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#### Advantage 1 Norms

#### Drone policy sets a dangerous legal precedent – leads to global conflict escalation – especially in Asia

Taylor, 11/10/13 [Guy, “U.S. intelligence warily watches for threats to U.S. now that 87 nations possess drones”, http://www.washingtontimes.com/news/2013/nov/10/skys-the-limit-for-wide-wild-world-of-drones/?page=all]

The age of the drone is here, and U.S. intelligence agencies are warily monitoring their proliferation around the globe. China uses them to spy on Japan near disputed islands in Asia. Turkey uses them to eyeball Kurdish activity in northern Iraq. Bolivia uses them to spot coca fields in the Andes. Iran reportedly has given them to Syria to monitor opposition rebels. The U.S., Britain and Israel are the only nations to have fired missiles from remote-controlled drones, but the proliferation of unmanned aerial vehicles has become so prevalent that U.S. intelligence sources and private analysts say it is merely a matter of time before other countries use the technology. “People in Washington like to talk about this as if the supposed American monopoly on drones might end one day. Well, the monopoly ended years ago,” said Peter W. Singer, who heads the Center for 21st Century Security and Intelligence at the Brookings Institution. What’s worse, clandestine strikes carried out by Washington in far-flung corners of the world have set a precedent that could be ugly. Mr. Singer said as many as 87 nations possess some form of drones and conduct various kinds of surveillance either over their own territories or beyond. Among those 87, he said, 26 have either purchased or developed drones equivalent in size to the MQ-1 Predator — the model made by San Diego-based General Atomics. While American Predators and their updated sister, the MQ-9 Reaper, are capable of carrying anti-armor Hellfire missiles, the clandestine nature of foreign drone programs makes it difficult to determine how many other nations have armed drones. Defense industry and other sources who spoke with The Washington Times said 10 to 15 nations are thought to be working hard on doing just that, and China and Iran are among those with the most advanced programs. “Global developments in the UAV arena are being tracked closely,” said one U.S. intelligence official, who spoke with The Times on the condition of anonymity. “Efforts by some countries to acquire armed UAV systems are concerning, not least because of the associated proliferation risk.” Other sources said that while the international media have focused on the controversy and political backlash associated with civilian casualties from U.S. drone strikes in Pakistan, Yemen and Somalia, Washington’s unprecedented success with the technology — both in targeting and killing suspected terrorists — has inspired a new kind of arms race. “It’s natural that other nations and non-state actors, seeing the many ways the U.S. has leveraged the technology, are keen to acquire remotely piloted aircraft,” said Lt. Gen. Robert P. Otto, Air Force deputy chief of staff for intelligence, surveillance and reconnaissance. Race to the skies The number of nations possessing drones nearly doubled from 41 to 76 from 2005 to 2011, according to a report last year by the Government Accountability Office, which highlighted the fact that U.S. companies are no longer alone in manufacturing and marketing the technology. “Many countries acquired their UAVs from Israel,” said the report. It said Germany, France, Britain, India, Russia and Georgia have either leased or purchased Israeli drones, including the Heron, a model that many foreign militaries see as a good alternative to the American-made Predators and Reapers. A report this year by Teal Group, a Virginia-based aerospace and defense industry analysis corporation, said UAVs have come to represent the “most dynamic growth sector” of the global aerospace industry, with spending on drones projected to more than double from roughly $5.2 billion a year today to more than $11 billion in 2022. China is widely seen as a potential powerhouse in the market. Chinese companies have “marketed both armed drones and weapons specifically designed for UAV use,” said Steven J. Zaloga, a top analyst at Teal Group. “It’s a case where if they don’t have the capability today, they’ll have it soon.” Although there is concern in Washington that China will sell the technology to American adversaries, sources say, the U.S. also is pushing ahead with development of its own secretive “next generation” drones. Today’s models emerged in the post-9/11 era of nonconventional conflict — a time when American use of both weaponized and surveillance-only drones has been almost exclusively over chaotic patches of the planet void of traditional anti-aircraft defenses. With little or no need to hide, relatively bulky drones such as the MQ-1 Predator dominated the market. But the “big secret,” Mr. Zaloga said, “is that the U.S. is already working on both armed and unarmed UAVs that can operate in defended airspace.” Another factor likely to fuel the proliferation of armed drones, he said, centers on a global push to make “very small weapons” that can be tailored to fit smaller aircraft. This matters because of the roughly 20,000 drones now in existence, only about 350 are large enough to carry the slate of weapons on the current market. “What the new munitions will do is mean that if you’re operating the smaller UAVs, you’ll be able to put weapons on them,” said Mr. Zaloga. “And those smaller UAVs are being manufactured now by quite a few countries.” In the wrong hands? One serious concern in Washington is that smaller drones could be used by groups such as al Qaeda or Hezbollah, the Iran-backed militant and political organization based in Lebanon that is engaged in a protracted war with Israel. The U.S. intelligence official who spoke with The Times on the condition of anonymity said it is “getting easier for non-state actors to acquire this technology.” Hezbollah leader Hassan Nasrallah made headlines by claiming his group flew a drone into Israeli airspace last year, after Israel announced that it had shot a UAV out of the sky. Although Mr. Nasrallah said the drone was made in Iran and assembled in Lebanon, little is known about precisely what type it was — or whether it was armed. Armed or not, U.S. officials are wary. “No one is turning a blind eye to the growing use of surveillance-only UAV systems — including by non-state actors — even if these systems have a host of beneficial civil applications,” said the official who spoke with The Times. “One problem is that countries may perceive these systems as less provocative than armed platforms and might use them in cross-border operations in a way that actually stokes regional tension.” That appears to be happening in Asia, where Japan recently threatened to shoot down Chinese drones flying near the disputed Senkaku Islands in the East China Sea. Northeast Asian countries are likely to invest heavily in drone technology, said Patrick M. Cronin, senior director of the Asia-Pacific Security Program at the Center for a New American Security in Washington. “But even before these investments are manifested in wider deployments, Japan will be relying on UAVs for wider and better surveillance, particularly around its southwest island chain, while China will be using them to variably challenge Japanese administrative control and, indirectly, pressure the United States to restrain its ally,” said Mr. Cronin. “This vital new technology is improving situational awareness. But, paradoxically, if used more offensively the same technology may also accelerate a maritime crisis in the East or even South China Sea.” U.S. precedents Others say the U.S. and its closest allies have set a precedent with clandestine drone strikes in foreign lands. Although British forces have carried out hundreds of drone strikes in Afghanistan and Israel has used drone-fired missiles to kill suspected terrorists in Egypt’s Sinai Peninsula, as well as Islamic militants in Gaza, the most widespread use has been directed by the U.S. military and CIA. In addition to strikes in Libya and Somalia, the U.S. has carried out more than 375 strikes in Pakistan and as many as 65 in Yemen over the past nine years, according to the London-based Bureau of Investigative Journalism. The concern, said the Brookings Institution’s Mr. Singer, is that adversaries will point to U.S. behavior as an excuse for carrying out cross-border targeting of “high-value” individuals. “That’s where you have the problem,” he said. “Turkey carries out a strike in northern Iraq and then cites U.S. precedent in Pakistan to justify it. Or Iran carries out a drone strike inside Syria that the Syrian government says it’s fine with because it’s a lawless area where what they call ‘terrorists’ are hanging out, and then they throw the precedent back at the U.S. “That would make it sticky for us,” said Mr. Singer. “That’s not the broader norm we want out there.”

#### Those deterrence breakdowns escalate

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

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

#### Asian conflict escalates due to drone use

**Brimley et al, 13** \*vice president \*\*AND director of the Technology and National Security Program \*\*\*AND deputy director of the Asia Program at the Center for a New American Security (Shawn Brimley, Ben Fitzgerald, and Ely Ratner, 17 September 2013, “The Drone War Comes to Asia,” http://www.foreignpolicy.com/articles/2013/09/17/the\_drone\_war\_comes\_to\_asia?page=0,1)//CC

In the midst of this heightened tension, you could be forgiven for overlooking the news early in September that Japanese F-15s had again taken flight after Beijing graciously commemorated the one-year anniversary of Tokyo's purchase by sending an unmanned aerial vehicle (UAV) toward the islands. But this wasn't just another day at the office in the contested East China Sea: this was the first known case of a Chinese drone approaching the Senkakus. Without a doubt, China's drone adventure 100-miles north of the Senkakus was significant because it aggravated already abysmal relations between Tokyo and Beijing. Japanese officials responded to the incident by suggesting that Japan might have to place government personnel on the islands, a red line for Beijing that would have been unthinkable prior to the past few years of Chinese assertiveness. But there's a much bigger and more pernicious cycle in motion. The introduction of indigenous drones into Asia's strategic environment -- now made official by China's maiden unmanned provocation -- will bring with it additional sources of instability and escalation to the fiercely contested South and East China Seas. Even though no government in the region wants to participate in major power war, there is widespread and growing concern that military conflict could result from a minor incident that spirals out of control. Unmanned systems could be just this trigger. They are less costly to produce and operate than their manned counterparts, meaning that we're likely to see more crowded skies and seas in the years ahead. UAVs also tend to encourage greater risk-taking, given that a pilot's life is not at risk. But being unmanned has its dangers: any number of software or communications failures could lead a mission awry. Combine all that with inexperienced operators and you have a perfect recipe for a mistake or miscalculation in an already tense strategic environment. The underlying problem is not just the drones themselves. Asia is in the midst of transitioning to a new warfighting regime with serious escalatory potential. China's military modernization is designed to deny adversaries freedom of maneuver over, on, and under the East and South China Seas. Although China argues that its strategy is primarily defensive, the capabilities it is choosing to acquire to create a "defensive" perimeter -- long-range ballistic and cruise missiles, aircraft carriers, submarines -- are acutely offensive in nature. During a serious crisis when tensions are high, China would have powerful incentives to use these capabilities, particularly missiles, before they were targeted by the United States or another adversary. The problem is that U.S. military plans and posture have the potential to be equally escalatory, as they would reportedly aim to "blind" an adversary -- disrupting or destroying command and control nodes at the beginning of a conflict. At the same time, the increasingly unstable balance of military power in the Pacific is exacerbated by the (re)emergence of other regional actors with their own advanced military capabilities. Countries that have the ability and resources to embark on rapid modernization campaigns (e.g., Japan, South Korea, Indonesia) are well on the way. This means that in addition to two great powers vying for military advantage, the region features an increasingly complex set of overlapping military-technical competitions that are accelerating tensions, adding to uncertainty and undermining stability. This dangerous military dynamic will only get worse as more disruptive military technologies appear, including the rapid diffusion of unmanned and increasingly autonomous aerial and submersible vehicles coupled with increasingly effective offensive cyberspace capabilities. Of particular concern is not only the novelty of these new technologies, but the lack of well-established norms for their use in conflict. Thankfully, the first interaction between a Chinese UAV and manned Japanese fighters passed without major incident. But it did raise serious questions that neither nation has likely considered in detail. What will constrain China's UAV incursions from becoming increasingly assertive and provocative? How will either nation respond in a scenario where an adversary downs a UAV? And what happens politically when a drone invariably falls out of the sky or "drifts off course" with both sides pointing fingers at one another? Of most concern, how would these matters be addressed during a crisis, with no precedents, in the context of a regional military regime in which actors have powerful incentives to strike first? These are not just theoretical questions: Japan's Defense Ministry is reportedly looking into options for shooting down any unmanned drones that enter its territorial airspace. Resolving these issues in a fraught strategic environment between two potential adversaries is difficult enough; the United States and China remain at loggerheads about U.S. Sensitive Reconnaissance Operations along China's periphery. But the problem is multiplying rapidly. The Chinese are running one of the most significant UAV programs in the world, a program that includes Reaper- style UAVs and Unmanned Combat Aerial Vehicles (UCAVs); Japan is seeking to acquire Global Hawks; the Republic of Korea is acquiring Global Hawks while also building their own indigenous UAV capabilities; Taiwan is choosing to develop indigenous UAVs instead of importing from abroad; Indonesia is seeking to build a UAV squadron; and Vietnam is planning to build an entire UAV factory. One could take solace in Asia's ability to manage these gnarly sources of insecurity if the region had demonstrated similar competencies elsewhere. But nothing could be further from the case. It has now been more than a decade since the Association of Southeast Asian Nations (ASEAN) and China signed a declaration "to promote a peaceful, friendly and harmonious environment in the South China Sea," which was meant to be a precursor to a code of conduct for managing potential incidents, accidents, and crises at sea. But the parties are as far apart as ever, and that's on well-trodden issues of maritime security with decades of legal and operational precedent to build upon. It's hard to be optimistic that the region will do better in an unmanned domain in which governments and militaries have little experience and where there remains a dearth of international norms, rules, and institutions from which to draw. The rapid diffusion of advanced military technology is not a future trend. These capabilities are being fielded -- right now -- in perhaps the most geopolitically dangerous area in the world, over (and soon under) the contested seas of East and Southeast Asia. These risks will only increase with time as more disruptive capabilities emerge. In the absence of political leadership, these technologies could very well lead the region into war.

#### Goes nuclear

**Goldstein, 13** – Avery, David M. Knott Professor of Global Politics and International Relations, Director of the Center for the Study of Contemporary China, and Associate Director of the Christopher H. Browne Center for International Politics at the University of Pennsylvania (“First Things First: The Pressing Danger of Crisis Instability in U.S.-China Relations,” International Security, vol. 37, no. 4, Spring 2013, Muse //Red)

Two concerns have driven much of the debate about international security in the post-Cold War era. The first is the potentially deadly mix of nuclear proliferation, rogue states, and international terrorists, a worry that became dominant after the terrorist attacks against the United States on September 11, 2001.1 The second concern, one whose prominence has waxed and waned since the mid-1990s, is the potentially disruptive impact that China will have if it emerges as a peer competitor of the United States, challenging an international order established during the era of U.S. preponderance.2 Reflecting this second concern, some analysts have expressed reservations about the dominant post-September 11 security agenda, arguing that China could challenge U.S. global interests in ways that terrorists and rogue states cannot. In this article, I raise a more pressing issue, one to which not enough attention has been paid. For at least the next decade, while China remains relatively weak, the gravest danger in Sino-American relations is the possibility the two countries will find themselves in **a crisis** that **could escalate to open military conflict.** In contrast to the long-term prospect of a new great power rivalry between the United States and China, which ultimately rests on debatable claims about the intentions of the two countries and uncertain forecasts about big shifts in their national capabilities, the danger of instability in a crisis involving these two nuclear-armed states is a tangible, near-term concern.3 Even if the probability of such a war-threatening crisis and its escalation to the use of significant military force is low, the **potentially catastrophic consequences** of this scenario provide good reason for analysts to better understand its dynamics and for policymakers to fully consider its implications. Moreover, events since 2010—especially those relevant to disputes in the East and South China Seas—suggest that **the danger of a military confrontation** in the Western Pacific **that could lead to a U.S.-China standoff may be on the rise.** In what follows, I identify not just pressures to use force preemptively that pose the most serious risk should a Sino-American confrontation unfold, but also related, if slightly less dramatic, incentives to initiate the limited use of force to gain bargaining leverage—a second trigger for potentially devastating instability during a crisis.4 My discussion proceeds in three sections. The first section explains why, during the next decade or two, a serious U.S.-China crisis may be more likely than is currently recognized. The second section examines the features of plausible Sino-American crises that may make them so dangerous. The third section considers general features of crisis stability in asymmetric dyads such as the one in which a U.S. superpower would confront an increasingly capable but still thoroughly overmatched China—the asymmetry that will prevail for at least the next decade. This more stylized discussion clarifies the inadequacy of focusing one-sidedly on conventional forces, as has much of the current commentary about the modernization of China's military and the implications this has for potential conflicts with the United States in the Western Pacific,5 or of focusing one-sidedly on China's nuclear forces, as a smaller slice of the commentary has.6 An assessment considering the interaction of conventional and nuclear forces indicates why **escalation resulting from crisis instability remains a devastating possibility.** Before proceeding, however, I would like to clarify my use of the terms "crisis" and "instability." For the purposes of this article, I define a crisis as a confrontation between states involving a serious threat to vital national interests for both sides, in which there is the expectation of a short time for resolution, and in which there is understood to be a sharply increased risk of war.7 This definition distinguishes crises from many situations to which the label is sometimes applied, such as more protracted confrontations; sharp disagreements over important matters that are not vital interests and in which military force seems irrelevant; and political disputes involving vital interests, even those with military components, that present little immediate risk of war.8 I define instability as the temptation to resort to force in a crisis.9 Crisis stability is greatest when both sides strongly prefer to continue bargaining; instability is greatest when they are strongly tempted to resort to the use of military force. Stability, then, describes a spectrum—from one extreme in which neither side sees much advantage to using force, through a range of situations in which the balance of costs and benefits of using force varies for each side, to the other extreme in which the benefits of using force so greatly exceed the costs that striking first looks nearly irresistible to both sides. Although the incentives to initiate the use of force may not reach this extreme level in a U.S. China crisis, the capabilities that the two countries possess raise concerns that escalation pressures will exist and that they may be highest **early in a crisis**, compressing the time frame for diplomacy to avert military conflict.

#### Only judicial review builds sustainable norms

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]

The current practice of using drones to engage in overseas killings raises difficult legal ques-tions 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 tar-geted 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 execu-tive 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 con-cerns 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 atten-tion 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.

#### Drone court key

Chow, 13 [Droning On: The Need to Establish a New Norm, Eugene K. Chow Former Executive Editor, Homeland Security NewsWire, http://www.huffingtonpost.com/eugene-k-chow/establish-new-constitutional-norm\_b\_2683131.html]

Contrary to what some have argued that the president requires full and unadjudicated control of the CIA's drone program for the swift execution of military operations to safeguard the nation, the proposed drone court or some form of Congressional oversight would not necessarily slow down the government's ability to wage war. Before that fateful button is pressed and Hellfire missiles go streaking toward an enemy combatant, thousands of [hu]man-hours are poured into gathering intelligence, assessing threats, and monitoring their movements. In all that time building up to that final moment, why can we not spare a few extra minutes for a Congressional committee, a judge, or a panel to determine if an American ought to be killed or not? Let us remember that the measure of a democratic society is not how it treats its best, but its worst. In the war against violent extremism, our government has already established a precedent for additional oversight. Following the Hamdi v. Rumsfeld decision, the Pentagon created Combatant Status Review Tribunals to determine if captured enemies on the battlefield had been properly designated as "enemy combatants." So it is not a question of whether the government can establish additional layers of oversight to ensure transparency, accountability, and the protection of Constitutional rights, but rather do we have the will. Now that a perpetual war, waged on an omnipresent battlefield, and drones capable of automatically monitoring every single moving object within 65 square miles and firing death-dealing missiles with a click of the button have become commonplace - it is high time we put into place laws and parameters that clearly define this new norm.

