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### Advantage 1 is Accountability

#### Accountability mechanisms that constrain the executive prevent drone overuse in Pakistan and Yemen---drones are key to stability but overuse is counterproductive

Benjamin R. Farley 12, JD from Emory University School of Law, former Editor-in-Chief of the Emory International Law Review, “Drones and Democracy: Missing Out on Accountability?” Winter 2012, 54 S. Tex. L. Rev. 385, lexis

Effective accountability mechanisms constrain policymakers' freedom to choose to use force by increasing the costs of use-of-force decisions and imposing barriers on reaching use-of-force decisions. The accountability mechanisms discussed here, when effective, reduce the likelihood of resorting to force (1) through the threat of electoral sanctioning, which carries with it a demand that political leaders explain their resort to force; (2) by limiting policymakers to choosing force only in the manners authorized by the legislature; and (3) by requiring policymakers to adhere to both domestic and international law when resorting to force and demanding that their justifications for uses of force satisfy both domestic and international law. When these accountability mechanisms are ineffective, the barriers to using force are lowered and the use of force becomes more likely.¶ Use-of-force decisions that avoid accountability are problematic for both functional and normative reasons. Functionally, accountability avoidance yields increased risk-taking and increases the likelihood of policy failure. The constraints imposed by political, supervisory, fiscal, and legal accountability "make[] leaders reluctant to engage in foolhardy military expeditions... . If the caution about military adventure is translated into general risk-aversion when it comes to unnecessary military engagements, then there will likely be a distributional effect on the success rates of [democracies]." n205 Indeed, this result is predicted by the structural explanation of the democratic peace. It also explains why policies that rely on covert action - action that is necessarily less constrained by accountability mechanisms - carry an increased risk of failure. n206 Thus, although accountability avoidance seductively holds out the prospect of flexibility and freedom of action for policymakers, it may ultimately prove counterproductive.¶ In fact, policy failure associated with the overreliance on force - due at least in part to lowered barriers from drone-enabled accountability avoidance - may be occurring already. Airstrikes are deeply unpopular in both Yemen n207 and Pakistan, n208 and although the strikes have proven critical [\*421] to degrading al-Qaeda and associated forces in Pakistan, increased uses of force may be contributing to instability, the spread of militancy, and the failure of U.S. policy objectives there. n209 Similarly, the success of drone [\*422] strikes in Pakistan must be balanced against the costs associated with the increasingly contentious U.S.-Pakistani relationship, which is attributable at least in part to the number and intensity of drone strikes. n210 These costs include undermining the civilian Pakistani government and contributing to the closure of Pakistan to NATO supplies transiting to Afghanistan, n211 thus forcing the U.S. and NATO to rely instead on several repressive central Asian states. n212 Arguably the damage to U.S.-Pakistan relations and the destabilizing influence of U.S. operations in Yemen would be mitigated by fewer such operations - and there would be fewer U.S. operations in both Pakistan and Yemen if U.S. policymakers were more constrained by use-of-force accountability mechanisms.¶ From a normative perspective, the freedom of action that accountability avoidance facilitates represents the de facto concentration of authority to use force in the executive branch. While some argue that such concentration of authority is necessary or even pragmatic in the current international environment, 168 it is anathema to the U.S. constitutional system. Indeed, the founding generation’s fear of foolhardy military adventurism is one reason for the Constitution’s diffusion of use-of-force authority between the Congress and the President. 169 That generation recognized that a President vested with an unconstrained ability to go to war is more likely to lead the nation into war.

#### Judicial review is key to prevent mistakes – executive targeting decisions are inevitably flawed

Ahmad Chehab 12, Georgetown University Law Center, “RETRIEVING THE ROLE OF ACCOUNTABILITY IN THE TARGETED KILLINGS CONTEXT: A PROPOSAL FOR JUDICIAL REVIEW,” March 30 2012, abstract available at http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572

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

#### Opposing authors force a false choice by only arguing against total bans on drones---reform through external oversight solves all status quo problems---executive actions aren’t accountable

Conor Friedersdorf 13, staff writer at The Atlantic, where he focuses on politics and national affairs, March 27th, 2013, "Let's Make Drone Strikes Safe, Legal, and Rare,"www.theatlantic.com/politics/archive/2013/03/lets-make-drone-strikes-safe-legal-and-rare/274399/

Plenty of pundits on the left and right still support targeted killing, as do voters, military brass, think-tank fellows, and Congressional majorities. It is nevertheless worth giving the issue another look, because the Obama Administration's apologists seldom acknowledge the strongest arguments against our particular drone policy. Their rhetoric, however effective, depends on a subtle, sometimes unconscious evasion. It's surprisingly easy for an interested observer to be led astray.¶ Can you spot the problem in the following arguments? Joshua Foust acknowledges that unmanned aerial vehicles sometimes terrorize and kill innocents, but asks, "Is there a better alternative to drone strikes for counterterrorism in northwest Pakistan?" He concludes that, in the short run, there simply isn't.\* "The targets of drone strikes in Pakistan sponsor insurgents in the region that kill U.S. soldiers and destabilize the Pakistani state," he writes. "They cannot simply be left alone to continue such violent attacks."¶ Says David Frum, defending the extrajudicial killing of American citizens, "The practical alternative to drones isn't jury trials. It's leaving U.S. passport carrying terrorists alone unharmed to execute their plans." Max Boot in Commentary agrees that citizens are fair game. "Given the need to continue these drone strikes," he argues, "it would be silly and self-destructive to grant certain al-Qaeda figures immunity just because they happen to have American citizenship."¶ In a Los Angeles Times op-ed defending drones, international law professor Michael W. Lewis writes that there are "four obvious options" for dealing with Taliban or Al Qaeda in tribal areas of Pakistan: accept their presence, send the Pakistani military to attack them, send in American ground troops, or his preference, which is armed drones. "Any alternative use of force against Taliban or Al Qaeda forces would be likely to cause many more civilian casualties," he concludes.¶ Implicit in each argument is a false choice. The authors all write here as if America must persist with our drone policy as it is or else forever ground our fleet.\* They're arguing against the proposition that there should be no drones at all. None treat seriously the alternative that the vast majority of drone critics advocate: a reformed drone program that operates legally, morally, and prudently. In 2009, President Obama criticized his predecessor for establishing "an ad hoc legal approach for fighting terrorism" that was neither effective nor sustainable -- a framework that "failed to rely on our legal traditions and time-tested institutions, and that failed to use our values as a compass." Going forward, he said, America's war against Al Qaeda must proceed "with an abiding confidence in the rule of law and due process; in checks and balances and accountability."¶ Most drone critics demand no more than that Obama live up to the standards he articulated. They aren't against keeping armed drones in our arsenal; they're against giving them to the CIA, an opaque intelligence agency that is prone to abusing the power to kill in secret and has no obligation to follow the rules of engagement that constrain the U.S. military.¶ They aren't against killing Al Qaeda members with Hellfire missiles; they're against a process for identifying Al Qaeda terrorists or "associated forces" that equates being accused with being guilty.¶ They aren't against killing American citizens who join the enemy; they're against the extrajudicial killing of Americans merely accused of doing so, especially when conducted in secret, far from any battlefield, with no evidence or defense presented, and no mechanism for accountability if a mistake is made.¶ They aren't against rules permitting certain enemies to be targeted and killed; they're against secret rules written by compromised political appointees and withheld from the crucible of public discourse.¶ In short, most drone critics aren't opposed to armed, unmanned aerial vehicles in general, but to specific features of the targeted-killing program that make it imprudent and immoral. Precisely because it is so difficult to argue that armed drones are always indefensible, Obama defenders often speak out as if against that straw man. As a result, fewer Americans grapple with the more persuasive argument that Obama's specific drone campaign is indefensible, for a much more legally, morally, and prudentially sound drone program could replace it. That's the tragedy and travesty of this whole picture -- many of the problems with the U.S. drone program could be mitigated through straightforward reforms. And those reforms ought to be imposed by Congress, not adopted in secret by an executive branch that has the prerogative to reverse itself in secret or grant itself exceptions.

#### Scenario 1 is Yemen

#### Unaccountable drone strikes strengthen AQAP and destabilize Yemen

Jacqueline Manning 12, Senior Editor of International Affairs Review, December 9 2012, “Free to Kill: How a Lack of Accountability in America’s Drone Campaign Threatens U.S. Efforts in Yemen,” http://www.iar-gwu.org/node/450

Earlier this year White House counter-terrorism advisor, John Brennan, named al-Qaeda in the Arabian Peninsula (AQAP) in Yemen the greatest threat to the U.S. Since 2009, the Obama administration has carried out an estimated 28 drone strikes and 13 air strikes targeting AQAP in Yemen, while the Yemeni Government has carried out 17 strikes, and another five strikes cannot be definitively attributed to either state . There is an ongoing debate over the effectiveness of targeted killings by drone strikes in the fight against al-Qaeda. However, what is clear is that the secrecy and unaccountability with which these drone strike are being carried out are undermining U.S. efforts in Yemen.¶ The drone campaign in Yemen is widely criticized by human rights activists, the local population and even the United Nations for its resulting civilian casualties. It is also credited with fostering animosity towards the U.S. and swaying public sentiment in Yemen in favor of AQAP. The long-term effects, as detailed by a 2012 report by the Center for Civilians in Conflict, seem to be particularly devastating. The resulting loss of life, disability, or loss of property of a bread-winner can have long-term impacts, not just on an individual, but on an entire family of dependents.¶ The effectiveness of drone technology in killing al-Qaeda militants, however, cannot be denied. Targeted killings by drone strikes have eliminated several key AQAP members such as Anwar al-Awlaki, Samir Khan, Abdul Mun’im Salim al Fatahani, and Fahd al-Quso . Advocates of the counterterrorism strategy point out that it is much less costly in terms of human lives and money than other military operations.¶ While there are strong arguments on both sides of the drone debate, both proponents and critics of targeted killings of AQAP operatives by drones agree that transparency and accountability are needed.¶ Authorizing the CIA to carry out signature strikes is of particular concern. In signature strikes, instead of targeting individual Al Qaeda leaders, the CIA targets locations without knowing the precise identity of the individuals targeted as long as the locations are linked to a “signature” or pattern of behavior by Al Qaeda officials observed over time. This arbitrary method of targeting often results in avoidable human casualties.¶ Secrecy surrounding the campaign often means that victims and families of victims receive no acknowledgement of their losses, much less compensation. There are also huge disparities in the reported number of deaths. In addition, according to The New York Times, Obama administration officials define “militants” as “all military-age males in a strike zone...unless there is explicit intelligence posthumously proving them innocent” This definition leads to a lack of accountability for those casualties and inflames anti-American sentiment.¶ In a report submitted to the UN Human Rights Council, Ben Emmerson, special rapporteur on the promotion and protection of human rights while countering terrorism, asserted that, "Human rights abuses have all too often contributed to the grievances which cause people to make the wrong choices and to resort to terrorism….human rights compliant counter-terrorism measures help to prevent the recruitment of individuals to acts of terrorism." There is now statistical evidence that supports this claim. A 2010 opinion poll conducted by the New America Foundation in the Federally Administered Tribal Areas (FATA) of Pakistan, where U.S. drone strikes have been carried out on a much larger scale, shows an overwhelming opposition to U.S. drone strikes coupled with a majority support for suicide attacks on U.S. forces under some circumstances.¶ It is clear that the drone debate is not simply a matter of morality and human rights; it is also a matter of ineffective tactics. At a minimum the U.S. must implement a policy of transparency and accountability in the use of drones. Signature strikes take unacceptable risks with innocent lives. Targets must be identified more responsibly, and risks of civilian casualties should be minimized. When civilian casualties do occur, the United States must not only acknowledge them, but also pay amends to families of the victims.

#### Strengthened AQAP undermines the Saudi regime

Colonel Hassan Abosaq 12, US Army War College, master of strategic studies degree candidate, 2012, "The Implications of Unstable on Saudi Arabia," Strategy Research Project, www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA560581

AQAP has been vociferous in its opposition to the Saudi regime, and is likely to continue targeting the Kingdom, particularly its oil installations and members of the royal family. In August 2009, an AQAP member attempted to assassinate Prince Mohammed bin Naif, the Saudi Assistant Interior Minister for security affairs. The prince’s attacker was trained in and launched his attack from Yemen, confirming to the Saudis that instability in Yemen poses a security threat to Saudi Arabia. A strengthened AQAP in Yemen is certain to try to put pressure on Saudi Arabia and to strike Saudi targets. AQAP’s military chief, Qasin al-Raymi, warned the Saudi Leadership in July 2011 that they are still regarded as apostates. And he specifically placed King Abdullah, the late Crown Prince Sultan, Interior Minister Prince Naif, and his son Mohammed Bin Naif on the target list.21 In March 2010, Saudi Arabia foiled several planned attacks on oil installation with the arrest of more than 100 suspected al-Qaeda militants. The arrests included 47 Saudis, 51 Yemenis, a Somali, a Bangladeshi, and an Eritrean.22 The wider domestic strife in Yemen has provided AQAP with some breathing space. More worrisome for Saudi Arabia is the increased lawlessness within Yemen. Not only does this provide the space that al-Qaeda needs to regroup, train, recruit, but it also deflects the state resources away from counterterrorism operations. Saudi Arabia has for years been working to infiltrate al-Qaeda in its unstable neighbor to south, Yemen. Saudi Arabia has also been giving Yemen a great deal of assistance to counterterrorism and it is worrying to the Saudis to see all of that assistance diverted from the purposes for which it was intended. In June 2011, AQAP leaped into the security vacuum created by Yemen’s political volatility, and 63 al-Qaeda in the Arabian Peninsula fighters escaped from a Yemeni prison.23 This exemplifies how Yemeni instability emboldens this lethal al-Qaeda affiliate. As the Yemeni military consolidates its strength in an attempt to maintain state control and fight two insurgencies and oppress the protesters, AQAP has further expanded its safe haven in the country’s interior, further increasing their operational capacity. This organization has not only attacked police, foreigners, and diplomatic missions within the country, but also served as a logistic base for acts of terrorism abroad. Yemen also has become the haven for jihad militants not just from Yemen and Saudi Arabia, but from all over the world which includes some Arabs, Americans, Europeans, Africans and others. Al-Qaeda camps, where terrorists from all over the world train are also situated in Yemen. The growing anarchy and al-Qaeda presence could spill over into Saudi Arabia.

#### That destabilizes the Middle East

Anthony Cordesman 11, Arleigh A. Burke Chair in Strategy at CSIS, former director of intelligence assessment in the Office of the Secretary of Defense, former adjunct prof of national security studies at Georgetown, PhD from London University, Feb 26 2011, “Understanding Saudi Stability and Instability: A Very Different Nation,” http://csis.org/publication/understanding-saudi-stability-and-instability-very-different-nation

History scarcely means we can take Saudi stability for granted. Saudi Arabia is simply too critical to US strategic interests and the world. Saudi petroleum exports play a critical role in the stability and growth of a steadily more global economy, and the latest projections by the Department of Energy do not project any major reductions in the direct level of US dependence on oil imports through 2025.¶ Saudi Arabia is as important to the region’s security and stability as it is to the world’s economy. It is the key to the efforts of the Gulf Cooperation Council to create local defenses, and for US strategic cooperation with the Southern Gulf states. It plays a critical role as a counterbalance to a radical and more aggressive Iran, it is the source of the Arab League plan for a peace with Israel, and it has become a key partner in the war on terrorism. The US strategic posture in the Middle East depends on Saudi Arabia having a friendly and moderate regime.

