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### Drone Wars

#### Advantage one is Drone Wars

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

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

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

#### The impact is deterrence crises that cause nuclear conflict and Indo Pak War

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

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

#### Indo Pak war goes nuclear

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

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

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

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

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

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

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

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

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

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

### Advantage Two

#### Advantage two is Convergence

#### Convergence between military and intelligence authorities kills the signal of accountability --- results in operational confusion and lack of legal clarity

**Chesney, ’12** Charles I. Francis Professor in Law at the University of Texas School of Law (Robert Chesney, “Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate,” http://jnslp.com/wp-content/uploads/2012/01/Military-Intelligence-Convergence-and-the-Law-of-the-Title-10Title-50-Debate.pdf)//CC

This surely confused at least some observers. The mission had been executed by U.S. Navy SEALs from Joint Special Operations Command (JSOC) after all, and both operational and tactical command seemed to have resided at all times with JSOC personnel.4 But for those who had been following the evolution of the CIA and JSOC during the post-9/11 period, Panetta’s account would not have been surprising. The bin Laden raid was, from this perspective, merely the latest example of an ongoing process of convergence among military and intelligence activities, institutions, and authorities. The convergence trend is not a post-9/11 novelty. It has much deeper roots than that. The trend has accelerated considerably over the past decade, however, thanks to an array of policy, budgetary, institutional, and technological developments. And as the trend accelerates, it is becoming increasingly clear that it has profoundly important implications for the domestic law architecture governing military and intelligence activities. That architecture is a complex affair, including what might be described as “framework” statutes and executive branch directives generated in fits and starts over the past forty years. Ideally, it serves to mediate the tension between the desire for flexibility, speed, and secrecy in pursuit of national defense and foreign policy aims, on one hand, and the desire to preserve a meaningful degree of democratic accountability and adherence to the rule of law, on the other. Of course, the legal architecture has never been perfect on this score, or even particularly close to perfection. But the convergence trend has made the current architecture considerably less suited towards these ends. First, it reduces the capacity of the existing rules to promote accountability. The existing rules attempt to promote accountability in two ways. They promote it within the executive branch by requiring explicit presidential authorization for certain activities, and they promote accountability between the executive branch and Congress by requiring notification to the legislature in a broader set of circumstances. Convergence undermines these rules by exposing (and exacerbating) the incoherence of key categorical distinctions upon which the rules depend, including the notion that there are crisp delineations separating intelligence collection, covert action, and military activity. As a result, it is possible, if not probable, that a growing set of exceptionally sensitive operations – up to and including the use of lethal force on an unacknowledged basis on the territory of an unwitting and non-consenting state – may be beyond the reach of these rules. Second, the convergence trend undermines the existing legal architecture along the rule-of-law dimension by exposing latent confusion and disagreement regarding which substantive constraints apply to military and intelligence operations. Is international law equally applicable to all such operations? Is an agency operating under color of “Title 50” at liberty to act in locations or circumstances in which the armed forces ordinarily cannot? These questions are not in fact new, but thanks to convergence they are increasingly pressing.

#### Plan averts executive covert classification – that eviscerates international cooperation and legitimacy

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If these definitions are accepted as true, the result is that it has become legally easier for the executive branch to order covert action than to order conventional armed conflict. To commit military troops for a traditional military action, the President must have a casus belli and subsequently seek jus ad bellum justification and (typically) international support. This would usually involve the political and diplomatic gyrations involved in garnering both domestic legal support from Congress and international legal support from the United Nations Security Council. Alternatively, to authorize a covert action, the President may forgo these diplomatic and political gyrations and merely issue a classified finding to conduct a covert action. While the President must report this action to Congress,34 the President may restrict disclosure to the “Gang of Eight” when “it is essential to limit access to the finding to meet extraordinary circumstances affecting vital interests of the United States ... Thus, while covert action is not without legal accountability, it is a much more direct way for the President to commit forces. Additionally, forces conducting covert action operate by stealth. By their nature, they will have much lower visibility in the public eye. This provides the Executive a lawful option to commit force while theoretically lessening the media accountability for those actions. As a result, covert action also vests an immense amount of authority in the Executive and the “Gang of Eight” to conduct operations without the accountability to their constituents typically found in a democratic society.36 Covert action also enables unilateral action. The stealthy nature of covert action means that the Executive would be discouraged from seeking international cooperation. Any international support would likely be limited to notifying host nations of the presence of troops, and those notifications, as a tactical matter, would likely be last minute and very directive in nature.& This type of unilateral action contrasts the cooperative intent for international law,38 and, in the words of one legal scholar, “(ujnilateral action- covert or overt - generates particularly high emotions, because many view it as a litmus test for one’s commitment to international law.”39 Excessive use of covert action might be deemed by some nations as a rebuke of international law or evidence of a hubristic foreign policy. The continued and constant use of this instrument when lethality is the goal raises issues of international legitimacy.

#### Policy makers circumvent accountability by classifying overt actions as covert

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While the bin Laden raid demonstrates a positive result and the operation shows a clear need to maintain an ability to conduct covert action, it is important to emphasize that covert action is not without policy hazards. The danger in blurring the line between covert action and traditional military activities is that policymakers will choose to authorize what might normally be characterized as a traditional military activity under the guise of a covert action in order to circumvent the need for accountability or international support. Applying traditional military force without transparency is not the raison d’etre for a covert capability. For a case study, one need not look further than our current military conflict in AF/PAK. Is the precision bombing campaign being conducted truly a traditional military activity or a covert action? While arguments can be made for both sides, the mission of precision bombing, especially over an extended duration, has traditionally fallen to the United States Air Force or United States Navy. The action, despite its legal authorization, is certainly overt; newspapers chronicle the airstrikes daily.«3 One must wonder, then, how the concept of “covert” is being understood on the modern battlefield.

#### Retailoring the legal architecture is key to reverse the trend

**Chesney, ’12** Charles I. Francis Professor in Law at the University of Texas School of Law (Robert Chesney, “Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate,” http://jnslp.com/wp-content/uploads/2012/01/Military-Intelligence-Convergence-and-the-Law-of-the-Title-10Title-50-Debate.pdf)//CC

The various issues collected under the heading of the “Title 10/Title 50” debate go to the heart of our still evolving national security legal architecture. That architecture aims to reconcile the need for secrecy and discretion in the pursuit of national security aims, on one hand, with the need to subject the resulting powers as much as possible to mechanisms that enhance accountability and compliance with the rule of law, on the other. The current architecture is by no means perfect. Whatever utility it does have, however, will fade if the structure fails to evolve concurrently with fundamental changes in the institutions it purports to regulate. The story of convergence set forth above is the story of just such a significant change, a salutary one involving seemingly successful adaptation to strategic and operational challenges. The question now is whether any serious steps will be taken to retailor the legal architecture accordingly.

#### This spills over to grand strategy issues

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In summary, the modern battlefield, and the adaptive enemy therein, presents legal issues in deciding between covert action and traditional military activities. As a matter of law, the President may authorize any agency to conduct a covert action via presidential finding.\*\* Alternatively, the President must justify the use of force under traditional military activities under jus ad bellum doctrines in domestic and international law. While covert action has an important function in providing policymakers a precise tool to use in the spectrum between diplomatic and military force, legal bodies must use caution to ensure the “Fifth Function” is being used properly and not merely to circumvent legal requirements or media accountability. This accountability is especially important since it is politically easier for the executive branch to authorize covert action. This Article has also explored the idea of expanding covert action with the potential for capture and prosecution under an internationally recognized due process regime. Understanding this increasingly blurred line will not be easy, but if the general and statesman are to truly understand the nature of the war upon which they are embarking,49 an expanded covert action may function as a useful policy tool within the bounds of the law. In the end, as this Article has underscored, accountability married to the legitimacy of the rule of law is the core to a coherent grand strategy.

#### That collapses hegemony

**Berger, ’12** Lt. Col. in the Army (Joseph B. Berger, 4th Quarter 2012, “Title 10, Title 50, and the Chain of Command,” JFQ 67)//CC

The Abbottabad raid illustrates the post-9/11 security environment convergence of DOD military and CIA intelligence operations.7 While dead terrorists attest to this arrangement’s efficacy, many directly challenge the legal and policy framework behind current DOD-CIA cooperation. The discourse focuses largely on distinctions between Title 10 and Title 50 and the legal basis for conducting apparently overlapping military and intelligence operations beyond the battlefields of Iraq and Afghanistan. Notwithstanding the potentially misleadingly simple labels of Title 10 and Title 50, these complex issues lack clear answers. Many argue the legacy structure ill equips the President to effectively combat the threat. But tweaking that structure carries risk. Thus, correctly classifying and structuring our actions within that framework are critical. The law of war is designed to protect our nation’s military forces when they are engaged in traditional military activities under a military chain of command; spies conducting intelligence activities under executive authority have no such protections. This distinction rests on a constitutional, statutory, treaty, and doctrinal framework underpinning the military concept of command authority. U.S. power relies on moral and legal legitimacy. Exclusive state control over the legitimate use of armed force remains viable domestically and internationally only where exercised within an accepted framework. Thus, employing DOD forces in a nontraditional manner entails significant risk. The policy implications of classification and structure are neither semantic nor inconsequential, and must be understood by senior decisionmakers; likewise, individual Servicemembers must understand the practical effects. A rigorous risk analysis should therefore inform any deviation, however permissible under domestic law.

#### Legitimacy key to global stability---prevents great power war

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

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

#### Congress key – laws on the book create authority convergence --- stronger oversight key to legitimacy

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After establishing the relevant legal authorities, Part III discusses Congressional oversight, which reveals itself as the true Title 10-Title 50 issue. It is Congress’s antiquated oversight structure and a concomitant **misunderstanding of the law** that casts a shadow of concern and purported illegitimacy over military operations that resemble activities conducted by intelligence agencies. Congress’s stovepiped view of national security operations is legally incongruous and operationally dangerous because it suggests statutory authorities are mutually exclusive and it creates concerns about interagency cooperation at exactly the time in history when our policy and legal structures should be encouraging increased interagency coordination and cooperation against interconnected national security threats. Concern over purported Title 10-Title 50 issues arises most often in the context of discussions over unconventional and cyber warfare. While most details of how these operations are conducted are not publicly available, Part IV will define unconventional warfare and cyberwarfare and generally explain their purpose, role, and conduct. These military operations are conducted in secret and in environments where public acknowledgement of the U.S. military’s involvement may raise diplomatic and national security concerns (e.g., other countries and cyberspace), which is why Congressional intelligence committees often mistakenly conclude they should have oversight of these military operations. However, when the law (and even Congress’s own legislative history) is applied to unconventional warfare and cyberwarfare in Part IV, it becomes apparent that these are military operations rather than intelligence activities so long as they remain under the command and control of a military commander and are conducted prior to or during (anticipated or actual) acknowledged military operations. Part V offers a few concluding thoughts and recommendations.

#### Reform by Congress is vital to reverse internal discord and confusion – signals legitimacy

**Wall, ’11** Professor of International Law at the US Naval War College (Andru Wall, 2011, “Demystifying the Title 10 - Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action,” <http://harvardnsj.org/wp-content/uploads/2012/01/Vol.-3_Wall1.pdf)//CC>

Congress’s failure to provide necessary interagency authorities and budget authorizations threatens our ability to prevent and wage warfare. Congress’s stubborn insistence that military and intelligence activities inhabit separate worlds casts a pall of illegitimacy over interagency support, as well as unconventional and cyber warfare. The U.S. military and intelligence agencies work together more closely than perhaps at any time in American history, yet Congressional oversight and statutory authorities sadly remain mired in an obsolete paradigm. After ten years of war, Congress still has not adopted critical recommendations made by the 9/11 Commission regarding congressional oversight of intelligence activities. Congress’s stovepiped oversight sows confusion over statutory authorities and causes Executive Branch attorneys to waste countless hours distinguishing distinct lines of authority and funding. Our military and intelligence operatives work tirelessly to coordinate, synchronize, and integrate their efforts; they deserve interagency authorities and Congressional oversight that encourages and supports such integration.

#### Absent that, discord within Congress collapses oversight and classification

**Wall, ’11** Professor of International Law at the US Naval War College (Andru Wall, 2011, “Demystifying the Title 10 - Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action,” http://harvardnsj.org/wp-content/uploads/2012/01/Vol.-3\_Wall1.pdf)//CC

The Title 10-Title 50 debate is typically invoked to express concerns that the military is taking over missions and activities “properly” within the sole domain of the intelligence agencies. While ordinary Americans in the heartland may care only that U.S. national security objectives are effectively accomplished, military and intelligence bureaucrats and their Congressional overseers remain obsessed with who actually does the mission. Yet a careful analysis of the law and related legislative history shows how the law permits much of what Congress attempts to restrict with its stovepiped approach to oversight of the military and intelligence community. A. Legal Authorities Professor Gregory McNeal, sitting on a law school panel discussing Title 10-Title 50 issues, suggested that lawyers advising special operations units may have trouble discerning whether they are operating under Title 10 or Title 50 authorities.16 McNeal elaborated: When the military goes out, there are JAGs who sit with intelligence agents or officials and advise on whether it is lawful to strike a specific target or engage in a specific operation. If a JAG is seated in a targeting cell in a special operations unit, the first question will still be whether a certain target can be attacked. However, the second question that the officer in that cell will oftentimes ask is whether he is operating under Title 10 or Title 50 authority. If it is a CIA drone, the answer may be that it is fine to hit the target. Under Title 10 the answer may be, no you cannot.17

#### Drones are key—a new, cohesive Title 60 framework is key to end procedural bifurcation and field conflicts

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There’s a lot of confusion and disagreement over how the government should manage two increasingly important techniques of waging war: drones and cyber-activities. President Barack Obama’s current counter-terrorism adviser and nominee to head the CIA, John Brennan, says the drone operations should be largely shifted from the CIA to the Pentagon. Some lawmakers want to create a special new court to review targeted killing operations. Meanwhile, Congress has repeatedly failed to agree on how to build cybersecurity domestically, and there is no consensus on what laws should control offensive cyber-operations. Let me suggest one overarching principle that could help us bring these new ways of war under better control. Congress should write a new law putting both drone operations and offensive cyber-operations under the same rules that now govern covert operations by the CIA. That law has two key features: a formal decision by the President, called a “finding,” and notification of a small group of members of Congress. That law has worked pretty well since it was first enacted in 1974. Presidents have to be persuaded that the operation is well-designed and important to carry out, and Congress is informed so that it can exercise oversight on behalf of the American people. On occasion, covert actions have been modified or cancelled in response to congressional concerns. This kind of oversight is better than what a court could do, because courts judge only issues like due process, not the strategic and political factors that routinely confront the executive and legislative branches. Right now, drone operations are conducted in a crazy bifurcated system. Those done by the CIA are regularly reviewed by the intelligence committees. Those done by the Pentagon are reportedly eventually briefed to the congressional defense committees, but there is no regular and required process as there is for the CIA operations. The situation becomes especially murky when both the CIA and the Pentagon are conducting drone operations in the same area, as in Yemen, or when the CIA and the Joint Special Operations Command work together, as in the bin Laden raid. The Pentagon operates under laws called Title 10 of the U.S. Code, while the CIA is controlled by the war powers provisions of Title 50. What we need is a “Title 60” to bridge the gaps. Otherwise, a devious executive could assign tasks to the Pentagon precisely to escape notification and oversight. Or the compartmentalization that necessarily surrounds sensitive operations could lead to conflicts in the field.