#### Legal constraints key—codified clarity key to norms

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

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

#### It’s reverse causal: formal agreements are only effective if driven by US precedent

Robert Farley 11, assistant professor at the Patterson School of Diplomacy and International Commerce at the University of Kentucky, Over the Horizon: U.S. Drone Use Sets Global Precedent, October 12, http://www.worldpoliticsreview.com/articles/10311/over-the-horizon-u-s-drone-use-sets-global-precedent

Is the world about to see a "drone race" among the United States, China and several other major powers? Writing in the New York Times, Scott Shane argued that just such an arms race is already happening and that it is largely a result of the widespread use of drones in a counterterror role by the United States. Shane suggests that an international norm of drone usage is developing around how the United States has decided to employ drones. In the future, we may expect that China, Russia and India will employ advanced drone technologies against similar enemies, perhaps in Xinjiang or Chechnya. Kenneth Anderson agrees that the drone race is on, but disagrees about its cause, arguing that improvements in the various drone component technologies made such an arms race inevitable. Had the United States not pursued advanced drone technology or launched an aggressive drone campaign, some other country would have taken the lead in drone capabilities. So which is it? Has the United States sparked a drone race, or was a race with the Chinese and Russians inevitable? While there's truth on both sides, on balance Shane is correct. **Arms races don't just "happen"** because of outside technological developments. Rather, they are embedded in political dynamics associated with public perception, international prestige and bureaucratic conflict. China and Russia pursued the development of drones before the United States showed the world what the Predator could do, but they are pursuing capabilities more vigorously because of the U.S. example. Understanding this is necessary to developing expectations of what lies ahead as well as a strategy for regulating drone warfare. States run arms races for a variety of reasons. The best-known reason is a sense of fear: The developing capabilities of an opponent leave a state feeling vulnerable. The Germany's build-up of battleships in the years prior to World War I made Britain feel vulnerable, necessitating the expansion of the Royal Navy, and vice versa. Similarly, the threat posed by Soviet missiles during the Cold War required an increase in U.S. nuclear capabilities, and so forth. However, states also "race" in response to public pressure, bureaucratic politics and the desire for prestige. Sometimes, for instance, states feel the need to procure the same type of weapon another state has developed in order to maintain their relative position, even if they do not feel directly threatened by the weapon. Alternatively, bureaucrats and generals might use the existence of foreign weapons to argue for their own pet systems. **All of these reasons** share common characteristics, however: They are both social and strategic, and they depend on the behavior of other countries. Improvements in technology do not make the procurement of any given weapon necessary; rather, geostrategic interest creates the need for a system. So while there's a degree of truth to Anderson's argument about the availability of drone technology, he ignores the degree to which dramatic **precedent can affect state policy**. The technologies that made HMS Dreadnought such a revolutionary warship in 1906 were available before it was built; its dramatic appearance nevertheless transformed the major naval powers' procurement plans. Similarly, the Soviet Union and the United States accelerated nuclear arms procurement following the Cuban Missile Crisis, with the USSR in particular increasing its missile forces by nearly 20 times, partially in response to perceptions of vulnerability. So while a drone "race" may have taken place even without the large-scale Predator and Reaper campaign in Pakistan, Yemen and Somalia, the extent and character of the race now on display has been driven by U.S. behavior. Other states, observing the effectiveness -- or at least the capabilities -- of U.S. drones will work to create their own counterparts with an enthusiasm that **they would not have had in absence of the U.S. example**. What is undeniable, however, is that we face a drone race, which inevitably evokes the question of arms control. Because they vary widely in technical characteristics, appearance and even definition, drones are poor candidates for "traditional" arms control of the variety that places strict limits on number of vehicles constructed, fielded and so forth. Rather, to the extent that any regulation of drone warfare is likely, it will come through treaties limiting how drones are used. Such a treaty would require either deep concern on the part of the major powers that advances in drone capabilities threatened their interests and survival, or widespread revulsion among the global public against the practice of drone warfare. The latter is somewhat more likely than the former, as drone construction at this point seems unlikely to dominate state defense budgets to the same degree as battleships in the 1920s or nuclear weapons in the 1970s. However, for now, drones are used mainly to kill unpleasant people in places distant from media attention. So creating the public outrage necessary to force global elites to limit drone usage may also prove difficult, although the specter of "out of control robots" killing humans with impunity might change that. P.W. Singer, author of "Wired for War," argues that new robot technologies will require a new approach to the legal regulation of war. Robots, both in the sky and on the ground, not to mention in the sea, already have killing capabilities that rival those of humans. Any approach to legally managing drone warfare will likely come as part of a more general effort to regulate the operation of robots in war. However, even in the unlikely event of global public outrage, any serious effort at regulating the use of drones will require **U.S. acquiescence**. Landmines are a remarkably unpopular form of weapon, but the United States continues to resist the Anti-Personnel Mine Ban Convention. If the United States sees unrestricted drone warfare as being to its advantage -- and it is likely to do so even if China, Russia and India develop similar drone capabilities -- then even global outrage may not be sufficient to make the U.S. budge on its position. This simply reaffirms the original point: Arms races don't just "happen," but rather are a direct, if unexpected outcome of state policy. Like it or not, the behavior of the United States right now is structuring how the world will think about, build and use drones for the foreseeable future. Given this, U.S. policymakers should perhaps devote a touch more attention to the precedent they're setting.

### Adv 2

#### Advantage 2 Accountability

#### Ex ante review key to accountable and legitimate targeted killing

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.

#### Drones key to legitimacy

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

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

#### Heg without legitimacy causes violent transitions—voluntary limits on power maintain relative stability

Martin Griffiths January **2004**; Associate Professor and Head of School at School of Government and International Relations, Griffith University (coincidence, as it turns out) “BEYOND THE BUSH DOCTRINE: AMERICAN HEGEMONY AND WORLD ORDER” AUSTRALASIAN JOURNAL OF AMERICAN STUDIES www.anzasa.arts.usyd.edu.au/a.j.a.s/Articles/1\_04/Griffiths.pdf‎

In international relations, an established hegemony helps the cause of international peace in a number of ways. First, a hegemon deters renewed military competition and provides general security through its preponderant power. Second, a hegemon can, if it chooses, strengthen international norms of conduct. Third, a hegemon’s economic power serves as the basis of a global lending system and free trade regime, providing economic incentives for states to cooperate and forego wars for resources and markets. Such was the nature of British hegemony in the nineteenth century, hence the term Pax Britannica. After the Second World War, the United States has performed the roles that Britain once played, though with an even greater preponderance of power. Thus, much of the peace between democracies after World War Two can be explained by the fact that the political-military hegemony of the United States has helped to create a security structure in Europe and the Pacific conducive to peaceful interaction. Today, American hegemony is tolerated by many states in Europe and Asia, not because the United States is particularly liked, but because of the perception that its absence might result in aggression by aspiring regional hegemons. However, Chalmers Johnson has argued that this is a false perception promoted from Washington to silence demands for its military withdrawal from Japan and South Korea.8 It is true that hegemonic stability theory can be classified as belonging in the realist tradition because of its focus on the importance of power structures in international politics. The problem is that power alone cannot explain why some states choose to follow or acquiesce to one hegemon while vigorously opposing and forming counter-alliances against another hegemon. Thus when international relations theorists employ the concept of hegemonic stability, they supplement it with the concept of legitimacy.9 Legitimacy in international society refers simply to the perceived justice of the international system. As in domestic politics, legitimacy is a notoriously difficult factor to pin down and measure. Still, one cannot do away with the concept, since it is clear that all political orders rely to some extent on consent in addition to coercion. Hegemony without legitimacy is insufficient to deter violent challenges to the international order, and may provoke attempts to build counter-alliances against the hegemon. Hegemonic authority which accepts the principle of the independence of states and treats states with a relative degree of benevolence is more easily accepted. The legitimacy of American hegemony during the cold war was facilitated by two important characteristics of the era. First, the communist threat (whether real or imaginary) disguised the tension between the United States’ promotion of its own interests and its claim to make the world safe for capitalism.10 Second, American hegemony managed to combine economic liberalism between industrialised states with an institutional architecture (the Bretton Woods system) that moderated the volatility of transaction flows across borders. It enabled governments to provide social investments, safety nets and adjustment assistance at the domestic level.11 In the industrialised world, this grand bargain formed the basis of the longest and most equitable economic expansion in human history, from the 1950s to the 1980s. And it provided the institutional foundation for the newest wave of globalisation, which began not long thereafter and is far broader in scope and deeper in reach than its nineteenth century antecedent. The system that the United States led the way in creating after 1945 has fared well because the connecting and restraining aspects of democracy and institutions reduce the incentives for Western nations to engage in strategic rivalry or balance against American hegemony. The strength of this order is attested to by the longevity of its institutions, alliances and arrangements, based on their legitimacy in the eyes of the participants. Reacting against the closed autarchic regions that had contributed to the world depression and split the globe into competing blocs before the war, the United States led the way in constructing a post-war order that was based on economic openness, joint management of the Western political-economic order, and rules and institutions that were organised to support domestic economic stability and social security.12 This order in turn was built around a basic bargain: the hegemonic state obtains commitments from secondary states to participate in the international order, and the hegemon in return places limits on the exercise of its power. The advantage for the weak state is that it does not fear domination or abandonment, reducing the incentive to balance against the hegemon, and the leading state does not need to use its power to actively enforce order and compliance. It is these restraints on both sides and the willingness to participate in this mutual accord that explains the longevity of the system, even after the end of the cold war. But as the founder and defender of this international order, the United States, far from being a domineering hegemon, was a reluctant superpower.

#### That prevents great power war, economic collapse, and global governance failures

**Thayer 13**—PhD U Chicago, former research fellow at Harvard Kennedy School’s Belfer Center, political science professor at Baylor (Bradley, professor in the political science department at Baylor University, “Humans, Not Angels: Reasons to Doubt the Decline of War Thesis”, International Studies Review Volume 15, Issue 3, pages 396–419, September 2013, dml)

Accordingly, while Pinker is sensitive to the importance of power in a domestic context—the Leviathan is good for safety and the decline of violence—he neglects the role of power in the international context, specifically he neglects US power as a force for stability. So, if a liberal Leviathan is good for domestic politics, a liberal Leviathan should be as well for international politics. The primacy of the United States provides the world with that liberal Leviathan and has four major positive consequences for international politics (Thayer 2006). In addition to ensuring the security of the United States and its allies, American primacy within the international system causes many positive outcomes for the world. The first has been a more peaceful world. During the Cold War, US leadership reduced friction among many states that were historical antagonists, most notably France and West Germany. Today, American primacy and the security blanket it provides reduce nuclear proliferation incentives and help keep a number of complicated relationships stable such as between Greece and Turkey, Israel and Egypt, South Korea and Japan, India and Pakistan, Indonesia and Australia. Wars still occur where Washington's interests are not seriously threatened, such as in Darfur, but a Pax Americana does reduce war's likelihood—particularly the worst form—great power wars**.** Second, American power gives the United States the ability to spread democracy and many of the other positive forces Pinker identifies. Doing so is a source of much good for the countries concerned as well as the United States because liberal democracies are more likely to align with the United States and be sympathetic to the American worldview. In addition, once states are governed democratically, the likelihood of any type of conflict is significantly reduced. This is not because democracies do not have clashing interests. Rather, it is because they are more transparent, more likely to want to resolve things amicably in concurrence with US leadership. Third, along with the growth of the number of democratic states around the world has been the growth of the global economy. With its allies, the United States has labored to create an economically liberal worldwide network characterized by free trade and commerce, respect for international property rights, mobility of capital, and labor markets. The economic stability and prosperity that stems from this economic order is a global public good. Fourth, and finally, the United States has been willing to use its power not only to advance its interests but to also promote the welfare of people all over the globe. The United States is the earth's leading source of positive externalities for the world. The US military has participated in over 50 operations since the end of the Cold War—and most of those missions have been humanitarian in nature. Indeed, the US military is the earth's “911 force”—it serves, de facto, as the world's police, the global paramedic, and the planet's fire department. There is no other state, group of states, or international organizations that can provide these global benefits. Without US power, the liberal order created by the United States will end just as assuredly. But, the waning of US power, at least in relative terms, introduces additional problems for Pinker concerning the decline of violence in the international realm. Given the importance of the distribution of power in international politics, and specifically US power for stability, there is reason to be concerned about the future as the distribution of relative power changes and not to the benefit of the United States.

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

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

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

#### External court oversight maintains legitimacy – key to global stability

Knowles, 9 [Robert, Assistant Professor, NYU Law, “Article: American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, p. lexis]

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

#### Intra-executive processes cause operational error

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

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

#### Ex ante key – FISA critics miss the mark

Guiora, 12 [Targeted Killing: When Proportionality Gets All Out of Proportion, Amos N. Guiora. Professor of Law, S.J. Quinney College of Law, University of Utah, p. SSRN]

The unitary executive theory aggressively articulated, and implemented, by the Bush Administration has been adopted in toto by the Obama Administration. While the executive clearly prefers to operate in a vacuum, the question whether that most effectively ensures effective operational counterterrorism is an open question. The advantage of institutionalized, process-based input into executive action prior to decision implementation is worthy of discussion in operational counterterrorism. The solution to this search for an actionable guideline is the **strict scrutiny standard.** What is strict scrutiny, and how is it to be implemented in the context of operational counterterrorism? Why is there a need, if at all, for an additional standard articulating self-defense? The strict scrutiny standard would enable operational engagement of a non-state actor predicated on intelligence information that would meet admissibility standards akin to a court of law. The strict scrutiny test seeks to strike a balance **enabling the state to act sooner** but subject to significant restrictions. The ability to act sooner is limited, however, by the requirement that intelligence information must be reliable, viable, valid, and corroborated. The strict scrutiny standard proposes that for states to act as early as possible in order to prevent a possible terrorist attack the information must meet admissibility standards similar to the rules of evidence. The intelligence must be reliable, material, and probative. The proposal is predicated on the understanding that while states need to engage in operational counterterrorism, mistakes regarding the correct interpretation and analysis of intelligence information can lead to tragic mistakes. Adopting admissibility standards akin to the criminal law minimizes operational error. Rather than relying on the executive branch making decisions in a “closed world” devoid of oversight and review, the intelligence information justifying the proposed action must be submitted to a court that would ascertain the information’s admissibility. The discussion before the court would necessarily be conducted ex parte; however, the process of preparing and submitting available intelligence information to a court would significantly contribute to minimizing operational error that otherwise would occur. The logistics of this proposal are far less daunting than might seem—the court before which the executive would submit the evidence is the FISA Court. Presently, FISA Court judges weigh the reliability of intelligence information in determining whether to grant government ex parte requests for wire-tapping warrants. Under this proposal, judicial approval is necessary prior to undertaking a counterterrorism operation predicated solely on intelligence information. The standard the court would adopt in determining the information’s reliability is the same applied in the traditional criminal law paradigm. The intelligence must be reliable, material, and probative. While the model is different—a defense attorney cannot question state witnesses—the court will assume a dual role. In this dual role capacity the court will cross-examine the representative of the intelligence community and subsequently rule as to the information’s admissibility. While some may suggest that the FISA court is largely an exercise in “rubber-stamping,” the importance of the proposal is in requiring the government to present the available information to an independent judiciary as a precursor to engaging in operational counterterrorism. The call is complicated: the United States is a nation based on democratic values rooted in ethics and morals; yet, when push comes to shove the United States does not always act in accordance with these articulated principles. The vision of a “city upon a hill,” articulated by Puritan settler John Winthrop and subsequently referenced by President Ronald Reagan, 9 has been called into question by certain U.S. counterterrorism measures. This is not the first time that American responses in the face of crisis (whether real or perceived) have reflected “over-board” and “over-broad” approaches.10

#### Op error strengthens armed insurgencies

Mayer 9 (Jane, critically acclaimed author and staff writer for the New Yorker, “The Predator War,” The New Yorker, 10-26, http://www.newyorker.com/reporting/2009/10/26/091026fa\_fact\_mayer)

Indeed, the history of targeted killing is marked by errors. In 1973, for example, Israeli intelligence agents murdered a Moroccan waiter by mistake. They thought that he was a terrorist who had been involved in slaughtering Israeli athletes at the Munich Olympics, a year earlier. And in 1986 the Reagan Administration attempted to retaliate against the Libyan leader Muammar Qaddafi for his suspected role in the deadly bombing of a disco frequented by American servicemen in Germany. The U.S. launched an air strike on Qaddafi’s household. The bombs missed him, but they did kill his fifteen-month-old daughter. The C.I.A.’s early attempts at targeting Osama bin Laden were also problematic. After Al Qaeda blew up the U.S. Embassies in Tanzania and Kenya, in August, 1998, President Bill Clinton retaliated, by launching seventy-five Tomahawk cruise missiles at a site in Afghanistan where bin Laden was expected to attend a summit meeting. According to reports, the bombardment killed some twenty Pakistani militants but missed bin Laden, who had left the scene hours earlier. The development of the Predator, in the early nineteen-nineties, was supposed to help eliminate such mistakes. The drones can hover above a target for up to forty hours before refuelling, and the precise video footage makes it much easier to identify targets. But the strikes are only as accurate as the intelligence that goes into them. Tips from informants on the ground are subject to error, as is the interpretation of video images. Not long before September 11, 2001, for instance, several U.S. counterterrorism officials became certain that a drone had captured footage of bin Laden in a locale he was known to frequent in Afghanistan. The video showed a tall man in robes, surrounded by armed bodyguards in a diamond formation. At that point, drones were unarmed, and were used only for surveillance. “The optics were not great, but it was him,” Henry Crumpton, then the C.I.A.’s top covert-operations officer for the region, told Time. But two other former C.I.A. officers, who also saw the footage, have doubts. “It’s like an urban legend,” one of them told me. “They just jumped to conclusions. You couldn’t see his face. It could have been Joe Schmo. Believe me, no tall man with a beard is safe anywhere in Southwest Asia.” In February, 2002, along the mountainous eastern border of Afghanistan, a Predator reportedly followed and killed three suspicious Afghans, including a tall man in robes who was thought to be bin Laden. The victims turned out to be innocent villagers, gathering scrap metal. In Afghanistan and Pakistan, the local informants, who also serve as confirming witnesses for the air strikes, are notoriously unreliable. A former C.I.A. officer who was based in Afghanistan after September 11th told me that an Afghan source had once sworn to him that one of Al Qaeda’s top leaders was being treated in a nearby clinic. The former officer said that he could barely hold off an air strike after he passed on the tip to his superiors. “They scrambled together an élite team,” he recalled. “We caught hell from headquarters. They said ‘Why aren’t you moving on it?’ when we insisted on checking it out first.” It turned out to be an intentionally false lead. “Sometimes you’re dealing with tribal chiefs,” the former officer said. “Often, they say an enemy of theirs is Al Qaeda because they just want to get rid of somebody. Or they made crap up because they wanted to prove they were valuable, so that they could make money. You couldn’t take their word.” The consequences of bad ground intelligence can be tragic. In September, a nato air strike in Afghanistan killed between seventy and a hundred and twenty-five people, many of them civilians, who were taking fuel from two stranded oil trucks; they had been mistaken for Taliban insurgents. (The incident is being investigated by nato.) According to a reporter for the Guardian, the bomb strike, by an F-15E fighter plane, left such a tangle of body parts that village elders resorted to handing out pieces of unidentifiable corpses to the grieving families, so that they could have something to bury. One Afghan villager told the newspaper, “I took a piece of flesh with me home and I called it my son.” Predator drones, with their superior surveillance abilities, have a better track record for accuracy than fighter jets, according to intelligence officials. Also, the drone’s smaller Hellfire missiles are said to cause far less collateral damage. Still, the recent campaign to kill Baitullah Mehsud offers a sobering case study of the hazards of robotic warfare. It appears to have taken sixteen missile strikes, and fourteen months, before the C.I.A. succeeded in killing him. During this hunt, between two hundred and seven and three hundred and twenty-one additional people were killed, depending on which news accounts you rely upon. It’s all but impossible to get a complete picture of whom the C.I.A. killed during this campaign, which took place largely in Waziristan. Not only has the Pakistani government closed off the region to the outside press; it has also shut out international humanitarian organizations like the International Committee for the Red Cross and Doctors Without Borders. “We can’t get within a hundred kilometres of Waziristan,” Brice de la Vingne, the operational coördinator for Doctors Without Borders in Pakistan, told me. “We tried to set up an emergency room, but the authorities wouldn’t give us authorization.” A few Pakistani and international news stories, most of which rely on secondhand sources rather than on eyewitness accounts, offer the basic details. On June 14, 2008, a C.I.A. drone strike on Mehsud’s home town, Makeen, killed an unidentified person. On January 2, 2009, four more unidentified people were killed. On February 14th, more than thirty people were killed, twenty-five of whom were apparently members of Al Qaeda and the Taliban, though none were identified as major leaders. On April 1st, a drone attack on Mehsud’s deputy, Hakimullah Mehsud, killed ten to twelve of his followers instead. On April 29th, missiles fired from drones killed between six and ten more people, one of whom was believed to be an Al Qaeda leader. On May 9th, five to ten more unidentified people were killed; on May 12th, as many as eight people died. On June 14th, three to eight more people were killed by drone attacks. On June 23rd, the C.I.A. reportedly killed between two and six unidentified militants outside Makeen, and then killed dozens more people—possibly as many as eighty-six—during funeral prayers for the earlier casualties. An account in the Pakistani publication The News described ten of the dead as children. Four were identified as elderly tribal leaders. One eyewitness, who lost his right leg during the bombing, told Agence France-Presse that the mourners suspected what was coming: “After the prayers ended, people were asking each other to leave the area, as drones were hovering.” The drones, which make a buzzing noise, are nicknamed machay (“wasps”) by the Pashtun natives, and can sometimes be seen and heard, depending on weather conditions. Before the mourners could clear out, the eyewitness said, two drones started firing into the crowd. “It created havoc,” he said. “There was smoke and dust everywhere. Injured people were crying and asking for help.” Then a third missile hit. “I fell to the ground,” he said. The local population was clearly angered by the Pakistani government for allowing the U.S. to target a funeral. (Intelligence had suggested that Mehsud would be among the mourners.) An editorial in The News denounced the strike as sinking to the level of the terrorists. The Urdu newspaper Jang declared that Obama was “shutting his ears to the screams of thousands of women whom your drones have turned into dust.” U.S. officials were undeterred, continuing drone strikes in the region until Mehsud was killed. After such attacks, the Taliban, attempting to stir up anti-American sentiment in the region, routinely claims, falsely, that the victims are all innocent civilians. In several Pakistani cities, large protests have been held to decry the drone program. And, in the past year, perpetrators of terrorist bombings in Pakistan have begun presenting their acts as “revenge for the drone attacks.” In recent weeks, a rash of bloody assaults on Pakistani government strongholds has raised the spectre that formerly unaligned militant groups have joined together against the Zardari Administration. David Kilcullen, a counter-insurgency warfare expert who has advised General David Petraeus in Iraq, has said that the propaganda costs of drone attacks have been disastrously high. Militants have used the drone strikes to denounce the Zardari government—a shaky and unpopular regime—as little more than an American puppet. A study that Kilcullen co-wrote for the Center for New American Security, a think tank, argues, “Every one of these dead non-combatants represents an alienated family, a new revenge feud, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased.” His co-writer, Andrew Exum, a former Army Ranger who has advised General Stanley McChrystal in Afghanistan, told me, “Neither Kilcullen nor I is a fundamentalist—we’re not saying drones are not part of the strategy. But we are saying that right now they are part of the problem. If we use tactics that are killing people’s brothers and sons, not to mention their sisters and wives, we can work at cross-purposes with insuring that the tribal population doesn’t side with the militants. Using the Predator is a tactic, not a strategy.” Exum says that he’s worried by the remote-control nature of Predator warfare. “As a military person, I put myself in the shoes of someone in fata”—Pakistan’s Federally Administered Tribal Areas—“and there’s something about pilotless drones that doesn’t strike me as an honorable way of warfare,” he said. “As a classics major, I have a classical sense of what it means to be a warrior.” An Iraq combat veteran who helped design much of the military’s doctrine for using unmanned drones also has qualms. He said, “There’s something important about putting your own sons and daughters at risk when you choose to wage war as a nation. We risk losing that flesh-and-blood investment if we go too far down this road.”