#### Global nuke war

Primakov 9 [September, Yevgeny, President of the Chamber of Commerce and Industry of the Russian Federation; Member of the Russian Academy of Sciences; member of the Editorial Board of Russia in Global Affairs. This article is based on the scientific report for which the author was awarded the Lomonosov Gold Medal of the Russian Academy of Sciences in 2008, “The Middle East Problem in the Context of International Relations”]

The Middle East conflict is unparalleled in terms of its potential for spreading globally. During the Cold War, amid which the Arab-Israeli conflict evolved, the two opposing superpowers directly supported the conflicting parties: the Soviet Union supported Arab countries, while the United States supported Israel. On the one hand, the bipolar world order which existed at that time objectively played in favor of the escalation of the Middle East conflict into a global confrontation. On the other hand, the Soviet Union and the United States were not interested in such developments and they managed to keep the situation under control. The behavior of both superpowers in the course of all the wars in the Middle East proves that. In 1956, during the Anglo-French-Israeli military invasion of Egypt (which followed Cairo’s decision to nationalize the Suez Canal Company) the United States – contrary to the widespread belief in various countries, including Russia – not only refrained from supporting its allies but insistently pressed – along with the Soviet Union – for the cessation of the armed action. Washington feared that the tripartite aggression would undermine the positions of the West in the Arab world and would result in a direct clash with the Soviet Union. Fears that hostilities in the Middle East might acquire a global dimension could materialize also during the Six-Day War of 1967. On its eve, Moscow and Washington urged each other to cool down their “clients.” When the war began, both superpowers assured each other that they did not intend to get involved in the crisis militarily and that that they would make efforts at the United Nations to negotiate terms for a ceasefire. On July 5, the Chairman of the Soviet Government, Alexei Kosygin, who was authorized by the Politburo to conduct negotiations on behalf of the Soviet leadership, for the first time ever used a hot line for this purpose. After the USS *Liberty* was attacked by Israeli forces, which later claimed the attack was a case of mistaken identity, U.S. President Lyndon Johnson immediately notified Kosygin that the movement of the U.S. Navy in the Mediterranean Sea was only intended to help the crew of the attacked ship and to investigate the incident. The situation repeated itself during the hostilities of October 1973. Russian publications of those years argued that it was the Soviet Union that prevented U.S. military involvement in those events. In contrast, many U.S. authors claimed that a U.S. reaction thwarted Soviet plans to send troops to the Middle East. Neither statement is true. The atmosphere was really quite tense. Sentiments both in Washington and Moscow were in favor of interference, yet both capitals were far from taking real action. When U.S. troops were put on high alert, Henry Kissinger assured Soviet Ambassador Anatoly Dobrynin that this was done largely for domestic considerations and should not be seen by Moscow as a hostile act. In a private conversation with Dobrynin, President Richard Nixon said the same, adding that he might have overreacted but that this had been done amidst a hostile campaign against him over Watergate. Meanwhile, Kosygin and Foreign Minister Andrei Gromyko at a Politburo meeting in Moscow strongly rejected a proposal by Defense Minister Marshal Andrei Grechko to “demonstrate” Soviet military presence in Egypt in response to Israel’s refusal to comply with a UN Security Council resolution. Soviet leader Leonid Brezhnev took the side of Kosygin and Gromyko, saying that he was against any Soviet involvement in the conflict. The above suggests an unequivocal conclusion that control by the superpowers in the bipolar world did not allow the Middle East conflict to escalate into a global confrontation. After the end of the Cold War, some scholars and political observers concluded that a real threat of the Arab-Israeli conflict going beyond regional frameworks ceased to exist. However, in the 21st century this conclusionno longer conforms to the realit**y**. The U.S. military operation in Iraq has changed the balance of forces in the Middle East. The disappearance of the Iraqi counterbalance has brought Iran to the fore as a regional power claiming a direct role in various Middle East processes. I do not belong to those who believe that the Iranian leadership has already made a political decision to create nuclear weapons of its own. Yet Tehran seems to have set itself the goal of achieving a technological level that would let it make such a decision (the “Japanese model”) under unfavorable circumstances. Israel already possesses nuclear weapons and delivery vehicles. In such circumstances, the absence of a Middle East settlement opens a dangerous prospect ofa nuclear collision in the region, which would have catastrophic consequences for the whole world**.** The transition to a multipolar world has objectively strengthened the role of states and organizations that are directly involved in regional conflicts, which increases the latter’s danger and reduces the possibility of controlling them. This refers, above all, to the Middle East conflict. The coming of Barack Obama to the presidency has allayed fears that the United States could deliver a preventive strike against Iran (under George W. Bush, it was one of the most discussed topics in the United States). However, fears have increased that such a strike can be launched *Yevgeny Primakov* 1 3 2 RUSSIA IN GLOBAL AFFAIRS VOL. 7 • No. 3 • JULY – SEPTEMBER• 2009 by Israel, which would have unpredictable consequences for the region and beyond. It seems that President Obama’s position does not completely rule out such a possibility.

#### Scenario 2 is Pakistan

#### Overuse of drones in Pakistan empowers militants and destabilizes the government

Michael J Boyle 13, Assistant Professor of Political Science at La Salle University, former Lecturer in International Relations and Research Fellow at the Centre for the Study of Terrorism and Political Violence at the University of St Andrews, PhD from Cambridge University, January 2013, “The costs and consequences of drone warfare,” International Affairs 89: 1 (2013) 1–29, <http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89_1/89_1Boyle.pdf>

The escalation of drone strikes in Pakistan to its current tempo—one every few days—directly contradicts the long-term American strategic goal of boosting the capacity and legitimacy of the government in Islamabad. Drone attacks are more than just temporary incidents that erase all traces of an enemy. They have lasting political effects that can weaken existing governments, undermine their legitimacy and add to the ranks of their enemies. These political effects come about because drones provide a powerful signal to the population of a targeted state that the perpetrator considers the sovereignty of their government to be negligible. The popular perception that a government is powerless to stop drone attacks on its territory can be crippling to the incumbent regime, and can embolden its domestic rivals to challenge it through violence. Such continual violations of the territorial integrity of a state also have direct consequences for the legitimacy of its government. Following a meeting with General David Petraeus, Pakistani President Asif Ali Zardari described the political costs of drones succinctly, saying that ‘continuing drone attacks on our country, which result in loss of precious lives or property, are counterproductive and difficult to explain by a democratically elected government. It is creating a credibility gap.’75 Similarly, the Pakistani High Commissioner to London Wajid Shamsul Hasan said in August 2012 that¶ what has been the whole outcome of these drone attacks is that you have directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.76¶ The appearance of powerlessness in the face of drones is corrosive to the appearance of competence and legitimacy of the Pakistani government. The growing perception that the Pakistani civilian government is unable to stop drone attacks is particularly dangerous in a context where 87 per cent of all Pakistanis are dissatisfied with the direction of the country and where the military, which has launched coups before, remains a popular force.77

#### Pakistan instability causes loose nukes and Indian intervention --- goes nuclear

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

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

#### Extinction

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

A nuclear conflict in the subcontinent would have disastrous effects on the world as a whole. In a January 2010 paper published in Scientific American, climatology professors Alan Robock and Owen Brian Toon forecast the global repercussions of a regional nuclear war. Their results are strikingly similar to those of studies conducted in 1980 that conclude that a nuclear war between the United States and the Soviet Union would result in a catastrophic and prolonged nuclear winter, which could very well place the survival of the human race in jeopardy. In their study, Robock and Toon use computer models to simulate the effect of a nuclear exchange between India and Pakistan in which each were to use roughly half their existing arsenals (50 apiece). Since Indian and Pakistani nuclear devices are strategic rather than tactical, the likely targets would be major population centers. Owing to the population densities of urban centers in both nations, the number of direct casualties could climb as high as 20 million. ¶ The fallout of such an exchange would not merely be limited to the immediate area. First, the detonation of a large number of nuclear devices would propel as much as seven million metric tons of ash, soot, smoke, and debris as high as the lower stratosphere. Owing to their small size (less than a tenth of a micron) and a lack of precipitation at this altitude, ash particles would remain aloft for as long as a decade, during which time the world would remain perpetually overcast. Furthermore, these particles would soak up heat from the sun, generating intense heat in the upper atmosphere that would severely damage the earth’s ozone layer. The inability of sunlight to penetrate through the smoke and dust would lead to global cooling by as much as 2.3 degrees Fahrenheit. This shift in global temperature would lead to more drought, worldwide food shortages, and widespread political upheaval.

### Advantage 2 is Norms

#### Failure to adopt rules for US drones sets an abusive international precedent----magnifies every impact by causing global instability and collapse of interstate relations

Kristen Roberts 13, news editor for National Journal, master's in security studies from Georgetown University, master's degree in journalism from Columbia University, March 21st, 2013, "When the Whole World Has Drones," National Journal, www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321

To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order.¶ Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan.¶ This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself **that would at minimum** create a globally relevant standard **for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation.**

#### And it makes great power war inevitable by tempting leaders to use drones too often---causes escalation---traditional checks don’t apply

Eric Posner 13, a professor at the University of Chicago Law School, May 15th, 2013, "The Killer Robot War is Coming," Slate, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/05/drone\_warfare\_and\_spying\_we\_need\_new\_laws.html

Drones have existed for decades, but in recent years they have become ubiquitous. Some people celebrate drones as an effective and humane weapon because they can be used with precision to slay enemies and spare civilians, and argue that they pose no special risks that cannot be handled by existing law. Indeed, drones, far more than any other weapon, enable governments to comply with international humanitarian law by avoiding civilian casualties when attacking enemies. Drone defenders also mocked Rand Paul for demanding that the Obama administration declare whether it believed that it could kill people with drones on American territory. Existing law permits the police to shoot criminals who pose an imminent threat to others; if police can gun down hostage takers and rampaging shooters, why can’t they drone them down too?¶ While there is much to be said in favor of these arguments, drone technology poses a paradox that its defenders have not confronted. Because drones are cheap, effective, riskless for their operators, and adept at minimizing civilian casualties, governments may be tempted to use them too frequently.¶ Indeed, a panic has already arisen that the government will use drones to place the public under surveillance. Many municipalities have passed laws prohibiting such spying even though it has not yet taken place. Why can’t we just assume that existing privacy laws and constitutional rights are sufficient to prevent abuses?¶ To see why, consider U.S. v. Jones, a 2012 case in which the Supreme Court held that the police must get a search warrant before attaching a GPS tracking device to a car, because the physical attachment of the device trespassed on property rights. Justice Samuel Alito argued that this protection was insufficient, because the government could still spy on people from the air. While piloted aircraft are too expensive to use routinely, drones are not, or will not be. One might argue that if the police can observe and follow you in public without obtaining a search warrant, they should be able to do the same thing with drones. But when the cost of surveillance declines, more surveillance takes place. If police face manpower limits, then they will spy only when strong suspicions justify the intrusion on targets’ privacy. If police can launch limitless drones, then we may fear that police will be tempted to shadow ordinary people without good reason.¶ Similarly, we may be comfortable with giving the president authority to use military force on his own when he must put soldiers into harm’s way, knowing that he will not risk lives lightly. Presidents have learned through hard experience that the public will not tolerate even a handful of casualties if it does not believe that the mission is justified. But when drones eliminate the risk of casualties, the president is more likely to launch wars too often.¶ The same problem arises internationally. The international laws that predate drones assume that military intervention across borders risks significant casualties. Since that check normally kept the peace, international law could give a lot of leeway for using military force to chase down terrorists. But if the risk of casualties disappears, then nations might too eagerly attack, resulting in blowback and retaliation. Ironically, the reduced threat to civilians in tactical operations could wind up destabilizing relationships between countries, including even major powers like the United States and China, making the long-term threat to human life much greater.¶ These three scenarios illustrate the same lesson: that law and technology work in tandem. When technological barriers limit the risk of government abuse, legal restrictions on governmental action can be looser. When those technological barriers fall, legal restrictions may need to be tightened.

#### These conflicts go nuclear --- wrecks global stability

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A second consequence of the spread of drones is that many of the traditional concepts which have underwritten stability in the international system will be radically reshaped by drone technology. For example, much of the stability among the Great Powers in the international system is driven by deterrence, specifically nuclear deterrence.135 Deterrence operates with informal rules of the game and tacit bargains that govern what states, particularly those holding nuclear weapons, may and may not do to one another.136 While it is widely understood that nuclear-capable states will conduct aerial surveillance and spy on one another, overt military confrontations between nuclear powers are rare because they are assumed to be costly and prone to escalation. One open question is whether these states will exercise the same level of restraint with drone surveillance, which is unmanned, low cost, and possibly deniable. States may be more willing to engage in drone overflights which test the resolve of their rivals, or engage in ‘salami tactics’ to see what kind of drone-led incursion, if any, will motivate a response.137 This may have been Hezbollah’s logic in sending a drone into Israeli airspace in October 2012, possibly to relay information on Israel’s nuclear capabilities.138 After the incursion, both Hezbollah and Iran boasted that the drone incident demonstrated their military capabilities.139 One could imagine two rival states—for example, India and Pakistan—deploying drones to test each other’s capability and resolve, with untold consequences if such a probe were misinterpreted by the other as an attack. As drones get physically smaller and more precise, and as they develop a greater flying range, the temptation to use them to spy on a rival’s nuclear programme or military installations might prove too strong to resist. If this were to happen, drones might gradually erode the deterrent relationships that exist between nuclear powers, thus magnifying the risks of a spiral of conflict between them.

#### Credible external oversight is key---leads to international modeling and allows the US to effectively crack down on other abusive drone programs

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Further, the U.S. counterterrorism chief John Brennan has noted that the administration is "establishing precedents that other nations may follow." But, for now, other countries have no reason to believe that the United States carries out its own targeted killing operations responsibly. Without a credible oversight program, those negative perceptions of U.S. behavior will fill the vacuum, and an anything-goes standard might be the result. U.S. denunciations of other countries' programs could come to ring hollow. ¶ If the United States did adopt an oversight system, those denunciations would carry more weight. So, too, would U.S. pressure on other states to adopt similar systems: just as suspicions grow when countries refuse nuclear inspection, foreign governments that turned down invitations to apply a proven system of oversight to their own drone campaigns would reveal their disregard for humanitarian concerns.

#### Now is key to shape international norms and only the US can lead---lack of rules undermines all other norms on violence

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While drone advocates such as Max Boot argue that other countries are unlikely to follow any precedents about drone use established by America, power has an undeniable effect in establishing which norms are respected or enforced. America used its power in the international system after World War 2 to embed norms about human rights and liberal political organization, not only in allies, but in former adversaries and the international system as a whole. Likewise, the literature on rule-oriented constructivism presents a powerful case that norms have set precedents on the appropriate war-fighting and deterrence policies when using weapons of mass destruction and the practices of colonialism and human intervention. Therefore, drones advocates must consider the possible **unintended consequences of lending legitimacy to the** unrestricted use of drones. However, with the Obama administration only now beginning to formulate rules about using drones and seemingly uninterested in restraining its current practices, the US may miss an opportunity to entrench international norms about drone operations.¶ If countries begin to follow the precedent set by the US, there is also the risk of weakening pre-existing international norms about the use of violence. In the summer 2000 issue of International Security, Ward Thomas warned that, while the long-standing norm against assassination has always been less applicable to terrorist groups, the targeting of terrorists is, “likely to undermine the norm as a whole and erode the barriers to the use of assassination in other circumstances.” Such an occurrence would represent a deleterious unintended consequence to an already inhumane international system, justifying greater scrutiny of the drone program.¶ Realism cautions scholars not to expect ethical behaviour in international politics. Yet, the widespread use of drones by recent administrations with little accountability and the lack of any normative framework about their deployment on the battlefield could come to be seen as a serious strategic error and moral failing. If the Obama administration was nervous about leaving an amorphous drone policy to a possible Romney Presidency, then surely China or Russia possessing such a program would be terrifying.

