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**“Authority” is the ex-ante allocation of decision rights**

**Garfagnini**, ITAM School of Business, 10/15/**2012**

(Umberto, italics emphasis in original, “The Dynamics of Authority in Innovating Organizations,” https://editorialexpress.com/cgi-bin/conference/download.cgi?db\_name=MWETFall2012&paper\_id=62)

**Why do organizations change their internal allocation of authority over time?** We propose a simple theory in which innovation with a new technology generates an *endogenous need for coordination* among divisions. A division manager has private information about the expected productivity of new technologies, which can be communicated strategically to headquarters. **The organization** has an advantage in coordinating technologies across divisions and **can only commit to an ex-ante allocation of decision rights** (**i.e.**, **authority**). When the importance of cross-divisional externalities is small and the organization's coordination advantage is moderate, we show that an organization can optimally delegate authority to a division manager initially and then later centralize authority.

**violation: Targeted killing authority’ is the decision to determine imminence—ex post does not address this, but is only post-hoc supervision**

Benjamin **McKelvey**, “Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Exeuctive killing Power,” VANDERBILT JOURNAL OF TRANSNATIONAL LAW v. 44, 11—**11**, [www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/](http://www.vanderbilt.edu/jotl/2012/06/due-process-rights-and-the-targeted-killing-of-suspected-terrorists-the-unconstitutional-scope-of-executive-killing-power/)

Therefore, the President was justified in using lethal force to protect the nation against Aulaqi, or any other American, if that individual presented a concrete threat that satisfied the “imminence” standard.109 However, the judiciary may, as a matter of law, review the use of military force to ensure that it conforms with the limitations and conditions of statutory and constitional grants of authority.110 In the context of targeted killing, a federal court could evaluate the targeted killing program to determine whether it satisfies the constitutional standard for the use of defensive force by the Executive Branch. **Targeted killing**, by its very name, **suggests** an entirely **premeditated and offensive** form of **military force**.111 Moreover, the overview of the CIA’s targeted killing program revealed a rigorous process involving an enormous amount of advance research, planning, and approval.112 While **the President has exclusive authority over determining whether a specific situation or individual presents an imminent threat** to the nation, the judiciary has the authority to define “imminence” as a legal standard.113 **These are general concepts of law**, not political questions, and they are **subject to judicial review**.114

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114. **Al-Aulaqi Response, supra note** 2, at 24–25 (**acknowledging its authority to define “imminence**” yet declining to do so because it **would require the court to determine “ex ante** **the** permissible **scope of** particular tactical **decisions**”); Dehn & Heller, supra note 16, at 179 (referring to the government’s motion to dismiss on the basis that it “involv[es] an executive-branch decision to target an individual in the context of a congressionally authorized, armed conflict”); id. at 187 (noting Aulaqi’s request for the court to make a legal determination of the correct standard for the targeted killing of a U.S. citizen).

**Vote neg-**

**Limits – hundreds of policies raise the costs of Presidential authority – they allow all of them**

**Ground – they spike out of disads to drones**

**Precision – it’s the most important distinction**

**Solum**, professor of law at UCLA, **2003**

(Lawrence, “Legal Theory Lexicon 001: Ex Ante & Ex Post,” http://lsolum.typepad.com/legal\_theory\_lexicon/2003/09/legal\_theory\_le\_2.html)

**If I had to select only one theoretical tool for a** first-year law **student to master**, **it would be the ex post/ex ante distinction**. (Of course, this is cheating, because there is a lot packed into the distinction.) The terminology comes from law and economics, and here is the basic idea:

**The ex post perspective is backward looking**. From the ex post point of view, we ask questions like: Who acted badly and who acted well? Whose rights were violated? Roughly speaking, we associated the ex post perspective with fairness and rights. The ex post perspective in legal theory is also loosely connected with deontological approaches to moral theory. In general jurisprudence, we might associate the ex post perspective with legal formalism.

**The ex ante perspective is forward looking**. From the ex ante point of view, **we ask questions like**: **What affect will this rule have on the future?** Will decision of a case in this way produce good or bad consequences? Again, roughly speaking we associate the ex ante perspective with policy and welfare. The ex ante perspective in legal theory is loosely connected with consequentialist (or utilitarian or welfarist) approaches to moral theory. In general jurisprudence, we might associate the ex ante perspective with legal instrumentalism (or legal realism).

### OFF

#### CP Text: The federal judiciary should strike down the President’s targeting killing policy involving drone strikes on the grounds that it violates the constitution.

#### Drone strikes are unconstitutional

Taylor 13 (Robert, 2-12-13, "Find Out What the Constitution Really Says About Obama's Drone Strikes" Policy Mic) www.policymic.com/articles/25382/find-out-what-the-constitution-really-says-about-obama-s-drone-strikes

Now that the Obama administration's policy of targeted assassinations and secret "kill lists" is finally being discussed publicly in the media nearly four years after these policies were officially implemented, questions are being raised over the legality and constitutionality of these programs. While Obama supporters and Senate Republicans are defending a president's claim to target and kill American citizens without due process, these actions are one of the biggest violations of constitutional law that a government can ever take and have absolutely no place in a professed free society. According to the Department of Justice white paper that was leaked last week summarizing the administration's justification of the killing of Muslim cleric and U.S. citizen Anwar al-Awlaki in Yemen in 2011, the president has the power to order extrajudicial killings if an "informed, high-level official" deems a suspect a "continuing" and "imminent" threat to the country. The problem with this claim is that the administration defines "imminent threat" in such a way as to render the word nearly meaningless. The president can order the kill if "capture is unfeasible," but this also is defined incredibly broadly. While attempting to use this type of language to give a general facade of placing limits and boundaries on their power to kill, in actuality it places virtually no restrictions on the government's power to kill in secrecy. As flawed as these arguments are, perhaps the worst aspect of Obama's justifications is when the administration claims that limits on its power are simply not enforceable in court and ignores even the most modest restraints on depriving persons of their life. No court has the power to oversee the president's power, argues the administration, and the president will engage in targeted killings without presenting any evidence to a court before or after and rejects the idea that it even needs to. In Mathews v. Elridge, the Supreme Court established minor limits on the federal government's authority by taking into account "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." The administration ignores even this vague limit, not only in the leaked white paper but by Attorney General Eric Holder's own words a few years back when he defended the right of the military to indefinitely detain American citizens without trial. It seems absurd to debate the constitutionality of such a program, especially considering the U.S. Constitution's direct and clear wording on the matter. The Fifth Amendment states that "no person shall be deprived of life, liberty, or property without due process." The federal government, under no circumstances, can deny any person's individual rights without due process. It's really fairly simple and straightforward. As hard as they apparently tried to justify it on their own broad interpretations of constitutionality, every claim made by the Obama administration substantiating the right of the U.S. government to order extrajudicial killings, suspend due process, and severely limit any court's ability to challenge this authoritarian power fails.

### OFF

#### The United States Congress should pass legislation that makes the President’s targeting killing policy involving drone strikes comply with international law.

#### Congress solves

Mark David **Maxwell**, Colonel, Judge Advocate with the U.S. Army, Winter 20**12**, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

In the wake of the attacks by al Qaeda on September 11, 2001, an analogous phenomenon of feeling safe has occurred in a recent U.S. national security policy: America’s explicit use of targeted killings to eliminate terrorists, under the legal doctrines of selfdefense and the law of war. Legal scholars define targeted killing as the use of lethal force by a state4 or its agents with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.5 In layman’s terms, targeted killing is used by the United States to eliminate individuals it views as a threat.6 **Targeted killings**, for better or for worse, **have become “a defining doctrine of American strategic policy**.”7 Although many U.S. Presidents have reserved the right to use targeted killings in unique circumstances, **making this option a formal part of American foreign policy incurs risks that, unless adroitly controlled and defined in concert with Congress, could drive our practices in the use of force in a direction that is not wise for the long-term health of the rule of law**.

This article traces the history of targeted killing from a U.S. perspective. It next explains how terrorism has traditionally been handled as a domestic law enforcement action within the United States and why this departure in policy to handle terrorists like al Qaeda under the law of war—that is, declaring war against a terrorist organization—is novel. While this policy is not an ill-conceived course of action given the global nature of al Qaeda, there are practical limitations on how this war against terrorism can be conducted under the orders of the President. **Within the authority to target individuals who are terrorists, there are** two **facets of Presidential power that the U**nited **S**tates **must grapple with**: first, **how narrow and tailored the President’s authority should be when ordering a targeted killing** under the rubric of **self-defense; and** second, **whether the President must adhere to concepts within the law of war,** specifically the targeting of individuals who do not don a uniform. **The gatekeeper of these Presidential powers and the prevention of their overreach is Congress**. **The Constitution demands nothing less, but thus far, Congress’s silence is deafening**.

History of Targeted Killing During the Cold War, the United States used covert operations to target certain political leaders with deadly force.8 These covert operations, such as assassination plots against Fidel Castro of Cuba and Ngo Dinh Diem of South Vietnam, came to light in the waning days of the Richard Nixon administration in 1974. In response to the public outrage at this tactic, the Senate created a select committee in 1975, chaired by Senator Frank Church of Idaho, to “Study Government Operations with Respect to Intelligence Activities.”9 This committee, which took the name of its chairman, harshly condemned such targeting, which is referred to in the report as assassination: “We condemn assassination and reject it as an instrument of American policy.”10 In response to the Church Committee’s findings, President Gerald R. Ford issued an Executive order in 1976 prohibiting assassinations: “No employee of the United States Government shall engage in, or conspire to engage in political assassination.”11 The order, which is still in force today as Executive Order 12333, “was issued primarily to preempt pending congressional legislation banning political assassination.”12 President Ford did not want legislation that would impinge upon his unilateral ability as Commander in Chief to decide on the measures that were necessary for national security. 13 In the end, no legislation on assassinations was passed; national security remained under the President’s purview. Congress did mandate, however, that the President submit findings to select Members of Congress before a covert operation commences or in a timely fashion afterward.14 This requirement remains to this day. Targeted killings have again come to center stage with the Barack Obama administration’s extraordinary step of acknowledging the targeting of the radical Muslim cleric Anwar al-Awlaki, a U.S. citizen who lived in Yemen and was a member of an Islamic terrorist organization, al Qaeda in the Arabian Peninsula.15 Al-Awlaki played a significant role in an attack conducted by Umar Farouk Abdulmutallab, the Nigerian Muslim who attempted to blow up a Northwest Airlines flight bound for Detroit on Christmas Day 2009.16 According to U.S. officials, al-Awlaki was no longer merely encouraging terrorist activities against the United States; he was “acting for or on behalf of al-Qaeda in the Arabian Peninsula . . . and providing financial, material or technological support for . . . acts of terrorism.”17 Al-Awlaki’s involvement in these activities, according to the United States, made him a belligerent and therefore a legitimate target. The context of the fierce debates in the 1970s is different from the al-Awlaki debate. The targeted killing of an individual for a political purpose, as investigated by the Church Committee, was the use of lethal force during peacetime, not during an armed conflict. During armed conflict, the use of targeted killing is quite expansive.18 But in peacetime, the use of any lethal force is highly governed and limited by both domestic law and international legal norms. The presumption is that, in peacetime, all use of force by the state, especially lethal force, must be necessary. The Law Enforcement Paradigm Before 9/11, the United States treated terrorists under the law enforcement paradigm—that is, as suspected criminals.19 This meant that a terrorist was protected from lethal force so long as his or her conduct did not require the state to respond to a threat or the indication of one. The law enforcement paradigm assumes that the preference is not to use lethal force but rather to arrest the terrorist and then to investigate and try him before a court of law.20 The presumption during peacetime is that the use of lethal force by a state is not justified unless necessary. Necessity assumes that “only the amount of force required to meet the threat and restore the status quo ante may be employed against [the] source of the threat, thereby limiting the force that may be lawfully applied by the state actor.”21 The taking of life in peacetime is only justified “when lesser means for reducing the threat were ineffective.”22 Under both domestic and international law, the civilian population has the right to be free from arbitrary deprivation of life. Geoff Corn makes this point by highlighting that a law enforcement officer could not use deadly force “against suspected criminals based solely on a determination an individual was a member of a criminal group.”23 Under the law enforcement paradigm, “a country cannot target any individual in its own territory unless there is no other way to avert a great danger.”24 It is the individual’s conduct at the time of the threat that gives the state the right to respond with lethal force. The state’s responding force must be reasonable given the situation known at the time. This reasonableness standard is a “commonsense evaluation of what an objectively reasonable officer might have done in the same circumstances.”25 The U.S. Supreme Court has opined that this reasonableness is subjective: “[t]he calculus of reasonableness must embody allowances for the fact that police officers often are forced to make split-second judgments . . . about the amount of force that is necessary in a particular situation.”26 The law enforcement paradigm attempts to “minimize the use of lethal force to the extent feasible in the circumstances.”27 This approach is the starting point for many commentators when discussing targeted killing: “It may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but the goal of the operation, from its inception, should not be to kill.”28 The presumption is that intentional killing by the state is unlawful unless it is necessary for self-defense or defense of others.29 Like the soldier who acts under the authority of self-defense, if one acts reasonably based on the nature of the threat, the action is justified and legal. What the law enforcement paradigm never contemplates is a terrorist who works outside the state and cannot be arrested. These terrorists hide in areas of the world where law enforcement is weak or nonexistent. The terrorists behind 9/11 were lethal and lived in ungovernable areas; these factors compelled the United States to rethink its law enforcement paradigm. The Law of War Paradigm The damage wrought by the 9/11 terrorists gave President George W. Bush the political capital to ask Congress for authorization to go to war with these architects of terror, namely al Qaeda. Seven days later, Congress gave the President the Authorization for the Use of Military Force (AUMF) against those “nations, organizations, or persons [the President] 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.”30 For the first time in modern U.S. history, the country was engaged in an armed conflict with members of an organization, al Qaeda, versus a state. The legal justification to use force, which includes targeted killings, against al Qaeda, the Taliban, and associated forces is twofold: self-defense and the law of war.31 In armed conflict, the rules governing when an individual can be killed are starkly different than in peacetime. The law enforcement paradigm does not apply in armed conflict. Rather, designated terrorists may be targeted and killed because of their status as enemy belligerents. That status is determined solely by the President under the AUMF. Unlike the law enforcement paradigm, the law of war requires neither a certain conduct nor an analysis of the reasonable amount of force to engage belligerents. In armed conflict, it is wholly permissible to inflict “death on enemy personnel irrespective of the actual risk they present.”32 Killing enemy belligerents is legal unless specifically prohibited—for example, enemy personnel out of combat like the wounded, the sick, or the shipwrecked.33 Armed conflict also negates the law enforcement presumption that lethal force against an individual is justified only when necessary. If an individual is an enemy, then “soldiers are not constrained by the law of war from applying the full range of lawful weapons.”34 Now the soldier is told by the state that an enemy is hostile and he may engage that individual without any consideration of the threat currently posed. The enemy is declared hostile; the enemy is now targetable. Anticipatory Self-defense

This paradigm shift is novel for the United States. **The President’s authority to order targeted killings is clear under domestic law; it stems from the AUMF**. **Legal ambiguity of the U.S. authority to order targeted killings emerges**, however, **when it is required to interpret international legal norms like self-defense and the law of war**. **The U**nited **S**tates **has been a historic champion of these international norms, but now they are hampering its desires to target and kill terrorists**.