#### Committee reform creates procedural rigor for drone strikes—notification by the executive isn't enough

**Cohen, ’12** fellow at the Century Foundation (Michael A. Cohen, 24 July 2012, “The Imperial Presidency: Drone Power and Congressional Oversight,” http://www.worldpoliticsreview.com/articles/12194/the-imperial-presidency-drone-power-and-congressional-oversight)//CC

The episode is reflective of the current state of congressional oversight of the executive branch on national security issues: The executive branch stonewalls or uses legal justification to avoid oversight, and Congress does precious little to demand that its constitutional prerogatives are respected. Instead of a push and pull between the two branches of the U.S. government limiting both sides’ power, the opportunities for the expansion of executive power are becoming more pronounced -- and could get worse. To be sure, things weren’t supposed to be this way. As a presidential candidate on the campaign trail, Barack Obama talked a big game about limiting executive power and adhering more closely to congressional mandates. As president, he has moved the balance of power in a different direction. In his handling of the Libyan intervention, for instance, Obama initially refused to go to Congress to get authorization for the use of force. Later he made the credibility-stretching argument that the war in Libya did not meet the definition of “hostilities” under the War Powers Resolution, which requires the president to seek congressional authorization for the use of force within 60 days of the initiation of hostilities. While presidents have generally questioned the resolution’s constitutionality, they have also generally abided by its key provisions regarding the use of force. This was not the case in Libya. The Libya intervention is, in key regards, Obama’s most ostentatious expansion of executive power, but this disregard for congressional prerogatives has seeped into other areas as well, in particular the so-called shadow war, which includes the use of cyber attacks, drone strikes and special forces to pursue U.S. national security interests and wage the war on terror. Since taking office, the administration has significantly increased the scope of the U.S. drone war. The shift coincides with post-Sept. 11 increases in both the U.S. drone arsenal and the size of the U.S. Special Operations Command (SOCOM). Meanwhile, at the same time that he has reduced the number of U.S. boots on the ground in actual combat zones, Obama has stretched the battlefield of the war on terror. While the administration notifies congressional intelligence committees of its targeted killings of suspected terrorist leaders, it does so in private. In fact, only in recent weeks did the Obama White House publicly confirm the use of “direct action” against targets in Somalia and Yemen -- and even then in a manner that was less than forthcoming and that didn’t include reference to CIA targeted killing operations. Ironically, however, the administration stands on firmer legal ground here than it did on Libya. It has used the Authorization of Military Force (AUMF) granted in 2001 by Congress to justify nearly every aspect of these operations, including targeted killing campaigns carried out by both the military and the CIA, and the continued detention of prisoners in Guantanamo Bay and Afghanistan. As Yale Law School professor Bruce Ackerman told me, “The AUMF was a response to a real problem, namely the attacks of Sept. 11. It is now being transformed into a tool for fighting a 100-year war against terrorists.” In a sense we are witnessing a perfect storm of executive branch power-grabbing: a broad authorization of military force giving the president wide-ranging discretion to act, combined with a set of tools -- drones, special forces and cyber technology -- that allows him to do so in unprecedented ways. And since few troops are put in harm’s way, there is barely any public scrutiny. Congress has the ability to stop these excesses. On Libya, it possessed the power to turn off the financial spigot and cut off funding, and indeed, there was a tepid effort in the House of Representatives to do so. On the AUMF, Congress could simply repeal it or more realistically modify it to take into account the new battlefields in the war on terror. Finally, it could conduct greater oversight, in particular public hearings, of how the executive branch is utilizing military force. But not only has Congress not taken these steps, in deliberations over the National Defense Authorization Act earlier this year, it tried to expand the AUMF. On the use of drones and targeted killings, Congress has made little effort to demand greater information from the White House and has not held any public hearings on either of these issues. As Micah Zenko recently noted, claims “that congressional oversight of targeted killings exclusively by the intelligence committees in closed sessions is adequate” are “indefensible.” The reasons for congressional abdication are legion. Partisanship plays an important role. For example, from 2001 to 2006, Republicans largely abstained from overseeing a Republican White House’s wars in Iraq and Afghanistan. Since a Democrat became president, however, congressional oversight and scrutiny of the administration in terms of foreign policy has remained underwhelming, if not nearly as bad. Meanwhile, the White House has treated Congress dismissively and even with contempt. Historically, strong institutional prerogatives have been a check on such parochialism -- think William Fulbright and the Senate Foreign Relations Committee’s apostasy on Vietnam or even the bipartisan Iran-Contra hearings in the 1980s. Today, however, few in Congress have shown much interest in upholding even its most basic foreign policy responsibilities. Quite simply, there are no Frank Churches or even Russ Feingolds in Congress anymore. But there are also serious institutional obstacles to enhanced congressional scrutiny. Writing in the Harvard National Security Journal (.pdf), Andru Wall argues that much of the problem with congressional oversight can be traced to an antiquated understanding of how national security operations are actually carried out. At a time of greater interagency cooperation and coordination between the military and intelligence agencies, Congress still sees these functions as somehow discrete. As Greg Miller noted in the Washington Post in December, “Within 24 hours of every CIA drone strike, a classified fax machine lights up in the secure spaces of the Senate Intelligence Committee, spitting out a report on the location, target and result. The outdated procedure reflects the agency’s effort to comply with Title 50 requirements that Congress be provided with timely, written notification of covert action overseas. There is no comparable requirement in Title 10, and the Senate Armed Services Committee can go days before learning the details of JSOC strikes. Neither panel is in a position to compare the CIA and JSOC kill lists or even arrive at a comprehensive understanding of the rules by which each is assembled.” In addition, oversight responsibilities are often bifurcated by separate authorization and appropriation processes. The 9/11 Commission recommended ending this dysfunctional arrangement among intelligence committees and creating a single joint intelligence committee with both authorizing and appropriating responsibilities. Nearly 10 years later, it still hasn’t happened. If history is any guide, so long as Congress fails to hold the president’s feet to the fire, the executive branch will take on more responsibilities that are outside the purview of Congress’ prying eyes. Ackerman called such “legislative irresponsibility and executive unilateralism” a self-perpetuating phenomenon that is a “recurrent dynamic in presidential systems.” With the lack of any strong institutional pride in Congress, an executive branch that for obvious reasons prefers less oversight and the advent of new tools for fighting America’s wars, this situation is likely to get worse before it gets better, if it ever does.

#### It’s the only way to end the Title 10-50 debate

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Congress could end the Title 10-Title 50 debate by simply reforming its oversight of military and intelligence activities and align oversight with the statutory authorities. Rather than focus on what the activity in question looks like (what is being done), Congress should simply ask who is funding the activity and who is exercising direction and control; oversight should be aligned in the House and Senate and should correspond to funding, direction and control. Congress should adopt the recommendations of the 9/11 Commission—align congressional oversight with statutory authorities and reform its bifurcated intelligence authorization and appropriations functions—and thereby eliminate most real and perceived Title 10-Title 50 issues. With the crux of the Title 10-Title 50 debate exposed as dysfunctional congressional oversight, this article now turns to explaining why some military and intelligence activities look alike, yet remain distinguishable.

#### More impacts! Decline of US leadership causes global conflict

Zhang and Shi 11 Yuhan Zhang is a researcher at the Carnegie Endowment for International Peace, Washington, D.C.; Lin Shi is from Columbia University. She also serves as an independent consultant for the Eurasia Group and a consultant for the World Bank in Washington, D.C., 1/22, “America’s decline: A harbinger of conflict and rivalry”, http://www.eastasiaforum.org/2011/01/22/americas-decline-a-harbinger-of-conflict-and-rivalry/

This does not necessarily mean that the US is in systemic decline, but it encompasses a trend that appears to be negative and perhaps alarming. Although the US still possesses incomparable military prowess and its economy remains the world’s largest, the once seemingly indomitable chasm that separated America from anyone else is narrowing. Thus, the global distribution of power is shifting, and the inevitable result will be a world that is less peaceful, liberal and prosperous, burdened by a dearth of effective conflict regulation. Over the past two decades, no other state has had the ability to seriously challenge the US military. Under these circumstances, motivated by both opportunity and fear, many actors have bandwagoned with US hegemony and accepted a subordinate role. Canada, most of Western Europe, India, Japan, South Korea, Australia, Singapore and the Philippines have all joined the US, creating a status quo that has tended to mute great power conflicts. However, as the hegemony that drew these powers together withers, so will the pulling power behind the US alliance. The result will be an international order where power is more diffuse, American interests and influence can be more readily challenged, and conflicts or wars may be harder to avoid. As history attests, power decline and redistribution result in military confrontation. For example, in the late 19th century America’s emergence as a regional power saw it launch its first overseas war of conquest towards Spain. By the turn of the 20th century, accompanying the increase in US power and waning of British power, the American Navy had begun to challenge the notion that Britain ‘rules the waves.’ Such a notion would eventually see the US attain the status of sole guardians of the Western Hemisphere’s security to become the order-creating Leviathan shaping the international system with democracy and rule of law. Defining this US-centred system are three key characteristics: enforcement of property rights, constraints on the actions of powerful individuals and groups and some degree of equal opportunities for broad segments of society. As a result of such political stability, free markets, liberal trade and flexible financial mechanisms have appeared. And, with this, many countries have sought opportunities to enter this system, proliferating stable and cooperative relations. However, what will happen to these advances as America’s influence declines? Given that America’s authority, although sullied at times, has benefited people across much of Latin America, Central and Eastern Europe, the Balkans, as well as parts of Africa and, quite extensively, Asia, the answer to this question could affect global society in a profoundly detrimental way. Public imagination and academia have anticipated that a post-hegemonic world would return to the problems of the 1930s: regional blocs, trade conflicts and strategic rivalry. Furthermore, multilateral institutions such as the IMF, the World Bank or the WTO might give way to regional organisations. For example, Europe and East Asia would each step forward to fill the vacuum left by Washington’s withering leadership to pursue their own visions of regional political and economic orders. Free markets would become more politicised — and, well, less free — and major powers would compete for supremacy. Additionally, such power plays have historically possessed a zero-sum element. In the late 1960s and 1970s, US economic power declined relative to the rise of the Japanese and Western European economies, with the US dollar also becoming less attractive. And, as American power eroded, so did international regimes (such as the Bretton Woods System in 1973). A world without American hegemony is one where great power wars re-emerge, the liberal international system is supplanted by an authoritarian one, and trade protectionism devolves into restrictive, anti-globalisation barriers. This, at least, is one possibility we can forecast in a future that will inevitably be devoid of unrivalled US primacy.

#### And it’s key to manage every major transnational threat

Fareed ****Zakaria 8****, Ph.D. in Government from Harvard University, & editor of Foreign Affairs magazine & Newsweek Internationa & professor of IR and political philosophy at Harvard and Columbia University, “Wanted: A New Grand Strategy”, 12/8**/**08**,** <http://www.newsweek.com/id/171249>

The "Global Trends" report identifies several worrying aspects of the new international order—competition for resources like oil, food, commodities and water; climate change; continued terrorist threats; and demographic shifts. But the most significant point it makes is that these changes are taking place at every level and at great speed in the global system. Nations with differing political and economic systems are flourishing. Subnational groups, with varied and contradictory agendas, are on the rise. Technology is increasing the pace of change. Such ferment is usually a recipe for instability. Sudden shifts can trigger sudden actions—terrorist attacks, secessionist outbreaks, nuclear brinksmanship.

The likelihood of instability might increase because of the economic crisis. Despite some booms and busts—as well as 9/11 and the wars in Afghanistan and Iraq—the world has been living through an economic golden age. Global growth has been stronger for the past five years than in any comparable period for almost five decades. Average per capita income has risen faster than in any such period in recorded history. But that era is over. The next five years are likely to be marked by slow growth, perhaps even stagnation and retreat, in certain important areas. What will be the political effects of this slowdown? Historically, economic turmoil has been accompanied by social unrest, nationalism and protectionism. We might avoid these dangers, but it is worth being acutely aware of them.

At the broadest level, the objective of the United States should be to stabilize the current global order and to create mechanisms through which change—the rise of new powers, economic turmoil, the challenge of subnational groups like Al Qaeda—can be accommodated without overturning the international order. Why? The world as it is organized today powerfully serves America's interests and ideals. The greater the openness of the global system, the better the prospects for trade, commerce, contact, pluralism and liberty.

Any strategy that is likely to succeed in today's world will be one that has the active support and participation of many countries. Consider the financial crisis, which several Western governments initially tried to handle on their own. They seemed to forget about globalization—and nothing is more globalized than capital. Belatedly recognizing this, leaders held the G20 meeting in Washington. This was a good first step (though just a first step). Without a coordinated approach, efforts to patch up the system will fail.

The same applies not just to "soft" problems of the future—pandemics, climate change—but to current security challenges as well. The problem of multilateralism in Afghanistan—a place where everyone claims to be united in the struggle—is a sad test case for the future. Thirty-seven nations, operating with the blessing of the United Nations and attacking an organization that has brutally killed civilians in dozens of countries, are still unable to succeed. Why? There are many reasons, but it does not help that few countries involved—from our European allies to Pakistan—are genuinely willing to put aside their narrow parochial interests for a broader common one. Terrorism in South Asia generally requires effective multinational cooperation. Business as usual will produce terrorism that will become usual.

National rivalries, some will say, are in the nature of international politics. But that's no longer good enough. Without better and more sustained cooperation, it is difficult to see how we will solve most of the major problems of the 21st century. The real crisis we face is not one of capitalism or American decline, but of globalization itself. As the problems spill over borders, the demand for common action has gone up. But the institutions and mechanisms to make it happen are in decline. The United Nations, NATO and the European Union are all functioning less effectively than they should be. I hold no brief for any specific institution. The United Nations, especially the Security Council, is flawed and dysfunctional. But we need someinstitutions for global problem-solving, some mechanisms to coordinate policy. Unless we can find ways to achieve this, we should expect more crises and less success at solving them.