#### That prevents heg decline and allows the US to set global drones norms that prevent the worst consequences of use

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In his second term, President Obama has an opportunity to reverse course and establish a new drones policy which mitigates these costs and avoids some of the long-term consequences that flow from them. A more sensible US approach would impose some limits on drone use in order to minimize the political costs and long-term strategic consequences. One step might be to limit the use of drones to HVTs, such as leading political and operational figures for terrorist networks, while reducing or eliminating the strikes against the ‘foot soldiers’ or other Islamist networks not related to Al-Qaeda. This approach would reduce the number of strikes and civilian deaths associated with drones while reserving their use for those targets that pose a direct or imminent threat to the security of the United States. Such a self-limiting approach to drones might also minimize the degree of political opposition that US drone strikes generate in states such as Pakistan and Yemen, as their leaders, and even the civilian population, often tolerate or even approve of strikes against HVTs. Another step might be to improve the levels of transparency of the drone programme. At present, there are no publicly articulated guidelines stipulating who can be killed by a drone and who cannot, and no data on drone strikes are released to the public.154 Even a Department of Justice memorandum which authorized the Obama administration to kill Anwar al-Awlaki, an American citizen, remains classified.155 Such non-transparency fuels suspicions that the US is indifferent to the civilian casualties caused by drone strikes, a perception which in turn magnifies the deleterious political consequences of the strikes. Letting some sunlight in on the drones programme would not eliminate all of the opposition to it, but it would go some way towards undercutting the worst conspiracy theories about drone use in these countries while also signalling that the US government holds itself legally and morally accountable for its behaviour.156¶ A final, and crucial, step towards mitigating the strategic consequences of drones would be to develop internationally recognized standards and norms for their use and sale. It is not realistic to suggest that the US stop using its drones altogether, or to assume that other countries will accept a moratorium on buying and using drones. The genie is out of the bottle: drones will be a fact of life for years to come. What remains to be done is to ensure that their use and sale are transparent, regulated and consistent with internationally recognized human rights standards. The Obama administration has already begun to show some awareness that drones are dangerous if placed in the wrong hands. A recent New York Times report revealed that the Obama administration began to develop a secret drones ‘rulebook’ to govern their use if Mitt Romney were to be elected president.157 The same logic operates on the international level. Lethal drones will eventually be in the hands of those who will use them with fewer scruples than President Obama has. Without a set of internationally recognized standards or norms governing their sale and use, drones will proliferate without control, be misused by governments and non-state actors, and become an instrument of repression for the strong. One remedy might be an international convention on the sale and use of drones which could establish guidelines and norms for their use, perhaps along the lines of the Convention on Certain Conventional Weapons (CCW) treaty, which attempted to spell out rules on the use of incendiary devices and fragment-based weapons.158 While enforcement of these guidelines and adherence to rules on their use will be imperfect and marked by derogations, exceptions and violations, the presence of a convention may reinforce norms against the flagrant misuse of drones and induce more restraint in their use than might otherwise be seen. Similarly, a UN investigatory body on drones would help to hold states accountable for their use of drones and begin to build a gradual consensus on the types of activities for which drones can, and cannot, be used.159 As the progenitor and leading user of drone technology, the US now has an opportunity to show leadership in developing an international legal architecture which might avert some of the worst consequences of their use.¶ If the US fails to take these steps, its unchecked pursuit of drone technology will have serious consequences for its image and global position. Much of American counterterrorism policy is premised on the notion that the narrative that sustains Al-Qaeda must be challenged and eventually broken if the terrorist threat is to subside over the long term. The use of drones does not break this narrative, but rather confirms it. It is ironic that Al-Qaeda’s image of the United States—as an all-seeing, irreconcilably hostile enemy who rains down bombs and death on innocent Muslims without a second thought—is inadvertently reinforced by a drones policy that does not bother to ask the names of its victims. Even the casual anti-Americanism common in many parts of Europe, the Middle East and Asia, much of which portrays the US as cruel, domineering and indifferent to the suffering of others, is reinforced by a drones policy which involves killing foreign citizens on an almost daily basis. A choice must be made: the US cannot rely on drones as it does now while attempting to convince others that these depictions are gross caricatures. Over time, an excessive reliance on drones will deepen the reservoirs of anti-US sentiment, embolden America’s enemies and provide other governments with a compelling public rationale to resist a US-led international order which is underwritten by sudden, blinding strikes from the sky. For the United States, preventing these outcomes is a matter of urgent importance in a world of rising powers and changing geopolitical alignments. No matter how it justifies its own use of drones as exceptional, the US is establishing precedents which others in the international system—friends and enemies, states and non-state actors—may choose to follow. Far from being a world where violence is used more carefully and discriminately, a drones-dominated world may be one where human life is cheapened because it can so easily, and so indifferently, be obliterated with the press of a button. Whether this is a world that the United States wants to create—or even live in—is an issue that demands attention from those who find it easy to shrug off the loss of life that drones inflict on others today.

#### Decline of US leadership causes global conflict

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

#### Lack of norms causes Chinese drone aggression in maritime disputes---that increases tensions

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It's now been a year since Japan's previously ruling liberal government purchased three of the Senkaku Islands to prevent a nationalist and provocative Tokyo mayor from doing so himself. The move was designed to dodge a potential crisis with China, which claims "indisputable sovereignty" over the islands it calls the Diaoyus.¶ Disregarding the Japanese government's intent, Beijing has reacted to the "nationalization" of the islands by flooding the surrounding waters and airspace with Chinese vessels in an effort to undermine Japan's de facto administration, which has persisted since the reversion of Okinawa from American control in 1971. Chinese incursions have become so frequent that the Japanese Air Self-Defense Forces (JASDF) are now scrambling jet fighters on a near-daily basis in response.¶ In the midst of this heightened tension, you could be forgiven for overlooking the news early in September that Japanese F-15s had again taken flight after Beijing graciously commemorated the one-year anniversary of Tokyo's purchase by sending an unmanned aerial vehicle (UAV) toward the islands. But this wasn't just another day at the office in the contested East China Sea: this was the first known case of a Chinese drone approaching the Senkakus.¶ Without a doubt, China's drone adventure 100-miles north of the Senkakus was significant because it aggravated already abysmal relations between Tokyo and Beijing. Japanese officials responded to the incident by suggesting that Japan might have to place government personnel on the islands, a red line for Beijing that would have been unthinkable prior to the past few years of Chinese assertiveness.¶ But there's a much bigger and more pernicious cycle in motion. The introduction of indigenous drones into Asia's strategic environment -- now made official by China's maiden unmanned provocation -- will bring with it additional sources of instability and escalation to the fiercely contested South and East China Seas. Even though no government in the region wants to participate in major power war, there is widespread and growing concern that military conflict could result from a minor incident that spirals out of control.¶ Unmanned systems could be just this trigger. They are less costly to produce and operate than their manned counterparts, meaning that we're likely to see more crowded skies and seas in the years ahead. UAVs also tend to encourage greater risk-taking, given that a pilot's life is not at risk. But being unmanned has its dangers: any number of software or communications failures could lead a mission awry. Combine all that with inexperienced operators and you have a perfect recipe for a mistake or miscalculation in an already tense strategic environment. ¶ The underlying problem is not just the drones themselves. Asia is in the midst of transitioning to a new warfighting regime with serious escalatory potential. China's military modernization is designed to deny adversaries freedom of maneuver over, on, and under the East and South China Seas. Although China argues that its strategy is primarily defensive, the capabilities it is choosing to acquire to create a "defensive" perimeter -- long-range ballistic and cruise missiles, aircraft carriers, submarines -- are acutely offensive in nature. During a serious crisis when tensions are high, China would have powerful incentives to use these capabilities, particularly missiles, before they were targeted by the United States or another adversary. The problem is that U.S. military plans and posture have the potential to be equally escalatory, as they would reportedly aim to "blind" an adversary -- disrupting or destroying command and control nodes at the beginning of a conflict.¶ At the same time, the increasingly unstable balance of military power in the Pacific is exacerbated by the (re)emergence of other regional actors with their own advanced military capabilities. Countries that have the ability and resources to embark on rapid modernization campaigns (e.g., Japan, South Korea, Indonesia) are well on the way. This means that in addition to two great powers vying for military advantage, the region features an increasingly complex set of overlapping military-technical competitions that are accelerating tensions, adding to uncertainty and undermining stability.¶ This dangerous military dynamic will only get worse as more disruptive military technologies appear, including the rapid diffusion of unmanned and increasingly autonomous aerial and submersible vehicles coupled with increasingly effective offensive cyberspace capabilities.¶ Of particular concern is not only the novelty of these new technologies, but the lack of well-established norms for their use in conflict.¶ Thankfully, the first interaction between a Chinese UAV and manned Japanese fighters passed without major incident. But it did raise serious questions that neither nation has likely considered in detail. What will constrain China's UAV incursions from becoming increasingly assertive and provocative? How will either nation respond in a scenario where an adversary downs a UAV? And what happens politically when a drone invariably falls out of the sky or "drifts off course" with both sides pointing fingers at one another? Of most concern, how would these matters be addressed during a crisis, with no precedents, in the context of a regional military regime in which actors have powerful incentives to strike first?¶ These are not just theoretical questions: Japan's Defense Ministry is reportedly looking into options for shooting down any unmanned drones that enter its territorial airspace.¶ Resolving these issues in a fraught strategic environment between two potential adversaries is difficult enough; the United States and China remain at loggerheads about U.S. Sensitive Reconnaissance Operations along China's periphery. But the problem is multiplying rapidly. The Chinese are running one of the most significant UAV programs in the world, a program that includes Reaper- style UAVs and Unmanned Combat Aerial Vehicles (UCAVs); Japan is seeking to acquire Global Hawks; the Republic of Korea is acquiring Global Hawks while also building their own indigenous UAV capabilities; Taiwan is choosing to develop indigenous UAVs instead of importing from abroad; Indonesia is seeking to build a UAV squadron; and Vietnam is planning to build an entire UAV factory.¶ One could take solace in Asia's ability to manage these gnarly sources of insecurity if the region had demonstrated similar competencies elsewhere. But nothing could be further from the case. It has now been more than a decade since the Association of Southeast Asian Nations (ASEAN) and China signed a declaration "to promote a peaceful, friendly and harmonious environment in the South China Sea," which was meant to be a precursor to a code of conduct for managing potential incidents, accidents, and crises at sea. But the parties are as far apart as ever, and that's on well-trodden issues of maritime security with decades of legal and operational precedent to build upon.¶ It's hard to be optimistic that the region will do better in an unmanned domain in which governments and militaries have little experience and where there remains a dearth of international norms, rules, and institutions from which to draw.¶ The rapid diffusion of advanced military technology is not a future trend. These capabilities are being fielded -- right now -- in perhaps the most geopolitically dangerous area in the world, over (and soon under) the contested seas of East and Southeast Asia. These risks will only increase with time as more disruptive capabilities emerge. In the absence of political leadership, these technologies could very well lead the region into war.

#### Causes US-Sino nuclear war

Max Fisher 11, foreign affairs writer and editor for the Atlantic, MA in security studies from Johns Hopkins, Oct 31 2011, “5 Most Likely Ways the U.S. and China Could Spark Accidental Nuclear War,” http://www.theatlantic.com/international/archive/2011/10/5-most-likely-ways-the-us-and-china-could-spark-accidental-nuclear-war/247616

Neither the U.S. nor China has any interest in any kind of war with one other, nuclear or non-nuclear. The greater risk is an accident. Here's how it would happen. First, an unforeseen event that sparks a small conflict or threat of conflict. Second, a rapid escalation that moves too fast for either side to defuse. And, third, a mutual misunderstanding of one another's intentions.¶ This three-part process can move so quickly that the best way to avert a nuclear war is for both sides to have absolute confidence that they understand when the other will and will not use a nuclear weapon. Without this, U.S. and Chinese policy-makers would have to guess -- perhaps with only a few minutes -- if and when the other side would go nuclear. This is especially scary because both sides have good reason to err on the side of assuming nuclear war. If you think there's a 50-50 chance that someone is about to lob a nuclear bomb at you, your incentive is to launch a preventative strike, just to be safe. This is especially true because you know the other side is thinking the exact same thing. In fact, even if you think the other side probably won't launch an ICBM your way, they actually might if they fear that you're misreading their intentions or if they fear that you might over-react; this means they have a greater incentive to launch a preemptive strike, which means that you have a greater incentive to launch a preemptive strike, in turn raising their incentives, and on and on until one tiny kernel of doubt can lead to a full-fledged war that nobody wants.¶ The U.S. and the Soviet Union faced similar problems, with one important difference: speed. During the first decades of the Cold War, nuclear bombs had to be delivered by sluggish bombers that could take hours to reach their targets and be recalled at any time. Escalation was much slower and the risks of it spiraling out of control were much lower. By the time that both countries developed the ICBMs that made global annihilation something that could happen within a matter of minutes, they'd also had a generation to sort out an extremely clear understanding of one another's nuclear policies. But the U.S. and China have no such luxury -- we inherited a world where total mutual destruction can happen as quickly as the time it takes to turn a key and push a button.¶ The U.S. has the world's second-largest nuclear arsenal with around 5,000 warheads (first-ranked Russia has more warheads but less capability for flinging them around the globe); China has only about 200, so the danger of accidental war would seem to disproportionately threaten China. But the greatest risk is probably to the states on China's periphery. The borders of East Asia are still not entirely settled; there are a number of small, disputed territories, many of them bordering China. But the biggest potential conflict points are on water: disputed naval borders, disputed islands, disputed shipping lanes, and disputed underwater energy reserves. These regional disputes have already led to a handful of small-scale naval skirmishes and diplomatic stand-offs. It's not difficult to foresee one of them spiraling out of control. But what if the country squaring off with China happens to have a defense treaty with the U.S.?¶ There's a near-infinite number of small-scale conflicts that could come up between the U.S. and China, and though none of them should escalate any higher than a few tough words between diplomats, it's the unpredictable events that are the most dangerous. In 1983 alone, the U.S. and Soviet Union almost went to war twice over bizarre and unforeseeable events. In September, the Soviet Union shot down a Korean airliner it mistook for a spy plane; first Soviet officials feared the U.S. had manufactured the incident as an excuse to start a war, then they refused to admit their error, nearly pushing the U.S. to actually start war. Two months later, Soviet spies misread an elaborate U.S. wargame (which the U.S. had unwisely kept secret) as preparations for an unannounced nuclear hit on Moscow, nearly leading them to launch a preemptive strike. In both cases, one of the things that ultimately diverted disaster was the fact that both sides clearly understood the others' red lines -- as long as they didn't cross them, they could remain confident there would be no nuclear war.¶ But the U.S. and China have not yet clarified their red lines for nuclear strikes. The kinds of bizarre, freak accidents that the U.S. and Soviet Union barely survived in 1983 might well bring today's two Pacific powers into conflict -- unless, of course, they can clarify their rules. Of the many ways that the U.S. and China could stumble into the nightmare scenario that neither wants, here are five of the most likely. Any one of these appears to be extremely unlikely in today's world. But that -- like the Soviet mishaps of the 1980s -- is exactly what makes them so dangerous.

### Plan

#### The United States Federal Government should limit the President's war powers authority to assert, on behalf of the United States, immunity from judicial review by establishing a cause of action allowing civil suits brought against the United States by those unlawfully injured by targeted killing operations, their heirs, or their estates in security cleared legal proceedings.

### Solvency

#### The plan establishes legal norms and ensures compliance with the laws of war

Jonathan Hafetz 13, Associate Prof of Law at Seton Hall University Law School, former Senior Staff Attorney at the ACLU, served on legal teams in multiple Supreme Court cases regarding national security, “Reviewing Drones,” 3/8/2013, http://www.huffingtonpost.com/jonathan-hafetz/reviewing-drones\_b\_2815671.html

The better course is to ensure meaningful review after the fact. To this end, Congress should authorize federal damages suits by the immediate family members of individuals killed in drone strikes.¶ Such ex post review would serve two main functions: providing judicial scrutiny of the underlying legal basis for targeted killings and affording victims a remedy. It would also give judges more leeway to evaluate the facts without fear that an error on their part might leave a dangerous terrorist at large.¶ For review to be meaningful, judges must not be restricted to deciding whether there is enough evidence in a particular case, as they would likely be under a FISA model. They must also be able to examine the government's legal arguments and, to paraphrase the great Supreme Court chief justice John Marshall, "to say what the law is" on targeted killings.¶ Judicial review through a civil action can achieve that goal. It can thus help resolve the difficult questions raised by the Justice Department white paper, including the permissible scope of the armed conflict with al Qaeda and the legality of the government's broad definition of an "imminent" threat.¶ Judges must also be able to afford a remedy to victims. Mistakes happen and, as a recent report by Columbia Law School and the Center for Civilians in Conflict suggests, they happen more than the U.S. government wants to acknowledge.¶ Errors are not merely devastating for family members and their communities. They also increase radicalization in the affected region and beyond. Drone strikes -- if unchecked -- could ultimately create more terrorists than they eliminate.¶ Courts should thus be able to review lethal strikes to determine whether they are consistent with the Constitution and with the 2001 Authorization for Use of Military Force, which requires that such uses of force be consistent with the international laws of war. If a drone strike satisfies these requirements, the suit should be dismissed.