#### The impact is Middle East War and Pakistani collapse

Hussain 13 (Nazia, research scholar at the Terrorism, Transnational Crime and Corruption Center and a doctoral student at George Mason University, “Pakistan's Jihadi Problem and the Middle East,” Middle East Institute, 4-11, <http://www.mei.edu/content/pakistans-jihadi-problem-and-middle-east>)

Jihadi groups in Pakistan pose grave threats to the stability of the country and the surrounding region. Their operations and influence have extended from beyond the tribal areas to Pakistan’s cities. Along with countries such as Syria and Iraq, Pakistan has become a theater of doctrinal differences between Shia and Sunni Muslims, signifying that rifts between local groups have become linked to the wider violent sectarianism in the Middle East. This evolving composition of the “Jihadi problem” in Pakistan demonstrates that while jihadi groups may be based locally, their outlook is becoming increasingly transnational, and directly linked with the Middle East and the various conflicts raging within the region. The jihadi groups, mainly Tehreek-e-Taliban Pakistan (TTP) have become powerful enough to extend influence from beyond the tribal areas to major urban centers. Not only have they been operating in Quetta and Peshawar for some time, they are disbursing justice and instilling a reign of fear in Karachi, a city which contributes a quarter of Pakistan’s GDP. At the political level, this ease of functioning in Karachi is important as it means that they are in the process of displacing political parties such as Muttahida Qaumi Movement (MQM), Pakistan Peoples Party (PPP), and Awami National Party (ANP), thereby constricting political space for Pakistanis. In an open letter to Pakistanis, the TTP called upon them to boycott the elections as it would only mean a continuation of Western-style corrupt governance, but if they had to attend any political gatherings, to avoid those held by MQM, ANP, and PPP. The threats have worked to the effect that the secular ANP, which to date has represented Pashtuns in Pakistan, has been forced to go door-to-door for political canvassing, instead of holding political rallies. In Punjab, the sectarian Lashkar-e-Jhangvi (LeJ) has secured a political alliance with the ruling party of Pakistan Muslim League-Nawaz faction (PML-N), highlighting that it not only has a constituency that will vote for it, but also has political sway to forge a partnership with the ruling party. These developments point out that jihadi and sectarian groups have begun to command popular respect, and cannot be considered merely as foot soldiers of jihad that can be controlled by the state machinery. Slowly but surely, they are carving constituencies of support, instilling fear, or both, among the people of Pakistan. Adding to the conundrum, the ongoing Shia-Sunni conflict in the Middle East has spilled over into Pakistan. The trend of wreaking revenge on Pakistan’s Shia minority for ideological reasons as well as for the tactical purpose of avenging the suffering of Sunnis at the hands of the Alawite regime in Syria and the slights suffered under the Shia government in Iraq is disturbing. It manifests the fact that religious motivations of local sectarian groups are aligning with the interests of transnational entities such as Al Qaeda that believe in creating unrest in the already turbulent Syria and Iraq. Since the1980s, doctrinal differences between Sunnis and Shias have become a full-blown conflict in Pakistan. The country also has become a theater of competing ideologies of Sunni and Shia Islam, especially after the revolution in neighboring Iran. As a US diplomatic cable published by Wikileaks noted, an estimated $100 million a year from donors from the Gulf was supporting some of the hardline religious seminaries that have been responsible in creation of an extremist recruitment network in Punjab province. Vali Nasr traces the genesis of this problem in his book, The Shia Revival (p.160–162), pointing out that, ‘In the 1980s and the1990s, South Asia in general and Pakistan in particular served as the main battleground of the Saudi-Iranian and Sunni-Shia conflict. India and Pakistan were far more vulnerable to Shia assertiveness than the Arab countries...Pakistan was where Iran focused its attention first. There, as contrasted with the situation along the Iran-Iraq border, it would not be conventional war but rather ideological campaigns and sectarian inspired civil violence that would decide the outcome…The more aggressively Iran tried to influence the Shias of India and Pakistan, the more the Sunni ulama in those countries became determined to respond. After Iran organized Shia youth into student associations and supported the formation of a Pakistani Shia party modeled after Lebanon’s Amal, the Sunnis **began to form sectarian militias recruited from madrassas across the country**, including those that had been set up in the Pashtun region along the Afghan border to train fighters for the war against the Soviet Union. These militias enjoyed the backing not only of Islamabad but also of Riyadh and even for a time of Baghdad, as all three regimes saw Iranian influence in Pakistan as a strategic threat.” From the days of foreign governments supporting various factions to the use of the jihadi groups in India and Afghanistan, the situation has become even more complex. Different jihadi groups have not only become interlinked with each other for operational ease, they also share the goal of establishing an Islamic caliphate in Pakistan and beyond. In that respect, the dream of making Pakistan a truly Islamic state has become even more elusive. It can be argued that what these groups aspire for, in its distorted version, is striking at the heart of the ideological confusion that surrounded Pakistan and the possible role of Islam in its polity and society. Over the years, successive governments dabbled with the idea of finding a place for Islam in the new republic, but none did this more systematically than General Zia-ul-Haq. Not only was the use of Islam a useful tool to dilute the impact of populist appeal of Zulfiqar Ali Bhutto, it also provided a newborn constituency of Islamists and ulama to the Zia government. The new constituency of Islamists in Pakistan was further strengthened by support during the Afghan jihad days. The historical genesis of the jihadi groups is useful to understand, as it paints them as more than miscreants contributing to chaos in Pakistan, but more so, as people whose thinking and operations have been in the making for years. These groups, by their very actions, question the role of Islam ― and what version of Islam at that ― in the state of Pakistan. Furthermore, in their conception of Pakistan as an Islamic caliphate, and their worldview of not tolerating Shia interpretations of Islam, their actions are synchronizing with the current plight of Sunni brethren in the Middle East. In conclusion, the jihadi problem poses an existential problem not only in terms of the future of, and the role of Islam (and dominant interpretation of religion) in Pakistan, but is also connected to the Sunni-Shia conflict in the Middle East, as demonstrated in Iraq and Syria, and which threatens to affect other countries in the region as well. For policy makers in Pakistan and elsewhere, it is important to understand the nature of the “jihadi problem” as beyond the debate of terrorism and counterterrorism, and law and the absence of the rule of law. Hypothetically, neither can all Shias leave Pakistan, nor all extremist groups tried in courts of law. Instead, it is necessary to understand the multidimensional “jihadi problem” confronting Pakistan and the region. The links between national and transnational issues need to be recognized, in order to collaborate with Middle Eastern countries in preventing a Shia-Sunni conflagration that spans the length and breadth of the Muslim world. Lastly, policy makers should take into account the Pakistani people, who, if their loyalties are transferred to actors other than the state, can be the country’ undoing, or if their energies are harnessed, can provide the opportunity to turn things around. Pakistan needs to spend more on social sectors,[1] as well as improve governance throughout the country. **If the government will not cater to the needs of the people, they will have no option but to seek sustenance from actors who will. That could prove** tragic **for Pakistan and dangerous for its immediate neighbors and the international community**.

#### Goes nuclear

Michael O’Hanlon 5, senior fellow with the Center for 21st Century Security and Intelligence and director of research for the Foreign Policy program at the Brookings Institution, visiting lecturer at Princeton University, an adjunct professor at Johns Hopkins University, and a member of the International Institute for Strategic Studies

PhD in public and international affairs from Princeton, Apr 27 2005, “Dealing with the Collapse of a Nuclear-Armed State: The Cases of North Korea and Pakistan,” http://www.princeton.edu/~ppns/papers/ohanlon.pdf

Were Pakistan to collapse, it is unclear what the United States and like-minded states would or should do. As with North Korea, it is highly unlikely that “surgical strikes” to destroy the nuclear weapons could be conducted before extremists could make a grab at them. The United States probably would not know their location – at a minimum, scores of sites controlled by Special Forces or elite Army units would be presumed candidates – and no Pakistani government would likely help external forces with targeting information. The chances of learning the locations would probably be greater than in the North Korean case, given the greater openness of Pakistani society and its ties with the outside world; but U.S.-Pakistani military cooperation, cut off for a decade in the 1990s, is still quite modest, and the likelihood that Washington would be provided such information or otherwise obtain it should be considered small. If a surgical strike, series of surgical strikes, or commando-style raids were not possible, the only option would be to try to restore order before the weapons could be taken by extremists and transferred to terrorists. The United States and other outside powers might, for example, respond to a request by the Pakistani government to help restore order. Given the embarrassment associated with requesting such outside help, the Pakistani government might delay asking until quite late, thus complicating an already challenging operation. If the international community could act fast enough, it might help defeat an insurrection. Another option would be to protect Pakistan’s borders, therefore making it harder to sneak nuclear weapons out of the country, while only providing technical support to the Pakistani armed forces as they tried to quell the insurrection. Given the enormous stakes, the United States would literally have to do anything it could to prevent nuclear weapons from getting into the wrong hands. India would, of course, have a strong incentive to ensure the security of Pakistan’s nuclear weapons. It also would have the advantage of proximity; it could undoubtedly mount a large response within a week, but its role would be complicated to say the least. In the case of a dissolved Pakistani state, India likely would not hesitate to intervene; however, in the more probable scenario in which Pakistan were fraying but not yet collapsed, India’s intervention could unify Pakistan’s factions against the invader, even leading to the deliberate use of Pakistani weapons against India. In such a scenario, with Pakistan’s territorial integrity and sovereignty on the line and its weapons put into a “use or lose” state by the approach of the Indian Army, nuclear dangers have long been considered to run very high.

### Plan

#### The United States Federal Government should establish a limited ex ante judicial review process for targeted killing by drones.

### Solvency

#### Our procedural safeguard is key to minimize error and establish a credible signal

Somin, 13 [Ilya Somin Professor of Law HEARING ON “DRONE WARS: THE CONSTITUTIONAL AND COUNTERTERRORISM IMPLICATIONS OF TARGETED KILLING” TESTIMONY BEFORE THE UNITED STATES SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS April 23, 2013]

In my view, the use of targeted killings by drones is not inherently illegal or immoral. It is a legitimate weapon of war in the struggle against al Qaeda and associated terrorist groups. However, serious constitutional and other problems arise if the US government fails to take proper care to ensure that the use of drones is strictly limited to legitimate terrorist targets. These dangers are likely to be at their most severe in the admittedly rare cases involving American citizens. I would urge the Subcommittee and Congress generally to consider adopting procedural safeguards that would minimize the likelihood of erroneous or illegal drone strikes. One proposal that deserves serious consideration is the establishment of an independent court that would oversee drone strikes in advance. 2 I. WHY TARGETED KILLING IS NOT INHERENTLY ILLEGAL OR IMMORAL. The Authorization for the Use of Military Force enacted by Congress on September 14, 2001 authorizes the president 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, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”1 This is generally understood as creating a legal state of war between the United States and Al Qaeda and its allies. The Supreme Court has recognized this, describing the conflict we are engaged in as “the war with al Qaeda.”2 Similarly, President Obama, like President George W. Bush before him, has emphasized that “we are indeed at war with Al Qaeda and its affiliates.”3 Thus, all three branches of government have recognized that a state of war exists, and that therefore the United States is entitled to use all measures normally permitted in warfare against its enemies. In wartime, the individualized targeting of an enemy commander is surely both legal and moral. During World War II, for example, the United States targeted Japanese Admiral Isoruku Yamamoto, and the British and Czechs successfully targeted German SS General Reinhard Heydrich.4 Few if any serious commentators claim that these operations and others like them were either illegal or morally dubious. If it is permissible to individually target a uniformed enemy officer, such as Admiral Yamamoto in World War II, it is surely legitimate to do the same to the leader of a terrorist organization. Indeed, it would be perverse if terrorist leaders enjoyed greater protection against targeting than uniformed military officers. Unlike the latter, terrorists do not even pretend to obey the laws of war. And they deliberately endanger civilians by choosing not to wear distinctive uniforms. To give terrorists greater protection against targeted killing than that enjoyed by uniformed military personnel would in effect reward and incentivize illegal behavior that endangers innocent civilians by making it harder to distinguish them from combatants. In some ways, individual targeting of terrorist leaders is actually more defensible than mass targeting of their underlings. Leaders usually bear greater moral and legal responsibility for the activities of their groups than do low-level members. And, at least in some cases, individual targeting of leaders is less likely to inflict collateral damage on civilians than conventional attacks on groups. This analysis does not change if the enemy leader happens to be an American citizen. Surely the targeting of Admiral Yamamoto would not have become illegal or immoral if he had acquired dual US citizenship while living in the United States during the 1920s. As Justice Sandra Day O’Connor noted in her majority opinion for the Supreme Court in Hamdi v. Rumsfeld, “[a] citizen, no less than an alien, can be part of or supporting forces hostile to the United States or coalition partners and engaged in an armed conflict against the United States.”5 Benjamin Wittes of the Brookings Institution correctly points out that “Americans have fought in foreign armies against their country in numerous armed conflicts in the past, and their citizenship has never relieved them of the risks of that belligerency.”6 Most obviously, nearly all the combatants arrayed against US forces in the Civil War were American citizens. Yet that did not prevent the Union Army from targeting them with lethal force or make it illegal to do so. Giving American citizens who join terrorist organizations blanket immunity from individual targeting is also problematic because it would increase terrorists’ incentives to recruit Americans. Obviously, a terrorist leader who is immune from individually targeted attack can be more effective than one who is not. There is also no reason to believe that the use of drones for such targeting raises any greater moral or legal problems than the use of conventional weapons such as air strikes, attacks by ground forces, or artillery. Drones can, of course, be used in ways that are illegal, unethical, or unwise. For example, they could be used to deliberately target civilians. But the same is true of virtually every other weapon of war. Given the existence of a state of war, I believe that the Obama administration was correct to conclude in its recently released White Paper that it is legal for the government to target US citizens who are “senior operational leader[s] of al-Qa’ida or an associated force.”7 Some critics of the Administration White Paper focus on the possible weaknesses of the memo’s three additional requirements for the targeted killing of a US citizen: that “(1) an informed, high-level official of the US government has determined that the targeted individual poses an imminent threat of violent attack against the United States, (2) capture is infeasible and the United States continues to monitor whether capture becomes feasible, and (3) the operation would be conducted in a manner consistent with applicable law of war principles.”8 Law Professor Gerard Magliocca, for example, argues that “[t]he White Paper says that a citizen is eligible for death-by-drone when ‘an informed, high-level, official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States.’ In my opinion, this threshold is too low.”9 But the “imminent threat” test applies only to people located outside the United States who are “senior operational leaders of al-Qa’ida or an associated force,” not to just anyone who “an informed...official” believes to be a threat.10 In other words, the requirements that the target pose an “imminent threat” and cannot be captured are in addition to the requirement that he be a senior leader of Al Qaeda or one of its “associated forces.” Once this key point is recognized, many of the objections to the memo are weakened. Indeed, a senior al Qaeda leader likely qualifies as a legitimate target even if he does not pose an “imminent threat.” It was surely permissible to target Admiral Yamamoto even if the US did not have any proof that he was planning “imminent” military operations against US forces. The fact that he was a top enemy commander in an ongoing war was enough. Here as elsewhere, there is no good reason to give terrorist leaders greater immunity from attack than that enjoyed by uniformed military officers. Even when the use of targeted killing is both legal and moral, it is not always prudent and wise. In, many cases, it might be desirable to refrain from otherwise unproblematic strikes in order to avoid antagonizing civilian populations in the relevant region, or for other strategic reasons. Such considerations are extremely important, but probably best left to those with greater expertise on the relevant issues than I possess. I note them here only to emphasize that I do not claim that the US government should indiscriminately resort to the use of targeted killing in every instance where it might be legally permissible to do so. To the contrary, a prudent government should exercise great caution in ordering such operations. II. THE TARGETING DILEMMA. Although the targeting of genuine al Qaeda leaders is legally and morally unproblematic, the administration’s policy of targeted killing still raises serious questions. The key issue is whether we are following rigorous enough procedures to ensure that the people targeted by drone strikes really are members of terrorist organizations at war with the United States. A. Choosing Targets. Unfortunately, identifying al Qaeda leaders is a far more difficult task than identifying enemy officers in a conventional war. Precisely because terrorists do not wear uniforms and often do not have a clear command structure, it is easy to make mistakes. And where US citizens are involved, there is the danger that the government will target someone merely because that person is a political enemy of the current administration. Even if officials are acting entirely in good faith, there is still a serious risk that innocent people will be targeted in error. The DOJ White Paper does not even consider the question of how we decide whether a potential target really is a terrorist leader or not. But that is the most difficult and dangerous issue that must be considered. The problem is not an easy one. On the one hand, war cannot wait on elaborate judicial processes. And we usually cannot give a potential target an opportunity to contest his designation in court without tipping him off. On the other hand, it is both dangerous and legally problematic to give the president and his subordinates unconstrained power to designate American citizens as “terrorist leaders” and then target them at will. A drone strike aimed at American citizen without adequate evidence showing that he or she is a terrorist combatant raises serious constitutional problems. In particular, it is likely to violate the Due Process Clause of the Fifth Amendment, which forbids government deprivation of “life, liberty, or property without due process of law.”11 Legal scholars and jurists have spilled many barrels of ink debating the exact meaning of these words. But at the very least, they surely prevent the executive from unilaterally ordering the death of American citizen without at least some substantial proof that he is an enemy combatant, and perhaps an independent judicial determination thereof.12 As the Supreme Court has recognized, the Bill of Rights protects American citizens overseas, as well as domestically.13 Whether non-citizens are also entitled to the protection of the Due Process Clause when targeted beyond the boundaries of the United States is more disputable. Even though the text of the Amendment extends to all “persons,” some historical evidence suggests that the Due Process Clause was originally understood as not applying to foreigners outside US jurisdiction.14 The risk of either inadvertent or deliberate targeting of innocent people is heightened by the growing scale of targeted killing over the last several years. According to leading counterterrorism expert Peter Bergen, the Obama Administration conducted 283 drone strikes in Pakistan alone between 2009 and late 2012, more than six times as many as in the years of the George W. Bush administration.15 These strikes go well beyond targeting “senior” terrorists. Indeed, only 13% of them succeeded in killing a terrorist or “militant” leader.16 A recent analysis of government documents obtained by McClatchy Newspapers suggests that the vast majority of drone strikes under the Obama administration have been aimed at low-level al Qaeda and Taliban members.17 During a 12 month period ending in September 2011, McClatchy estimates that drone strikes in Pakistan killed some 482 people, of which only 8 were “senior al Qaida leaders” and 265 were low-level “militants.”18 Low- level terrorists and their allies are still legitimate targets. But the extension of the targeted killing program to cover such minor figures necessarily heightens the risk of error and abuse. A related challenge is the extension of targeted killings to cover radical Islamist groups that have few or no ties to al Qaeda or the Taliban. The AUMF only authorizes military action against “those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”19As Harvard Law School Professor and former head of the Office of Legal Counsel Jack Goldsmith points out, the AUMF “is a tenuous foundation for military action against newly threatening Islamist terrorist groups … that have ever-dimmer links to the rump al-Qaeda organization.”20 The difficulty of determining which groups are closely enough affiliated with al Qaeda to be covered by the AUMF also heightens the danger of error and abuse in target selection. In this testimony, I do not address the special issues raised by the potential use of targeted killings on American soil. But I agree with Attorney General Eric Holder’s recent statement indicating that the president does not “have the authority to use a weaponized drone to kill an American not engaged in combat on American soil.”21 B. Possible Institutional Safeguards. 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 7 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. Whether targeting decisions are made with or without judicial oversight, there is also an important question of burdens of proof. How much evidence is enough to justify classifying you or me as a senior Al Qaeda leader? The administration memo does not address that crucial question either. Obviously, it is unrealistic to hold military operations to the standards of proof normally required in civilian criminal prosecutions. But at the same time, we should be wary of giving the president unfettered power to order the killing of citizens simply based on his assertion that they pose a threat. Amos Guiora suggests that an oversight court should evaluate proposed strikes under a “strict scrutiny standard” that ensures that strikes are only ordered based on intelligence that is “reliable, material and probative.”25 It is difficult for me to say whether this standard of proof is the best available option. But the issue is a crucial one that deserves further consideration. Ideally, we need a standard of proof rigorous enough to minimize reckless or abusive use of targeted killing, but not so high as to preclude its legitimate use. Neither judicial review nor any other oversight system can completely eliminate all errors from the system. Given the limitations of intelligence and the fallibility of human decision-makers, some mistakes are probably inevitable. The only way avoid all error is to ban targeted killing entirely. But that approach might actually lead to greater loss of innocent life overall, by making it more difficult to combat terrorism and by incentivizing policymakers to use military tactics that often cause greater loss of life than targeted drone strikes. What we can hope to achieve is an oversight system that greatly diminishes the risk of serious abuse: targeted killings that are undertaken recklessly or - worse still – for the deliberate purpose of eliminating people who do not pose any genuine threat, but are merely attacked because they are critics of the government, or otherwise attracted the wrath of policymakers. Overall, we should seek to establish procedural safeguards that provide a check on executive discretion without miring the process in prolonged litigation that makes it impossible to conduct operations in “real time.” We cannot achieve anything approaching perfection. But it is reasonable to hope that we can improve on the status quo. Judicial oversight can help ensure that we are targeting the right individuals. But courts are less likely to be effective in addressing the problem of defining the range of groups that we are at war with. Our enemies probably are not limited to individuals formally affiliated with al Qaeda, since that organization has a variety of allies that support it. But the AUMF is not broad enough to cover all radical Islamist groups everywhere, nor is it desirable that we wage war against all of them. Ultimately, only Congress can properly clarify the scope of the conflict we are engaged in. Like many commentators and legal scholars across the political spectrum, I hope that Congress enacts a framework statute defining the scope of the War on Terror, and regulating the use of targeted killing, including appropriate procedural safeguards. So far, however, it has not chosen to do. It may take a highly visible disaster such as the deliberate or clearly reckless targeting of an obviously innocent person, to stimulate appropriate legislative action. At that point, it may be too late to reverse either the resulting harm to innocent people or the damage to the public image and foreign policy interests of the United States. But I very much hope that such a conjecture is unduly pessimistic.