Skeptics of targeted killing admit that “[t]he decision to target specific individuals with lethal force after September 11 was neither unprecedented nor surprising.”35 Mary Ellen O’Connell has conceded, for example, that targeted killing against enemy combatants in Afghanistan is not an issue because “[t]he United States is currently engaged in an armed conflict” there.36 But when the United States targets individuals outside a zone of conflict, as it did with alAwlaki in Yemen,37 it runs into turbulence because a state of war does not exist between the United States and Yemen.38 A formidable fault line that is emerging between the Obama administration’s position and many academics, international organizations,39 and even some foreign governments40 is where these targeted killings can be conducted.41

According to the U.S. critics, if armed conflict between the states is not present at a location, then the law of war is never triggered, and the state reverts to a peacetime paradigm. In other words, the targeted individual cannot be killed merely because of his or her status as an enemy, since there is no armed conflict. Instead, the United States, as in peacetime, must look to the threat the individual possesses at the time of the targeting. There is a profound shift of the burden upon the state: the presumption now is that the targeted killing must be necessary. When, for example, the United States targeted and killed six al Qaeda members in Yemen in 2002, the international reaction was extremely negative: the strike constituted “a clear case of extrajudicial killing.”42

The Obama administration, like its predecessor, disagrees. Its legal justification for targeted killings outside a current zone of armed conflict is anticipatory self-defense. The administration cites the inherent and unilateral right every nation has to engage in anticipatory self-defense. This right is codified in the United Nations charter43 and is also part of the U.S. interpretation of customary international law stemming from the Caroline case in 1837. A British warship entered U.S. territory and destroyed an American steamboat, the Caroline. In response, U.S. Secretary of State Daniel Webster articulated the lasting acid test for anticipatory self-defense: “[N]ecessity of self defense [must be] instant, overwhelming, leaving no choice of means and no moment for deliberation . . . [and] the necessity of self defense, must be limited by that necessity and kept clearly within it.”44

A state can act under the guise of anticipatory self-defense. This truism, however, leaves domestic policymakers to struggle with two critical quandaries: first, the factual predicate required by the state to invoke anticipatory self-defense, on the one hand; and second, the protections the state’s soldiers possess when they act under this authority, on the other. As to the first issue, there is simply no guidance from Congress to the President; the threshold for triggering anticipatory self-defense is ad hoc. As to the second issue, under the law of war, a soldier who kills an enemy has immunity for these precapture or warlike acts.45 This “combatant immunity” attaches only when the law of war has been triggered. Does combatant immunity attach when the stated legal authority is self-defense? There is no clear answer.

**The administration is blurring the contours of** the right of the state to act in Yemen under **self-defense and the law of war protections** afforded its soldiers when so acting. Therefore, what protections do U.S. Airmen enjoy when operating the drone that killed an individual in Yemen, Somalia, or Libya?

If they are indicted by a Spanish court for murder, what is the defense? Under the law of war, it is combatant immunity. But if the law of war is not triggered because the killing occurred outside the zone of armed conflict, the policy could expose Airmen to prosecution for murder. **In order to alleviate** both of these **quandaries, Congress must step in with legislative guidance**. **Congress has the constitutional obligation to fund and oversee military operations**.46 **The goal of congressional action must not be to thwart the President from protecting the U**nited **S**tates **from the dangers of a very hostile world**. As the debates of the Church Committee demonstrated, **however, the President’s unfettered authority in the realm of national security is a cause for concern**. **Clarification is required because the AUMF gave the President a blank check to use targeted killing** under domestic law, **but it never set parameters on the President’s authority when international legal norms intersect and** potentially **conflict with measures stemming from domestic law**.

**OFF**

**Plan causes fights with the President that kill court legitimacy and cause circumvention**

**Pushaw 4**—Professor of law @ Pepperdine University [Robert J. Pushaw, Jr., “Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, Vol. 69, 2004] **gender pronoun modified**

**Civil libertarians have urged the Court to exercise** the same sort of **judicial review over war powers** as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the **institutional differences**, **embedded in the Constitution**, that **have always led federal judges to review warmaking under special standards**. Most obviously, **the President can act with a speed, decisiveness, and access to info**rmation (often highly confidential) **that cannot be matched** by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, **the judiciary by design acts far more slowly** than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, **by the time federal judges** (particularly those on the Supreme Court) **decide a case, the action taken by the executive is several years old**. Sometimes, **this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored**.57 **At other times**, however, **the war rages, the President’s action is set in stone, and** he **will ignore any judicial orders that he conform his conduct to constitutional norms**.58 **In such critical situations, issuing a judgment simply weakens the Court** as an institution, **as** **Chief Justice Taney learned the hard way**.59 Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62 This proposal intelligently blends a concern for individual rights with pragmatism. **Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so** and employs the least restrictive means to achieve that interest.63 Obviously, **national security is a compelling governmental interest**.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65 Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, **the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors**—**including highly sensitive intel**ligence **that he does not wish to dis-close**.66 Moreover, **if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution**. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach. Moreover, **such** searching **scrutiny will be useless in situations where the President has made a wartime decision that** ~~he~~ **[they] will not change**, **even if judicially ordered to do so**. For instance, **assume that the Court in Korematsu** had applied “hard look” review and **found that** President **Roosevelt had wildly exaggerated** the sabotage and espionage **risks** posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). **If the Court accordingly** had **struck down** **FDR’s order** to relocate them, **he would** likely **have disobeyed it.** Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that **the solution in such** unique **situations** (i.e., **where a politically strong President has made a final decision and will defy any contrary court judgment**) **is not judicial review in any form**—**ordinary, deferential, or hard look**. Rather, **the Court should simply declare the matter to be a political question and dismiss the case**. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

**Legitimacy key to rule of law and compliance with decisions**

**Schapiro** 8-5-’**13**, Robert A. Schapiro, dean and Asa Griggs Candler professor of law at Emory University School of Law., Op-ed contributor, Christian Science Monitor, Objection! Americans' opinion of Supreme Court can't keep dropping, Lexis, jj

**Public confidence in the judiciary provides a critical foundation for** a society committed to the **rule of law. As America's unelected justices confront controversial questions,** the **legitimacy** of their decisions **depends on public support for the institution**. **The court must rely on other government officials, including elected leaders and law enforcement officers, to implement its rulings**. **Examples around the world suggest that obedience to judicial decisions may well depend on the level of respect that the courts enjoy.**

**rule of law solves war, terror, failed states, econ, effective power projection**

**Feldman ‘8** [Noah Feldman, a contributing writer for the magazine, is a law professor at Harvard University and an adjunct senior fellow at the Council on Foreign Relations, “When Judges Make Foreign Policy”, NEW YORK TIMES, 9—25—08, www.nytimes.com/2008/09/28/magazine/28law-t.html]

Looking at today’s problem through the lens of our great constitutional experiment, it emerges that there is no single, enduring answer to which way the Constitution should be oriented, inward or outward. The truth is that we have had an inward- and outward-looking Constitution by turns, depending on the needs of the country and of the world. Neither the text of the Constitution, nor the history of its interpretation, nor the deep values embedded in it justify one answer rather than the other. In the face of such ambiguity, the right question is not simply in what direction does our Constitution look, but where do we need the Constitution to look right now? Answering this requires the Supreme Court to think in terms not only of principle but also of policy: to weigh national and international interests; and to exercise fine judgment about how our Constitution functions and is perceived at home and abroad. The conservative and **liberal approaches to legitimacy and the rule of law need to be supplemented with a healthy dose of real-world pragmatism**. In effect, the fact that the Constitution affects our relations with the world requires the justices to have a foreign policy of their own. On the surface, it seems as if such inevitably political judgments are not the proper province of the court. If assessments of the state of the world are called for, shouldn’t the court defer to the decisions of the elected president and Congress? Aren’t judgments about the direction of our country the exclusive preserve of the political branches? Indeed, the Supreme Court does need to be limited to its proper role. But when it comes to our engagement with the world, that role involves taking a stand, not stepping aside. The reason for this is straightforward: the court is in charge of interpreting the Constitution, and the Constitution plays a major role in shaping our engagement with the rest of the world. The court therefore has no choice about whether to involve itself in the question of which direction the Constitution will face; it is now unavoidably involved. Even choosing to defer to the other branches of government amounts to a substantive stand on the question. That said, when the court exercises its own independent political judgment, it still does so in a distinctively legal way.For one thing, the court can act only through deciding the cases that happen to come before it, and the court is limited to using the facts and circumstances of those cases to shape a broader constitutional vision. The court also speaks in the idiom of law — which is to say, of regular rules that apply to everyone across the board. It cannot declare, for instance, that only this or that detainee has rights. It must hold that the same rights extend to every detainee who is similarly situated. This, too, is an effective constraint on the way the court exercises its policy judgment. Indeed, it is this very regularity that gives its decisions legitimacy as the product of judicial logic and reasoning. Why We Need More Law, More Than Ever So what do we need the Constitution to do for us now? The answer, I think, is that the Constitution must be read to help us remember that while the war on terror continues, we are also still in the midst of a period of rapid globalization. An enduring lesson of the Bush years is the extreme difficulty and cost of doing things by ourselves. **We need to build and rebuild alliances — and law has** historically **been** one of **our best tool**s for doing so. In our present precarious situation, **it would be a** terrible **mistake to abandon our** historic **position of leadership in the g**lobal **spread of** the **rule of law. Our leadership matters for** reasons both universal and national. Seen from the perspective of the world, **the fragmentation of power** after the cold war **creates new dangers** of disorder that need to be mitigated by the sense of regularity and predictability **that only the rule of law can provide. Terrorists need to be deterred. Failed states need to be brought under the umbrella of international organizations so they can govern themselves. And economic interdependence demands coordination, so that the collapse of one does not become the collapse of all**. From a national perspective, our interest is less in the inherent value of advancing individual rights than in claiming that our allies are obligated to help us by virtue of legal commitments they have made. The Bush administration’s lawyers often insisted that lawwas a tool of the weak, and that therefore as a strong nation we had no need to engage it. But this notion of “lawfare” as a threat to the United States is based on a misunderstanding of the very essence of how law operates. **Law** comes into being and is sustained not because the weak demand it but because it is a tool of the powerful — as it has been for the United States since World War II at least. The reason those with power prefer law to brute force is that it **regularizes and legitimates the exercise of authority. It is easier and cheaper to get the compliance of weaker** people or **states by promising them rules** and a fair hearing **than by threatening them constantly with force.** After all, if those wielding power really objected to the rule of law, they could abolish it, the way dictators and juntas have often done the world over.

**OFF**

**The US is winning the war on terror because of drones**

**Byman** July/August **’13** (Daniel L, Research Director, Saban Center for Middle East Policy, Senior Fellow, Foreign Policy, Saban Center for Middle East Policy, “Why Drones Work: The Case for Washington's Weapon of Choice”, Foreign Affairs, <http://www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman>, CMR)

**Despite** President Barack **Obama’s** recent **call to reduce** the United States’ **reliance on drones, they will** likely **remain his administration’s weapon of choice**. Whereas President George W. Bush oversaw fewer than 50 drone strikes during his tenure, **Obama has signed off on over 400** of them **in the last four years, making the program the centerpiece of U.S. counterterror**ism **strategy**. **The drones have done** their job **remarkably well**: by **killing key leaders** **and denying terrorists sanctuaries** in Pakistan, Yemen, and, to a lesser degree, Somalia, **drones have devastated al Qaeda and associated anti-American militant groups**. And they have done so at little financial cost, at no risk to U.S. forces, and **with fewer civilian casualties than** many **alternative methods** would have caused. Critics, however, remain skeptical. They claim that drones kill thousands of innocent civilians, alienate allied governments, anger foreign publics, illegally target Americans, and set a dangerous precedent that irresponsible governments will abuse. Some of these criticisms are valid; others, less so. In the end, **drone strikes remain a necessary instrument of counterterrorism**. The United States simply cannot tolerate terrorist safe havens in remote parts of Pakistan and elsewhere, **and drones offer a comparatively low-risk way of targeting these areas while minimizing collateral damage**.

**aff flips that--*Perception* of drones flexibility** disrupts recruitment, crushes operational effectiveness, and distracts from large-scale attacks

**Young 13**

[Alex, Associate Staff at Harvard Int’l Review, M.D., Harvard University; M.S.H.S., University California Los Angeles, “A Defense of Drones”, Feb 25, <http://hir.harvard.edu/a-defense-of-drones>, CMR]

**Critics** also **claim** that **eliminating** **only** the **senior leaders** of terrorist organizations **does not make significant progress** in eradicating the group as a whole. **This argument falls short** on two fronts. **First, killing the leaders** of Al Qaeda, the Taliban, and similar networks **does hinder their operations: decapitating terrorist groups interrupts** their **planning, recruitment, and execution of attacks** – not necessarily because each leader is irreplaceably vital to the success of the group (although some are), but because **the threat of death from the skies shifts the strategic calculations of** living **leaders**, changing the actions of the group. The Los Angeles Times of March 22nd, 2009, quoting an anonymous counterterrorism official, reported that Al Qaeda leaders are wondering who's next to be killed in a drone strike and have started hunting down people inside al Qaeda who they think are responsible for collaborating with the US on drone strike planning. **The threat of drone strikes sows divisive suspicion inside enemy groups and distracts them** from accomplishing their objectives.¶ Moreover, **drone strikes have disrupted al Qaeda’s system for training new recruits**. The Times of London reports that in 2009**, Al Qaeda leaders decided to abandon their traditional training camps because bringing new members** to a central location **offered too easy a target for drone strikes**. Foreign Policy emphasized this trend on November 2nd, 2012, arguing that, “**destroying communication centers, training camps and vehicles undermines** the **operational effectiveness of al-Qaeda and the Taliban**, and quotes from operatives of the Pakistan-based Haqqani Network reveal that drones have forced them into a ‘jungle existence’ where they fear for the lives on a daily basis.” **The threat of death from the skies has forced extremist organizations to become more scattered**.¶ More importantly, though, **drone strikes** do not only kill top leaders; they **target** their **militant followers as** well. The New America Foundation, a think tank that maintains a database of statistics on drone strikes, reports that **between** 20**04** **and 2012, drones killed between 1,489 and 2,605 enemy combatants in Pakistan**. Given that Al Qaeda, the Pakistani Taliban, and the various other organizations operating in the region combined do not possibly have more than 1,500 senior leaders, it follows that many, if not most, of those killed were low-level or mid-level members – in many cases, individuals who would have carried out attacks. The Los Angeles Times explains that, “the Predator campaign has depleted [Al Qaeda’s] operational tier. **Many** of the dead **are longtime loyalists** who had worked alongside Bin Laden […] They are **being replaced by less experienced recruits.” Drones decimate terrorist organizations at all levels**; the idea that these strikes only kill senior officials is a myth.

**WMD terror is likely and causes extinction**

Nathan **Myhrvold '13**, Phd in theoretical and mathematical physics from Princeton, and founded Intellectual Ventures after retiring as chief strategist and chief technology officer of Microsoft Corporation , July 2013, "Stratgic Terrorism: A Call to Action," The Lawfare Research Paper Series No.2, <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

Several **powerful trends have aligned to** profoundly **change the way that the world works. Technology** ¶ now **allows stateless groups to organize, recruit, and fund ¶ themselves in an unprecedented fashion**. **That, coupled ¶ with** the extreme **difficulty of** finding and **punishing a stateless group, means that stateless groups are positioned to be ¶ lead players on the world stage.** **They may act on their own, ¶ or** they may act **as proxies for nation-states that wish to ¶ duck responsibility**. Either way, stateless groups are forces ¶ to be reckoned with.¶ At the same time, a different set of **technology trends ¶ means that small numbers of people can obtain incredibly ¶ lethal power.** Now, for the first time in human history, **a ¶ small group can be as lethal as the largest superpower**. Such ¶ a group could execute an attack that could kill millions of ¶ people. **It is technically feasible for such a group to kill billions** of people, to end modern civilization—perhaps **even** ¶ to **drive the human race to extinction**. Our defense establishment was shaped over decades to ¶ address what was, for a long time, the only strategic threat ¶ our nation faced: Soviet or Chinese missiles. More recently, ¶ it has started retooling to address tactical terror attacks like ¶ those launched on the morning of 9/11, but the reform ¶ process is incomplete and inconsistent. **A real defense will ¶ require** rebuilding our **military** and intelligence **capabilities** from the ground up. Yet, so far, strategic terrorism has ¶ received relatively little attention in defense agencies, and ¶ the efforts that have been launched to combat this existential threat seem fragmented.¶ History suggests what will happen. The only thing ¶ that shakes America out of complacency is a direct threat ¶ from a determined adversary that confronts us with our ¶ shortcomings by repeatedly attacking us or hectoring us for ¶ decades

**Adv2**

**CO2 solves food crisis, kills millions—tech can’t keep up**

Dr. Craig D. **Idso**, ESTIMATES OF GLOBAL FOOD PRODUCTION IN THE YEAR 2050: WILL WE PRODUCE ENOUGH TO ADEQUATELY FEED THE WORLD, Center for the Study of Carbon Dioxide and Global Change, 6—15—**11**, p. 30-31.

