mobilize state militias under federal control, but included a series of mandatory procedural checks--including judicial [\*399] approval--that restricted his ability to do so. n62 Far from defying these comprehensive restrictions at a moment of grave crisis, Washington satisfied their every requirement in scrupulous detail. He issued a proclamation ordering the Whiskey Rebels to disperse. n63 When they refused to do so, he submitted a statement to Justice James Wilson of the Supreme Court describing the situation in Pennsylvania and requesting statutory certification. n64 Only when Wilson issued a letter precisely reciting the requisite statutory language (after first requiring the President to come back with authentication of underlying reports and verification of their handwriting n65) did Washington muster the troops. n66 Washington's compliance with statutory restrictions on his use of force continued even after his forces were in the field. Because Congress was not in session when he issued the call-up order, Washington was authorized by statute to mobilize militias from other states besides Pennsylvania--but only "until the expiration of thirty days after the commencement of the ensuing [congressional] session." n67 When it became clear that the Pennsylvania campaign would take longer than that, Washington went back to Congress to petition for extension of the statutory time limit that would otherwise have required him to [\*400] disband his troops. n68 Far from serving as an archetypal example of presidential defiance, the Whiskey Rebellion demonstrates exactly the opposite. FDR's efforts to supply the United Kingdom's war effort before Pearl Harbor teach a similar lesson. During the run-up to America's entry into the war, Congress passed a series of Neutrality Acts that supplemented longstanding statutory restrictions on providing assistance to foreign belligerents. Despite these restrictions, FDR sent a range of military assistance to the future Allies. n69 Yoo makes two important claims about the administration's actions during this period. First, he claims the administration asserted that "[a]ny statutory effort by Congress to prevent the President from transferring military equipment to help American national security would be of 'questionable constitutionality'" (III, p 300). Second, he suggests that American military assistance in fact violated the neutrality statutes (III, pp 295-301, 310, 327-28).

#### Statutory restrictions are legislative limits

The Law Dictionary 13 “What is Statutory Restriction?, The Law Dictionary: **Featuring Black’s Law Dictionary Free Online Legal Dictionary 2nd Edition**, Accessed 7-22-2013, http://thelawdictionary.org/statutory-restriction/

What is STATUTORY RESTRICTION?

Limits or controls that have been place on activities by its ruling legislation.

#### Aff ground---only process-based affs can beat the executive CP and ex ante review is illegal

Bloomberg 13, Bloomberg Editorial Board, Feb 18 2013, “Why a ‘Drone Court’ Won’t Work,” http://www.bloomberg.com/news/2013-02-18/why-a-drone-court-won-t-work.html

As for the balance of powers, that is where we dive into constitutional hot water. Constitutional scholars agree that the president is sworn to use his “defensive power” to protect the U.S. and its citizens from any serious threat, and nothing in the Constitution gives Congress or the judiciary a right to stay his hand. It also presents a slippery slope: If a judge can call off a drone strike, can he also nix a raid such as the one that killed Osama bin Laden? If the other branches want to scrutinize the president’s national security decisions in this way, they can only do so retrospectively.

### Counterplan 1AR

#### too many legal obstacles means the executive is functionally unrestrained

Murphy and Radsan – Their Author – 9 (Richard, AT&T Professor of Law – Texas Tech University School of Law, and Afsheen John, Professor – William Mitchell College of Law; Assistant General Counsel – Central Intelligence Agency, “Due Process and Targeted Killing of Terrorists,” Cardozo Law Review, November, 32 Cardozo L. Rev. 405, Lexis)

As to legal hurdles, Boumediene itself poses a **high one to lawsuits** by non-U.S. citizens for overseas attacks. Here we may seem to contradict our earlier insistence that Boumediene presupposes some form of constitutional protection worldwide for everyone.212 Yet Boumediene shows that the requirement of judicial process depends on a pragmatic analysis.213 As part of its balancing, Boumediene made clear that courts should favor the interests of American citizens and of others with strong connections to the United States.214 Although the Boumediene petitioners lacked the preference in favor of citizens, they persuaded a slim majority of the Court to extend constitutional habeas to non-resident aliens detained at Guantanamo. This result, however, took place under exceptional circumstances: among them, Guantanamo is de facto United States territory;215 the executive had held detainees there for years and claimed authority to do so indefinitely; and the Supreme Court doubted the fairness and accuracy of the CSRTs.216 Absent such circumstances, Boumediene leaves courts to follow their habit of deferring to the executive on national security. For targeted killing, that may mean cutting off non-citizens from American courts.

