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#### Advantage 1 is due process!!!!!

#### Faith in executive restraint kills due process – oversight creates assurance in the system

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 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.173 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

#### Exclusive authority over drones by the executive guarantees a high error rate and use of state secrets – that wrecks due process – independent oversight is key

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/>)

Currently, there is no specific evidence that the targeted killing program has been used for illegitimate purposes other than national defense and security. However, the Executive’s exercise of authority in identifying and pursuing threats of terror has produced a worrisome error rate.175 According to an analysis of Predator drone strikes in Pakistan conducted by the New America Foundation, since 2004, the non-militant fatality rate has been roughly 20 percent.176 In other words, about one-fifth of those killed by Predator drone strikes have been non-military targets, including innocent civilians.177 In June of 2010, it was reported that the government lost nearly 75 percent of the cases involving habeas petitions filed by detainees at Guantanamo Bay.178 This suggests that for the majority of detained enemy combatants, the government has had insufficient evidence for the assertion that the detained individuals were involved in hostilities against the United States.179 The rate of error in these instances only adds to the concern over the procedural guarantees of the targeted killing process and the need for a more standardized process with a robust system of screening and oversight. There is also historical precedent for cautiously evaluating the legitimacy and constitutionality of unreviewable executive authority in matters of espionage and national security. In 1976, President Ford issued an executive order outlawing political assassination.180 The order was a response to revelations after the Watergate scandal that the CIA had attempted to assassinate Cuban President Fidel Castro multiple times.181 Every U.S. president since Ford has upheld the ban on political assassinations in subsequent executive orders.182 This is an example of classified CIA activity that, once publicly known, was deemed unacceptable as a matter of law and policy.183 The current targeted killing program conducted in executive secrecy raises concerns similar to those of political assassination. The state secrets privilege is another form of unreviewable executive power that ought to be met with skepticism. In Aulaqi, the DOJ raised the state secrets privilege as alternative grounds for summary judgment, claiming that litigating the issues before the court would require the disclosure of sensitive classified intelligence and would endanger national security.184 Originally, the state secrets privilege was a rarely-used but formidable evidentiary objection.185 Since the terrorist attacks of September 11, however, it has been used much more frequently and as grounds for the dismissal of entire cases.186 Not only is the expanded use of the state secrets privilege problematic, so too is the privilege itself.187 The Supreme Court formally recognized the privilege in United States v. Reynolds. 188 However, the validity of even this first use of the privilege has been called into question, raising concerns over the potential for government abuse.189 In Reynolds, the government argued that certain accident reports containing state secrets should be kept out of trial.190 Although the Court agreed, the merits of this decision have since been cast in doubt.191 When the accident reports in Reynolds later became public, they were shown to contain no sensitive state secrets.192 Instead, the reports contained potentially embarrassing evidence of negligent government conduct.193 As long as targeted killing is conducted under the cloak of the state secrets privilege, there is no guarantee that the program will be free of government misconduct. C. The Need for a Resolution Concerns over targeted killing error rates and historical abuses of executive power cast extraordinary doubt over the adequacy of the Obama Administration’s legal justification of targeted killing, as articulated by the Department of State.194 The government’s argument is that it should be taken at its word when it assures the public that the process for identifying and targeting suspected terrorists with lethal force is careful, rigorous, and legal.195 This is not an adequate explanation of targeted killing law for two reasons. First, this explanation leaves unanswered the question of how the targeted killing program is careful, rigorous, and legal.196 Second, there is ample historical evidence that suggests that executive guarantees of authority and privilege ought to be met with skepticism.197 Without some form of independent oversight or review, taking the Executive Branch at its word is not an adequate form of due process and provides no minimum constitutional guarantee.198

#### Prior, judicial oversight ensures informed and impartial decision-making – vital to due process

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

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

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

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

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

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

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

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

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

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

#### SCENARIO 1 IS HUMAN RIGHTS LEADERSHIP!

#### Lack of due process on drones spills over – it’s the knockout blow for rights guarantees

Blum and Heymann 10 (Gabriella, Assistant Professor of Law – Harvard Law School, and Philip, Professor of Law – Harvard Law School, “Law and Policy of Targeted Killing,” Harvard National Security Journal, 1 Harv. Nat'l Sec. J. 145, Lexis)

As we have shown, targeted killings may be justified even without declaring an all-out "war" on terrorism. A war paradigm is overbroad in the sense that it allows the targeting of any member of a terrorist organization. For the United States, it has had no geographical limits. When any suspected member of a hostile terrorist organization--regardless of function, role, or degree of contribution to the terrorist effort--might be targeted anywhere around the world without any due process guarantees or monitoring procedures, targeted killings run grave risks of doing both short-term and lasting harm. In contrast, a peacetime paradigm that enumerates specific exceptions for the use of force in self-defense is more legitimate, more narrowly tailored to the situation, offers potentially greater guarantees for the rule of law. It is, however, harder to justify targeted killing operations under a law enforcement paradigm when the tactic is used as a continuous and systematic practice rather than as an exceptional measure. Justifying targeted killings under a law enforcement paradigm also threatens to erode the international rules that govern peacetime international relations as well as the human rights guarantees that governments owe their own citizens.

#### New legal framework key to effective norms – clear, national standards bridge the gap

Mutua 7 (Makau, SUNY Distinguished Professor, Professor of Law, Floyd H. & Hilda L. Hurst Faculty Scholar, and Director of the Human Rights Center – Buffalo Law School, “Standard Setting in Human Rights: Critique and Prognosis,” Human Rights Quarterly, Vol. 29, http://www.law.buffalo.edu/content/dam/law/restricted-assets/pdf/faculty/mutuaM/journals/hrq2907.pdf)

Even with historic conceptual and institutional breakthroughs, a lot remains to be done to secure human dignity. Although human rights standards have been set in virtually all areas that touch on human dignity, normative gaps and weaknesses still exist in many areas. New normative frameworks are needed in some areas, while in others they must be elaborated and strengthened. Standard setting is a dynamic process that must respond to a rapidly changing globe and challenges that come with the emergence of new problems and conditions. The argument that the era of standard setting is over is not only mistaken, but dangerous.

The setting of human rights standards is not a static process. The conditions of humanity that human rights standards seek to safeguard and promote are evolving concepts. New conditions of oppression and powerlessness are forever being discovered, and new challenges are constantly emerging. For example, the gay rights movement and the campaign for the rights of people with disabilities were unthinkable just a few decades ago. The current US war on terror has similarly thrown up new obstacles to established norms. There is no doubt that these and many other issues require a normative response. The struggle for and definition of human freedom and development is a continuous and evolutionary process. These issues require unceasing vigilance, revision, re-evaluation, deepening, and re-definition. Broad norms and standards must be unpacked, broken down, elucidated, revised, and may even need to be rejected and replaced by new and different standards. The scope, reach, and content of norms must be comprehensible to their beneficiaries, as well as to those who bear the responsibility for their implementation. Vacuous, rhetorical, and vague standards accomplish little.

To be effective, standards must have a clear path for their implementation and enforcement. This is an area of weakness. Institutions that are responsible for the promotion and protection of human rights standards—states and IGOs—are largely perceived by NGOs as reluctant, unwilling, unable, or ineffectual actors. They are seen as interested mostly in blunting the bite of human rights to safeguard state sovereignty. The effect of human rights must be translated at the national level, so municipal institutions that safeguard basic rights are critical to enforcement. Judiciaries, national human rights institutions, bar associations, NGOs, police and security apparatuses, and legislatures must be in the frontline to entrench, deepen, promote, and protect human rights. However, only human rights NGOs among these institutions can usually be relied on to advance the human rights agenda with vigor, honesty, and a healthy disinterest. Human rights norms must be internalized by states in their legal and political orders to be effective.

#### The impact is global war

William W. Burke-White 4, Lecturer in Public and International Affairs and Senior Special Assistant to the Dean, Woodrow Wilson School of Public and International Affairs, Princeton University, Spring 2004, Harvard Human Rights Journal, 17 Harv. Hum. Rts. J. 249, p. 279-280

This Article presents a strategic--as opposed to ideological or normative--argument that the promotion of human rights should be given a more prominent place in U.S. foreign policy. It does so by suggesting a correlation between the domestic human rights practices of states and their propensity to engage in aggressive international conduct. Among the chief threats to U.S. national security are acts of aggression by other states. Aggressive acts of war may directly endanger the United States, as did the Japanese bombing of Pearl Harbor in 1941, or they may require U.S. military action overseas, as in Kuwait fifty years later. Evidence from the post-Cold War period [\*250] indicates that states that systematically abuse their own citizens' human rights are also those most likely to engage in aggression. To the degree that improvements in various states' human rights records decrease the likelihood of aggressive war, a foreign policy informed by human rights can significantly enhance U.S. and global security.¶ Since 1990, a state's domestic human rights policy appears to be a telling indicator of that state's propensity to engage in international aggression. A central element of U.S. foreign policy has long been the preservation of peace and the prevention of such acts of aggression. n2 If the correlation discussed herein is accurate, it provides U.S. policymakers with a powerful new tool to enhance national security through the promotion of human rights. A strategic linkage between national security and human rights would result in a number of important policy modifications. First, it changes the prioritization of those countries U.S. policymakers have identified as presenting the greatest concern. Second, it alters some of the policy prescriptions for such states. Third, it offers states a means of signaling benign international intent through the improvement of their domestic human rights records. Fourth, it provides a way for a current government to prevent future governments from aggressive international behavior through the institutionalization of human rights protections. Fifth, it addresses the particular threat of human rights abusing states obtaining weapons of mass destruction (WMD). Finally, it offers a mechanism for U.S.-U.N. cooperation on human rights issues.

#### And, human rights cred is key to limit Russian autocracy

Mendelson 9 (Sarah, Senior Fellow in the Russia and Eurasia Program – Center for Strategic and International Studies, “U.S.-Russia Relations and the Democracy and Rule of Law Deficit”, 6-19, http://www.tcf.org/publicat ions/internationalaffairs/US-RussianRelationsandtheDemocracyandRuleofLawDeficit.pdf)

In fact, coping with authoritarian trends in Russia (and elsewhere) will involve **changes in U.S. policies that have, on the surface, nothing to do with Russia**. Bush administration counterterrorism policies that authorized torture, indefinite detention of terrorist suspects, and the rendering of detainees to secret prisons and Guantánamo have had numerous negative unintended con­sequences for U.S. national security, including serving as a recruitment tool for al Qaeda and insurgents in Iraq.4 Less often recognized, these policies also have undercut whatever leverage the United States had, as well as limited the effectiveness of American decision-makers, to push back on authoritarian poli­cies adopted by, among others, the Putin administration. At its worst, American departures from the rule of law may have enabled abuse inside Russia. These departures certainly left human rights defenders isolated.5 Repairing the dam­age to U.S. soft power and reversing the departure from human rights norms that characterized the Bush administration’s counterterrorism policies will provide the Obama administration strategic and moral authority and improve the ability of the United States to work with allies. It also can have positive consequences for Obama’s Russia policy. The changes that need to be made in U.S. counterterrorism policies, how­ever politically sensitive, are somewhat more straightforward than the adjust­ments that must be made to respond to the complex issues concerning Russia. The Obama administration must determine how best to engage Russian lead­ers and the population on issues of importance to the United States, given Russia’s poor governance structures, the stark drop in oil prices, Russia’s continued aspirations for great power status, and the rather serious resentment by Russians concerning American dominance and prior policies. The policy puzzle, therefore, is how to do all this without, at the same time, sacrificing our values and undercutting (yet again) U.S. soft power. This report assesses the political dynamics that have shaped Russia’s authoritarian drift, briefly addresses a few of the ways in which they mat­ter for U.S. policy, and suggests several organizing principles to help the Obama administration manage this critical relationship. Possible approaches include working closely with Europe on a joint approach to Russia, accurately anticipating the unintended consequences of U.S. policy in one realm (such as Kosovo) for Russia policy, and embracing the rights of states to choose their Sarah E. Mendelson 5 own security alliances. A final important principle relates to U.S. engagement with Russians beyond the Kremlin. President Obama should speak directly to the Russian people, engaging in a manner that respects their interests and desires, but also reflects the core values of the Obama administration; that is, “reject[s] as false the choice between our safety and our ideals.”6 The Obama administration also should endorse a platform and a process for a renewed dialogue between U.S. and Russian civil society. The View from the Kremlin Two interactive dynamics over the past several years have shaped the dominant approach by the Russian government to the outside world: the United States declined as a world power, and at the same time, the Russian state accumulated massive wealth from high gas and oil prices. Following what many in the Russian elite view as the “humiliation” of the 1990s, by 2008, Russia was no longer a status quo power. Instead, revisionist in nature, Russian authorities focused on the restoration of great power status.7 Fueled by petrodollars, the government tackled this project in numerous ways, including military exer­cises around the globe, soft power projects such as a twenty-four-hour-a-day English language cable news station, “think tanks” in New York and Paris, and perhaps most important, gas and oil distribution systems meant to make Russia a central player in energy security for decades to come.8 This restora­tion project undoubtedly will be slowed by the current financial crisis and drop in oil revenues, but the building blocks remain in place. As the restoration project evolved, the Putin administration increasingly challenged aspects of the post–World War II and post–cold war legal, secu­rity, and economic architecture, and suggested the need for new arrangements. Many in the Russian elite seemed to view the changes that have occurred in Europe over the past twenty years, such as the enlargement of the North 6 U.S.-Russian Relations and the Democracy and Rule of Law Deficit Atlantic Treaty Organization (NATO) and the European Union (EU), as ille­gitimate, driven not by the choices of local governments or populations, but by the will of Washington. Nostalgia for the Soviet era, a related sentiment, is widely shared, and is an important source of former president and now Prime Minister Vladimir Putin’s popularity.9 Some experts even suggest that many in Russia’s governing structures believe that Europe whole and free—that is, post–cold war Europe—is not in the security interest of Russia. The Carnegie Moscow Center’s Lilya Shevtsova has labeled this view “great power nation­alism” and observes that the “Putin-Medvedev-Lavrov doctrine” derives from the premise that Russia seeks to contain the West—while the West is busy trying not to offend Russia.10 Some other studies suggest that Russian policy­makers have attempted, in fact, to divide the United States from Europe, and generally have preferred bilateral to multilateral engagement.11 At the United Nations, Russia, together with China, repeatedly has challenged international responses to gross human rights violations in Burma, Darfur, and Zimbabwe, and it has engaged in systematic efforts to undermine the Organization for Security and Co-operation in Europe’s (OSCE) election monitoring efforts and the Council of Europe’s human rights monitoring.12 Meanwhile, Russian lead­ers seem to believe the current European security arrangements are soft com­mitments, ripe for renegotiation and restructuring. President Dmitri Medvedev has, in fact, called for a new “collective security arrangement,” at the same time reintroducing the concept of spheres of influence.13 All of these actions taken together, along with the decline in U.S. soft power, have looked at times as if some in the Russian government were trying to reset the table on human rights and international law, exporting its democracy and rule of law deficit abroad. How best can the United States, together with Europe, respond to this situation? Two additional dynamics are relevant: Russian internal weaknesses, both political and economic, but also the degree to which the Russian authori­ties’ assessment of the condition of the international system is correct. For Sarah E. Mendelson 7 example, in August 2008, Russian government officials fecklessly deployed human rights and international law rhetoric to justify the Russian use of force in South Ossetia—was that just a murky reflection of the current deeply incon­sistent international order?14 Will that calculation be challenged by the Obama administration? How can it do so effectively? Will we see a new era of more robust international organizations, underpinned by respect for human rights and international law? If not, will we be in for a period of serious instability in Europe, along Russia’s borders? Russia’s Democracy and Rule of Law Deficit What makes these questions so pressing is the reality that American and European political strategy dating back to the early 1990s of integrating Russia into the Euro-Atlantic community and thus encouraging democratic develop­ment has largely failed. By 2009, Vladimir Putin’s policies have systemati­cally closed off nearly all legitimate structures for voicing opposition. Many nongovernmental organizations are under daily pressure from the authorities.15 The parliament is dominated by a government-run party, United Russia, and outcomes of local and national elections are controlled by the authorities. The government controls national television. The few critically minded journalists that exist routinely are threatened or are under constant surveillance by the authorities, and twenty murders of journalists since 2000 have gone unsolved.16 One small newspaper known for its criticism of Kremlin policies has seen four of its journalists killed in recent years. At a minimum, the authorities have pre­sided over an era of impunity, and at worst, some fear government authorities may have been directly involved in these deaths.17 Meanwhile, the democratic political opposition is extremely marginal and dysfunctional—irrespective of whatever government pressures are brought to bear on it. Russia has no leading liberal figures that might emerge as national leaders at present. In years past, the fighting among liberal parties was legend­ary, and led to multiple fratricidal losses in single-mandate districts, as liberal parties ran against one another—back when there were competitive elections for parliamentary seats.18 Today, it is unclear when or how the democratic opposition will repair itself. Yet, as political space has shrunk steadily in the past ten years, the major­ity of Russians do not appear to mind. In terms of the younger generation, the conventional wisdom that wealth would lead to a demand for democracy has not been borne out; only about 10 percent of survey respondents could be considered strongly supportive of democracy, while most are ambivalent. In the early 1990s, many in the West assumed that the older Soviet generation would be replaced eventually by a younger, pro-Western, pro-democratic gen­eration. Experts and policymakers alike assumed this succession would be a natural course of events, like gravity. A similar conventional wisdom about the younger generation in Russia continues. It holds that iPods, lattes, skateboards, and other artifacts of Western consumer culture will translate into a desire for independent media, justice, and human rights. In 2005 and 2007, in an environment of steadily shrinking political space, a study based at the Center for Strategic and International Studies (CSIS) explored how young Russians viewed Soviet history and Stalin. Our nationally representative surveys of 16-to-29-year-old Russians suggested that, despite economic prosperity, most young people gravitated enthusiastically to Vladimir Putin’s ideological platform of revisionist history and nostalgia. The narrative advanced by the government concerning recent history quite simply resonated with this younger generation. In both surveys, a majority believed that Stalin did more good than bad and that the collapse of the Soviet Union was the greatest geopolitical catastrophe of the twentieth century. These findings undoubtedly reflected coordinated strategic communications efforts by government authorities, including sup­port of a teacher’s guide rewriting Soviet history, downplaying the deaths of millions of citizens, and effacing historical memory. These actions facilitated Russia’s authoritarian trend.19 In sum, the Russian middle class and support for authoritarian governance coexist. The tacit bargain of the past decade, however, in which dissenters were punished but Russians’ pocketbooks grew, may now be threatened by the inter­national economic crisis. Oil prices plunged from a high of $147 a barrel in July 2008 to about $40 a barrel in December 2008. If the price of oil stays low, the lubricating effect of oil and gas revenues may well dry up, laying bare Russia’s dysfunctional state institutions and challenging the authorities’ ability to govern. Economic hardship and poor governance seem, at least anecdotally, to correlate with an increase in public protest and nervousness on the part of the ruling authorities.20 Perhaps, in the long run, the mix of economic hard times and poor governance will stimulate a greater demand for democracy and the rule of law in Russia, as citizens grow unhappy with state institutions that do not function and link that dysfunction to poor governance. In the near term, we can expect growth in nationalism and xenophobia. 21 To be sure, the democracy and rule of law deficit and the growth in nationalism pose problems primarily for Russians. In the twenty-first cen­tury, independent investigative journalism and the legitimate use of courts for prosecution are necessary to fight corruption. Today, Russia is plagued by corruption, and the Russian authorities dominate both television and court decisions.22 Independent newspapers and Internet sites exist, but journal­ists who have engaged in investigative journalism have been killed or live under threat.23 In a state where the rule of man predominates, the population experiences the police as predatory rather than protective. Torture in police stations is said to be common and police officers who have been rotated through Chechnya are said to be especially abusive.24 In a 2004 CSIS survey of 2,400 Russians ages 16 to 65, 41 percent of respondents feared arbitrary arrest by the police.25 In a 2007 CSIS survey of 2,000 Russians ages 16 to 29, 62 percent of respondents fully or partially distrusted the police.26 While one cannot make direct comparisons for methodological reasons, it is worth bearing in mind a recent study of attitudes toward police in China, where only 25 percent reported distrust.27 Undoubtedly, the democracy and rule of law deficit varies regionally, but it is particularly worrisome in the southern regions of Russia. The govern­ment’s approach to what it perceives as widespread radical Islamic sentiment in the North Caucasus has increased violence rather than contained it. Between May 1 and August 31, 2008, there were at least 282 incidents, and between September 1 and December 31, 2008 there were at least 333.28 When the situ­ation is at its most dire, the Russian government appears not to control this part of its territory. Many experts worry that there will be war in the North Caucasus in 2009, or possibly that, south of the border, a Russian-Georgia war will break out again.29 That prognosis may be overly gloomy, but violence is clearly on the rise and the socioeconomic conditions in the region are dire. Why It Matters What does any of this have to do with the Obama administration? The democ­racy and rule of law deficit in Russia has a range of security and human rights implications for the United States and our allies in Europe. For example, the Obama administration comes to office with a number of arms control goals. These plans may be complicated by the absence of Russian military reform that, in turn, correlates with abuse inside the army. (They are also complicated by continued government reliance on nonconventional forces: in September 2008, President Medvedev committed to modernizing the nuclear arsenal.30) Serious, joint counterterrorism efforts with the United States, Europe, and Russia are likely to remain illusive as long as the police and security ser­vices are corrupt and abusive, and the media, a potential source to expose that corruption, is largely controlled by the government. Even at the nongov­ernmental, track-two level, it is now difficult to have the sort of transatlantic Sarah E. Mendelson 11 policy dialogue on terrorism that has been common among other nations and societies since 2001.31 The most dire evidence suggests that security service personnel or contractors have been deployed abroad, in European cities, to eliminate Kremlin enemies. In the most famous example, British authorities have sought the extradition from Moscow of former KGB bodyguard and cur­rent Duma member Andrew Lugovoi for the murder by Polonium poisoning of Alexander Litvinenko in London in November 2006.32 Kremlin proxies, such as Chechnya’s Ramzan Kadyrov, may have agents doing the same on his behalf on the streets of Austria, also with apparent impunity.33 At a minimum, the Russian authorities seem to have drawn a red line at additional enlargement of Euro-Atlantic organizations. Instead of allowing states and societies to decide for themselves what alliances and security or economic arrangements they want, Russian officials speak of “zones of inter­est” and “neutral” spaces—presumably such as Ukraine. In the worst case scenario, the Kremlin might decide to probe the resolve of existing NATO and EU security commitments. Presumably, this realization led General James Craddock to request that NATO begin defense planning for the Baltic states.34 Some believe, although the evidence is not clear, that the May 2007 cyber attack on Estonian government agencies, banks, newspapers, and other organi­zations was a first probe by the Russian government.35 In the August 2008 war in Georgia, for which all sides deserve some blame, experts saw evidence of additional Russian government cyber attacks and a prime example of blatant disregard for international law as the Russian government sought to change an internationally recognized border by force.36 Meanwhile, existing Euro-Atlantic organizations are negatively and directly affected by Russia’s democracy and rule of law deficit. In recent years, the European Court of Human Rights has heard far more cases from Russia than any other country, effectively substituting for Russia’s domestic judiciary. Some European human rights lawyers argue that this situation is severely undermining the court’s efficacy and ability to handle cases from a broad range of countries. Moreover, the Russian government increasingly has failed to compensate victims or their families, apparently now risking its expul­sion from the Council of Europe.37 According to numerous OSCE officials, the Kremlin has waged a systematic campaign to undercut the organization’s vari­ous monitoring efforts.38 The emergent norm of international election observa­tion has been undermined by the Kremlin’s attempts to legitimize fraudulent elections at home and in neighboring states, supporting a wave of authoritarian governments in this region.39