As indicated in the material above, **a very real and devastating food crisis is looming** on the horizon, and **continuing advancements in agricultural technology and expertise will most likely not be able to bridge the gap between global food supply and global food demand just a few short years from now.** However, **the positive impact of Earth’s rising atmospheric CO2 concentration on crop yields will considerably lessen the severity of the coming food shortage**. **In some regions** and countries **it will mean the difference between being food secure or food insecure**; **and it will aid in lifting untold hundreds of millions out of a state of hunger and malnutrition, preventing starvation and premature death. For those regions of the globe where** **neither enhancements** in the techno-intel effect **nor the rise in CO2 are projected to foster food security**, an Apollo moon-mission-like commitment is needed by governments and researchers to further increase crop yields per unit of land area planted, nutrients applied, and water used. And about **the only truly viable option for doing so** (**without** taking enormous amounts of land and water from nature and **driving untold numbers of plant and animal species to extinction**) is to have researchers and governments invest the time, effort and capital needed to identify and to prepare for production the plant genotypes that are most capable of maximizing CO2 benefits for important food crops. Rice, for example, is the third most important global food crop, accounting for 9.4% of global food production. Based upon data presented in the CO2 Science Plant Growth Database, the average growth response of rice to a 300-ppm increase in the air’s CO2 concentration is 35.7%. However, **data** obtained from De Costa et al. (2007), who studied the growth responses of 16 different rice genotypes, **revealed CO2-induced productivity increases ranging** from -7% **to +263%.** Therefore, **if countries learned to identify which genotypes provided the largest yield increases per unit of CO2 rise, and then grew those genotypes, it is quite possible that the world could collectively produce enough food to supply the needs of all of its inhabitants**. But since rising CO2 concentrations are considered by many people to be the primary cause of global warming, we are faced with a dilemma of major proportions. **If proposed regulations restricting anthropogenic CO2 emissions** (which are designed to remedy the potential global warming problem) **are enacted, they will greatly exacerbate future food problems by reducing the CO2-induced yield enhancements that are needed to supplement increases provided by advances in agricultural technology and expertise.** And as a result of such CO2 emissions regulations, **hundreds of millions of the world’s population will be subjected to hunger and malnutrition**. Even more troubling is the fact that **thousands would die daily as a result of health problems they likely would have survived had they received adequate food and nutrition**. About **the** **only** **option for avoiding the food crisis**, and its negative ramifications for humanity and nature alike, **is to allow the atmospheric CO2 concentration to continue to rise as predicted** (no CO2 emission restrictions), and then to learn to maximize those benefits through the growing of CO2-loving cultivars.

**food crisis outweighs warming—massive wars, turns biosphere**

Dr. Craig D. **Idso**, ESTIMATES OF GLOBAL FOOD PRODUCTION IN THE YEAR 2050: WILL WE PRODUCE ENOUGH TO ADEQUATELY FEED THE WORLD, Center for the Study of Carbon Dioxide and Global Change, 6—15—**11**, p. 31-32.

In light of the host of real-world research findings discussed in the body of this report, it should be evident to all that **the looming food shortage facing humanity** mere years to decades from now **is far more significant than the theoretical and largely unproven catastrophic climate- and weather-related projections of the world’s climate alarmists**. And it should also be clear that **the factor that figures most prominently in both scenarios is the air’s CO2 content**. The **theorists proclaim** that **we must drastically reduce anthropogenic CO2 emissions by whatever means possible**, including drastic government interventions in free-market enterprise systems. The realists suggest that **letting economic progress take its natural unimpeded course is the only way to enable the air’s CO2 content to reach a level that will provide the aerial fertilization effect of atmospheric CO2 enrichment that will be needed to provide the extra food production that will be required to forestall massive human starvation and all the social unrest and warfare that will** unavoidably **accompany it, as well as humanity’s decimation of what little yet remains of pristine nature, which will include the driving to extinction of untold numbers of both plant and animal species. Climate alarmists** totally **misuse the precautionary principle when they ignore the reality of the approaching** lack-of-**food**-induced **crisis that would decimate the entire biosphere, and when they claim** instead that **the catastrophic projections of their climate models are so horrendous that anthropogenic CO2 emissions must be reduced at all costs**. Such actions should not even be contemplated without first acknowledging the fact that **none of the catastrophic consequences of rising global temperatures have yet been conclusively documented, as well as the much greater likelihood of the horrendous global food crisis that would follow such actions.** The two potential futures must be weighed in the balance, and very carefully, before any such actions are taken.

**Co2 solves ice age--extinction**

David **Deming**, Associate Professor, Arts and Sciences, University of Oklahoma, “The Coming Ice Age,” AMERICAN THINKER, 5—13—**09**, [www.americanthinker.com/2009/05/the\_coming\_ice\_age.html](http://www.americanthinker.com/2009/05/the_coming_ice_age.html), accessed 5-27-11.

In northern Europe, the Little Ice Age kicked off with the Great Famine of 1315. Crops failed due to cold temperatures and incessant rain. Desperate and starving, parents ate their children, and people dug up corpses from graves for food. In jails, inmates instantly set upon new prisoners and ate them alive. The Great Famine was followed by the Black Death, the greatest disaster ever to hit the human race. One-third of the human race died; terror and anarchy prevailed. **Human civilization** as we know it **is only possible in a warm interglacial climate.** Short of a catastrophic asteroid impact, the greatest threat to the human race is the onset of another ice age. The oscillation between ice ages and interglacial periods is the dominant feature of Earth's climate for the last million years. But the computer models that predict significant global warming from carbon dioxide cannot reproduce these temperature changes. This failure to reproduce the most significant aspect of terrestrial climate reveals an incomplete understanding of the climate system, if not a nearly complete ignorance. Global warming predictions by meteorologists are based on speculative, untested, and poorly constrained computer models. But our knowledge of ice ages is based on a wide variety of reliable data, including cores from the Greenland and Antarctic ice sheets. In this case, it would be perspicacious to listen to the geologists, not the meteorologists. **By reducing our production of carbon dioxide, we risk hastening the advent of the next ice age.** Even more foolhardy and dangerous is the Obama administration's announcement that they may try to cool the planet through geoengineering. **Such a move** in the middle of a cooling trend **could provoke the irreversible onset of an ice age.** *It is not hyperbole to state that* **such a climatic change would mean the end of human civilization** *as we know it***. Earth's climate is controlled by the Sun**. In comparison, every other factor is trivial. The coldest part of the Little Ice Age during the latter half of the seventeenth century was marked by the nearly complete absence of sunspots. And the Sun now appears to be entering a new period of quiescence. August of 2008 was the first month since the year 1913 that no sunspots were observed. As I write, **the sun remains quiet. We are in a cooling trend.** The areal extent of global sea ice is above the twenty-year mean. We have heard much of the dangers of global warming due to carbon dioxide. But **the potential danger of any potential anthropogenic warming is trivial compared to the risk of entering a new ice age**. Public policy decisions should be based on a realistic appraisal that takes both climate scenarios into consideration.

**negative feedbacks check**

**NIPCC**, Nongovernment International Panel on Climate Change, CLIMATE CHANGE RECONSIDERED, Craig Idso, S. Fred Singer, Warren Anderson, J.Scott Armstrong, Dennis Avery, Franco Battaglia, Robert Carter, Piers Corbyn, Richard Courtney, Joseph d’Aleo, Don Easterbrook, Fred Goldberg, Vicent Gray, Williams Gray, Kesten Green, Kenneth Haapala, David Hagen, Richard Alan Keen, adhav Khandekar, William Kininmonth, Hans Labohm, Anthony Lupo, Howard Maccabee, M.Michael MOgil, Christopher Monckton, Lubos Motl, Stephen Murgatroyd, Nicola Scafetta, Harrison Schmitt, Tom Segalstad, George Taylor, Dick Thoenes, Anton Uriarte Gerd Weber, 20**09**, p. 3.

Chapter 2. Feedback Factors and Radiative Forcing • Scientific research suggests **the** model-derived **temperature sensitivity of the earth accepted by the IPCC is too large. Corrected feedbacks** in the climate system **could reduce climate sensitivity to values that are an order of magnitude smaller.** • **Scientists** may have **discovered a connection between cloud creation and sea surface temperature in the tropics that creates a “thermostat-like control” that automatically vents excess heat into space**. If confirmed, **this could totally compensate for the warming influence of all anthropogenic CO2 emissions** experienced to date, as well as all those that are **anticipated to occur in the future.** • **The IPCC dramatically underestimates the total cooling effect of aerosols. Studies have found** their **radiative effect is comparable to or larger than the temperature forcing caused by all the increase in greenhouse gas concentrations** recorded since pre-industrial times. • **Higher temperatures** are known to **increase emissions of** dimethyl sulfide (**DMS**) **from the world’s oceans, which increases the albedo of marine stratus clouds, which has a cooling effect**. • **Iodocompounds**—created by marine algae— **function as cloud condensation nuclei, which help create new clouds that reflect more incoming solar radiation back to space and thereby cool the planet.** • **As the air’s CO2** content—and possibly its temperature—**continues to rise, plants emit greater amounts of carbonyl sulfide gas, which eventually makes it way into the stratosphere**, **where** it **is transformed into solar-radiationreflecting sulfate aerosol particles, which have a cooling effect.** • **As CO2 enrichment enhances biological growth, atmospheric levels of biosols rise**, many of **which function as cloud condensation nuclei**. Increased **cloudiness diffuses light, which stimulates plant growth and transfers more fixed carbon into plant and soil storage reservoirs.** • Since agriculture accounts for almost half of nitrous oxide (N2O) emissions in some countries, there is concern that enhanced plant growth due to CO2 enrichment might increase the amount and warming effect of this greenhouse gas. But field **research shows** that **N2O emissions fall as CO2 concentrations** and temperatures **rise, indicating this is** actually **another negative climate feedback.** • **Methane** (CH4) **is a potent greenhouse gas**. An enhanced CO2 environment has been shown to have “neither positive nor negative consequences” on atmospheric methane concentrations. **Higher temperatures have been shown to result in reduced methane release from peatbeds**. Methane emissions from cattle have been reduced considerably by altering diet, immunization, and genetic selection.

**Ecosystems resilient to higher CO2**

**NIPCC 11** (Nongovernmental International Panel on Climate Change. Surviving the unprecedented climate change of the IPCC. 8 March 2011. http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html)

In a paper published in Systematics and Biodiversity, Willis et al. (2010) consider the IPCC (2007) "predicted climatic changes for the next century" -- i.e., their contentions that "global temperatures will increase by 2-4°C and possibly beyond, sea levels will rise (~1 m ± 0.5 m), and atmospheric CO2will increase by up to 1000 ppm" -- noting that it is "widely suggested that the magnitude and rate of these changes will result in many plants and animals going extinct," citing studies that suggest that "within the next century, over 35% of some biota will have gone extinct (Thomas et al., 2004; Solomon et al., 2007) and there will be extensive die-back of the tropical rainforest due to climate change (e.g. Huntingford et al., 2008)." On the other hand, they indicate that some **biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change** (e.g. Royer, 2008; Zachos et al., 2008), **and yet biotic communities have remained remarkably resilient** (Mayle and Power, 2008) **and in some cases thrived** (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records." Going on to do just that, **Willis et al. focus on "intervals in time in the fossil record when atmospheric CO**2 **concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present,"** **describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity**." And **what emerges** from those studies, as they describe it, "**is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another**." And, most importantly in this regard, they report "**there is very little evidence for broad-scale extinctions due to a warming world."** In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence **we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next centur**y," reiterating that "**the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate."**

**adaptation solves**

Indur **Goklany**, PhD., “Misled on Climate change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” POLICY STUDY n. 399, Reason Foundation, 12—**11**, 12.

**The** second **major reason why future adaptive capacity has been underestimated** (and the impacts of global warming systematically overestimated) **is that few impact studies consider secular technological change**.25 **Most assume that no new technologies will come on line**, although some do assume greater adoption of existing technologies with higher GDP per capita and, much less frequently, a modest generic improvement in productivity. **Such an assumption may have been appropriate during the Medieval Warm Period**, when the pace of technological change was slow, **but nowadays technological change is fast** (as indicated in Figures 1 through 5) **and**, arguably, **accelerating. It is unlikely that we will see a halt to technological change unless so-called precautionary policies are instituted that count the costs of technology but ignore its benefits, as some governments have already done for genetically modified crops and various pesticides.**

**their authors are hacks**

Dr. William **Happer**, “The Truth About Greenhouse Gases,” George C. Marshall Institute, 5—23—**11**, [www.marshall.org/article.php?id=953](http://www.marshall.org/article.php?id=953), accesse 6-28-11.

The management of most scientific societies has enthusiastically signed on to the global warming bandwagon. This is not surprising, since **governments, as well as many states and foundations, generously fund those who reinforce their desired outcomes under the cover of saving the planet. Certain private industries are** also **involved: those positioned to profit from enacted controls as well as financial institutions heavily invested in “green technologies” whose rationale disappears the moment global warming is widely understood to be a non-problem. There are known connections and movements of people involved in government policy, scientific societies, and private industry, all with the common thread of influencing the outcome of a set of programs and investments underpinned by the supposed threat of global warming.**

**No accidents, History proves**

Michael **Quinlan**, former top official in the British Ministry of Defence, 200**9** “Thinking about Nuclear Weapons: Principles, Problems, Prospects” p. 63-69

Deterrence is not possible without escalation risk; and its presence can point to no automatic policy conclusion save for those who espouse outright pacifism and accept its consequences. Accident and Miscalculation Ensuring the safety and security of nuclear weapons plainly needs to be taken most seriously. Detailed information is understandably not published, but such direct evidence as there is suggests that it always has been so taken in every possessor state, with the inevitable occasional failures to follow strict procedures dealt with rigorously. **Critics have** nevertheless from time to time **argued that the possibility of accident** involving nuclear weapons **is** so **substantial** that it must weigh heavily in the entire evaluation of whether war-prevention structures entailing their existence should be tolerated at all. Two sorts of scenario are usually in question. The first is that of a single grave event involving an unintended nuclear explosion—a technical disaster at a storage site, for example, Dr the accidental or unauthorized launch of a delivery system with a live nuclear warhead. The second is that of some event—perhaps such an explosion or launch, or some other mishap such as malfunction or misinterpretation of radar signals or computer systems—initiating a sequence of response and counter-response that culminated in a nuclear exchange which no one had truly intended. No event that is physically possible can be said to be of absolutely zero probability (just as at an opposite extreme **it is absurd to claim**, as has been heard from distinguished figures, **that nuclear-weapon use can be guaranteed to happen within some finite future span despite not having happened for over sixty years**). But human affairs cannot be managed to the standard of either zero or total probability. We have to assess levels between those theoretical limits and weigh their reality and implications against other factors, in security planning as in everyday life. There have certainly been, across the decades since 1945, many known accidents involving nuclear weapons, from transporters skidding off roads to bomber aircraft crashing with or accidentally dropping the weapons they carried (in past days when such carriage was a frequent feature of readiness arrangements----it no longer is). A few of these accidents may have released into the nearby environment highly toxic material. None however has entailed a nuclear detonation. Some commentators suggest that this reflects bizarrely good fortune amid such massive activity and deployment over so many years. A more rational deduction **from the facts of this long experience** would however be that **the probability** of any accident triggering a nuclear explosion **is extremely low**. It might be further noted that the **mechanisms needed to set off such an explosion are technically demanding**, and that in a large number of ways the past sixty years have seen extensive improvements in safety arrangements for both the design and the handling of weapons. It is undoubtedly possible to see respects in which, after the cold war, some of the factors bearing upon risk may be new or more adverse; but some are now plainly less so. **The years** which the world has come through entirely **without accidental** or unauthorized **detonation** have **included** early **decades in which** knowledge was sketchier, precautions were less developed, and **weapon designs were less ultra-safe** than they later be

came, as well as substantial periods in which weapon numbers were larger, deployments more widespread and diverse, movements more frequent, and several aspects of doctrine and readiness arrangements more tense. Similar considerations apply to the hypothesis of nuclear war being mistakenly triggered by false alarm. Critics again point to the fact, as it is understood, of numerous occasions **when initial steps in alert sequences** for US nuclear forces **were embarked upon**, or at least called for, **by, indicators mistaken or misconstrued. In none of these instances**, it is accepted, **did matters get at all near to** nuclear **launch**--extraordinary **good fortune** again, **critics** have **suggested. But the** rival and **more logical inference from hundreds of events stretching over sixty years** of experience presents itself once more: that **the probability of initial misinterpretation leading far towards mistaken launch is remote**. Precisely because any nuclear-weapon possessor recognizes the vast gravity of any launch, **release sequences have many steps, and human decision is repeatedly interposed** as well as capping the sequences. **To convey that because a first step was prompted the world** **somehow came close to accidental** nuclear **war is wild hyperbole**, rather like asserting, when a tennis champion has lost his opening service game, that he was nearly beaten in straight sets. **History** anyway **scarcely offers any ready example** of major war started by accident even before the nuclear revolution imposed an order-of-magnitude increase in caution. It was occasionally conjectured that nuclear war might be triggered by the real but accidental or unauthorized launch of a strategic nuclear-weapon delivery system in the direction of a potential adversary. No such launch is known to have occurred in over sixty years. The probability of it is therefore very low. But even if it did happen, the further hypothesis of it initiating a general nuclear exchange is far-fetched. It fails to consider the real situation of decision-makers as pages 63-4 have brought out. **The notion that cosmic holocaust might be mistakenly precipitated in this way belongs to science fiction**.