#### Cause of action creates a deterrent effect that makes officials think twice about drones---drawbacks of judicial review don’t apply

Stephen I. Vladeck 13, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, Feb 27 2013, “DRONES AND THE WAR ON TERROR: WHEN CAN THE U.S.TARGET ALLEGED AMERICAN TERRORISTS OVERSEAS?” Hearing Before the House Committee on the Judiciary, http://www.lawfareblog.com/wp-content/uploads/2013/02/Vladeck-02272013.pdf

At first blush, it may seem like many of these issues would be equally salient in the context of after-the-fact damages suits. But as long as such a regime was designed carefully and conscientiously, I believe that virtually all of these concerns could be mitigated. ¶ For starters, retrospective review doesn’t raise anywhere near the same concerns with regard to adversity or judicial competence. With respect to adversity, presumably those who are targeted in an individual strike could be represented as plaintiffs in a post-hoc proceeding, whether through their next friend or their heirs. And as long as they could state a viable claim for relief, it’s difficult to see any pure Article III problem with such a suit for retrospective relief.¶ As for competence, judges routinely review whether government officers acted in lawful self-defense under exigent circumstances (this is exactly what the Supreme Court’s 1985 decision in Tennessee v. Garner20 contemplates, after all). And if the Guantánamo litigation of the past five years has shown nothing else, it demonstrates that judges are also more than competent to resolve not just whether individual terrorism suspects are who the government says they are (and thus members of al Qaeda or one of its affiliates), but to do so using highly classified information in a manner that balances—albeit not always ideally—the government’s interest in secrecy with the detainee’s ability to contest the evidence against him.21 Just as Guantánamo detainees are represented in their habeas proceedings by security-cleared counsel who must comply with court-imposed protective orders and security procedures,22 so too, the subjects of targeted killing operations could have their estates represented by security-cleared counsel, who would be in a far better position to challenge the government’s evidence and to offer potentially exculpatory evidence / arguments of their own. And although the Guantánamo procedures have been developed by courts on an ad hoc basis (a process that has itself been criticized by some jurists), 23 Congress might also look to provisions it enacted in 1996 in creating the little-known Alien Terrorist Removal Court, especially 8 U.S.C. § 1534,24 as a model for such proceedings. ¶ More to the point, it should also follow that courts would be far more able as a practical matter to review the relevant questions in these cases after the fact. Although the pure membership question can probably be decided in the abstract, it should stand to reason that the imminence and infeasibility-of-capture issues will be much easier to assess in hindsight—removed from the pressures of the moment and with the benefit of the dispassionate distance that judicial review provides. To similar effect, whether the government used excessive force in relation to the object of the attack is also something that can only reasonably be assessed post hoc.¶ In addition to the substantive questions, it will also be much easier for courts to review the government’s own internal procedures after they are employed, especially if the government itself is already conducting after-action reviews that could be made part of the (classified) record in such cases. Indeed, the government’s own analysis could, in many cases, go a long way toward proving the lawfulness vel non of an individual strike.¶ As I mentioned before, there would still be a host of legal doctrines that would likely get in the way of such suits. Just to name a few, there is the present (albeit, in my view, unjustified) hostility to judicially inferred causes of actions under Bivens; the state secrets privilege;and sovereign and official immunity doctrines. But I am a firm believer that, except where the President himself is concerned (where there’s a stronger argument that immunity is constitutionally grounded),25 each of these concerns can be overcome by statute—as at least some of them arguably have been in the context of the express damages actions provided for under FISA. 26 So long as Congress creates an express cause of action for nominal damages, and so long as the statute both (1) expressly overrides state secrets and immunity doctrines; and (2) replaces them with carefully considered procedures for balancing the secrecy concerns that would arise in many—if not most—of these cases, these legal issues would be vitiated. Moreover, any concerns about exposing to liability government officers who acted in good faith and within the scope of their employment can be ameliorated by following the model of the Westfall Act, and substituting the United States as the proper defendant in any suit arising out of such an operation.27¶ Perhaps counterintuitively, I also believe that after-the-fact judicial review wouldn’t raise anywhere near the same prudential concerns as those noted above. Leaving aside how much less pressure judges would be under in such cases, it’s also generally true that damages regimes don’t have nearly the same validating effect on government action that ex ante approval does. Otherwise, one would expect to have seen a dramatic upsurge in lethal actions by law enforcement officers after each judicial decision refusing to impose individual liability arising out of a prior use of deadly force. So far as I know, no such evidence exists.¶ Of course, damages actions aren’t a perfect solution here. It’s obvious, but should be said anyway, that in a case in which the government does act unlawfully, no amount of damages will make the victim (or his heirs) whole. It’s also inevitable that, like much of the Guantánamo litigation, most of these suits would be resolved under extraordinary secrecy, and so there would be far less public accountability for targeted killings than, ideally, we might want. Some might also object to this proposal as being unnecessary—that, given existing criminal laws and executive orders, there is already a sufficiently clear prohibition on unlawful strikes to render any such damages regime unnecessarily superfluous. ¶ At least as to this last objection, it bears emphasizing that the existing laws depend entirely upon the beneficence of the Executive Branch, since they assume both that the government will (1) willfully disclose details of unlawful operations rather than cover them up; and (2) prosecute its own in cases in which they cross the line. Given both prior practice and unconfirmed contemporary reports of targeted killing operations that appear to raise serious legality issues, such as “signature strikes,” it doesn’t seem too much of a stretch to doubt that these remedies will prove sufficient.¶ In addition, there are two enormous upsides to damages actions that, in my mind, make them a least-worst solution—even if they are deeply, fundamentally flawed:¶ First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability—and, as importantly, precedent—such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution may even compel at least some form of judicial process. 28 Compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to balance all of the relevant private, government, and legal interests at stake in such cases.¶ \* \* \*¶ In his concurrence in the Supreme Court’s famous decision in the Steel Seizure case, Justice Frankfurter suggested that “The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.”¶ 29 It seems to me, Mr. Chairman, that targeted killing operations by the Executive Branch present the legislature with two realistic choices: Congress could accept with minimal scrutiny the Executive Branch’s claims that these operations are carried out lawfully and with every relevant procedural safeguard to maximize their accuracy—and thereby open the door to the “unchecked disregard” of which Justice Frankfurter warned. Or Congress could require the government to defend those assertions in individual cases before a neutral magistrate invested with the independence guaranteed by the Constitution’s salary and tenure protections. So long as the government’s interests in secrecy are adequately protected in such proceedings, and so long as these operations really are consistent with the Constitution and laws of the United States, what does the government have to hide?

# 2AC

## Topicality

### 2AC Authority Topicality

#### We meet---TOTAL DISCRETION without oversight IS war authority---we restrict that

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### Counter-interp---restrictions means limit---includes conditions

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

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

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

#### We meet---the ability to act without judicial review is presidential authority

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

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

#### So does ex post review

ECHR 91,European Court of Human Rights, Decision in Ezelin v. France, 26 April 1991, http://www.bailii.org/eu/cases/ECHR/1991/29.html

The main question in issue concerns Article 11 (art. 11), which provides:¶ "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.¶ 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."¶ Notwithstanding its autonomous role and particular sphere of application, Article 11 (art. 11) must, in the present case, also be considered in the light of Article 10 (art. 10) (see the Young, James and Webster judgment of 13 August 1981, Series A no. 44, p. 23, § 57). The protection of personal opinions, secured by Article 10 (art. 10), is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (art. 11).¶ A. Whether there was an interference with the exercise of the freedom of peaceful assembly¶ In the Government’s submission, Mr Ezelin had not suffered any interference with the exercise of his freedom of peaceful assembly and freedom of expression: he had been able to take part in the procession of 12 February 1983 unhindered and to express his convictions publicly, in his professional capacity and as he wished; he was reprimanded only after the event and on account of personal conduct deemed to be inconsistent with the obligations of his profession.¶ The Court does not accept this submission. The term "restrictions" in paragraph 2 of Article 11 (art. 11-2) - and of Article 10 (art. 10-2) - cannot be interpreted as not including measures - such as punitive measures - taken not before or during but after a meeting (cf. in particular, as regards Article 10 (art. 10), the Handyside judgment of 7 December 1976, Series A no. 24, p. 21, § 43, and the Müller and Others judgment of 24 May 1988, Series A no. 133, p. 19, § 28).

#### So does cause of action

Edward Keynes 10, Professor of Political Science at The Pennsylvania State University and has been visiting professor at the universities of Cologne, Kiel, and Marburg. A University of Wisconsin Ph.D., he has been a Fulbright and an Alexander von Humboldt fellow, “Undeclared War: Twilight Zone of Constitutional Power”, Google Books, p. 119-120

Despite numerous cases challenging the President’s authority to initiate and conduct the Vietnam War, the Federal courts exhibited extreme caution in entering this twilight zone of constitutional power. The federal judiciary’s reluctance to decide war-powers controversies reveals a respect for the constitutional separation of powers, an appreciation of the respective constitutional functions of Congress and the President in external affairs, and a sense of judicial self-restraint. Although most Federal courts exercised self-restraint, several courts scaled such procedural barriers as jurisdiction, standing to sue, sovereign immunity, and the political question to address the scope of congressional and presidential power to initiate war and military hostilities without a declaration of war. The latter decisions reveal an appreciation of the constitutional equilibrium upon which the separation of powers and the rule of law rest. Despite judicial caution, several Federal courts entered the political thicket in order to restore the constitutional balance between Congress and the President. Toward the end of the war in Indochina, judicial concern for the rule of law recommended intervention rather than self-restraint.

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#### 2. Ground---ex ante is illegal and always loses to the ex post CP

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

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

#### 5. Authority means LEGALITY, NOT capability---prevents affs like “defund the military”

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### 6. “On” means there’s no limits disad

Dictionary.com, http://dictionary.reference.com/browse/on

On preposition 1.so as to be or remain supported by or suspended from: Put your package down on the table; Hang your coat on the hook. 2.so as to be attached to or unified with: Hang the picture on the wall. Paste the label on the package.

## Solvency

### Cards

#### Finishing Vladeck

Stephen I. Vladeck 13, Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School, Feb 27 2013, “DRONES AND THE WAR ON TERROR: WHEN CAN THE U.S.TARGET ALLEGED AMERICAN TERRORISTS OVERSEAS?” Hearing Before the House Committee on the Judiciary, http://www.lawfareblog.com/wp-content/uploads/2013/02/Vladeck-02272013.pdf

rather than cover them up; and (2) prosecute its own in cases in which they cross the line. Given both prior practice and unconfirmed contemporary reports of targeted killing operations that appear to raise serious legality issues, such as “signature strikes,” it doesn’t seem too much of a stretch to doubt that these remedies will prove sufficient.¶ In addition, there are two enormous upsides to damages actions that, in my mind, make them a least-worst solution—even if they are deeply, fundamentally flawed:¶ First, if nothing else, the specter of damages, even nominal damages, should have a deterrent effect on future government officers, such that, if a targeted killing operation ever was carried out in a way that violated the relevant legal rules, there would be liability—and, as importantly, precedent—such that the next government official in a similar context might think twice, and might make sure that he’s that much more convinced that the individual in question is who the government claims, and that there’s no alternative to the use of lethal force. Second, at least where the targets of such force are U.S. citizens, I believe that there is a non-frivolous argument that the Constitution may even compel at least some form of judicial process. 28 Compared to the alternatives, nominal damages actions litigated under carefully circumscribed rules of secrecy may be the only way to balance all of the relevant private, government, and legal interests at stake in such cases.¶ \* \* \*¶ In his concurrence in the Supreme Court’s famous decision in the Steel Seizure case, Justice Frankfurter suggested that “The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.”¶ 29 It seems to me, Mr. Chairman, that targeted killing operations by the Executive Branch present the legislature with two realistic choices: Congress could accept with minimal scrutiny the Executive Branch’s claims that these operations are carried out lawfully and with every relevant procedural safeguard to maximize their accuracy—and thereby open the door to the “unchecked disregard” of which Justice Frankfurter warned. Or Congress could require the government to defend those assertions in individual cases before a neutral magistrate invested with the independence guaranteed by the Constitution’s salary and tenure protections. So long as the government’s interests in secrecy are adequately protected in such proceedings, and so long as these operations really are consistent with the Constitution and laws of the United States, what does the government have to hide?

#### Ex post review creates a credible signal of compliance that restrains future executives

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

While some experts have argued for court oversight of drone strikes before they're carried out, Brooks sides with those who say that would be unwieldy and unworkable.¶ Brooks says however an administration that knows its strikes could face court review after the fact -- with possible damages assessed -- would be more responsible and careful about who it strikes and why.¶ "If Congress were to create a statutory cause of action for damages for those who had been killed in abusive or mistaken drone strikes, you would have a court that would review such strikes after the fact. [That would] create a pretty good mechanism that would frankly keep the executive branch as honest as we hope it is already and as we hope it will continue to be into administrations to come," Brooks said.¶ "It would be one of the approaches that would go a very long way toward reassuring both U.S. citizens and the world more generally that our policies are in compliance with rule of law norms."

## 2AC Executive CP

### 2AC Executive CP---General

#### Exec fiat is a voter---aff authors assume the exec WON’T act---no comparative lit kills aff ground and real world education

Richard H. Pildes 13, J.D. candidate at NYU school of law, and Samuel Issacharoff, J.D. candidate at NYU school of law, June 1st, 2013, "Drones and the Dilemma of Modern Warfare,"lsr.nellco.org/cgi/viewcontent.cgi?article=1408&context=nyu\_plltwp

As with all use of lethal force, there must be procedures in place to maximize the likelihood of correct identification and minimize risk to innocents. In the absence of form al legal processes, sophisticated institutional entities engaged in repeated, sensitive actions – including the military – will gravitate toward their own internal analogues to legal process, even without the compulsion or shadow of formal judicial review. This is the role of bureaucratic legalism 63 in developing sustained institutional practices, even with the dim shadow of unclear legal commands. These forms of self- regulation are generated by programmatic needs to enable the entity’s own aims to be accomplished effectively; at times, that necessity will share an overlapping converge with humanitarian concerns to generate internal protocols or process-like protections that minimize the use of force and its collateral consequences, in contexts in which the use of force itself is otherwise justified. But because these process-oriented protections are not codified in statute or reflected in judicial decisions, they typically are too invisible to draw the eye of constitutional law scholars who survey these issues from much higher levels of generality.

#### Only judicial review offsets cognitive biases and is credible---psychology proves

Cassandra Burke Robertson 12, Associate Professor, Case Western Reserve University School of Law, 2012, “ARTICLE: DUE PROCESS IN THE AMERICAN IDENTITY,” Alabama Law Review, 64 Ala. L. Rev. 255, p. lexis