#### Global war

Goodby 2 (James E., Former Fellow – US Institute of Peace, and Piet Buwalda and Dmitriĭ Trenin, A Strategy for Stable Peace: Toward a Euroatlantic Security Community, p. 27-29)

A decade after the Cold War was solemnly buried, there is still no stable peace between Russia and the Western countries. Moreover, from the late 1990s the dynamic of the relationship has taken a negative direc­tion. NATO's expansion to the east, the Kosovo crisis, and the second Chechen war stand out as milestones of the gradual slide toward something alternately described as a "cold peace" and a "new cold war." Frustration is steadily building on both sides. Mutual expecta­tions have been drastically lowered. In the Western world, and in North America in particular, public expectations for Russia and its affairs have plummeted. "Russia fatigue" is widespread in Europe as well. In Russia itself, Western, especially U.S., policies are often described as being aimed at keeping Russia weak and fragmented, with a purpose of subjugating it. It would appear, then, that today is anything but a pro­pitious starting point for an effort to chart the road toward a security community centered on Europe that would include Russia. But such an effort is necessary and should not be delayed. At worst, a Russia that is not properly anchored in a common institu­tional framework with the West can turn into a loose nuclear cannon. If conflicts arise between Russia and its smaller neighbors, the West will not be able to sit them out. And a progressive alienation between Russia and the Western world would have a very negative impact on domestic developments in Russia. Now that the German problem has been solved, the Russian problem looms as potentially Europe's largest. The United States will not be able to ignore Russia's strategic nuclear arsenal, and the European Union can hardly envisage a modi­cum of stability along its eastern periphery unless it finds a formula to co-opt Russia as Europe's reliable associate. RUSSIAN DEMOCRATIZATION In the decade since the demise of the Soviet Union and the commu­nist system, Russia has evolved into a genuinely pluralist society, al­though it is still a very incomplete democracy. To its credit, Russia has a constitution that proclaims separation of powers; it has a work­ing parliament, an executive president, and a nominally independent judiciary. Between 1993 and 2000, three parliamentary and two presi­dential elections were held; for the first time in Russia's long history, transfer of power at the very top occurred peacefully and in accor­dance with a democratic constitution. This is already becoming a pat­tern. Power has been decentralized vertically as well as horizontally. Power monopoly is a thing of the past. Russia's regions have started to form distinct identities. The regional governors, or presidents of re­publics, within Russia are popularly elected, as are city mayors and regional legislatures. The national economy has been largely priva­tized. The media, though not genuinely independent either of the au­thorities or of the various vested interests, are free in principle. There is a large degree of religious freedom, and ideological oppression is nonexistent. Finally, Russians are free to travel abroad. These achievements are significant, and most of them are irre­versible. Yet, Russia's development is handicapped by major hurdles to speedier societal transformation, as is occurring in Poland or Es­tonia. One hurdle is poor governance, stemming from the irresponsi­bility of the elites as much as from sheer incompetence. Toward the end of the Yeltsin era, the state itself appeared privatized, with parts of it serving the interests of various groups or strongmen. Corruption and crime are pervasive. Accustomed to living in an authoritarian state, many Russians began to associate democracy with chaos and thug­gery. Another major problem is widespread poverty and the collapse of the social infrastructure, including health care. Too many Russians believe they have gained little or nothing from the economic and social changes of the past decade. Taken together, these factors work toward the restoration of some form of authoritarian and paternalistic rule.

#### It’s reverse casual – aligning the war on terror with due process builds support for US leadership on human rights – the impact is warming and legitimacy

Schulz 8 (William F., Senior Fellow – Center for American Progress, Adjunct Professor of International Relations – The New School, Former Executive Direction – Amnesty International, “Introduction,” *The Future of Human Rights: U.S. Policy for a New Era*, p. 11-14)

Which leads to the second general principle the United States must reaffirm: a commitment to global cooperation and respect for international protocols and institutions, imperfect as they are. Of Francis Fukuyama's four bedrock characteristics of neoconservatism, it is the final one" skepticism about the legitimacy and effectiveness of international law and institutions to achieve either security or justice"38-that most dramatically divides normative human rights practice from neoconservative.

Sophisticated advocates of human rights are not naive about the failures of the United Nations, the shortcomings of the UN Human Rights Council, the unproven value of the International Criminal Court, or the weakness of unenforceable international law. But to ignore international regimens, much less undermine them, is to sacrifice the best resource the United States has available for convincing the world that we do not suffer from solipsism, immune to the needs and opinions of others; that our intent is benign; and that the most powerful nation on earth is prepared to use its power fairly and wisely. Mighty as we are, we do not live in a cocoon; we cannot solve our problems by ourselves, be they Iraq or terrorism or global warming.

Respect for human rights and the processes by which they are fashioned is one of the best ways to win global friends and influence the passions of people. And whether we think the source of human rights is God, natural law, or consensualism, an international imprimatur lends legitimacy to our pursuit of them. As a study by the Princeton Project on National Security noted recently, "Liberty under law within nations is inextricably linked with a stable system of liberty under law among them. " 40 Surely even Condoleezza Rice who, during the 2000 presidential campaign, wrote that "foreign policy in a Republican administration ... will proceed from the firm ground of the national interest, not the interests of an illusory international community [emphasis added] " 41 has come to rue the day she thought the world community no more than a chimera.

Repairing the Damage

The damaging effect of neoconservative policies on human rights goes well beyond reinforcement of the suspicion that American advocacy of human rights is a mere cover for an imperialist agenda. Those policies have undermined the notion that spreading human rights and democracy around the globe are viable goals of U.S. foreign policy. They have weakened international institutions upon which human rights depend. And they have increased a certain natural reticence on the part of the American people to commit U.S. troops to humanitarian and peace keeping missions, even when they are justified, as they are, for example, in Darfur. Coupled with America's human rights practices as part of its prosecution of the war on terror-secret incommunicado detentions, denial of habeas corpus, winking acceptance of torture-the nation's ability to hold others to account for their own abuses has been severely weakened.

A new administration will certainly have its hands full repairing this damage. It will need to find a variety of ways to signal renewed US. support for the international system. RatifYing one or more international human rights treaties would help do that. Perhaps the Convention on the Rights of the Child, which all countries except the United States and Somalia have ratified, would be a place to start now that the U.S. Supreme Court has removed one of the major objections to the treaty by declaring the execution of juveniles unconstitutional. Or closing Guantanamo Bay. Or removing the reservations to various human rights treaties that declare them nonenforceable in domestic law. Or standing for election to the UN Human Rights Council, flawed though it is, and using that forum to articulate a renewed commitment to a comprehensive human rights agenda. Or revisiting U.S. concerns about the International Criminal Court with an eye toward eventually ratifYing the Rome statutes establishing the court, or at least suspending the penalties we have leveraged against those countries that have refused to immunize Americans from prosecution by the court. If Iraq has taught us anything, it ought to have demonstrated that finding ways to deal with tyrants short of military force is to the advantage of all parties.

It will need to adopt a more sophisticated, less ham-handed approach to the promotion of democracy around the globe. It ought to go without saying that human rights are served by an increase in the number of stable democracies in the world. But the key word is "stable," since we know that newly formed, unstable democratic states lacking robust civil societies and strong democratic institutions are especially prone to be breeding grounds for all sorts of mischief, not least the production of terrorists. The tragedy of the Iraq War will only be compounded if the lesson drawn from it is that, because force- . feeding democracy proved so destructive, the only alternative is quiescence. While democracy is no magic bullet, tyranny guarantees bullets aplenty. Not every nation is ready to leap into full-blown democracy on a moment's notice. But if, indeed, as worldwide surveys have found, more than 90 percent of Muslims endorse democ- Introduction 13 racy as the best form of government, what is required of us is neither perfectionism nor passivity.42 What is required of us is patience.

It will need to codify the positive obligations of the United States under the

newly minted doctrine of the "responsibility to protect. "Just as the Iraq War ought not sour us on promoting democracy, so we must not allow it to impose an unfitting shyness upon us about using military power for humanitarian ends. In 2005 the UN General Assembly endorsed the worldwide responsibility to protect civilian populations at risk from mass atrocities.43 That does not imply that the United States will have to be the proverbial "world's policeman," committing its troops willy-nilly to the far corners of the globe. But it does mean that the United States will need to take mass atrocities seriously, adopting an early warning system for populations in danger, shoring up weak and failing states, and providing leadership and support for intervention when necessary, even when it itself stays far away from battle. The American people can distinguish between unwise military posturing and morally justified humanitarian interventions. In January 2007, after more than three years and 3,000 U.S. deaths in Iraq, 63 percent of Americans, quite understandably, said that the world has grown more afraid of U.S. military force and that such fear undermines U.S. security by prompting other nations to seek means to protect themselves.44 Yet, even so, in a poll taken six months later, a plurality of Americans favored deploying U.S. troops as part of a multinational force in Darfur.45 If the American people can tell the difference between legitimate and illegitimate use of force, the American government ought to be able to also.

It will need to conform US. practices to international standards on fundamental human rights issues. The United States will never reclaim its reputation for human rights leadership as long as its own policies on such issues as **due process** for prisoners taken into custody in the course of the war on terror remain at such radical odds with international law and practice. There is considerable room for debate as to how cases of terror suspects should be adjudicated, especially when highly classified intelligence is involved-whether, for example, the United States should establish special national security courts or integrate such defendants into the regular criminal justice system46- but what is beyond doubt is that the current system in which suspects are cast into legal netherworlds of secret detentions and coercive interrogations cannot continue. And in a broader sense, the United States would do well in the eyes of the world to be less defensive about its own domestic practices that may fall short of international standards. Our credibility in criticizing others waxes and wanes in direct proportion to our willingness to acknowledge our own shortcomings. We should, for example, welcome to this country any UN special rapporteur who seeks an invitation to investigate; we should encourage the solicitor general of the United States to draw upon international law to buttress the government's arguments before the Supreme Court, thereby lending encouragement to those members of the court who are beginning to look to such law to inform their opinions;47 and we should issue an annual report on U.S. human rights practices to complement the State Department's reports on other countries. Mter all, since the Chinese publish such a report on us each year, it could not hurt to publish a more accurate version of our own.

#### Warming causes extinction

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

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

#### Lack of legitimacy makes US leadership ineffective, regardless of material power

Barak Mendelsohn 10, assistant professor of political science at Haverford College and a senior fellow of FPRI. Author of Combating Jihadism: American Hegemony and Interstate Cooperation in the War on Terrorism, June 2010, “The Question of International Cooperation in the War on Terrorism”, <http://www.fpri.org/enotes/201006.mendelsohn.cooperationwarterror.html>

Going against common conceptions, I argue that the United States sought to advance more than what it viewed as simply its own interest. The United States stands behind multiple collaborative enterprises and should be credited for that. Nevertheless, sometimes it has overreached, sought to gain special rights other states do not have, or presented strategies that were not compatible with the general design of the war on terrorism, to which most states subscribed. When it went too far, the United States found that, while secondary powers could not stop it from taking action, they could deny it legitimacy and make the achievement of its objectives unattainable. Thus, despite the common narrative, U.S. power was successfully checked, and the United States found the limitations of its power, even under the Bush administration. Defining Hegemony Let me begin with my conception of hegemony. While the definition of hegemony is based on its material aspects—the preponderance of power—hegemony should be understood as a part of a social web comprised of states. A hegemon relates to the other states in the system not merely through the prism of power balances, but through shared norms and a system of rules providing an umbrella for interstate relations. Although interstate conflict is ubiquitous in international society and the pursuit of particularistic interests is common, the international society provides a normative framework that restricts and moderates the hegemon's actions. This normative framework accounts for the hegemon's inclination toward orderly and peaceful interstate relations and minimizes its reliance on power. A hegemon’s role in the international community relies on legitimacy. Legitimacy is associated with external recognition of the hegemon’s right of primacy, not just the fact of this primacy. States recognize the hegemon’s power, but they develop expectations that go beyond the idea that the hegemon will act as it wishes because it has the capabilities to do so. Instead, the primacy of the hegemon is manifested in the belief that, while it has special rights that other members of the international society lack, it also has a set of duties to the members of the international society. As long as the hegemon realizes its commitment to the collective, its position will be deemed legitimate. International cooperation is hard to achieve. And, in general, international relations is not a story of harmony. A state’s first inclination is to think about its own interests, and states always prefer doing less over doing more. The inclination to pass the buck or to free ride on the efforts of others is always in the background. If a hegemon is willing to lead in pursuit of collective interests and to shoulder most of the burden, it can improve the prospects of international cooperation. However, even when there is a hegemon willing to lead a collective action and when states accept that action is needed, obstacles may still arise. These difficulties can be attributed to various factors, but especially prominent is the disagreement over the particular strategy that the hegemon promotes in pursuing the general interest. When states think that the strategy and policies offered by the hegemon are not compatible with the accepted rules of “rightful conduct” and break established norms, many will disapprove and resist. Indeed, while acceptance of a hegemon’s leadership in international society may result in broad willingness to cooperate with the hegemon in pursuit of shared interests it does not guarantee immediate and unconditional compliance with all the policies the hegemon articulates. While its legitimacy does transfer to its actions and grants some leeway, that legitimacy does not justify every policy the hegemon pursues—particularly those policies that are not seen as naturally deriving from the existing order. As a result, specific policies must be legitimated before cooperation takes place. This process constrains the hegemon’s actions and prevents the uninhibited exercise of power.

#### Extinction

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.

#### SCENARIO TWO IS LEGAL CRISES!

#### Obama’s white paper claimed due process for citizens, but executive implementation creates a legal disaster that wrecks due process – providing notice and opportunity is key

Feldman 13 (Noah, Professor of Constitutional and International Law – Harvard University, “Obama’s Drone Attack on Your Due Process,” Bloomberg, 2-8, <http://www.bloomberg.com/news/2013-02-08/obama-s-drone-attack-on-your-due-process.html>)

\*gender modified

The biggest problem with the recently disclosed Obama administration white paper defending the drone killing of radical clerk Anwar al-Awlaki isn’t its secrecy or its creative redefinition of the words “imminent threat.” It is the revolutionary and shocking transformation of the meaning of due process.

Fortunately, as seen during John Brennan’s confirmation hearing for Central Intelligence Agency director, Congress is starting to notice.

Due process is the oldest and most essential component of the rule of law. It goes back to the Magna Carta, when the barons insisted that King John agree not to kill anyone or take property without following legal procedures.

What they meant -- and what has been considered the essence of due process since -- is that the accused must be notified of the charges against him and have the opportunity to have his[\*/her\*] case heard by an impartial decision maker. If you get due process, you can’t complain about the punishment that follows. If you don’t get that opportunity, you’ve been the victim of arbitrary power.

Are U.S. enemies entitled to due process? Well, no -- not if they are arrayed against the country on the battlefield. In war, you don’t try the enemy. You kill him, preferably before he kills you. And if some of the Japanese troops at Guadalcanal had held U.S. citizenship, it wouldn’t have suddenly given them due process rights. If Awlaki was an enemy fighting on the battlefield, he wouldn’t have deserved due process while the fight was on. Off it, he should legally be like any other U.S. citizen, innocent until proven guilty.

Generous Idea

Yet, despite claiming that the Awlaki killing was justified because he was an operational leader of al-Qaeda, and thus in some sense an enemy on the battlefield, the white paper still assumes that due process applies to U.S. citizens abroad who adhere to the enemy. On the surface, this sounds plausible and even generous: Why not consider the possibility that a U.S. citizen abroad has some rights against being killed out of the blue?

In fact, though, applying due process analysis to Awlaki produces a legal disaster. The problem is, once you consider due process, you have to give it some meaning -- and the meaning you choose will cast a long shadow over what the term means everywhere else.

The white paper uses two Supreme Court cases to assess what process is due to an American about to be killed by a drone. The first, Mathews v. Eldridge, is a 1976 case in which the court held that the elaborate administrative processes necessary after a person lost his Social Security disability benefits were constitutionally acceptable even though there was no evidentiary hearing before the benefits were terminated. In that case, the court said that the process due could be determined by balancing the individual’s interest against the government’s.

The other case was 2004’s Hamdi v. Rumsfeld, where the court held that a detained enemy combatant -- in custody, not on the battlefield -- must receive “notice of the factual basis for his classification, and a fair opportunity to rebut the Government’s factual assertions before a neutral decision- maker.”