**No air pollution impact**

**Schwartz 6** Joel Schwartz is a visiting fellow at AEI and a Professor of Environmental Epidemiology at Harvard. "Getting Real on Air Pollution and Health," June 14, AEI, http://www.aei.org/article/energy-and-the-environment/contaminants/air/getting-real-on-air-pollution-and-health/

The EPA attributes well over 90 percent of the benefits of its clean air programs to improvements in human health. Thus, a key policy question is whether EPA's health-benefit claims are credible. **Even as public health authorities and environmental activists become more strident in raising health alarms, evidence continues to mount that air pollution at contemporary low levels is causing little or no harm, even in the most polluted areas of the country.¶**More sober estimates in the EPA's own technical analyses belie the scary claims it puts out for public consumption. Writing in the journal Environmental Health Perspectives, EPA scientists estimated that going from 2002 ozone levels, which were by far the highest of the past several years, to nationwide compliance with the stringent new federal eight-hour ozone standard would reduce respiratory-related hospital admissions and emergency room visits by no more than a few tenths of a percent.¶**Claims of an air pollution-asthma link by health experts have also been undermined by recent research.** While the prevalence of asthma has nearly doubled in America during the past 25 years, **air pollution of all kinds has sharply declinedaround the nation at the same time, making air pollution an implausible culprit.¶** Government-funded research by scientists from the University of Southern California supports this finding. The authors of the Children's Health Study reported that **children who grew up in areas with higher air pollution, including areas with the worst air pollution in the nation by far, had a lower risk of developing asthma**. The researchers also found that ozone had no effect on lung development, even though the study included areas that exceeded the federal ozone standard more than 100 days per year. And even in a community with uniquely high soot levels--more than twice the current federal health standard--soot was associated with only a 1 percent to 2 percent decline in lung capacity.¶**The most serious claim about air pollution is that it prematurely kills tens of thousands of Americans each year. This claim is based on small statistical correlations between pollution levels and risk of death. But correlation doesn't necessarily mean causation,** as demonstrated recently by a number of embarrassing reversals of conventional medical wisdom.¶**The air pollution-mortality claim deserves even greater skepticism.** First, it is based on the same unreliable correlation methods that have led medical authorities astray in other areas. Second, even though **pollution** is weakly correlated with higher premature mortality on average, it **seems to protect against death in about one-third of cities.How could pollution kill people in some cities and save them in others?** More likely, both results are chance correlations rather than real effects. Third, **in laboratory experiments, researchers have been unable to kill animals by exposing them to air pollution at levels many times greater than ever occur in the United States.**

**water scarcity spurs coop and adaptation checks**

**Katz, ’11** [David Katz is Director of the Akirov Institute for Business and Environment at Tel Aviv University. He is also Adjunct Lecturer at Tel Aviv University’s Recanati School of Management and Porter School of Environmental Studies where he teaches courses in environmental and resource economics and corporate environmental strategy. “Hydro-Political Hyperbole:”. Global Environmental Politics, Volume 11, Number 1, February 2011. <http://muse.jhu.edu.proxy.library.emory.edu/journals/global_environmental_politics/v011/11.1.katz.html>]

A number critiques have been leveled against both the theory and the empirical evidence behind the water wars hypothesis. **One critique of** the environmental security literature, of which much of the published **material on water wars** is guilty, **is that warnings and threats of future violence are often considered as evidence**.28 Statements from the 1980s that the next war in the Middle East will be over water have already proven false. **Research has shown**, however, **that even the more general predictions of imminent water wars that are based on comments by officials may be suspect**. **Leng**, for instance, **found no correlation between the frequency of threats**of war **and**the onset of **war**.29 Examining conflict and cooperation over water resources, Yoffe and colleagues noted over 400 incidents of water-related verbal exchanges by political figures between 1948 and 1999 that were conflictual in nature, but only 37 instances of violent conflict of varying levels of intensity. Thirty of these were from the Middle East, none were [End Page 15] more recent than 1970, none were all-out wars, and in none was water the central cause of conflict.30 **Proponents of water war** scenariosoften **premise their** dire **conclusions on the fact that water is essential for life** and non-substitutable.31 **Yet water for basic needs represents a small share of total water use, even in arid countries**.32 Economists and others point out that **over 80 percent of world freshwater withdrawals are for the agricultural sector, a relatively low-value use and one in which large gains in efficiency could be made**by changes in irrigation techniques and choice of crops. Thus, economic critiques of the water war hypothesis stress **that** **the value of water that would be gained from military conflict is unlikely to outweigh the** economic**costs** of military preparation and battle, much less the loss of life.33 **Some authors have even questioned the empirical basis for the conclusion that freshwater is increasingly scarce**,34 an assumption on which the water war hypothesis relies. Such a “cornucopian” view claims that **people adapt to scarcity through improvements in technology, pricing, and efficiency—rendering water less scarce, not more so.** Perhaps the strongest case against the likelihood of water wars is the lack of empirical evidence of precedents. **Wolf found only one documented case of war explicitly over water, and this took place over 4500 years ago**.35 **Moreover, he could document only seven cases of acute conflict over water**. Yoffe and colleagues also find that armed conflict over water resources has been uncommon.36 They found that **cooperation was much more common than conflict**, both globally and in all world regions except the Middle East/North Africa. This pattern may explain why only a limited number of case studies of water conflict are presented in the water wars literature. **Analysts have criticized environmental security arguments that are based on case studies because such works tend to have no variation in the dependent variable**.37 Many large sample statistical studies have attempted to address such shortcomings, however, in several cases these studies too have come under fire. For instance, **a number of** large-sample statistical **studies find correlations between water**-related **variables and conflict**, however, **few**, if any, **provide convincing support for causal relationships**. Moreover, **several studies found that water availability had no impact on the likelihood of either domestic or international conflict**,38**including at least one study that attempted to replicate earlier studies** [End Page 16] **that claimed to have found such correlations**.39 **Moreover, the results of several studies that do find correlations between water and conflict are either not robust or are contrasted by other findings**. For instance, **Raleigh and Urdal find that the statistical significance of water scarcity variables is highly dependent on one or two observations**, leading them to conclude that **actual effects of water scarcity “areweak, negligible or insignificant**.”40 Jensen and Gleditsch find that the results of Miguel and colleagues are less robust when using a recoding of the original dataset.41 Gleditsch and colleagues found that shared basins do predict an increased propensity for conflict, but found no correlation between conflict and drought, the number of river crossings, or the share of the basin upstream, leading them to state that “support for a scarcity theory of water conflict is somewhat ambiguous.”42

**burnout**

The **Independent** **3** [UK “Future Tense: Is Mankind Doomed?”, http://www.commondreams.org/headlines03/0725-04.htm 7/25/03]

Maybe - though plenty of experienced graduate students could already have a stab. But nature knows that **infectious diseases are very hard to get right**. Only HIV/Aids has 100 per cent mortality, and takes a long time to achieve it. By definition, **lethal diseases kill their host. If they kill too quickly, they aren't passed on; if too slowly, we can detect them and isolate the infected. Any mutant smallpox or other handmade germ would certainly be too deadly or too mild**. And even **Sars killed fewer people worldwide than die on Britain's roads in a week.** **As scares go, this one is** ideal - **overblown and unrealistic**.

**Ilaw fails --- states will either inevitably cooperate, or ilaw can’t convince them to**

Eric A. **Posner 9**, Kirkland and Ellis Professor of Law at the University of Chicago Law School. The Perils of Global Legalism, 34-6

34 ¶ Most **global legalists** acknowledge that international law is created and enforced by states. They **believe that states are willing to expand international law** along legalistic lines **because states’ long-term interests lie in solving global collective action problems**. In the absence of a world govern- ment or other forms of integration, international law seems like the only way for states to solve these problems. **The great difﬁculty** for the global legalist **is explaining why, if states create** and maintain **international law**, **they will also not break it** **when they prefer to free ride. In the absence of an enforcement mechanism, what ensures that states** that create law and legal institutions that are supposed to solve global collective action prob- lems **will not ignore them?** ¶For the rational choice theorist, the answer is plain: **states cannot solve global collective action problems by creating institutions that themselves depend on global collective action.** **This is not to say that international law is not possible** at all. Certainly, states can cooperate by threatening to retaliate against cheaters, and where international problems are matters of coordination rather than conﬂ ict, international law can go far, indeed.7 **But if states** (or the individuals who control states) **cannot create a global government** or q uasi-g overnment institutions, **then it seems unlikely that they can solve,** in spontaneous fashion, **the types of problems that, at the national level, require the action of governments**. ¶ Global legalists are not enthusiasts for rational choice theory and have ¶ 35¶ grappled with this problem in other ways.8 I will criticize their attempts in chapter 3. Here I want to focus on **one approach**, which **is to insist that just as** **individuals can be loyal to government,** **so too can** individuals (and their **governments**) **be loyal to international law** and be willing to defer to its requirements even when self-i nterest does not strictly demand that they do so. **International law has force because (or to the extent that) it is legitimate**.9 ¶ What makes governance or law legitimate? This is a complicated ques- tion best left to philosophers, but a simple and adequate point for present purposes is that **no system of law will be perceived as legitimate unless those governed by that law believe that the law** does good — **serves their interests** or respects and enforces their values. Perhaps more is required than this — such as political participation, for example — but we can treat the ﬁ rst condition as necessary if not sufﬁ cient. **If individuals believe that a system of law does not advance their interests** and respect their values, **that** instead **it** **advances the interests of others or is dysfunctional** and helps no one at all, **they will not believe that the law is legitimate and will not voluntarily submit to its authority. ¶** Unfortunately, **international law does not satisfy this condition**, mainly **because of its institutional weaknesses**; but of course, **its institutional weaknesses stem from the state system — states are not willing to tolerate powerful international agencies. In classic international law, states enjoy sovereign equality, which means that international law cannot be created unless all agree**, and that international law binds all states equally. What this means is that if nearly everyone in the world agrees that some global legal instrument would be beneﬁ cial (**a climate treaty**, the UN charter), it **can be blocked by a tiny country** like Iceland (population 300,000) **or a dictatorship** like North Korea. **What is the attraction of a system that puts a tiny country like Iceland on equal footing with China?** When then at- torney general Robert Jackson tried to justify American aid for Britain at the onset of World War II on the grounds that the Nazi Germany was the aggressor, international lawyers complained that the United States could not claim neutrality while providing aid to a belligerent — there was no such thing as an aggressor in international law.10 Nazi Germany had not agreed to such a rule of international law; therefore, such a rule could not exist. Only through the destruction of Nazi Germany could international law be changed; East and West Germany could reenter international so-¶ 36¶ ciety only on other people’s terms. How could such a system be perceived to be legitimate? ¶ There is, of course, a reason why international law works in this fash- ion. **Because no world government can compel states to comply with inter- national law, states will comply with international law only when doing so is in their interest.** In this way, international law always depends on state consent. So international law must take states as they are, which means that little states, big states, good states, and bad states, all exist on a plane of equality. ¶

### Adv1

**US action irrelevant to international norms on drones – other tech proves**

**Etzioni 13** – professor of IR @ George Washington (Amitai, “The Great Drone Debate”, March/April, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>, CMR)

Other **critics contend** that **by the U**nited **S**tates ¶ **using drones, it leads other countries into making and** ¶ **using them.** For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK ¶ and author of a book about drones argues that, “The ¶ proliferation of drones should evoke reﬂection on the ¶ precedent that the United States is setting by killing ¶ anyone it wants, anywhere it wants, on the basis of ¶ secret information. Other nations and non-state entities are watching—and are bound to start acting in ¶ a similar fashion.”60 Indeed scores of countries are ¶ now manufacturing or purchasing drones. There can ¶ be little doubt that the fact that drones have served ¶ the United States well has helped to popularize them. ¶ However, **it does not follow that U**nited **S**tates ¶ **should not have employed drones in the hope that** ¶ **such a show of restraint would deter others**. First ¶ of all, this would have meant that either the United ¶ States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either ¶ roam and rest freely—or it would have had to use ¶ bombs that would have caused much greater collateral damage. ¶ Further, **the record shows** that **even when the** ¶ **U**nited **S**tates **did not develop a particular weapon,** ¶ **others did.** Thus, **China has taken the lead in** the ¶ development of **anti-ship missiles and** seemingly ¶ **cyber weapons** as well. One must keep in mind ¶ that **the international environment is** a **hostile** ¶ one. **Countries**—and especially non-state actors—¶ most of the time **do not play by** some set of **selfconstraining rules**. Rather, **they** tend **to employ** ¶ **whatever weapons they can obtain that will further** ¶ **their interests.** The United States correctly does ¶ not assume that it can rely on some non-existent ¶ implicit gentleman’s agreements that call for the ¶ avoidance of new military technology by nation X ¶ or terrorist group Y—if the United States refrains ¶ from employing that technology¶ I am not arguing that there are no natural norms ¶ that restrain behavior. There are certainly some ¶ that exist, particularly in situations where all parties beneﬁt from the norms (e.g., the granting of ¶ diplomatic immunity) or where particularly horrifying weapons are involved (e.g., weapons of ¶ mass destruction). However **drones are but one** ¶ **step**—following bombers and missiles—**in the** ¶ **development of distant battleﬁeld tech**nologies. ¶ (Robotic soldiers—or future ﬁghting machines—¶ are next in line). **In such circumstances, the role** ¶ **of norms is much more limited**.

**No drones arms race – multiple checks**

- narrow application – diplomatic and political costs – state defenses

**Singh 12** – researcher at the Center for a New American Security (Joseph, “Betting Against a Drone Arms Race”, 8/13, <http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2TxEkUI37>, CMR)

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones.¶ As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, **the narrow applications of** current **drone tech**nology **coupled with** what we know about **state behavior** in the international system **lend no credence to** these **ominous warnings**.¶ Indeed, critics seem overly-focused on the domestic implications of drone use.¶ In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.”¶ Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, **there remain** equally **serious** **diplomatic and political** **costs** that emanate from **beyond a fickle electorate, which** will **prevent** the likes of the **increased drone aggression** predicted by both Ignatieff and Sharkey.¶ Most recently, **the** serious **diplomatic scuffle instigated by Syria**’s **downing a Turkish reconnaissance plane** in June **illustrated** **the** very serious **risks** of operating any aircraft in foreign territory.¶ **States** **launching drones must still weigh** the **diplomatic and political costs** of their actions, **which make the calculation surrounding their use no fundamentally different** to any other aerial engagement.¶ **This** recent bout also **illustrated a salient point** regarding drone technology: **most states maintain** at least minimal air **defenses that can quickly detect and take down drones**, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active.¶ What the U.S. also learned, however, was that **drones constitute an effective military tool in an extremely narrow strategic context.** They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations against a technologically unsophisticated enemy.¶ In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region.