As a policy matter, offering a heightened level of due process may have positive effects. First, it better accounts for the true costs and benefits of counterterrorism practices, offsetting cognitive biases that affect this calculation. Second, it also likely increases the perceived legitimacy of U.S. government action--at least when such action does not violate individuals' sense of identity. Finally, heightened due process can also reconcile deontological and consequentialist views of due process and preserve the centrality of process in the American identity.¶ Providing a higher level of due process can guard against cognitive biases that cause us to overestimate the risks of events that are catastrophic and outside our direct control--two hallmarks of the terrorist threat. n154 First, the risk of a terrorist strike is perceived as a more short-term and immediate risk than the potential harm to judicial process in the long run, and "in a period of crisis, long-term costs are easily overshadowed by perceived short-term gains." n155 Second, the terrorist threat raises existential fears--it "threatens to change the way we experience our lives, draining meaning from relationships of trust and community, and coloring life with the awful hues of suspicion, intimidation, and fear." n156 Thus, we are predisposed to misjudge the risk of terrorism in a due process calculus, and as a result, "we have all too often" realized only with hindsight that we overestimated the potential emergency "after civil liberties have been sacrificed at the altar of national security." n157 By maintaining and even increasing traditional elements of procedural due process, we may offset [\*285] this cognitive bias to some degree by forcing a more reasoned analysis of long-term risks. n158¶ In addition to guarding against cognitive bias, heightened due process may also increase institutional legitimacy over time. This benefit would not be immediate; nevertheless, as Professor Lawrence Solum has noted, even a consequentialist approach to due process need not confine itself to a calculation of only the most obvious or short-term costs and benefits. n159 Instead, it should account for more far-reaching effects, including political legitimacy. n160 And a respect for procedural justice, in particular, can increase institutional legitimacy; as scholars have noted, "procedural fairness plays a key role in shaping the legitimacy that citizens grant to government authority." n161¶ Institutional legitimacy can have significant value in the fight against terrorism. n162 When institutions have a high level of political legitimacy, they possess "a reservoir of goodwill that allows the institutions of government to go against what people may want at the moment without suffering debilitating consequences." n163 Without this reservoir, governments must spend additional resources to monitor compliance and to create incentives for desired behavior. n164 But with such a reservoir, it is easier to encourage global cooperation in specific counterterrorism initiatives and to foster "the development of international legal norms against terrorism." n165¶ This legitimacy benefit only accrues when procedures comport with identity, however. n166 It has long been noted that fair procedures can improve participants' reactions to decisional outcomes--that is, even when [\*286] those decisions go against them, the existence of fair procedures minimizes people's negative reaction. n167 Recently, however, work in experimental psychology has revealed an exception to this "fair process effect"; namely, when individuals "have their identity violated by a decision outcome," they "will be motivated to find flaws in the procedure to justify being upset about the decision outcome." n168 That is, "if a decision damages a central part of an individual (i.e., one's identity), it is unlikely that providing a voice or having consistent procedures can remedy the situation." n169¶ This "identity violation effect" suggests that in considering whether to increase reliance on traditional mechanisms of judicial due process, we should explicitly consider questions of identity. The recent data on public opinion may indicate that a majority of Americans do not currently feel that counterterrorism policy violates their sense of identity. For some, in fact, extending due process to accused terrorists may violate their sense of self. n170¶ But for that portion of the population who opposes such tactics, the identity violation effect may come into play when considering executive-branch alternatives to judicial process. To the extent that extrajudicial counterterrorism measures violate some individuals' sense of what it means to be American, it may be impossible to persuade them that alternative processes such as military commissions or executive-branch level review of targeted killings offer sufficient protection. Indeed, those who oppose such procedures often frame their objections in terms of identity, suggesting that the identity violation effect is felt at least by a significant minority. n171 Even without a majority, this group can have a significant impact on public policy, especially in influencing others who attach both a "due process" and "strength" meaning to the American identity but who have found the "strength" meaning to be more salient up till now. n172¶ As a policy matter, a legal doctrine of due process will be most robust when it is informed by sociological realities as well as political realities. n173 Due process serves a truth-seeking function and protects against the abuse of governmental power. n174 But it also serves a political role "designed to engage the litigant qua citizen in an important governmental institution for [\*287] deciding rights." n175 This political function can only work effectively if our due process rights conform to our national identity.¶ A fundamental reliance on due process--even to the detriment of competing goals such as access to justice--is woven into the fabric of both American law and American identity. n176 This Article has argued that such considerations already run through the public dialogue regarding counterterrorism policy, albeit often at an unacknowledged and unconscious level. n177 Those implicit considerations should be made explicit and brought to the forefront of public debate.¶ CONCLUSION¶ Due process is a fundamental American value, and it is a value that deserves a role in the national debate over security. Perhaps harkening back to Immanuel Kant, the protagonists in Real Genius responsible for stopping the weapon deployment repeated the catchphrase "It's a moral imperative!" n178 In the debate over due process in the war on terror, however, commentators have frequently merged the moral view with the legal. This blending is understandable; although due process is a legal doctrine with consequentialist roots, it is also a deontological value with a significant place in the American identity.¶ Separating these strands in the public debate on the war on terror can facilitate the conscious consideration of our national identity. In turn, this explicit recognition of the intertwining of identity and policy can create the opportunity to intentionally shape this identity. As Professor (now Legal Adviser to the State Department) Harold Koh has noted, "national identities are not givens, but rather, socially constructed products of learning, knowledge, cultural practices, and ideology." n179 Reinforcing a deontological commitment to an identity founded on the rule of law--and to judicial process as an expression of that commitment--helps to create such a social construction by establishing "a shared cultural belief" that people can "take . . . for granted as a necessary and proper aspect of their [\*288] society." n180 In order to do so, however, we must broaden the discussion beyond the legality of the policies--or even their instrumental value--and move the discussion into an examination of more fundamental questions of who we are as a nation and who we want to be.

#### Not solvency---February memo proves

Glenn Greenwald 13, J.D. from NYU, award-winning journalist, February 5th, 2013, "Chilling legal memo from Obama DOJ justifies assassination of US citizens," The Guardian, www.theguardian.com/commentisfree/2013/feb/05/obama-kill-list-doj-memo

This memo is not a judicial opinion. It was not written by anyone independent of the president. To the contrary, it was written by life-long partisan lackeys: lawyers whose careerist interests depend upon staying in the good graces of Obama and the Democrats, almost certainly Marty Lederman and David Barron. Treating this document as though it confers any authority on Obama is like treating the statements of one's lawyer as a judicial finding or jury verdict.¶ Indeed, recall the primary excuse used to shield Bush officials from prosecution for their crimes of torture and illegal eavesdropping: namely, they got Bush-appointed lawyers in the DOJ to say that their conduct was legal, and therefore, it should be treated as such. This tactic - getting partisan lawyers and underlings of the president to say that the president's conduct is legal - was appropriately treated with scorn when invoked by Bush officials to justify their radical programs. As Digby wrote about Bush officials who pointed to the OLC memos it got its lawyers to issue about torture and eavesdropping, such a practice amounts to:¶ "validating the idea that obscure Justice Department officials can be granted the authority to essentially immunize officials at all levels of the government, from the president down to the lowest field officer, by issuing a secret memo. This is a very important new development in western jurisprudence and one that surely requires more study and consideration. If Richard Nixon and Ronald Reagan had known about this, they could have saved themselves a lot of trouble."¶ Life-long Democratic Party lawyers are not going to oppose the terrorism policies of the president who appointed them. A president can always find underlings and political appointees to endorse whatever he wants to do. That's all this memo is: the by-product of obsequious lawyers telling their Party's leader that he is (of course) free to do exactly that which he wants to do, in exactly the same way that Bush got John Yoo to tell him that torture was not torture, and that even it if were, it was legal.¶ That's why courts, not the president's partisan lawyers, should be making these determinations. But when the ACLU tried to obtain a judicial determination as to whether Obama is actually authorized to assassinate US citizens, the Obama DOJ went to extreme lengths to block the court from ruling on that question. They didn't want independent judges to determine the law. They wanted their own lawyers to do so.¶ That's all this memo is: Obama-loyal appointees telling their leader that he has the authority to do what he wants. But in the warped world of US politics, this - secret memos from partisan lackeys - has replaced judicial review as the means to determine the legality of the president's conduct.

#### Legitimizes violent unilateralism internationally

Ralph Nader 12, consumer advocate, lawyer, and author, Dec 1 2012, “Reining in Obama and His Drones,” http://www.truthdig.com/report/item/reining\_in\_obama\_and\_his\_drones\_20121201/

Critics point out how many times in the past that departments and agencies have put forth misleading or false intelligence, from the Vietnam War to the arguments for invading Iraq, or have missed what they should have predicted such as the fall of the Soviet Union. This legacy of errors and duplicity should restrain presidents who execute, by ordering drone operators to push buttons that target people thousands of miles away, based on secret, so-called intelligence.¶ Mr. Obama wants, in Mr. Fein’s view, to have “his secret and unaccountable predator drone assassinations to become permanent fixtures of the nation’s national security complex.” Were Obama to remember his constitutional law, such actions would have to be constitutionally authorized by Congress and subject to judicial review.¶ With his Attorney General Eric Holder maintaining that there is sufficient due process entirely inside the Executive Branch and without Congressional oversight or judicial review, don’t bet on anything more than a more secret, violent, imperial presidency that shreds the Constitution’s separation of powers and checks and balances.¶ And don’t bet that other countries of similar invasive bent won’t remember this green-light on illegal unilateralism when they catch up with our drone capabilities.

#### Other countries won’t believe us---external verification key

Philip Alston 11, John Norton Pomeroy Professor of Law at the NYU School of Law, former UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “The CIA and Targeted Killings Beyond Borders,” 2011, 2 Harv. Nat'l Sec. J. 283, lexis

Before moving to consider the Obama administration's approach to these issues, it is important to underscore the fact that we are talking about two different levels of accountability. The first is that national procedures must meet certain standards of transparency and accountability in order to meet existing international obligations. The second is that the national procedures must themselves be sufficiently transparent to international bodies as to permit the latter to make their own assessment of the extent to which the state concerned is in compliance with its obligations. In other words, even in situations in which states argue that they put in place highly impartial and reliable accountability mechanisms, the international community cannot be expected to take such assurances on the basis of faith rather than of convincing information. Assurances offered by other states accused of transgressing international standards would not be accepted by the United States in the absence of sufficient information upon the basis of which some form of verification is feasible. Since the 1980s, the phrase "trust but verify" n104 has been something of a mantra in the arms control field, but it is equally applicable in relation to IHL and IHRL. The United States has consistently demanded of other states that they demonstrate to the international community the extent of their compliance with international standards. A great many examples could be cited, not only from the annual State Department reports on the human rights practices of other states, but also from a range of statements by the President and the Secretary of State in relation to countries like Egypt, Libya, and Syria in the context of the Arab Spring of 2011.

#### It’s a rubber stamp

Ilya Somin 13, Professor of Law at George Mason University, “Hearing on ‘Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing’: Testimony before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights”, April 23, http://www.law.gmu.edu/assets/files/faculty/Somin\_DroneWarfare\_April2013.pdf

But any internal executive process has the flaw that it could always be overriden by the president, and possibly other high-ranking executive branch officials. Moreover, lower- level executive officials might be reluctant to veto drone strikes supported by their superiors, either out of careerist concerns, or because administration officials are naturally likely to share the ideological and policy priorities of the president. An external check on targeting reduces such risks. External review might also enhance the credibility of the target-selection process with informed opinion both in the United States and abroad.

### AT: Lawyers

#### Only judicial oversight can credibly verify compliance with the laws of war

Avery Plaw 7, Associate Prof of Political Science at the University of Massachusetts at Dartmouth, PhD in Political Science from McGill University, “Terminating Terror: The Legality, Ethics and Effectiveness of Targeting Terrorists,” Theoria: A Journal of Social and Political Theory, No. 114, War and Terror (December 2007), pp. 1-27

To summarize, the general policy of targeting terrorists appears to be defensible in principle in terms of legality, morality and effectiveness. However, some specific targetings have been indefensible and should be prevented from recurring. Critics focus on the indefensible cases and insist that these are best prevented by condemning the general policy. States which target terrorists and their defenders have insisted that self-defense provides a blanket justification for targeting operations. The result has been a stalemate over terrorist targeting harmful to both the prosecution of the war on terror and the credibility of international law. Yet neither advocates nor critics of targeting appear to have a viable strategy for resolving the impasse. A final issue which urgently demands attention, therefore, is whether there are any plausible prospects for a coherent and principled political compromise over the issue of targeting terrorists.¶ Conclusion: the Possibility of Principled Compromise ¶ This final section offers a brief case that there is room for a principled comftarpromise between critics and advocates of targeting terrorists. The argument is by example—a short illustration of one promising possibility. It will not satisfy everyone, but I suggest that it has the potential to resolve the most compelling concerns on both sides.¶ The most telling issues raised by critics of targeting fall into three categories: (1) the imperative need to establish that targets are combatants; (2) the need in attacking combatants to respect the established laws of war; and (3) the overwhelming imperative to avoid civilian casualties. The first issue seems to demand an authoritative judicial determination that could only be answered by a competent court. The second issue requires the openly avowed and consistent implementation of targeting according to standards accepted in international law—a requirement whose fulfillment would best be assured through judicial oversight. The third issue calls for independent evaluation of operations to assure that standards of civilian protection are robustly upheld, a role that could be effectively performed by a court.

## 2AC Debt Ceiling

### Debt Ceiling

#### Shutdown pounds

CBS News 10/5/13, "Government shutdown drags on; Congress to take Sunday off," http://www.cbsnews.com/8301-250\_162-57606174/government-shutdown-drags-on-congress-to-take-sunday-off/

With much of the federal government shut down for the fifth day, Congress has its hands full trying to reach an agreement on reopening the government, but one brief spot of compromise emerged on Friday, with Republicans and Democrats both voicing support for a proposal to restore back pay to federal employees who have been furloughed during the shutdown.¶ ¶ The House will vote Saturday on the measure before recessing until Monday. The vote is expected to pass with bipartisan support. Senate Democratic leaders have not commented publicly on the proposal, but the White House has signaled its strong support.¶ "Federal workers keep the Nation safe and secure and provide vital services that support the economic security of American families," a statement from the White House read. "The Administration appreciates that the Congress is acting promptly to move this bipartisan legislation and looks forward to the bill's swift passage."¶ Restoring back pay to federal workers is "something Congresses have done every time there's been a shutdown, and it's something bipartisan majorities support," White House spokesman Jay Carney added on Friday.¶ Given the administration's aversion to other bills that would address some of the impacts of the shutdown without reopening the entire government - an aversion that has been supported strongly by Senate Democrats - it is likely that the bill will clear the Senate as well and head to the president's desk.¶ Unfortunately, that is where the bipartisan agreement ends, for the most part.¶ The parties remain as far apart on Saturday as they have been for much of the week, with Democrats in the House and Senate calling for a "clean" bill to reopen the government with no strings attached, and Republicans demanding some kind of concession from Democrats on Obamacare before they consent to end the shutdown.

#### Not intrinsic---a logical policymaker could do both, key to op cost decision-making

#### No econ decline war

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

The final outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.37 Whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict, there were genuine concerns that the global economic downturn would lead to an increase in conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fuel impressions of surge in global public disorder. The aggregate data suggests otherwise, however. The Institute for Economics and Peace has constructed a “Global Peace Index” annually since 2007. A key conclusion they draw from the 2012 report is that “The average level of peacefulness in 2012 is approximately the same as it was in 2007.”38 Interstate violence in particular has declined since the start of the financial crisis – as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict; the secular decline in violence that started with the end of the Cold War has not been reversed.39 Rogers Brubaker concludes, “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”40 None of these data suggest that the global economy is operating swimmingly. Growth remains unbalanced and fragile, and has clearly slowed in 2012. Transnational capital flows remain depressed compared to pre-crisis levels, primarily due to a drying up of cross-border interbank lending in Europe. Currency volatility remains an ongoing concern. Compared to the aftermath of other postwar recessions, growth in output, investment, and employment in the developed world have all lagged behind. But the Great Recession is not like other postwar recessions in either scope or kind; expecting a standard “V”-shaped recovery was unreasonable. One financial analyst characterized the post-2008 global economy as in a state of “contained depression.”41 The key word is “contained,” however. Given the severity, reach and depth of the 2008 financial crisis, the proper comparison is with Great Depression. And by that standard, the outcome variables look impressive. As Carmen Reinhart and Kenneth Rogoff concluded in This Time is Different: “that its macroeconomic outcome has been only the most severe global recession since World War II – and not even worse – must be regarded as fortunate.”42

#### Global economy’s resilient---learned lessons from ‘08

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

It is equally possible, however, that a renewed crisis would trigger a renewed surge in policy coordination. As John Ikenberry has observed, “the complex interdependence that is unleashed in an open and loosely rule-based order generates some expanding realms of exchange and investment that result in a growing array of firms, interest groups and other sorts of political stakeholders who seek to preserve the stability and openness of the system.”103 The post-2008 economic order has remained open, entrenching these interests even more across the globe. Despite uncertain times, the open economic system that has been in operation since 1945 does not appear to be closing anytime soon.

#### Obama weak now

NPR 9/21, “Have Obama's Troubles Weakened Him For Fall's Fiscal Fights?” http://www.ideastream.org/news/npr/224494760

President Obama has had a tough year. He failed to pass gun legislation. Plans for an immigration overhaul have stalled in the House. He barely escaped what would have been a humiliating rejection by Congress on his plan to strike Syria.¶ Just this week, his own Democrats forced Larry Summers, the president's first choice to head the Federal Reserve, to withdraw.¶ Former Clinton White House aide Bill Galston says all these issues have weakened the unity of the president's coalition.¶ "It's not a breach, but there has been some real tension there," he says, "and that's something that neither the president nor congressional Democrats can afford as the budget battle intensifies."¶ Obama is now facing showdowns with the Republicans over a potential government shutdown and a default on the nation's debt. On Friday, the House voted to fund government operations through mid-December, while also defunding the president's signature health care law — a position that's bound to fail in the Senate.¶ As these fiscal battles proceed, Republicans have been emboldened by the president's recent troubles, says former GOP leadership aide Ron Bonjean.