Astonishingly, the white paper follows its summary of these decisions with the bald assertion that a citizen outside U.S. territory can be killed if a high-level official determines that he poses an imminent threat, it would be unfeasible to capture him and the laws of war would otherwise permit the killing.

Never Explained

The non sequitur is breathtaking. Awlaki wouldn’t receive notice, the opportunity to be heard or a hearing before a decision maker. In other words, he would receive none of the components of traditional due process -- not even one. How the absence of due process could be magically transformed into its satisfaction is never stated or explained. All we get is the assertion that a target’s interest in life must be “balanced against” the government’s interest in protecting other Americans. On this theory, no due process would be due to those accused of murder, because their lives would have to be balanced against the government’s interest in protecting their potential victims.

#### Obama relies on internal review to legally say targeted killing meets due process – external review prevents manipulation of the law that weakens it in other areas

Powell 13 (Jeff, Professor of Law – Duke University School of Law, Former Member – Justice Department’s Office of Legal Counsel, Former Deputy Assistant Attorney, “Jeff Powell on Targeted Killing and Due Process,” Lawfare Blog, 6-21, <http://www.lawfareblog.com/2013/06/jeff-powell-on-targeted-killing-and-due-process/>)

There is much to admire in the speech President Barack Obama gave on May 23rd in which he gave us his views on “lethal, targeted action” against high ranking members of al-Qaeda and its allies, above all his acknowledgment that the “laws constrain the power of the President, even during wartime.” For all his speech’s virtues, however, Mr. Obama’s comments about one legal issue, due process, should disturb us deeply. In discussing his insistence “on strong oversight of all lethal action,” the President stated, “for the record,” that he “do[es] not believe it would be constitutional for the government to target and kill any U.S. citizen – with a drone, or a shotgun – without due process.” Mr. Obama had just referred to the killing of Anwar Awlaki, whose death was “the one instance when we targeted an American citizen,” and he plainly was not confessing constitutional error. There is no serious doubt, then, that the President thinks that the US government deprived Mr. Awlaki of his life with due process. Unfortunately, Mr. Obama’s discussion of that issue is fundamentally flawed in two ways: first, in his assumption that due process applies at all, and second, in his belief that the administration’s procedures satisfy due process.

The President’s blanket assertion that our government must always provide due process before killing a citizen may seem self-evident – after all, the Fifth Amendment demands that no person (not citizen!) shall be deprived of life, liberty or property without due process of law — but Mr. Obama was wrong nonetheless. Due process requires fairness in government’s dealings with those it governs; it simply does not apply to military decisions, in hostilities that Congress has authorized, about attacking members of enemy forces who are not under American control. Mr. Obama was not justifying the killing of Mr. Awlaki as an extrajudicial execution but as the elimination of a particular enemy officer in the field as an act of war. The Constitution imposes other constraints on presidential action in a time of war, but due process has no role in what the Supreme Court’s 2004 decision in Hamdi v. Rumsfeld termed “the Executive in its exchanges …with enemy organizations in times of conflict.”

If there is no constitutional due process requirement at all, why does it matter that Mr. Obama assumes that there is? Is there any real harm in putting forth a standard for meeting a burden that doesn’t exist? There is, because the President’s reasoning may undercut the meaning of due process in other circumstances where the constitutional requirement does apply.

From comments he and other officials have made, and from the Justice Department “White Paper” that was leaked earlier this year, what he had in mind seems clear: it is the “strong oversight” over targeting decisions that the President himself has mandated that he and his advisors believe satisfies the Constitution. The White Paper lays out the argument: the executive branch itself has provided a targeted US citizen due process because only high-level members of al-Qaeda and its allies are targeted, the decision to use lethal force is made by an “informed, high-level official of the U.S. government,” that official must determine that the potential target poses an “imminent threat of violent attack,” and it must not be feasible to capture the individual without excessive risk to the lives of American personnel or vital American interests. As the President put it, Mr. Awlaki “was continuously trying to kill people” as part of his role in al-Qaeda, and although Mr. Obama “would have detained and prosecuted Awlaki if we captured him before he carried out a plot … we couldn’t.”

I have no objection to the procedures that the White Paper outlines: indeed they are roughly the sort of careful decisionmaking that I would hope my government would employ in such a grave matter. (Whether our current practices of targeted killing are a wise or even moral policy overall is another question.) Nor am I criticizing the determination that Mr. Awlaki met the White Paper’s targeting criteria: I have no reason or inclination to doubt the President’s view of the facts. But the White Paper’s claim that these laudable procedures amount to due process is quite indefensible.

The White Paper (correctly) invoked the Hamdi v. Rumsfeld decision for the due process analysis that applies in the war against al-Qaeda, but its understanding of the Constitution’s requirements could hardly be more at odds with the discussion of “the central meaning of procedural due process” in Justice Sandra Day O’Connor’s lead opinion: “Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner,” and they must be heard by a “neutral and detached judge.” “These essential constitutional promises may not be eroded,” Justice O’Connor concluded, but the White Paper – and I think we can assume the President as well – apparently find these promises inapplicable in the context of targeted killings.

It takes only a moment’s reflection to see that the President’s laudable procedures for imposing “strong oversight” over targeting decisions are worlds apart from Hamdi’s “essential constitutional promises” – indeed, it is hard to imagine how a military decision about attacking an enemy combatant could be otherwise. Of course the White Paper does not propose that potential targets be given notice of the government’s possible interest in killing them. Of course it does not contemplate, much less require, that a targeted individual be heard at any time or in any manner as to why the government is mistaken about his identity or activities. Of course it does not provide for a neutral and detached decisionmaker to resolve any factual uncertainty: the ultimate decisionmaker here is the President in his capacity as commander in chief, who (we should hope) is not in the least neutral or detached in carrying out his responsibility for national security. Calling the executive’s own procedures the due process that is meant to check arbitrary executive decisions isn’t merely an erosion of the “essential constitutional promises” but their wholesale repudiation. If Mr. Awlaki was entitled to due process, then his killing violated the Constitution.

Since due process doesn’t apply to a US military decision, in a situation of actual and authorized hostilities, to attack a member of the enemy’s forces who is a legitimate target under the law of war, the Constitution was not in fact violated. But my concern here is to identify the patent error in the White Paper’s and the President’s thinking about due process, because that error is likely to confuse our thinking about the wisdom and morality of targeted killing. The decision to kill a known, identified human being is a brutal one, the action of doing so is ugly to think about, even apart from the fact that sometimes other people die (as Mr. Obama acknowledged with sorrow). This brutality and ugliness are part of the grim reality of war. When we pretend to ourselves that our procedures for making such decisions satisfies the constitutional requirements of due process, we cast a veil of civility and even humanity over something that is inherently violent and dehumanizing.

I am not a pacifist, and I accept that the brutality of war is sometimes unavoidable. But the law’s antiseptic language about the weighing and balancing of interests according to “the traditional due process analysis” that supplies the legal “framework for assessing the process due a U.S. citizen” (I quote from the White Paper) masks, in a deeply misleading fashion, the brutality, the terror and the violence of war – even if we are right to conclude that we should take lethal action against our enemies. It serves no good purpose for the President and his advisors, or for any of us as citizens, to pretend that targeted killing is or can be anything other than the brutality it is.

The problem with the President’s constitutional error is not limited to its power to confuse our thinking about the reality of targeted killing. Once a legal argument gains legitimacy in the courts, or among executive officials, or in public discussion, it tends to expand beyond its original boundaries – the intellectual habits of lawyers and the traditional legalism of American public debate make this almost inevitable. By dint of repetition if nothing else, the claim that the executive’s own internal cogitations can amount to constitutional due process threatens to acquire the sort of legitimacy that will tempt future lawyers, and future Presidents, to apply it in other contexts. During World War Two, Justice Robert Jackson rejected the government’s argument that it was constitutional to intern US citizens purely on the basis of their Japanese ancestry because the decision rested on the executive’s claim of military necessity. Jackson didn’t propose that the courts interfere with the military’s actions, but he vigorously objected to anyone rationalizing the decision as constitutional. Accept that conclusion, Jackson wrote, and “[t]he principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.” The same worry applies to the President’s rewriting of what due process requires. Neither Mr. Obama nor anyone else can foresee or prevent future claims that we must turn the idea of due process on its head because of some perceived need to do so. The President and his advisors should rethink the White Paper’s faulty reasoning, and we should all keep in view the difference between “the essential constitutional promises” due process embodies, and the modes of military decision that our government employs in waging war.

#### That's especially true for drug-trafficking

Mataconis 13 (Doug, Private Practice Attorney, “President Obama’s Troubling Justification For Targeted Killings,” Outside the Beltway, 2-5, <http://www.outsidethebeltway.com/136544/>)

Obviously, the biggest concern here is the fact that the memo presents a fairly broadly open-ended definition of what an “imminent” attack actually is. It certainly doesn’t have the same meaning that it does in general conversation. This seems especially true given the fact that the al-Awlaki killing occurred nearly two years after the terrorist attack he was accused of masterminding, the 2009 “Underwear Bomber” attack. If we’re talking about the plot to apparently send bombs disguised as toner cartridges into the United States from Yemen, the killing took place a years after the alleged threat. Since we have never been privy to any of the evidence that the Administration supposedly had against him, it’s hard to see how he was the kind of “imminent” threat that ordinary use of the word would suggest or why it wouldn’t have been just as acceptable to capture him and bring him back to the United States for trial.

Ron Fournier points out many of the questions that arise from these memo:

1. Where does this slippery slope end? If killing Americans with no due process is OK when their alleged crime is consorting with al-Qaida, it’s not a huge intellectual leap to give government officials the same judge-and-jury authority over other heinous acts such as mass murder, drug-trafficking and pornography.

2. Shouldn’t there be a higher standard? In the torture debate, many Americans seemed to buy the concept that extreme measures might be necessary to prevent an imminent attack against the U.S. Should the standard be higher for torture than murder?

3. What makes a targeting killing lawful? Holder told the public months ago that killing Americans can be justified if “capture is not feasible.” But the memo gives more leeway to government officials, condoning the killing of an American if U.S. troops would be put at risk in an attempted capture, for example. Why the double-speak?

4. Why the secrecy? Obama promised to run the most transparent administration of modern times, and in many ways he’s kept the pledge. But not on this life-and-death issue. A group of 11 senators, led by Democrat Ron Wyden of Oregon, have urged Obama to release all Justice Department memos on targeting killings. There are many more, and more important, documents than the Isikoff memo that need exposure. The public deserves to know why its president, without due process or visibility, is issuing death sentences to alleged terrorists, some of them Americans. They learned today that the public statements of administration officials on this matter can’t be trusted.

Based on an initial reading of the memo (which is available as a PDF file), it seems pretty clear that the Administration is attempting to make it appear that their policy limits the President’s authority when, in reality, it greatly expanding it. By defining “imminence” so loosely, as well as the other qualifications that are put on the decision of whether or not to target someone for killing, they have managed to vastly expand the powers of the Presidency just as President George W. Bush did during his time in office. This is of concern for two reasons.

First, as I’ve said in other posts regarding this matter, the idea that the President can decide on his own when an American citizen can be targeted for assassination by means of a secret process which American courts cannot review is a profoundly disturbing one. Who’s to say that this some rule can’t be used to target someone in the United States, or in a foreign country that, if requested, would be more than likely to assist us in arrest of such a suspect? Once you concede the idea that a President has the right to order the death of an American citizen without trial or any other form of due process, you’ve opened the floodgates to all kinds of potential problems.

#### Broadly applying due process for trafficking is key to global support that solves organized crime

Lichter 9 (Brian A., J.D. – Northwestern School of Law, “THE OFFENCES CLAUSE, DUE PROCESS, AND THE EXTRATERRITORIAL REACH OF FEDERAL CRIMINAL LAW IN NARCO-TERRORISM PROSECUTIONS,” Northwestern University Law Review, 103(4), http://www.law.northwestern.edu/lawreview/v103/n4/1929/lr103n4lichter.pdf)

The new narco-terrorism statute raises important constitutional issues that warrant further scholarly exploration. In a world of increasingly globalized crime, the constitutional rights of foreign nationals, the extraterritorial jurisdiction of federal courts, and Congress‘s power to legislate extraterritorially will become central questions within our constitutional framework. These issues, taken together, raise the broader question of the proper balance between individual liberties and national security interests in a post-9/11 world. This Comment argues that the government‘s power to proscribe narcoterrorism is broad. But while the Constitution should act as a shield for national interests rather than a sword in extraterritorial prosecutions, 207 the government‘s power is not—and cannot be—exercised without constraint. Although Congress‘s Offences Clause power is broad, it is not limitless. To check this broad power, the Executive is under no obligation to initiate § 960a prosecutions, particularly if a prosecution would pose thorny political and diplomatic questions. The Fifth Amendment‘s Due Process Clause also limits the extraterritorial reach of federal law. Although this Comment argues that due process does not require a territorial nexus, measuring due process pursuant to internationally accepted bases of jurisdiction in extraterritorial prosecutions is advantageous for policy reasons. Exercising jurisdiction in accordance with international law is politically beneficial because it demonstrates the United States‘ compliance with accepted norms and puts other countries on notice as to when the United States will likely assert jurisdiction. Moreover, international law, through protective jurisdiction, provides a tool by which federal courts can exercise jurisdiction over extraterritorial violations of nonperemptory norms. As this Comment suggests, this jurisdiction is a safety net that permits the U.S. government to protect its own security interests, along with those of allied governments, through the criminal law. In this way, § 960a can become a powerful prosecutorial tool in the fightagainst international crime.

#### Nuclear war

**Dobriansky, 1 -** Under Secretary for Global Affairs at the State Department (Paula, “The Explosive Growth of Globalized Crime,”http://www.iwar.org.uk/ecoespionage/resources/transnational-crime/gj01.htm

Certain types of international crime -- terrorism, human trafficking, drug trafficking, and contraband smuggling -- involve serious violence and physical harm. Other forms -- fraud, extortion, money laundering, bribery, economic espionage, intellectual property theft, and counterfeiting -- don't require guns to cause major damage. Moreover, the spread of information technology has created new categories of cybercrime.

For the United States, international crime poses threats on three broad, interrelated fronts. First, the impact is felt directly on the streets of American communities. Hundreds of thousands of individuals enter the U.S. illegally each year, and smuggling of drugs, firearms, stolen cars, child pornography, and other contraband occurs on a wide scale across our borders.

Second, the expansion of American business worldwide has opened new opportunities for foreign-based criminals. When an American enterprise abroad is victimized, the consequences may include the loss of profits, productivity, and jobs for Americans at home.

Third, international criminals engage in a variety of activities that pose a grave threat to the national security of the United States and the stability and values of the entire world community. Examples include the acquisition of weapons of mass destruction, trade in banned or dangerous substances, and trafficking in women and children. Corruption and the enormous flow of unregulated, crime-generated profits are serious threats to the stability of democratic institutions and free market economies around the world.

#### Independently – culminates in misuse of surveillance drones in Syria and Mexico

Sager and Schneider 13 (Josh and Dan, Writers – The Boston Occupier, “America’s Dangerous Drone Precedent: A Secret and Unaccountable Program of Targeted Killings,” Progressive Cynic, 1-29, <http://theprogressivecynic.com/2013/01/29/americas-dangerous-drone-precedent-a-secret-and-unaccountable-program-of-targeted-killings/>)

In addition to their use as a tool in extrajudicial assassination, drones are quickly becoming a hot-ticket item for government agencies that want to conduct surveillance. U.S. Customs and Border Protection currently operates nine drones, using them for border and drug trafficking surveillance; Homeland Security has used them to support FEMA during disaster relief operations; and the Seattle Police Department recently caused a stir when the Mayor and City Council found out that they were operating a pair of surveillance drones.

Support for laissez-faire regulation of this new industry is likely to find a home in the new Congress. Changes between the 112th and 113th sessions haven’t done much to alter the makeup of the House Unmanned Systems Caucus, a bipartisan group of Representatives that collectively received over $8 million in campaign donations from drone manufacturers during the 2012 elections. In early 2012, the “drone caucus” was instrumental in shaping the Federal Aviation Administration Authorization Act (FAAAA), a law passed annually to approve funding for the FAA. This year’s FAAAA contained a special section addressing unmanned aerial vehicles, and specifically requests that both representatives of the aviation and drone industries have a say in crafting how drones are deployed within the country.

This kind of private-public partnership strengthens as the use of drones for surveillance and war around the world increases, and will surely have a strong influence over which countries will have access to this technology, and will set the terms for how it is used. A September study released by NYU and Stanford pointed out the dangers in allowing drone use to spread without a legal framework for their sale and use.

When it comes to them being as a tool of war, researchers ominously noted that:

“US practices may also facilitate recourse to lethal force around the globe by establishing dangerous precedents for other governments. As drone manufacturers and officials successfully reduce export control barriers, and as more countries develop lethal drone technologies, these risks increase.”

Three months into the Afghanistan War, Ali Qaed Sinan al-Harithi and five others (including a U.S. citizen) became the first six fatalities of the U.S. drone program. Not in Afghanistan, however, but in Yemen. In 2001, the U.S. justified the strikes similarly to how Israel, during the First Intifada, justified its own “targeted killing” program. The U.S. said that because Harithi could not possibly be arrested, and was alleged to be a member of al-Qaeda, it was legal to kill him because the U.S. was “at war” with terrorism and this conflict justified ignoring the sovereignty of another state.

Without the constraint of an enforceable international law, there may be too few barriers in place to stop other nations from exploiting the same loopholes that the U.S. has to kill members of groups they deem ‘terrorists’—say, Mexican drug cartels or the Free Syrian Army—but their own citizens, as well. Seen in this light, the assassinations of Harithi, Awlaki, and thousands of others are not mere casualties of short-term war; they are the first dead in new breed of globalized warfare, bound only by feasibility and the size of one’s defense budget.

#### That causes global escalation of Syria

Rozoff 13 (Rick, investigative journalist, “U.S. Drone Strikes In Syria: Dangerous Escalation,” Global Research, 3-18, <http://www.globalresearch.ca/u-s-drone-strikes-in-syria-dangerous-escalation/5327190>)

The introduction of drone strikes by the United States inside Syria would mark a dangerous escalation in the Syrian unrest, says Rick Rozoff, manager of the Stop NATO organization.Rozoff told the U.S. Desk that if deadly U.S drone strikes are expanded to Syria, it would be “the most disturbing manifestation of the international drone warfare policy.”

Drone attacks inside Syria would be “an act of utter provocation,” he said.

“If the U.S. directly engage in military strikes, which is what drone attacks are, means that the U.S. has openly intervened and become belligerent in the war on Syria and it could lead to an escalation of tensions not only in the region but globally.”

#### Nuclear war

**Russell 9** (James, Senior Lecturer in the Department of National Security Affairs – Naval Postgraduate School, “Strategic Stability Reconsidered: Prosepects for Nuclear War and Escalation in the Middle East,” Online)

Strategic stability in the region is thus undermined by various factors: (1) asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors; (2) the presence of non-state actors that introduce unpredictability into relationships between the antagonists; (3) incompatible assumptions about the structure of the deterrent relationship that makes the bargaining framework strategically unstable; (4) perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack; (5) the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation by Israel and/or the United States; (6) the lack of a communications framework to build trust and cooperation among framework participants. These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or **as a result of miscalculation** or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could **quickly escalate** in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the **context of an unstable strategic framework**. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with **substantial risk for the entire world.**

#### Independently causes Russia nuclear war

PressTV 8-8-13 (“Israel can spark US-Russia thermonuclear war: LaRouche,” <http://www.presstv.com/detail/2013/08/08/317842/israel-can-spark-usrussia-nuclear-war/>)

American political activist Lyndon LaRouche has warned that the continuation of Israeli behavior towards Syria, including the recent air strikes against the Arab country, could end in a US-Russia thermonuclear war.

His comments appeared in an article by Jeffrey Steinberg, which has been published in the latest issue of Executive Intelligence Review, a weekly news magazine founded by LaRouche himself.