**Realist theory disproves the advantage**

JM **Greico**- professor of political science at Duke University, **1993** “Neorealism and Neoliberalism: The Contemporary Debate”¶ edited by David Allen Baldwin, chapter entitled “Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism” p. 116-118

**Realism** has **dominated international relations theory** at least since World War II.' For realists, international **anarchy fosters competition** and conflict among states **and inhibits** their **willingness to cooperate** **even when** **they share common interests**. Realist theory also argues that **international institutions are unable to mitigate anarchy's constraining effects on interstate cooperation**. Realism, then, presents **a pessimistic analysis of the prospects for international cooperation and** of **the** **capabilities of** international **institutions**.2¶ The major challenger to realism has been what I shall call liberal institutionalism. Prior to the current decade, it appeared in three successive presentations—functionalist integration theory in the 1940s and early 1950s, neofunctionalist regional integration theory in the 1950s and 1960s, and interdependence theory in the 1970s.3 All three versions rejected realism's propositions about states and its gloomy understanding of world politics. Most significantly, they argued that international institutions can help states cooperate. Thus, compared to realism, these earlier versions of liberal institutionalism offered a more hopeful prognosis for international cooperation and a more optimistic assessment of the capacity of institutions to help states achieve it.¶ **International tensions and conflicts during the 1970s undermined liberal institutionalism and reconfirmed realism in large measure**. Yet that difficult decade did not witness a collapse of the international system, and in the light of continuing modest levels of interstate cooperation, a new liberal institutionalist challenge to realism came forward during the early 1980s (Stein 1983:115-40; Axelrod 1984; Keohane 1984; Lipson 1984; Axelrod and Keohane 1985). What is distinctive about this newest liberal institutionalism is its claim that it accepts a number of core realist propositions, including, apparently, the realist argument that anarchy impedes the achievement of international cooperation. However, the core liberal arguments—that realism overemphasizes conflict and underestimates the capacities of international institutions to promote cooperation—remain firmly intact. The new liberal institutionalists basically argue that even if the realists are correct in believing that anarchy constrains the willingness of states to cooperate, states nevertheless can work together and can do so especially with the assistance of international institutions.¶ This point is crucial for students of international relations. If neo-liberal institutionalists are correct, then they have dealt realism a major blow while providing ine intellectual justification for treating their own approach, and the tradition from which it emerges, as the most effective for understanding world politics.¶ This essay's principal argument is that, in fact, neoliberal **institutionalism misconstrues the realist analysis of international anarchy and** therefore **it misunderstands the realist analysis of the impact of anarchy on the preferences and actions of states. Indeed, the new liberal institutionalism fails to address a major constraint on the willingness of states to cooperate which is generated by international anarchy and which is identified by realism.** As a result, the new theory's **optimism about international cooperation is likely to be proven wrong.¶** Neoliberalism's claims about cooperation are based on its belief that states are atomistic actors. It argues that states seek to maximize their individual absolute gains and are indifferent to the gains achieved by others. Cheating, the new theory suggests, is the greatest impediment to cooperation among rationally egoistic states, but international institutions, the new theory also suggests, can help states overcome this barrier to joint action. Realists understand that states seek absolute gains and worry about compliance. However, realists¶ find that **states are positional, not atomistic**, in character, and **therefore** realists argue that, in addition to concerns about cheating, **states in cooperative arrangements** also **worry that their partners might gain more from cooperation that they do**. For realists, **a state will focus both on its absolute and relative gains from cooperation**, and a state that is satisfied with a partner's compliance in a joint arrangement might nevertheless exit from it because the partner is achieving relatively greater gains. Realism, then, finds that **there are** at least **two major barriers to international cooperation**: **state concerns about cheating and state concerns about relative achievements of gains.** Neoliberal **institutionalism pays attention exclusively to the former** **and is unable to identify, analyze, or account for the latter.¶** Realism's identification of the relative gains problem for cooperation is based on its insight that **states in anarchy fear for their survival as independent actors**. According to realists, states worry that **today's friend may be tomorrow's enemy** in war, and fear that achievements of joint gains that advantage a friend in the present might produce a more dangerous potential foe in the future. As a result, **states must give serious attention to the gains of partners.** Neoliber-als fail to consider the threat of war arising from international anarchy, and this allows them to ignore the matter of relative gains and to assume that states only desire absolute gains. Yet in doing so, they fail to identify a major source of state inhibitions about international cooperation.¶ In sum, I suggest that **realism**, its emphasis on conflict and competition notwithstanding, **offers a more complete understanding of the problem of international cooperation than does its latest liberal challenger**. If that is true, then **realism is still the most powerful theory of international politics.**

**drones make conflict less likely**

**Goure, 12**

[Daniel, vice president of the Lexington Institute, Drones and the Changing Nature of Warfare: Hold the Presses!, CATO Unbound, January 13, 2012, <http://www.cato-unbound.org/2012/01/13/daniel-goure/drones-changing-nature-warfare-hold-presses>, CMR] gender edited

Has the accelerated use of drones opened a new chapter in the history of warfare, as David Cortright asserts? If so, what is the title of that chapter? It certainly is not “Drones Make War More Likely, Indiscriminate or Bloodier.” **As** recent landmark **studies by Goldstein and Pinker clearly document, societal violence** in general and armed conflict in particular **are on the decline**.[1] The fact that we live in the historical shadow of the air raids on Dresden and Tokyo but are focused on a few hundred strikes by unmanned aerial systems in Pakistan underscores this dramatic change in the way air power is employed today. Drones are not new. The V-1 was a drone, but lacked a man-in-the-loop and precision guidance capabilities. Modern drones emerged from the overall revolution in precision navigation and networked communications which began more than two decades ago. This revolution centered on improvements in technologies for position location, remote sensing, automated flight controls, computer-based target designation, high bandwidth communications, high capacity computing and smart fusing. These technologies were combined to provide a capability for long-range precision strikes, as demonstrated in the first Gulf War. Most often this capability required both a platform/launcher and a “smart” weapon such as a laser-guided bomb or Joint Direct Attack Munition that would be flown to a release point, then fly to a specific target based either on laser illumination or pre-programmed GPS coordinates. Cruise missiles, which have been widely proliferated, are essentially drones. Modern drones provide many of the best features of both cruise missiles and manned aircraft. Most significantly, they provide the tactical and operational flexibility of manned platforms with the reduced risk to personnel associated with cruise missiles. Unlike the former, they allow for man-in-the-loop control and vehicle recovery. Unlike the latter, they can operate at altitudes and in environments unsuited to manned systems and, in some cases, for extended periods of time. Despite the proliferation of drones, particularly by the United States, at best it can be argued that the proliferation of unmanned aerial systems (UASs) is changing tactics, particularly with respect to operations on land. The predominant mission of drones today is to collect information, primarily electro-optical data in the form of pictures and full motion video. The overwhelming majority of drone flying hours are conducted by systems such as Aerovironment’s Wasp, Puma, and Raven; Insitu’s ScanEagle; and Textron’s Shadow for the purpose of providing overwatch for maneuvering Army and Marine Corps units. Even the vaunted Predator, a variant of which, the MQ-9 Reaper, is the platform employed for armed strikes, is predominantly employed for intelligence, surveillance, and reconnaissance missions. The larger systems such as Northrop Grumman’s Global Hawk and Lockheed Martin’s stealthy RQ-170 Sentinel are intended solely to gather intelligence. Armed drones serve a niche function. They are useful in situations where real-time tactical intelligence is required in order to launch a weapon and the operating environment is extremely benign. Because they can loiter in the area of a suspected target, waiting for positive identification and the proper time to strike with the least possibility of inflicting collateral damage, they are far less lethal than any other aerial weapons system. **Attempts to connect an increased tendency to use force are supported neither by the evidence nor by logic.** The **frequency and intensity** of conflicts **has declined even as the ability** to conduct remote combat **has increased exponentially.** There were only a handful of drones available to the U.S. military when Operations Enduring Freedom and Iraqi Freedom began. The lack of unmanned systems appears to have posed no obstacle to the decision to initiate either operation. **It is difficult to accord any** serious **influence over the conduct of air operations** in past or current conflicts **to the presence of armed drones.** In the era before drones, the U.S. imposed ten year long no-fly zones over northern and southern Iraq. In addition, the number of drone sorties in total is but a tiny fraction of all aerial sorties. Armed drone sorties constitute only a small fraction of total drone missions. Cortright notes that since 2009 there have been 239 drone strikes into Pakistan. However, for the month of January 2011, Coalition forces in Afghanistan flew 387 sorties in which guns were fired or munitions expended.[2] These statistics suggest a clear preference on the part of the military for manned aerial systems and not drones in the conduct of tactical air operations. Cortright also reports that 145 drone strikes were conducted during Operation Odyssey Dawn—the liberation of Libya. Actually this is an incorrect statement. While drones were used over Libya these were not armed flights, hence they were sorties and not strikes. But this is good example of the breathless quality of much of the analysis today of the implications of drones for warfare. Look at the numbers. **The U.S.** alone **conducted some 3,500 sorties during Operation Odyssey Dawn.** So **drones amounted to 4% of the total.** By the way, the United States and United Kingdom also launched 228 Tomahawk cruise missiles during this operation, 112 on the first night of the conflict. If we are to accord to weapon systems influence over the decision to use force then in the case of Libya, **precedence must be given based simply on the number of sorties conducted to cruise missiles**, aerial refueling tankers, tactical fighters, and even cargo planes before we come to the little-used drone. **The availability of un[staffed]**manned **aerial systems in no way makes conflict more likely** or more brutal. Quite the opposite, in fact, seems to be the case. The presumption that were it not for the availability of drones, the U.S. would refrain from conducting military operations against terrorists based in Pakistan is highly dubious. We have an example of an alternative military option: Operation Enduring Freedom. **As** Joshua **Goldstein pointed out in a recent article, the use of armed drones in Pakistan may have prevented the use of far bloodier means.** “Armed drones now attack targets that in the past would have required an invasion with thousands of heavily armed troops, displacing huge numbers of civilians and destroying valuable property along the way.”[3] According to Robert Woodward’s reporting on President Obama’s decision to deploy additional forces to Afghanistan in 2009, a number of senior advisors proposed a lower-cost, smaller deployment based on increased use of special operations forces and unmanned aerial vehicles. I might go even farther than Goldstein and argue that **Cortright should advocate** the greater use of **drones**, armed and otherwise, precisely **due to his interest in reducing the frequency, intensity, and costs of conflicts**. Just as dash cameras in police cars and cell phone cameras have led to a decrease in police brutality and the ability to bring those who violate procedures to account, the electro-optical sensors on drones can be used to increase oversight over military forces in the field. In fact, cameras can reduce what Cortright calls “the psychological distance that separates the launching of a strike from its bloody impact.” It can also help reduce the alleged isolation of the American people from the use of force in their name. Unfortunately in view of its title, the primary focus of Cortright’s article is not on drones and warfare. Rather, it centers on the subset of the role of drones in current counterterrorism operations. A number of the issues he raises are frankly much more relevant to the rather murky legal and operational circumstances surrounding the global campaign against al Qaeda. Cortright is closer to the mark when, as the title of his article suggests, he connects the nature of drones, notably the lack of a person in the cockpit, to the sense that both the George W. Bush and, most particularly, the Obama Administration saw such systems as supporting if not promoting a “license to kill.” Critics of the use of drones against unlawful combatants in Pakistan and elsewhere would be on firmer ground by connecting the disembodied features of “Nintendo warfare” to our seeming tolerance for the weakening of legal safeguards for criminal terrorists. In conclusion, I would suggest that there is nothing in the current employment of drones or in plans for future unmanned aerial systems that poses the kinds of dangers suggested by Mr. Cortright. They will not make war easier or cheaper. **There is no evidence that armed drones have reduced the political inhibitions against the use of deadly force.** The use of drones in no way threatens to weaken the moral presumption against the inappropriate or excessive use of force that is at the heart of the just war doctrine—the emphasis is mine, but the qualifiers have always belonged to just war theory. **Mr. Cortright’s problem is not with drones but the policies** of those who employ them. I almost hate to say it, but we should remember that drones don’t kill terrorists, governments do.

#### No internal link—drones wouldn’t change the calculus vis a vis nuclear weapons any more than other currently existing weapons

**Miscalc is always possible**

**Barash and Webel**, Professor of Psychology at the University of Washington, and lecturer at Berkeley with a multidisciplinary PhD in Political Science, Philosophy and Psychology, 20**09** (David P. and Charles P., Peace and Conflict Studies, 2nd edition, pp.22-23)

In the age of nuclear and biochemical weapons, some people claim that the destructiveness of these devices has made war obsolete. It is interesting to note, however, that this suggestion is not unique to contemporary weapons of mass destruction. Throughout history, people have regularly claimed that the latest advances in weaponry, by their very deadliness, will somehow prevent war. And then comes the next one. (This brings to mind Mark Twain’s comment: “It is easy to stop smoking. I’ve done it many times.”) Following the invention of the bayonet, for example, an English editor wrote in 1715 that “perhaps Heaven hath in Judgment inflicted the Cruelty of this invention on purpose to fright Men into Amity and Peace, and into an Abhorrence of the Tumult and Inhumanity of War.” Similarly, Alfred Nobel hoped that his new invention, dynamite, would make war impossible. In 1910, an Englishman, Norman Angell, wrote a best-selling book, The Great Illusion, in which he argued that because of the economic interconnectedness of nations, as well as the increased destructiveness of modern military forces, war had finally become impossible. The “great illusion” was that no one could rationally conceive of or wage war in the 20th century; ironically, World War I began just 3 years after the publication of Angell’s book. And in that conflict, the invention of the machine gun made neither people nor war obsolete. Rather, it led to the deaths of hundreds of thousands, often in just a single battle, such as the Battle of the Somme. Since the dawn of the nuclear age in 1945, some observers of the global military scene have once again suggested that since war has become unacceptably destructive—to a would-be aggressor and even to a supposed “victor”—the likelihood of war has actually decreased. Although this line of reasoning may appear somewhat comforting, it is also seriously flawed. Let us grant that nuclear war, because of its potential for global annihilation, is in a sense its own deterrent. States possessing nuclear weapons (especially the major superpowers) may well be very cautious in any conflict with other nuclear weapons states. But at the same time, theories of mutual nuclear deterrence seem to have produced the expectation that because of the seriousness of nuclear war, each side can count on the other to refrain from anything resembling a nuclear provocation, which in turn makes the world yet more “safe for conventional war.” In addition, **there is the great danger that in a nuclear confrontation, each side will presume that the other will be deterred** by the prospect of annihilation **and, therefore, expect the other to back down, while remaining determined to stand firm** itself. Moreover, **nuclear weapons carry with them an inherent ambiguity: Since the consequences of using them are so extreme, the threat to do so lacks credibility.** As a result, although technological “progress” in war making has undeniably made war—especially nuclear war—horrifically destructive, it remains uncertain whether such developments have actually made war any less likely. In fact, it may well be true that **a nuclear conflict,** detonation, or accident is **more, n**ot less, **likely in** this century than in the previous one. This is **because of the increased likelihood of “accidental”** local (or *theater*) **nuclear wars, as well as the likely proliferation of small nuclear devices** (possibly deliverable in suitcases) and of “rogue states” and “terrorists” seeking to acquire them. Perhaps most disturbing of all, the fact remains that **human beings, including decision makers, are influenced by many things beyond** a cool, **rational calculation** of their perceived best interests. **Wars have been initiated for** many reasons, often including **mistaken judgment or faulty information.**

**Never in the history of human warfare has an effective weapon been invented and then allowed to rust without at some time being used**.

## 2NC

### T OV 2NC

#### Bidirectionality – Absent prohibition they can create conditions that functionally increase authority [TK authority isn’t everywhere now- some things are not ok- they make them all OK]

Posner 12 (Eric, University of Chicago Law, “Deference to the Executive in the United States After September 11: Congress, the Courts, and the Office of Legal Counsel”, <http://ericposner.com/DEFERENCE%20TO%20THE%20EXECUTIVE.pdf>)

To see why, consider an example in which the President must choose an action that lies on a continuum, such as electronic surveillance. At one extreme, the President can engage in actions that are clearly lawful—for example, spying on criminal suspects after obtaining warrants from judges. At the other extreme, the President can engage in actions that are clearly unlawful—for example, spying on political opponents. OLC opinions will not affect Congress's or the public's reaction to either the obviously lawful or the obviously unlawful actions. But then there are middle cases. Consider Policy L, which is just barely legal, and Policy I, which is just barely illegal. The President would like to pursue Policy L but fears that Congress and others will mistakenly believe that Policy L is illegal. As a result, political opposition to Policy L will be greater than it would be otherwise. In such a case, a favorable advisory opinion from a neutral legal body that has credibility with Congress will help the President.\* OLC approval of Policy L would cause political opposition (to the extent that it is based on the mistaken belief that Policy L is unlawful) to melt away. Thus, the OLC enables the President to engage in Policy L, when without OLC participation that might be impossible. True, the OLC will not enable the President to engage in Policy I, assuming OLC is neutral. Indeed, OLC's negative reaction to Policy / might stiffen Congress's resistance. Nevertheless, the President will use the OLC only because he believes that on average, the OL C will strengthen his hand. An analogy to contract law might be illuminating. People enter contracts because they enable them to do things ex ante by imposing constraints on them ex post. For example, a debtor can borrow money from a creditor only because a court will force the debtor to repay the money ex post. It would be strange to say that contract law imposes "constraints" on people because of ex post enforcement. In fact, contract law enables people to do things that they could not otherwise do—it extends their power. If it did not, people would not enter contracts.