#### Resource scarcity and environmental conflicts will escalate globally.

**De Souza 11** Mike, National affairs reporter; BA from Concordia University, “Energy-starved future looms, military warns” Postmedia News 4/18 http://www.vancouversun.com/technology/Energy+starved+future+looms+military+warns/4634442/story.html

The planet is running out of oil and heading toward a future that could trap Canada in a violent spiral of decline in the economy and the environment, a special research unit within the Canadian military is predicting. This "global quagmire" is one of four possible future scenarios advanced by the six members of the team who are developing a plan for the army of tomorrow based on existing scientific research and analysis. In a best-case scenario, they predict that Canada could be at the forefront of a prosperous green economy, in which clean energy and environmental protection are priorities and living standards improve around the world. Two other scenarios fall in between, but all four alternatives conclude that energy security and global environmental change are the most serious and unpredictable factors that could radically alter society as well as the role of Canada's army. "It all depends on what kind of steps are taken today that could lead to various futures," Peter Gizewski, a strategic analyst on the team, told Postmedia News. Members of the team said that climate change in particular could have a wide range of consequences, as well as oil shortages in a world with no alternative sources of energy. "I don't think anybody would claim that we're all doomed in the sense that we're all going to face the same level," said Gizewski. "But there are parts of the world in some areas where armed conflict could occur that are particularly vulnerable to these things." The team has also noted that the world is now consuming oil faster than it's discovering it. "Globally, we find more (oil) all the time, but we haven't actually found as much as we've used in a given year since 1985," said Maj. John Sheahan, another member of the research team." Sheahan noted that the price of a full tank of gasoline, even at $100, is a bargain when compared to estimates in some research that it would be equivalent to about 25,000 people each doing one hour of work. The global quagmire scenario predicts a world ravaged by climate change and environmental degradation in which "markets are highly unstable" and there are high risks of widespread conflicts involving ownership and access to oil, water, food and other resources. "Indeed, the danger of resource wars, both between and within states is acute," said a technical paper produced by the group in December. "Much of the violence occurs in the developing world, as dictators, organized crime groups and revolutionary movements fight for control of increasingly desperate societies. Yet developed countries are by no means immune from strife."

#### Proliferation risks extinction; cooperation solves the impact even if can’t prevent proliferation itself

**Dyer, 04** – worked as a freelance journalist, columnist, broadcaster and lecturer on international affairs for more than 20 years, but he was originally trained as an historian. Born in Newfoundland, he received degrees from Canadian, American and British universities, finishing with a Ph.D. in Military and Middle Eastern History from the University of London. [Gwynne, "The end of war," Toronto Star, 12/30, l/n]

War is deeply embedded in our history and our culture, probably since before we were even fully human, but weaning ourselves away from it should not be a bigger mountain to climb than some of the other changes we have already made in the way we live, given the right incentives. And we have certainly been given the right incentives: The holiday from history that we have enjoyed since the early '90s may be drawing to an end, and another great-power war, fought next time with nuclear weapons, may be lurking in our future..

The "firebreak" against nuclear weapons use that we began building after Hiroshima and Nagasaki has held for well over half a century now. But the proliferation of nuclear weapons to new powers is a major challenge to the stability of the system. So are the coming crises, mostly environmental in origin, which will hit some countries much harder than others, and may drive some to desperation.

Add in the huge impending shifts in the great-power system as China and India grow to rival the United States in GDP over the next 30 or 40 years and it will be hard to keep things from spinning out of control. With good luck and good management, we may be able to ride out the next half-century without the first-magnitude catastrophe of a global nuclear war, but the potential certainly exists for a major die-back of human population.

We cannot command the good luck, but good management is something we can choose to provide. It depends, above all, on preserving and extending the multilateral system that we have been building since the end of World War II. The rising powers must be absorbed into a system that emphasizes co-operation and makes room for them, rather than one that deals in confrontation and raw military power. If they are obliged to play the traditional great-power game of winners and losers, then history will repeat itself and everybody loses.

Our hopes for mitigating the severity of the coming environmental crises also depend on early and concerted global action of a sort that can only happen in a basically co-operative international system.

When the great powers are locked into a military confrontation, there is simply not enough spare attention, let alone enough trust, to make deals on those issues, so the highest priority at the moment is to keep the multilateral approach alive and avoid a drift back into alliance systems and arms races. And there is no point in dreaming that we can leap straight into some never-land of universal brotherhood; we will have to confront these challenges and solve the problem of war within the context of the existing state system.

#### Diseases end civilization

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

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

### Plan

#### The United States federal government should implement “Title 60” statutory restrictons on the targeted killing authority of the President of the United States.

## 2AC

### at no norms

#### Global summit coming now

Butigan, 13 [May 23rd, Ken Butigan is director of Pace e Bene, a nonprofit organization fostering nonviolent change through education, community and action. He also teaches peace studies at DePaul University and Loyola University in Chicago.

“Envisioning an international treaty banning drones”, <http://wagingnonviolence.org/feature/envisioning-an-international-treaty-banning-drones/>]

At the World Social Forum in Tunisia that took place this past March, an anti-drones workshop attended by participants from 15 nations decided to form a global anti-drones network. There is also talk about a global summit on **anti-drones organizing** in Britain at the end of November, where there is an increasingly vigorous movement led by the Drones Campaign Network and others. In the United States, this organizing is being advanced by Code Pink, Drones Watch, Know Drones, and the Network to Stop Drone Surveillance and Warfare, which helped sponsor a recent convergence in Syracuse, N.Y., and nationwide nonviolent actions against drones this past April. When I was the national coordinator of an organization working to end the U.S. wars in Central America in the late 1980s, I got an impassioned letter from an activist in Louisiana arguing for a campaign focused on stopping the production of anti-personnel landmines being made in her state. The missive detailed the worldwide destruction these explosive devices were wreaking and urged that a concerted effort be launched to make them a thing of the past. While we lent some support to this cry for help, it was not until 1991 that another Central America peace activist, Jody Williams, activated a bold and comprehensive plan to do something about landmines. Hired by the Vietnam Veterans of America Foundation to coordinate a new effort to ban the devices worldwide, Williams worked without an office or staff to stitch together a global movement that led to the promulgation of the Mine Ban Treaty in 1997, **which has now been signed by 161 nations**. Some of the globe’s heavy hitters have refused to sign — including the United States, China and Russia — but that’s why Williams and the effort she co-founded, The International Campaign to Ban Landmines, keep at it. Even without universal compliance the treaty has made a difference. As the ICBL website reports, parties to the Mine Ban Treaty “must not use, develop, produce, acquire, stockpile, retain or transfer antipersonnel mines… Only a handful of states (not party to the treaty) and non-state armed groups continue to use antipersonnel landmines… Trade has come to a virtual halt.” The Mine Ban Treaty is only one of numerous international agreements that have been steadily erecting the global armature of peace, justice and sustainability. Though we have far to go (as I am reminded by my students when we study the Universal Declaration of Human Rights, one of the greatest documents of this kind, whose 30 articles are violated daily), these initiatives commit states to steer clear of behavior that a global consensus has repudiated. Sometimes signatories ignore their commitments — Article VI of the 1970 Nuclear Nonproliferation Treaty, which obligates nations possessing nuclear weapons to achieve nuclear disarmament, comes to mind. But sometimes they stand by them. The Comprehensive Nuclear Test Ban Treaty, for example, has been signed by 159 nations since 1996 who have abided by it, including the United States, which exploded on average one nuclear bomb in the Nevada desert every week and a half for 40 years. Though the CTBT has yet to go fully into force (and though the U.S. Senate refuses to ratify it), most of the world operates as if this is the way we will be now. In the end, that’s the ultimate power of international treaties. With few substantial options available to enforce them, international covenants rely on naming — and making durably plausible — a set of assumptions about how we will act and not act. The longer they exist, the stronger they resemble reality: as if can, at times, become is. Treaties matter. They establish universal obligations. They signal the critical importance of the issue at hand. And they help build and reinforce a global constituency for yet another plank in the long-term construction of a worldwide culture of peace with justice.

#### Prior guidelines key to successful international negotiations

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/>]

It is easy to think about drone warfare as a uniquely American phenomenon, but that is far from the truth. According to CNN, up to 50 nations currently have or are developing Unmanned Aerial Vehicles, in addition to a number of non-state actors such as Hezbollah. As the U.N. Charter already outlaws “arbitrary killings,” not to mention civilian ones, drone strikes constitute a severe threat to the integrity of international law. It is the responsibility of the United Nations, which has a unique ability to enact a system of international accountability, to curb the use of drones. While it may seem an unenviable task to convince the world’s most powerful nation to disarm itself of a crucial weapon, it should be no more difficult than convincing the United States to sign nuclear non-proliferation treaties (1968) or chemical weapons treaty (1997), especially if other nations continue to expand their own rival programs. 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.

#### 1AC Stevenson says field conflicts – they turn the disad and cause extinction – every hotspot and all heg

**Lamb and Marks 10** (Interagency Essay Col. Arthur D. Simons Center Fort Leavenworth, Kansas No. 11-02 May 2011 Expanding Chief of Mission Authority to Produce Unity of Effort by Christopher Lamb and Edward Marks The paper is a condensed version of the original published by National Defense University Press as Strategic Perspectives for the Institute for National Strategic Studies, December, 2010.)

An ambassador’s relationship with the CIA is complicated by the Agency’s concern for protecting what it calls “sources and methods,” the disclosure of which it often claims lies outside the responsibility to the chief of mission. With DoD, the relationship is complicated by the separate and somewhat overlapping authority of the regional geographic combatant commanders to control U.S. forces in the field. Conflicts between the DoD and ambassadors are nothing new, but urgent counterterrorism objectives have exacerbated the problem as has the recent dramatic expansion of DoD responsibilities in areas such as post-conflict reconstruction. Given the mixed record, there has been much commentary over the years on the degree to which the combined chief of mission and country team model has actually been successful in managing interagency coordination.25 Recently, the Special Inspector General for Iraqi Reconstruction 6 InterAgency Essay 11-02, May 2011 commented in his final report that “agency personnel always report to their department heads in Washington” which will “inevitably exert a countervailing force on interagency coordination.”26 In short, while many assert that the chief of mission and country team model works well most of the time in most embassies, this is not always the case.27 Expanding the Chief of Mission Authority The first step in making chief of mission authority more useful to Presidents would be legislation providing for similar type authority to be delegated to specified executive branch officials. Situations that might call for this authority fall into three categories: • Crises (political or natural) that require an expeditionary effort by the U.S. government (e.g., tsunami, earthquake, genocide, UN peacekeeping operation, or an Iraq- or Afghanistan-like crisis). • A regional problem of sufficient import to require a special empowered executive (e.g., the Israeli-Palestine issue, Afghanistan-Pakistan strategy, or North Korean nuclear policy). • Policy management and implementation requiring regional coordination below the global and above bi-lateral level (e.g., geographic regional affairs; ad hoc regional affairs, such as the terrorist problem in the Horn of Africa; and piracy). Many crises in today’s world, especially natural catastrophes like the Asian tsunami or the Haitian earthquake, require the mobilization and deployment of a range of U.S. government capabilities (air and sea transport, medical assistance, emergency supplies, and reconstruction assistance) often in coordination with international organizations and other governments. Although the U.S. government has become quite skilled at responding to natural crises, as in the Asian tsunami, it is often a close-run affair with problems arising as the first needs are met. Haiti is a good example of that, where the immediate emergency needs were followed by a complicated reconstruction challenge that is still unresolved.

### 2AC DA – Terror

#### No scenario for nuclear terror---consensus of experts

Matt Fay 13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

#### No bio threat—empirics and science

Dove 12 [Alan Dove, PhD in Microbiology, science journalist and former Adjunct Professor at New York University, “Who’s Afraid of the Big, Bad Bioterrorist?” Jan 24 2012, http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/]

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so this release over the world’s largest city really represented a worst-case scenario.¶ Nobody got sick or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

#### TKs cause more terrorism---Hydra effect and local backlash

Gabriella Blum 10, Assistant Professor of Law, Harvard Law School, and Philip Heymann, the James Barr Professor of Law, Harvard Law School, June 27, 2010, “Law and Policy of Targeted Killing,” Harvard National Security Journal, http://harvardnsj.org/wp-content/uploads/2010/06/Vol-1\_Blum-Heymann\_Final.pdf

An immediate consequence of eliminating leaders of terrorist organizations will sometimes be what may be called the Hydra effect, the rise of more—and more resolute—leaders to replace them. The decapitating of the organization may also invite retaliation by the other members and followers of the organization. Thus, when Israel assassinated Abbas Mussawi, Hezbollah‘s leader in Lebanon, in 1992, a more charismatic and successful leader, Hassan Nassrallah, succeeded Mussawi. The armed group then avenged the assassination of its former leader in two separate attacks, blowing up Israeli and Jewish targets in Buenos Aires, killing over a hundred people and injuring hundreds more.¶ Targeted killing may also interfere with important gathering of critical intelligence. The threat of being targeted will drive current leaders into hiding, making the monitoring of their movements and activities by the counterterrorist forces more difficult. Moreover, if these leaders are found and killed, instead of captured, the counterterrorism forces lose the ability to interrogate them to obtain potentially valuable information about plans, capabilities, or organizational structure.¶ The political message flowing from the use of targeted killings may be harmful to the attacking country’s interest, as it emphasizes the disparity in power between the parties and reinforces popular support for the terrorists, who are seen as a David fighting Goliath. Moreover, by resorting to military force rather than to law enforcement, targeted killings might strengthen the sense of legitimacy of terrorist operations, which are sometimes viewed as the only viable option for the weak to fight against a powerful empire. If collateral damage to civilians accompanies targeted killings, this, too, may bolster support for what seems like the just cause of the terrorists, at the same time as it weakens domestic support for fighting the terrorists.¶ When targeted killing operations are conducted on foreign territory, they run the risk of heightening international tensions between the targeting government and the government in whose territory the operation is conducted. Israel’s relations with Jordan became dangerously strained following the failed attempt in September 1997 in Jordan to assassinate Khaled Mashaal, the leader of Hamas. Indeed, international relations may suffer even where the local government acquiesces in the operation, but the operation fails or harms innocent civilians, bringing the local government under political attack from domestic constituencies (recall the failed attack in Pakistan on Al-Zawahiri that left eighteen civilians dead).¶ Even if there is no collateral damage, targeted killings in another country’s territory threatens to draw criticism from local domestic constituencies against the government, which either acquiesced or was too weak to stop the operation in its territory. Such is the case now in both Pakistan and Yemen, where opposition forces criticize the governments for permitting American armed intervention in their countries.¶ The aggression of targeted killings also runs the risk of spiraling hatred and violence, numbing both sides to the effects of killing and thus continuing the cycle of violence. Each attack invites revenge, each revenge invites further retaliation. Innocent civilians suffer whether they are the intended target of attack or its unintentional collateral consequences.¶ Last but not least, exceptional measures tend to exceed their logic. As in the case of extraordinary detention or interrogation methods, there is a danger of over-using targeted killings, both within and outside of the war on terrorism. A particular danger in this context arises as the killing of a terrorist often proves a simpler operation than protracted legal battles over detention, trial, extradition, and release.