#### If their PC internal link is true, Obama won’t fight the plan

Carlo Munoz 5/23/13, staff writer for defense and national security for the Hill, “Obama seeks to ramp down 9/11-era rules for war on terror,” http://thehill.com/blogs/defcon-hill/policy-and-strategy/301737-obama-seeks-to-ramp-down-911-rules-for-war-on-terror

But Obama argued in his address Thursday at the National Defense University that the law has expanded beyond its intent and should be repealed.¶ "I look forward to engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF’s mandate," Obama said.¶ Obama argued that unless the 12-year-old rules are rewritten, Congress risked giving future presidents unbound powers.¶ “Unless we discipline our thinking and our actions, we may be drawn into more wars we don’t need to fight, or continue to grant presidents unbound powers more suited for traditional armed conflicts between nation states,” Obama said in arguing for the AUMF’s change.¶ “So I look forward to engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF’s mandate,” he said. “And I will not sign laws designed to expand this mandate further. Our systematic effort to dismantle terrorist organizations must continue. But this war, like all wars, must end. That’s what history advises. That’s what our democracy demands.”¶ It seems unlikely Congress will approve legislation to change the rules of engagement, however, and it is unclear how hard Obama — already focused on immigration reform and distracted by a trio of controversies — will push on the issue.¶ Some Republicans argued Obama was weakening the U.S. war on terror with his proposals.¶ “I believe we are still in a long, drawn-out conflict with al Qaeda. To somehow argue that al Qaeda is ‘on the run,’ comes from a degree of un-reality to me that is really incredible,” said Sen. John McCain (R-Ariz.).¶ Violent al Qaeda affiliates in Yemen, West Africa, Libya and elsewhere that continue to plot attacks against the United States are proof positive the rules of engagement must remain intact, he said.¶ "To somehow think we can bring the [AUMF] to a complete closure contradicts the reality of the facts on the ground," McCain said. "Al Qaeda will be with us for a long time."¶ A former CIA officer argued the White House simply does not have the political capital to burn in order to get the counterterrorism rules changed.¶ "Congress is not going to allow [Obama] to move" on the rules changes or any of the other initiatives laid out by the president during Thursday's speech, Frederick Fleitz, a former CIA official, told The Hill on Thursday.¶ "I do not think the president is going to spend a lot of political capital on this," said Fleitz, who described Thursday's speech as being geared more toward preserving Obama's foreign policy legacy than actual changes in counterterrorism strategy.

#### PC low now---plan’s a win

Jill Lawrence 9-17**,** national correspondent at National Journal, September 17th, 2013, “Obama Says He’s Not Worried About Style Points. He Should Be,” National Journal, <http://www.nationaljournal.com/whitehouse/obama-says-he-s-not-worried-about-style-points-he-should-be-20130917>

In some ways Obama's fifth year is typical of fifth years, when reelected presidents aim high and often fail. But in some ways it is atypical, notably in the number of failures, setbacks, and incompletes Obama has piled up. Gun control and immigration reform are stalled. Two Obama favorites withdrew their names as potential nominees in the face of congressional opposition – Susan Rice, once a frontrunner for secretary of state, followed by Larry Summers, a top candidate to head the Federal Reserve. Secretary of State John Kerry's possibly offhand remark about Assad giving up his chemical weapons, and Putin's jump into the arena with a diplomatic proposal, saved him from almost certain defeat on Capitol Hill. Edward Snowden set the national security establishment on its heels, then won temporary refuge from … Putin. It's far from clear how that will be resolved.¶ And that's as true for the budget and debt-limit showdowns ahead.¶ Some of Obama's troubles are due to the intransigence of House conservatives, and some may be inevitable in a world far less black and white than the one Reagan faced. But the impression of ineffectiveness is the same.¶ "People don't like it when circumstances are dictating the way in which a president behaves. They want him to be the one in charge," says Dallek, who has written books about nine presidents, including Reagan and Franklin Roosevelt. "It's unfair… On the other hand, that's what goes with the territory. People expect presidents to be in command, and they can't always be in command, and the public is not forgiving."¶ Obama's job approval numbers remain in the mid-40s. The farther they fall below 50 percent, history suggests, the worse he can expect Democrats to do in the midterm House and Senate elections next year. Obama would likely be in worse trouble with the public, at least in the short term, if he had pushed forward with a military strike in Syria. In fact, a new Pew Research Center poll shows 67 percent approve of Obama's switch to diplomacy. But his journey to that point made him look weak and indecisive.¶ Indeed, the year's setbacks are accumulating and that is dangerous for Obama.¶ "At some point people make a collective decision and they don't listen to the president anymore. That's what happened to both Jimmy Carter and George W. Bush," Cannon says. "I don't think Obama has quite gone off the diving board yet in the way that Carter or Bush did … but he's close to the edge. He needs to have some successes and perceptions of success."

#### Fiat solves the link--- plan passes without backlash

#### PC not key and passage inevitable

Jason Easley 9-15, September 15th, 2013, "Obama Humiliates John Boehner By Laughing At His Debt Ceiling Threat," www.politicususa.com/2013/09/15/obama-humiliates-john-boehner-laughing-debt-ceiling-threat.html

Republicans might want to rethink this whole scare Obama into spending cuts with a threat not to raise the debt ceiling plan, because the president isn’t looking scared. The only person who should be scared here is Speaker John Boehner, because Obama clearly has the upper hand.¶ The president has been around the block more than a few times with Boehner and his House Republicans. He knows how this drama plays out. Despite all of their huffy warnings of doom, everyone knows that the wealthy billionaires who fund many Republican campaigns do not want their party to crash the economy (again).¶ President Obama was burned by Boehner the first time that he tried to negotiate, and he learned a valuable lesson. Unless Obama will negotiate with them, all Republicans have are empty threats. When Obama waits the House Republicans out, he wins. The president has nothing to lose. The pressure is all on the House Republicans. They are up for reelection next year. Paying the nation’s bills is their constitutional duty. House Republicans will feel the wrath of the voters if they hurt the economy.¶ The president knows that Boehner’s threats are meaningless. He can laugh them off because they are nothing more than hot air from an empty suit. House Republicans keep trying the same crisis creating tactics and failing. President Obama already knows how the debt ceiling issue is going to end, and whether they’ll admit it or not, Republicans do too.

#### Normal means is plan passes after debt ceiling debate---they’ve cleared the docket

#### Credit ratings have no effect on economy or investment

Neil Irwin 13, is a Washington Post columnist and economics editor, June 10th, 2013, "S&P upgrades U.S. credit, proves continuing irrelevance," [www.washingtonpost.com/blogs/wonkblog/wp/2013/06/10/sp-upgrades-u-s-credit-rating-proves-continuing-irrelevance/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/10/sp-upgrades-u-s-credit-rating-proves-continuing-irrelevance/)

In the summer of 2011, after a debt ceiling showdown in which some Congressional Republicans threatened to allow the government to default, the credit rating firm Standard & Poor's roiled world markets further by downgrading the U.S. government's credit. S&P concluded that the debts of the United States did not in fact warrant a AAA rating but rather a mere AA+. The firm said its outlook for U.S. government debt was negative, seeing risk of further downgrades.¶ Well, good news, America! S&P on Monday revised its outlook to "stable" instead of "negative." So you're still not AAA in their book, but at least things don't appear set to get worse.¶ There is some logic behind the change; in the past two years, the U.S. budget deficit has come down quite a bit, and, importantly, House Republicans have backed away from the practice of threatening default over the debt ceiling to get their way.¶ At the same time, the shift shows the absurdity of sovereign credit ratings.¶ Think of it this way: When S&P (or its competitors, Moody's or Fitch) rates a corporate bond, it is providing useful information about the probability that the company will default on its debt. It can kick the tires, examine the quality of the company's balance sheet, the integrity of its managers, the stability of its revenues. Life is then simpler for investors buying corporate bonds.¶ But sovereign debt is different. It forms the bedrock of the financial system. It is backed not by a company that can easily fail and go bankrupt but by the full faith and credit of the government, with a central bank capable of printing money if there is a short-term liquidity squeeze. And the ratings firms don't bring any special analytical capability to the party; everything you might want to know about the creditworthiness of the U.S. government is in plain sight, from the future path of Federal Reserve policy to the relative dysfunction of Congress to the nation's economic prospects. S&P and Moody's and Fitch might have useful analysis to offer on how creditworthy a manufacturing firm might be, but on U.S. government debt they're just one more group of guys with opinions.¶ Don't believe me? Believe the markets. It's true that the downgrade of the U.S. credit rating in August 2011 caused palpitations on the exchanges -- but that greater uncertainty stirred investors to plow money into Treasury bonds, the very securities that had been downgraded. And today, with news of the upgrade in S&P's outlook for U.S. government debt, Treasury bond yields actually climbed as bond prices fell a bit, fitting the tenor of the better economic news over the last few months.¶ If you assign credit ratings, and the issuer's bonds rise in value after a downgrade and fall in value after an upgrade, you might start to ask yourself whether your ratings are actually telling people anything very useful.

## Drones Shift DA

#### UQ overwhelms --- drones will INEV move to the DOD --- and the link makes no sense because Obaam thinks this will increase his power

John T. Bennett 13, Defense News, 5/24/13, “White House Quietly Shifts Armed Drone Program from CIA to DoD,” http://www.defensenews.com/article/20130524/DEFREG02/305240010/White-House-Quietly-Shifts-Armed-Drone-Program-from-CIA-DoD

The White House has quietly shifted lead responsibility for its controversial armed drone program from the CIA to the Defense Department, a move that could encounter resistance on Capitol Hill.

The decision is a landmark change in America’s 12-year fight against al-Qaida and raises new legal and operational questions while solving others. The shift could set off a bitter congressional turf war among the leaders of the committees that oversee the military and intelligence community, who already have sparred over the issue.

At issue is a months-long debate about whether the CIA should remain the lead organization for planning and conducting aerial strikes on al-Qaida targets from remotely piloted aircraft.

The Obama administration appears to have settled that debate, opting to hand the military control of most drone strikes while returning the CIA to its core missions of collecting and analyzing intelligence.

In a landmark counterterrorism speech Thursday at National Defense University in Washington, Obama did not directly acknowledge the spy agency has been running the drone-strike program for years. Nor did he formally announce the Defense Department would be handed the lead role in the targeted-killing program.

The president offered some clues into the status of the program, opaquely signaling it will now primarily be conducted by the United States military.

When discussing the thorny issue that is the legality of the drone program, Obama called strikes from remotely piloted aircraft a “military tactic.”

“To say a military tactic is legal, or even effective, is not to say it is wise or moral in every instance, for the same progress that gives us the technology to strike half a world away also demands the discipline to constrain that power, or risk abusing it,” Obama said.

Minutes later, Obama, while noting drone strikes present unique geopolitical challenges for Washington, again seemed to hint his administration has concluded the military should run the drone-strike effort.

“Now, this is not to say that the risks are not real,” Obama said. “Any U.S. military action in foreign lands risks creating more enemies and impacts public opinion overseas.”

Military 'Preference'

A senior Obama administration official who briefed reporters before the president’s speech spoke more clearly, announcing the White House indeed has concluded the military soon will take over the lead role for planning and carrying out drone strikes on al-Qaida targets.

“What we do express in the PPG, though, is the preference that the United States military have the lead for the use of force not just in war zones like Afghanistan, but beyond Afghanistan where we are fighting against al-Qaida and its associated forces,” the senior administration official said.

The official was referring to a new presidential policy guidance Obama signed this week that adjusts Washington’s counterterrorism approach and includes the drone-program shift.

In that classified document, “there’s an indication of a preference for the Department of Defense to engage in the use of force outside of war zones,” the senior administration official told reporters.

That official, however — by calling it “a preference” that the military take the lead role — provided important wiggle room and signaled the CIA is not out of the targeted-killing business for good.

To that end, a former senior CIA official told Defense News earlier this week following a not-for-attribution event in Washington that Obama and his senior national security advisers have wanted for some time to return the CIA to its core missions.

“Do you want the nation’s top espionage agency conducting a paramilitary mission or performing espionage?” the former senior official asked rhetorically. “The agency, since 9/11, and it’s understandable, has gotten away from its core missions. A lot of the collection and analysis really is now used for targeting.”

The former senior official predicted the revamped drone program will give the president important legal flexibility.

Turning his hand for effect as if turning the dial of a safe or adjusting a thermostat, the former senior CIA official concluded: “What you want is a dial, not a switch.”

Defense Secretary Chuck Hagel issued a brief statement following Obama’s counterterrorism speech, with analysts saying he appeared to acknowledge the drone-program change.

“The president today presented a comprehensive vision for how we will continue to protect the nation from terrorism, especially from al-Qaida and its affiliates, while remaining true to our values and laws,” Hagel said. “I have directed the Department of Defense to work closely with our interagency partners and allies to implement the president’s guidance.”

Christopher Preble, a senior national security analyst at the CATO Institute, called Hagel’s mention of “interagency partners” a veiled reference to coming coordination with the CIA over taking control of the drone program.

#### Iran won’t be aggressive—history proves

Paul R. Pillar 12, Visiting Professor and Director of the Security Studies Program in the Edmund A. Walsh School of Foreign Service at Georgetown University, served in the Central Intelligence Agency for 28 years, "We Can Live with a Nuclear Iran," March/April, The Washington Monthly, <http://www.washingtonmonthly.com/magazine/marchapril_2012/features/we_can_live_with_a_nuclear_ira035772.php?page=all>

Given the momentousness of such an endeavor and how much prominence the Iranian nuclear issue has been given, one might think that talk about exercising the military option would be backed up by extensive analysis of the threat in question and the different ways of responding to it. But it isn’t. Strip away the bellicosity and political rhetoric, and what one finds is not rigorous analysis but a mixture of fear, fanciful speculation, and crude stereotyping. There are indeed good reasons to oppose Iranian acquisition of nuclear weapons, and likewise many steps the United States and the international community can and should take to try to avoid that eventuality. But an Iran with a bomb would not be anywhere near as dangerous as most people assume, and a war to try to stop it from acquiring one would be less successful, and far more costly, than most people imagine.¶ What difference would it make to Iran’s behavior and influence if the country had a bomb? Even among those who believe that war with the Islamic Republic would be a bad idea, this question has been subjected to precious little careful analysis. The notion that a nuclear weapon would turn Iran into a significantly more dangerous actor that would imperil U.S. interests has become conventional wisdom, and it gets repeated so often by so many diverse commentators that it seldom, if ever, is questioned. Hardly anyone debating policy on Iran asks exactly why a nuclear-armed Iran would be so dangerous. What passes for an answer to that question takes two forms: one simple, and another that sounds more sophisticated.¶ The simple argument is that Iranian leaders supposedly don’t think like the rest of us: they are religious fanatics who value martyrdom more than life, cannot be counted on to act rationally, and therefore cannot be deterred. On the campaign trail Rick Santorum has been among the most vocal in propounding this notion, asserting that Iran is ruled by the “equivalent of al-Qaeda,” that its “theology teaches” that its objective is to “create a calamity,” that it believes “the afterlife is better than this life,” and that its “principal virtue” is martyrdom. Newt Gingrich speaks in a similar vein about how Iranian leaders are suicidal jihadists, and says “it’s impossible to deter them.”¶ The trouble with this image of Iran is that it does not reflect actual Iranian behavior. More than three decades of history demonstrate that the Islamic Republic’s rulers, like most rulers elsewhere, are overwhelmingly concerned with preserving their regime and their power—in this life, not some future one. They are no more likely to let theological imperatives lead them into self-destructive behavior than other leaders whose religious faiths envision an afterlife. Iranian rulers may have a history of valorizing martyrdom—as they did when sending young militiamen to their deaths in near-hopeless attacks during the Iran-Iraq War in the 1980s—but they have never given any indication of wanting to become martyrs themselves. In fact, the Islamic Republic’s conduct beyond its borders has been characterized by caution. Even the most seemingly ruthless Iranian behavior has been motivated by specific, immediate concerns of regime survival. The government assassinated exiled Iranian dissidents in Europe in the 1980s and ’90s, for example, because it saw them as a counterrevolutionary threat. The assassinations ended when they started inflicting too much damage on Iran’s relations with European governments. Iran’s rulers are constantly balancing a very worldly set of strategic interests. The principles of deterrence are not invalid just because the party to be deterred wears a turban and a beard.¶ If the stereotyped image of Iranian leaders had real basis in fact, we would see more aggressive and brash Iranian behavior in the Middle East than we have. Some have pointed to the Iranian willingness to incur heavy losses in continuing the Iran-Iraq War. But that was a response to Saddam Hussein’s invasion of the Iranian homeland, not some bellicose venture beyond Iran’s borders. And even that war ended with Ayatollah Khomeini deciding that the “poison” of agreeing to a cease-fire was better than the alternative. (He even described the cease- fire as “God’s will”—so much for the notion that the Iranians’ God always pushes them toward violence and martyrdom.)