“Lyndon LaRouche warned on Aug. 3 that ongoing Israeli actions, including the July 5 Israeli Air Force (IAF) bombing of a depot near Latakia, Syria which held Russian-made anti-ship cruise missiles, could trigger a wider war, drawing the United States into thermonuclear conflict with Russia,” the article starts.

Following the attack, American officials said the air strike had failed to destroy all the missiles. Steinberg said the leak proved that the US wanted to distance itself from any military measure against Russian targets in Syria to avoid further escalation of any future conflict with Moscow.

“According to U.S. intelligence sources contacted by EIR, the leaks are intended to make clear that the United States is not supporting the Israeli strikes against Russian targets against Syria. Such strikes could lead to an escalation that directly draws the United States into a head-on confrontation with Russia,” the piece read.

#### And, US-Mexico surveillance drones destroy relations

News 7-24 (Mexico’s News Service, “US, Mexico talk bilateral security,” 7-24, <http://www.thenews.com.mx/index.php?option=com_content&view=article&id=12173&Itemid=276>)

Delegates from Mexico and the U.S. met near the countries’ border on Tuesday to discuss security and immigration issues. Mexican Interior Secretary Miguel Ángel Osorio Chong held talks with counterpart Janet Napolitano at the U.S.-Mexico Binational Meeting in Tamaulipas.

The meeting took place behind closed doors, and delegates did not share details on any outcomes. Osorio Chong said in his twitter account prior to the meeting that the Mexico and the U.S. “share a vision of a dynamic and secure border, implicating a shared responsibility.” Border security has been hotly discussed in both countries since the U.S. Senate passed an immigration reform bill that would see border security tightened and the estimated 11 million undocumented immigrants living in the U.S. given a path to citizenship.

Mexico’s relationship with the U.S. has been under the spotlight after former President Felipe Calderón was accused of allowing U.S. agencies conduct surveillance operations in Mexico, causing uproar among the Mexican public. President Enrique Peña Nieto said that if found to be true, the operations would have been “totally unacceptable.” The U.S. is also known to have flown surveillance drones over Mexico in the fight against organized crime.

#### That determines overall Latin American relations

Pamela K. Starr 9, adjunct fellow specializing in Mexico at the Pacific Council on International Policy, “Mexico and the United States: A Window of Opportunity?”, Pacific Council on International Policy, April 2009, <http://www.pacificcouncil.org/pdfs/Mexico_and_the_United_States.pdf>

Mexican sentiment toward the United States matters. If Mexicans mistrust the United States, question what our country stands for, and feel treated like a second-class ally, it will be difficult for Washington to foster a cooperative relationship that extends beyond drugs and trade. Further, without a cooperative relationship with its nearest Latin American neighbor it will be difficult for the United States to improve relations with the rest of the region. And as demonstrated by the expansion of Chinese investment, Russian military sales and naval maneuvers, Iranian diplomatic visits, and Hugo Chávez’ s regional sway, U.S. influence in the Latin American region can no longer be taken for granted. The election of a new U.S. president dedicated to increased reliance on multilateralism, support for human rights and democracy, and listening to the concerns of our allies, and devoted to increasing the role of diplomacy in American foreign policy is a key component of the previously noted window of opportunity for U.S.-Mexico relations. These promised features of an Obama foreign policy have created a well of enthusiasm and hope in Mexico for the future of Mexico’s relations with the United States. In this context, small symbolic acts can have an outsized positive impact on the bilateral relationship. These could include the following: • Follow through on the Obama administration’s early promises of partnership and “co- responsibility” for shared policy challenges. Mexico is accustomed to hearing new administrations in Washington point to a natural partnership with Mexico and call for renewed attention to bilateral concerns only to redirect their attention when seemingly more pressing international concerns arise. While the Mexican reaction to Secretary Clinton’s trip was strikingly positive, it was tempered by a “wait-and-see” attitude informed by a long history of unfulfilled promises emanating from the north. Giving the pressing nature of many of our bilateral challenges, the United States cannot afford to turn away from Mexico once again. • Actively work to redefine Mexico – in the minds of policy makers and of U.S. citizens – as an opportunity rather than a problem. As long as Americans think of Mexico as mostly a source of problems for the United States, mustering congressional support for policies that advance U.S. national interests by “helping Mexico” will remain a hard sell. This redefinition should include an expansion of cultural and educational exchanges between the two countries, enlisting celebrities as informal diplomats, and promoting contact and communication among non-governmental actors on both sides of the border. Potentially most important, Washington must carefully guard its rhetoric about Mexico to avoid disparaging statements that ultimately do harm to U.S. national interests. • Sustain the initial flurry of meetings among high-level government officials. Follow up meetings motivated by the security situation in Mexico with regular consultations between U.S. administration officials and their Mexican counterparts on the full spectrum of bilateral issues in which conversation reflects an attitude of partnership, bilateral cooperation, the genuine exchange of ideas and concerns, and the desire to find shared solutions to common problems. As useful as North American trilateral meetings are, U.S. officials should not rely on them as a substitute for direct exchanges with leaders in Mexico City.

#### That’s necessary for a successful Energy and Climate Partnership of the Americas

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With the challenges of climate change, clean energy, resource scarcity and green growth [are] set to dominate U.S.-Latin American relations, Valenzuela’s successor should have experience in these areas. ¶ These issues are a [priority](http://www.state.gov/p/wha/rls/rm/2011/154105.htm) for the Obama administration and present lucrative opportunities for the U.S. to improve trade and commercial relations with Latin America at a time when the region is a magnet for investment in clean energy.¶ In Chile, President Barack Obama spoke of the [urgency](http://www.whitehouse.gov/the-press-office/2011/03/21/remarks-president-obama-latin-america-santiago-chile) of tackling climate change and embracing a more secure and sustainable energy future in the Americas. The Energy and Climate Partnership of the Americas (ECPA), which aims to accelerate the deployment of clean energy and advance energy security, is an essential component of hemispheric relations.¶ Multiple U.S. agencies and departments are carrying out extensive work on climate change. The U.S. Agency for International Development (USAID), which runs the Global Climate Change Initiative, [argues](http://www.usaid.gov/our_work/environment/climate/) that climate change is one of the century’s greatest challenges and will be a diplomatic and development priority.¶ The U.S. Special Envoy for Climate Change, Todd [Stern](http://www.ecpamericas.org/files/events/Todd_Stern_20100416_eng.pdf), says that Latin America is a significant focus of funding with over $60 million spent in 2009-10 on climate-related bilateral assistance in the region. The U.S. military Southern Command [co-hosted](http://www.intercambioclimatico.com/en/2011/07/14/wp-content/uploads/Civil-Military-Collaboration-to-Address-Adaptation-to-Climate-Change-in-South-America.pdf) two events in Colombia and Peru focused on climate change concluding that the issue is a major security concern and as a result could be a powerful vehicle for U.S. military engagement in the region.¶ This year the Union of South American Nations’ (UNASUR) Defense Council (CDS) [inaugurated](http://en.mercopress.com/2011/05/23/unasur-defence-strategic-studies-centre-opens-this-week-in-buenos-aires) the new Defense Strategic Studies Center (CEED), which will look at various challenges including the protection of strategic [energy](http://www.rpp.com.pe/2011-05-27-ministros-de-defensa-de-unasur-piden-proteger-recursos-estrategicos-noticia_369675.html) and food resources and adapting to [climate change](http://www.google.com/hostednews/epa/article/ALeqM5jwR9CJoQuzRwgF3cGM48NV0LuyOA?docId=1538629).¶ THE REGION’S RESOURCES¶ Latin America and the Caribbean boast incredible and highly coveted natural resources including 25 percent of the planet’s arable land, 22 percent of its forest area, [and] 31 percent of its freshwater, 10 percent of its oil, 4.6 percent of its natural gas, 2 percent of coal reserves and 40 percent of its copper and silver reserves.¶ The International Energy Agency [forecasts](http://www.nytimes.com/2011/06/16/business/energy-environment/16oil.html?_r=2) that in the future world consumers are going to become more dependent on the Americas to satisfy their demand for oil with Brazil, Colombia, the U.S. and Canada set to meet the demand.¶ Brazil will host the U.N. [Conference on Sustainable Development](http://www.uncsd2012.org/rio20/) in 2012 with the green economy theme topping the agenda. Peter [Hakim](http://www.thedialogue.org/page.cfm?pageID=32&pubID=2679), president emeritus of Inter-American Dialogue, argues that while U.S.-Brazilian relations are fraught, both countries need to work harder to improve cooperation.¶ Climate change, clean energy, resource scarcity and green growth are key potential areas for U.S.-Brazilian relations. The launch of a [U.S](http://www.whitehouse.gov/the-press-office/2011/03/19/united-states-and-brazil-fact-sheets).[-Brazilian Strategic Energy Dialogue](http://www.whitehouse.gov/the-press-office/2011/03/19/united-states-and-brazil-fact-sheets), focusing on cooperation on biofuels and renewable energy, among other areas, is a productive start.¶ Although Latin America and the Caribbean continue to be the largest U.S. export market, the U.S.’s share of the region’s imports and exports has [dropped](http://www.eclac.org/publicaciones/xml/4/42854/2011_195_Highlights_of_economics_and_trade_WEB.pdf) over the last few years. China is now the top destination for the [exports](http://www.eclac.cl/comercio/publicaciones/xml/4/43664/People_Republic_of_China_and_Latina_America_and_the_Caribbean_trade.pdf) of Argentina, Venezuela, Brazil, Chile, Costa Rica, Peru and Uruguay. Latin American exports to China are concentrated in raw materials, which account for nearly [60 percent](http://www.eclac.cl/comercio/publicaciones/xml/4/43664/People_Republic_of_China_and_Latina_America_and_the_Caribbean_trade.pdf), while exports to the U.S. are more diversified.¶ THE RISE OF CHINA¶ Arturo Valenzuela [says](http://www.miamiherald.com/2011/05/25/2236198/washington-says-its-not-scared.html) this makes Latin Americans better off trading with the U.S. because they can take advantage of greater technology in the value chain. However, crude oil remained the top [export](http://www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/4/42854/P42854.xml&xsl=/comercio/tpl/p9f.xsl&base=/tpl/top-bottom.xsl) to the U.S. for Argentina, Brazil, Colombia, Ecuador, Mexico and Venezuela in the 2007-2009 time period.¶ The U.S. may assert it has a superior trade model to China, but the U.N.’s economic commission for the region [argues](http://www.eclac.org/publicaciones/xml/4/42854/2011_195_Highlights_of_economics_and_trade_WEB.pdf) there is a perceived lack of strategic vision by the U.S. in Latin America. Although the Energy and Climate Partnership of the Americas (ECPA) is the flagship U.S. initiative in the region and will be a key focus for President Obama at the 2012 Summit of the Americas, it is not yet comparable to past initiatives such as the 1960s-era [Alliance for Progress](http://en.wikipedia.org/wiki/Alliance_for_Progress).

#### ECPA key to sustainable development

Daniel M. Kammen 12, Professor of Energy at UC Berkeley and Diego Ponce de Leon Barido, Doctoral student in the Energy and Resources Group at UC Berkeley who has done research on Latin American water management and ecosystem services, “[Building Bridges to a Sustainable Energy Future](http://www.greatenergychallengeblog.com/2012/12/05/building-bridges-to-a-sustainable-energy-future/),” National Geographic, December 5, <http://www.greatenergychallengeblog.com/2012/12/05/building-bridges-to-a-sustainable-energy-future/>

The Americas are undergoing a transition in the energy sector that will have global geopolitical ramifications. At the same time as the United States is touted to become the world’s largest oil producer by 2020, and a net exporter by 2030, Brazil, Nicaragua, and Panama show the most promise in becoming regional hubs not only for clean energy investment, but for sustained low-carbon economic growth (see related story: “[U.S. to Overtake Saudi Arabia, Russia as World’s Top Energy Producer](http://news.nationalgeographic.com/news/energy/2012/11/121112-iea-us-saudi-oil/)“).¶ Although Latin America and the Caribbean lag behind the United States and Canada in terms of implemented clean energy policy and project funding, 7 percent of the region’s total installed capacity today is renewables, and it is expected to grow faster in years to come. (See related interactive map: [“The Global Electricity Mix](http://environment.nationalgeographic.com/environment/energy/great-energy-challenge/world-electricity-mix/)“) Faced with ever-changing economic and political realities, regional collaborations for knowledge-creation and -sharing are crucial for fostering lasting partnerships that can make ‘sustainability science’, well, sustainable.¶ International partnerships that lead to concrete action are often the clearest signs of innovation. At the state to state level, the [Energy and Climate Partnership for the Americas](http://www.ecpamericas.org) (ECPA) and at the person-to-person level, the Fulbright [NEXUS](http://www.cies.org/nexus/) program provide clear evidence regional collaborations that are clearly changing the modes of engagement within the hemisphere. One of us just returned from a partnership-building ECPA sponsored trip to Nicaragua, facilitated by both the U. S. Embassy team and a local NGO, [blueEnergy](http://www.blueenergygroup.org/?lang=en), which is discussed below and [here](http://www.partnersoftheamericas.net/2012/08/senior-ecpa-fellow-returns-from.html), focused on community energy.¶ Just two years after its launch by President Obama in 2009, ECPA has moved beyond its initial focus on knowledge sharing around cleaner and more efficient energy, and now also supports sustainable forest and land use initiatives as well as climate change adaptation strategies. Governments and institutions such as the Organization of American States (OAS), the World Bank, and the Inter-American Development Bank (IDB), have all worked together to support regional technical workshops, business strategies, and other initiatives for new and cleaner ways to provide energy. ECPA has also become a vehicle for leaders in sustainability research and practice to work at the institutional level to link industry, university, and civil-society groups in the New World.

#### Prevents extinction

Dr. Glen Barry 13, Political ecologist with expert proficiencies in old forest protection, climate change, and environmental sustainability policy, Ph.D. in "Land Resources" and Masters of Science in "Conservation Biology and Sustainable Development” from the University of Wisconsin-Madison, “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse,” Forests.org, February 4, 2013, pg. <http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp>

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability  
Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere.   
It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities.  
Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet.   
Those knowledgeable about planetary boundaries – and abrupt climate change and terrestrial ecosystem loss in particular – must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies.  
If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature – extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last?  
The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary – yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us.  
Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric.  
I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic – based upon an "Earth narrative" of natural and human history – which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000).   
Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival – entirely dependent upon the natural world – depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats.   
The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios – the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala – is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life.  
The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative.   
Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers.  
Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long.   
Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies.   
In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever.   
One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program – funded by a carbon tax – to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries.   
In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

### Plan

#### The United States Federal Government should grant limited jurisdiction to a federal court that prohibits uninhabited aerial vehicle targeted killings of individual United States citizens when, after being afforded notice and opportunity as well as defense from an independent public advocate, it is proven that the target is not a senior member of Al Qaeda or associated force.

### Solvency

#### SOLVENCY!

#### A special court that determines the eligibility of US is key to effectively check presidential backsliding – due process will collapse absent the plan

Weinberger 13 (Dr. Seth, Associate Professor in the Department of Politics & Government – University of Puget Sound, “Enemies Among Us: The Targeted Killing of American Members of al Qaeda and the Need for Congressional Leadership,” Global Security Studies Review, 5-7, <https://blogs.commons.georgetown.edu/globalsecuritystudiesreview/2013/05/07/enemies-among-us-the-targeted-killing-of-american-members-of-al-qaeda-and-the-need-for-congressional-leadership/>)

On September 30, 2011, an American drone fired on and destroyed a convoy of members of al Qaeda in the Arabian Peninsula (AQAP). The target of the strike was Anwar al-Awlaki, a U.S. citizen born in New Mexico in 1971, accused of being a propagandist and operational leader for AQAP. The targeted killing of an American citizen raises a simple yet extremely discomfiting problem: Should the President of the United States be able to order an American citizen to be killed without trial, without any external review process, and without appeal?

In June 2010, John Brennan, then Deputy National Security Adviser for Homeland Security and Counterterrorism and current CIA director, stated that “there are dozens of U.S. persons [who have joined international terrorist organizations] who are in different parts of the world and they are very concerning to us.”[1] The issue was made even more salient on February 4, 2013, when an unclassified U.S. Justice Department (DOJ) white paper was released which laid out the legal justification for the targeted killing of “a U.S. citizen who is a senior operational leader of al Qaeda or an associated force.”[2]

The release of the targeted killing white paper unleashed a barrage of criticism of the policy. One author called the brief “a disaster” and asserted that “the Obama administration…wants to justify…assassinating citizens without specific and credible evidence of imminent violence.”[3] Another warned that “what’s so terrifying about this white paper is that it’s unconstitutional, not in the sense that it violates any particular tenet of the American Constitution, but in that it doesn’t respect the premise of there being a Constitution in the first place.”[4] Yet another claims that “[the white paper] is every bit as chilling as the Bush Office of Legal Counsel (OLC) torture memos in how its clinical, legalistic tone completely sanitizes the radical and dangerous power it purports to authorize.”[5] A few voices defended the policy, arguing, for example, that “once you take up arms against the United States, you become an enemy combatant, thereby forfeiting the privileges of citizens and the protections of the Constitution,”[6] and that “American presidents…have lawfully deployed military force against citizens in insurrection, rebellion, or war against the United States from the beginning of the nation.”[7]

However, focusing on the question of whether and when the president can order the targeted killing of an American citizen who has joined al Qaeda – as did almost all of the analyses of the DOJ white paper – not only misses the more important question involved but also obscures the best avenue to a potential solution. Instead of asking whether the president ought to be able to order the killing of American members of al Qaeda, we should instead be asking whether the president should be allowed to determine when an American citizen can be considered to be a senior operational member of al Qaeda, and if so, by what process?

Why is the question of determining who is a member of al Qaeda more important than the question of whether the president can kill American senior operational members of al Qaeda? As made clear by the World War II-era case Ex Parte Quirin, American citizens who join the armed forces of an enemy of the United States during wartime forfeit many of their basic constitutional protections and can be, as was the American citizen involved in the case, tried by military tribunal and executed under the laws of war.[8] The 2004 case of Hamdi v. Rumsfeld built on the Quirin case, finding that not only were at least some of the president’s war powers activated by congressional passage of the Authorization for the Use of Military Force (AUMF) in 2001, but that, as is normal under the laws of war, American citizens seized on the battlefield can be detained until the end of the conflict.[9]

However, the Hamdi decision also illustrates why the question of who is and is not a member of al Qaeda is the more critical question. The U.S. Supreme Court’s decision in Hamdi contained language vital for understanding the issue. The Court acknowledged that while enemy soldiers seized on the battlefield during a “normal” war do not receive an opportunity to challenge their detention, the exigencies of the war in Afghanistan against the Taliban dictate that “the circumstances surrounding Hamdi’s seizure cannot in any way be characterized as ‘undisputed’.”[10] Furthermore, because “‘the risk of erroneous deprivation’ of [Hamdi’s] liberty is unacceptably high” and as the case dealt with “the most elemental of liberty interests – the interest in being free from physical detention by one’s own government,” the Court decided that the traditional rules of war needed adjusting for the armed conflict against the Taliban.[11] Thus, the Court ruled that “a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification and a fair opportunity to rebut the Government’s factual assertions before a neutral decision maker.”[12] In essence, the Court ruled that the armed conflict with the Taliban sufficiently resembled traditional conflict as to allow for the indefinite military detention of enemy combatants, but that the difficulties involved in determining who is and is not an enemy combatant (for example, fighters in the Taliban neither wore uniforms nor carried identification) warranted an alteration in the normal application of the president’s war powers where American citizens are concerned.

The laws of war were designed to govern ‘traditional’ wars, in which the armies of states met on the battlefield and in which soldiers wore uniforms clearly identifying themselves as combatants. The lack of clarity that prompted the ruling in Hamdi comes from the inherent ambiguities in a low-intensity war against a non-state actor that is not limited to a specific battlefield. These ambiguities are magnified in the conflict against al Qaeda. Not only do al Qaeda’s members not wear uniforms or carry identification cards, but, given the decentralized nature of the organization, it is not even clear what exactly constitutes membership. It might be possible that one can become a “member” of al Qaeda simply by declaring or even believing oneself to be a member. In short, we should be much less confident in our judgments about who is and who is not a member of al Qaeda.