#### Prefer our studies

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

As this discussion illustrates, each of the most common claims for the effectiveness of drones is based on shaky empirical evidence, questionable assumptions and logical fallacies. Several of them conflate arguments about efficiency—that is, the relative ratio of inputs (measured in dollars or risk to US personnel) to outputs (measured in killed terrorists) with arguments about effectiveness. Drones are only ‘effective’ if they contribute to achieving US strategic goals in a region, a fact which is often lost in analyses that point only to body counts as a measure of their worthiness. More generally, arguments in favour of drones tend to present only one side of the ledger, measuring the losses for groups like Al-Qaeda and the Taliban without considering how many new recruits they gain as a result of the escalation of drone strikes. They ignore the fact that drones have replaced Guantánamo Bay as the number one recruiting tool for Al-Qaeda today.72 The gruesome mathematics of assessing drone strikes, especially when measured only in the dead bodies of those associated with terrorist movements, ignores the impact that drones are having on how the US is perceived among the populations of these states. Drone warfare may be considered ‘effective’ only if one operates with an attenuated notion of effectiveness that focuses on short-term tactical successes— that is, dead terrorists who might some day have posed a threat to the United States—while ignoring or underplaying long-term strategic costs.

#### Widespread drone usage kills Pakistan

**Imtiaz 12** [Huma, The Express Tribune, with the International Herald Tribune, “Drone program is counterproductive for Pakistan’s goals: Rehman,” July 10, 2012, <http://tribune.com.pk/story/406195/concerns-over-drone-strikes-cannot-be-brushed-aside-sherry-rehman>]

In an interview with CNN’s Christiane Amanpour, Ambassador Rehman said that the drone program “radicalises foot soldiers, tribes and entire villages in our region. And what we see, really, is that increasingly Pakistan is feared as a predatory footprint.” Pakistan has said the drone strikes are counter-productive and the Parliament had even voted calling for an end to the unilateral strikes as a pre-condition to resuming the Nato supply routes through Pakistan. In response to a question over whether the apology over the Salala incident meant that Pakistan had allowed the drone program to continue, Rehman denied the assertion, and said that the apology over the Salala incident has “opened the space for an opportunity where we can have constructive conversations that might be to the satisfaction of both sides. Right now, we have given no go-ahead at all.” She added that their concerns over the drone strikes could not be brushed aside. In related news, at least 17 people were reported to have been killed in North Waziristan in a ‘triple strike’ a few days after the apology over the Salala incident was offered by Secretary of State Hillary Clinton. Ambassador Rehman said that the drone program tests the relationship between Pakistan and the US at every juncture. “We honestly feel that there are better ways now of eliminating al Qaeda, which has been done with our help. And we have been doing that consistently. We’re the heavy lifters in this relationship.” When asked about whether Pakistan accepted the accounting of how the Obama administration identified militants, Rehman said it was worrisome, “because this leads to what you call signature strikes, if I’m not mistaken, where a certain level of suspected activity generates or motivates the trigger for — I really don’t know what motivates the trigger for X level or Y level of drone strikes.” In response to a question about the long-awaited apology over the Salala incident, Rehman said that Pakistan was seeking the apology or the word “sorry”. “There were occasions when I think that it was almost on the table. And there were occasions when it looked like it’s off the table. She added that while there was pressure on Pakistan, she did not think they were applied or planned by the administration. “I think that what did really happen was it perhaps may be the politics of election year in Washington playing itself out.” She added that there also needs to be less “tough talk” in public, and said there was a trust deficit between both countries that needed to be worked on.

#### That’s key to Indo-Pak dialogue and securing Pakistan’s nuclear arsenal

**Stanford 2012** [Living Under Drones: Strategic Considerations, Stanford International Human Rights & Conflict Resolution Clinic, <http://www.livingunderdrones.org/report-strategy/>]

Dennis Blair, former Director of National Intelligence, described how unilateral American drone attacks in Pakistan are eroding US “influence and damaging our ability to work with Pakistan to achieve other important security objectives like eliminating Taliban sanctuaries, encouraging Indian-Pakistani dialogue, and making Pakistan’s nuclear arsenal more secure.”[73] Cameron Munter, who announced his early resignation as US Ambassador to Pakistan in May 2012,[74] reportedly revealed to colleagues that he “didn’t realize his main job was to kill people.”[75] In previous interviews, he criticized the US use of drones, arguing that the attacks need to be more “judicious.”[76] Although Secretary of State Hilary Clinton strongly supports drone strikes, she reportedly also has “complained to colleagues about the drones-only approach at Situation Room meetings.”[77] The New York Times reported in May 2012, “some officials felt the urgency of counterterrorism strikes was crowding out consideration of a broader strategy against radicalization.”[78]

#### The Pakistani government is at risk of collapse due to drone strikes

Boyle 13 (Michael, Assistant professor of political science at La Salle University, lectured at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, Scotland, adviser on Obama's counterterrorism expert group in 07-08, The costs and consequences of drone warfare, International Affairs, Volume 89 Issue 1, January 15th 2013, http://onlinelibrary.wiley.com/doi/10.1111/1468-2346.12002/pdf, pages 1-29)

The extent to which the United States has assumed the role of a direct combatant and marginalized the Pakistani government through drone strikes has systematically undermined the claim that the central government in Islamabad could be a credible competitor for the loyalties of the tribal population. Second, drone strikes have also multiplied the ranks of the enemies of the Pakistani government and deepened its growing sense of crisis.

#### Disregard Pitt—no quals, rabid partisan

**PW, 3** (Publishers Weekly, http://www.amazon.com/Greatest-Sedition-Silence-Years-America/dp/0745320104)

Pitt, coauthor of War on Iraq: What Team Bush Doesn't Want You to Know, is an angry leftist. He is angry with the president and his administration for dismantling the Bill of Rights, distorting our national purpose and placing environmental policy, tax policy and our military power in the hands of corporate oil interests. He is angry with the media for ineptly reporting on important policy issues while endlessly chasing Gary Condit. He is angry at the Supreme Court for giving Bush the presidency. And he is angry with the American public because they "have not been minding the store." It is unfortunate that many of Pitt's speculations about the Bush administration are too far off-center and inflammatory for the majority of even those who oppose the president. His report of the death of democracy in America ("The American Experiment may well be finished") will strike many as premature; his statement that "[p]atriotic Americans fear to speak out against the government" is patently untrue, given the size of recent antiwar demonstrations. Repeatedly, such flights undercut Pitt's more salient complaints. And his impassioned suggestions to the left (e.g., "end tax giveaways to corporations and the rich") break no new ground.

### 2AC DA – Flex

#### Restrictions inevitable---the aff prevents haphazard ones which are worse

Benjamin Wittes 9, senior fellow and research director in public law at the Brookings Institution, is the author of Law and the Long War: The Future of Justice in the Age of Terror and is also a member of the Hoover Institution's Task Force on National Security and Law, “Legislating the War on Terror: An Agenda for Reform”, November 3, Book, p. 17

A new administration now confronts the same hard problems that plagued its ideologically opposite predecessor, and its very efforts to turn the page on the past make acute the problems of institutionalization. For while the new administration can promise to close the detention facility at Guantanamo Bay and can talk about its desire to prosecute suspects criminally, for example, it cannot so easily forswear noncriminal detention. While it can eschew the term "global war on terror," it cannot forswear those uses of force—Predator strikes, for example—that law enforcement powers would never countenance. Nor is it hastening to give back the surveillance powers that Congress finally gave the Bush administration. In other words, its very efforts to avoid the Bush administrations vocabulary have only emphasized the conflicts hybrid nature—indeed- emphasized that the United States is building something new here, not merely applying something old.¶ That point should not provoke controversy. The evidence that the United States is fumbling toward the creation of hybrid institutions to handle terrorism cases is everywhere around us. U.S. law, for example, now contemplates extensive- probing judicial review of detentions under the laws of war—a naked marriage of criminal justice and wartime traditions. It also contemplates warrantless wiretapping with judicial oversight of surveillance targeting procedures—thereby mingling the traditional judicial role in reviewing domestic surveillance with the vacuum cleaner-type acquisition of intelligence typical of overseas intelligence gathering. Slowly but surely, through an unpredictable combination of litigation, legislation, and evolutionary developments within executive branch policy, the nation is creating novel institutional arrangements to authorize and regulate the war on terror. The real question is not whether institutionalization will take place but whether it will take place deliberately or haphazardly, whether the United States will create through legislation the institutions with which it wishes to govern itself or whether it will allow an endless sequence of common law adjudications to shape them.¶ The authors of the chapters in this book disagree about a great many things. They span a considerable swath of the U.S. political spectrum, and they would no doubt object to some of one another's policy prescriptions. Indeed, some of the proposals are arguably inconsistent with one another, and it will be the very rare reader who reads this entire volume and wishes to see all of its ideas implemented in legislation. What binds these authors together is not the programmatic aspects of their policy prescriptions but the belief in the value of legislative action to help shape the contours of the continuing U.S. confrontation with terrorism. That is, the authors all believe that Congress has a significant role to play in the process of institutionalization—and they have all attempted to describe that role with reference to one of the policy areas over which Americans have sparred these past several years and will likely continue sparring over the next several years.

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

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

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

[\*332]

**Specifically true for drones**

**Cole 13** David, The Nation's legal affairs correspondent, is the author of *The Torture Memos: Rationalizing the Unthinkable*, "What's Wrong With Obama's Drone Policy", February 13, www.thenation.com/article/172898/whats-wrong-obamas-drone-policy#

The power to kill by remote control anywhere in the world should not unilaterally reside in the executive branch. The white paper dismissively claims that courts cannot second-guess the executive’s “predictive” judgments about national security. But courts already do this. The Foreign Intelligence Surveillance Court, composed of federal judges, reviews requests for search and wiretap warrants based on national security concerns. Those warrants by definition rest on predictive judgments about whether evidence relating to national security will be found. If we demand that a court authorize even a temporary wiretap, **shouldn’t we also demand that a court review a decision to end a human life?** Some have questioned the utility of a necessarily one-sided and secret warrant process, but warrants have served us well for centuries by interposing an independent decision-maker between the executive and the citizenry. Due process may require advance notice to the target in some instances and/or judicial review after the fact, as the Israeli Supreme Court requires. **But we can’t leave this awesome power exclusively in executive hands**.¶ Some object that since ordinary uses of armed force in wartime do not require this sort of public accountability, judicial review and due process, those requirements ought not to apply to drone strikes. During World War II, FDR did not have to issue criteria for a kill list, involve courts or publish his officers’ specific rules of engagement. **But the technology of drones, coupled with the murky scope of this “war,” make those features essential now**. Because they permit the killing of people without putting boots on the ground or risking American lives, and because they are, at least in theory, surgically precise, drones reduce the considerable practical disincentives to lethal force.¶ The ambiguous definitions of the scope of this war and even of the enemy risk establishing a **precedent that drones can be used against anyone** a government considers even a long-term threat. The administration claims still to be operating under the 2001 Authorization for Use of Military Force (AUMF), but that sanctioned military force only against those who attacked us on 9/11 and those who harbored them. In Yemen and Somalia, we have killed members of Al Qaeda in the Arabian Peninsula and Al Shabaab. Neither organization even existed in 2001, and Al Shabaab seems principally focused on domestic Somali grievances. Does the AUMF authorize the government to kill by remote control any group that says it is inspired by Al Qaeda? If so, has President Obama resurrected the “global war on terror” that he previously rejected?¶ Much like transnational wars against nonstate actors, drones challenge traditional legal and ethical categories. The root of the problem is that they make it too easy to kill**. We need not and cannot forswear their use**. We should not confuse them with assassinations and torture. **But we must insist on clear restrictions, transparent practices, independent oversight and accountability—in short, the rule of law**. In his only major presidential speech on national security, in May 2009, President Obama promised that he would fight terror within the confines of our values and the rule of law. What happened to that promise?

#### No impact---flex is self-defeating

Tom Engelhardt 5, created and runs the Tomdispatch.com website, a project of The Nation Institute where he is a Fellow. Each spring he is a Teaching Fellow at the Graduate School of Journalism at the University of California, Berkeley. <http://www.tomdispatch.com/post/32668/>