### A2 “WM” 2NC

#### “war powers authority” is the president’s discretion to launch an attack – ex post doesn’t do that because the president maintains the decision power – only ex ante is topical

Vladeck 13 (Steve, Professor of Law and the Associate Dean for Scholarship – American University Washington College of Law, JD – Yale Law School, Senior Editor – Journal of National Security Law & Policy, “Why a “Drone Court” Won’t Work–But (Nominal) Damages Might…,” Lawfare Blog, 2-10, http://www.lawfareblog.com/2013/02/why-a-drone-court-wont-work/)

II. Drone Courts and the Separation of Powers

In my view, the adversity issue is the deepest legal flaw in “drone court” proposals. But the idea of an ex ante judicial process for signing off on targeted killing operations may also raise some serious separation of powers concerns insofar as such review could directly interfere with the Executive’s ability to carry out ongoing military operations… First, and most significantly, even though I am not a particularly strong defender of unilateral (and indefeasible) presidential war powers, I do think that, if the Constitution protects any such authority on the part of the President (another big “if”), it includes at least some discretion when it comes to the “defensive” war power, i.e., the President’s power to use military force to defend U.S. persons and territory, whether as part of an ongoing international or non-international armed conflict or not. And although the Constitution certainly constrains how the President may use that power, it’s a different issue altogether to suggest that the Constitution might forbid him for acting at all without prior judicial approval–especially in cases where the President otherwise would have the power to use lethal force. This ties together with the related point of just how difficult it would be to actually have meaningful ex ante review in a context in which time is so often of the essence. If, as I have to think is true, many of the opportunities for these kinds of operations are fleeting–and often open and close within a short window–then a requirement of judicial review in all cases might actually prevent the government from otherwise carrying out authority that most would agree it has (at least in the appropriate circumstances). This possibility is exactly why FISA itself was enacted with a pair of emergency provisions (one for specific emergencies; one for the beginning of a declared war), and comparable emergency exceptions in this context would almost necessarily swallow the rule. Indeed, the narrower a definition of imminence that we accept, the more this becomes a problem, since the time frame in which the government could simultaneously demonstrate that a target (1) poses such a threat to the United States; and (2) cannot be captured through less lethal measures will necessarily be a vanishing one. Even if judicial review were possible in that context, it’s hard to imagine that it would produce wise, just, or remotely reliable decisions.

#### judicial review doesn’t restrict authority

Michael H. Gilbert, attorney and Lt. Col., USAF, “The Military and the Federal Judiciary: An Unexplored Part of the Civil-Military Relations Triangle,” USAFA JOURNAL OF LEGAL STUDIES v. 8, 1998, LN.

The judiciary can perform the critical function of judicial review of cases involving the military without unconstitutionally impinging upon the authority of Congress and the President. In matters of policy concerning the conduct or preparation of war, courts can cautiously examine the facts to determine the propriety of their review. The greater the nexus to national security and to the conduct of purely military affairs, the greater the hesitancy courts should exercise in their review. In today's military, which is increasingly used for actions other than military operations, the concern with harming good order and discipline is less material. By interpreting the framers' intent to grant virtually exclusive, plenary control of the military to the Congress, which regulates and maintains the armed forces, and to the President, who is the Commander-in-Chief of the armed forces, the Supreme Court removes the judiciary from the issue of civil-military relations. Entrusting the other two branches of the government to lawfully care for the military results in strengthening the authority of civilian control by two branches of Government but only at the cost of removing civilian control which should be exercised by the courts.

#### Ex-post review only determines whether particular targeted killings exceeded authority the government already had---that doesn’t affect the legality of targeted killings

Steve Vladeck 13, professor of law and the associate dean for scholarship at American University Washington College of Law, 2/5/13, “What’s Really Wrong With the Targeted Killing White Paper,” <http://www.lawfareblog.com/2013/02/whats-really-wrong-with-the-targeted-killing-white-paper/>

Many of us wondered, at the time, just where this came from–since it’s hard to imagine what due process could be without at least some judicial oversight. On this point, the white paper again isn’t very helpful. The sum total of its analysis is Section II.C, on page 10, which provides that:

[U]nder the circumstances described in this paper, there exists no appropriate judicial forum to evaluate these constitutional considerations. It is well established that “[m]atters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention,” because such matters “frequently turn on standards that defy the judicial application,” or “involve the exercise of a discretion demonstrably committed to the executive or legislature.” Were a court to intervene here, it might be required inappropriately to issue an ex ante command to the President and officials responsible for operations with respect to their specific tactical judgment to mount a potential lethal operation against a senior operational leader of al-Qa’ida or its associated forces. And judicial enforcement of such orders would require the Court to supervise inherently predictive judgments by the President and his national security advisors as to when and how to use force against a member of an enemy force against which Congress has authorized the use of force.

There are two enormous problems with this reasoning:

First, many of us who argue for at least some judicial review in this context specifically don’t argue for ex ante review for the precise reasons the white paper suggests. Instead, we argue for ex post review–in the form of damages actions after the fact, in which liability would only attach if the government both (1) exceeded its authority; and (2) did so in a way that violated clearly established law. Whatever else might be said about such damages suits, they simply don’t raise the interference concerns articulated in the white paper, and so one would have expected some distinct explanation for why that kind of judicial review shouldn’t be available in this context. All the white paper offers, though, is its more general allusion to the political question doctrine. Which brings me to…

Second, and in any event, the suggestion that lawsuits arising out of targeted killing operations against U.S. citizens raise a nonjusticiable political question is almost laughable–and is the one part of this white paper that really does hearken back to the good ole’ days of the Bush Administration (I’m less sold on any analogy based upon the rest of the paper). Even before last Term’s Zivotofsky decision, in which the Supreme Court went out of its way to remind everyone (especially the D.C. Circuit) of just how limited the political question doctrine really should be, it should’ve followed that uses of military force against U.S. citizens neither “turn on standards that defy the judicial application,” nor “involve the exercise of a discretion demonstrably committed to the executive or legislature.” Indeed, in the context of the Guantánamo habeas litigation, courts routinely inquire into the very questions that might well arise in such a damages suit, e.g., whether there is sufficient evidence to support the government’s conclusion that the target is/was a senior operational leader of al Qaeda or one of its affiliates…

Don’t get me wrong: Any suit challenging a targeted killing operation, even a post hoc damages action, is likely to run into a number of distinct procedural concerns, including the difficulty of arguing for a Bivens remedy; the extent to which the state secrets privilege might preclude the litigation; etc. But those are the arguments that the white paper should’ve been making–and not a wholly unnuanced invocation of the political question doctrine in a context in which it clearly does not–and should not–apply.

V. A Modest Proposal

This all leads me to what I’ve increasingly come to believe is the only real solution here: If folks are really concerned about this issue, especially on the Hill, then Congress should create a cause of action–with nominal damages–for individuals who have been the targets of such operations (or, more honestly, their heirs). The cause of action could be for $1 in damages; it could expressly abrogate the state secrets privilege and replace it with a procedure for the government to offer at least some of its evidence ex parte and in camera; and it could abrogate qualified immunity so that, in every case, the court makes law concerning how the government applies its criteria in a manner consistent with the Due Process Clause of the Fifth Amendment. This wouldn’t in any way resolve the legality of targeted killings, but it would clear the way for courts to do what courts do–ensure that, when the government really is depriving an individual of their liberty (if not their life), it does so in a manner that comports with the Constitution–as the courts, and not just the Executive Branch, interpret it. It’s not a perfect solution, to be sure, but if ever there was a field in which the perfect is the enemy of the good, this is it.

#### prefer ours- torts don’t implicate SOP- core of the topic

George D. Brown, Professor, Law, Boston College, “Accountability, Liability, and the War on Terror—Constitutional Tort Suits as Truth and Reconciliation Vehicles,” BOSTON COLLEGE LAW SCHOOL LEGAL STUDIES RESEARCH PAPER SERIES n. 216, 1—7—11, p. 236-239.

A second problem is that, despite the arguments advanced by Fuller and others, judges have frequently questioned the use of the tort suit as a vehicle to question broad governmental decisions. A well-known example is United States v. Varig Airlines,348 a statutory case involving the Federal Tort Claims Act, in which the Supreme Court cited Congress's desire to "prevent judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort.,,349 In Schneider v. Kissinger,350 a 2005 decision with a distinct war on terror flavor/51 the District of Columbia Circuit declared that "recasting foreign policy and national security questions in tort terms does not provide standards for making or reviewing foreign policy judgments.,,352 Moreover, the court seemed willing to extend the shield of policy to the means of implementing it, at least where those means were implicit in the original policy.353 In the court's view, "[t]o determine whether drastic measures should be taken in matters of foreign policy and national security is not the stuff of adjudication but of policymaking. ,,354 Of course, in a constitutional tort suit, a policy and the means of executing it may blend into one claim, a possibility that the Schneider court seemed to foresee. 355

In the constitutional context, opponents of the Bivens action have long expressed a preference for equitable relief and doubts about the basic concept of a "constitutional tort." Dissenting in Carlson v. Green,356 Justice Rehnquist noted the long-established "power of federal courts to grant equitable relief for constitutional violations," citing Marbury as an example.357

"The essence of equity jurisdiction has been the power of the

Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private These arguments bear some similarity to those of the original Bivens dissenters.3 Indeed, although the Bivens doctrine is still alive, the Supreme Court has engaged in a substantial retrenchment beginning in the 1980s.360 It is clear that the Court regarded several ofthese suits as directed at policy beyond merely presenting claims for redress of a distinct tort. 361

Justice Rehnquist returned to the subject in his dissent in Butz v. Economou.362 He reiterated the point that Marburl "involved equitabletype relief by way of mandamus or injunction.,,36 More importantly, he stressed:

[T]he threat of injunctive relief without the possibility of damages in the case of a Cabinet official is a better tailoring of the competing need to vindicate individual rights, on the one hand, and the equally vital need, on the other, that federal officials exercising discretion will be unafraid to take vigorous action to protect the public interest. 364

The notion that tort suits play less of a role in vindicating the public interest resurfaced in Nixon v. Fitzgerald.365 The Court distinguished a "merely private suit for damages" from "an ongoing criminal prosecution" or an action to maintain the separation of powers. 66 It is, of course, true that courts-particularly state courts-have long made governmental policy through the processes of the common law. Tort cases are a strong example. In the constitutional areaj individual criminal cases are often the vehicles for important new rules. 67 Outside that area, however, we are used to constitutional law on such vital matters as desegregation, abortionil school prayer, and free speech being made primarily in equitable actions.36 It is not coincidental that the Supreme Court's retreat from Bivens began with cases aimed at the structure of governmental programs or underlying policies.369 A single tort decision can bring an entire national program to a halt. The core of the problem is whether one views constitutional tort suits as taking courts too far beyond their adjudicative function or whether one agrees with Professor Bandes' contention that "the courts' particularization function inevitably involves precedent setting and norm creation. The difference between decisions that bind discrete parties and those that bind large groups is a matter of degree, not of kind." 70

### Restrictions Prohibit

#### Restrictions prohibit

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

### Legit: Turns Case 2NC

#### It turns their courts advantage – lower courts won’t enforce the plan

Westerland et al. 10—Professor of Political Science @ University of Arizona [Chad Westerland, Jeffrey A. Segal (Chair of Political Science and SUNY Distinguished Professor @ StonyBrook University), Lee Epstein (Professor of Law and Political Science @ Northwestern University), Charles M. Cameron (Professor of Politics and Public Affairs @ Princeton University) Scott Comparato (Professor of Political Science @ Southern Illinois University), “Strategic Defiance and Compliance in the U.S. Courts of Appeals,” American Journal of Political Science, Vol. 54, No. 4, October 2010, Pg. 891–905

Scholars and journalists alike spilt much ink over Hopwood, as well as decisions by other courts overturning well-established Supreme Court precedents—cases such as the Fourth Circuit’s United States v. Dickerson (1999), holding that states under its supervision need not follow Miranda v. Arizona (1966); and the Missouri Supreme Court’s overruling of Stanford v. Kentucky (1989) in Simmons v. Roper (2003). And, yet, these decisions are merely the most striking instances of a more general phenomenon, lower court deviation from earlier precedents set by a higher court—a phenomenon that can take far subtler forms (e.g., distinguishing or limiting precedents). Indeed, as one observer noted well over half a century ago, “[Many] precedents have been rejected through the stratagem of distinguishment; others have been the subject of conscious judicial oversight. As a consequence, judicial discretion among ‘inferior’ judges is not so confined and limited as legal theorists would have it” (Comment 1941, 1448–49; see also Canon and Johnson 1998; Murphy 1959). This observation raises a question that, depending on one’s perspective, may be posed two different ways: Why do lower courts defy higher court precedent, or, given the minute percentage of lower court cases that are heard and reversed (currently well under 1%), why do lower courts comply with higher court precedent? Scholarly attempts to address these questions take several forms.1 One line of inquiry seeks to identify the circumstances that lead to deviations, subtle or overt. Baum (1978), for example, suggests that lower courts will be less responsive to the U.S. Supreme Court in controversial civil liberties cases, and that the clarity of the precedent, the perceived legitimacy of the Court’s ruling, and perception by lower court judges of the chances of review also affect the likelihood of compliance (see also Canon and Johnson 1998). Another has focused on socialization and conformity to legal culture as the critical causal mechanism. Robert Cover’s (1975) noted study of the enforcement of the Fugitive Slave Act by abolitionist judges, for example, emphasizes the moral quandary posed by the judges’ twin commitments to abolition and the rule of law (see also Howard 1981). Pg. 892

### Lk: Must Read 2NC (:45

#### circumvention destroys judicial legitimacy and separation of powers---even unsuccessful backlash can put the entire edifice of judicial review in question

Andrew D. Martin 1, Prof of Political Science at Washington University 2001. Statuatory Battles and Constitutional Wars: Congress and the Supreme Court

But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even irrevocably harm its reputation, credibility, and legitimacy. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as scott v. sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other members of government did of course, unsuccessfully at least in terms of the ruling’s impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the court, the effects of which the justices may feel in the not-so-distant future.