Several examples illustrate the problems caused by this ambiguity over membership in al Qaeda. First, consider Major Nidal Hassan, who stands accused of 13 counts of murder and 32 counts of attempted murder in the shootings at Ft. Hood, Texas. While Hasan had been in communication with Anwar al-Awlaki, he was ultimately court martialed rather than tried as a terrorist. This decision troubled terrorism scholar Bruce Hoffman, who argued that while he “used to argue it was only terrorism if it were part of some identifiable, organized conspiracy… this new strategy of al-Qaeda is to empower and motivate individuals to commit acts of violence completely outside any terrorist chain of command.”[13]

Next is the case of al Shabaab, an Islamist insurgent movement dedicated to bringing Sharia to Somalia. In February 2012, leaders of al Shabaab officially pledged allegiance to al Qaeda, a pledge that was enthusiastically accepted by Ayman al-Zawahiri, who succeeded Osama bin Laden as the formal head of al Qaeda.[14] Since the 2012 National Defense Authorization Act (NDAA) expanded the scope of the 2001 AUMF to include “associated groups,” al Shabaab is now a legitimate target for American forces. This poses several problems. First, a number of Somali-American citizens have joined al Shabaab, mostly for religious and nationalistic reasons related to the domestic political situation in Somalia.[15] Second, al Shabaab has largely confined its activities to inside Somalia, with the exceptions of a bombing in Uganda and a grenade attack in Kenya, attacks almost certainly intended to convince Uganda and Kenya to withdraw their respective troops from Somalia.[16] Third, many members have splintered-off from the main body of al Shabaab in the wake of the union with al Qaeda, apparently to keep their struggle focused on Somalia rather than the global jihad.[17] There seems to be little evidence, other than the formal affiliation, that al Shabaab has taken any actions against American citizens or interests or that al Shabaab is in any way other than name a part of the global terrorist movement.

And yet, under the 2012 NDAA, a Somali-American who becomes a senior operational leader of al Shabaab in order to liberate and Islamize Somalia is the legal equivalent of Anwar al-Awlaki and is therefore eligible for being targeted for death. Is this the enemy as envisioned by Congress and defined in the 2001 AUMF?

These examples call attention to several vital questions surrounding the Obama Administration’s use of targeted killing against American citizens. Is every group that is somehow connected to al Qaeda the “enemy” in this conflict, regardless of the threat it poses to American national interests or its involvement in global jihad? What kind of connection – formal, operational, or ideological – is sufficient justification for including an affiliated group under the scope of the 2001 AUMF and 2012 NDAA? Exactly what actions make an individual a member of al Qaeda? Given these serious questions about what constitutes involvement with al Qaeda, it is dangerous for decisions about the eligibility of American citizens for targeted killing to be made without legislative definition or judicial process or review.

The Obama Administration would likely claim that such decisions are a fundamental incident of war and therefore part of the president’s war powers that were activated by the 2001 AUMF. And under the current legal regime, the President’s use of drones to eliminate American senior operational members of al Qaeda is indeed legal.

But legal is not the same thing as prudent. Simply because a course of action is permitted does not mean it should be taken. For a number of reasons, perhaps most importantly because it is increasingly unclear what constitutes being a senior operational member of al Qaeda, we should be skeptical of allowing the Executive Branch to judge these decisions on its own. Without effective checks or definition, there can be little doubt that the bar for defining membership in al Qaeda and eligibility for targeting will move downwards, allowing more Americans to be targeted without due process. And in the absence of additional congressional actions to limit the president’s ability to make such determinations, that is exactly the situation that exists.

But how could such checks or definitions be imposed? The President’s likely defense – that under the 2001 AUMF, only the Executive Branch can determine questions of al Qaeda membership – is a strong one. Here we must return to the Hamdi decision. By focusing attention and criticism on the power to target American members of al Qaeda rather than on the power to determine eligibility for being targeted, most analysts and pundits have missed the importance of the Hamdi decision for suggesting a solution to the problem of targeted killings.

By giving Yasir Hamdi a status hearing to determine his eligibility for indefinite military detention without trial, the Supreme Court interfered with the traditional war powers of the president and altered the standard applications of the rules of war. The Court argued, as mentioned earlier, that as the prospect of indefinite detention involves the “most elemental of liberty interests,” “striking the proper constitutional balance…is of great importance to the Nation during this period of ongoing combat.”[18] What is true for an American citizen detained on the battlefield and assigned for indefinite detention is undoubtedly true for an American citizen who has been targeted for death by a U.S. drone strike. Surely, the right not to be killed by a Hellfire missile ordered by one’s own government without due process must be as elemental of a liberty interest, if not more so, as “the interest in being free from physical detention.”[19]

Furthermore, while the Court did add a hearing into the process for military detention, it still permitted the U.S. government to assign an American citizen to indefinite detention. It did so even while acknowledging that, given the undefined nature of the conflict against the Taliban, which the U.S. government might not consider won for two generations or more, “Hamdi’s detention could last for the rest of his life.”[20] The justification given for leaving the basic structure of military detention in place was the determination that conflict between the U.S. and the Taliban resembles the traditional conflicts for which the laws of war were created. However, the Court warned that “if the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, [the long-standing law of war principles] unravel.”[21] It seems reasonable that a conflict like the one with al Qaeda –in which drones are used to target American citizens who have been identified as senior operational leaders of decentralized affiliates of an already decentralized non-state terrorist organization – presents circumstances unlike traditional wars in which enemies were readily identifiable by their uniforms, identification cards, and adherence to a clearly visible military and political chain of command.

From the logic of the Hamdi decision, it follows that adjustments or adaptations to the traditional war powers of the president to target American citizens believed to be members of the armed forces of the enemy might be both justifiable and allowable. What options or procedures could be put into place? Two options stand out. First, Congress could attempt to identify the positive criteria for membership in al Qaeda, the nature of the relationships between al Qaeda and its various affiliates, and, more specifically, the definition of a senior operational leader. While this would undoubtedly be a difficult task, there is precedent for such efforts by the Legislative Branch. The laws surrounding conspiracy must define at what point constitutionally-protected free speech switches to the illegal preparation for criminal activity.

But once again, what is possible is not always the best course of action. Given the diffuse nature of global terrorist networks and the flexible nature of the battlefield, trusting an a priori assessment to accurately account for all possibilities and to do so in a timely manner is likely a bad idea. A better option would be the creation of a special national security court, along the lines of the courts that hear federal requests for warrantless wiretapping in accordance with the Foreign Intelligence Surveillance Act (FISA). Such a court could be created and empowered by Congress to hear presidential requests to designate an American citizen as a senior operational leader of either al Qaeda or of an affiliated group as defined under the 2001 AUMF and the 2012 NDAA.

#### None of their solvency args apply – the plan is a drone court limited to eligibility

Weinberger 13 (Dr. Seth, Associate Professor in the Department of Politics & Government – University of Puget Sound, “Enemies Among Us: The Targeted Killing of American Members of al Qaeda and the Need for Congressional Leadership,” Global Security Studies Review, 5-7, <https://blogs.commons.georgetown.edu/globalsecuritystudiesreview/2013/05/07/enemies-among-us-the-targeted-killing-of-american-members-of-al-qaeda-and-the-need-for-congressional-leadership/>)

Several people have voiced objections to the creation of a FISA-style “drone court.” One worries that a court of “generalist federal judges” will lack “national security expertise,” “are not accustomed to ruling on lightning-fast timetables,” and should not be able to involve themselves in “questions about whether to target an individual for assassination by a drone strike.” [22] Another writes that, “the determination of whether a person is a combatant to judicial review would seem to rather clearly violate the separation of powers requirements in the Constitution,” as in Ex Parte Milligan, the Supreme Court ruled that the congressional war power “extends to all legislation essential to the prosecution of the war…except such as interferes with the command of the forces and the conduct of campaigns,” which includes, the author argues, the “sole authority to determine who the specific combatants are when conducting a campaign.”[23] While in a traditional war such objections are almost certainly correct, in the context of the Hamdi decision and with the unconventional nature of the armed conflict against al Qaeda, they become less compelling.

First, if properly defined, the new court could be limited solely to questions of eligibility, not the decision of whether and when to conduct a drone strike. The court would carry out a function quite similar to the FISA courts, judging whether the Executive Branch has sufficient evidence to support its claim that a citizen has become a senior operational member of a group covered under the AUMF and 2012 NDAA. This would differ little from the FISA courts’ assessments of Executive Branch requests to wiretap individuals believed to be agents of a foreign power without a warrant.

Second, given the definition of imminent threat in the Department of Justice’s white paper – a definition that incorporates “considerations of the relevant window of opportunity, the possibility of reducing collateral damage to civilians, and the likelihood of heading off future disastrous attacks on Americans”[24] – such eligibility decisions are not likely to be made in the moments immediately prior to a drone strike. Rather, eligibility decisions are likely made in the process of long investigations and in light of much intelligence.

Finally, while Anthony Arend is almost certainly correct that in nearly every other incidence of armed conflict, Congress would not be permitted to involve itself in determinations of who is and who is not an eligible target for the American military, as Hamdi makes clear, the armed conflict against al Qaeda is not like every other armed conflict. The Supreme Court has already inserted a judicial proceeding into the determination of whether an American citizen seized on the battlefield is actually an enemy combatant and therefore eligible for indefinite detention, a determination that traditionally has been solely within the purview of executive power. It would be counterintuitive – to say the least – if an American citizen could be killed, but not detained, without judicial involvement.

#### Targeted killing policy under executive authority will collapse due process protections

Alford, 11 [Copyright (c) 2011 Utah Law Review Society Utah Law Review 2011 Utah Law Review 2011 Utah L. Rev. 1203 LENGTH: 41771 words ARTICLE: The Rule of Law at the Crossroads: Consequences of Targeted Killing of Citizens NAME: Ryan Patrick Alford\* BIO: \* © 2011 Ryan Patrick Alford, Assistant Professor, Ave Maria School of Law, p. lexis]

From 2001 to 2004, the constitutional order of the United States was severely tested. In Hamdi v. Rumsfeld, n408 the Supreme Court held that the writ of habeas corpus extended to a United States citizen held at Guantanamo Bay. n409 Eight of the nine Justices agreed that the executive branch did not have the power to hold a citizen indefinitely, without access to basic due process protections enforceable in open court. n410 This case was properly seen as a watershed, a rejection of theories of executive detention that were incompatible with the basic tenets of our common law tradition. n411 However, the clear right to habeas corpus is only slightly over three hundred years old - the right not to be killed without due process of law is twice as old and considerably more fundamental. As Blackstone made clear, habeas corpus was originally necessary because it was a prophylactic protection for Magna Carta's right not to be killed. n412 To turn a blind eye to executive death warrants would be to trample upon numerous principles the Framers believed so important as to put into a document that outlines the parameters of the state itself. It would also trample upon principles that predate the Bill of Rights: the balance of powers, the constraints on arbitrary executive action, and the specific requirements of additional due process for those accused of crimes amounting to treason. It would also make a mockery of their [\*1271] comprehensive view of due process, which precluded the use of military justice against civilians. It would allow a return to the very features of royalist justice that they and their forbearers detested, such as allowing the executive the power of judgment and denying the courts the power to intervene - this was the hallmark of the detested Star Chamber, which was abolished on these grounds in 1641. n413 What is perhaps most perplexing about this current crossroads is that there seems to be very little discussion of the importance of this case within the legal profession in general, and in particular among the scholars and lawyers who had opposed the legal framework for the indefinite detention of the detainees at Guantanamo Bay. It is difficult to understand why so much determined opposition should emerge to the withholding of the rights of habeas corpus from American citizens (which led to the decision in Hamdi), n414 while the administration's decision to issue executive death warrants has led to so little. Apart from the decision of the ACLU and the CCR to litigate the case on behalf of Nasser Al-Aulaqi, there has been very little action taken within the legal community to publicize the Obama Administration's decision to use the targeted killing program to assassinate an American citizen. n415 As the discussion of the targeted killing program after Al-Awlaki's extrajudicial execution reveals, American militants like Anwar al-Awlaki are placed on a kill or capture list by a secretive panel of senior government officials, which then informs the president of its decisions ... . There is no public record of the operations or decisions of the panel, which is a subset of the White House's National Security Council ... . Neither is there any law establishing its existence or setting out the rules by which it is supposed to operate. n416 [\*1272] Not only is there no law addressing the due process rights of Americans with respect to targeted killing, but no law on this subject can be made. The executive branch has prevented the judiciary from addressing the killing of citizens by asserting that the courts do not have jurisdiction over these cases because they present political questions. Since the judiciary may not adjudicate the claims of those about to be killed, the prevailing law of the land now comes in the form of secret memoranda created by the executive's Office of Legal Counsel ("OLC"). n417 The executive branch now has the final say on the constitutionality of its decision to kill an American citizen, since it asserts that no court has jurisdiction to review its opinion. This is executive privilege beyond James I's wildest dreams. While the administration insists that the OLC memorandum did not formulate general criteria for deciding whether Americans accused (impliedly, but not formally) of treason may be tortured or killed, n418 its version of events is actually worse than the alternative. The administration advances the position that a citizen suspected of treason may be killed after a singular determination within the executive branch that this would not violate the citizen's due process rights. "If that's true, then the Obama Administration is **playing legal Calvinball**, making decisions based on individual cases, rather than consistent legal criteria." n419 Unfortunately, this has been confirmed to be true: the recommendations for targeted killings are reportedly made on a case-by-case basis by "a grim debating society" of "more than 100 members of the government's sprawling national security apparatus," who provide no indication of using legal principles when determining such issues as which sort of "facilitators" of terrorism should be marked for death. n420 This sort of Star Chamber is precisely what the rule of law was designed to protect us against. After months of silence, Attorney General of the United States Eric Holder traced out the rationale for the targeted killing of an American citizen. n421 Rebutting this article's thesis, he argued: Some have argued that the president is required to get permission from a federal court before taking action against a United States citizen who is a senior operational leader of Al Qaeda or associated forces... . [\*1273] This is simply not accurate. "Due process" and "judicial process" are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process. n422 Given the Obama Administration's decision not to release the OLC memorandum or even acknowledge that they did in fact kill Al-Awlaki, n423 this will likely be the most comprehensive description of the legal case for targeted killings the American people ever receive. Its arrogance is stunning. Attorney General Holder appears to rely implicitly on a Court decision holding that those having their social security benefits terminated are not entitled to a hearing in advance in support of another proposition. Namely, that some unspecified degree of procedural fairness apportioned in secret within the executive branch is all that is required before an American citizen can be killed. The Constitution, and a tradition of resistance to arbitrary executive power that it reaffirmed that extends back to the Magna Carta, is being held for naught - on the basis of a holding from an administrative law case wrenched forcibly out of context. With this flimsy justification, the administration rationalizes the creation of a new Star Chamber, newly empowered to administer capital punishment in secret and unchallengeable proceedings. Should this pass unchallenged, this may herald the end of the rule of law in America.

#### Executive clarity isn't enough – creates a double standard that impacts global perception

Zimmerman, 13 [Evan, Citing Zenko of CFR, Jane Dao of the NYT, Kristin Roberts of the Atlantic, etc. “Secrecy and the Obama Drone Program: a Violation of the Fifth Amendment”, April 22, 2013 http://uculr.com/articles/2013/4/22/secrecy-and-the-obama-drone-program-a-violation-of-the-fifth-amendment]