Here it is worth reviewing the positions Yoo advocated while in the executive branch and since, and their consequences in the "war on terror." At every turn, Yoo has sought to exploit the "flexibility" he finds in the Constitution to advocate an approach to the "war on terror" in which legal limits are either interpreted away or rejected outright. Just two weeks after the September 11 attacks, Yoo sent an extensive memo to Tim Flanigan, deputy White House counsel, arguing that the President had unilateral authority to use military force not only against the terrorists responsible for the September 11 attacks but against terrorists anywhere on the globe, with or without congressional authorization.¶ Yoo followed that opinion with a series of memos in January 2002 maintaining, against the strong objections of the State Department, that the Geneva Conventions should not be applied to any detainees captured in the conflict in Afghanistan. Yoo argued that the president could unilaterally suspend the conventions; that al-Qaeda was not party to the treaty; that Afghanistan was a "failed state" and therefore the president could ignore the fact that it had signed the conventions; and that the Taliban had failed to adhere to the requirements of the Geneva Conventions regarding the conduct of war and therefore deserved no protection. Nor, he argued, was the president bound by customary international law, which insists on humane treatment for all wartime detainees. Relying on Yoo's reasoning, the Bush administration claimed that it could capture and detain any person who the president said was a member or supporter of al-Qaeda or the Taliban, and could categorically deny all detainees the protections of the Geneva Conventions, including a hearing to permit them to challenge their status and restrictions on inhumane interrogation practices.¶ Echoing Yoo, Alberto Gonzales, then White House counsel, argued at the time that one of the principal reasons for denying detainees protection under the Geneva Conventions was to "preserve flexibility" and make it easier to "quickly obtain information from captured terrorists and their sponsors." When CIA officials reportedly raised concerns that the methods they were using to interrogate high-level al-Qaeda detainees -- such as waterboarding -- might subject them to criminal liability, Yoo was again consulted. In response, he drafted the August 1, 2002, torture memo, signed by his superior, Jay Bybee, and delivered to Gonzales. In that memo, Yoo "interpreted" the criminal and international law bans on torture in as narrow and legalistic a way as possible; his evident purpose was to allow government officials to use as much coercion as possible in interrogations.¶ Yoo wrote that threats of death are permissible if they do not threaten "imminent death," and that drugs designed to disrupt the personality may be administered so long as they do not "penetrate to the core of an individual's ability to perceive the world around him." He said that the law prohibiting torture did not prevent interrogators from inflicting mental harm so long as it was not "prolonged." Physical pain could be inflicted so long as it was less severe than the pain associated with "serious physical injury, such as organ failure, impairment of bodily function, or even death."¶ Even this interpretation did not preserve enough executive "flexibility" for Yoo. In a separate section of the memo, he argued that if these loopholes were not sufficient, the president was free to order outright torture. Any law limiting the president's authority to order torture during wartime, the memo claimed, would "violate the Constitution's sole vesting of the Commander-in-Chief authority in the President."¶ Since leaving the Justice Department, Yoo has also defended the practice of "extraordinary renditions," in which the United States has kidnapped numerous "suspects" in the war on terror and "rendered" them to third countries with records of torturing detainees. He has argued that the federal courts have no right to review actions by the president that are said to violate the War Powers Clause. And he has defended the practice of targeted assassinations, otherwise known as "summary executions."¶ In short, the flexibility Yoo advocates allows the administration to lock up human beings indefinitely without charges or hearings, to subject them to brutally coercive interrogation tactics, to send them to other countries with a record of doing worse, to assassinate persons it describes as the enemy without trial, and to keep the courts from interfering with all such actions.¶ Has such flexibility actually aided the U.S. in dealing with terrorism? In all likelihood, the policies and attitudes Yoo has advanced have made the country less secure. The abuses at Guantánamo and Abu Ghraib have become international embarrassments for the United States, and by many accounts have helped to recruit young people to join al-Qaeda. The U.S. has squandered the sympathy it had on September 12, 2001, and we now find ourselves in a world perhaps more hostile than ever before.¶ With respect to detainees, thanks to Yoo, the U.S. is now in an untenable bind: on the one hand, it has become increasingly unacceptable for the U.S. to hold hundreds of prisoners indefinitely without trying them; on the other hand our coercive and inhumane interrogation tactics have effectively granted many of the prisoners immunity from trial. Because the evidence we might use against them is tainted by their mistreatment, trials would likely turn into occasions for exposing the United States' brutal interrogation tactics. This predicament was entirely avoidable. Had we given alleged al-Qaeda detainees the fair hearings required by the Geneva Conventions at the outset, and had we conducted humane interrogations at Guantánamo, Abu Ghraib, Camp Mercury, and elsewhere, few would have objected to the U.S. holding some detainees for the duration of the military conflict, and we could have tried those responsible for war crimes. What has been so objectionable to many in the U.S. and abroad is the government's refusal to accept even the limited constraints of the laws of war.¶ The consequences of Yoo's vaunted "flexibility" have been self-destructive for the U.S. -- we have turned a world in which international law was on our side into one in which we see it as our enemy. The Pentagon's National Defense Strategy, issued in March 2005, states,¶ "Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak, using international fora, judicial processes, and terrorism."¶ The proposition that judicial processes -- the very essence of the rule of law -- are to be dismissed as a strategy of the weak, akin to terrorism, suggests the continuing strength of Yoo's influence. When the rule of law is seen simply as a device used by terrorists, something has gone perilously wrong. Michael Ignatieff has written that "it is the very nature of a democracy that it not only does, but should, fight with one hand tied behind its back. It is also in the nature of democracy that it prevails against its enemies precisely because it does." Yoo persuaded the Bush administration to untie its hand and abandon the constraints of the rule of law. Perhaps that is why we are not prevailing.

#### Syria substantially limited Obama’s war powers

**Rothkopf, 9/1/13** – editor of Foreign Policy (David, “Rothkopf: 5 consequences of President Obama's Syria decision” <http://www.newsday.com/opinion/oped/rothkopf-5-consequences-of-president-obama-s-syria-decision-1.5993890>)

3. He's now boxed in for the rest of his term.

Whatever happens with regard to Syria, the larger consequence of the president's action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to begin military action without seeking congressional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary.

But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of precedent -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way.

4. This president just dialed back the power of his own office.

Obama has reversed decades of precedent regarding the nature of presidential war powers -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship.

The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider House Speaker John Boehner's statement that Congress will not reconvene before its scheduled Sept. 9 return to Washington.

Perhaps more important, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to dial back the imperial presidency than anything his predecessors or Congress have done for decades.

5. America's international standing will likely suffer.

As a consequence of all of the above, even if the president "wins" and persuades Congress to support his extremely limited action in Syria, the perception of America as a nimble, forceful actor on the world stage and that its president is a man whose word carries great weight is likely to be diminished. Again, like the shift or hate it, foreign leaders can do the math. Not only is post-Iraq, post-Afghanistan America less inclined to get involved anywhere, but when it comes to the use of U.S. military force (our one indisputable source of superpower strength) we just became a whole lot less likely to act or, in any event, act quickly. Again, good or bad, that is a stance that is likely to figure into the calculus of those who once feared provoking the United States.

### 2AC DA – Ptx

#### i/l confusion – link is PC, i/l is focus, means no coherent scenario, you can’t vote on it

#### No war scenario

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

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

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

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

#### 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.

#### 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.

#### 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.

#### Obama won’t fight the plan

Kwame Holman 13, congressional correspondent for PBS NewsHour; citing Rosa Brooks, Prof of Law at Georgetown University Law Center, former Counselor to the Under Secretary of Defense for Policy, former senior advisor at the US Dept of State, “Congress Begins to Weigh In On Drone Strikes Policy,” http://www.pbs.org/newshour/rundown/2013/04/congress-begins-to-weigh-in-on-drone-strikes-policy.html

In an October 2012 interview, Mr. Obama said of the drone program, "we've got to ... put a legal architecture in place, and we need Congressional help in order to do that, to make sure that not only am I reined in but any president's reined in, in terms of some of the decisions that we're making."¶ The president has not taken up the drone issue in public again but White House press secretary Jay Carney, asked Wednesday about the drone hearing, said, "We have been in regular contact with the committee. We will continue to engage Congress...to ensure our counterterrorism efforts are not only consistent with our laws and system of checks and balances, but even more transparent to the American people and the world."¶ And after the hearing, Brooks, too, sounded optimistic.¶ "My own sense is that the executive branch is open to discussion of some kind of judicial process," she said.¶ While some experts have argued for court oversight of drone strikes before they're carried out, Brooks sides with those who say that would be unwieldy and unworkable.¶ Brooks says however an administration that knows its strikes could face court review after the fact -- with possible damages assessed -- would be more responsible and careful about who it strikes and why

#### 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.

#### 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 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.

#### 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. ‎

#### Obama won’t negotiate – politically he’d prefer default

**Wall Street Journal, 9/17/13** (“Obama Goes to War” <http://online.wsj.com/article/SB10001424127887324665604579081144245072978.html?mod=WSJ_Opinion_LEADTop>)

Mr. Obama declares that he won't even deign to negotiate over an extension of the debt limit, which expires within a month or two. And he carpet-bombs Republicans only two weeks after House Speaker John Boehner and Majority Leader Eric Cantor took a political risk and declared they'd vote for the President's Syrian war resolution against the views of most of their own Members.

The evidence suggests that Mr. Obama wants a showdown with Congress that ends with a government shutdown or a dance with default. He can then mount an offensive against Republicans that will rally his base, which soured on his Syrian plans and vetoed Larry Summers for the Federal Reserve. With his domestic agenda dead on Capitol Hill, Mr. Obama may also figure that stigmatizing Republicans over a shutdown-default crisis is the only way that Democrats can retake the House in 2014.

#### Capital’s not key – Obama won’t negotiate and Boehner won’t go past the deadline

**Berman, 9/17/13** (Russell, “House Republicans divided on when to battle ObamaCare” The Hill,

<http://thehill.com/homenews/house/322585-gop-divided-on-when-to-battle-obamacare>)

At the same time, President Obama vowed again Monday not to negotiate over the debt ceiling, and Democrats have been adamant that they would never agree to roll back the healthcare law in fiscal negotiations.

“I will not negotiate over whether or not America keeps its word and meets its obligations,” Obama said in remarks timed to the fifth anniversary of the 2008 financial crisis.

“I will not negotiate over the full faith and credit of the United States. This country has worked too hard, for too long, to dig out of a crisis just to see their elected representatives here in Washington purposely cause another crisis.”

Citing Obama’s stance, conservative Rep. Raúl Labrador (R-Idaho) questioned why GOP leaders believed they could extract more in a debt-ceiling fight than in a battle over a short-term spending bill.

“I’m not really clear why they believe that,” he said. “I think [focusing] on the [continuing resolution] is the best way for us to approach this.”

Labrador blamed Boehner for saying that he would not allow the U.S. to default on its debt.

“The problem is that John Boehner has already said that he will not go past the deadline of the debt ceiling, and when you do that, you’re kind of undermining your negotiation,” Labrador said.

“You don’t have a strong position when you’re negotiating when you say you are unwilling to go past a certain deadline. So it doesn’t matter what happens with the rates. If the Democrats already know that John Boehner is not going to default on the debt, then they know that they don’t have to negotiate with you.”

#### There’s nobody in the GOP Obama can even talk to and he won’t negotiate

**Holland, 9/19/13** (Steve, “Obama, Boehner locked in budget battle” Blouin News,

<http://blouinnews.com/68767/story/obama-boehner-locked-budget-battle>

The lack of communication is particularly problematic because of the current low-profile of Senate Republican leader Mitch McConnell, who has played the broker in some past fiscal fights. That has gotten him in some political trouble at home in Kentucky, and may be one factor in why he is facing a conservative challenger in his 2014 re-election bid.

McConnell has yet to emerge in a meaningful way in the current showdown.

Last week, at a meeting on budget matters of "the Big Four" congressional leaders - McConnell, Senate Majority Leader Harry Reid, Boehner and House Democratic leader Nancy Pelosi - the Kentucky Republican did not have much to say, a senior Democratic aide said.

"He makes it tough for us to work with him. We don't know where he is," the Democratic aide said.

If history is any guide, one side will blink in the end. Since Democratic President Bill Clinton came out the winner from a 1995 government shutdown battle with a Republican Congress, the conventional wisdom is that Obama would be seen as the victor in any such battle this year.

"I would imagine that the administration has calculated that they will probably come out of that wreckage a little better than the Republicans," said Peverill Squire, a political science professor at the University of Missouri.

"Right now I don't think they have any idea who they can talk to among the Republicans."

### 2AC CP

#### Doesn’t solve drone prolif – external oversight key to accountability – only a non-executive framework creates a guarantee and is modeled – formal constraints resolve ambiguity that prevents strong prolif constraints --- that’s Brooks and HRI

#### doesn’t solve convergence – slayer 1ac wall cards say nobody trusts the president and the only way to restore legitimacy is fixing internal structure of congress – LAWS ON BOOKS cause illegitimacy, not drones themselves

#### Links to politics

Billy Hallowell 13, writer for The Blaze, B.A. in journalism and broadcasting from the College of Mount Saint Vincent in Riverdale, New York and an M.S. in social research from Hunter College in Manhattan, “HERE’S HOW OBAMA IS USING EXECUTIVE POWER TO BYPASS LEGISLATIVE PROCESS” Feb. 11, 2013, <http://www.theblaze.com/stories/2013/02/11/heres-how-obamas-using-executive-power-to-bylass-legislative-process-plus-a-brief-history-of-executive-orders/>

“In an era of polarized parties and a fragmented Congress, the opportunities to legislate are few and far between,” Howell said. “So presidents have powerful incentive to go it alone. And they do.”¶ And the political opposition howls.¶ Sen. Marco Rubio, R-Fla., a possible contender for the Republican presidential nomination in 2016, said that on the gun-control front in particular, Obama is “abusing his power by imposing his policies via executive fiat instead of allowing them to be debated in Congress.”¶ The Republican reaction is to be expected, said John Woolley, co-director of the American Presidency Project at the University of California in Santa Barbara.¶ “For years there has been a growing concern about unchecked executive power,” Woolley said. “It tends to have a partisan content, with contemporary complaints coming from the incumbent president’s opponents.”

#### Perm do both:

Solves the politics link --- Obama won’t backlash against himself

#### Mustin says the pres has an incentive to classify things as covert – kills global legitimacy

#### XO’s not binding

EW 13, Empty Wheel, "Scott Shane Defends the Commander-in-Chief's Language", April 12, www.emptywheel.net/2013/04/12/scott-shane-defends-the-commander-in-chiefs-language/

Shane appears to misunderstand something about Executive Orders (though he’s not alone on this front). DOJ’s Office of Legal Counsel has twice (once during Iran-Contra, and again in 2001 or thereabouts) judged that EO 12333 — the very EO purportedly prohibiting assassination — need not be formally changed when the President stops adhering to it. The language the Bush-era OLC came up with to justify ignoring EO 12333 without telling anyone reads,¶ An executive order cannot limit a President. There is no constitutional requirement for a President to issue a new executive order whenever he wishes to depart from the terms of a previous executive order. Rather than violate an executive order, the President has instead modified or waived it.¶ Granted, in this particular instance, the Administration was secretly “waiving” EO 12333′s prohibition on surveilling Americans overseas, not assassination, but the principle is clear: EOs are not hard and fast rules, they are simply claims the Executive Branch makes about its own behavior but doesn’t always abide by.