#### Legitimacy is on the brink---its fragile and breakable- cirvumvention pushes it over the edge

Burke 8/23 (Kevin Burke is a partner in Sidley's New York office. He litigates class actions and other complex disputes in the areas of securities, LLP, “How Low Public Trust Threatens the Legitimacy of Court Decisions,” http://proceduralfairnessblog.org/2013/08/23/how-low-public-trust-threatens-the-legitimacy-of-court-decisions/)

Trust is an essential component of procedural fairness, which, in turn, has been shown to be a key source of legitimacy for decision-makers. All public institutions now face serious skepticism from the public about their trustworthiness. However, a trust deficit – and the resulting lack of legitimacy – are of particular threat to the judiciary. Legitimacy is essential if courts are to be respected and, indeed, if court orders are to be obeyed. Simply put, failure to maintain and enhance the legitimacy of court decisions imperils the judiciary as an institution and the vital role assigned to the judiciary in our Constitutional tradition. The threat is real. Today, 75% of the American public thinks judges’ decisions are, to a moderate to significant extent, influenced by their political or personal philosophy. Of course, judges have a range of philosophical views and exercise discretion, so some differences of opinion among judges are to be expected. But 75% of the American public also believes judges’ decisions are, to a moderate to significant extent, influenced by their desire to be appointed to a higher court. Two recent articles explain the potentially grave implications. First, Politico recently published a contribution by law professors Charles Geyh and Stephen Gillers advocating for a bill to make the Supreme Court adopt a code of ethics. They argue: [I]t would be a mistake for the Court to view the [ethics] bill as a challenge to its power. It is rather an invitation. No rule is thrust on the justices. Under the … bill, the justices are asked to start with the code governing other federal judges, but are then free to make ‘any amendments or modifications’ they deem ‘appropriate.’ A response that says, in effect, ‘We won’t do it because you can’t make us’ will hurt the court and the rule of law. Second, Linda Greenhouse, a regular commentator on the New York Times Blog “Opinionator,” recently wrote this post about the Foreign Intelligence Surveillance Court entitled Too Much Work?. Greenhouse writes: As Charlie Savage reported in The Times last month, Chief Justice John G. Roberts Jr. has used that authority to name Republican-appointed judges to 10 of the court’s 11 seats. (While Republicans in Congress accuse President Obama of trying to “pack” the federal appeals court in Washington simply by filling its vacant seats, they have expressed no such concern over the fact that the chief justice has over-weighted the surveillance court with Republican judges to a considerably greater degree than either of the two other Republican-appointed chief justices who have served since the court’s creation in 1978.) What do these two pieces mean for judges? Both articles highlight how the judiciary itself, if not careful, can contribute to the erosion of public trust in our decisions. To be sure, the erosion of the legitimacy of judicial decisions is not entirely the fault of the Supreme Court, nor of judges in general. The media, for example, often refers to which President appointed a judge as a shorthand way to explain a decision. But that is, in part, why Ms. Greenhouse’s piece is important. The Chief Justice is recognized as a brilliant man. He and every other judge in the United States know the inevitable shorthand the media will use to describe judges and to explain their decisions. And so the Chief Justice, the members of the United States Supreme Court, indeed every judge in this country needs to be particularly sensitive to what we are doing that might either advance trust in courts or contribute to the erosion of the legitimacy of our courts. The bottom line is: Appearances make a difference. There will be decisions by judges at every level of court that test the public’s trust in our wisdom. It is therefore imperative that judges act in a manner that builds a reservoir of goodwill so that people will stand by courts when a decision is made with which they disagree. There may have been an era when trust in the wisdom and impartiality of judicial decisions could be taken as a given. But if there was such an era, we no longer live in it. Trust and legitimacy today must be earned.

### Lk: Drone Courts 1NC

#### ex post kill court legitimacy – they’re controversial and violate Article III

Epps 13 (Garrett Epps, Professor of Law at the University of Baltimore, “Why a Secret Court Won’t Solve the Drone-Strike Problem,” The Atlantic, February 16, 2013, http://www.theatlantic.com/politics/archive/2013/02/why-a-secret-court-wont-solve-the-drone-strike-problem/273246/)

Washington's idea of the week is a secret court, based on the Foreign Intelligence Surveillance Court, which issues secret wiretap warrants in certain espionage cases. Executive officials would go before the drone court and present their evidence that an individual abroad, perhaps a U.S. citizen, is an Al Qaeda affiliate and an imminent danger. Judges on the panel would issue, in effect, a secret death warrant--a certification that lethal force can be used against the "enemy combatant." Sen. Dianne Feinstein spoke favorably about the idea at confirmation hearings for C.I.A. Director-designate John Brennan. So did former Defense Secretary Robert Gates. Thursday, the New York Times joined in the chorus. Americans love courts and judges. But they trust them because, in our system, they are independent of elected officials--not part of the political machine. They are also what lawyers call "courts of limited jurisdiction." In carefully chosen language, Article III of the Constitution extends "the judicial power" of the United States to a specific and limited set of "cases and controversies." Federal courts decide cases; they do not fight wars, collect the garbage, or set health-care policy. And most particularly, they may not become an advisory agency of the executive branch. The idea of a "drone court" would send federal courts into areas they have never gone before, and indeed from which, I think, the text of the Constitution bars them. **It could** also **put the** integrity of our court system at risk. Let's frame the issue properly. The present administration does not claim that the president has "inherent authority" to attack anyone anywhere. Instead, from the documents and speeches we've seen, the administration says it can order drone attacks only as provided by the Authorization for the Use of Military Force passed by Congress after the September 11 attacks--that is, 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." Unlike the fictional President Bennett in Tom Clancy's Clear and Present Danger, then, President Obama can't suddenly send the drone fleet down to take out, say, Colombian drug lords or the Lord's Resistance Army in Uganda. That's a marked change from the overall position of the last administration, and it's an important limitation on the president's claimed authority. But because of that limitation, a court would be supervising the president's command decisions in a time of authorized military action--after, that is, the legal equivalent of a "declaration of war." As commander in chief, the president has been given a mission by Congress. By passing the AUMF, Congress has delegated to him its full war power to use in that mission. Nothing in the AUMF is directed to the courts; in fact, I have trouble finding authority for target selection anywhere in Article III. And whatever the technological changes, constitutionally I see no difference between targeting an enemy with a drone and doing the same thing with a Cruise missile or a SEAL Team. Courts simply aren't equipped to decide military tactics. The FISA Court, on the other hand, doesn't really reach beyond Article III--judges since ancient times have issued warrants for searches and arrests, and the individuals being spied on are suspected of crimes against the United States. But I don't know of a deep-rooted tradition of common-law courts telling the shire reeve he can hunt someone down and kill him without trial. There's yet another problem: what criteria would a "drone court" apply? In the "white paper" obtained by NBC News earlier this month, the Department of Justice says that a decision to order a strike involves three requirements: (1) the target represents "an imminent threat of violent attack"; (2) capturing the target would be "infeasible"; and (3) a lethal attack can be carried out "in a manner consistent with law of war principles." A court might be able to apply the first criterion, though just barely; but there is simply no precedent for an Article III judge balancing the prospective risks of a capture operation vs. that of a missile, or assessing the probability of "collateral damage" if the strike goes forward. **We have left "the judicial power" behind altogether, and created a** panel of poorly trained generals in sloppy black uniforms.Finally, in time of war, there will be occasions when a target emerges and decisions must be made too quickly for even a secret court proceeding. And thus the "drone court" would not be able to rule on some cases; an ambitious president could find many exceptions. In addition, an ambitious executive might also use the secret court as a means to extend the drone-strike authority beyond actions in time of authorized military action. With such a review mechanism in place, the argument might go, there's no danger in ceding the president's authority to use drones against enemies not so designated by Congress.

### A2 “Legitimacy Resil”

#### Legitimacy is a limited resource--it must be preserved

Richard Pacelle, Research Professor in Political Science, 2002 (THE ROLE OF THE SUPREME COURT IN AMERICAN POLITICS: THE LEAST DANGEROUS BRANCH, p. 29)

According to Christopher Smith, the legitimacy issue underlying judicial policy making rests on the appropriateness of the judiciary, actions in formulating and implementing public policies.' Legitimacy is a political resource. It is fragile and finite, and the Court must conserve and protect it. If the Court oversteps its boundaries, its decisions will not earn the respect of the public or the other branches of government, and its ultimate resource, its legitimacy, will be threatened.

### Sustain devp imp

#### An effective court is key to sustainable development

Stein 5—Former Judge of the New South Wales Court of Appeal and the New South Wales Land and Environment Court [Justice Paul Stein (International Union for Conservation of Nature (IUCN) Specialist Group on the Judiciary), “Why judges are essential to the rule of law and environmental protection,” Judges and the Rule of Law: Creating the Links: Environment, Human Rights and Poverty, IUCN Environmental Policy and Law Paper No. 60, Edited by Thomas Greiber, 2006]

The Johannesburg Principles state: “We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.” There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts. Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized. A role for judges? It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

### Modeling: Ext1A—US Not Key 2NC

#### All their “precedent” evidence relies on the assertion that there’s a causal link between U.S. drone doctrine and other’ countries choices---that’s not true---no tangible evidence

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way:

Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat.

“Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.”

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?)

It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.

Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.

But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.

Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do – but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

#### not reverse causal

Saunders 13 **(**Paul, executive director of The Center for the National Interest and associate publisher of The National Interest. He served in the State Department from 2003 to 2005, “We Won't Always Drone Alone,” <http://nationalinterest.org/commentary/we-wont-always-drone-alone-8177>)

A broader and deeper challenge is how others—outside the United States—will use drones, whether armed or unarmed, and what lessons they will draw from Washington’s approach. Thus far, the principal lesson may well be that drones can be extremely effective in killing your opponents, wherever they are, without risking your own troops and without sending soldiers or law enforcement personnel across another country’s borders. It seems less likely that others will adopt U.S.-style legal standards and oversight procedures, or that they will always ask other governments before sending drones into their airspace.¶ Based on their actions, it is almost as if Obama administration officials believe that the United States and its allies will have a long-term monopoly on drones. How else can one explain their exuberant confidence in launching drone attacks? However, the administration’s dramatic expansion in drone strikes—and their apparent effectiveness—will only further shorten Washington’s reign as the drone capital of the world by increasing the incentives to others eager to develop, refine or buy the technology.¶ Have Obama administration officials given any thought to what the world might look like when armed drones are more widespread and when Americans or U.S. allies and partners could become targets? To an outsider, there is little evidence of this kind of thinking in the administration’s use of drones.¶ This is a serious problem. According to an unclassified July 2012 report by the Government Accountability Office, at least 76 countries already have acquired unmanned aerial vehicles, known as UAVs or drones; the report also states that “countries of concern” are attempting to acquire advanced UAVs from foreign suppliers as well as seeking illegal access to U.S. technology. And a 2012 special report by the United Kingdom’s Guardian newspaper indicated that China has 10 or more models, though not all are armed. Other sources identify additional varieties in China. At least 50 countries are trying to build 900 different types of drones, the GAO writes.¶ More generally, the administration’s expanding use of drones is a powerful endorsement of not only the technology, but of the practice of targeted killing as an instrument of foreign and security policy. Having provided this powerful impetus, the United States should not be surprised if others—with differing legal standards and more creative efforts at self-justification—seize upon it once they have the necessary capabilities. According to the GAO, this is already happening—in government-speak, “while only a limited number of countries have fielded lethal or weaponized UAVs, this threat is anticipated to grow.” From this perspective, it is ironic that a president so critical of his predecessor’s unilateralism would practice it himself—particularly in a manner that other governments will find much easier to emulate than the Bush administration’s larger-scale use of force. How does the Obama administration plan to respond if and when China or Russia uses armed UAVs to attack groups they define as terrorists?

### Modeling: Ext2—No Arms Race 2NC

#### AND, the costs outweigh the benefits – reject aff alarmism

**Singh 12** – researcher at the Center for a New American Security (Joseph, “Betting Against a Drone Arms Race”, 8/13, <http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/#ixzz2TxEkUI37>, CMR)

In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology.¶ Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team.¶ Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones.¶

What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use.¶ Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best.¶ Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations.¶ Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

## 1NR

### Nuke Deterrence

**Irrational leaders cause miscalculation and deterrence breakdown**

Tom **Sauer**, Research Fellow, JFK School of Government, Harvard University, Nuclear Arms Control: Nuclear Deterrence in the Post-Cold War Period, 19**98**, p. 8.

However**, the possibility that nuclear deterrence will fail because of miscalculations can never be excluded. Here we should consider government leaders who are psychologically disturbed, under the influence of alcohol, drugs and/or medication, willing to risk** their own **lives** and those of others **for ideological or religious reasons or,** despite the possible dangers, **simply dare to risk an attack**, or a combination of these factors. The fact that in most cases more than one individual is empowered to launch nuclear weapons reduces the possibility of irrational use but is no guarantee. Here the danger of groupthink and other risks inherent in decision-making processes within an organization have been demonstrated.

**The only valid conclusion is that the possibility of nuclear deterrence failing has always existed, still exists, and will always exist** as long as the Nuclear Weapons States and their allies hold on to nuclear devices and to the idea of nuclear deterrence. **The longer one counts on nuclear deterrence the greater the possibility that individuals** who belong to any of the three above-mentioned categories will **decide to launch** nuclear weapons, **and thus the greater the possibility that nuclear deterrence will fail.**

### Warming Good: Ext 1--CO2 Ag--Overview 2NC (:35/1:10

#### food insecurity is a conflict multiplier – most probable scenario for nuclear war

Future Directions International ’12 (“International Conflict Triggers and Potential Conflict Points Resulting from Food and Water Insecurity Global Food and Water Crises Research Programme”, May 25, <http://www.futuredirections.org.au/files/Workshop_Report_-_Intl_Conflict_Triggers_-_May_25.pdf>, )

There is a growing appreciation that the conflicts in the next century will most likely be fought over a lack of resources. Yet, in a sense, this is not new. Researchers point to the French and Russian revolutions as conflicts induced by a lack of food. More recently, Germany’s World War Two efforts are said to have been inspired, at least in part, by its perceived need to gain access to more food. Yet the general sense among those that attended FDI’s recent workshops, was that the scale of the problem in the future could be significantly greater as a result of population pressures, changing weather, urbanisation, migration, loss of arable land and other farm inputs, and increased affluence in the developing world. In his book, Small Farmers Secure Food, Lindsay Falvey, a participant in FDI’s March 2012 workshop on the issue of food and conflict, clearly expresses the problem and why countries across the globe are starting to take note. . He writes (p.36), “…if people are hungry, especially in cities, the state is not stable – riots, violence, breakdown of law and order and migration result.” “Hunger feeds anarchy.” This view is also shared by Julian Cribb, who in his book, The Coming Famine, writes that if “large regions of the world run short of food, land or water in the decades that lie ahead, then wholesale, bloody wars are liable to follow.” He continues: “An increasingly credible scenario for World War 3 is not so much a confrontation of super powers and their allies, as a festering, self-perpetuating chain of resource conflicts.” He also says: “The wars of the 21st Century are less likely to be global conflicts with sharply defined sides and huge armies, than a scrappy mass of failed states, rebellions, civil strife, insurgencies, terrorism and genocides, sparked by bloody competition over dwindling resources.” As another workshop participant put it, people do not go to war to kill; they go to war over resources, either to protect or to gain the resources for themselves. Another observed that hunger results in passivity not conflict. Conflict is over resources, not because people are going hungry. A study by the International Peace Research Institute indicates that where food security is an issue, it is more likely to result in some form of conflict. Darfur, Rwanda, Eritrea and the Balkans experienced such wars. Governments, especially in developed countries, are increasingly aware of this phenomenon. The UK Ministry of Defence, the CIA, the US Center for Strategic and International Studies and the Oslo Peace Research Institute, all identify famine as a potential trigger for conflicts and possibly even nuclear war.