#### Limited drone court is the only effective balancing mechanism

Weinberger, 13 [Dr. Weinberger is Associate Professor in the Department of Politics & Government at the University of Puget Sound, <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. Terrorism is, without question, a serious threat to the security of the United States. President Obama is currently employing military force under a legal authority granted by Congress in the 2001 AUMF and in Section 1021 of the 2012 NDAA. That legal authority gives the president the power to determine which groups are affiliated with al Qaeda, to identify American citizens who have assumed senior operational roles within those groups, and to kill those citizens through drone strikes or other means. However, while Congress may have given the president the power to order targeted killings, that does not mean that Congress cannot or should not alter the scope of that authority. Congress’s fundamental tasks are to define the contours of the American legal sphere, to determine the legal status of American citizens before the Executive Branch, and to protect the rights of U.S. citizens. America’s war against terrorism has produced myriad challenges to the civil liberties of American citizens: from the warrantless wiretapping program under President Bush to the military detention without trial of Yasir Hamdi to the targeted killing of Anwar al-Awlaki, the rights of American citizens have been tested as never before. If an opportunity exists to clarify and define that balance without unduly interfering with the president’s war powers, it should be taken. But that requires Congress to put aside its traditional reluctance to interfere with the conduct of military campaigns and exercise its own war powers. Unfortunately, Congress does not possess a stellar track record on this issue. Perhaps by using the Hamdi decision to point the way, Congress can be encouraged to step up to define and protect the most elemental right of all **–** the right not to be killed by one’s government without judicial involvement.

#### Ex ante review key to improve targeting and legitimize the program

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

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

#### Executive lead role spurs mistrust and global opposition

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

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

## 2ac

### AT: Rubber Stamp (2ac)

#### The plans internal check avoids rubber stamping

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]

The objections to such a proposal are many. In the context of proposed courts to review the targeting of U.S. citizens, for example, some have argued that such review would serve merely to institutionalize, legitimize, and expand the use of targeted drone strikes.177 But this ignores the reality of their continued use and expansion and imagines a world in which targeted killings of operational leaders of an enemy organization outside a zone of active conflict is categorically prohibited (an approach I reject178). If states are going to use this extraordinary power (and they will), there ought to be a clear and transparent set of applicable standards and mechanisms in place to ensure thorough and careful review of targeted-killing decisions. The formalization of review procedures—along with clear, binding standards—will help to avoid ad hoc decisionmaking and will ensure consistency across administrations and time. Some also condemn the ex parte nature of such reviews.179 But again, this critique fails to consider the likely alternative: an equally secret process in which targeting decisions are made without any formalized or institutionalized review process and no clarity as to the standards being employed. Institutionalizing a court or review board will not solve the secrecy issue, but it will lead to enhanced scrutiny of decisionmaking, particularly if a quasi-adversarial model is adopted, in which an official is obligated to act as advocate for the potential target. 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: Alt Causes – Top Level

#### Drones outweigh

Linked to Obama, and sufficiency

Holmes, 13 [Stephen, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>]

Obama rightly boasts that he has extracted the country from land wars. But he is simultaneously sleepwalking it into new conflict zones around the world. He would presumably not be doing this had drone warfare not been an available option. In his 23 May speech, speaking about the war America launched in the wake of 9/11, he said: ‘this war, like all wars, must end. That’s what history advises. That’s what our democracy demands.’ What he apparently meant to say was that he has found a way for this war to continue without penetrating the consciousness of US citizens. That is apparently what American democracy demands. The instrument that has allowed him to narrow the fight guarantees that the fight will go on. Obama came into office promising to restrict and reconfigure the country’s counterterrorism efforts, to bring them back within the rule of law. Instead, he too is fighting fire with fire. He continues to play according to bin Laden’s archaic playbook, perpetuating an endless post-9/11 revenge cycle, tit for tat. The Khost tragedy, where revenge against drone strikes justified further revenge strikes by drone, is a case in point. On the basis of undisclosed evidence, evaluated in unspecified procedures by rotating personnel with heterogeneous backgrounds, the US is continuing to kill those it classifies as suspected terrorists in Somalia, Yemen and Pakistan. It has certainly been eliminating militants who had nothing to do with 9/11, including local insurgents fighting local battles who, while posing no realistic threat to America, had allied themselves opportunistically with international anti-American jihadists. By following the latter wherever they go, the US is allowing ragtag militants to impose ever new fronts in its secret aerial war. Mistakes are made and can’t be hidden, at least not from local populations. Nor can the resentment of surrounding communities be easily assuaged. This is because, even when it finds its target, the US is killing not those who are demonstrably guilty of widely acknowledged crimes but rather those who, it is predicted, will commit crimes in the future. Of course, the civilian populations in the countries where these strikes take place will never accept the hunches of CIA or Pentagon futurologists. And so they will never accept American claims about the justice of Obama’s slimmed-down war on terror, but instead claim the right of self-defence, and this would be true even if drone operators could become as error-free as Brennan once claimed they already are. But of course collateral damage and mistaken-identity strikes will continue. They are inevitable accompaniments of all warfare. And they, too, along with intentional killings that are never publicly justified, will communicate resoundingly to the world that the arbitrary and unpredictable killing of innocent Muslims falls within America’s commodious concept of a just war. The rage such strikes incite will be all the greater if onlookers believe, as seems likely, that the killing they observe makes relatively little contribution to the safety of Americans. Indeed, this is already happening, which is the reason that the drone, whatever its moral superiority to land armies and heavy weaponry, has replaced Guantánamo as the incendiary symbol of America’s indecent callousness towards the world’s Muslims. As Bush was the Guantánamo president, so Obama is the drone president. This switch, whatever Obama hoped, represents a worsening not an improvement of America’s image in the world.

### AT: Brooks and Wohlforth

#### Brooks and Wohlforth are wrong about everything

Loomis, 08 [LEVERAGING LEGITIMACY IN SECURING U.S. LEADERSHIP NORMATIVE DIMENSIONS OF HEGEMONIC AUTHORITY A Dissertation submitted to the Faculty of the Graduate School of Arts and Sciences of Georgetown University in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Government, August 4, 2008]

Questioning Illegitimacy Costs: The Brooks-Wohlforth Challenge A nuanced perspective that avoids taking a paradigmatic position on the question of legitimacy costs is that recently advanced by Stephen Brooks and William Wohlforth.24 Brooks and Wohlforth focus their argument on the impact of U.S. unilateralism and insist that current international relations theory simply does not support an academic claim that U.S. unilateral behavior negatively impacts U.S. interests in the divergent ways that Neorealism, Neoliberal Institutionalism, and Constructivism predicts. United States unilateralism is a prime candidate for conduct perceived to be illegitimate and thus is a good test for my argument that perceived illegitimacy degrades U.S. influence. Given the extensiveness of U.S. power, the exaggerated levels of alarm that U.S. unilateralism presumably has generated, and the extent to which legal and social norms proscribe unilateral behavior, it is widely expected that U.S. unilateralism has a particularly strong deteriorating effect on U.S. authority. Brooks and Wohlforth conclude that the empirical evidence and the logical sequence of each of the three mainstream traditions of international relations theory provide insufficient evidence that the United States faces tangible costs as a result of unilateral behavior. Their analysis, however, suffers from a misspecification of the “costs” that they are looking for in response to U.S. unilateralism. Because the heart of their argument is that the costs of unilateral behavior are relatively low, a close inspection of the contours of these costs is required to evaluate their claim. First, challenging the Realist critique of U.S. unilateralism, the authors propose that balancing behavior against the United States is an expected cost of U.S. unilateralism. They conclude that because balancing is not observable, there are no tangible costs. Yet given the vastness of U.S. military preponderance, balancing is unlikely irrespective of U.S. behavior. Yet despite the fact that balancing is remote considering its short-term futility, the absence of balancing is not a fair test of the costs of illegitimate behavior. They do point to resistance strategies of key European states—notably Germany and France—as a form of “soft balancing”, but they suggest that this behavior was the result of German and French domestic politics and had little to do with unilateralism of the United States. Yet they do not make clear why ally domestic opposition to U.S. behavior, which restricts ally behavior vis-àvis U.S. requests, should not be considered a cost of U.S. unilateralism. This oversight is particularly problematic in cases in which domestic opposition generates real costs for the United States. Furthermore, irrespective of the fact that this behavior would be difficult to characterize as acts of balancing (soft or hard) in the definition they provide, their restriction of authority costs to balancing-type behavior renders an analysis of the impact of perceived illegitimacy incomplete.25 Second, Brooks and Wohlforth suggest that the paucity of evidence that unilateral behavior resulted in a major reduction in efficiency gains predicted in the neoliberal literature undermines the institutionalist critique of unilateralism. For one thing, they argue, there is no clear consensus in the literature on the impact of unilateral behavior on U.S. bargaining leverage. In addition, they argue, much of this literature is heavily empirical and devoid of theoretical content. Furthermore, the costs of multilateral action are significant and must be considered against the professed gains of multilateral coordination. Lastly, they suggest that the claim that the United States suffers from bad-faith behavior vis-à-vis institutional engagement is entangled with the emerging literature on reputation effects, which is, in their words, “woefully underdeveloped”.26 In sum, in their view, the theoretical and empirical evidence is insufficiently robust to identify the precise costs that the U.S. faces as a result of a unilateral foreign policy. It is not so much that the institutionalist literature is incorrect on the subject, but that the research agenda is incomplete. Yet by missing the costs in the form of degraded authority, they are prevented from assessing the full range of effects that U.S. unilateralism triggers. Third, Brooks and Wohlforth raise doubts about the constructivist argument that U.S. unilateralism degrades the legitimacy of the architecture of international order—an order from which the United States directly benefits—requiring increased U.S. costs for continued maintenance of the existing order. In establishing the contours of constructivism, they restrict this school of thought to its emphasis on the habituation of international rules, consistent with James March and Johan Olsen’s suggestion that a “logic of appropriateness” shapes decision-making processes.27 Brooks and Wohlforth then challenge constructivist 26 Brooks and Wohlforth, "International Relations Theory and the Case against Unilateralism," 516. 27 March and Olsen, Rediscovering Institutions : The Organizational Basis of Politics, 23. 24 claims that unilateral behavior toward Iraq in 2003 will generate unacceptable costs by suggesting there were other degrading effects of the onset of the Iraq war besides the fact that it was largely unilateral. Their criticism here, too, fails to explore the full range of authority costs, and thus fails to undermine the essential core of my argument. First, the argument I am advancing suggests that ideational factors—perceived fidelity to widely accepted international norms— influence decisions to resist U.S. authority. While legitimacy is widely considered to be the realm of constructivist scholarship, as discussed above, its effects are not dependent on the socialization effects and subsequent internalization of those norms. The argument here is that states can choose to comply with normative influences as a matter of strategic choice, which bypasses the centrality of identity transformation often identified with constructivists (and presumed by Brooks and Wohlforth as forming the outer boundary of constructivist thought). The main reason the Brooks and Wohlforth critique is unconvincing with respect to the constructivist expectation of legitimacy costs again turns on the subject of costs. They argue that because constructivist scholarship fails to satisfactorily answer three entangled complexities—that some forms of unilateralism are more costly than others, compensating strategies may mollify the possible costs, and unilateralism can shape the normative landscape to the hegemon’s advantage—constructivism cannot establish any generalities regarding the legitimacy effects of unilateralism with any degree of confidence. The problem is not that constructivist arguments about unilateralism are wrong, but rather that the scope 25 conditions have not been sufficiently specified. As a result, they argue, the constructivist perspective is deprived of analytical leverage. The 2003 Iraq war is a single data point, they suggest, exhibiting many features that may have degraded U.S. legitimacy. Here their entire argument hangs on the fact that constructivism has not provided sufficient purchase beyond the case of Iraq. How can one be certain that it was unilateralism that had the effect that constructivists now claim in retrospect? This question is valid. Yet in making this case they admit that “many other aspects of the (Iraq) case… are obviously corrosive of legitimacy.”28 Limiting constructivist arguments to unilateralism may be overly restrictive, but according to Brooks’ and Wohlforth’s own standards, the soil is fertile for new work on the broader question of the costs of perceived illegality and illegitimacy. It is on this broader question that this dissertation seeks to provide insight. Brooks and Wohlforth ultimately conclude that academic criticisms of President Bush’s unilateral policies were motivated largely by the substance of the policies (on which academia traditionally has little to offer), but focused on procedural issues (on which it does). They call for increased attention to clarifying the distinction between criticisms of substance and of procedure. In one respect, this dissertation is an answer to their skepticism that international relations scholarship has much to offer in terms of generalities around unilateralism. I am seeking to expand the specification of the independent variable beyond unilateral behavior to include the character of U.S. foreign policy, measured by its normative 28 Brooks and Wohlforth, "International Relations Theory and the Case against Unilateralism," 518. 26 consistency with international standards regulating the use of force. This should help satisfy the criticism that the outcome of unilateralism is under-determined.

### 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: Counterplan

#### Congress key to legal clarity

Mark David Maxwell, Colonel, Judge Advocate with the U.S. Army, Winter 2012, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

The weakness of this theory is that it is not codified in U.S. law; it is merely the extrapolation of international theorists and organizations. The only entity under the Constitution that can frame and settle Presidential power regarding the enforcement of international norms is Congress. As the check on executive power, Congress must amend the AUMF to give the executive a statutory roadmap that articulates when force is appropriate and under what circumstances the President can use targeted killing. This would be the needed endorsement from Congress, the other political branch of government, to clarify the U.S. position on its use of force regarding targeted killing. For example, it would spell out the limits of American lethality once an individual takes the status of being a member of an organized group. Additionally, statutory clarification will give other states a roadmap for the contours of what constitutes anticipatory self-defense and the proper conduct of the military under the law of war. Congress should also require that the President brief it on the decision matrix of articulated guidelines before a targeted killing mission is ordered. As Kenneth Anderson notes, “[t]he point about briefings to Congress is partly to allow it to exercise its democratic role as the people’s representative.”74 The desire to feel safe is understandable. The consumers who buy SUVs are not buying them to be less safe. Likewise, the champions of targeted killings want the feeling of safety achieved by the elimination of those who would do the United States harm. But allowing the President to order targeted killing without congressional limits means the President can manipulate force in the name of national security without tethering it to the law advanced by international norms. The potential consequence of such unilateral executive action is that it gives other states, such as North Korea and Iran, the customary precedent to do the same. Targeted killing might be required in certain circumstances, but if the guidelines are debated and understood, the decision can be executed with the full faith of the people’s representative, Congress. When the decision is made without Congress, the result might make the United States feel safer, but the process eschews what gives a state its greatest safety: the rule of law.