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

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

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

#### Division is on the books – doesn’t clarify policy, undermines mission effectiveness – transparent congressional action based on External control mechanisms key – Alston says the impact is modeling – the CP sets a dangerous precedent –the plans approach key to solve

#### Perm do the CP - the plan text says the USFG – CP is just a potential re clarification

#### Future presidents prevent solvency

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

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

#### Doesn’t solve perception, DOD policy, or committee jurisdiction

**Wall, ’11** Professor of International Law at the US Naval War College (Andru Wall, 2011, “Demystifying the Title 10 - Title 50 Debate: Distinguishing Military Operations, Intelligence Activities & Covert Action,” http://harvardnsj.org/wp-content/uploads/2012/01/Vol.-3\_Wall1.pdf)//CC

This perception—that the Executive Branch is deliberately trying to avoid congressional oversight—naturally riles the intelligence committees. In its report accompanying the Intelligence Authorization Act for Fiscal Year 2010, the House Permanent Select Committee on Intelligence noted “with concern the blurred distinction between the intelligence-gathering activities carried out by the Central Intelligence Agency (CIA) and the clandestine operations of the Department of Defense.”58 The Committee accused DoD of labeling its clandestine activities as operational preparation of the environment (OPE) in order to justify them under Title 10 and avoid oversight by the intelligence committees “and the congressional defense committees cannot be expected to exercise oversight outside of their jurisdiction.”59 The Intelligence Committee apparently perceives an oversight lacuna, yet no such lacuna exists. Rather, all activities conducted under Title 10 authorities are subject to oversight by the armed services committees and, for example, commanders of special operations forces regularly brief the armed services committees on their clandestine activities. As illustrated by Figure 1, the congressional intelligence committees exercise oversight of intelligence activities, while the armed services committees exercise oversight jurisdiction over military operations.60 The congressional oversight is not coterminous with statutory authorities, as Title 10 includes authority for the Secretary of Defense to engage in both intelligence activities and military operations. Congressional oversight overlaps when non-DoD elements of the intelligence community provide support to military operations and in the unlikely or at least rare instance where the President directs elements of DoD to conduct covert action.61 Oversight would also overlap with respect to intelligence activities carried out by an element of the intelligence community in support of a military operation authorized under Title 10. Congressional oversight of the military is straightforward: both the Senate and House Armed Services Committees exercise jurisdiction over all aspects of DoD and matters relating to “the common defense.”62 Defense authorization bills originate in the armed services committees, where they must be approved before consideration by the full Senate or House. Problems arose in the wake of 9/11 as DoD expanded its intelligence capabilities in order to support ongoing military operations, and the intelligence committees correspondingly sought to expand their jurisdiction in an attempt to bring all military intelligence collection efforts within their purview, which created clashes with the armed services committees and the Executive Branch and generated debates over appropriate congressional oversight.

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

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

And so Barack Obama greatly expanded the secret war that George W. Bush began. In the fall of 2009, Obama approved a "long list" of new CIA paramilitary operation proposals, as well as CIA requests for more armed drones, more spies, and larger targeting areas in Pakistan. "The CIA gets what it wants," said the president, approving the CIA requests, and conveying what Mazzetti thinks was his first-term attitude toward the Agency. The Department of Defense also got most of what it wanted. Obama approved an initiative by General David Petraeus to expand "military spying activities throughout the Muslim world," and gave special operations forces "even broader authorities to run spying missions across the globe" than they possessed under the Bush administration. Mazzetti describes Obama's souped-up secret war as "the way of the knife," a reference to Obama counterterrorism czar (and now CIA director) John Brennan's claim that the administration had replaced the "hammer" of large deployments with the "scalpel" of secret pinpoint missions. Its most famous use was the Abbottabad raid to kill bin Laden. But its most enduring legacy is Obama's significant expansion of the CIA and JSOC drone-strike campaign against Al Qaeda and affiliates, especially in Pakistan and Yemen. In 2009, the Obama administration conducted more drone strikes in those countries than the Bush administration had done in the seven years after 9/11; and to date, it has conducted almost nine times more drone strikes there than its predecessor. The administration's most controversial drone strike came against an American citizen, Anwar al-Awlaki, a leader of Al Qaeda in the Arabian Peninsula, the Yemeni organization responsible for the failed Detroit "underwear bomb" attack on Christmas in 2009 and other attempted attacks against the United States. Government lawyers gave the green light to kill al-Awlaki in 2010, but the administration had no idea where in Yemen he was. By 2011, the CIA and JSOC both had spies on the ground in Yemen and were "running two distinct drone wars," with different targeting lists, from bases in Saudi Arabia (for the CIA) and Ethiopia and Djibouti (for JSOC). In the fall of 2011, in part because of prior JSOC targeting mistakes and in part because of the CIA's extraordinary successes in Pakistan, Obama tasked the CIA alone with finding and killing al-Awlaki. On September 30, a CIA Reaper drone fired on a convoy near the Saudi Arabian desert and completed the mission. At the end of president Obama's first term, Mazzetti remarks, Americans seemed "little concerned about their government's escalation of clandestine warfare." By that point Obama's way of the knife had both decimated the senior leadership of Al Qaeda and reversed the Republicans' traditional advantage on national security. "Ask Osama bin Laden and the 22 out of 30 top Al Qaeda leaders who have been taken off the field whether I engage in appeasement," said the boastful president in December 2011, flicking away Republican charges that he was soft on terrorism. "Or whoever is left out there, ask them about that," he added. But in the last few months the Obama administration's secret war—and especially its drone program—have come under attack on multiple fronts. In 2011, The Washington Post reported the CIA's counterterrorism chief bragging of his Al Qaeda strikes that "we are killing these sons of bitches faster than they can grow them now." It is unclear whether this statement is true today. The core Al Qaeda organization appears debilitated. But its affiliate organizations are operating in Somalia, Yemen, and Iraq. And powerful new affiliates appear to be springing up elsewhere, including Al Qaeda in the Islamic Maghreb in post-Qaddafi North Africa, and the Al Nusra Front in revolutionary Syria. Secrecy is the essence of the type of war that Obama has chosen to fight. In this light, questions about the strategic success of Obama's drone campaign, and his secret war more generally, are growing. "We cannot kill our way to victory," former Congresswoman Jane Harman, who was a member of the House Intelligence Committee, testified in a counterterrorism hearing last month. General Stanley McChrystal, who presided over JSOC from 2003 to 2008, made a similar point in a recent interview in Foreign Affairs. The "danger of special operating forces," he noted, is that "you get this sense that it is satisfying, it's clean, it's low risk, it's the cure for most ills." But history provides no example of "a covert fix that solved a complex problem," he continued, adding that a too-heavy reliance on drone strikes is also "problematic" because "it's not a strategy in itself; it's a short-term tactic." One reason McChrystal questions the strategic efficacy of heavy reliance on drones is that "inhabitants of that area and the world have significant problems watching Western forces, particularly Americans, conduct drone strikes inside the terrain of another country." Last summer, Pew Research reported "considerable opposition" in "nearly all countries," and especially in predominantly Muslim countries, to Obama's drone program. It also found that Lebanon, Egypt, Jordan, and Pakistan now had a less favorable attitude toward the United States than at the end of the Bush administration. And a Gallup poll in February found that 92 percent of the people in Pakistan disapprove of the American leadership and 4 percent approve—historically bad numbers for the United States that are largely attributable to the way of the knife. These are discouraging numbers for a president who hoped to diminish the terrorism threat by establishing "a new beginning between the United States and Muslims ... based upon mutual interest and mutual respect," as Obama said in Cairo in 2009. The president added in that speech that the United States during the Bush era had acted "contrary to our ideals," and he pledged to "change course." But as the polls abroad show, Obama's change of course has not made the world think better of American ideals. Ben Emmerson, a United Nations special rapporteur on counter-terrorism and human rights, recently suggested that some American drone attacks might be war crimes. Since he launched an investigation in January, he has noted that most nations "heavily disput[e]" the legal theory underlying Obama's stealth wars, and concluded that American drone strikes violate Pakistan's sovereignty, contrary to international law. Most Americans are little interested in the popularity abroad of the way of the knife. To date, they very strongly support what they know about the president's drone campaign against foreign terrorist suspects. Support for targeting American citizens such as Anwar al-Awlaki, however, has dropped, and the focus on American citizens is affecting other elements of the way of the knife. In large part this has resulted from the administration's stilted explanations about the legal limits on killing Americans and the secret processes for placing American suspects on target lists. When a less-than-convincing Justice Department white paper on the topic leaked to the press in February, it stoked suspicions that the administration had big plans and something to hide. Questions grew when the administration continued to withhold legal memos from Congress, and when John Brennan danced around the issue during his confirmation hearings to be director of the CIA. Senator Rand Paul then cleverly asked Brennan whether the president could order a drone to kill a terrorist suspect inside the United States. When Brennan and Attorney General Eric Holder seemed to prevaricate, Paul conducted his now-famous filibuster. "I cannot sit at my desk quietly and let the president say that he will kill Americans on American soil who are not actively attacking the country," Paul proclaimed. The president never said, or suggested, any such thing. But with trust in Obama falling fast, Paul was remarkably successful in painting the secret wars abroad as a Constitution-defying threat to American citizens at home. Paul's filibuster attracted attention to the issue of drone attacks on Americans in the homeland. A more serious challenge to the president comes from growing concerns, including within his own party, about the legal integrity of his secret wars abroad. Anne-Marie Slaughter, a former senior official in Obama's State Department, recently gainsaid "the idea that this president would leave office having dramatically expanded the use of drones—including [against] American citizens—without any public standards and no checks and balances." Many in Congress want to increase the transparency of the processes and legal standards for placing a suspect (especially an American) on a targeting list, to tighten those legal standards (perhaps by recourse to a "drone court"), and to establish a more open accounting of the consequences (including civilian casualties) from the strikes. "This is now out in the public arena, and now it has to be addressed," Senator Dianne Feinstein, a Democrat, recently said. Others in Congress worry about the obsolescence of the legal foundation for the way of the knife: the congressional authorization, in 2001, of force against Al Qaeda. "I don't believe many, if any, of us believed when we voted for [the authorization] that we were voting for the longest war in the history of the United States and putting a stamp of approval on a war policy against terrorism that, 10 years plus later, we're still using," said Senator Richard Durbin, also a Democrat, in a Wall Street Journal interview. "What are the checks and balances of the system?" he asked. Senator John McCain, who led bipartisan efforts against what he saw as Bush-era legal excesses, is now focusing similar attention on Obama. "I believe that we need to revisit this whole issue of the use of drones, who uses them, whether the CIA should become their own air force, what the oversight is, [and] what the legal and political foundations [are] for this kind of conflict," he said last month. These are unhappy developments for the president who in his first inaugural address pledged with supercilious confidence that, unlike his predecessor, he would not expend the "rule of law" for "expedience's sake." Obama reportedly bristles at the legal and political questions about his secret war, and the lack of presidential trust that they imply. "This is not Dick Cheney we're talking about here," he recently pleaded to Democratic senators who complained about his administration's excessive secrecy on drones, according to Politico. And yet the president has ended up in this position because he committed the same sins that led Cheney and the administration in which he served to a similar place. The first sin is an extraordinary institutional secrecy that Obama has long promised to reduce but has failed to. In part this results from any White House's inevitable tendency to seek maximum protection for its institutional privileges and prerogatives. The administration's disappointing resistance to sharing secret legal opinions about the secret war with even a small subset of Congress falls into this category. Much of what the administrat-ion says about its secret war seems incomplete, self-serving, and ultimately non-credible. But the point goes deeper, for secrecy is the essence of the type of war that Obama has chosen to fight. The intelligence-gathering in foreign countries needed for successful drone strikes there cannot be conducted openly. Nor can lethal operations in foreign countries easily be acknowledged. Foreign leaders usually insist on non-acknowledgment as a condition of allowing American operations in their territories. And in any event, an official American confirmation of the operations might spark controversies in those countries that would render the operations infeasible. The impossible-to-deny bin Laden raid was a necessary exception to these principles, and the United States is still living with the fallout in Pakistan. For official secrecy abroad to work, the secrets must be kept at home as well. In speeches, interviews, and leaks, Obama's team has tried to explain why its operations abroad are lawful and prudent. But to comply with rules of classified information and covert action, the explanations are conveyed in limited, abstract, and often awkward terms. They usually raise more questions than they answer—and secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges. As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests. A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants. The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust. Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. **Rather,** he must take advantage oftheseparation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because **adversarial branches of government** assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct. Administration officials resist this route because they worry about the outcome of the public debate, and because the president is, as The Washington Post recently reported, "seen as reluctant to have the legislative expansion of another [war] added to his legacy." But the administration can influence the outcome of the debate only by engaging it. And as Mazzetti makes plain, the president's legacy already includes the dramatic and unprecedented unilateral expansion of secret war. What the president should be worried about for legacy purposes is that this form of warfare, for which he alone is today responsible, is increasingly viewed as illegitimate.

#### This counterplan is a voting issue for deterrence --- fiats the object on the resolution which kills aff offense AND it’s fiat artificially limits the topic, decreasing the scope of discussion and undermining real world education – independently the topic mandates the judge isn’t the executive - the impact is jurisdiction

### 2AC K

#### Political constraints fail – weak media, governmental secrecy and the existence of a wide array of war powers abuses

**Giraldi, 12** - Philip Giraldi, a former CIA officer, is executive director of the Council for the National Interest (“Defending the Indefensible” 9/13, <http://www.theamericanconservative.com/articles/defending-the-indefensible/>

Posner is comfortable with the only restraint on executive power being the somewhat amorphous consent of those who are generally speaking disengaged and virtually powerless in our political system. His view would astonish America’s Founders, who saw democracy as little more than mob rule and who, as a consequence, devised a republic resting on a system of constitutional restraints to avoid giving that power to the demos. What the Founders feared even more than an unrestrained presidency was tyranny by the majority, a constraint on government that Posner, ironically, sees as a protection against executive overreach. Be that as it may, real pushback against Washington is largely ineffective as today’s Americans are poorly informed about issues and the media has largely abandoned its role as the Fourth Estate. Meanwhile the government is able to cite secrecy to protect its illegal actions, giving the president the ability to create and manage a suitable narrative supporting his policies, no matter how harmful they might be. It is difficult to imagine that there is a genuine popular consensus supporting illegal detention, targeted killings, torture, warrantless surveillance, secret wars, or an immigration program that includes deliberate non-enforcement of laws, but they are all current government policies.

And, contrary to Posner’s assertion, there is indeed a slippery slope. I’m not sure what Posner means by it being unlikely that an “average citizen” might targeted for death by drone, but certainly three citizens that I know of have been executed in that fashion and several more are believed to be on the death list. Increased use of state secrets privilege is a symptom of executive privilege, violation of what was once regarded as privacy is now systemic, and the United States has been going to war more frequently and without any regard for national interest ever since the constitutional norms to limit the authority to do so were abandoned in Korea. If the main purpose of government as seen from the ground up is, per Posner, to “foster security and prosperity” then the unitary executive has failed miserably, as the United States policy of executive-inspired global armed intervention has made the entire world less safe while the standard of living for most Americans (possibly excluding University of Chicago law professors) has fallen sharply.