Notwithstanding the ease with which the Administration authorized the killing of al-Awlaki, the Administration has a clear understanding that the primary impediment to lawfully killing Americans is the due process clause of the Fifth Amendment of the US Constitution, which states that, “no person shall…be deprived of life, liberty, or property, without due process of law.”[19] DOJ “assumes that the rights afforded by the Fifth Amendment’s Due Process Clause…attach to a US citizen even while he is abroad.”[20] However, such a protection does not make a US citizen immune from a lethal operation if he is an enemy combatant.[21] Rather, the Administration believes it must weigh the “private interest that will be affected by the official action” against the government’s asserted interest,[22] including “the burdens the government would face in providing process.”[23] The person in question has, indeed, a very weighty, in fact “uniquely compelling,” private interest: his life.[24] However, the Administration says that its war and accordant duty to defend the lives of innocent US citizens is also compelling, maybe even more so in this context than the accused’s own life.[25] Perhaps to satisfy such Fifth Amendment concerns, the DOJ White Paper states that there are three conditions that a targeted killing of a US citizen must fulfill before death may be considered: (a) an “informed, high-level”[26] US official must believe that there is an “imminent threat of violent attack”[27] against the US; (b) capture, which is a “fact-specific, and potentially time-sensitive, question,”[28] must be infeasible, and (c) the operation to kill must be conducted in “a manner consistent with applicable law of war principles.”[29] To be killed, targets must present an “imminent threat,” the first condition.[30] Traditionally, an “imminent threat” means an attack of some sort is about to happen. However, the Administration maintains that al-Qaida “does not behave like a traditional military,”[31] meaning that this conflict is not a traditional war. Specifically, “the Constitution does not require the President to delay action until some theoretical end-stage of planning—when the precise time, place, and manner of an attack become clear,”[32] according to the Administration. So, in accordance with this unconventional war, there is a similarly unconventional definition of “imminent.” DOJ maintains that an “imminent threat” does not require the US “to have clear evidence that a specific attack on US persons and interests will take place in the immediate future,”[33] leading one to question what standard of evidence is required at all. To justify itself, the Administration agrees with the Supreme Court that there must be “the greatest respect and consideration of judgments of military authorities in matters relating to the actual prosecution of war, and…the scope of that discretion is necessarily wide.”[34] DOJ states that it is not required to refrain from action until “preparations for an attack are concluded” because that would not allow the US “sufficient time to defend itself.”[35] Furthermore, for the US to lawfully defend itself, it must demonstrate that the people it defends against are legitimate targets and that the modes of defense are legitimate, which DOJ attempts to root in the traditional laws of war. The US is in armed conflict with al-Qaida and associated forces,[36] making its members legitimate targets of the US military and conduct with them subject to national self-defense laws.[37] Congress designated as enemy combatants those who aid al-Qaida and its associated forces, prompting the Administration to cite the public authority justification[38] when targeting their members.[39] The Administration believes that, as it has the right to detain US citizens who are enemy combatants,[40] it may similarly use lethal force as an “important incident of war,”[41] against those citizens.[42] Although the Administration believes it may only unilaterally conduct a drone strike in a place where al-Qaida is believed to have a “significant and organized presence,”[43] it also believes that there is little geographical limitation of its scope to target al-Qaida militants.[44] Furthermore, although the DOJ White Paper only addresses US citizens in foreign countries, public statements of DOJ suggest that they believe there would also be lawful circumstances in which US citizens on American soil could be killed.[45] The Administration recognizes that its powers are not unlimited, and that even powers granted to it by Congress may not have unlimited scope.[46] However, it believes that these killings are within the bounds of proper executive authority. Even more, under the Administration’s position, there is no mode for the public to police the propriety and legality of targetedkillings by drones, as DOJ believes there is no proper forum for any case that would be brought against the government for its use of the drone program.[47] In effect, the only form of checks and balances here is to trust the US government not to overstep its authority. IV. Criticism of Official Policy The US has indicated that it believes that it may lawfully take out a citizen with a drone. What might a citizen do to trigger this? It is difficult to say, as the government’s asserted justifications are secret and, it claims, broad. If someone is wrongfully killed by a drone, how can his or her family[48] know that they have standing to sue the US government if the program is mostly secret?[49] There is **great confusion** surrounding the administration of US drone strikes, and the government has provided no adequate guidance. Since the US has kept its policies governing the drone program secret, the policy of targeted killings of US citizens is also secret. Such secrecy makes it so that no one can defend himself against the authorization of a drone strike or sue for restitution if accidentally killed. Secrecy is not the only impediment to the public’s understanding of the drone program; more obfuscation arises from the Administration’s own clear contradictions of its own policies. For example, Eric Holder’s letter to Rand Paul indicates that the Administration believes that it is possible legally to take out a US citizen with a drone on US soil, notwithstanding the DOJ White Paper’s requirement that US citizens only be targeted if they are, (a) on foreign soil, and are (b) senior leaders, (c) of al-Qaida. Why? We do not know, rendering the law impermissibly unclear. Furthermore, the Administration has already broken from its own standards. The only US citizen killed who was a senior leader of al-Qaida is Anwar al-Awlaki. An American subordinate of his—who was, in fact, dismissed as collateral damage, and never considered a senior leader publicly—was killed. A few weeks later, al-Awlaki’s son was also killed despite no indication that he was even involved in any terrorism group. The Administration has clearly conducted drone strikes that violate their own stated legal framework for proper and lawful targeted killings. Compounding the issue, the Administration’s rules are built on shaky ground. Hamdi v. Rumsfeld, a case that is crucial foundation for the legal positions taken within the DOJ White Paper, refers to the capture and detainment of a US citizen in combat, not assassination from a distance at a time potentially far removed from the time of attack. Hamdi admits that “while the full protections…may prove unworkable and inappropriate” in combat, “threats to military operations posed by a basic system of independent review are not so weighty as to trump a citizen’s core right to challenge meaningfully the Government’s case and to be heard by an impartial adjudicator.”[50] The right to an impartial adjudicator implies the right to a place and time to be heard, as well as the right to construct and present a case that has a “meaningful” possibility of success. In sum, Hamdi demands that due process of law be maintained outside of the combat setting, which by definition is where targeted killings occur. These rights have been violated with the way that targeted killings have been carried out so far. The Administration maintains that the killing of al-Awlaki’s son was collateral damage rather than the result of an authorized strike specifically against him. But this still means that, as a result, his family is now eligible to sue for restitution.[51] How would al-Awlaki’s son’s family be granted damages from the impartial adjudicator Hamdi calls for if the program that killed him is secret?[52] How could they prove that he was not a legitimate target if the criteria for targeted killings are unknown, or at least not clearly defined? They may not, perhaps most clearly because of DOJ’s position that there is no proper forum for such a trial.[53] Additionally, the secrecy of the program - and the fact that the government maintains that any decisions regarding targeted killing may only be reached through the its own “internal deliberations”[54] - ensures that, before they are killed, targets are impeded in their efforts to collect facts about their case and therefore wage a “meaningful” defense against the government’s accusations. Both of these situations directly violate the right to a robust defense before an impartial adjudicator called for in Hamdi, presenting serious constitutional issues relating to the Fifth Amendment. It is simply incorrect to compare the power to capture someone from the battlefield[55] with the right to be tried before one is killed, considering the right to an impartial adjudicator in a non- combat situation[56] and the highly compelling—in fact, paramount—interest a person has in saving his own life from imposition by the government.[57] The government may cite its own compelling interests and the power to strike secretly, but that is not mutually exclusive from a system with an acceptable level of disclosure. The exact manner and time at which they strike may remain secret, and may conform with the laws of war, but US citizens are entitled to know what they did to be targeted, to contest their targeting in some way, and for their families to pursue just compensation—and be awarded it—if they are wrongfully killed. This is only possible if the families know how and why their kin was killed, and what laws were broken. V. Conclusion and Summary A person has a clear right to due process. It would go too far to suggest that this implies that a person is absolutely free from being killed by the government. However, it is clear that a person has the right to defend himself in court, which requires that the charges against him be made known and the laws that he has broken publicized. The secrecy of the drone program does not allow Americans these protections that the Fifth Amendment requires. **There are alternatives to a fully public trial**—at the very least, a person is entitled to a military tribunal, if not a grand jury, for a capital offense. Being in a state of war does not allow the government to cease following the rule of law, but merely means some of its conduct becomes governed by the laws of war instead. Wartime perhaps permits targeted persons to be tried in absentia, for which there is some precedent,[58] represented by a public defender or his family and their private attorney.[59] If there truly is no “proper forum” in existence, Congress has the power to establish a court[60] with special jurisdiction over these matters. If the US government is concerned about speed,[61] it may establish special courts with a high, but not absolute, level of secrecy that try these cases with special speed.[62] If the government is worried that a publicized drone program will harm the United States’ image, secrecy is doing so already**,** causing speculation that the U.S. has secret agreements with other governments.[63] This further engenders suspicion of America, particularly in countries where citizens only have state-owned media and assume such information is vetted and condoned by the Administration.[64] If the government is concerned that such actions will slow down the U.S., it already has. Rand Paul recently stopped Senate business with a 13-hour filibuster of the architect of the drone program, John Brennan’s, nomination to Director of the CIA in order to force Eric Holder to say whether the Administration would target U.S. citizens on American soil. Holder was forced to respond, thereby delaying other DOJ business. There may be more such delays in the future as dissent, already present,[65] grows. The secrecy of the drone program is harming US citizens and their right to defend themselves and their families’ rights to just compensation if the accused are unjustly harmed. The issue is not that drones as a new technology are inherently problematic, but that they are used as a proxy targeted killing program, the secrecy of which is leveraged to sidestep the provision of Fifth Amendment rights. Americans do not know whether they are targeted, or what they can be targeted for. Due process of law requires these protections, especially when one’s life is at stake. Secrecy prevents these protections from being provided, a clear violation of the Fifth Amendment. There is a distinction between secrecy provided for the purpose of national security and an unacceptable lack of oversight. And it is clear that, with its drone policy, the Administration has not afforded the public the necessary information, rights, and protections it deserves.

#### Limited and external review is key – allows for extensive processes that can’t be overridden by the president

Somin 13 (Ilya, Professor of Law – George Mason University School of Law, Hearing on “Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing,” United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, 4-23, <http://www.judiciary.senate.gov/pdf/04-23-13SominTestimony.pdf>)

One partial solution to the problem of target selection would be to require officials to get advance authorization for targeting a United States citizen from a specialized court, similar to the FISA Court, which authorizes intelligence surveillance warrants for spying on suspected foreign agents in the United States. The specialized court could act faster than ordinary courts do and without warning the potential target, yet still serve as a check on unilateral executive power. In the present conflict, there are relatively few terrorist leaders who are American citizens. Given that reality, we might even be able to have more extensive judicial process than exists under FISA.

Professor Amos Guiora of the University of Utah, a leading expert on legal regulation of counterterrorism operations with extensive experience in the Israeli military, has developed a proposal for a FISA-like oversight court that deserves serious consideration by this subcommittee, and Congress more generally.22 The idea of a drone strike oversight court has also been endorsed by former Secretary of Defense Robert Gates, who served in that position in both the Obama and George W. Bush administrations. Gates emphasizes that “some check on the president’s ability to do this has merit as we look to the long-term future,” so that the president would not have the unilateral power of “being able to execute” an American citizen.23

We might even consider developing a system of judicial approval for targeted strikes aimed at non-citizens. The latter process might have to be more streamlined than that for citizens, given the larger number of targets it would have to consider. But it is possible that it could act quickly enough to avoid compromising operations, while simultaneously acting as a check on abusive or reckless targeting. However, the issue of judicial review for strikes against non-citizens is necessarily more difficult than a court that only covers relatively rare cases directed at Americans.

Alternatively, one can envision some kind of more extensive due process within the executive branch itself, as advocated by Neal Katyal of the Georgetown University Law Center.24 But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lower level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad.

# 2ac

### AT: Yoo

#### Yoo is wrong and so is every neg argument

**Holmes, 6 –** (Stephen, The Nation, “John Yoo's Tortured Logic” 5/1,

<http://www.thenation.com/article/john-yoos-tortured-logic?page=0,5#axzz2fcXCAdpt>

Yoo's legal theory, it should be said, is as dubious as his historical scholarship. For starters, he has a zero-sum conception of the government's foreign-policy powers. He expresses bafflement at James Wilson, who both favored a strong executive and gave a major role in foreign affairs to Congress. Wilson's support for Congressional war powers, Yoo says, "does not square perfectly with his broad thoughts in favor of a strong executive expressed during the ratification debates." But the enigma dissolves if power-sharing can actually increase the capacity of the executive to achieve its aims. Executive power hinges upon the President's capacity to mobilize support and voluntary cooperation for its projects. That such power might be increased by accepting Congressional oversight and input is self-evident, although apparently incomprehensible to Yoo.

Power-sharing can increase overall power in another way as well. Human beings do not always perform best when unwatched and uncorrected. Cheney has repeatedly argued that the Administration can get "unvarnished" advice only under conditions of the strictest confidentiality. And there is something to this argument. But it is equally obvious that secrecy has its own pathologies, including a tendency to perpetuate mistaken policies long after they could have been profitably corrected. Hence, an executive branch under serious scrutiny by a well-informed legislature with real power to push back will not necessarily perform more poorly than an executive branch sheltered from criticism and control.

If the executive is not compelled by Congress and the courts to give plausible reasons for its actions, it may soon have no plausible reasons for its actions. It will lash out violently in the "war on terror," but its choices will feel distressingly arbitrary. It will not establish an intelligent list of priorities, keep its powder dry or allocate scarce resources in a prudent and effective manner. Administration spokesmen have repeatedly explained that since 9/11 the risks of inaction have become greater than the risks of action. And Yoo agrees: "The costs of inaction can be extremely high--the possibility of a direct attack on the United States and the deaths of thousands of civilians." But the inadequacy of this reasoning should be obvious.

The leap from inaction to action cannot possibly, on its own, guarantee a reduction of risk. Precipitous action may well produce deep commitments from which it will prove impossible or immensely costly to extricate ourselves. In a world of scarce resources and opportunity costs, moreover, every decision to act is a decision not to act. To commit Arabic speakers to the Iraqi theater, for example, is to withdraw them from other tasks, such as the manhunt for Osama bin Laden. To act more forcefully in one arena is to act less forcefully in another. Such trade-offs are seldom desirable, but they are often inevitable.

By dismantling checks and balances, along the lines idealized and celebrated by Yoo, the Administration has certainly gained flexibility in the "war in terror." It has gained the flexibility, in particular, to shoot first and aim afterward. It has acted on disinformation and crackpot theories and utopian expectations that could perhaps have been corrected or moderated if traditional decision-making protocols had been respected and key policy-makers had not silenced dissident voices and sequestered themselves in an echo chamber. Yoo sees no danger in allowing a poorly educated and sketchily briefed President, perhaps surrounded by yes men and fed picked-over intelligence, to define unilaterally the principal threats facing the country. He does not worry about irreversible decisions taken impetuously and without eliciting a second opinion. But if the misbegotten Iraq War proves anything, it is the foolhardiness of allowing an autistic clique that reads its own newspapers and watches its own TV shows to decide, without outsider input, where to expend American blood and treasure--that is, to decide which looming threats to stress and which to downplay or ignore.

Yoo begins with the premise that the Constitution gives the President virtually unchecked power over foreign affairs. This is an alarming thesis, for all the reasons addressed. But it becomes even more ominous in the post-9/11 context. In the "war on terror," as Yoo is the first to admit, the foreign front and the home front have become harder to distinguish. Infiltrators and saboteurs are no longer minor and peripheral to the war effort. They are the main enemy, and the battlefield on which we meet them emphatically includes US soil. As a result, the President's war powers, if grotesquely distended and freed from oversight as Yoo would like, threaten to overwhelm and submerge the Constitution, not just abroad but also domestically. Only if our rulers were infallibly clairvoyant would it be safe to gamble in this reckless way not merely with our personal liberties but also, and perhaps more important, with our country's national security in an age of multiple, unfamiliar and--we have every reason to fear--still metastasizing threats.

#### Overuse risks entanglement in foreign conflicts

**Byman, 13** – Daniel, Professor in the Security Studies Program at the Edmund A. Walsh School of Foreign Service at Georgetown University and a Senior Fellow at the Saban Center for Middle East Policy at the Brookings Institution (“Why Drones Work,” Foreign Policy, July/August 2013, <http://www.foreignaffairs.com/articles/139453/daniel-byman/why-drones-work?page=show> //Red)

The U.S. government also needs to guard against another kind of danger: that the relative ease of using drones will **make U.S. intervention abroad too common.** The scholars Daniel Brunstetter and Megan Braun have argued that drones provide “a way to avoid deploying troops or conducting an intensive bombing campaign” and that this “may encourage countries to act on just cause with an ease that is potentially worrisome.” Although al Qaeda remains a threat, it has been substantially defanged since 9/11, thanks to the destruction of its haven in Afghanistan and effective global police, intelligence, and drone campaigns against its cells. In addition, the U.S. government needs to remember that many of the world’s jihadist organizations are focused first and foremost on local regimes and that although the United States has an interest in helping its allies fight extremists, Washington cannot and should not directly involve itself in every fight. The Obama administration should spell out those cases in which the AUMF does not apply and recognize the risks of carrying out so-called goodwill kills on behalf of foreign governments. Helping French and Malian forces defeat jihadists in Mali by providing logistical support, for example, is smart policy, but sending U.S. drones there is not. In places where terrorists are actively plotting against the United States, however, drones give Washington the ability to limit its military commitments abroad while keeping Americans safe. Afghanistan, for example, could again become a Taliban-run haven for terrorists after U.S. forces depart next year. Drones can greatly reduce the risk of this happening. Hovering in the skies above, they can keep Taliban leaders on the run and hinder al Qaeda’s ability to plot another 9/11.

### AT: T Restriction

#### We meet – contextual ev

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

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

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

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

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

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

#### Restrict doesn’t mean prohibit

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

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

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

### AT: Flex DA (2AC) – (1)

#### The aff is key middle ground---total flex causes worse decision-making in crises

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

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

#### Syria triggers the DA

**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.

#### The plan bolsters 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

#### 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.

### AT: Debt Ceiling (Kentucky)

#### Obama solves the impact—

#### Emergency powers

Liptak 10/3—American journalist, lawyer and instructor in law and journalism (Adam, 10/3/13, “Experts See Potential Ways Out for Obama in Debt Ceiling Maze,” <http://www.nytimes.com/2013/10/04/us/politics/experts-see-potential-ways-out-for-obama-in-debt-ceiling-maze.html?_r=0>)

The view that Mr. Obama could continue borrowing without Congressional authorization is based on three arguments.¶ One is grounded in an aggressive understanding of presidential power, the second in an interpretation of an obscure provision of the 14th Amendment and the third on a choice among three irreconcilable constitutional obligations.¶ A senior administration official was dismissive of all three options, calling them “unicorn theories,” reflecting the White House’s position that only Congress can solve a problem of its own creation.¶ “The Constitution gives Congress — not the president — the authority to borrow money, and only Congress can increase the debt ceiling,” Jay Carney, the White House press secretary, said on Thursday, adding that Congress must “authorize the Treasury to pay the bills that Congress racked up.”¶ But Eric Posner, a law professor at the University of Chicago, said that the meaning if not the words of the Constitution left Mr. Obama with **room to act**.¶ “The president has **inherent emergency powers**,” he said. “It has long been understood that the president should act to protect the country.”¶

#### He can issue more debt

Liptak 10/3—American journalist, lawyer and instructor in law and journalism (Adam, 10/3/13, “Experts See Potential Ways Out for Obama in Debt Ceiling Maze,” <http://www.nytimes.com/2013/10/04/us/politics/experts-see-potential-ways-out-for-obama-in-debt-ceiling-maze.html?_r=0>)

The third alternative, the subject of a 2012 article in The Columbia Law Review, focuses on what the article’s authors call the irreconcilable instructions Congress will have provided to Mr. Obama if it fails to act. Having been told to spend, but not to raise taxes or issue debt, “the president has to decide which of Congress’s orders to follow,” said Neil H. Buchanan, a law professor at George Washington University, who wrote the article with Michael C. Dorf, a law professor at Cornell. The president must, in the article’s words, “choose the least unconstitutional option.”

That option, the authors concluded, is issuing more debt**.**

#### The debt ceiling won’t cause a crisis—it will just force a balanced budget

Dorfman 10/3—professor of economics at The University of Georgia and consultant on economic issues to a variety of corporations and local governments (Jeffrey, 10/3/13, “Don't Believe The Debt Ceiling Hype: The Federal Government Can Survive Without An Increase,” <http://www.forbes.com/sites/jeffreydorfman/2013/10/03/dont-believe-the-debt-ceiling-hype-the-federal-government-can-survive-without-an-increase/>)

Ignore what you hear and read in the news. **The federal government actually reached the legal debt ceiling about four months ago**. Since then, the government has been financing its monthly budget deficit by stealing/borrowing money from other government funds, like the federal government employees’ pension fund. In about two weeks, the government will run out of tricks to keep operating as if nothing has happened. If the debt ceiling is not raised by then, the government has to balance its budget.¶ That’s right. As much as the politicians and news media have tried to convince you that the world will end without a debt ceiling increase, it is simply not true. The federal debt ceiling sets a legal limit for how much money the federal government can borrow. In other words, it places an upper limit on the national debt. It is like the credit limit on the government’s gold card.¶ Reaching the debt ceiling does not mean that the government will default on the outstanding government debt. In fact, the U.S. Constitution forbids defaulting on the debt (14th Amendment, Section 4), so the government is not allowed to default even if it wanted to.¶ In reality, if the debt ceiling is not raised in the next two weeks, the government will actually have to prioritize its expenses and keep its monthly, weekly, and daily spending under the revenue the government collects. In simple terms, the government would have to spend an amount less than or equal to what it earns. Just like ordinary Americans have to do in their everyday lives.¶ Once the reality of what hitting the debt ceiling means is understood, the important question is: can the government actually live with a balanced budget? How much money could it spend? Could enough spending be cut to live within a balanced budget? The answer is **yes**, the federal government could live with a balanced budget. Below I will show you precisely how.¶

#### No econ decline war---best and most recent data

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 GOP cave – redistricting and primary challenger fears

**Isenstadt, 10/3/13** (Alex, Politico, “Government shutdown: Why many Republicans have no reason to deal” <http://www.politico.com/story/2013/10/government-shutdown-republicans-deal-97768.html?hp=l23>

The prevailing wisdom ahead of the government shutdown was that tea party lawmakers who agitated for it would fold within a few days, once they got an earful from angry constituents and felt the sting of bad headlines. House GOP leaders called it a “touch the stove” moment for the band of Republican rebels, when ideology would finally meet reality.

But there’s another reality that explains why that thinking may well be wrong, and the country could be in for a protracted standoff: Most of the Republicans digging in have no reason to fear voters will ever punish them for it.

The vast majority of GOP lawmakers are safely ensconced in districts that, based on the voter rolls, would never think of electing a Democrat. Their bigger worry is that someone even more conservative than they are — bankrolled by a cadre of uncompromising conservative groups — might challenge them in a primary.

So from the standpoint of pure political survival, there’s every incentive to keep the government closed in what looks like a futile protest over Obamacare. The latest theory gaining currency in Congress is that it will take a potential default on the nation’s debt in a few weeks to bring the crisis to a head.

#### Obama likes the plan – he won’t fight it

Rosen 13 (Jeffrey, Legal Affairs Editor – New Republic, “A New Idea to Limit Drone Strikes Could Actually Legitimize Them,” New Republic, 2-11, <http://www.newrepublic.com/article/112392/drone-courts-congress-should-exercise-oversight-instead>)

On Sunday, Robert Gates, the former Pentagon chief for Presidents Obama and Bush, endorsed an idea that has been floated by Democratic lawmakers in the wake of John O. Brennan's confirmation hearings to be CIA Director: a drone court that would review the White House’s targeted killings of American citizens linked to al Qaida. The administration has signaled its openness to the idea of a congressionally created drone court, which would be modeled on the secret Foreign Intelligence Surveillance Court that reviews requests for warrants authorizing the surveillance of suspected spies or terrorists. But although senators at the Brennan hearings were rightly concerned about targeted killings operating without any judicial or congressional oversight, the proposed drone court would raise as many constitutional and legal questions as it resolved. And it would give a congressional and judicial stamp of approval to a program whose effectiveness, morality, and constitutionality are open to serious questions. Rather than rushing to create a drone court, Congress would do better to hold hearings about whether targeted drone killings are, in fact, morally, constitutionally, and pragmatically defensible in the first place.