The state-secrets privilege poses another barrier to Bivens-style actions. This privilege allows the government to block the disclosure of information in court that would damage national security.217 It could prevent a case from proceeding in any number of ways. For instance, the government could block plaintiffs from accessing or using information needed to determine whether a Predator attack had a sound basis through human or technical sources of intelligence.218 By this trump card, the government could prevent litigation from seriously compromising intelligence sources and methods.219

#### Too many hurdles for ex post litigation

Taylor, 13 [February, Paul Taylor, Senior Research FellowA FISC for Drones? Center for Policy & Researchhttp://transparentpolicy.org/2013/02/a-fisc-for-drones/]

Additionally, in search and seizure warranting, there an ex post review will eventually be available. That will likely not be the case in drone strikes and other targeted killings unless such a process is specifically created. There are simply too many **hurdles to judicial review (including state secrets, political questions, discovery problems**, etc) for the courts to create such an opportunity without congressional action.

#### Automatic finding of illegality is key – ex post review causes errors and overreactions

Proulx 5 (Vincent-Joel, LL.L., LL.B., University of Ottawa; LL.M. (International Legal Studies), “If the Hat Fits, Wear It, If the Turban Fits, Run for your Life: Reflections on the Indefinite Detention and Targeted Killing of Suspected Terrorists,” Hastings Law Journal, May, 56 Hastings L.J. 801, Lexis)

In this article, I have attempted to enumerate and discuss the most important international legal restraints on indefinite detention and targeted killing of suspected terrorists. The objective was not to deliver an exhaustive review of legal impediments to such practices. It was rather to present a principled approach to upholding international human rights norms in resistance to recent arguments purporting to subsume legally insulated aspects of the war on terror into one overriding security discourse, and to refute claims that the significance of the distinction between POWs and protected persons has begun to fade. However, many additional restraints come to mind. When addressing the question of indefinite detention, for instance, one could envision a regime that would impose frequent judicial reviews of the detentions and, correspondingly, reduce the language of deference to executive decision-making. This judicial mechanism would ensure and extend a legitimating function on the courts, while also ascertaining their institutional structure. n468 However, the practical problem with this approach is readily discernible: domestic courts are notoriously reluctant to apply norms of international law and, when they do, they tend to defer to the executive's own interpretation of the relevant international rules. n469 Countries could also implement commissions of inquiry that would proceed to ex post facto reviews of executive decision-making and action, based on the logic of the Mcshane decision. n470 Whatever the checks and balances mechanism may be, indefinite detention offers the opportunity to review and scrutinize executive action in real time, as custody over prisoners is ongoing.

Such is not the case with a policy of targeted killing: once the executive action is carried out, the individual is removed with no chance to appeal his situation or to contest the legality of the unilateral decision. Surely, the case for targeted killing of suspected terrorists becomes attractive when one considers that terrorists themselves do not distinguish between civilians and military targets in perpetrating attacks. In such cases, the parameters of the Caroline doctrine may appear to be fulfilled and a reprisal may be justified, at least on a prima facie basis. n471 [\*893] Although few people will convincingly advocate that the perpetrators of 9/11 deserved to perish, n472 it is probably fair to assume that even fewer would mourn the passing of Osama bin Laden. However, there is a distinct possibility that a policy of targeted killing might engender the adverse effect of hoisting a targeted terrorist to the rank of martyr. n473 If such eventuality was to materialize, namely if an influential terrorist or insurgent leader was removed, anti-West sentiment might increase and renewed support for the terrorist's agenda might ultimately transform that individual's quest into a crusade. As a result, the rationales of prevention and deterrence underlying the targeted killing of such individual would be defeated from the outset. Furthermore, eliminating some of Al Qaeda's senior leadership would only temporarily displace the problem: there are several other groups willing to commit widespread acts of murder. Therefore, the objective should not be to kill terrorists but rather to reorganize society so as to understand and prevent acts of terrorism. n474 In addition, based on the considerations in Part III of this article, targetted killing is untenable (and undesirable) in terms of policy, international legitimacy, and law.