#### Links to politics

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

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

#### Executive action isn’t credible

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

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

### AT: UAV Strikes

#### No link uniqueness – drones decreasing now, but don’t take out the advantage

Bergen, 10/25/13 [Peter, CNN, Did Obama keep his drone promises? <http://www.cnn.com/2013/10/25/opinion/bergen-drone-promises/index.html>]

A study of drone strike activity **since May 23**, tabulated by the New America Foundation from news reports, provides some answers. The Obama administration has cut the number of CIA drone strikes considerably in Pakistan and has slightly slowed the number of strikes in Yemen. At the same time, the targets of the drone strikes have increasingly tended to be the leaders of al Qaeda or affiliated groups rather than mere foot soldiers. Nevertheless, the drone program continues to involve a number of civilian casualties and not enough has been done to make it as transparent and legally sustainable as the President has promised. There were just 10 drone strikes in Pakistan during the past five months; an average of one strike every 15 days. In the year before Obama's speech, drone strikes happened every eight days. The average death toll of the most recent strikes in Pakistan is about six, which is about the same as the average death toll over the year before Obama's May speech, indicating that changes to the program have not included restricting the sizes of those groups of suspected militants that are being targeted. According to media reports, four top militant leaders were killed in strikes in Pakistan and Yemen since the May speech, which is a much higher rate of "high-value" targeting than was seen previously. Just seven militant leaders were reported killed in the 44 strikes that took place during the year before Obama's keynote speech on terrorism. Why have drones killed civilians? The pace of drone strikes fell in Yemen after Obama's speech, too, but not as sharply as it did in Pakistan. Since May 23, there have been 12 strikes in Yemen; an average of about one strike every 13 days. Over the previous year, a strike occurred about once every 10 days. As in Pakistan, the size of the groups targeted in Yemen has remained about the same after Obama's speech. The average death toll resulting from those 12 strikes was 4.5, while the average death toll over the year prior was about six. Starting in 2009, the civilian casualty rate from drone strikes has been on a markedly downward trajectory in Pakistan. That trend has continued into 2013, during which no civilians have been confirmed killed in Pakistan, according to the New America Foundation study. Similarly, the Bureau of Investigative Journalism, a London-based organization that tracks drone strikes, also found no civilian casualties in Pakistan so far this year. But a 10-year-old boy was killed in a drone strike in the Yemeni province of Al Jawf on June 9, and two civilians were reported killed in Yemen on August 8. Reports on CIA drones released Tuesday by Amnesty International and Human Rights Watch highlight some of the civilian casualties that have been caused by drone strikes in Pakistan and Yemen over the past several years. The Amnesty International report recounts a strike in October 2012, in which a 68-year-old woman, Mamana Bibi, was killed by a drone as she picked vegetables with her grandchildren, a number of whom were injured in the attack. The report observed "Amnesty International is seriously concerned that these and other strikes have resulted in unlawful killings that may constitute extrajudicial executions or war crimes." But even these on-the-ground investigations cannot bring to light the full extent or impact of the U.S. drone campaign. Only greater transparency on the part of the government can do that. As U.S. Supreme Court Justice Louis Brandeis observed a century ago, "Sunlight is the best disinfectant."

#### Unrestricted drone use causes nuclear war in the Caucuses

Clayton 12 (Nick Clayton, Worked in several publications, including the Washington Times the Asia Times and Washington Diplomat. He is currently the senior editor of Kanal PIK TV's English Service (a Russian-language channel), lived in the Caucuses for several years,10/23/2012, "Drone violence along Armenian-Azerbaijani border could lead to war", www.globalpost.com/dispatch/news/regions/europe/121022/drone-violence-along-armenian-azerbaijani-border-could-lead-war)

Armenia and Azerbaijan could soon be at war if drone proliferation on both sides of the border continues. In a region where a fragile peace holds over three frozen conflicts, the nations of the South Caucasus are buzzing with drones they use to probe one another’s defenses and spy on disputed territories. The region is also host to strategic oil and gas pipelines and a tangled web of alliances and precious resources that observers say threaten to quickly escalate the border skirmishes and airspace violations to a wider regional conflict triggered by Armenia and Azerbaijan that could potentially pull in Israel, Russia and Iran. To some extent, these countries are already being pulled towards conflict. Last September, Armenia shot down an Israeli-made Azerbaijani drone over Nagorno-Karabakh and the government claims that drones have been spotted ahead of recent incursions by Azerbaijani troops into Armenian-held territory. Richard Giragosian, director of the Regional Studies Center in Yerevan, said in a briefing that attacks this summer showed that Azerbaijan is eager to “play with its new toys” and its forces showed “impressive tactical and operational improvement.” The International Crisis Group warned that as the tit-for-tat incidents become more deadly, “there is a growing risk that the increasing frontline tensions could lead to an accidental war.” “Everyone is now saying that the war is coming. We know that it could start at any moment.” ~Grush Agbaryan, mayor of Voskepar With this in mind, the UN and the Organization for Security and Co-operation in Europe (OSCE) have long imposed a non-binding arms embargo on both countries, and both are under a de facto arms ban from the United States. But, according to the Stockholm International Peace Research Institute (SIPRI), this has not stopped Israel and Russia from selling to them. After fighting a bloody war in the early 1990s over the disputed territory of Nagorno-Karabakh, Armenia and Azerbaijan have been locked in a stalemate with an oft-violated ceasefire holding a tenuous peace between them. And drones are the latest addition to the battlefield. In March, Azerbaijan signed a $1.6 billion arms deal with Israel, which consisted largely of advanced drones and an air defense system. Through this and other deals, Azerbaijan is currently amassing a squadron of over 100 drones from all three of Israel’s top defense manufacturers. Armenia, meanwhile, employs only a small number of domestically produced models. Intelligence gathering is just one use for drones, which are also used to spot targets for artillery, and, if armed, strike targets themselves. Armenian and Azerbaijani forces routinely snipe and engage one another along the front, each typically blaming the other for violating the ceasefire. At least 60 people have been killed in ceasefire violations in the last two years, and the Brussels-based International Crisis Group claimed in a report published in February 2011 that the sporadic violence has claimed hundreds of lives. “Each (Armenia and Azerbaijan) is apparently using the clashes and the threat of a new war to pressure its opponent at the negotiations table, while also preparing for the possibility of a full-scale conflict in the event of a complete breakdown in the peace talks,” the report said. Alexander Iskandaryan, director of the Caucasus Institute in the Armenian capital, Yerevan, said that the arms buildup on both sides makes the situation more dangerous but also said that the clashes are calculated actions, with higher death tolls becoming a negotiating tactic. “This isn’t Somalia or Afghanistan. These aren’t independent units. The Armenian, Azerbaijani and Karabakh armed forces have a rigid chain of command so it’s not a question of a sergeant or a lieutenant randomly giving the order to open fire. These are absolutely synchronized political attacks,” Iskandaryan said. The deadliest recent uptick in violence along the Armenian-Azerbaijani border and the line of contact around Karabakh came in early June as US Secretary of State Hillary Clinton was on a visit to the region. While death tolls varied, at least two dozen soldiers were killed or wounded in a series of shootouts along the front. The year before, at least four Armenian soldiers were killed in an alleged border incursion by Azerbaijani troops one day after a peace summit between the Armenian, Azerbaijani and Russian presidents in St. Petersburg, Russia. “No one slept for two or three days [during the June skirmishes],” said Grush Agbaryan, the mayor of the border village of Voskepar for a total of 27 years off and on over the past three decades. “Everyone is now saying that the war is coming. We know that it could start at any moment." Azerbaijan refused to issue accreditation to GlobalPost’s correspondent to enter the country to report on the shootings and Azerbaijan’s military modernization. Flush with cash from energy exports, Azerbaijan has increased its annual defense budget from an estimated $160 million in 2003 to $3.6 billion in 2012. SIPRI said in a report that largely as a result of its blockbuster drone deal with Israel, Azerbaijan’s defense budget jumped 88 percent this year — the biggest military spending increase in the world. Israel has long used arms deals to gain strategic leverage over its rivals in the region. Although difficult to confirm, many security analysts believe Israel’s deals with Russia have played heavily into Moscow’s suspension of a series of contracts with Iran and Syria that would have provided them with more advanced air defense systems and fighter jets. Stephen Blank, a research professor at the United States Army War College, said that preventing arms supplies to Syria and Iran — particularly Russian S-300 air defense systems — has been among Israel’s top goals with the deals. “There’s always a quid pro quo,” Blank said. “Nobody sells arms just for cash.” In Azerbaijan in particular, Israel has traded its highly demanded drone technology for intelligence arrangements and covert footholds against Iran. In a January 2009 US diplomatic cable released by WikiLeaks, a US diplomat reported that in a closed-door conversation, Azerbaijani President Ilham Aliyev compared his country’s relationship with Israel to an iceberg — nine-tenths of it is below the surface. Although the Jewish state and Azerbaijan, a conservative Muslim country, may seem like an odd couple, the cable asserts, “Each country finds it easy to identify with the other’s geopolitical difficulties, and both rank Iran as an existential security threat.” Quarrels between Azerbaijan and Iran run the gamut of territorial, religious and geo-political disputes and Tehran has repeatedly threatened to “destroy” the country over its support for secular governance and NATO integration. In the end, “Israel’s main goal is to preserve Azerbaijan as an ally against Iran, a platform for reconnaissance of that country and as a market for military hardware,” the diplomatic cable reads. But, while these ties had indeed remained below the surface for most of the past decade, a series of leaks this year exposed the extent of their cooperation as Israel ramped up its covert war with the Islamic Republic. In February, the Times of London quoted a source the publication said was an active Mossad agent in Azerbaijan as saying the country was “ground zero for intelligence work.” This came amid accusations from Tehran that Azerbaijan had aided Israeli agents in assassinating an Iranian nuclear scientist in January. Then, just as Baku had begun to cool tensions with the Islamic Republic, Foreign Policy magazine published an article citing Washington intelligence officials who claimed that Israel had signed agreements to use Azerbaijani airfields as a part of a potential bombing campaign against Iran’s nuclear sites. Baku strongly denied the claims, but in September, Azerbaijani officials and military sources told Reuters that the country would figure in Israel’s contingencies for a potential attack against Iran. "Israel has a problem in that if it is going to bomb Iran, its nuclear sites, it lacks refueling," Rasim Musabayov, a member of the Azerbiajani parliamentary foreign relations committee told Reuters. “I think their plan includes some use of Azerbaijan access. We have (bases) fully equipped with modern navigation, anti-aircraft defenses and personnel trained by Americans and if necessary they can be used without any preparations." He went on to say that the drones Israel sold to Azerbaijan allow it to “indirectly watch what's happening in Iran.” According to SIPRI, Azerbaijan had acquired about 30 drones from Israeli firms Aeronautics Ltd. and Elbit Systems by the end of 2011, including at least 25 medium-sized Hermes-450 and Aerostar drones. In October 2011, Azerbaijan signed a deal to license and domestically produce an additional 60 Aerostar and Orbiter 2M drones. Its most recent purchase from Israel Aeronautics Industries (IAI) in March reportedly included 10 high altitude Heron-TP drones — the most advanced Israeli drone in service — according to Oxford Analytica. Collectively, these purchases have netted Azerbaijan 50 or more drones that are similar in class, size and capabilities to American Predator and Reaper-type drones, which are the workhorses of the United States’ campaign of drone strikes in Pakistan and Yemen. Although Israel may have sold the drones to Azerbaijan with Iran in mind, Baku has said publicly that it intends to use its new hardware to retake territory it lost to Armenia. So far, Azerbaijan’s drone fleet is not armed, but industry experts say the models it employs could carry munitions and be programmed to strike targets. Drones are a tempting tool to use in frozen conflicts, because, while their presence raises tensions, international law remains vague at best on the legality of using them. In 2008, several Georgian drones were shot down over its rebel region of Abkhazia. A UN investigation found that at least one of the drones was downed by a fighter jet from Russia, which maintained a peacekeeping presence in the territory. While it was ruled that Russia violated the terms of the ceasefire by entering aircraft into the conflict zone, Georgia also violated the ceasefire for sending the drone on a “military operation” into the conflict zone. The incident spiked tensions between Russia and Georgia, both of which saw it as evidence the other was preparing to attack. Three months later, they fought a brief, but destructive war that killed hundreds. The legality of drones in Nagorno-Karabakh is even less clear because the conflict was stopped in 1994 by a simple ceasefire that halted hostilities but did not stipulate a withdrawal of military forces from the area. Furthermore, analysts believe that all-out war between Armenia and Azerbaijan would be longer and more difficult to contain than the five-day Russian-Georgian conflict. While Russia was able to quickly rout the Georgian army with a much superior force, analysts say that Armenia and Azerbaijan are much more evenly matched and therefore the conflict would be prolonged and costly in lives and resources. Blank said that renewed war would be “a very catastrophic event” with “a recipe for a very quick escalation to the international level.” Armenia is militarily allied with Russia and hosts a base of 5,000 Russian troops on its territory. After the summer’s border clashes, Russia announced it was stepping up its patrols of Armenian airspace by 20 percent. Iran also supports Armenia and has important business ties in the country, which analysts say Tehran uses as a “proxy” to circumvent international sanctions. Blank said Israel has made a risky move by supplying Azerbaijan with drones and other high tech equipment, given the tenuous balance of power between the heavily fortified Armenian positions and the more numerous and technologically superior Azerbaijani forces. If ignited, he said, “[an Armenian-Azerbaijani war] will not be small. That’s the one thing I’m sure of.”

### AT: Politics

#### No arms race

Procida 9—National Intelligence Fellow at the Council on Foreign Relations (Frank, Why an Iranian Nuclear Bomb Is Not the End of the World, 9 June 2009, http://www.foreignaffairs.com/articles/65127/frank-procida/overblown)

Since the advent of the nuclear age, scientists, activists, academics, and politicians have feared that the spread of atomic weapons would prove unstoppable. The rhetoric one hears today regarding the probable reaction of Middle Eastern countries to a nuclear Iran echoes concerns put forth by experts when the Soviet Union, China, and even France got the bomb. Yet the worst-case scenarios rarely came to pass -- Germany and Japan, for instance, remained nonnuclear despite expectations -- and there is no reason to suspect that the Middle East will buck this historical trend. Analysts are particularly concerned about the reactions of countries such as Egypt and Saudi Arabia to an Iranian nuclear program. What they seem to forget is that the Arab world already has been living with a nuclear neighbor, Israel -- a state against which many Arab countries have fought wars and still do not recognize. Still, the Arab world has been unable or unwilling to respond in kind. An Iranian nuclear capability would not threaten these states more, or even as much as, an Israeli weapon. And in terms of prestige and influence, a Persian bomb should not be any more significant to these states than a Jewish one. Furthermore, developing a nuclear weapon is not as simple as flipping a switch. Libya spent close to two decades trying to acquire a nuclear weapon before giving up its program in 2003. Technology has never been the region's strong suit, and even with A. Q. Khan-supplied centrifuge drawings readily available, it would be foolish to expect a rash of nuclear successes in the near future.

#### Impact inevitable, the deal fails

**Washington Post, 12/19/13** – editorial board (“Does Iran truly want a nuclear deal?” <http://www.washingtonpost.com/opinions/does-iran-truly-want-a-nuclear-deal/2013/12/19/79bc3454-6754-11e3-8b5b-a77187b716a3_story.html>)

PRESIDENT OBAMA said this month that he assessed the chance of reaching a permanent accord with Iran on its nuclear program as no “more than 50-50.” For his part, Secretary of State John F. Kerry told Congress that he “came away from our preliminary negotiations” with Tehran “with serious questions about whether or not they’re ready and willing to make some of the choices that have to be made.” Events in the past week have made clear that those bearish judgments were justified. Iranian officials walked out of talks with the West last Friday — not the negotiations about a final accord, which have not begun in earnest, but those on the implementation of the preliminary agreement reached in Geneva in November. The pretext was an announcement by the U.S. Treasury of actions against companies that have been violating U.S. sanctions against Iran. The announcement should not come as a surprise: Though the United States and its partners agreed to some sanctions relief in Geneva, they made clear that they would continue to enforce measures constraining Iranian trade and banking. By making a show of breaking off talks, Tehran was attempting to bluff the West into hollowing out the remaining sanctions by stopping their enforcement. It also delayed the time when it will have to comply with its own commitment to cut back on its enrichment of uranium and reduce the stockpile it has accumulated. Meanwhile, other nuclear activities not covered by the preliminary accord continue. No doubt, Iran does not expect this work to prompt the United States to walk out. Perhaps such maneuvering is inevitable. But Iran is sending an early message that it does not intend to bargain in good faith. That impression was reinforced by interviews given recently by Foreign Minister Mohammad Javad Zarif, including one to The Post’s David Ignatius. Mr. Zarif claimed that Iran wanted a deal and that “on our side . . . it is very easy to reach an agreement.” But he also came close to ruling out acceptance of steps that will be essential to ensuring that Iran is not left with a nuclear breakout capacity. Of particular concern are two nuclear facilities that have scant conceivable purpose other than the production of weapons: the underground Fordow enrichment facility and the Arak heavy-water reactor, which is under construction and could be used to produce plutonium. In previous rounds of negotiations, the Obama administration sought the shutdown of Fordow and suspension of construction at Arak; though it obtained neither in the interim agreement, a final deal must address both. Yet Mr. Zarif said of Arak, “We cannot roll back the clock 20 years and simply get rid of a project that has been the subject of a great deal of human and material investment.” Of Fordow, he said the U.S. demand revealed an intention to facilitate a military attack on Iran’s nuclear infrastructure, since “Fordow cannot be hit.” But the reverse logic also applies: Iran would not need a facility invulnerable to attack unless it wished to preserve the option to attempt a breakout. Mr. Obama and Mr. Kerry have devoted much time since the Geneva deal to persuading Congress not to approve additional sanctions on Iran. Perhaps their time would be better spent pushing the Iranian negotiators to stop posturing and stonewalling.

#### No impact – sanctions only apply if Iran cheats – and threats to walk out are a bluff

**Chicago Tribune, 12/28/13** – editorial board (“Send a message to the mullahs” <http://articles.chicagotribune.com/2013-12-28/opinion/ct-pass-iran-sanctions-edit-1228-jm-20131228_1_further-sanctions-blacklist-iran-new-sanctions>)

More than a month ago, Iran and the U.S. cut an interim deal on Iran's rogue nuclear program. Since then, Tehran and Washington look to have been engaged in the equivalent of arguing over whether the peace table should be round or square. They've met. They've talked. They've haggled over how to implement the agreement. Iran has allowed some preliminary nuclear inspections. But Tehran is still enriching uranium, still poised to bully its way into the nuclear club and menace the world. The six-month clock to start negotiating a final agreement hasn't even started yet. Recently a bipartisan group of U.S. senators, led by Illinois Republican Mark Kirk and New Jersey Democrat Robert Menendez, tried to inject some urgency into this diplomatic snoozefest. They introduced a bill that would trigger new sanctions on Tehran, but only if talks failed. This bill aims to concentrate the minds of Iranian leaders who may believe, after a decade of stalling while they developed their nuclear prowess, that they can continue to bamboozle the U.S. and its Western allies with ... more blather and feigned cooperation. The legislation would ratchet up the embargo on Iran's oil exports and blacklist Iran's mining, engineering and construction industries. It would cut Iran's access to billions of dollars in overseas bank funds and allow the U.S. to seize foreign-held assets of key regime officials. The key: Nothing — repeat, nothing — would happen unless Iran cheats on its commitments in the interim deal or drags its feet on negotiating a final deal. But President Barack Obama has threatened to veto the legislation. The administration warns that any move that even appears to impose new sanctions could upset the delicate sensibilities of the brutal mullahs who rule Iran. Tehran could interpret this legislation as a (gasp!) threat and scuttle the talks. Please. A couple of weeks ago, Iran stormed out of talks because its officials were incensed – incensed! – that the U.S. would enforce its own laws and blacklist a dozen Iranian companies and individuals for ... evading U.S. sanctions. The U.S. said the sanctions were imposed under existing laws and were not new measures. The Iranians soon returned to the bargaining table. Let's remember that there is only one reason the Iranians are negotiating: U.S. and European Union sanctions have strangled their economy. Unemployment and inflation are raging. Iran's currency is ideal for wallpapering the bathroom. The Senate bill would strengthen Obama's hand in current and future negotiations. He could shrug and play the good cop, warning the Iranians that he won't be able to hold back more sanctions for long if they don't get serious about cooperating, not just talking about cooperating. Obama has promised many times that he wouldn't let Iran build the bomb. But opposing this legislation is a signal to the Iranians that they need not worry much about further sanctions, that there's no hurry here, that there really aren't any imminent and painful consequences for stalling. That increases the risks to the world, and the risk that Israel may act in its self-defense. Every day that Iran stalls, every day that talk trumps action in this interim deal, is another signal that nothing has changed: Iran is still playing for time and winning.