#### Permute – do both – political pressure with legal reform solves – the alternative alone is likely to lead to pure majoritarian tyranny

**Cole, 12** – professor of law at Georgetown (David, “Are We Stuck with the Imperial Presidency?” 6/7,

<http://www.nybooks.com/articles/archives/2012/jun/07/are-we-stuck-imperial-presidency/?pagination=false>)

Despite its limitations, Posner and Vermeule’s book underscores a critically important point about modern constitutional democracy. The executive, if not “unbound” by law, does have an increasingly powerful hand. The separation of powers as originally envisioned is unrecognizable today. Moreover, while political checks are not sufficient to restrain presidential abuse, they are certainly necessary, and under certain conditions can be effective. As I have recently argued, it was civil society, more than the courts or Congress, that compelled President Bush to curb many of his assaults on fundamental principles of law and human rights following the terrorist attacks of September 11.6

But what was essential to the political pressure that forced President Bush’s hand was its substantive content—its demand that the Bush administration abide by the rule of law. Posner and Vermeule’s mistake is to assume that the “rule of politics” can replace the “rule of law.” Politics standing alone may facilitate abuse as much as check it. Consider the lynch mobs in the US, or the Nazi Party in Germany. What we need if we are to check abuses of executive power is not just any politics, but a politics that champions the rule of law. And as the record at Guantánamo illustrates, that type of politics will often coalesce around a distinctly legal challenge, objecting to departures from distinctly legal norms.

Congress’s own actions made it clear that had Guantánamo been left purely to politics, few if any of the legal protections accorded prisoners would have been allowed. The litigation on behalf of prisoners generated political pressure for a restoration of the values of legality, and that pressure in turn played a critical part in the outcome of litigation. At its best, then, there is a symbiotic relationship between politics and law, in which civil society’s appeal to law informs politics, and that politics reinforces the law’s appeal.

Posner and Vermeule understand the importance of politics as a checking force in the modern world, but fail to see the critical qualification that the politics must be organized around a commitment to fundamental principles of liberty, equality, due process, and the separation of powers—in short, the rule of law. Properly understood, the rule of politics is a critical supplement to, but not a sufficient substitute for, the rule of law. We cannot survive as a constitutional democracy true to our principles without both.

#### Political constraints must operate in tandem with legal constraints to be effective

**Huq, 12** - Assistant Professor of Law, University of Chicago Law School (Aziz, “BINDING THE EXECUTIVE (BY LAW OR BY POLITICS)”, August, <http://www.law.uchicago.edu/files/file/400-ah-binding.pdf>) **PV = Posner and Vermeule**

Articulating and answering the question “What binds the executive?”, The Executive Unbound draws a sharp line between legal and political constraints on discretion—a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand. While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/politics dichotomy.” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority.25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

#### Legal compliance is vital to executive credibility – ignoring the law generates resistance that undermines effective governance

**Huq, 12** - Assistant Professor of Law, University of Chicago Law School (Aziz, “BINDING THE EXECUTIVE (BY LAW OR BY POLITICS)”, August, <http://www.law.uchicago.edu/files/file/400-ah-binding.pdf>) **PV = Posner and Vermeule**

But other strands of political theory now available today do provide explanations for why powerful political actors, even absent proximate adverse consequence for violating the law, still have cause to conform their conduct with ex ante legal rules. In a comprehensive account of liberalism’s view of law as a constraint on government, Stephen Holmes historicizes the notion that even a sovereign with “strictly unconditional” power can further its own interests by imposing ex ante constraints via other institutions or laws.137 That idea goes back to the sixteenth-century theorist of monarchy Jean Bodin.138 Bodin demonstrated how “[c]onstitutional constraints may be an indirect technique for building effective state institutions and reinforcing governmental power.” 139 Beginning from the premise that no monarchy is “self-sufficient” in its ability to secure compliance from officials and subjects, Bodin argued that legal constraints bridge the gap.140 To sustain obedience, the prince recognizes rights and shares authority to secure cooperation and mitigate resistance.141 Restated in more familiar contemporary terms, Bodin argued that powerful actors benefited from legal compliance in situations of repeat play.142 By distributing the labor of governance, diversifying information sources, and co-opting resistance, constitutional and legal rules conduce to stability.143 This observation is supported by empirical work finding that “nominally democratic” institutions within an autocracy can be successfully employed to “solicit cooperation and to neutralize the threat of rebellion from forces within society.” 144 Even an all-powerful sovereign for this reason has instrumental reasons for compliance with the law and employment of putatively power-diffusing institutions.

#### Political checks alone are ineffective – they have to be combined with legal restrictions

**Huq, 12** - Assistant Professor of Law, University of Chicago Law School (Aziz, “BINDING THE EXECUTIVE (BY LAW OR BY POLITICS)”, August, <http://www.law.uchicago.edu/files/file/400-ah-binding.pdf>) **PV = Posner and Vermeule**

This Part turns to the second element of the strong law/politics dichotomy: the thesis that political forces bind the executive in ways legal rules cannot. The “political” mechanisms identified by PV are organized around two concepts: credibility and popularity. Presidents want credibility and popularity, PV argue, and these preferences induce the executive branch to share authorities. Political incentives as a result “at least block the most lurid forms of executive abuse” in ways legal constraints cannot (p 5).149 In this Part, I argue that neither credibility nor popularity mechanisms can generate stable effects on executive behavior standing on their own. I focus here not solely on the question whether an executive under political constraints will diverge from median popular preferences, but also on whether it will violate deeply held deontological values, such as those embodied in generally recognized constitutional entitlements under the Bill of Rights. Considering the effect of political bonds upon both genres of “abuse” suggests that the political mechanisms limned by PV work best (or only) when they interact with legal limits on executive authority. The possibility of such complementary interactions will be taken up at greater length in Part IV.

## 1AR ESR

### Publish CP (1ar)

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

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

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

### Drone Prolif (1ar)

#### Only congress solves

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

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

### Legitimacy (1ar)

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

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

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

## 1AR Pres Powers

### ux

#### Tons of Congressional interference now

#### Bradley et al ‘12

Curtis A. Bradley, Sarah H. Cleveland, The Honorable Brett M. Kavanaugh, Martin S. Lederman, Judith Resnik and Stephen I. Vladeck, “WAR, TERROR, AND THE FEDERAL COURTS, TEN YEARS AFTER 9/11: CONFERENCE\*: ASSOCIATION OF AMERICAN LAW SCHOOLS' SECTION ON FEDERAL COURTS PROGRAM AT THE 2012 AALS ANNUAL MEETING IN WASHINGTON, D.C.,” 61 Am. U.L. Rev. 1253

So where are we? Marty mentioned a word that had not been mentioned before, which was "Congress." What's the big picture of where we are right now in terms of federal courts, separation of powers, war powers? I would start with, in the wake of September 11th, Congress authorizing two wars: it authorized the war against Al-Qaeda and the Taliban, and authorized the war in Iraq. That itself is a significant precedent. When you ask, twenty years from now, thirty years from now, what's the most significant precedent arising out of the post-9/11 years? I think one of them, if not the most important, will be that those were congressionally authorized wars. **A President, who in the future tries to engage in an unauthorized ground war of any significance,** will be faced with those precedents used against them. President Bush obtained authorization for those two wars. Second. As Marty's article with David Barron points out so well, Congress has regulated the Executive's conduct of war in many respects, both before and after September 11th. We tend to forget that and sometimes think, well this is all just the Executive Branch operating in kind of a free zone, free from congressional restraint. And in fact, whether it's interrogation or detention, surveillance, a number of particulars of how the **Executive goes about the war effort**, Congress has been deeply involved, including in the wake of September 11th. I think it's very important to remember Congress's role there. And then third - and this was not self-evident on September 12th - the courts have played a significant role, as Sarah mentioned, in enforcing restrictions on the Executive's conduct of war. Where was the political question doctrine in Hamdi or Hamdan? Nowhere to be found. Nowhere to be found. What about the President's exclusive, preclusive Article II power, to ignore congressional restrictions or disregard congressional restrictions, depending on - what's the scope of that? Not a single Justice in Hamdi or Hamdan suggested that detention or activities related to detainees were within the exclusive, preclusive power of the President. Hamdan, footnote twenty-three, I think, pointedly ends with, "The government does not argue otherwise." Which was a recognition that not even the Executive Branch was asserting in that case, an exclusive, preclusive power. So the political question doctrine has not played a major role. The exclusive, preclusive power of the President was the big issue raised by some of the OLC opinions [\*1268] in 2002/2003, but the Bush Administration later backed away from it, culminating in the January 15, 2009 OLC memo for the file essentially but publicly retracting or distancing itself from a number of prior OLC memos. So the courts are playing a role in enforcing congressional restrictions.

### link turn

#### Congress constrains bolster the credibility of threats – solves escalation

Waxman 8/25/13 (Matthew Waxman is a law professor at Columbia Law School, where he co-chairs the Roger Hertog Program on Law and National Security. He is also Adjunct Senior Fellow for Law and Foreign Policy at the Council on Foreign Relations and a member of the Hoover Institution Task Force on National Security and Law. He previously served in senior policy positions at the State Department, Defense Department, and National Security Council. After graduating from Yale Law School, he clerked for Judge Joel M. Flaum of the U.S. Court of Appeals and Supreme Court Justice David H. Souter, “The Constitutional Power to Threaten War” Forthcoming in YALE LAW JOURNAL, vol. 123, 2014, August 25th DRAFT)

Part II draws on several strands of political science literature to illuminate the relationship between war powers law and threats of force. As a descriptive matter, the swelling scope of the president’s practice in wielding threatened force largely tracks the standard historical narrative of war powers shifting from Congress to the President. Indeed, adding threats of force to that story might suggest that this shift in powers of war and peace has been even more dramatic than usually supposed, at least in terms of how formal congressional checks are exercised.

Part II also shows, however, that congressional checks and influence – even if not formal legislative powers – operate more robustly and in different ways to shape strategic decision-making than usually supposed in legal debates about war powers, and that **these checks and influence can enhance the potency of threatened force**. This Article thus fits into a broader scholarly debate now raging about the extent to which the modern President is meaningfully constrained by law, and in what ways. 20 Recent political science scholarship suggests that Congress already exerts constraining influences on presidential decisions to threaten force, even without resorting to binding legislative actions. 21 Moreover, when U.S. security strategy relies heavily on threats of force, credibility of signals is paramount. Whereas it often used to be assumed that institutional checks on executive discretion undermined democracies’ ability to threaten war credibly, some **recent political science scholarship** also offers reasons to expect that congressional political constraints can actually bolster the credibility of U.S. threats. 22

### 1ar - secrecy

#### Too much secrecy causes bad decision-making and fosters even worse group-think

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

That some level of secrecy is vital in national-security affairs, including the war on terror, is beyond dispute. But can there ever be too much secrecy? Advocates of uninhibited executive discretion appear to deny the possibility, overselling secrecy's benefits for counterterrorism and downplaying its costs. Implementing this lopsided perspective, the Bush administration invested considerable resources in stonewalling, sealing records, unilaterally defying judicial discovery orders, withholding documents from Congress and the 9/11 Commission, over-classifying, lying to the FISA court, destroying CIA videotapes to conceal criminal violation of the anti-torture statute, attaching gag orders to National Security Letters, and routinely invoking the "state secrets doctrine." n53 Some of these practices are probably justified under certain conditions. But they can also have pathological consequences, including the sheltering of the official view of reality, tunnel vision, fixation, and obsession. Secrecy can be self-defeating when it provides cover for a failure to make contingency plans or to consider side effects and alternative options, not to mention obstructing investigations into bribery and sweetheart deals whereby long-term national-security interests are subordinated to short-term interests in corporate profits. The stupefying effect of excessive secrecy is strongly suggested by the experience of Bush's first term, when "the process of lying to deceive the enemy imperceptibly turned into lying to hide failures and disappointments." n54

#### No speed or secrecy link – FISA court disproves

**Baker, 7 -** Chief Judge to the United States Court of Appeals for the Armed Forces, former Special Assistant to the President and Legal Advisor to the National Security Council (James, IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERILOUS TIMES, p. 27-28)

Nor does the inclusion of the legislative or judicial branches necessarily undermine the national security requirements for speed and secrecy. The FISA court has demonstrated that the government’s most sensitive secrets can be subject to external judicial validation without disclosure. Likewise, it is noteworthy that one of the most significant intelligence secrets briefed to the Gang of Eight prior to 9/11 – the U.S. effort to kill or capture Osama Bin Laden in the late 1990s – did not leak.

Moreover, where secrecy is paramount, there is usually a lawful means to follow the statutory framework and preserve secrecy. In a criminal context, for example, there is the Classified Information Procedures Act. In the War Powers reporting context, the executive can file a classified report. In the covert action context, the law provides three reporting mechanisms, including notification to just eight senior members of Congress or in the rarest case, post-facto notification. In addition, where it is important to enact legal policy to protect those in the field, or to validate controversial or dangerous initiatives, statutory documentation can occur in classified form. This is done frequently with budgetary matters in the classified annexes to the intelligence and defense bills. In other words, there is usually a means to make constitutional and procedural checks and balances function in the national security context, so as to appraise the efficacy of policy and to ensure policy is implemented consistent with the rule of law.

### 1ar - speed

#### Speed arguments assume the executive is a singular actor – other branches can act as quickly, and acting in tandem solves best

**Pearlstein, 9 -** Visiting Scholar and Lecturer in Public and International Affairs, Woodrow Wilson School of Public & International Affairs, Princeton University (Deborah, “Form and Function in the National Security Constitution” 41 Conn. L. Rev. 1549, lexis)

This brings us to the new functionalists' role effectiveness approach. For whatever one researcher (especially, the new functionalists would suggest, legal researchers) might find in the empirical literature informing the nature of security threats and emergency responses, the new functionalists' more forthright argument is that institutional competences make the executive better positioned to consider this information and make decisions accordingly. Indeed, in a linear comparison of institutional competences, the differences among the branches that flow from institutional structure are of course real. The judiciary, for example, can only act in the event of a case or controversy. The administrative agency and national security apparatus may put information, in the first instance, in the hands of the executive rather than Congress or the courts. Moreover, the new functionalists add, the judiciary lacks the expertise and the procedural and evidentiary resources to make good judgments in an emergency; judicial resources are too scarce to require individualized determinations as to many hundreds or thousands of detainees it is assumed, as a matter of raw effectiveness, it will be necessary to detain. And given its own resource constraints and motives, the executive is [\*1598] unlikely to exaggerate the danger posed by an individual, or detain too many people. n168 Accordingly, the new functionalists tend to favor a decision- making structure with loose (if any), emergency-driven congressional engagement and deferential (if any) judicial review.

But such comparative competence accounts are misleading in several ways. They ignore the complexity of current government decision-making structures. The vast executive branch decision-making apparatus means decisions rarely come down to the speed possible with one man acting alone, and Congress and the courts have at their institutional disposal multiple means to enable the sharing of information among the branches. Such accounts also critically ignore the possibility of collective organizational capacity, a notion Justice Jackson's Youngstown concurrence seemed squarely to contemplate. n169 The executive acting alone may be better than the courts acting alone in some circumstances, but the executive plus the courts (or Congress) may be more effective than the executive alone.