Finally, we must entertain the claim that certain governments are, in fact, engaged in extra-judicial killings. In such cases, those governments' only apparent concern becomes how well they cover up their operations. n475 A possible legal restraint on this practice lies in the [\*894] increased use of lawyers to advise military personnel in combat and on a real-time basis. The objective of this additional legal constraint is to make split-second decisions consonant with international law, to the extent possible. Another prospective mitigating solution to this controversial policy would be to promote an absolute ban on targeted killing. Consequently, a targeted killing would always be condemned, by definition. However, the individuals carrying out the killing could attempt to exculpate themselves **ex post facto**, based on the reasoning of the High Court of Justice of Israel in the famous Torture case. n476 This justification would hinge on a logic of necessity, with particular emphasis on the issue of proportionality. n477 However, to adequately ensure that this model diminishes abuse and honest mistakes, while also tackling the slippery slope concern, it is imperative that the exercise of targeted killing automatically trigger a prima facie finding of illegality. Under this structure, the burden of proving necessity inherently rests with the targeting entity or official. Nevertheless, it should again be stressed that this type of model is ripe for retribution, misjudgment, and overreaction.

#### CP kills operational certainty

Chesney, 13 [Bobby Chesney is the Charles I. Francis Professor in Law at the University of Texas School of Law, as well as a non-resident Senior Fellow of the Brookings Institution. His scholarship encompasses a wide range of issues relating to national security and the law, including detention, targeting, prosecution, covert action, and the state secrets privilege; most of it is posted here.http://www.lawfareblog.com/2013/02/a-fisc-for-drone-strikes-a-few-points-to-consider/]

Better Ex Ante Approval than Ex Post Damages Steve has posted about the alternative of providing a post-hoc nominal damages action. I need to think about it more, but if I had to choose I’m pretty sure I’d endorse the ex ante warrant instead. At common law the prospect of post-hoc damages suits (for trespass) had much to due with the emergence of a warrant system for searches/ Officials needed certainty ex ante that they would not face a lawsuit, and it was not enough to know that various doctrines made it unlikely they’d actually personally owe lots of money. So too here, I think, if there must actually be judicial involvement.

### Da 1ar

#### Kept secret – no expertise hurdles

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

COVERT OPERATIONS AGAINST AMERICAN CITIZENS COURT (COAACC) The creation of the Covert Operations Against American Citizens Court (COAACC) would help alleviate such a burden and balance these concerns by anchoring targeted killings within the rule of law.119 The federal judicial system already has specialized courts in place for particularly complex issues requiring unique knowledge, including bankruptcy, copyrights, international trade, patent, and tax.120 To be sure, the most relevant model for this court would be the Foreign Intelligence Surveillance Court (FISC), which was created by the Foreign Intelligence Surveillance Act (FISA) to provide a statutory framework for the use of electronic eavesdropping in the context of foreign intelligence gathering.121 The FISC consists of eleven U.S. district court judges publicly appointed by the Chief Justice of the Supreme Court.122 It has jurisdiction over applications for and orders approving electronic surveillance, physical searches, pen registers, trace devices or orders for production of tangible things anywhere within the United States under FISA.123 If an application for surveillance is denied by the FISC, it can be appealed to the Foreign Intelligence Surveillance Court of Review, which consists of three federal judges also designated by the Chief Justice. Finally, appeals can be taken via discretionary review by the Supreme Court as well.124Proceedings before the FISC are ex parte and non-adversarial. The court only hears evidence presented solely by the Department of Justice. The FISC proceedings are kept sufficiently secret to protect sensitive government information but there is a provision to allow for opinions to be released with executive approval.125 In the history of the FISC, only one opinion has been published.126 Importantly, FISA allows for the FISC and the Court of Review to establish its own rules and procedures “as are reasonably necessary to administer their responsibility under FISA.”127 The FISC is structured so as to operate “as expeditiously as possible” given the time sensitivity of surveillance operations.128 B. FUNCTIONAL CONSIDERATIONS FOR COAACC ESTABLISHMENT The COAACC could function by providing the targeting killing analysis with neutral and detached oversight. When the President deems a citizen worthy of targeting, they would need to present their reasoning to a COAACC judge. This judge would be a Senate-confirmed Article III judge with the necessary national security expertise to appreciate the military concerns brought about by this added level of process. The executive branch would need to demonstrate the imminence of the threat posed by the U.S. citizen under international law and the inability to incapacitate that individual by any other least restrictive means.129 For example, although the US has the right to defend itself, that right is circumscribed by Article 51 of the UN Charter and Article 2(4). The latter provision provides that member states must refrain “from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” No exceptions were granted, such as for preventing humanitarian disasters or rooting out terrorist organizations, except for two: interventions authorized by the U.N. Security Council “as may be necessary to maintain or restore international peace and security” and “the inherent right of individual or collective self-defense.”130 According to long state practice, and hence customary international law, this right applies not only after a nation has suffered an attack, but also in anticipation of an “imminent” attack. 131 The COAACC could presumably adjudicate this imminence standard by applying familiar cannons, such as the Caroline test to a sought after target.132 While in Hamdi, Justice O’Connor allowed for a presumption in favor of the government in habeas proceedings, the defendant’s absence in the COAACC combined with the seriousness of the consequences inherent in a targeted killing adjudication may necessitate an enhanced level of protection and a presumption in favor of the citizen being targeted.133 The COAACC judges would issue opinions to establish a discipline and to guide future decisions. These opinions should be as public as national security permits. This court would not adjudicate on macro issues that are traditionally left to the political branches such as defining the type of conflict and deciding which system of law governs that conflict. Rather, **the court’s analysis will focus** exclusively **on the targeted individual** and whether targeting is necessary and legal. One way to make the hearings more adversarial is to form an expert bar of federal and military defense counsel to represent the interests of the citizen being targeted. (This would eliminate the complexities and delay associated with a constitutional standing challenge.) These individuals would be approved by the Chief Justice, much like the judges on the FISC, and would need to have relevant experience. Advocates can be former military lawyers, federal defenders, and court martial judges, attorneys with detainee litigation experience or individuals with similar backgrounds. These lawyers would be appointed to represent the targeted citizens as guardians ad litem. One important substantive analysis that the COAACC could use is the seminal test propounded by the Israeli High Court in distinguishing between civilians who are not taking part with hostilities and civilians who are and thus eligible to being targeted for assassination. The four-fold test requires the State to examine whether: 1. The state has strong evidence that the potential target meets the conditions of having lost their protected status; 2. There are other less drastic alternative measures to stop a potential threatening target, such as arrest, without posing too great a risk to the lives of State’s soldiers; 3. Conduct an immediate independent and thorough investigation of the operation to determine its justifiability, and compensating innocent civilians in appropriate cases; and 4. Assess in advance proportionality of innocent civilians’ expected collateral damages to the anticipated military advantage gained by the operation, to make sure operation gains are greater than civilian collateral damages.134 Although not a required form of analysis, these factors nonetheless suggest a rigorous review of proposed Executive Branch assassination targets. It is vital that the COAACC not function as a mere a rubber stamp for presidential fiat, a charge that has been previously ascribed to the FISC in light of its high approval rate.135 It should be noted, however, that a high approval rate does not suggest excessive judicial acquiescence, since the mere existence of the COAACC would presumably filter out weaker requests from executive officials. It is also vital to incorporate IHL protections for individual abroad being targeted by the government.136 Such constraints could further enhance both the global credibility of American efforts to target alleged terrorists and reduce likelihood of collateral damage.