From the administration’s perspective, the appeal of a drone court is obvious: Despite the suggestion in the recently released Department of Justice White Paper white paper that the president’s unilateral decisions about targeted killings can’t be reviewed by judges, the administration cites Supreme Court cases that suggest the opposite: namely, that the president’s decision to designate Americans as enemy combatants can only be justified when authorized by Congress, with the possibility of independent judicial review.

### AT: Liberal Legalism 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.

### AT: CP

#### Doesn’t enshrine an external check or stop the president’s global authority – key to due process

Sohn, 13 [Written By: Michelle Sohn Edited By: Laura Fishwick & Gillian Kassner Editorial Policy ,http://jolt.law.harvard.edu/digest/digest-note/drone-strikes-and-due-process]

At the end of the Civil War, Lambdin P. Milligan, a United States citizen, was arrested in his Indiana home, tried before a military commission, and sentenced to death on a number of charges including “[a]ffording aid and comfort to rebels against the authority of the United States”. Ex parte Milligan, 71 U.S. 2, 6 (1866). Milligan petitioned for a writ of habeas corpus and the case went all the way to the Supreme Court. The Supreme Court held that the military commission had no jurisdiction to try or sentence Milligan. Even in a time of war, Milligan was entitled to his due process rights under the Fifth Amendment of the U.S. Constitution. Nearly 150 years later, the U.S. finds itself embroiled in another time of war. Advances in military technology such as drones have greatly enhanced the government’s ability to conduct lethal operations anywhere in the world without ever having to put a single American soldier on the ground. Paradoxically, it is exactly these new advances in military technology that have dredged up a longstanding, yet important conflict between balancing national security with constitutional protections of due process. The conflict between national security and due process recently regained national attention with the leaking of a Department of Justice White Paper. The White Paper detailed the legal framework under which the government can lawfully order lethal operations against a United States citizen who is outside a recognized battlefield and believed to be a “senior operational leader” or an “associated force” of al-Qa’ida. It concluded that when an informed high-level U.S. official determines that (1) a U.S. citizen poses an “imminent threat” of violent attack, (2) capture of the citizen is infeasible, and (3) the operation can be conducted consistently with law of war principles, lethal force does not violate international or domestic law. The White Paper expressed the latest of a long series of arguments put forth by the Obama Administration justifying its practice of requiring minimal due process procedures before taking lethal action against U.S. citizens far from the combat zone. In fact, as early as 2010, Harold Koh, Legal Advisor to the U.S. State Department, stated that a nation “engaged in an armed conflict or legitimate self-defense is not required to provide targets with legal process before the state may use lethal force…” In 2012, Attorney General Eric Holder in his address at Northwestern University declared that the President is not required to go through a federal court in order to take action, “The Constitution guarantees due process, not judicial process.” What is most striking about the Obama Administration’s collective arguments is the wide discretion afforded to the Executive Branch and the inchoate analysis of the constitutional expectations due process requires from each branch of government. There are two components of due process: fair notice and the opportunity to be heard. The fundamental rationale behind due process is to check against arbitrary government action. At its core, due process is an amalgamation of what makes the separation of powers a powerful American ideal. The Legislative branch writes the laws—including the ones that dictate charges available against U.S. citizens—that the Executive branch enforces by bringing citizens in violation of the law to be tried before an impartial Judicial branch that the Constitution itself or the Legislative branch has established. Times of national crisis will necessarily render some procedures of due process more elastic than times of peace. Indeed, the Supreme Court has recognized that in certain cases the procedures for due process must be narrowed in times of national crisis. For example, in Ex Parte Quirin, during World War II, the Court upheld the constitutionality of trying a U.S. citizen for offenses against the laws of war in front of a military commission rather than a jury. See Ex parte Quirin, 317 U.S. 1 modified sub nom. U.S. ex rel. Quirin v. Cox, 63 S. Ct. 22 (U.S. 1942). At the same time, the Court has also recognized that “[w]hatever power the United States Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake.” Hamdi v. Rumsfeld, 542 U.S. 507, 536 (2004). The Hamdi opinion, which the DOJ White Paper cited, also recognized the need to balance the constitutional guarantee of due process with the Executive branch’s responsibility to keep the nation secure. Thus, in evaluating the constitutional protections afforded a U.S. citizen captured and deemed an “enemy combatant” by the U.S. military, the Hamdi Court used a balancing test that it had employed 28 years prior in Mathews v. Eldridge. The Mathews Court stated that the proper test for evaluating how much due process is required is the consideration of three factors: “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest…”.Mathews v. Eldridge, 424 U.S. 319 (1976). The DOJ White Paper conceded that “no private interest is more substantial” than the interest in avoiding erroneous deprivation of life. White Paper at 6. However, the DOJ reasoned that the government interest in ensuring national security by using force on those that pose an “imminent threat of violent attack” is compelling. As such, the DOJ concluded that the “realities of combat” justified the force rendered necessary to meet those realities. In fact, the DOJ White Paper quoted the Hamdi decision, “due process analysis need not blink at those realities.” Hamdi, 542 U.S at 531. However, this use of Hamdi is disingenuous. The “realities” the Court referred to were the necessities of detaining enemy combatants rather than the use of force.[1] The DOJ White Paper’s use of Hamdi to justify drone strikes outside recognized combat zones is increasingly suspect due to the fact that Hamdi emphasized that petitioner Hamdi was captured in a foreign combat zone. In doing so, Hamdi refered to Ex Parte Milligan, the aforementioned Supreme Court case regarding the constitutionality of military commissions during the Civil War. The Milligan Court held that despite being in a time of declared war, the military commission had no jurisdiction to try and sentence Milligan. The Hamdi Court reasoned “[h]ad Milligan been captured while he was assisting Confederate soldiers by carrying a rifle against Union troops on a Confederate battlefield, the holding of the Court might well have been different”. Hamdi, 542 U.S. at 522. Indeed, the Milligan Court pointed to the fact that in Indiana “…there was no hostile foot…[and] so in the case of a foreign invasion, martial rule may become a necessity in one state, when in another, it would be “mere lawless violence.” Milligan, 71 U.S. 2 at 126-27. The Court in both Hamdi and Milligan implicitly acknowledged the importance of recognized combat zones as a potential check on the Executive branch’s expansive war powers. Perhaps part of the reason the Hamdi Court emphasized the fact that Hamdi was captured in Afghanistan involves the due process requirement of fair notice. After all, to be in an internationally recognized battle zone such as Afghanistan can constitute sufficient notice as to the hazards and “realities of combat”. As Professor Noah Feldman wrote in his blog post, Obama’s Drone Attack on Your Due Process, “The White Paper should have said that due process doesn’t apply on the battlefield.” However, the DOJ White Paper’s analysis is not focused on the legality of drone strikes on the battlefield. It justifies drone strikes outside an area of active hostilities. White Paper at 1. Under the DOJ’s analysis, U.S. citizens in countries that the President, Congress, or even the United Nations Security Council has not officially authorized military engagements with are open to drone strikes. Of course, one could argue that Congress authorized the use of force against terrorists and thus, being a terrorist against the U.S. is notice enough. However, this is a rather tautological argument. After all, how does the government determine a U.S. citizen is a terrorist without providing the citizen a meaningful opportunity to be heard before issuing a drone strike? The Obama Administration has consistently justified its broad exercise of military powers by pointing out that it is executing what Congress has authorized it to do. Congress’ 2001 Authorization of Military Force “authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.” Authorization for Use of Military Force, Pub. L. No. 107-40 (2001). The DOJ White Paper notes that Congress did not put geographical limits on this authorization. Further, the DOJ White Paper stipulated that once a U.S. citizen is deemed an “imminent threat,” the use of lethal force becomes a legitimate act of self-defense. However, the DOJ White Paper’s definition of “imminent threat” is alarmingly broad. According to the White Paper, imminent threat does not require “clear evidence that a specific attack on U.S. persons…will take place in the immediate future”. White Paper at 7. The DOJ concluded that if the targeted individual is continually involved with planned attacks and there is no evidence suggesting “that he has renounced or abandoned such activities”, the U.S. official could make a determination of “imminent threat.” White Paper at 8. The White Paper leaves unresolved the criteria or timeline as to how and when those assessments are made. It is also unclear which officers of the U.S. military are “informed” and “high-level” enough to make such an assessment. “[W]ithout doubt, our Constitution recognizes that core strategic matters of war belong in the hands of those who are best positioned and most politically accountable for making them.” Hamdi v. Rumsfeld, 542 U.S. 507, 531 (2004). However, just how far up or down the chain of command can the assessment of “imminent threat” be made? If the principle behind due process is government accountability, how accountable can we hold those in charge of making the assessment? Are the current Obama Administration practices the ones that properly minimize erroneous risk of deprivation of life? Certainly, terrorism is a global threat not limited to traditional geographic notions of the battlefield. The DOJ White Paper is a reflection of these modern conditions of warfare. Indeed, the forefathers of the Constitution and the Milligan Court could not have foreseen or fathomed the amorphous, global nature of today’s threats posed to the United States of America. However, as the Hamdi Court plurality wrote, “We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens…” The Constitution demands that more than one branch of government balances the scales of due process in its hands. The core of due process requires that our branches of government hold each other accountable precisely to decrease the risk of erroneous deprivation of a U.S. citizen’s life. After all, while Article II of the Constitution names the President “commander in chief”, Article I grants Congress the authority to “declare war…and make rules concerning captures on land and water…” and Article III puts acts of treason within the jurisdiction of the judiciary. Thus, there is still a role for both the courts and Congress to play in the realm of military technology and constitutional guarantees. Congress should seek to more concretely define the concept of “imminent threat”. It should also seek to clarify the protocol on using force against U.S. citizens outside the combat zone. This is not to say that Congress should necessarily limit the Executive’s power to use force outside Afghanistan. However, it should seek to more clearly define the policy concerns for U.S. citizens outside traditional battlefields. For example, if a U.S. citizen is outside Afghanistan, should more efforts be made to capture? The Executive Branch can then execute the law with a more definite strategy that has Congress’ blessing. As for the judiciary, while the courts should not undertake to form military policy, when called upon the courts should evaluate the criteria used through the lens of the Mathews balancing test as well as the measure of Congress’ authorization of power to the Executive. As more and more information regarding drone use is provided to Congress and the public, all citizens should keep in mind that the entire world is not a combat zone and U.S. military practices toward its citizens should not imply this scenario. On the other hand, the Executive should be enabled to use advances in military technology to secure the nation against the global nature of terrorism. However, due process does require that no one branch maintain unilateral authority over a U.S. citizen’s life, liberty, or property. Due process can and does require the Executive, Congress, and the courts to work in concert toward accountability and the pursuit of a more perfect union.

#### Doesn’t solve legitimacy – external review of US citizen targets is key

Cole 12 (David, Professor of Constitutional Law and Criminal Justice – Georgetown University Law Center, “Obama and Terror: The Hovering Questions,” New York Review of Books, 7-12, 59(12), p. 2)

Policy considerations also strongly favored a civilian criminal trial. The federal courts have successfully prosecuted more than two hundred defendants on “terrorism” charges since September 11. While many of those prosecutions involve dubious practices of entrapment and trumped-up charges of “material support,” federal courts have undoubtedly shown that they can handle terrorism cases. Their judges are seasoned, their rules are clear, and their process has the legitimacy earned through years of application to millions of Americans.

The military commissions, by contrast, are subject to continuing change, with few or no precedents to rely upon. Their military lawyers and judges have no experience with serious terrorist trials. And the proceedings lack legitimacy, both because they remain tainted by the lawless form they initially took under President Bush, and because by design they apply only to noncitizens, and not to Americans. Their track record to date has been dominated by false starts, Keystone Cops procedures, and surprisingly light sentences.

So any rational actor would choose to try KSM in civilian criminal court. That’s precisely what Attorney General Holder did. He’s been widely criticized ever since for failing to prepare the way for the announcement by informing New York officials sufficiently ahead of time, and for failing to defend the announcement forcefully. But Klaidman reveals that the decision to delay informing New York officials was driven by a concern about leaks, and that all relevant officials, including Mayor Michael Bloomberg, supported the decision when it was announced. It was only later, when the New York officials were inundated by the complaints of their constituents, that they reversed course.

#### CP isn’t sufficient – the cp is just lip service

Buttar 13 (Shahid, “Killing Us Softly: Why the Administration's Response to Criticism on Drones Carries Little Water,” 3-17, <http://truth-out.org/opinion/item/15156-killing-us-softly-why-the-administrations-response-to-criticism-on-drones-carries-little-water>)

Much of the controversy surrounding Brennan’s nomination concerned mere disclosure: whether the executive branch would let Congress read the administration’s legal analysis governing the targeted assassination program. President Obama apparently heard the message, admitting in his State of the Union address that more transparency is required. The result proved underwhelming. One congressional committee received a single legal memo among several, which did not even purport to delineate the boundaries of the assassination program, but rather explored the use of deadly authority against a single target among several hundred who have been killed, including at least four US citizens. Mere disclosure of some OLC memos to some Senators is insufficient. Meaningful congressional oversight requires full access to all the legal memos, as well as active investigation of the underlying facts. It is not enough to simply read executive legal analyses paying lip service to constitutional values routinely violated on the ground. The congressional intelligence committees, after all, were founded after robust investigations revealed widespread abuses by intelligence agencies, including the CIA, spanning decades and the terms of several presidents. Factual investigation has revealed more recent abuses, as well. Last year, the Senate Intelligence Committee concluded a thorough investigation of torture, which produced a report recognizing torture as an international human rights abuse that ultimately undermined US national security by producing false intelligence, eroding pro American sentiment abroad, and helping our enemies recruit foot soldiers. Yet, reflecting its pattern of embracing secrecy while claiming transparency, the Obama administration has refused to declassify the report. It is only because neither the press nor the public know the facts that irresponsible Hollywood fiction proved so problematic and controversial. Forgotten in commentary on Brennan’s confirmation were some troubling details suggesting that, on both torture and drone strikes, transparency remains inadequate. First, Senators had to fight tooth & nail to secure even the most minimal disclosure from the White House. Second, other congressional committees also sought access to the OLC assassination memos, but were denied. Finally, beyond disclosure of the OLC’s legal memos are important questions about how the standards in them are applied to real facts. The Obama administration and CIA still refuse to answer congressional questions beyond the memos—such as, “How much evidence does the President need to determine that a particular American can be lawfully killed?” These questions are crucial, but Brennan’s confirmation could ensure that Congress receives few answers.

#### Media spin trumps solvency – executive can’t respond to follow-up questions – crushes legitimacy

Goldsmith 13 (Jack, Henry L. Shattuck Professor – Harvard Law School, “The Intersection of Vague Disclosure and Reduced Drone Strikes,” Lawfare, 5-27, <http://www.lawfareblog.com/2013/05/the-intersection-of-vague-disclosure-and-reduced-drone-strikes/>)

The major challenge to legitimating the shadow war against terrorists is that the Executive branch is hand-tied by its own secrecy rules, and cannot disclose what it is doing to permit Congress and the American people to judge whether it approves. Even Executive branch officials who want to be open about what is going on (as I believe the President and many of his national security officials want to be) are prevented by secrecy rules from being entirely candid. Officials convey information in what I recently described as “limited, abstract, and often awkward terms” that “usually raise more questions than they answer,” a problem exacerbated by the fact that “secrecy rules often preclude the administration from responding to follow-up questions, criticisms, and charges.” Disclosures designed to enhance trust can end (up) deepening mistrust, especially when journalists start reporting on events that don’t fit the administration’s narrative, and the administration cannot (perhaps because of secrecy rules, perhaps because the truth is uncomfortable) respond fully. This dynamic is made worse by the fact that partial disclosures are greeted for demands for more disclosures that the government simply cannot abide.

This is starting to happen with the abstractions that the President used to describe his ostensible curtailment of the war. Ryan Goodman and Sarah Knuckey have a careful analysis of the speech that note its ambiguities and uncertainties on the geographical scope of the war, the continued use of signature strikes, the meaning of non-feasible captures as prerequisite for strikes, whether Americans “not specifically targeted” (in the President’s words) were targeted as part of a signature strike or some other reason that prevented the president from describing their deaths as accidental, whether any member of a terrorist organization or only its leaders are targetable, and the crucial meaning of phrases like “near certainly,” “imminence,” and “associated forces.” Goodman and Knuckey conclude that these ambiguities and uncertainties make it “impossible for the public to, in the President’s words: “make informed decisions and hold the Executive Branch accountable,” and note that “until the White House releases the legal memos that explain its understanding of such terms and its legal justification for the drone program more broadly[,] there is reason to remain deeply skeptical.” Along similar lines, Lesley Clark and Jonathan S. Landay at McClatchy compare the President’s speech with past administration speeches and conclude that the speech might imply an expansion of drone killings.

Pushing in the other direction, however, is the reality that drone strikes (and their consequences) are in some senses verifiable, and the rate of strikes in both Pakistan and Yemen have dropped this year (and having been dropping for a few years in Pakistan). In the end, the credibility of the government’s new standards might turn less on the President’s words, which by themselves cannot establish credibility, but rather on how he is perceived to use drones (and other forms of fire) in fact. It does not follow, of course, that reduced drone strikes mean that the new standards have bite, or are constraining. As David Cole notes in a good if perhaps-too-hopeful NYRB essay:

[The reduction in drone strikes] may reflect a diminishing number of appropriate targets. It may suggest that the administration has for some time been employing more restrictive standards. Or it may reflect increasing acceptance of the view that drone strikes have become counterproductive—a point made publically by former counterterrorism intelligence chief Dennis Blair and retired General Stanley McChrystal, who headed the US forces in Afghanistan.

# 1ar

### AT: CMR DA

#### Policy disagreements don’t spill over --- no turns case

Hansen 9 – Victor Hansen, Associate Professor of Law, New England Law School, Summer 2009, “SYMPOSIUM: LAW, ETHICS, AND THE WAR ON TERROR: ARTICLE: UNDERSTANDING THE ROLE OF MILITARY LAWYERS IN THE WAR ON TERROR: A RESPONSE TO THE PERCEIVED CRISIS IN CIVIL-MILITARY RELATIONS,” South Texas Law Review, 50 S. Tex. L. Rev. 617, p. lexis

According to Sulmasy and Yoo, these conflicts between the military and the Bush Administration are the latest examples of a [\*624] crisis in civilian-military relations. n32 The authors suggest the principle of civilian control of the military must be measured and is potentially violated whenever the military is able to impose its preferred policy outcomes against the wishes of the civilian leaders. n33 They further assert that it is the attitude of at least some members of the military that civilian leaders are temporary office holders to be outlasted and outmaneuvered. n34 If the examples cited by the authors do in fact suggest efforts by members of the military to undermine civilian control over the military, then civilian-military relations may have indeed reached a crisis. Before such a conclusion can be reached, however, a more careful analysis is warranted. We cannot accept at face value the authors' broad assertions that any time a member of the military, whether on active duty or retired, disagrees with the views of a civilian member of the Department of Defense or other member of the executive branch, including the President, that such disagreement or difference of opinion equates to either a tension or a crisis in civil-military relations. Sulmasy and Yoo claim there is heightened tension or perhaps even a crisis in civil-military relations, yet they fail to define what is meant by the principle of civilian control over the military. Instead, the authors make general and rather vague statements suggesting any policy disagreements between members of the military and officials in the executive branch must equate to a challenge by the military against civilian control. n35 However, until we have a clear understanding of the principle of civilian control of the military, we cannot accurately determine whether a crisis in civil-military relations exists. It is to this question that we now turn.