Perhaps most important, the new functionalist role effectiveness view ignores the structural reality that national security policy (indeed all government decision- making) is channeled through a set of existing organizations, each with its own highly elaborated set of professional norms and responsibilities, standard procedures and routines, identities and culture, all of which constrain and guide behavior-often in ways that centrally affect the organization's ability to perform its functions. Considering how such pathologies affect decision-making, one may find a far more sophisticated-and more meaningful-set of comparisons between decision-making structures than asking, for example, whether the executive can make decisions faster than courts. The next section explores a role effectiveness approach that could take this reality into account.

#### Crisis politics require rules and constraints to prevent catastrophic mistakes

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

The most persuasive argument for executive discretion during emergencies is usually thought to be urgency. This is fascinating because, in the emergency room, urgency is the principal reason for avoiding discretion and relying on rules; nurses, for example, follow protocols elaborated in advance because, when a disaster strikes, they have little time to think. Besides reducing the risk of avoidable error, the rules governing emergency response considerably reduce decision and coordination costs. They also serve an emotionally reassuring function, something of immense practical value when the stakes are high and time is scarce.

As I mentioned earlier, managing diverse situations according to general rules is feasible only if the situations in question display observable uniformities. General rules for administering transfusions make sense because, for all practical purposes, the patients being transfused are the same. But that is only part of the story. Another reason why general rules are applicable in such cases is that emergency responders tend to react in predictable ways, freezing, fixating, or panicking under stress. All of us make costly and sometimes irreparable mistakes under immense time pressures. All of us, when spellbound by an onrushing threat, may fail to notice another lethal danger careening toward us from our blind side. To universal human fallibility and tunnel vision (exacerbated by urgency), we can add the equally universal human reluctance to admit mistakes and to make appropriate midstream adjustments in a timely fashion.

These considerations provide an initial reason for thinking that emergency-room practices may contain important lessons for managing national-security emergencies. Advocates of executive discretion in the war on terror frequently ask how precedents can guide our response to a wholly unprecedented threat. An initial answer is that America's situation after 9/11, however novel, is not totally unprecedented. At least one factor that has repeatedly undermined government effectiveness in the past, also during emergencies, remains essentially unchanged: our all-too-human cognitive and emotional imperfections.

[\*308] When facing an unprecedented threat, responders should of course jettison rules that prevent them from responding in the most effective and appropriate way. On the other hand, they do not necessarily want to circumvent those "auxiliary precautions" (rules, protocols, practices, and institutions) that have survived through trial and error to remind them of the complexity of their threat environment, to prevent their over-concentration on a single salient danger, to alert them to unintended complications triggered by our own ad hoc remedial interventions, and to bring their potentially fatal mistakes to light before it becomes too late to correct them.

#### Legal constraints reduce the risk of error in a crisis

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

Is regimented adherence to pre-existing rules in emergency situations relevant to the effective management of national-security emergencies? This question is raised by a rhetorical flourish frequently employed during the Bush presidency to silence critics of unconfined executive power in the war on terror: anyone who favors adhering to inherited legal rules, such as habeas corpus or the Geneva Conventions, must be frivolously underestimating the danger we face. In confronting the terrorist threat, effectiveness requires flexibility, and flexibility presupposes the shedding of rules - not of rules that the executive can selectively apply, revise, or flout at will, but of rules that effectively constrain the executive. The president's constitutional responsibility to act within the law, we are sometimes told, is secondary to his constitutional duty to defend and protect the country. Allegedly, only those who downplay the threat of international Salafi jihadism would suggest that we should fight al Qaeda with our hands tied behind our backs.

What makes the emergency-room example seem jarring, at least to anyone immersed in the Bush-era debate about counterterrorism, is that it conveys the opposite lesson: emergency-response personnel follow pre-established protocols precisely because they understand the dangers they face. Only those who fail to appreciate the gravity of a looming threat would advocate a wholesale dispensing with rules that professionals have developed over time to reduce the error rate of rapid-fire choices made as crises unfold.

If slavishly followed, admittedly, some rules would impede apt responses to danger and disaster. But the patently dysfunctional nature of particular rules in certain situations does not justify a blanket repudiation of obligatory rule-following during emergencies. n7 That rules may play an emphatically positive role during crises and calamities is plainly illustrated by emergency-room protocols. The reason why is easy to formulate. Rules do not function always and exclusively as disabling restraints, binding our hands; they can also serve [\*304] as steadying guidelines, focusing our aim, and reminding us of long-term objectives and collateral dangers that might otherwise slip from view in the flurry of an unfolding crisis.

That this rather obvious truth might have some relevance to the war on terror is strongly suggested by the behavior of the constitutionally unrestrained executive between 2001 and 2008. Some of the most egregious policy mistakes that occurred during this period can be traced directly to the constitutionally unchecked presidency, a "monarchical" and therefore potentially arbitrary decision-making system that, arguably, no country can afford, especially when faced with grave, obscure, and rapidly evolving threats.

### 1ar – flexibility

#### Flexibility isn’t needed vis a vis targeted killing

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]

Ex Ante Procedures Three key considerations should guide the development of ex ante procedures. First, any procedural requirements must reasonably respond to the need for secrecy in certain operations. Secrecy concerns cannot, for example, justify the lack of transparency as to the substantive targeting standards being employed. There is, however, a legitimate need for the state to protect its sources and methods and to maintain an element of surprise in an attack or capture operation. Second, contrary to oft-repeated rhetoric about the ticking time bomb, few, if any, capture or kill operations outside a zone of active conflict occur in situations of true exigency.166 Rather, there is often the time and need for advance planning. In fact, **advance planning is often necessary to minimize damage to one’s own troops and nearby civilians**.167 Third, the procedures and standards employed must be transparent and sufficiently credible to achieve the desired legitimacy gains.

#### The flexibility argument is wrong – the President is inevitably heavily constrained

**Zeisburg, 13** - assistant professor of political science at the University of Michigan (Mariah, War Powers: The Politics of Constitutional Authority, <http://press.princeton.edu/chapters/s10034.pdf>)

While policy flexibility is important, the relationship between policy flexibility and interbranch behavior is more complex than insularists claim. The president’s capacity to independently respond to crisis is structurally guaranteed by a fixed term and by high barriers to impeachment. Given a massive military establishment, he can pursue his policies even if very few people agree with him at all. Congress cannot, except under exceptional circumstances, remove him personally from office. The need for flexibility through independence is guaranteed at the structural level.

There are good reasons not to expand this structurally guaranteed independence into a norm of political insularity. In part, this is because the president’s decision space may be restricted by many forces beyond Congress. Presidents who govern unilaterally may discover that their strategy becomes more and more determined by the imperatives of a single force, say the views of a single cabinet. In fact, engaging the conflicting demands of different political realities and institutions can open space for an agent to make flexible decisions in a broader space. A president “freed” from Congress may end up chained by party. In the prelude to World War II, Senator Nye sought restrictive legislation out of a worry that open presidential discretion would leave the president beholden to economic interests against his own will.52 Roosevelt affirmed this worry, telling certain senators that “[i]f war came in Europe, [he] did not want to be forced to defend American commercial interests blindly—we would prefer to conduct American policy free from emotional and economic pressures.”53 Even imagining a presidency that faces no external pressures at all, groupthink in the cabinet may still restrict the branch’s flexibility. Politicians can sometimes achieve policy flexibility in the US constitutional system by working through a crossroads of conflicting imperatives, rather than being freed from any one of them.

Moreover, flexibility is not the only value for achieving a sound security policy. Wisdom, deliberateness, stability, and consistency are also values, and Congress is well-positioned to contribute here. The right response to a threat is often unclear. Diplomacy, embargoes, and even ignoring the incident may sometimes be more skillful than war.54 Some legislators have more expertise than the president on particular security problems, and they may have creative perspectives borne of long experience in difficult areas.

### Terror D

#### No retaliation—definitely no escalation

**Mueller 5** (John, Professor of Political Science – Ohio State University, Reactions and Overreactions to Terrorism, http://polisci.osu.edu/faculty/jmueller/NB.PDF)

However, history clearly demonstrates that overreaction is not necessarily inevitable. Sometimes, in fact, leaders have been able to restrain their instinct to overreact. Even more important, **restrained reaction--or even capitulation to terrorist acts--has often proved to be entirely acceptable politically**. That is, there are many instances where leaders did nothing after a terrorist attack (or at least refrained from overreacting) and did not suffer politically or otherwise. Similarly, after an unacceptable loss of American lives in Somalia in 1993, Bill Clinton responded by withdrawing the troops without noticeable negative impact on his 1996 re-election bid. Although Clinton responded with (apparently counterproductive) military retaliations after the two U.S. embassies were bombed in Africa in 1998 as discussed earlier, his administration did not have a notable response to terrorist attacks on American targets in Saudi Arabia (Khobar Towers) in 1996 or to the bombing of the U.S.S. Cole in 2000, and these non-responses never caused it political pain. George W. Bush's response to the anthrax attacks of 2001 did include, as noted above, a costly and wasteful stocking-up of anthrax vaccine and enormous extra spending by the U.S. Post Office. However, beyond that, it was the same as Clinton's had been to the terrorist attacks against the World Trade Center in 1993 and in Oklahoma City in 1995 and the same as the one applied in Spain when terrorist bombed trains there in 2004 or in Britain after attacks in 2005: the dedicated application of police work to try to apprehend the perpetrators. This approach was politically acceptable even though the culprit in the anthrax case (unlike the other ones) has yet to be found. The demands for retaliation may be somewhat more problematic in the case of suicide terrorists since the direct perpetrators of the terrorist act are already dead, thus sometimes impelling a vengeful need to seek out other targets. Nonetheless, the attacks in Lebanon, Saudi Arabia, Great Britain, and against the Cole were all suicidal, yet no direct retaliatory action was taken. **Thus, despite short-term demands that some sort of action must be taken**, experience suggests politicians can often successfully ride out this demand after the obligatory (and inexpensive) expressions of outrage are prominently issued.

#### Combined probability approaches zero

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

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

#### No interest in WMD

**Mueller 10**—Professor of Political Science and International Relations @ Ohio State. Widely-recognized expert on terrorism threats in foreign policy. AB from U Chicago, MA in pol sci from UCLA and PhD in pol sci from UCLA (John, “Calming Our Nuclear Jitters”, Issues in Science & Technology, 07485492, Winter 2010, Vol. 26, Issue 2, EBSCO, RBatra)

The al Qaeda factor The degree to which al Qaeda, the only terrorist group that seems to want to target the United States, has pursued or even has much interest in a nuclear weapon may have been exaggerated. The 9/11 Commission stated that "al Qaeda has tried to acquire or make nuclear weapons for at least ten years," but the only substantial evidence it supplies comes from an episode that is supposed to have taken place about 1993 in Sudan, when al Qaeda members may have sought to purchase some uranium that turned out to be bogus. Information about this supposed venture apparently comes entirely from Jamal al Fadl, who defected from al Qaeda in 1996 after being caught stealing $110,000 from the organization. Others, including the man who allegedly purchased the uranium, assert that although there were various other scams taking place at the time that may have served as grist for Fadl, the uranium episode never happened. As a key indication of al Qaeda's desire to obtain atomic weapons, many have focused on a set of conversations in Afghanistan in August 2001 that two Pakistani nuclear scientists reportedly had with Osama bin Laden and three other al Qaeda officials. Pakistani intelligence officers characterize the discussions as "academic" in nature. It seems that the discussion was wide-ranging and rudimentary and that the scientists provided no material or specific plans. Moreover, the scientists probably were incapable of providing truly helpful information because their expertise was not in bomb design but in the processing of fissile material, which is almost certainly beyond the capacities of a nonstate group. Kalid Sheikh Mohammed, the apparent planner of the 9/11 attacks, reportedly says that al Qaeda's bomb efforts never went beyond searching the Internet. After the fall of the Taliban in 2001, technical experts from the CIA and the Department of Energy examined documents and other information that were uncovered by intelligence agencies and the media in Afghanistan. They uncovered no credible information that al Qaeda had obtained fissile material or acquired a nuclear weapon. Moreover, they found no evidence of any radioactive material suitable for weapons. They did uncover, however, a "nuclear-related" document discussing "openly available concepts about the nuclear fuel cycle and some weapons-related issues." Just a day or two before al Qaeda was to flee from Afghanistan in 2001, bin Laden supposedly told a Pakistani journalist, "If the United States uses chemical or nuclear weapons against us, we might respond with chemical and nuclear weapons. We possess these weapons as a deterrent." Given the military pressure that they were then under and taking into account the evidence of the primitive or more probably nonexistent nature of al Qaedas nuclear program, the reported assertions, although unsettling, appear at best to be a desperate bluff. Bin Laden has made statements about nuclear weapons a few other times. Some of these pronouncements can be seen to be threatening, but they are rather coy and indirect, indicating perhaps something of an interest, but not acknowledging a capability. And as terrorism specialist Louise Richardson observes, "Statements claiming a right to possess nuclear weapons have been misinterpreted as expressing a determination to use them. This in turn has fed the exaggeration of the threat we face." Norwegian researcher Anne Stenersen concluded after an exhaustive study of available materials that, although "it is likely that al Qaeda central has considered the option of using non-conventional weapons," there is "little evidence that such ideas ever developed into actual plans, or that they were given any kind of priority at the expense of more traditional types of terrorist attacks." She also notes that information on an al Qaeda computer left behind in Afghanistan in 2001 indicates that only $2,000 to $4,000 was earmarked for weapons of mass destruction research and that the money was mainly for very crude work on chemical weapons. Today, the key portions of al Qaeda central may well total only a few hundred people, apparently assisting the Taliban's distinctly separate, far larger, and very troublesome insurgency in Afghanistan. Beyond this tiny band, there are thousands of sympathizers and would-be jihadists spread around the globe. They mainly connect in Internet chat rooms, engage in radicalizing conversations, and variously dare each other to actually do something. Any "threat," particularly to the West, appears, then, principally to derive from self-selected people, often isolated from each other, who fantasize about performing dire deeds. From time to time some of these people, or ones closer to al Qaeda central, actually manage to do some harm. And occasionally, they may even be able to pull off something large, such as 9/11. But in most cases, their capacities and schemes, or alleged schemes, seem to be far less dangerous than initial press reports vividly, even hysterically, suggest. Most important for present purposes, however, is that any notion that al Qaeda has the capacity to acquire nuclear weapons, even if it wanted to, looks farfetched in the extreme. It is also noteworthy that, although there have been plenty of terrorist attacks in the world since 2001, all have relied on conventional destructive methods. For the most part, terrorists seem to be heeding the advice found in a memo on an al Qaeda laptop seized in Pakistan in 2004: "Make use of that which is available … rather than waste valuable time becoming despondent over that which is not within your reach." In fact, history consistently demonstrates that terrorists prefer weapons that they know and understand, not new, exotic ones.