#### -- Legitimacy is resilient

Gibson and Caldiera 9 (James L., Professor of Government – Washington University and Fellow – Centre for Comparative and International Politics, and Gregory A., Distinguished University Professor in Political Communications and Policy Thinking – Ohio State University, Citizens, Courts, and Confirmations, http://press.princeton.edu/chapters/s8940.pdf)

But how is it that events come to shape attitudes toward institutions? Many assume such orientations are learned early in life, and are obdurate and resistant to change. Fortunately, some research exists that is directly relevant to the question of how citizens update their views toward institutions like the Supreme Court.

#### -- No collapse – public will accept Court controversy

Perea 8 (Juan Francisco, Professor of Law – University of Florida Levin College of Law, “The Role Of Judicial Review In Recent Presidential Elections In Peru, Costa Rica, And The United States”, Florida Journal of International Law, 20 Fla. J. Int'l L. 201, Lexis)

Notwithstanding, it remains remarkable that there was no widespread or sustained outrage at the Supreme Court's decisive role in the Bush presidency. National outrage could have taken several forms, none of which materialized in any significant way. There could have been continuing protests over the Bush presidency. There could have been congressional efforts to impeach some of the Justices of the Supreme Court. Given Republican control over the Congress, impeachment of Supreme Court justices who helped install a Republican president was unlikely politically. There could have been some amendment to the Constitution to prevent Supreme Court interference in future elections. While the 9/11 tragedy likely preempted national attention to any of these possibilities, it remains noteworthy that none of these expressions of outrage materialized significantly even prior to 9/11. It remains remarkable that there has been no deterioration in the Supreme Court's legitimacy, or in the perception of its legitimacy, since its unprecedented decision in Bush v. Gore. The U.S. Supreme Court is a remarkably powerful institution, and the public accepts its role in deciding controversial questions, even the outcome of a presidential election. There is great irony, in a democracy, when unelected judges decide the outcome of a presidential election. There should also be great concern about the social and political dynamics that allow an unchecked, and apparently uncheckable, judiciary to make such decisions with impunity