#### Unemployment thumps

**Klapper, 12/28/13** (Bradley, Associated Press, “1.3 million losing unemployment benefits today” <http://www.yakimaherald.com/news/yhr/saturday/1788393-8/13-million-losing-unemployment-benefits-today>)

More than 1 million Americans are bracing for a harrowing, post-Christmas jolt as extended federal unemployment benefits come to a sudden halt this weekend, with potentially significant implications for the recovering U.S. economy. A tense political battle likely looms when Congress reconvenes in the new, midterm election year. Nudging Congress along, a vacationing President Barack Obama called two senators proposing an extension to offer his support. From Hawaii, Obama pledged Friday to push Congress to move quickly next year to address the “urgent economic priority,” the White House said. For families dependent on cash assistance, the end of the federal government’s “emergency unemployment compensation” will mean some difficult belt-tightening as enrollees lose their average monthly stipend of $1,166.

#### Sanctions will pass and Obama won’t be able to sustain a veto

**Bloomfield, 12/25/13** (Douglas, Jerusalem Post, “Washington watch: What’s really behind the new Iran sanctions bill?” <http://www.jpost.com/Opinion/Columnists/Washington-watch-Whats-really-behind-the-new-Iran-sanctions-bill-336147>

AIPAC, which is usually in synch with Netanyahu, is leading a full court press on Capitol Hill against the administration, and most Jewish organizations have joined the campaign to make sure senators hear from constituents and contributors about the need to back the bill. In an unusual move, 10 Senate Democrat committee chairs – four of them Jewish – have called on Majority Leader Harry Reid (D-Nevada) to delay action on the bill. They cited an unclassified intelligence assessment saying, “New sanctions would undermine the prospects for a successful comprehensive agreement with Iran,” reported Laura Rozen of AI-Monitor. But that may be exactly what Netanyahu – who has made no secret of his disdain for the administration’s attempts to negotiate an end to the Iranian nuclear threat – wants. The White House has threatened to veto the bill but with the strong support of many Jewish organizations and many Democrats, that’s unlikely. The president would risk being accused of being soft on Iran and siding with the ayatollahs against the friends of Israel. Which is a big reason the bill has the strong support of Republicans, who reflexively oppose anything this president wants anyway. What’s more, a veto override is not out of the question. So look for a face-saving compromise or for the Senate Democratic leadership to keep it off the floor. The backers of the new sanctions bill have a very strong ally in Tehran. The government there has been boasting of the great success it has had already in breaking the sanctions and boosting their economy without giving up anything and recognition of their right to enrich uranium. That may play well at home but it poisons the atmosphere here. The Iranians know Israel’s supporters are the real driving force behind the tough US approach. They have wall-to-wall support on Capitol Hill and pick up more votes every time Iranian leaders spew their hatred for the Jewish state and call for its demise. The worst comes from the very top, supreme leader Ayatollah Ali Khamenei.

#### Kerry spends capital, not Obama

**Lakshmanan, 12/30/13** (Indira, “Kerry’s Energizer Bunny Diplomacy Takes Risks for Wins” Bloomberg News, <http://www.businessweek.com/news/2013-12-30/kerry-s-energizer-bunny-diplomacy-takes-risks-to-notch-wins>)

Keeping Promises Kerry’s accomplishments so far are conditional, dependent on other parties keeping their promises. His deals will be tested in the first half of the new year, with targets for progress on Middle East peace and signing a Bilateral Security Agreement to exempt U.S. forces from prosecution in Afghan courts, as well as deadlines for compliance by Iran and Syria. There’s doubt already whether a long-promised Syrian peace conference will go forward as planned in late January. Whatever their eventual outcome, Kerry has breathed new life into an array of long-shot talks. He has stuck with negotiations late into the night in Kabul, Geneva, Jerusalem and Ramallah to secure pledges from allies and adversaries alike that many -- including officials in the White House -- considered unachievable. Obama’s Busy Three U.S. national security and foreign policy officials said Kerry’s ambitious agenda in part reflects his belief that the president is consumed by domestic issues such as the budget and health care, is understandably reluctant to spend precious political capital on risky foreign initiatives and has less experience and fewer close relationships with foreign leaders than does his top diplomat, who was chairman of the Senate Foreign Relations Committee. All three spoke on the condition of anonymity to discuss internal administration politics. In interviews, 13 other current and former aides and policy makers said Kerry is fueled by ambitious goals and a fervent belief in negotiations and his own powers of persuasion. That’s rooted in a childhood as the son of a Foreign Service officer and a career as an elected politician. David Wade, who has long served as Kerry’s chief of staff, describes a man who cycles and plays hockey after two hip replacements and a broken nose, driven to seize every day after surviving his service as a naval officer in the Vietnam War. Last Big Job Part of his readiness to take risks may be his belief, after an unsuccessful presidential campaign, that serving as the nation’s top diplomat is likely to be his last big job. One of the oldest members of Obama’s cabinet, Kerry keeps a pace that’s exhausting even for aides half his age. On his birthday Dec. 11, he had a working breakfast with the U.S. ambassador to the United Nations, a staff meeting, intelligence reports, phone calls, a memorial service for the late South African President Nelson Mandela and a meeting with former Vice President Al Gore. Then he gave a classified briefing to senators on Iran, lobbied a senator on ratification of the international disabilities treaty, delivered a year-end policy speech, had a brief birthday dinner with his wife at home and flew all night to the Middle East, where he took a motorcade through a snowstorm for late-night talks with Palestinian Authority President Mahmoud Abbas. ‘Keeps Going’ “John Kerry is the Energizer Bunny of U.S. foreign policy -- he keeps going and going,” said Aaron David Miller, a former Mideast peace negotiator now at the Woodrow Wilson Center for International Scholars in Washington. Kerry’s also won effusive praise from Israeli and Palestinian leaders not known for bestowing plaudits. In a Dec. 8 speech, Israeli Prime Minister Benjamin Netanyahu thanked Kerry for “his tireless efforts for peace. Tireless. I mean this man doesn’t sleep.” Netanyahu joked that some of his cabinet members “are starting to get jealous. They complain that I only have time for him.” Speaking to reporters in the West Bank on Dec. 18, chief Palestinian negotiator Saeb Erekat predicted Kerry may succeed where others have failed in brokering a two-state solution. “The difference this time is John Kerry,” he said. “This man made a difference in terms of his relentless efforts and unwavering commitment.” Fallback Choice Kerry was greeted as a safe if unexciting fallback after Republican senators said they wouldn’t confirm Obama’s first pick for top diplomat, UN Ambassador Susan Rice, because of her flawed account of the deadly attack on the U.S. mission in Benghazi, Libya, in 2012. Rice is now national security adviser. Clinton, who is considering a run for president in 2016, is now seen by some in the foreign policy establishment as having been cautious to a fault. She delegated intractable issues such as the Middle East, Afghanistan and Iran to special envoys while she focused on championing American business opportunities, Internet freedom and women’s rights. Kerry has made headway where Clinton couldn’t thanks to a “combination of Obama’s willingness finally to delegate to Kerry because the clock is ticking down” for accords on major issues, “and Kerry’s readiness to take risks when his career is coming to an end and hers is taking off,” Miller said. In his first term, Obama was “the most controlling foreign policy president since Richard Nixon,” said Miller, who worked for four administrations, both Democrat and Republican. More Leeway Obama’s priorities also were different in his first term, with a focus on repairing America’s image and alliances abroad, ending the Iraq war and reviewing the Afghan strategy. That circumscribed what Clinton could do, according to State Department and White House officials who asked not to be identified discussing internal deliberations, as did her careful relationship with Obama, her rival in the 2008 Democratic presidential primaries. In contrast, Kerry -- who gave Obama his first opportunity on the national stage by asking him to deliver the keynote speech at the 2004 Democratic National Convention and many of whose aides also have worked for the president -- has been given more leeway on high-profile foreign initiatives. In repeat visits to the Middle East this year for marathon meetings with Israeli and Palestinian leaders, Kerry impressed Obama with his tenacity and all-out approach, administration officials said. “He’s willing to take a risk and actually do the grunt work of negotiating,” Deputy National Security Adviser Ben Rhodes said in an interview. Working for a president whose in-box is overflowing with domestic challenges -- and having earned the confidence of Obama’s inner circle as a Mr. Fix-it -- Kerry may have a freer hand to speak and act for the U.S. than any secretary of state since James Baker under President George H.W. Bush a quarter-century ago. Explaining Later “I get the impression sometimes that Kerry will do what he needs to get done and explain it to the White House later,” said Mike McCurry, a State Department and White House spokesman under President Bill Clinton and adviser to Kerry’s 2004 presidential run. Kerry also has formed a powerful and chummy relationship with his Russian counterpart Sergei Lavrov, making for an odd couple whose cooperation on issues such as Syria and Iran has upstaged differences over Russia’s policies at home and with former Soviet republics such as Georgia and Ukraine. At the same time, Kerry’s taking a hammering from U.S. lawmakers -- who cut him no slack as a former member of their elite club -- over the terms of a deal to rein in Iran’s nuclear program and for his arguments against imposing new sanctions. Senator John McCain, an Arizona Republican, has derided the man he still describes as a “good friend” as a “human wrecking ball.”

#### PC fails

**LaFranchi, 12/19/13** (Howard, Christian Science Monitor, “Senators, defying White House, push a new Iran sanctions bill” <http://www.csmonitor.com/USA/Foreign-Policy/2013/1219/Senators-defying-White-House-push-a-new-Iran-sanctions-bill>)

A bipartisan group of senators on Thursday introduced legislation, in defiance of the White House, that would hit Iran with new sanctions if it violates the terms of an interim deal reached last month on its nuclear program. The bill, proposed by Democrats Robert Menendez of New Jersey and Charles Schumer of New York, and Republican Mark Kirk of Illinois, would also impose tough new measures on Iran if it fails to reach a final agreement with the United States and other world powers that verifiably ends all of Iran’s uranium enrichment activities. Iran has repeatedly insisted that it will never give up all enrichment, and an interim deal that six world powers reached with Iran last month in Geneva includes language strongly implying that Iran could be allowed to retain low-level uranium enrichment capabilities. The legislation would allow for more than a year of negotiations with Iran on its nuclear program, but it would also impose a strict timetable on President Obama for regularly certifying that Iran is not violating the interim agreement and is negotiating in good faith on a final deal. The White House has warned that imposing new sanctions on Iran now would be tantamount to a “march to war.” The legislation, which already has the support of more than one-quarter of US senators, is not likely to come to a vote until after the Senate’s return from recess on Jan. 6. But already the bill is pitting its supporters, who insist more pressure is needed to keep Iran at the negotiating table, against critics who say new sanctions will doom talks. By setting Iran free to pursue further nuclear progress, they add, such a US move could make a costly new military intervention in the Middle East more likely. “Current sanctions brought Iran to the negotiating table and a credible threat of future sanctions will require Iran to cooperate and act in good faith at the negotiating table,” said Senator Menendez in a statement announcing the legislation. But the bill's opponents insist that the legislation violates the interim accord with Iran that the US just signed on to – the agreement pledges that no new sanctions will be imposed on Iran while talks go on. Moreover, it is a boon to hardliners on both sides of the debate who want no deal with Iran, they say. “There is no better way to undercut American diplomats and Iranian moderates that to introduce a bill that violates the terms of the [Geneva] nuclear agreement, sets prohibitive preconditions for any final deal, and pledges to support Israeli military strikes,” says Jamal Abdi, policy director at the National Iranian American Council in Washington. “This bill is a vote for war over diplomacy.” The Obama administration has been pressing the Senate to hold off on any new sanctions since the House overwhelmingly passed a new sanctions bill in the summer. The full-court press, including appearances by Secretary of State John Kerry before key Senate committees, intensified in recent weeks once the interim deal with Iran seemed imminent. Last month, the White House equated new sanctions to a death knell for diplomacy with Iran. “It is important to understand that if pursuing a resolution diplomatically is disallowed or ruled out, what options, then, do we and our allies have to prevent Iran from acquiring a nuclear weapon?” said White House Press Secretary Jay Carney. “The American people do not want a march to war.” The administration last week tried to head off the Senate sanctions juggernaut by naming new Iranian companies and individuals under existing sanctions – essentially saying, “We aren’t letting up the pressure on Iran, so you don’t need to mess things up by passing new sanctions.” Evidently, the Senate was unimpressed, though the administration’s measures were enough to infuriate Iran and prompt it to temporarily boycott experts-level talks on the way forward in negotiations on a permanent nuclear agreement.

#### No PC

**Boyer, 12/31/13 -** White House correspondent for The Washington Times(Dave, Washington Times, “TRICKY DICK: Only Nixon less popular than President Obama in Year 5” <http://www.washingtontimes.com/news/2013/dec/30/with-sagging-polls-barack-obama-follows-george-wbu/?page=all>)

Mr. Obama’s job-approval ratings in most polls this month were 40 percent or lower, down from 54 percent at the start of the year and the lowest of his presidency. Mr. Bush’s popularity in December 2005 stood at 43 percent, down from a high of 57 percent near the beginning of his second term and less than half the 90 percent-plus approval ratings in the days after the Sept. 11 attacks. Only Watergate-plagued Richard Nixon had a worse rating than Mr. Obama at the same point of his presidency, in 1973. Although presidents tend to lose some public approval after winning second terms, Mr. Obama’s numbers slipped more quickly than most others. “The history of the presidency is like an hourglass with the sand running out,” said Stephen Hess, a presidential historian at the left-leaning Brookings Institution. “There is a little bump up at the start of the fifth year, and then the downward trend continues. The problem here is that Obama had such a terrible fifth year. He blew that one opportunity he had to put some things together.” Almost from the moment of his reelection, Mr. Obama was sidetracked by scandals including the Internal Revenue Service targeting of conservative groups and revelations of widespread spying by the National Security Agency. In October came the hapless launch of the Obamacare website and the public’s realization that Mr. Obama didn’t tell the truth when he assured consumers that they could keep their health insurance policies if that’s what they preferred. The president’s broken promise damaged his credibility and was chosen by an independent fact-checking group as the biggest political lie of 2013. Asked about his plummeting numbers at a Dec. 20 news conference, Mr. Obama took refuge in the answer of all elected officials whose ratings are down: He is not worried about polls. “I have now been in office five years, close to five years, was running for president for two years before that, and we have had ups and we have had downs,” Mr. Obama said. “I took this job to deliver for the American people, and I knew and will continue to know that there are going to be ups and downs on it.” Political fallout Mr. Obama doesn’t have to face the ballot again, but many Democrats are openly worried that his low popularity numbers could drag down the party in the November midterm elections and could hand control of both houses of Congress to Republicans. A CNN/ORC poll released Dec. 20 found that Mr. Obama’s approval rating had dropped to 41 percent, matching an all-time low in the survey. CNN polling director Keating Holland said the president had lost significant support among women and young people, two voting blocs largely responsible for his 2012 re-election victory over Republican Mitt Romney. The CNN poll found that the rise in disapproval of the president came equally from the right and the left of the political spectrum. Mr. Bush said upon his re-election in 2004 that he intended to spend the political capital he had earned. But with the troubled war in Iraq and a failed push to partially privatize Social Security, he lost popularity rapidly and never regained it. Mr. Obama hopes to change his fortunes with a shake-up of senior White House staff, including the hiring of former Bill Clinton aide John Podesta, but Mr. Hess said the moves are unlikely to reverse the downward trend. “There’s always some ‘savior of the week’ that comes in from the outside,” Mr. Hess said. “It doesn’t usually work that way and there’s no reason to think it will in this case. You face the midterm election, which presidents always lose some seats.”

### AT: K

#### Sweeping claims don’t undercut the Aff. We can advance contingent and particular knowledge without “Big T” Epistemology.

#### PRICE ’98

(RICHARD PRICE is a former prof in the Department of Anthropology at Yale University. Later, he moved to Johns Hopkins University to found the Department of Anthropology, where he served three terms as chair. A decade of freelance teaching (University of Minnesota, Stanford University, Princeton University, University of Florida, Universidade Federal da Bahia), ensued. This article is co-authored with CHRISTIAN REUS-SMIT – Monash University – European Journal of International Relations Copyright © 1998 via SAGE Publications – http://www.arts.ualberta.ca/~courses/PoliticalScience/661B1/documents/PriceReusSmithCriticalInternatlTheoryConstructivism.pdf)

One of the central departures of critical international theory from positivism is the view that we cannot escape the interpretive moment. As George (1994: 24) argues, ‘the world is always an interpreted “thing”, and it is always interpreted in conditions of disagreement and conﬂict, to one degree or another’. For this reason, ‘there can be no common body of observational or tested data that we can turn to for a neutral, objective knowledge of the world. There can be no ultimate knowledge, for example, that actually corresponds to reality per se.’ This proposition has been endorsed wholeheartedly by constructivists, who are at pains to deny the possibility of making ‘Big-T’ Truth claims about the world and studiously avoid attributing such status to their ﬁndings. This having been said, after undertaking sustained empirical analyses of aspects of world politics constructivists do make ‘small-t’ truth claims about the subjects they have investigated. That is, they claim to have arrived at logical and empirically plausible interpretations of actions, events or processes, and they appeal to the weight of evidence to sustain such claims. While admitting that their claims are always contingent and partial interpretations of a complex world, Price (1995, 1997) claims that his genealogy provides the best account to date to make sense of anomalies surrounding the use of chemical weapons, and Reus-Smit (1997) claims that a culturalist perspective offers the best explanation of institutional differences between historical societies of states. Do such claims contradict the interpretive ethos of critical international theory? For two reasons, we argue that they do not. First, the interpretive ethos of critical international theory is driven, in large measure, by a normative rejection of totalizing discourses, of general theoretical frameworks that privilege certain perspectives over others. One searches constructivist scholarship in vain, though, for such discourses. With the possible exception of Wendt’s problematic ﬂirtation with general systemic theory and professed commitment to ‘science’, constructivist research is at its best when and because it is question driven, with self-consciously contingent claims made speciﬁcally in relation to particular phenomena, at a particular time, based on particular evidence, and always open to alternative interpretations. Second, the rejection of totalizing discourses based on ‘big-T’ Truth claims does not foreclose the possibility, or even the inevitability, of making ‘small-t’ truth claims. In fact, we would argue that as soon as one observes and interacts in the world such claims are unavoidable, either as a person engaged in everyday life or as a scholar. As Nietzsche pointed out long ago, we cannot help putting forth truth claims about the world. The individual who does not cannot act, and the genuinely unhypocritical relativist who cannot struggles for something to say and write. In short, if constructivists are not advancing totalizing discourses, and if making ‘small-t’ truth claims is inevitable if one is to talk about how the world works, then it is no more likely that constructivism per se violates the interpretive ethos of critical international theory than does critical theory itself.