#### turns biodiversity—land conversion

**Carter et al. 11**—lead authors are Robert Carter, Ph.D., Adjunct Research Fellow at James Cook University – AND – Craig Idso, Ph.D., Chairman at the Center for the Study of Carbon Dioxide and Global Change – AND – Fred Singer, Ph.D., President of the Science and Environmental Policy Project; contributing authors are Susan Crockford, Joseph D’Aleo, Indur Goklany, Sherwood Idso, Madhav Khandekar, Anthony Lupo, Willie Soon, and Mitch Taylor (© 2011, Climate Change Reconsidered: 2011 Interim Report, The Heartland Institute, <http://www.nipccreport.org/reports/2011/pdf/2011NIPCCinterimreport.pdf>)

Several years ago, Waggoner (1995) rhetorically asked: How much land can ten billion people spare for nature? That was the title of an essay he wrote to illuminate the dynamic tension between the need for land to support the agricultural enterprises that sustain mankind and the need for land to support the natural ecosystems that sustain all other creatures. As noted by Huang et al. (2002), human populations ―have encroached on almost all of the world‘s frontiers, leaving little new land that is cultivatable.‖ And in consequence of humanity‘s ongoing usurpation of this most basic of natural resources, Raven (2002) has noted ―species-area relationships, taken worldwide in relation to habitat destruction, lead to projections of the loss of fully two-thirds of all species on earth by the end of this century.‖ In addition, Wallace (2000) has calculated we will need to divert essentially all usable non-saline water on the face of the Earth to the agricultural enterprises that will be required to meet the food and fiber needs of humanity‘s growing numbers well before that. So what parts of the world are likely to be hit hardest by the great land-grabbing and water-consuming machine of humanity? Tilman et al. (2001) report developed countries are expected to withdraw large areas of land from farming between now and the middle of the century (2050), leaving developing countries to shoulder essentially all of the growing burden of feeding our expanding population. In addition, they calculate the loss of these countries‘ natural ecosystems to crops and pasture represent about half of all potentially suitable remaining land, which ―could lead to the loss of about a third of remaining tropical and temperate forests, savannas, and grasslands,‖ along with the many unique species they support. If one were to pick the most significant problem currently facing the biosphere, this would probably be it: a single species of life, Homo sapiens, is on course to annihilate two-thirds of the ten million or so other species with which we share the planet within the next several decades, simply by taking their land and water. Global warming, by comparison, pales in significance, as its impact is nowhere near as severe and in fact may be neutral or even positive. In addition, its chief cause is highly debated, and actions to thwart it are much more difficult, if not impossible, to define and implement. Furthermore, what many people believe to be the main cause of global warming—anthropogenic CO2 emissions—may actually be a powerful force for preserving land and water for nature. In an analysis of the problem of human land-use expansion, Tilman et al. (2002) introduced a few more facts before suggesting some solutions. They noted, for example, that by 2050 the human population of the globe is projected to be 50 percent larger than it was in 2000, and that global grain demand could double because of expected increases in per-capita real income and dietary shifts toward a higher proportion of meat. Hence, they stated the obvious when they concluded, ―raising yields on existing farmland is essential for ‗saving land for nature‘.‖ So how is it to be done? Tilman et al. (2002) suggested a strategy built around three essential tasks: (1) increasing crop yield per unit land area, (2) increasing crop yield per unit of nutrients applied, and (3) increasing crop yield per unit of water used. Regarding the first of these requirements, Tilman et al. note that in many parts of the world the historical rate of increase in crop yields is declining, as the genetic ceiling for maximal yield potential is being approached. This observation, in their words, ―highlights the need for efforts to steadily increase the yield potential ceiling.‖ With respect to the second requirement, they indicate, ―without the use of synthetic fertilizers, world food production could not have increased at the rate it did [in the past] and more natural ecosystems would have been converted to agriculture.‖ Hence, they state the solution ―will require significant increases in nutrient use efficiency, that is, in cereal production per unit of added nitrogen, phosphorus,‖ and so forth. Finally, as to the third requirement, Tilman et al. remind us ―water is regionally scarce,‖ and ―many countries in a band from China through India and Pakistan, and the Middle East to North Africa either currently or will soon fail to have adequate water to maintain per capita food production from irrigated land.‖ Increasing crop water use efficiency, therefore, is also a must. Although the impending biological crisis and several important elements of its potential solution are thus well defined, Tilman et al. (2001) noted ―even the best available technologies, fully deployed, cannot prevent many of the forecasted problems. This was also the conclusion of Idso and Idso (2000), who stated that although ―expected advances in agricultural technology and expertise will significantly increase the food production potential of many countries and regions,‖ these advances ―will not increase production fast enough to meet the demands of the even faster-growing human population of the planet. Fortunately, we have a powerful ally in the ongoing rise in the air‘s CO2 content that can provide what we can‘t. Since atmospheric CO2 is the basic ―food‖ of essentially all plants, the more of it there is in the air, the bigger and better they grow. For a nominal doubling of the air‘s CO2 concentration, for example, the productivity of Earth‘s herbaceous plants rises by 30 to 50 percent (Kimball, 1983; Idso and Idso, 1994), and the productivity of its woody plants rises by 50 to 80 percent or more (Saxe et al. 1998; Idso and Kimball, 2001). Hence, as the air‘s CO2 content continues to rise, the land use efficiency of the planet will rise right along with it. In addition, atmospheric CO2 enrichment typically increases plant nutrient use efficiency and plant water use efficiency. Thus, with respect to all three of the major needs identified by Tilman et al. (2002), increases in the air‘s CO2 content pay huge dividends, helping to increase agricultural output without the taking of new land and water from nature.

[if necessary]

#### nuke war causes extinction, turns environment

#### Starr 12 [Steven Starr - Director of the Clinical Laboratory Science Program at the University of Missouri-Columbia, Associate member of the Nuclear Age Peace Foundation, has been published by the Bulletin of the Atomic Scientists, his writings appear on the websites of the Nuclear Age Peace Foundation, the Moscow Institute of Physics and Technology Center for Arms Control, Energy and Environmental Studies, Scientists for Global Responsibility, and the International Network of Scientists Against Proliferation, “What is nuclear darkness?,” <http://www.nucleardarkness.org/web/whatisnucleardarkness/>]

In a nuclear war, burning cities would create millions of tons of thick, black smoke. This smoke would rise above cloud level, into the stratosphere, where it would quickly spread around the planet. A large nuclear war would produce enough smoke to block most sunlight from reaching the Earth's surface. Massive absorption of warming sunlight by a global stratospheric smoke layer would rapidly create Ice Age temperatures on Earth . The cold would last a long time; NASA computer models predict 40% of the smoke would still remain in the stratosphere ten years after a nuclear war. Half of 1% of the explosive power of US-Russian nuclear weapons can create enough nuclear darkness to impact global climate. 100 Hiroshima-size weapons exploded in the cities of India and Pakistan would put up to 5 million tons of smoke in the stratosphere . The smoke would destroy much of the Earth's protective ozone layer and drop temperatures in the Northern Hemisphere to levels last seen in the Little Ice Age. Shortened growing seasons could cause up to 1 billion people to starve to death. A large nuclear war could put 150 million tons of smoke in the stratosphere and make global temperatures colder than they were 18,000 years ago during the coldest part of the last Ice Age. Killing frosts would occur every day for 1-3 years in the large agricultural regions of the Northern Hemisphere. Average global precipitation would be reduced by 45%. Earth's ozone layer would be decimated. Growing seasons would be eliminated. A large nuclear war would utterly devastate the environment and cause most people to starve to death . Deadly climate change, radioactive fallout and toxic pollution would cause already stressed ecosystems to collapse. The result would be a mass extinction event that would wipe out many animals living at the top of the food chains - including human beings.

### Warming Good: Ext 2--Ice Age 2NC

#### Emissions solve ice age

**PERISCOPE POST**, “Human Carbon Emissions Have Averted Ice Age, Say Scientists, But Global Warming Dangers Remain,” 1—9—**12**, npg.

Scientists have published research suggesting human carbon emissions will prevent the next ice age. The news is likely to infuriate environmentalists while enthusing groups who oppose limiting carbon emissions. The advent of the next ice age is already behind schedule, reported The Telegraph: "Typically there is a period of about 11,000 years between ice ages, and with the last one ending 11,600 years ago the arrival of the next already appears overdue." Researchers suggested that this delay is due to the levels of CO2 in the atmosphere. So if global warming is keeping us from freezing over, does that mean it's actually a good thing? Nothing new. Andrew C. Revkin reported for The New York Times Dot Earth blog that there is already a large body of scientific literature on the subject of whether greenhouse gases are preventing a big freeze. Revkin spoke to several researchers in the field on the matter, most of whom concluded that what's new about the latest study is the way in which those involved have calculated the "interglacials", which are the warmer periods between ice ages.

### Warming Good: Ext 3--Feedbacks 2NC (1:00

#### DMS is unaccounted for by their models, checks any warming

**NIPCC**, Nongovernment International Panel on Climate Change, CLIMATE CHANGE RECONSIDERED, Craig Idso, S. Fred Singer, Warren Anderson, J.Scott Armstrong, Dennis Avery, Franco Battaglia, Robert Carter, Piers Corbyn, Richard Courtney, Joseph d’Aleo, Don Easterbrook, Fred Goldberg, Vicent Gray, Williams Gray, Kesten Green, Kenneth Haapala, David Hagen, Richard Alan Keen, adhav Khandekar, William Kininmonth, Hans Labohm, Anthony Lupo, Howard Maccabee, M.Michael MOgil, Christopher Monckton, Lubos Motl, Stephen Murgatroyd, Nicola Scafetta, Harrison Schmitt, Tom Segalstad, George Taylor, Dick Thoenes, Anton Uriarte Gerd Weber, 20**09**, p. 45-47.

More than two decades ago, Charlson et al. (1987) discussed the plausibility of a multi-stage negative feedback process, whereby warming-induced increases in the emission of dimethyl sulfide (DMS) from the world’s oceans tend to counteract any initial impetus for warming. The basic tenet of their hypothesis was that the global radiation balance is significantly influenced by the albedo of marine stratus clouds (the greater the cloud albedo, the less the input of solar radiation to the earth’s surface). The albedo of these clouds, in turn, is known to be a function of cloud droplet concentration (the more and smaller the cloud droplets, the greater the cloud albedo and the reflection of solar radiation), which is dependent upon the availability of cloud condensation nuclei on which the droplets form (the more cloud condensation nuclei, the more and smaller the cloud droplets). And in completing the negative feedback loop, Charlson et al. noted that the cloud condensation nuclei concentration often depends upon the flux of biologically produced DMS from the world’s oceans (the higher the sea surface temperature, the greater the sea-to-air flux of DMS). Since the publication of Charlson et al.’s initial hypothesis, much empirical evidence has been gathered in support of its several tenets. One review, for example, states that “major links in the feedback chain proposed by Charlson et al. (1987) have a sound physical basis,” and that there is “compelling observational evidence to suggest that DMS and its atmospheric products participate significantly in processes of climate regulation and reactive atmospheric chemistry in the remote marine boundary layer of the Southern Hemisphere” (Ayers and Gillett, 2000). But just how strong is the negative feedback phenomenon proposed by Charlson et al.? Is it powerful enough to counter the threat of greenhouse gas-induced global warming? According to the findings of Sciare et al. (2000), it may well be able to do just that. In examining 10 years of DMS data from Amsterdam Island in the southern Indian Ocean, these researchers found that a sea surface temperature increase of only 1°C was sufficient to increase the atmospheric DMS concentration by as much as 50 percent. This finding suggests that the degree of warming typically predicted to accompany a doubling of the air’s CO2 content would increase the atmosphere’s DMS concentration by a factor of three or more, providing what they call a “very important” negative feedback that could potentially offset the original impetus for warming. Other research has shown that this same chain of events can be set in motion by means of phenomena not discussed in Charlson et al.’s original hypothesis. Simo and Pedros-Alio (1999), for example, discovered that the depth of the surface mixing-layer has a substantial influence on DMS yield in the short term, via a number of photo-induced (and thereby mixing-depth mediated) influences on several complex physiological phenomena, as do longer-term seasonal variations in vertical mixing, via their influence on seasonal planktonic succession scenarios and food-web structure. More directly supportive of Charlson et al.’s hypothesis was the study of Kouvarakis and Mihalopoulos (2002), who measured seasonal variations of gaseous DMS and its oxidation products—non-sea-salt sulfate (nss-SO4 2-) and methanesulfonic acid (MSA)—at a remote coastal location in the Eastern Mediterranean Sea from May 1997 through October 1999, as well as the diurnal variation of DMS during two intensive measurement campaigns conducted in September 1997. In the seasonal investigation, DMS concentrations tracked sea surface temperature (SST) almost perfectly, going from a low of 0.87 nmol m-3 in the winter to a high of 3.74 nmol m-3 in the summer. Such was also the case in the diurnal studies: DMS concentrations were lowest when it was coldest (just before sunrise), rose rapidly as it warmed thereafter to about 1100, after which they dipped slightly and then experienced a further rise to the time of maximum temperature at 2000, whereupon a decline in both temperature and DMS concentration set in that continued until just before sunrise. Consequently, because concentrations of DMS and its oxidation products (MSA and nss- SO4 2-) rise dramatically in response to both diurnal and seasonal increases in SST, there is every reason to believe that the same negative feedback phenomenon would operate in the case of the longterm warming that could arise from increasing greenhouse gas concentrations, and that it could substantially mute the climatic impacts of those gases. Also of note in this regard, Baboukas et al. (2002) report the results of nine years of measurements of methanesulfonate (MS-), an exclusive oxidation product of DMS, in rainwater at Amsterdam Island. Their data, too, revealed “a well distinguished seasonal variation with higher values in summer, in line with the seasonal variation of its gaseous precursor (DMS),” which, in their words, “further confirms the findings of Sciare et al. (2000).” In addition, the MS- anomalies in the rainwater were found to be closely related to SST anomalies; and Baboukas et al. say this observation provides even more support for “the existence of a positive oceanatmosphere feedback on the biogenic sulfur cycle above the Austral Ocean, one of the most important DMS sources of the world.” In a newer study of this phenomenon, Toole and Siegel (2004) note that it has been shown to operate as described above in the 15 percent of the world’s oceans “consisting primarily of high latitude, continental shelf, and equatorial upwelling regions,” where DMS may be accurately predicted as a function of the ratio of the amount of surface chlorophyll derived from satellite observations to the depth of the climatological mixed layer, which they refer to as the “bloom-forced regime.” For the other 85 percent of the world’s marine waters, they demonstrate that modeled surface DMS concentrations are independent of chlorophyll and are a function of the mixed layer depth alone, which they call the “stress-forced regime.” So how does the warming-induced DMS negative feedback cycle operate in these waters? For oligotrophic regimes, Toole and Siegel find that “DMS biological production rates are negatively or insignificantly correlated with phytoplankton and bacterial indices for abundance and productivity while more than 82 percent of the variability is explained by UVR(325) [ultraviolet radiation at 325 nm].” This relationship, in their words, is “consistent with recent laboratory results (e.g., Sunda et al., 2002),” who demonstrated that intracellular DMS concentration and its biological precursors (particulate and dissolved dimethylsulfoniopropionate) “dramatically increase under conditions of acute oxidative stress such as exposure to high levels of UVR,” which “are a function of mixed layer depth.” These results—which Toole and Siegel confirmed via an analysis of the Dacey et al. (1998) 1992-1994 organic sulfur time-series that was sampled in concert with the U.S. JGOFS Bermuda Atlantic Time-Series Study (Steinberg et al., 2001)—suggest, in their words, “the potential of a global change-DMS-climate feedback.” Specifically, they say that “UVR doses will increase as a result of observed decreases in stratospheric ozone and the shoaling of ocean mixed layers as a result of global warming (e.g., Boyd and Doney, 2002),” and that “in response, open-ocean phytoplankton communities should increase their DMS production and ventilation to the atmosphere, increasing cloud condensing nuclei, and potentially playing out a coupled global change-DMS-climate feedback.” This second DMS-induced negative-feedback cycle, which operates over 85 percent of the world’s marine waters and complements the first DMSinduced negative-feedback cycle, which operates over the other 15 percent, is another manifestation of the capacity of earth’s biosphere to regulate its affairs in such a way as to maintain climatic conditions over the vast majority of the planet’s surface within bounds conducive to the continued existence of life, in all its variety and richness. In addition, it has been suggested that a DMS-induced negative climate feedback phenomenon also operates over the terrestrial surface of the globe, where the volatilization of reduced sulfur gases from soils may be just as important as marine DMS emissions in enhancing cloud albedo (Idso, 1990). On the basis of experiments that showed soil DMS emissions to be positively correlated with soil organic matter content, for example, and noting that additions of organic matter to a soil tend to increase the amount of sulfur gases emitted therefrom, Idso (1990) hypothesized that because atmospheric CO2 is an effective aerial fertilizer, augmenting its atmospheric concentration and thereby increasing vegetative inputs of organic matter to earth’s soils should also produce an impetus for cooling, even in the absence of surface warming. Nevertheless, and in spite of the overwhelming empirical evidence for both land- and ocean-based DMS-driven negative feedbacks to global warming, the effects of these processes have not been fully incorporated into today’s state-of-the-art climate models. Hence, the warming they predict in response to future anthropogenic CO2 emissions must be considerably larger than what could actually occur in the real world. It is very possible these biologically driven phenomena could entirely compensate for the warming influence of all greenhouse gas emissions experienced to date, as well as all those anticipated to occur in the future.

### Accidents

**Testing non-uq – the US, Soviet Union, North Korea, Pakistan, and India have all tested – nothing happened**

**That’s just common sense, but here’s ev**

Dana **Priest** – Wash Post - September 16, **2012**, The B61 bomb: A case study in costs and needs, http://www.washingtonpost.com/world/national-security/the-b61-bomb-a-case-study-in-needs-and-costs/2012/09/16/494aff00-f831-11e1-8253-3f495ae70650\_print.html

In the years that followed, **the United States conducted more than 1,000 nuclear tests as it perfected and expanded its nuclear arsenal during the arms race with the Soviet Union. Hundreds of tests also were conducted by other nuclear powers, including the Soviet Union, Britain, France and China.** President George H.W. Bush called a halt to U.S. nuclear tests in 1992. His decision was reaffirmed in 1996 when President Bill Clinton signed the Comprehensive Test Ban Treaty. The Senate rejected the treaty in 1999 and has not voted on it again, but the ban has remained in place. Russia, Britain and France are among the 36 countries that have ratified the treaty.