#### No impact to Iranian prolif---they’ll be cautious and moderate

Kenneth Waltz 12, senior research scholar @ Saltzman, Poly Sci Prof @ Columbia, September/October 2012, “Iran and the Bomb – Waltz Replies,” Foreign Affairs, Vol. 91, No. 5, p. 157-162

In arguing that a nuclear-armed Iran would represent an unacceptable threat to the United States and its allies, Colin Kahl rejects my contention that states tend to become more cautious once they obtain nuclear weapons and claims that I minimize the potential threat of an emboldened Islamic Republic. He accuses me of misreading history and suggests that I overestimate the stability produced by nuclear deterrence. In fact, it is Kahl who misunderstands the historical record and who fails to grasp the ramifications of nuclear deterrence.

In Kahl's view, new nuclear states do not necessarily behave as status quo powers and can instead be highly revisionist. Seeking a precedent, he highlights the fact that the Soviet Union encouraged North Korea to launch a potentially risky invasion of South Korea in 1950, shortly after the Soviets had tested their first nuclear bomb. But Kahl neglects to explain the context of that decision. Some time before, U.S. Secretary of State Dean Acheson had publicly identified the United States' security commitments in Asia; defending South Korea was not among them. The United States had also signaled its lack of interest in protecting the South Koreans by declining to arm them with enough weapons to repel a Soviet-backed invasion by the North. The Soviet Union therefore had good reason to assume that the United States would not respond if the North Koreans attacked. In light of these facts, it is difficult to see Stalin's encouragement of the invasion as an example of bold, revisionist behavior. Contrary to Kahl's claims, the beginning of the Korean War hardly supplies evidence of Soviet nuclear adventurism, and therefore it should not be understood as a cautionary tale when considering the potential impact that possessing a nuclear arsenal would have on Iranian behavior.

Kahl seems to accept that nuclear weapons create stability -- or a form of stability, at least. But he notes -- as do most scholars of nuclear matters, myself included -- that nuclear stability permits lower-level violence. Taking advantage of the protection that their atomic arsenals provide, nuclear-armed states can feel freer to make minor incursions, deploy terrorism, and engage in generally annoying behavior. But the question is how significant these disruptive behaviors are compared with the peace and stability that nuclear weapons produce.

Kahl points to the example of Pakistan, whose nuclear weapons have probably increased its willingness to wage a low-intensity fight against India, which makes the subcontinent more prone to crises. As Kahl correctly argues, Pakistan's increased appetite for risk probably played a role in precipitating the so-called Kargil War between India and Pakistan in 1999. But the Kargil War was the fourth war fought by the two countries, and it paled in comparison to the three wars they fought before they both developed nuclear weapons. In fact, the Kargil conflict was a war only according to social scientists, who oddly define "war" as any conflict that results in 1,000 or more battlefield deaths. By historical standards, that casualty rate constitutes little more than a skirmish. Far from proving that new nuclear states are not swayed by the logic of deterrence, the Kargil War supports the proposition that nuclear weapons prevent minor conflicts from becoming major wars. Indeed, nuclear weapons are the only peace-promoting weapons that the world has ever known, and there is no reason to believe that things would be different if Iran acquired such arms.

Kahl also frets that a nuclear-armed Iran would step up its support for terrorist groups. Terrorism is tragic for those whose lives it destroys and unnerving for countries that suffer from it. But the number of annual fatalities from international terrorism is vanishingly small compared with the casualties wrought by major wars. Of course, like Kahl, I would not welcome increased Iranian support for Hezbollah or an increased supply of more potent Iranian arms to Palestinian militants. And I, too, hope for a peaceful resolution of the Israeli-Palestinian conflict and the disputes between Israel and its neighbors. But the last several decades have not offered much reason to believe those goals can be easily attained, and I would rather see the possibility of major war reduced through nuclear stability, even if the price is an increase in disruptive activities and low-level conflict.

Just a few months ago in these pages, Kahl eloquently expressed his opposition to a proposed preventive strike on suspected Iranian nuclear facilities, warning that it could spark a regional war ("Not Time to Attack Iran," March/April 2012). I agree. But Kahl and I differ on what the United States can achieve in its showdown with the Islamic Republic. Kahl appears to believe that it is possible for the United States to forgo risky military action and still prevent Iran from obtaining nuclear weapons through a combination of sanctions and diplomacy. I strongly doubt that. Short of using military force, it is difficult to imagine how Iran could be prevented from acquiring nuclear weapons if it is determined to do so. That outcome would produce a lamentable possible increase in terrorism and lower-level conflict. But the many benefits of regional stability would far outweigh the costs.

### CIA AO

#### Plan’s key to CIA intel gathering

Greg Miller 13, staff writer covering the intelligence beat for the Washington Post, Mar 20 2013, “Secret report raises alarms on intelligence blind spots because of AQ focus,” http://articles.washingtonpost.com/2013-03-20/world/37873177\_1\_drone-strikes-secret-report-national-security-agency

A panel of White House advisers warned President Obama in a secret report that U.S. spy agencies were paying inadequate attention to China, the Middle East and other national security flash points because they had become too focused on military operations and drone strikes, U.S. officials said.¶ Led by influential figures including new Defense Secretary Chuck Hagel and former senator David L. Boren (D-Okla.), the panel concluded in a report last year that the roles of the CIA, the National Security Agency and other spy services had been distorted by more than a decade of conflict.¶ The classified document called for the first significant shift in intelligence resources since they began flowing heavily toward counterterrorism programs and war zones after the attacks of Sept. 11, 2001.¶ The findings by the President’s Intelligence Advisory Board may signal a turning point in the terrorism fight. The document was distributed to senior national security officials at the White House whose public remarks in recent weeks suggest that they share some of the panel’s concerns.¶ John O. Brennan, Obama’s former top counterterrorism adviser, who was sworn in as CIA director this month, told Congress in February that he planned to evaluate the “allocation of mission” at the agency. He described the scope of CIA involvement in lethal operations as an “aberration from its traditional role.”¶ U.S. intelligence officials cautioned that any course adjustments are likely to be more incremental than wholesale. One reason is continued concern about the al-Qaeda threat. But another is the influence accumulated by counterterrorism institutions such as the CIA’s Counterterrorism Center as they have expanded over the past decade.¶ Even Brennan made it clear that the CIA will not relinquish its fleet of armed drones, saying in written answers submitted to lawmakers as part of his confirmation that the agency had a long paramilitary history and “must continue to be able to provide the president with this option.”¶ Still, the advisory board’s previously undisclosed report reflects a broader concern about central aspects of the way counterterrorism operations are being prosecuted nearly 12 years after they began.¶ Last year, Brennan led a multi-agency effort to impose tighter rules on the targeted killing of terrorism suspects overseas. In recent weeks, the administration has been forced to disclose details about the legal basis for drone strikes on U.S. citizens abroad amid an uproar in Congress over the secrecy surrounding such decisions.¶ The White House also is weighing whether to give the Defense Department more control over the drone campaign and reduce the CIA’s role, although officials said the change could take years and probably would not involve CIA drone operations in Pakistan.¶ The intelligence board is made up of 14 experts, many of whom formerly held top government posts. They meet in secret and have extensive access to intelligence officials and records.¶ Members declined to discuss the contents of the report, citing the confidential nature of the group’s work. But several expressed deep misgivings about the increasingly paramilitary missions of the CIA and other intelligence agencies.¶ “The intelligence community has become to some degree a military support operation,” said Boren, a former chairman of the Senate Intelligence Committee who serves as co-chairman of the Intelligence Advisory Board. Boren said the deployment of intelligence personnel and resources has become so unbalanced that it “needs to be changed as dramatically as it was at the end of the Cold War.”¶ Another panelist, former congressman Lee H. Hamilton (D-Ind.), said traditional espionage “has suffered as the CIA has put more and more effort into the operational side.” Hamilton was co-chairman of the 9/11 Commission, whose findings helped usher in far-reaching intelligence changes, including shifting huge resources to counter the terrorist threat.¶ Now concerned that the shift has gone too far, Hamilton said that it is time to “redirect the war footing that we’ve had, the focus on counterterrorism . . . and go back to the traditional functions of gathering and analyzing.”¶ U.S. intelligence officials acknowledged that demands on spy agencies have grown in recent years, driven by political turmoil associated with the Arab Spring, the cyber-espionage threat posed by China and the splintering of militant groups in North Africa. The pressure has been compounded by shrinking or stagnant budgets for most agencies after years of double-digit increases.

## 2AC Legalism K

### AT: Vermuele & Posner

#### Posner and Vermeule are wrong---external checks are effective

Aziz Z. Huq 12, Assistant Professor of Law, University of Chicago Law School, "Binding the Executive (by Law or by Politics)", May 25, www.law.uchicago.edu/files/file/400-ah-binding.pdf

Paulson ’ s genuflection and Obama ’ s reticence, I will contend here, are symptomatic of our political system ’ s operation rather than being aberration al . It is generally the case that even in the heart of crisis, and even on matters where executive competence is supposedly at an acme , legislators employ formal institutional powers not only to delay executive initiatives but also affirmatively to end presidential policies. 20 Numerous examples from recent events illustrate the point. Congressional adversaries of Obama, for instance, cut off his policy of emptying Guantánamo Bay via appropriations riders. 21 Deficit hawks spent 2011 resisting the President’s solutions to federal debt, while the President declined to short - circuit negotiations with unilateral action. 22 Even in military matters, a growing body of empirical research suggests Congress often successfully influences the course of overseas engagements to a greater degree than legal scholars have discerned or acknowledged. 23¶ That work suggests that the failure of absolute congressional control over military matters cannot be taken as evidence of “the inability of law to constrain the executive ” in more subtle ways (p 5). The conventional narrative of executive dominance , in other words, is at best incomplete and demands supplementing .¶ This Review uses The Executive Unbound as a platform to explore how the boundaries of discretionary executive action are established. As the controversial national security policies of the Bush administration recede in time, the issue of executive power becomes ripe for reconsideration. Arguments for or against binding the executive are starting to lose their partisan coloration. There is more room to investigate the dynamics of executive power in a purely positive fashion without the impinging taint of ideological coloration.¶ Notwithstanding this emerging space for analys i s, t here is still surprising inattention to evidence of whether the executive is constrained and to the positive question of how constraint works. The Executive Unbound is a significant advance because it takes seriously this second “ mechanism question. ” Future studies of the executive branch will ignore its i mportant and trenchant analysis at their peril. 24 Following PV ’ s lead, I focus on the descriptive , positive question of how the executive is constrained . I do speak briefly and in concluding to normative matters . B ut f irst and foremost, my arguments should be understood as positive and not normative in nature unless otherwise noted.¶ Articulating and answering the question “ W hat binds the executive ?” , The Executive Unbound draws a sharp line between legal and political constraints on discretion — a distinction between laws and institutions on the one hand, and the incentives created by political competition on the other hand . While legal constraints usually fail, it argues, political constraints can prevail. PV thus postulate what I call a “strong law/ politics dichotomy. ” My central claim in this Review is that this strong law/politics dichotomy cannot withstand scrutiny. While doctrinal scholars exaggerate law ’s autonomy, I contend, the realists PV underestimate the extent to which legal rules and institutions play a pivotal role in the production of executive constraint. Further, the political mechanisms they identify as substitutes for legal checks cannot alone do the work of regulating executive discretion. Diverging from both legalist and realist positions, I suggest that law and politics do not operate as substitutes in the regulation of executive authority. 25 They instead work as interlocking complements. An account of the borders of executive discretion must focus on the interaction of partisan and electoral forces on the one hand and legal rules. It must specify the conditions under which the interaction of political actors’ exertions and legal rules will prove effective in limiting such discretion.

### AT: Rubberstamp

**Legal grey holes not inevitable**

Philip **Alston 11,** John Norton Pomeroy Professor of Law at the NYU School of Law, UN Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004 until 2010, “The CIA and Targeted Killings Beyond Borders,” 2011, 2 Harv. Nat'l Sec. J. 283, lexis nexis

The second problem with Vermeule's approach is the extent to which it **blurs empirical conclusions with normative arguments**. While he never actually states that black or grey holes are normatively desirable, he simply concludes that they are "inevitable" or "unavoidable", and that "decrying their existence is pointless." n558 He situates himself as a realist who is merely observing the reluctance of judges and legislators to scrutinize executive responses to emergencies. The legislators, he says, are "best [\*430] understood as Schmittian lawmakers," n559 while the judges are prudent in not being prepared to shoulder the responsibility of extending the rule of law to emergency situations, even those very broadly defined. n560 Scholars, it seems, are also realists, or at least are equally pusillanimous, since only a handful of them "takes seriously a model of 'global due process.'" n561. But it is done with an air of resignation and pragmatism rather than arguing, as Schmitt would, that it is both inevitable and normatively desirable for the sovereign to enjoy unfettered, dictatorial, powers. It is important to note that the empirical foundation upon which Vermeule bases his analysis is not only rather slight, but also ignores or downplays important examples of cases in which **the courts have in fact pushed back significantly against the executive in relation to conditions of detention and the use of torture**. n562 The results are far from perfect, but they hardly justify the conclusion that black and grey holes are necessarily inevitable.¶ Vermeule seeks to buttress his reliance on this empirical fatalism and his dismissal of "the aspiration to extend legality everywhere . . . [as] hopelessly utopian," n563 by asserting that there is unanimous support among the legal and political elites in the United States that the executive must be able to act illegally:¶ There are too many domains affecting national security in which official opinion holds unanimously, across institutions and partisan lines and throughout the modern era, that executive action must proceed untrammeled by even the threat of legal regulation and judicial review . . . . n564¶ This amounts to a normative argument, but because it is intertwined so carefully with the empirical argument he avoids tackling it head on. Thus, Dyzenhaus's argument for both the importance and feasibility of a common law constitutionalism that upholds the rule of law in the thick sense of vindicating fundamental constitutive principles is never really engaged with directly. Instead, claims of principle are refuted on the basis [\*431] of pragmatic arguments in favor of "hypocritical lip-service" which enables a "veil of decency" n565 to conceal the violations of the law that are being perpetrated and subsequently either overlooked or upheld by the courts. Vermeule concedes that judges could insist upon compliance with the rule of law, but asserts that it is "institutionally impossible for them to do so." n566¶ While Vermeule assiduously avoids any reference to or engagement with either international or foreign law, he invites such engagement when he argues that legal black and grey holes are not a peculiarly American response to the post-9/11 emergency, but rather are "integral to the administrative state," and hence "no legal order governing a massive and massively diverse administrative state can hope to dispense with them." n567 In other words, the United States should not be considered exceptional in this regard. The reality, however, is that almost **all of the principal common law jurisdictions with which the United States can be reasonably be compared (such as Canada, the United Kingdom, and Australia) have, within reasonable limits, respected the rule of law in emergency situations**. Roach has surveyed the extent to which this has been achieved and highlights the crucial role of the right given to states under domestic and international human rights law to derogate from certain rights in the case of emergency. n568 But the difference between Vermeule's approach and the derogation approach is that the latter compels governments to be explicit and open about the derogations, to demonstrate that they fall within specified limits, and to accept that the legality of any derogations is subject to judicial review. The need to spell out the derogation, to notify it publicly, and to be able and prepared to justify it against pre-determined criteria also ensure that the public will be much more involved in the process.