#### Focusing on particular details of the case is good – voting for the negs vague generalizations creates an awful decision-making model

Benedict Smith (Teaching Fellow (Acting Director Philosophy MA) in the Department of Philosophy

Fellow of the Wolfson Research Institute for Health and Wellbeing at the University of Durham) 2006 “Particularism, Perception and Judgement” Academia.edu

In a related way, Dancy seeks to undermine certain ‘coercive’ (Dancy 1993: 65) assumptions about what it is to be successful in reaching judgements about a given case by utilising the notion of ‘looking’. Rejecting the thought that general principles rationally constrain our moral thought, and provide the conditions under which moral discourse is possible, implies that knowing about moral reasons arises through scrutinising the contingencies of the moral world. Dancy explains the agents have an epistemic duty to look “really closely” at each case (Dancy 1993: 63). According to Dancy: Particularism claims that generalism is the cause of many bad moral decisions, made in the illjudged and unnecessary attempt to fit what we are to say here to what we have said on another occasion. We all know the sort of person who refuses to make the decision here that the facts are obviously calling for, because he cannot see how to make that decision consistent with one he made on a quite different occasion. We also know the person (often the same person) who 7 insists on a patently unjust decision here because of having made a similar decision in a different case. It is this sort of looking away that the particularists see as the danger in generalism. Reasons function in new ways on new occasions, and if we don’t recognise this fact and adapt our practice to it, we will make bad decisions. Generalism encourages a tendency not to look hard enough at the details of the case before one, quite apart from any over-simplistic tendency to rely on a few rules of dubious provenance (Dancy 1993: 64). ‘Looking away’ from an actual moral case with an eye to establishing a warranted belief or judgement with regard to the actual case can be evidence of an adherence to an atomistic theory of reasons. Looking away might be tempting when agents face difficult moral circumstances; where agents look to see how other cases have been considered in order to determine moral judgement concerning the case at hand. The complaint here is that this is a bad way of reaching moral judgement in practice and that it rests upon a misguided conception of the nature of moral reasons and of moral reasoning. Positively, and along with others who stress the importance of moral vision, Dancy explains that ‘looking closely’ at a moral case is an important component in an account of knowledge from a particularist’s standpoint. Negatively, agents must seek to avoid ‘looking away’ from the details of the case. These injunctions give rise to significant epistemological implications when considered against the backdrop of a holistic metaphysics of reasons. The account can look like a form of atomistic moral empiricism which renders deeply problematic, if not incoherent, the manner in which agents can be justified or be able to justify a claim that here is a reason to φ. A form of atomistic moral empiricism would involve the claims that moral knowledge is possible only through experiential contact with actual instantiations of valence, and that what constitute the grounds for such knowledge are discrete deliverances. Normatively speaking, agents are entitled to draw on nothing but the content of the deliverance. Failing to respect this condition would imply that possessing a justified belief about an actual reason here and now to φ is something that could be achieved by consulting a description of how reasons have functioned elsewhere. In other words, it would be to look away. Atomistic moral empiricism, according to how it has been sketched here, claims that justification and knowledge do not require external-to-context constraints on our activities of experiencing. For instance, that the existence and suitable manipulations of principles fix the valence of moral reasons independently of contextual instantiation and serve to rationally constrain any candidate beliefs or actions in a given circumstance.

#### Don’t vote negative on presumption

#### Ontology is silly and irrelevant to resolution of the political

Gathman 9 [Professional editor, translator, publishes pieces in salon.com and Austin Chronicle, <http://limitedinc.blogspot.com/2009/10/dialectics-of-diddling.html>]

IT – and I will interrupt the continuity of this post in the very first sentence to say that I, at least, refuse to identify the semi-autonomous heteronym, Infinite Thought, with the semi-autonomous philosopher, Nina, so this is about IT – recently wrote a post that makes an oblique but telling point against the current fashion for returning to things as they are via some kind of speculative realist ontology. As she notes, this gesture seems to go along with a taste for a politics that is so catastrophic as to be an excuse for no politics. “proliferating ontologies is simply not the point - further, what use is it if it simply becomes a race to the bottom to prove that every entity is as meaningless as every other (besides, the Atomists did it better). Confronting 'what is' has to mean accepting a certain break between the natural and the artificial, even if this break is itself artificial. Ontology is play-science for philosophers; I'm pretty much convinced when Badiou argues that mathematics has better ways of conceiving it than philosophy does and that, besides, ontology is not the point. What happens, or what does not happen, should be what concerns us: philosophers sometimes pride themselves on their ignorance of world affairs, again like watered-down Heideggarians, no matter how hostile they think they are to him, pretending that all that history and politics stuff is so, like, ontic, we're working on something much more important here.” Being the Derridean type, I expect that any attempt to create another, better ontology will produce the kinds of double binds that Derrida so expertly fished out of phenomenology. There have been a lot of replies to I.T.'s post. I thought the most interesting one was by Speculative Heresy, because he makes it clear that Speculative Realism is a return to a distinction that was popular among the analytic philosophers in the 50s, where a value neutral view of philosophy as a technique supposedly precluded the relevance of any political conclusions from conceptual analysis, and at worst blocked the advance of philosophy as a science. Here, the part of the natural is played by the question, which apparently asks itself in the void: “Which is to say that philosophy and politics are born of two different questions: ‘what is it?’ and ‘what to do?’ The latter, political, question need never concern itself with the former question.” IT rightly sees this reverence for the question in itself, and its supposedly fortunate alignment with the disciplines we all know and love, with their different mailboxes in the university, as a very Heideggerian gesture. And, as an empirical fact of intellectual history, it is very curious to think that a discipline is “born” from a syntactical unit peculiar to certain languages. Again, we run into a very old thematic, in which the question giving "birth" is entangled in the parallel series of logos and the body, in which each becomes a privileged metaphor for the other. There's nothing more political than this.

#### Extinction outweighs ontology

**Jonas 96** [Hans, Former Alvin Johnson Prof. Phil. At the New School for Social Research & Former Eric Voegelin Visiting Prof. at U. Munich, \*do not agree with gendered language, Mortality and Morality: A Search for the Good after Auschwitz, pg 111-2

With this look ahead at an ethics for the future, we are touching at the same time upon the question of the future of freedom. The unavoidable discussion of this question seems to give rise to misunderstandings. My dire prognosis that not only our material standard of living but also our democratic freedoms would fall victim to the growing pressure of a worldwide ecological crisis, until finally there would remain only some form of tyranny that would try to save the situation, has led to the accusation that I am defending dictatorship as a solution to our problems. I shall ignore here what is a confusion between warning and recommendation. But I have indeed said that such a tyranny would still be better than total ruin; thus, I have ethically accepted it as an alternative. I must now defend this standpoint, which I continue to support, before the court that I myself have created with the main argument of this essay. For are we not contradicting ourselves in prizing physical survival at the price of freedom? Did we not say that freedom was the condition of our capacity for responsibility—and that this capacity was a reason for the survival of humankind? By tolerating tyranny as an alternative to physical annihilation are we not violating the principle we established: that the How of existence must not take precedence over its Why? Yet we can make a terrible concession to the primacy of physical survival in the conviction that the ontological capacity for freedom, inseparable as it is from man’s being, cannot really be extinguished, only temporarily banished from the public realm. This conviction can be supported by experience we are all familiar with. We have seen that even in the most totalitarian societies the urge for freedom on the part of some individuals cannot be extinguished, and this renews our faith in human beings. Given this faith, we have reason to hope that, as long as there are human beings who survive, the image of God will continue to exist along with them and will wait in concealment for its new hour. With that hope—which in this particular case takes precedence over fear—it is permissible, for the sake of physical survival, to accept if need be a temporary absence of freedom in the external affairs of humanity. This is, I want to emphasize, a worst-case scenario, and it is the foremost task of responsibility at this particular moment in world history to prevent it from happening. This is in fact one of the noblest of duties (and at the same time one concerning self-preservation), on the part of the imperative of responsibility to avert future coercion that would lead to lack of freedom by acting freely in the present, thus preserving as much as possible the ability of future generations to assume responsibility. But more than that is involved. At stake is the preservation of the Earth’s entire miracle of creation, of which our human existence is a part and before which man reverently bows, even without philosophical “grounding.” Here too faith may precede and reason follow; it is faith that longs for this preservation of the Earth (fides quaerens intellectum), and reason comes as best it can to faith’s aid with arguments, not knowing or even asking how much depends on its success or failure in determining what action to take. With this confession of faith we come to the end of our essay ontology.

#### And, the alt collapses politics and causes global destruction - the case is a DA to the alt

Biskowski 95 [Lawrence J. professor of political theory and political economy at the University of Georgia, “Politics versus Aesthetics: Arendt's Critiques of Nietzsche and Heidegger”, The Review of Politics, Vol. 57, No. 1, Winter 1995, pg 59-89]

Although Arendt considered Heidegger to be perhaps the most important philosopher of the twentieth century, she always objected to the political dangers and deformations inherent in this emphasis on the self. Heidegger's philosophy led him away from the common, public world and directed his gaze inward toward the self.67 But this could not help but distort his political judgment, which must take its bearings from the public world. Instead, as we have seen, Heidegger associates the public world with inauthentic existence, a pernicious form of socialization, and a falling away from true Being. In fact, Arendt says, he dismisses all those modes of human existence which rest on the fact that Man lives together in the world with his fellows. To put it historically, Heidegger's Self is an ideal which has been working mischief in German philosophy and literature since Romanticism. In Heidegger this arrogant passion to be a self has contradicted itself; for never before was it so clear as in his philosophy that this is probably the one being which Man cannot be.6

Without the world as a source of political and moral orientation, the self and its death become Heidegger's central concern: Only in the realization of death, which will take him away from the world, has Man the certainty of being himself...in other words, the essential character of Man's Being is determined by what he is not, his nothingness...Death may indeed be the end of human reality; at the same time it is the guarantee that nothing matters but myself. With the experience of death as nothingness I have the chance of devoting myself exclusively to being a Self, and once and for all freeing myself from the surrounding world.69 For Arendt, on the contrary, authentic existence is never isolated in this egoistic way but rather exists only in acknowledgment of and communication with others. It can develop only in the togetherness of human beings in the common, public world. The sort of fascination with the self advocated by Heidegger leaves one disconnected from the multiform, multiperspectival reality of the political world. Among its consequences are a failure to comprehend political events, poor judgment, and a peculiar form of political irresponsibility. Arendt first develops this theme in Rahel Varnhagen where the not altogether different Romantic cult of interiority is criticized. The turn inward toward the self made Rahel and the intellectuals and artists in her circle blind to political reality.70 Similarly, in The Origins of Totalitarianism, Arendt sees romantic self-fascination as contributing to the general conditions which made the twentieth century mass movements and their horrors possible.71 A resurgent romanticism in intellectual life may be symptomatic of a general playfulness of modern thought in which almost any opinion can gain ground temporarily. No real thing, no historical event, no political idea was safe from the all-embracing and all-destroying mania by which these first literati could always find new and original opportunities for new and fascinating opinions.72 This playfulness, which certainly has its advocates among today's literati, is one manifestation of the general condition of world-alienation which appears as a persistent theme in much of Arendt's work. Whatever the undoubted aesthetic, agonistic, or expressivist aspects or moments of action (which Arendt recognizes and emphasizes, particularly in contradistinction to instrumental rationality and those philosophies and worldviews which tend to reduce history and human life to a mere process), she makes clear that action and politics cannot be reduced to or even thought of merely in terms of aesthetic self-expression: "Human plurality, the faceless 'They' from which the individual Self splits to be itself alone is divided into a great many units, and it is only as a member of such a unit, that is, of a community, that men are ready for action."73 These communities and their institutions depend for continued existence upon acting men; their conservation is achieved by the same means that brought them into being...[U]tter dependence upon further acts to keep it in existence marks the state as a product of action.74 Finally, Arendt tells us, "the inspiring principle of action is love of freedom, and this both in the negative sense of freedom from oppression and in the positive sense of the establishment of Freedom as a stable, tangible reality."75 Precisely this is the task of politics. But Heidegger's turn inward and away from the political world has a pedigree that goes beyond romanticism. Arendt consistently maintained that even though Heidegger rivals Nietzsche as a critic of the philosophical tradition, he too shares its general regard for "the incomprehensible triviality" of the common, public world, the only escape from which is withdrawal "into that solitude which philosophers since Parmenides and Plato have opposed to the political realm."76 Indeed, Heidegger no less than Plato personified to Arendt what might be called the professional thinker, and succumbed to the characteristic temptations of the profession.77 Arendt makes clear that all thinking requires some measure of aloofness, seclusion, and distance from the world,78 but this characteristic is amplified and expanded in Heidegger's philosophy. In Dasein, thinking and being alive fold in on one another and become one.79 Authentic existence requires thinking, which in turn requires distance from "the they" and everyday life. Immersion in everyday life constitutes and requires withdrawal from true Being. For Heidegger, not unlike Plato, thinking requires one to leave the cave of worldly affairs. But as we have seen, Arendt suggests that such a departure may result in a loss of moral-practical orientation.80 And this constitutes in the end perhaps the best explanation of why Heidegger's awesome ability to think did not prevent him from evil-doing in the form of **his support for** the **Nazis**.81 Heidegger eventually turned away from the emphasis on self-assertion and Dasein's "ownmost" state of being found in Being and Time.8 As Arendt tells the story, Heidegger's intense study of Nietzsche led him to see even his own previous philosophy as having been motivated by a form of will to power.83 Still concerned that instrumental rationality, science, and technology degraded Dasein by reducing everything to presence-at-hand, he came to see his own philosophy as "enframed" in the very same refusal to let beings be at the heart of the Western technological worldview he so detested. The new alternative Heidegger formulated was a Zen-like attitude or disposition of serene, gliding aloofness-Gelassenheit-in which state thinkers would refrain from attempting to impose their own will on beings (whether through technology or even through arguing for "ownmost" or "most authentic" modes of being). Thus, like Nietzsche, Heidegger eventually repudiates the will, a capacity Arendt sees as necessary for action and freedom. But more significantly, Heidegger's turn or reversal leaves him as alienated from politics and the common, public world as before. From the point of view of Arendtian politics, Heidegger has merely exchanged one form of world-alienation (glorification of self-assertion and extrication from "the they") for another (a regarding of the world simply as an object of contemplation). Arendt shares with the early Heidegger the notion that to be in the world is to be a locus of understanding, possibility, and freedom in the midst of a surrounding texture of meaning and significance. For the early Heidegger, however, the world serves primarily as a medium for the aesthetic expression of the self. After his Kehre, the world became something primarily to be regarded with serene, disinterested, contemplative wonder. This marked a return to the origins of philosophy in thaumazein. But philosophy and politics **are not the same**; the latter requires active engagement with the world, at least if the world is to be a fit home for mortal beings endowed with the capacity for action and the possibility of freedom.

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#### Globalized technological thought is good. Rejecting technological thought also rejects technological innovation and dooms us to extinction. This also defends our ontology

**Heaberlin, 4** – nuclear engineer, led the Nuclear Safety and Technology Applications Product Line at the Pacific Northwest National Laboratory (Scott, A Case for Nuclear-Generated Electricity, p. 31-40)

Well, then let's not do that, huh? Well, no, not hardly, because without that use of fertilizers we couldn't produce the food to feed the population. We just couldn't do it. Here are some comparisons."

If you used no fertilizers or pesticides you could get 500 kilograms of grain from a hectare in a dry climate and as much as 1000 kilograms in a humid cli­mate. If you got organic and used animal manure as fertilizer, assuming you could find enough, you might get as much as 2000 kilograms per hectare. For a sense of scale, the average in the United States, where recall we only get half the food value to hectare as the intensively farmed Chinese crop land, we get about 4500 kilograms per hectare on the average. In serious cornfields with fertilizer, irrigation, and pesticides, the value is 7000 kilograms per hectare.

Modern mechanized, chemically supported agriculture produces 7 to 14 times the food that you would get without those advantages. Even the best organic farming would produce only 30 to 45% of the food value you would get from the same sized chemically fertilized farm, and that is assuming you could get the manure you needed to make it work.

In very stark terms, without the chemically enhanced farming we would have probably something like one-fifth the food supply we have now. That means four-fifths the population would not be fed, at least as we are organized now. So, no, just giving up on fertilizers is not in the deal.

However, we could get the hydrogen and energy from sources other than natural gas. Nuclear energy could be used to provide electricity to extract hydrogen from water and produce the process heat required to combine the hydrogen and nitrogen from the air. That is just a thought to stick in your mind. While we are looking at energy use in agriculture, here are a few more numbers for you.10 If you look at the energy input into agriculture and the energy you get out, you see some interesting facts. By combining the energy used to make fertilizers and pesticides, power irrigation, and run the farm machinery in the United States, we use about 0.7 kcal of fossil fuel energy for each 1 kcal of food we make. This doesn't include the energy needed to process and transport the food. In Europe where they farm more intensely, the amount of energy out is just about the same as energy in. In Germany and Italy the numbers are 1.4 and 1.7 kcal energy input to each 1 kcal output respectively. The point is you need energy to feed people, well at least a lot of people.

Which gets us back to Cohen and his question. One of the studies he examined looked at a "self-sustaining solar energy system." For the United States, this would replace all fossil energy and provide one-fifth to one-half the current energy use. The conclusion of the study was that this would either produce" a significant reduction in our standard of living ... even if all the energy conservation measures known today were adopted" or if set at the current standard of living, "then the ideal U.S. population should be targeted at 40-100 million people." The authors of that study then cheerfully go on to point out that we do have enough fossil fuel to last a least a century, as long as we can work out the pesky environmental problems. So, you can go to a "self-sustaining" energy economy as long as you are willing to shoot between 2 out of 3 and 6 out of 7 of your neighbors.

And this is a real question. The massive use of fossil fuel driven agriculture to provide the fertilizers and pesticides, and power the farm equipment, is a) vitally important to feed everyone, and b) something we just can't keep up in a business-as-usual fashion. Sustainable means you can keep doing it. Fossil energy supplies are finite; you will run out some time. Massive use of fossil energy and the greenhouse gases they produce also may very well tip the planet into one of those extinction events in which a lot of very bad things happen to a lot of the life on the earth.

O.K. to Cohen's big question, how many people can the earth support? What it comes down to is that the "Well, it depends" answer depends on

• what quality of life you will accept,

• what level of technology you will use, and

• what level of social integration you will accept.

We have seen some of the numbers regarding quality of life. Clearly if you are willing to accept the Bangladesh diet, you can feed 1.8 times more people than if you chose the United States diet.

If you choose the back-to-nature, live like our hearty forefathers, level of technology, you can feed perhaps one-fifth as many people as you can with modern chemical fertilized agriculture. The rest have to go.

And here is the tough one. You can do a lot better, get a lot more people on the planet, if you just force a few things. Like, no more land wasted in growing grapes for wine or grains for whiskey and beer. No cropland used for tobacco. No more grain wasted on animals for meat, just grain for people. No more rich diets for the rich countries, share equally for everyone. No more trade barriers; too bad for the farmers in Japan and France, those countries would just have to accept their dependence on other countries for their food. It is easy to see that at least some of those might actually be a pretty good thing; however, the kicker is how do you get them to happen? After all, Mussolinill did make the trains run on time. How could you force these things without a totalitarian state? Are you willing to give up your ability to choose for yourself for the common good? It is not pretty, is it?

Cohen looked at all the various population estimates and concluded that most fell into the range of 4 to 16 billion. Taking the highest value when researchers offered a range, Cohen calculated a high median of 12 billion and taking the lower part of the range a low median of 7.7 billion. The good news in this is 12 billion is twice as many people as we have now. The bad news is that the projections for world population for 2050 are between 7.8 and 12.5 billion. That means we have got no more than 50 years before we exceed the nominal carrying capacity of the earth. Cohen also offers a qualifying observation by stating the "First Law of Information," which asserts that 97.6% of all statistics are made up. This helps us appreciate that application of these numbers to real life is subject to a lot of assumptions and insufficiencies in our understanding of the processes and data.

However, we can draw some insights from all of this. What it comes down to is that if you choose the fully sustainable, non-fossil fuel long-term options with only limited social integration, the various estimates Cohen looked at give you a number like 1 billion or less people that the earth can support. That means 5 out of 6 of us have got to go, plus no new babies without an offsetting death.

On the other hand, if you let technology continue to do its thing and perhaps get even better, the picture need not be so bleak. We haven't made all our farmland as productive as it can be. Remember, the Chinese get twice the food value per hectare as we do in the United States. There is also a lot of land that would become arable if we could get water to it. And, of course, in case you need to go back and check the title of this book, there are alternatives to fossil fuels to provide the energy to power that technology.

So given a positive and perhaps optimistic view of technology, we can look to some of the high technology assumption based studies from Cohen's review. From the semi-credible set of these, we can find estimates from 19 to 157 billion as the number of people the earth could support with a rough average coming in about 60 billion. This is a good time to be reminded of the First Law of Information. The middle to lower end of this range, however, might be done without wholesale social reprogramming. Hopefully we would see the improvement in the quality of life in the developing countries as they industrialize and increase their use of energy. Hopefully, also this would lead to a matching of the reduction in fertility rates that has been observed in the developed countries, which in turn would lead to an eventual balancing of the human population.