#### No impact – empirics prove

Feaver and Kohn 5 - Peter Feaver, professor of Political Science and Public Policy and the director of the Triangle Institute for Security Studies at Duke University, and Richard H. Kohn, Professor of History at the University of North Carolina, 2005, “The Gap: Soldiers, Civilians, and Their Mutual Misunderstanding,” in American Defense Policy, 2005 edition, ed. Paul J. Bolt, Damon V. Coletta, Collins G. Shackelford, p. 339

Concerns about a troublesome divide between the armed forces and the society they serve are hardly new and in fact go back to the beginning of the Republic. Writing in the 1950s, Samuel Huntington argued that the divide could best be bridged by civilian society tolerating, if not embracing, the conservative values that animate military culture. Huntington also suggested that politicians allow the armed forces a substantial degree of cultural autonomy. Countering this argument, the sociologist Morris Janowitz argued that in a democracy, military culture necessarily adapts to changes in civilian society, adjusting to the needs and dictates of its civilian masters.2 The end of the Cold War and the extraordinary changes in American foreign and defense policy that resulted have revived the debate. The contemporary heirs of Janowitz see the all volunteer military as drifting too far away from the norms of American society, thereby posing problems for civilian control. They make tour principal assertions. First, the military has grown out of step ideologically with the public, showing itself to be inordinately right-wing politically, and much more religious (and fundamentalist) than America as a whole, having a strong and almost exclusive identification with the Republican Party. Second, the military has become increasingly alienated from, disgusted with, and sometimes even explicitly hostile to, civilian culture. Third, the armed forces have resisted change, particularly the integration of women and homosexuals into their ranks, and have generally proved reluctant to carry out constabulary missions. Fourth, civilian control and military effectiveness will both suffer as the military—seeking ways to operate without effective civilian oversight and alienated from the society around it—loses the respect and support of that society. By contrast, the heirs of Huntington argue that a degenerate civilian culture has strayed so far from traditional values that it intends to eradicate healthy and functional civil-military differences, particularly in the areas of gender, sexual orientation, and discipline. This camp, too, makes four key claims. First, its members assert that the military is divorced in values from a political and cultural elite that is itself alienated from the general public. Second, it believes this civilian elite to be ignorant of, and even hostile to, the armed forces—eager to employ the military as a laboratory for social change, even at the cost of crippling its warfighting capacity. Third, it discounts the specter of eroding civilian control because it sees a military so thoroughly inculcated with an ethos of subordination that there is now too much civilian control, the effect of which has been to stifle the military's ability to function effectively Fourth, because support for the military among the general public remains sturdy, any gap in values is inconsequential. The problem, if anything, is with the civilian elite. The debate has been lively (and inside the Beltway, sometimes quite vicious), but it has rested on very thin evidence—(tunneling anecdotes and claims and counterclaims about the nature of civilian and military attitudes. Absent has been a body of systematic data exploring opinions, values, perspectives, and attitudes inside the military compared with those held by civilian elites and the general public. Our project provides some answers.

#### Congress is cutting the drones budget significantly.

Ackerman, 13 (Spencer Ackerman. American national security reporter. Graduated from Rutgers University. “Budget Cuts Are Set to Hit U.S. Military’s Drone Fleet”. Wired. Apr. 2nd, 2013. http://www.wired.com/dangerroom/2013/04/drone-cuts/)

For all the ongoing hype about the U.S. military’s arsenal of flying robots, they’re anything but safe from budget cuts. Pentagon officials anticipate spending significantly less on their surveillance and attack drones over the next several years, effectively ending the drone boom of the previous decade.

¶ The impending budget cuts are expected to affect each major funding source for the drones: the research and development accounts that keep new models coming online; the operations and maintenance accounts that keep current ones in the air; and the procurement accounts that keep the military purchasing them**.**¶ Already, the Pentagon is signaling that the boom times for drones are coming to an end, even as the robots remain one of the U.S.’s signature counterterrorism weapons. An overview prepared in February by Dyke Weatherington, who oversees unmanned systems for the Pentagon’s acquisitions and technology directorate, outlined the downturn.¶ Across all the various military drone programs, R&D cash is expected to fall to $1.03 billion in fiscal 2017, nearly half of the $1.99 billion the Pentagon requested in the fiscal 2013 budget. Budget cuts caused the Pentagon to shrink its anticipated drone-research spending: Weatherington’s presentation, delivered to the drone advocates at AUVSI and acquired by Danger Room, anticipates spending $1.3 billion in fiscal 2014, some $866 million less than the fiscal 2012 budget anticipated for that year.¶ Same goes for procurement, and what’s known as “operations and maintenance.” Weatherington anticipated that the Pentagon will spend $3 billion on drone purchases in 2014, some $814 less than the fiscal 2012 budget foresaw. And he expected that it’ll want $983 million in fiscal 2014 to keep its current fleet flying and tuned up, down $309 million from the expectation in the fiscal 2012 budget. The downward pattern for all drone accounts continues through 2017.¶ It’s possible that the fiscal 2014 budget, expected to be released on April 10, will revise those numbers further. “We’re still looking at those numbers,” says Maureen Schumann, a spokeswoman for Weatherington. Pentagon officials have described the current budget process as chaotic, as it’s occurred against the backdrop of an ongoing White House-congressional feud over spending cuts.¶ But drone manufacturers and their advocates have been bracing themselves for the downturn for a while, even as the drones remain busy worldwide. Last year, the Air Force cut its drone purchases by half while actually upping the combat air patrols they fly. AUVSI has been pushing the utility of drones to farmers as the advocacy group sees the military market shrinking.¶ Every defense account is feeling pressure under mandatory budget cuts enacted by Congress. But some observers see the robots as being particularly vulnerable, as they don’t have the traditional bureaucratic constituencies of other weapons systems.¶ “As the Pentagon wrestles with declining overall budget numbers, this would be the time to not let sunk costs drive us in the future. But the reality is that in tough budget times, the new becomes more directly threatening to the old,” says Peter Singer, a defense analyst at the Brookings Institution. (Where, full disclosure, Danger Room boss Noah Shachtman has a non-resident fellowship.) “And in bureaucracies, the old is not only more established, but is often at an advantage. It is more likely to have existing internal constituencies and tribes, and stronger support from Congressional members protecting existing factories and jobs in their district versus the potential of future program offices and future pork barrel spending.”¶ Despite the anticipated budget cuts, there are still new, experimental drone programs under way in the military. The Navy is pushing forward with an effort to launch an armed drone from an aircraft carrier. Darpa wants drones to operate from the decks of even smaller ships. In Afghanistan, Army units are using a six-pound lethal robot that bridges the gap between drone and missile.¶ But the funding reductions are “all the more striking,” Singer says, because of the enthusiasm that senior military leaders have mouthed for the drones. “In the next 20-30 years these things are going to explode,” Gen. Mark Welsh, the Air Force chief of staff, told an airpower conference in September. (He meant that colloquially.) “Who knows what will happen next, but it’s going to be exciting to watch and our Air Force has to be in the lead because we’ll know the best way to use them. Innovation is what we’re all about.”¶ Weatherington’s presentation pointed to a 33 percent reduction in drone funding in the coming years inside the Air Force alone.¶ “One is reminded a bit of that cavalry officer after World War I who is reputed to have said, ‘Thank goodness now the war is over, we can get back to real soldiering,” Singer says.

### AT: Circumvention

#### Obama would comply with the court

Stephen I. Vladeck 9, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, 3-1-2009, “The Long War, the Federal Courts, and the Necessity / Legality Paradox,” http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=facsch\_bkrev

Moreover, even if one believes that suspensions are unreviewable, there is a critical difference between the Suspension Clause and the issue here: at least with regard to the former, there is a colorable claim that the Constitution itself ousts the courts from reviewing whether there is a “Case[ ] of Rebellion or Invasion [where] the public Safety may require” suspension––and even then, only for the duration of the suspension.179 In contrast, Jackson’s argument sounds purely in pragmatism—courts should not review whether military necessity exists because such review will lead either to the courts affirming an unlawful policy, or to the potential that the political branches will simply ignore a judicial decision invalidating such a policy.180 Like Jackson before him, Wittes seems to believe that the threat to liberty posed by judicial deference in that situation pales in comparison to the threat posed by judicial review. ¶ The problem is that such a belief is based on a series of assumptions that Wittes does not attempt to prove. First, he assumes that the executive branch would ignore a judicial decision invalidating action that might be justified by military necessity.181 While Jackson may arguably have had credible reason to fear such conduct (given his experience with both the Gold Clause Cases182 and the “switch in time”),183 a lot has changed in the past six-and-a-half decades, to the point where I, at least, cannot imagine a contemporary President possessing the political capital to squarely refuse to comply with a Supreme Court decision. But perhaps I am naïve.184

### AT: Rubber Stamp (2ac)

#### Not a rubber stamp

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

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

### AT: Solvency (Generic)

#### Executive deference fails – judicial oversight brings US policy in line with IHL protections

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]

Introduction The current practice of using drones to engage in overseas killings raises difficult legal questions with incredibly high stakes. The fate of potential targets and collateral damage hangs in the balance along with grave concerns about national and foreign security. Over the past decade, expansive deference to the executive branch has allowed a substantial increase in the number and rate of drone strikes. The use of drones for targeted killing is becoming a regular tool of the U.S. government and perhaps will become so for other governments as well. What role, if any, do courts have to play in regulating this practice? Critics of the status quo would like greater transparency and accountability in regards to targeted killings. In addition to constitutional concerns, some worry the executive branch is violating International Humanitarian Law (IHL). They want the executive branch to reveal its legal under-standings of IHL. They also seek greater information regarding review processes for targeted kill-ings as to both prospective listings and retrospective assessments of compliance. These skeptics contend that the lack of judicial oversight and the opacity of the government’s legal position risks the deaths of innocent foreign civilians, violates democratic accountability norms, erodes our compliance reputation with allies, and helps recruit a new generation of anti-American insurgents. Even if the current approach is lawful, many worry about future administrations or other governments that may adopt drone strikes without sufficient IHL protections. As this chapter describes, some of these critics have proposed the use of courts to foster either transparency or accountability or both. In contrast, many, including the executive and judicial branches themselves, believe that the judicial role regarding drone strikes and targeted killings should be a minimal one. They suggest that an active court reviewing names of those to be targeted, providing damages to victims of un-lawful strikes, or demanding agencies declassify information on drone strikes would compromise an effective strategy in the war on terror. They fear judicial intervention would pose great danger to U.S. soldiers, foreign civilians, and in worst case scenarios, to U.S. citizens at home without en-hancing IHL compliance. In particular, executive branch officials have argued that greater transpar-ency may compromise intelligence efforts, provide targets with additional opportunities to act stra- 3 tegically, and sour relations with states currently willing to provide sub rosa permission for strikes. Meanwhile, these court opponents suggest that sufficient internal and congressional oversight can prevent unlawful activity. They also push back on the opacity charge by noting the information pro-vided through a series of high-level administration speeches and unacknowledged leaks. The U.S. judiciary itself is often reluctant to aggressively intervene in national security mat-ters and other legal issues arising out of armed conflicts. Federal courts frequently employ a variety of procedural postures and substantive doctrines to avoid deciding live IHL controversies. But the judicial branch sometimes surprises, as when the Supreme Court spoke to detention policy and its relationship to IHL in the trio of war on terror cases Hamdi,1 Hamdan,2 and Boumediene.3 U.S. courts might look to other countries, like Israel, whose courts have ruled on targeted killings and issued guidelines informed by IHL to govern future behavior.4 This chapter suggests the judiciary may play an important role in the debate over the executive branch’s decisions regarding IHL even if it declines to speak to the substance of such cases. First, advocates may use courts as a visible platform in which to make their arguments and spur conversations about alternative, non-judicially mandated transparency and accountability measures. As they did with the trio of detention cases, advocates can leverage underlying constitutional concerns about the treatment of citizens to stimulate interest in the larger IHL issues. Second, litigants may use courts to publicize and pursue Freedom of Information (FOIA) requests and thus enhance transparency. Even if courts decline to grant FOIA requests, the lawsuits can generate media attention about what remains undisclosed. Third, and most robustly, Congress may pass legislation that would facilitate either prospective review of kill lists through a so-called drone court or remove procedural barriers to retrospective damage suits for those unlawfully killed by a drone strike. **Even** the threat of such a judicial role may influence executive **branch** behavior.

### Econ Impact (1ar)

#### Best studies prove

Brandt and Ulfelder ‘11(\*Patrick T. Brandt, Ph.D. in Political Science from Indiana University, is an Assistant Professor of Political Science in the School of Social Science at the University of Texas at Dallas. \*\*Jay Ulfelder, Ph.D. in political science from Stanford University, is an American political scientist whose research interests include democratization, civil unrest, and violent conflict, April, 2011, “Economic Growth and Political Instability,” Social Science Research Network)

These statements anticipating political fallout from the global economic crisis of 2008–2010 reflect a widely held view that economic growth has rapid and profound effects on countries’ political stability. When economies grow at a healthy clip, citizens are presumed to be too busy and too content to engage in protest or rebellion, and governments are thought to be flush with revenues they can use to enhance their own stability by producing public goods or rewarding cronies, depending on the type of regime they inhabit. When growth slows, however, citizens and cronies alike are presumed to grow frustrated with their governments, and the leaders at the receiving end of that frustration are thought to lack the financial resources to respond effectively. The expected result is an increase in the risks of social unrest, civil war, coup attempts, and regime breakdown. Although it is pervasive, the assumption that countries’ economic growth rates strongly affect their political stability has not been subjected to a great deal of careful empirical analysis, and evidence from social science research to date does not unambiguously support it. Theoretical models of civil wars, coups d’etat, and transitions to and from democracy often specify slow economic growth as an important cause or catalyst of those events, but empirical studies on the effects of economic growth on these phenomena have produced mixed results. Meanwhile, the effects of economic growth on the occurrence or incidence of social unrest seem to have hardly been studied in recent years, as empirical analysis of contentious collective action has concentrated on political opportunity structures and dynamics of protest and repression. This paper helps fill that gap by rigorously re-examining the effects of short-term variations in economic growth on the occurrence of several forms of political instability in countries worldwide over the past few decades. In this paper, we do not seek to develop and test new theories of political instability. Instead, we aim to subject a hypothesis common to many prior theories of political instability to more careful empirical scrutiny. The goal is to provide a detailed empirical characterization of the relationship between economic growth and political instability in a broad sense. In effect, we describe the conventional wisdom as seen in the data. We do so with statistical models that use smoothing splines and multiple lags to allow for nonlinear and dynamic effects from economic growth on political stability. We also do so with an instrumented measure of growth that explicitly accounts for endogeneity in the relationship between political instability and economic growth. To our knowledge, ours is the first statistical study of this relationship to simultaneously address the possibility of nonlinearity and problems of endogeneity. As such, we believe this paper offers what is probably the most rigorous general evaluation of this argument to date. As the results show, some of our findings are surprising. Consistent with conventional assumptions, we find that social unrest and civil violence are more likely to occur and democratic regimes are more susceptible to coup attempts around periods of slow economic growth. At the same time, our analysis shows no significant relationship between variation in growth and the risk of civil-war onset, and results from our analysis of regime changes contradict the widely accepted claim that economic crises cause transitions from autocracy to democracy. While we would hardly pretend to have the last word on any of these relationships, our findings do suggest that the relationship between economic growth and political stability is neither as uniform nor as strong as the conventional wisdom(s) presume(s). We think these findings also help explain why the global recession of 2008–2010 has failed thus far to produce the wave of coups and regime failures that some observers had anticipated, in spite of the expected and apparent uptick in social unrest associated with the crisis.

### Econ Internal (1ar)

#### Obama will act unilaterally to auction Treasury bonds to protect the economy

**Drum, 9/25/13** – blogger for Mother Jones (Kevin, “If We Reach the Debt Limit, Obama Will Probably Just Break Through It Anyway” <http://www.motherjones.com/kevin-drum/2013/09/obama-debt-ceiling-bond-auction>)

We have various laws that require the federal government to disburse money. However, if we reach our statutory debt limit without Congress raising it, we'll have another law that says the government can't borrow any more money. Matt Yglesias comments: So we're headed straight for a legal and constitutional crisis that could also become a financial crisis. What laws does the executive branch follow and which does it break? What litigation will result from any decision, and who will prevail? I think the conventional wisdom actually somewhat overstates the odds of this leading to a total financial meltdown. Worst comes to worst, you pay people with IOUs for a week and then organize an "illegal" debt auction where bonds will sell at a modest premium to currently prevailing rates and ultimately the courts legitimize the option. But that will definitely be a kind of constitutional meltdown that will permanently shake confidence in the American financial and political system. I don't know if this is exactly how things will unfold, but it's in the right ballpark. I realize that a lot of people are still pushing the platinum coin thing, but keep in mind that even if you don't buy any of the arguments for why it's illegal, it only works if you can deposit the coin at the Fed. And the Fed has already said it wouldn't accept it. So it's not a live option no matter how passionately you believe it's legal. But if the debt ceiling showdown lasts more than a couple of weeks, it's likely that President Obama will simply order the Treasury to start auctioning bonds regardless. Maybe under the authority of the 14th Amendment, maybe under his authority as commander-in-chief. Maybe he'll declare a state of emergency of some kind. Who knows? But eventually this is how things will work out, with Obama acting because he has to, and because he knows that courts will be loathe to intervene in a political dispute between the executive and legislative branches. In any case, it would be a helluva mess. Republicans really need to grow up and stop treating the livelihoods of millions of workers and the good faith of the United States as mere partisan chew toys. It's long past time for the business community to stage an intervention.

#### Multiple factors check the impact

**FXStreet.com, 9/25**/13 – an investing website (“4 Reasons Why You Shouldn't Worry Over This Year's Debt Ceiling Deadline” <http://www.fxstreet.com/analysis/piponomics/2013/09/25/>)

The U.S. debt ceiling deadline may be looming like dark clouds over the market horizon, but I've found a few reasons why this issue might not be such a big deal after all.

1. In 2011 the market was also dealing with:

Back when the debt ceiling issue popped up in 2011, risk appetite was really low since markets were also troubled by Greece's potential default, Portugal's and Japan's debt downgrades, the prospect of another global recession, plus ongoing riots in the U.K. Clearly, the global economy had more problems than a math book!

This time around though, market sentiment is much different as major economies like the euro zone, the U.K., and even Japan and China are all looking at optimistic economic growth prospects. With that, the debt ceiling issue might simply make a tiny dent in risk appetite.

2. The Fed is still stimulating the markets.

In the FOMC statement last week, the Fed decided to keep supporting the U.S. economy by refusing to taper its monthly asset purchases. Aside from helping sustain the progress in lending and spending, this could eventually stimulate the global economy as it would also ensure healthy demand and robust trade activity.

3. The Dollar Index is hinting at a repeat of history.

If you look at the USDX chart you'll see that the dollar fell 200 pips from mid-July until early August when the debt ceiling deadline was due. It then encountered support at the 74.00 psychological area and even reached the 80.00 area by October.

This time around the USDX is consolidating at the 81.00 support on the daily chart. If history is to repeat itself, then the 200-pip fall from early September has already run its course. Does this mean that we're about to see a dollar rally soon?

4. We've seen this before.

In 2011 the U.S. government alleviated the markets' fears by raising the debt ceiling and promising to reduce future increases in government spending. Then, in 2013, they got over the fiscal cliff hurdle by passing a last-minute bill that includes a $600 billion tax revenue in a span of ten years. And then there's the budget sequestration issue, which has gone relatively smoothly since early this year despite the onslaught of criticism.

#### No markets impact

Peter Lefkin 13, Senior Vice President of Government and External Affairs for Allianz of North America, “Round 2 of the Debt-Ceiling Debate,” Allianz Global, 5/21, <http://us.allianzgi.com/Commentary/MarketInsights/Pages/5QuestionswithPeterLefkin.aspx>

Expect more brinkmanship from Democrats and Republicans. Both parties will go through the rhetoric and the charade of partisan politics. After several years of political uncertainty, markets generally discount dysfunction in Washington. But the political leverage has shifted: The fiscal cliff was a strategic loss for Republicans but it set the stage for them to stand pat on the sequester. The cards are now in their favor. And they’re going to play them. Earlier this year, everyone expected Republicans to demand sweeping changes to entitlement spending as a condition of agreeing to raise the debt limit. With the budget numbers improving, and the public already lulled into complacency about the deficit by low interest rates, many Republicans realize that they may have to shift gears. They could tie the debt-ceiling increase to something else. The Republican wish list includes comprehensive tax reform, entitlement reform and construction of the Keystone oil pipeline.

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