The point to all this is the near-term future of the human race depends on technology. If we turn away from technology, a very large fraction of the current and future human race will starve. If we just keep on as we are, with our current level of technology and dependence on fossil fuel resources, in the near term it will be a race between fertility decrease and our ability to feed ourselves, with, frankly, disaster the slight odds-on bet. In a slightly longer term, dependence on fossil fuels has got to lead to either social chaos or environmental disaster. There are no other end points to that road. It doesn't go anywhere else.

However, if we accept that it is technology that makes us human, that technology uniquely identifies us as the only animal that can choose its future, we can choose to live, choose to make it a better world for everyone and all life. This means more and better technology. It means more efficient technology that is kinder to the planet but also allows humans to support large numbers in a high quality of life. That road is not easy and has a number of ways to screw up. However, it is a road that can lead to a happier place, a better place.

Two Concluding Thoughts on the Case for Technology

Two more points and I will end my defense of technology. First, I want to bring you back from all the historical tour and all the numbers about population to something more directly personal. Let me ask you two questions.

What do you do for a living?

What did you have for breakfast?

Don't see any connection between these questions or of their connection to·the subject of technology? Don't worry, the point will come out shortly. I am just trying to bring the idea of technology back from this grand vision to its impact on your daily life.

Just as a wild guess, your answer to the first question was something that, say 500 years ago, didn't even exist. If we look 20,000 years ago, the only job was" get food." Even if you have a really directly socially valuable job like a medical doctor, 20,000 years ago you would have been extraneous. That is, the tribe couldn't afford you. What, no way! A doctor could save lives, surely a tribe would value such a skill. Well, sure, but the tribe could not afford taking one of their members out of the productive */I* getting the food" job for 20 years while that individual learned all those doctor skills.

If you examine the "what you do for a living" just a bit I think you will see a grand interconnectedness of all things. I personally find it pretty remarkable that we have a society that values nuclear engineers enough that I can make a living at it. Think about it. Somehow what I have done has been of enough value that, through various taxpayer and utility ratepayers, society has given me enough money for food and shelter. The tribe 20,000 years ago wouldn't have put up with me for a day.

You see, that is why we as humans are successful, wildly successful in fact. We work together. "Yeah, sure we do," you reply, " read a newspaper lately?" Well, *O.K.,* we fuss and fight a good deal and some of us do some pretty stupid and pretty mean things. But the degree of cooperation is amazing if you just step back a bit.

O.K., what did you have for breakfast: orange juice, coffee, toast, maybe some cereal and milk? Where do these things come from? Orange juice came from Florida or California. Coffee came from South America. Bread for the toast came perhaps from Kansas; cereal, from the Mid-West somewhere. The jam on the toast may have come from Oregon, or maybe Chile. Milk is probably the only thing that came from within a hundred miles of your breakfast table. Think about it. There were hundreds of people involved in your breakfast. Farmers, food-processing workers, packaging manufacturers, transportation people, energy producers, wholesale and retail people. Perhaps each one only spent a second on their personal contribution to your personal breakfast, but they touch thousands of other people's breakfasts as well. In turn, you buying the various components of your breakfast supported, in your part, all those people. They in turn, in some way or another, bought whatever you provide to society that allowed you to buy breakfast. Pretty amazing, don't you think?

Now when you look at all that, think about what ties all the planetwide interconnection, Yep, you guessed it: technology. Without technology, you get what is available within your personal reach, and what you produce is available only to those who are near enough that you can personally carry it to them on your own two feet. Technology makes our world work. It gives you personally a productive and socially valuable way to make both a living and to provide your contribution to the rest of us**.**

I want you to stop a minute and really think about that. What would your life be like without technology? Could you do what you currently do? Would anyone be able to use what you do? Would anyone pay you for that? "But I am a school teacher," you say, "of course, they would pay me!" Are you sure? Why do you need schools if there is no technology? All I need is to teach the kid how to farm and how to hunt. Sons and daughters can learn that by working in the fields along with their parents. See what I mean?

Now, I have hopefully reset your brain. Sure, you are still going to be hit with daily "technology is bad" messages. Hopefully, you are a bit more shielded against that din, and you have been given some perspective to balance that message and are prepared to see the true critical value of technology to human existence. The point is that technology is what makes us human. Without it, we are just slightly smarter monkeys.

You may feel that 6 billion of us are too many, and that may very well be. I personally don't know how to make that value decision. Which particular person does one select as being one of the excess ones?

However, the fact is that there are 6 billion of us, and it looks like we are headed for 10 to 12 billion in the next 50 years, Without not only the technology we have, but significantly better and more environmentally friendly technology, the world is going to get ugly as we approach these numbers,

On the other hand, with the right technologies we can not only support those numbers, we can do it while we close the gap between the haves and have-nots. We can make it a better place for everyone. It takes technology and the energy to drive it. Choosing technology is what we have to do to secure the evolutionary selection of us as a successful species, Remember, some pages back in discussing the unlikely evolutionary path to us, I said we are not the chosen, unless. Unless we choose us. This is what I meant. We are totally unique in all of evolutionary history. We humans have the unique ability and opportunity to choose either our evolutionary success or failure. A choice of technology gives us a chance. A choice rejecting technology dooms us as a species and gives the cockroaches the chance in our place. Nature doesn't care what survives, algae seas, dinosaurs, humans, cockroaches, or whatever is successful. If we care, we have to choose correctly.

As an aside, let me address a point of philosophy here. If any of this offends your personal theology, I offer this for your consideration. Genesis tells us God gave all the Earth to humanity and charged us with the stewardship thereof. So it is ours to use as well as we can. That insightful social philosopher Niccolo Machiavelli put it this way in 1501:

"What remains to be done must be done by you; since in order not to deprive us of our free will and such share of glory as belongs to us, God will not do everything Himself."

*O.K.,* you are saying, "I give." You have beaten the socks off me. Technology is good; technology is the identifying human trait and our only hope. But what is this stuff about choosing technology or not? Technology just happens doesn't it? I mean, technology always advances, it always has, so why the big deal?

Well, that is my last point on technology. It doesn't always just happen, and people have chosen to turn away from technology. In what might have seemed at the time to be a practical social decision, huge future implications were imposed on many generations to come. It has happened. Let me take you on one more trip through history. I think you will find it enlightening. In *Guns, Germs, and Steel,* Jared Diamond explores the question of why the European societies came to be dominate over all the other human cultures on earth. It is a fascinating story and provides a lot of insight into how modern societies evolved. In moving through history, he comes across a very odd discontinuity. He observes that if you came to earth from space in the year 1400 A.D., looked around, and went home to write your research paper on the probable future of the earth, you would clearly conclude the Chinese would run the entire planet shortly. Furthermore, you could conclude they would do it pretty darn well. If those same extraterrestrial researchers were to pop into their time machine and come back to earth in any year from say 1800 to now, they would be totally amazed to see China as a large, but relatively backward, country, struggling to catch up with their European and American peers.

To understand the significance of this, you have to go on that research trip with the extraterrestrials and look at China before 1400. In *The Lever af Riches,* Joel Mokyr dedicates one chapter looking at the comparisons of technology development in China to that in Europe. He lists the following as technology advantages China had in the centuries before 1400:

• Extensive water control projects, alternately draining and irrigating

land, significantly boosting agricultural production

• Sophisticated iron plow introduced sixth century B.C.

• Seed drills and other farm tools, introduced around 1000 *A.D.*

• Chemical and organic fertilizers and pesticides used

• Blast furnaces and casting of iron as early as 200 B.C., not known in Europe until fourteenth century

• Advanced use of power sources in textile production, not seen in Europe until the Industrial Revolution

• Invention of compass around 960 A.D.

• Major advances in maritime technology (more in a bit on this)

• Invention of paper around 100 A.D. (application as toilet paper by *590 A.D.).*

In the year 1400 AD., China was a world power, perhaps the only true world power. Their technology in agriculture, textiles, metallurgy, and maritime transportation were far in advance of any other country. They had a strong central government and a very healthy economy.

Their naval strength provides a real insight into the degree of this dominance. Dr. Diamond sends us to an extremely readable book *When China Ruled the Seas-The Treasure Fleet of the Dragon Throne 1405-1433* by Dr. Louise Levathes. Dr. Levathes takes us on an inside tour of the Chinese empire during these years. She focuses on the great treasure fleets that China set forth in these early years of the fifteenth century. In her book she has a wonderful graphic that overlays a Chinese vessel of the treasure fleet (-1410) with Columbus's *St. Maria* (1492). At 85 feet in length and three masts, the *St. Maria* is dwarfed by the nine-masted, 400-foot-long Chinese vessel.

The Chinese sailed fleets of these magnificent vessels throughout oceans of South Asia, to India, and even as far as the eastern coast of Africa. With this naval domination China claimed tribute from Japan, Korea, the nations of the Malay Archipelago, and various states within what is now India. Through both trade and the occasional application of military force, China provided an enlightened and progressive direction for all the nations within this sphere of influence. If two princes in India were fighting over a throne, it was the recognition, or lack thereof, from the Chinese emperor that decided who would rule. Setting a policy of religious inclusion and tolerance, the Chinese engaged the Arabian traders and calmed religious disputes within Asia.

With applications of power sources in textiles and advanced metallurgy, the Chinese were in the same position in 1400 as the British were in 1750, ready to launch into the Industrial Revolution. They traded with nations thousands of miles from home with vast, sophisticated shipping fleets. They were poised to extend this trade all the way to Europe and perhaps find the New World by going east instead of the European's going west in search of the rich Chinese markets.

But if we pop into that extraterrestrial time machine and drop into China in 1800, we find a technologically backward nation, humbled by a relatively small force of Europeans with "modern" military technology who wantonly imposed their will on the Chinese. The Chinese have been struggling to catch up with European and American technology ever since and so far not quite being able to do that. The domination of China by the Japanese during World War II shows how complete the turnaround was. In 1400 Japan was but one of many vassal states huddled about the feet of the Imperial Chinese throne. In 1940 the Japanese military crushed the Chinese government while marching on to control much of South Asia.

What could have happened to turn this clear champion of technology, trade, enlightened leadership with all its advantages over both its neighbors and yet-distant foreign competitors into such a weak, backward giant?

Mokyr goes through a pretty complete list of potential causes. He looks at diet, climate, and inherent philosophical mindset rejecting each as a credible actor mainly on the bases that all of these conditions were present during the period of technological and economic growth as well as the subsequent stagnation. Therefore, these were not determining factors in the turnabout. In the end he concludes, as does Diamond and Levathes, that it was just politics.

Yep, that is right. It was good, old human politics. Dr. Levathes gives us a delightful insider's view of the personalities and politics of Imperial progressions during this critical time period. To make a short story of it, the party that had been in control during the expansionist period supported the great treasure fleets, commerce with foreign nations, use and expansion of technology, and a rather harsh control of the rival party. The rival party was based on Confucian philosophy that preached a rigid, inward-looking, controlled existence.

When the Confucian party gained control of the throne, they had their opportunity to push back on the prior ruling party that had oppressed them so harshly for so long. And they did. They wanted nothing to do with foreigners; we have all we need at home, here in China, they said. The fleet was disbanded and the making of ocean-going vessels forbidden. Technology was no longer "encouraged." Again, their position was what we have is good enough, stop with all this new nonsense. Over a period of just a few years, the course of the entire nation was shifted from what would have appeared to be a bright future as the leading power in the world to a large, but relatively insignificant, backwater, rich in history and culture, but all backward looking to a former glory.

That was it. A shift in the political agenda. At the time, to the leaders in control, one that made sense. Focus at home, use what you have now, create order, discipline, control. In 50 years Japanese pirates controlled the coast of China, and the former ruler of the seas from Asia to Africa could not get out of their harbors safely.

So, you see **if the "technology is bad" message gets incorporated into too many of our daily decisions,** we can turn from our bright future into something else. The difference is that this time the stakes are much higher than they were in fifteenth century China. If we, in the developed nations, make the wrong choices, we doom all of humanity by our folly. It is not just that we miss the potential bright future, we miss the chance to avoid the combined human population growth and resources exhaustion disaster coming at us like a runaway train. Technology is the only way to prevent that train wreck. We can hear the siren's call of anti-technology, come back to nature and let the train run us down in a bloody mess, or we can try our best to use technology wisely and win free to make a better life for everyone.

#### Standing reserve is good

**Bostrom 3** PhD from the London School of Economics (Nick, 2003, “Transhumanism FAQ”, http://www.paulbroman.com/myspace/Transhumanism\_FAQ.txt) \

Population increase is an issue we would ultimately have to come to grips with even if healthy life-extension were not to happen. Leaving people to die is an unacceptable solution. A large population should not be viewed simply as a problem. Another way of looking at the same fact is that it means that many persons now enjoy lives that would not have been lived if the population had been smaller. One could ask those who complain about overpopulation exactly which people’s lives they would have preferred should not have been led. Would it really have been better if billions of the world’s people had never existed and if there had been no other people in their place? Of course, this is not to deny that too-rapid population growth can cause crowding, poverty, and the depletion of natural resources. In this sense there can be real problems that need to be tackled. How many people the Earth can sustain at a comfortable standard of living is a function of technological development (as well as of how resources are distributed). New technologies, from simple improvements in irrigation and management, to better mining techniques and more efficient power generation machinery, to genetically engineered crops, can continue to improve world resource and food output, while at the same time reducing environmental impact and animal suffering. Environmentalists are right to insist that the status quo is unsustainable. As a matter of physical necessity, things cannot stay as they are today indefinitely, or even for very long. If we continue to use up resources at the current pace, without finding more resources or learning how to use novel kinds of resources, then we will run into serious shortages sometime around the middle of this century. The deep greens have an answer to this: they suggest we turn back the clock and return to an idyllic pre-industrial age to live in sustainable harmony with nature. The problem with this view is that the pre-industrial age was anything but idyllic. It was a life of poverty, misery, disease, heavy manual toil from dawn to dusk, superstitious fears, and cultural parochialism. Nor was it environmentally sound – as witness the deforestation of England and the Mediterranean region, desertification of large parts of the middle east, soil depletion by the Anasazi in the Glen Canyon area, destruction of farm land in ancient Mesopotamia through the accumulation of mineral salts from irrigation, deforestation and consequent soil erosion by the ancient Mexican Mayas, overhunting of big game almost everywhere, and the extinction of the dodo and other big featherless birds in the South Pacific. Furthermore, it is hard to see how more than a few hundred million people

could be maintained at a reasonable standard of living with pre-industrial production methods, so some ninety percent of the world population would somehow have to vanish in order to facilitate this nostalgic return. Transhumanists propose a much more realistic alternative: not to retreat to an imagined past, but to press ahead as intelligently as we can. The environmental problems that technology creates are problems of intermediary, inefficient technology, of placing insufficient political priority on environmental protection as well as of a lack of ecological knowledge. Technologically less advanced industries in the former Soviet-bloc pollute much more than do their advanced Western counterparts. High-tech industry is typically relatively benign. Once we develop molecular nanotechnology, we will not only have clean and efficient manufacturing of almost any commodity, but we will also be able to clean up much of the mess created by today’s crude fabrication methods. This would set a standard for a clean environment that today’s traditional environmentalists could scarcely dream of.

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#### Not zero sum

Alan W. **Dowd**, writer on National Defense, Foreign Policy, and International Security, Winter-Spring **2013**, “Drone Wars: Risks and Warnings,” Strategic Studies Institute, http://www.strategicstudiesinstitute.army.mil/pubs/parameters/Issues/WinterSpring\_2013/1\_Article\_Dowd.pdf

As Michael Ignatieff asked in 2000, years before the drone war began, “If war becomes unreal to the citizens of modern democracies, will they care enough to restrain and control the violence exercised in their name . . . if they and their sons and daughters are spared the hazards of combat?”29 That question is directly linked to policymakers in the drone age. The risks policymakers take with UCAVs are greater because the accountability is less than with manned aircraft. After all, the loss of a drone is the loss of nothing more than metal. “More willing to lose is more willing to use,” as Daniel Haulman of the Air Force Historical Research Agency puts it.30 Yet as America’s deepening involvement in Yemen underscores, drones may actually make boots-on-the-ground intervention more likely. To identify new targets and authenticate existing targets for the drone war, Washington has quietly sent US troops into Yemen. According to unnamed military officials, the contingent of American troops is growing.31 As the troops identify targets, they become targets. Thus, far from preventing more direct and riskier forms of military engagement, drones are encouraging such engagement—even as many of their operators paradoxically carry out their lethal missions from the safety of bases in Nevada or New Mexico

#### Tradeoff already happened – there is a preference against drones now

Naureen **Shah et al**, Acting Director of the Human Rights Clinic and Associate Director of the Counterterrorism and Human Rights Project, Human Rights Institute at Columbia Law School, **2012**, “The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions,” Center for Civilians in Conflict, http://civiliansinconflict.org/uploads/files/publications/The\_Civilian\_Impact\_of\_Drones\_w\_cover.pdf

The Obama Administration has recognized the importance of pursuing alternatives to lethal targeting, as reflected in its repeatedly stated preference against killing in favor of capture operations.395 In an April 2012 speech, counterterrorism adviser John Brennan emphasized that the Administration prefers capture because it “allows us to gather valuable intelligence” and carries the potential to prosecute detainees in federal courts or military commissions.396 Moreover, Attorney General Eric Holder has described the preference for capture where feasible as—at least for US citizens—a matter of due process and legal requirement. 397 Conflictingly, in leaks, some Administration officials have noted that capture is not feasible because there is “nowhere to put them”—that in practice, there is no detention option.398 The stated US preference against lethal targeting is consonant with the principle of humanity, a requirement of the laws of war. The principle of humanity does not expressly require capture attempts, but involves a “complex assessment” of whether “the precise amount of force” used causes “no more death, injury, or destruction be caused than is actually necessary for the accomplishment of a legitimate military purpose in the prevailing circumstances.”399 The aim of the principle of humanity is “to avoid error, arbitrariness, and abuse.”400 In this sense, the principle of humanity is a corollary of human rights principles that deprivation of the right to life must not be arbitrary: that there must be a valid reason for using force, and that it must not be greater than absolutely necessary.401

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#### --- the plan prohibits the President’s ability to act without judicial review

John C. Eastman 6, Prof of Law at Chapman University, PhD in Government from the Claremont Graduate University, served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration, “Be Very Wary of Restricting President's Power,” Feb 21 2006, http://www.claremont.org/publications/pubid.467/pub\_detail.asp]

Prof. Epstein challenges the president's claim of inherent power by noting that the word "power" does not appear in the Commander in Chief clause, but the word "command," fairly implied in the noun "Commander," is a more-than-adequate substitute for "power." Was it really necessary for the drafters of the Constitution to say that the president shall have the power to command? Moreover, Prof. Epstein ignores completely the first clause of Article II -- the Vesting clause, which provides quite clearly that "The executive Power shall be vested in a President." The relevant inquiry is whether those who ratified the Constitution understood these powers to include interception of enemy communications in time of war without the permission of a judge, and on this there is really no doubt; they clearly did, which means that Congress cannot restrict the president's authority by mere statute.¶ Prof. Epstein's own description of the Commander in Chief clause recognizes this. One of the "critical functions" performed by the clause, he notes, is that "Congress cannot circumvent the president's position as commander in chief by assigning any of his responsibilities to anyone else." Yet FISA does precisely that, assigning to the FISA court a core command authority, namely, the ability to authorize interception of enemy communications. This authority has been exercised by every wartime president since George Washington.

#### War powers authority refers to the President’s overall power over national defense and warmaking---includes the plan

Manget 91 Fred F, Assistant General Counsel with the CIA, "Presidential War Powers", 1991, media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf

The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. " 3 ; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything required to wage war successfully. 3 H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means . "39 ¶ Thus, the Executive Branch's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.

#### The buck stops with the court, proves the plan creates a prohibition on executive authority when they say no

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

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

#### Contextual evidence proves our interp

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

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