#### Not biopolitical

Jean-Philippe Deranty 4, Professor of French and German Philosophy at Macquarie University, online: http://www.borderlandsejournal.adelaide.edu.au/vol3no1\_2004/deranty\_agambnschall.htm

28. All this explains why Agamben chooses to focus on the decisionistic tradition (Hobbes, Heidegger, Schmitt). With it, he wants to isolate the pure essences of all juridical orders and thus highlight the essential violence structuring traditional politics. Since the law essentially appears as a production and capture of bare life, the political order that enunciates and maintains the law is essentially violent, always threatening the bare life it has produced with total annihilation. Auschwitz is the real outcome of all normative orders. 29. The problem with this strategic use of the decisionistic tradition is that it does not do justice to the complex relationship that these authors establish between violence and normativity, that is, in the end the very normative nature of their theories. In brief, they are not saying that all law is violent, in essence or in its core, rather that law is dependent upon a form of violence for its foundation. Violence can found the law, without the law itself being violent. In Hobbes, the social contract, despite the absolute nature of the sovereign it creates, also enables individual rights to flourish on the basis of the inalienable right to life (see Barret-Kriegel 2003: 86). 30. In Schmitt, the decision over the exception is indeed "more interesting than the regular case", but only because it makes the regular case possible. The "normal situation" matters more than the power to create it since it is its end (Schmitt 1985: 13). What Schmitt has in mind is not the indistinction between fact and law, or their intimate cohesion, to wit, their secrete indistinguishability, but the origin of the law, in the name of the law. This explains why the primacy given by Schmitt to the decision is accompanied by the recognition of popular sovereignty, since the decision is only the expression of an organic community. Decisionism for Schmitt is only a way of asserting the political value of the community as homogeneous whole, against liberal parliamentarianism. Also, the evolution of Schmitt’s thought is marked by the retreat of the decisionistic element, in favour of a strong form of institutionalism. This is because, if indeed the juridical order is totally dependent on the sovereign decision, then the latter can revoke it at any moment. Decisionism, as a theory about the origin of the law, leads to its own contradiction unless it is reintegrated in a theory of institutions (Kervégan 1992). 31. In other words, Agamben sees these authors as establishing a circularity of law and violence, when they want to emphasise the extra-juridical origin of the law, for the law’s sake. Equally, Savigny’s polemic against rationalism in legal theory, against Thibaut and his philosophical ally Hegel, does not amount to a recognition of the capture of life by the law, but aims at grounding the legal order in the very life of a people (Agamben 1998: 27). For Agamben, it seems, the origin and the essence of the law are synonymous, whereas the authors he relies on thought rather that the two were fundamentally different.

### AT: Alt

#### No alt to the legal system---causes more abuse

Jerold S. Auerbach 83, Professor of History at Wellesley, “Justice Without Law?”, 1983, p. 144-146

As cynicism about the legal system increases, so does enthusiasm for alternative dispute-settlement institutions. The search for alternatives accelerates, as Richard Abel has suggested, "when some fairly powerful interest is threatened by an increase in the number or magnitude of legal rights.\*'6 Alternatives are designed to provide a safety valve, to siphon discontent from courts. With the danger of political confrontation reduced, the ruling power of legal institutions is preserved, and the stability of the social system reinforced. Not incidentally, alternatives prevent the use of courts for redistributive purposes in the interest of equality, by consigning the rights of disadvantaged citizens to institutions with minimal power to enforce or protect them. It is, therefore, necessary to beware of the seductive appeal of alternative institutions. They may deflect energy from political organization by groups of people with common grievances; or discourage effective litigation strategies that could provide substantial benefits. They may, in the end, create a two-track justice system that dispenses informal "justice" to poor people with "small" claims and "minor" disputes, who cannot afford legal services, and who are denied access to courts. (Bar associations do not recommend that corporate law firms divert their clients to mediation, or that business deductions for legal expenses—a gigantic government subsidy for litigation—be eliminated.) Justice according to law will be reserved for the affluent, hardly a novel development in American history but one that needs little encouragement from the spread of alternative dispute-settlement institutions.¶ It is social context and political choice that determine whether courts, or alternative institutions, can render justice more or less accessible—and to whom. Both can be discretionary, arbitrary, domineering—and unjust. Law can symbolize justice, or conceal repression. It can reduce exploitation, or facilitate it. It can prohibit the abuse of power, or disguise abuse in procedural forms. It can promote equality, or sustain inequality. Despite the resiliency and power of law, it seems unable to eradicate the tension between legality and justice: even in a society of (legal) equals, some still remain more equal than others. But diversion from the legal system is likely to accentuate that inequality. Without legal power the imbalance between aggrieved individuals and corporations, or government agencies, cannot be redressed. In American society, as Laura Nader has observed, "disputing without the force of law ... [is| doomed to fail."7 Instructive examples document the deleterious effect of coerced informality (even if others demonstrate the creative possibilities of indigenous experimentation). Freed slaves after the Civil War and factory workers at the turn of the century, like inner-city poor people now, have all been assigned places in informal proceedings that offer substantially weaker safeguards than law can provide. Legal institutions may not provide equal justice under law, but in a society ruled by law it is their responsibility.¶ It is chimerical to believe that mediation or arbitration can now accomplish what law seems powerless to achieve. The American deification of individual rights requires an accessible legal system for their protection. Understandably, diminished faith in its capacities will encourage the yearning for alternatives. But the rhetoric of "community" and "justice" should not be permitted to conceal the deterioration of community life and the unraveling of substantive notions of justice that has accompanied its demise. There is every reason why the values that historically are associated with informal justice should remain compelling: especially the preference for trust, harmony, and reciprocity within a communal setting. These are not, however, the values that American society encourages or sustains; in their absence there is no effective alternative to legal institutions.¶ The quest for community may indeed be "timeless and universal."8 In this century, however, the communitarian search for justice without law has deteriorated beyond recognition into a stunted off-shoot of the legal system. The historical progression is clear: from community justice without formal legal institutions to the rule of law, all too often without justice. But injustice without law is an even worse possibility, which misguided enthusiasm for alternative dispute settlement now seems likely to encourage. Our legal culture too accurately expresses the individualistic and materialistic values that most Americans deeply cherish to inspire optimism about the imminent restoration of communitarian purpose. For law to be less conspicuous Americans would have to moderate their expansive freedom to compete, to acquire, and to possess, while simultaneously elevating shared responsibilities above individual rights. That is an unlikely prospect unless Americans become, in effect, un-American. Until then, the pursuit of justice without law does incalculable harm to the prospect of equal justice.

# 1AR

## Solvency

### Psychology

#### The law can and should shape the rational behavior of individuals—plan is a form of libertarian paternalism that diminishes cognitive biases in decision making to maximize welfare

Thaler and Sunstein 3 Richard, Robert P. Gwinn Professor of Economics and Behavioral Science, University of Chicago Graduate School of Business, Cass, Karl N. Llewellyn Distinguished Service Professor, Law School and Department of Political Science, University of Chicago, "Libertarian Paternalism is Not an Oxymoron", preliminary draft 4/3/03, SSRN

The idea of libertarian paternalism might seem to be an oxymoron, but it is both possible and legitimate for private and public institutions to affect behavior while also respecting freedom of choice. Often people’s preferences are ill-formed, and their choices will inevitably be influenced by default rules, framing effects, and starting points. In these circumstances, a form of paternalism cannot be avoided. Equipped with an understanding of behavioral findings of bounded rationality and bounded self-control, libertarian paternalists should attempt to steer people’s choices in welfare-promoting directions without eliminating freedom of choice. It is also possible to show how a libertarian paternalist might select among the possible options and to assess how much choice to offer. Examples are given from many areas, including savings behavior, labor law, and consumer protection.¶ I. Introduction¶ Consider two studies of savings behavior:¶ 1. Hoping to increase savings by workers, several employers have adopted a simple strategy. Instead of asking workers to elect to participate in a 401(k) plan, workers will be assumed to want to participate in such a plan, and hence they will be automatically enrolled unless they specifically choose otherwise. This simple change in the default rule – from nonenrollment to enrollment -- has produced dramatic increases in enrollment. Rather than changing the default rule, some employers have provided their employees with a novel option: Allocate a portion of their future wage increases to savings. Employees who choose this plan are free to opt out at any time. A large number of employees have agreed to try the plan, and only a few have opted out. The result has been to produce significant increases in savings rates.2¶ Libertarians embrace freedom of choice, and so they deplore paternalism.3 Paternalists are thought to be deeply skeptical of freedom of choice and to deplore libertarianism.4 According to the conventional wisdom, libertarians cannot possibly embrace paternalism. The idea of libertarian paternalism seems to be a contradiction in terms.¶ Generalizing from the two studies just described, we intend to unsettle the conventional wisdom here. We elaborate a form of paternalism, libertarian in spirit, that should be acceptable to those who are firmly committed to freedom of choice on grounds of either autonomy or welfare.5 Indeed, we urge that libertarian paternalism provides a basis for both understanding and rethinking a number of areas of contemporary law, including those aspects that deal with worker welfare, consumer protection, and the family.6 In the process of defending these claims, we intend to make some objections to widely held beliefs about both freedom of choice and paternalism.7 Our emphasis is on the fact that in many domains, people lack clear, stable, or well-ordered preferences. What they choose is a product of framing effects, starting points, and default rules, leaving the very meaning of the term “preferences” unclear.¶ Consider the question whether to undergo a risky medical procedure. When people are told, “Of those who have this procedure, 90 percent are alive after five years,” they are far more likely to agree to the procedure than when they are told, “Of those who have this procedure, 10 percent are dead after five years.”8 What, then, are the patient’s “preferences” with respect to this procedure? Experience might be expected to solve this problem, but doctors too are vulnerable to this framing effect.9 Or return to the question of savings for retirement. It is now clear that if an employer requires employees to make an affirmative election in favor of savings, with the default rule devoting 100 percent of wages to current income, the level of savings will be far lower than if the employer adopts an automatic enrollment program, from which employees are freely permitted to opt out.10 Can workers then be said to have well-defined preferences about how much to save? This simple example can be extended to many situations involving the behavior of workers and consumers.¶ As the savings problem illustrates, the design features of both legal and organizational rules have surprisingly powerful influences on the choices made by those affected. We urge that such rules should be chosen with the explicit goal of improving the welfare of the people affected by them. The libertarian aspect of our strategies lies in the straightforward insistence that in general, people should be free to opt out of specified arrangements if they choose to do so. Hence we do not aim to defend any approach that blocks individual choices. The paternalistic aspect consists in the claim that it is legitimate for private and public institutions to attempt to influence people’s behavior even when third party effects are absent. In other words, we argue for self-conscious efforts, by private and public institutions, to steer people’s choices in directions that will improve their own welfare. In our understanding, a policy therefore counts as "paternalistic" if it attempts to influence the choices of affected parties in a way that will make choosers better off.11 Drawing on some well-established findings in behavioral economics and cognitive psychology, we emphasize the possibility that in some cases individuals make inferior decisions in terms of their own welfare -- decisions that they would change if they had complete information, unlimited cognitive abilities, and no lack of willpower.12 In fact the notion of libertarian paternalism might be complemented by that of libertarian benevolence, by which starting points, framing effects, and default rules are enlisted in the interest of vulnerable third parties, and we shall devote some discussion to this possibility.¶ Libertarian paternalism is a relatively weak and nonintrusive type of paternalism, because choices are not blocked or fenced off. In its most cautious forms, libertarian paternalism imposes trivial costs on those who seek to depart from the planner’s preferred option. But the approach we recommend nonetheless counts as paternalistic, because private and public planners are not trying to track people’s anticipated choices, but are self-consciously attempting to move people in directions that will promote their welfare. Some libertarians are likely to have little or no trouble with our endorsement of paternalism for private institutions; their chief objection is to paternalistic law and government. But as we shall show, the same points that support welfare-promoting private paternalism apply to government as well. It follows that one of our principal targets is the dogmatic anti-paternalism of numerous analysts of law, including many economists and economically oriented lawyers. We believe that this dogmatism is based on a combination of a false assumption and two misconceptions.13¶ The false assumption is that almost all people, almost all of the time, make choices that are in their best interest or at the very least are better, by their own lights, than the choices that would be made by third parties. This claim is either tautological, and therefore uninteresting, or testable. We claim that it is testable and false, indeed obviously false. Indeed we do not believe that anyone believes it on reflection. Suppose that a chess novice were to play a game of chess against an experienced player. Predictably the novice would lose precisely because he made inferior choices, choices that could easily be improved by some helpful hints. More generally, how well people choose is an empirical question, one whose answer is likely to vary across domains.14 As a first approximation, it seems reasonable to say that people make better choices in contexts in which they have experience and good information (say, choosing ice-cream flavors) than in contexts in which they are inexperienced and ignorant (say, choosing among medical treatments or investment options). So long as people are not choosing perfectly, it is at least possible that some policy could make them better off by improving their decisions.

### Framing Issue

#### No circumvention---DC court decision

Ed Morrissey 13, Hot Air, "DC circuit slaps Obama administration for refusing to follow statutory law", August 14, hotair.com/archives/2013/08/14/dc-circuit-slaps-obama-administration-for-refusing-to-follow-statutory-law/

Could the Yucca Mountain case put the White House in a vise on the ObamaCare mandates? The DC Circuit Court of Appeals ruled yesterday that the Obama administration cannot ignore statutory law that requires the completion of the licensing process for the controversial nuclear storage site in Nevada, including a final decision on approval. The Obama administration had avoided complying with the federal law that designated Yucca Mountain as a repository for nuclear waste:¶ In a rebuke to the Obama administration, a federal appeals court ruled Tuesday that the Nuclear Regulatory Commission has been violating federal law by delaying a decision on a proposed nuclear waste dump in Nevada.¶ By a 2-1 vote, the U.S. Court of Appeals for the District of Columbia ordered the commission to complete the licensing process and approve or reject the Energy Department’s application for a never-completed waste storage site at Nevada’s Yucca Mountain.¶ In a sharply worded opinion, the court said the nuclear agency was “simply flouting the law” when it allowed the Obama administration to continue plans to close the proposed waste site 90 miles northwest of Las Vegas. The action goes against a federal law designating Yucca Mountain as the nation’s nuclear waste repository.¶ “The president may not decline to follow a statutory mandate or prohibition simply because of policy objections,” Judge Brett M. Kavanaugh wrote in a majority opinion, which was joined Judge A. Raymond Randolph. Chief Judge Merrick B. Garland dissented.¶ As Glenn Reynolds wrote, “Seems like this might apply in quite a few situations.” The Obama administration has decided to ignore statutory language in the Affordable Care Act in order to delay enforcement of the employer mandate, out-of-pocket caps on insurance, and a few other aspects of the law it champions to this day. The Yucca Mountain case provides a similar scenario, and at least at the moment, legal precedent that would likely apply to an appeal of the waivers unilaterally imposed by President Obama.¶ The appeals court explicitly stated that a failure to bind a President to the statute has important implications for the principle of limited government — and so does the ObamaCare case. Once Congress passes a bill and a President signs it, it becomes binding law — binding on the President as well as everyone else. In order to “waive” a mandate at this point, Obama has to go back to Congress and ask them to modify the statute accordingly. Obama won’t do that because the House will insist on rolling back all of the mandates at the same time, and the Senate might actually go along with that approach after the serial disaster that this rollout has produced.¶ Instead, the formal constitutional-law scholar has convinced himself that statutes don’t apply to the President. The DC court of appeals has just given Obama a basic lesson in constitutional law, one that stretches from the Nevada mountainside to the doors of HHS. Perhaps the House might think about filing suit under this precedent to force Obama to come back to Congress.

#### Obama won’t circumvent the plan---recent DC Circuit ruling

Joel B. Pollak 13, "Nuclear Fallout: Yucca Decision Could Affect Immigration, Obamacare", August 14, www.breitbart.com/Big-Government/2013/08/14/Nuclear-Fallout-Yucca-Decision-Affects-Immigration-Obamacare

The Obama administration suffered a setback Tuesday when the D.C. Circuit Court of Appeals ruled against it over the issue of nuclear waste storage at Yucca Mountain, Nevada, which President Barack Obama opposes. Though the ruling re-opens the issue, and provoked bipartisan backlash from Nevada Senators Harry Reid (D) and Dean Heller (R), the bigger impact is the fallout the decision may have for the White House on other issues.¶ In his decision, Judge Brett Kavanaugh, a George W. Bush appointee, held that the Obama administration and federal agencies could not ignore their statutory duty, under the Nuclear Waste Policy Act of 1983, to issue a final decision on the Yucca issue within three years. The Obama administration simply ignored that duty because of policy objections, Kavanaugh held, and therefore had failed to show the "constitutional respect owed to Congress."¶ While a President may refuse to obey a statutory mandate if he has a constitutional objection to it, or if Congress has failed to appropriate the funds necessary to carry it out, he may not do so simply because he has a different opinion: "[T]he President may not decline to follow a statutory mandate or prohibition simply because of policy objections," Kavanaugh said, referring to Article II of the Constitution and Supreme Court precedent.¶ That holding could be relevant to several other issues on which President Obama has decided to flout federal statutes. In 2012, after Congress refused to pass the "Dream Act" to ease immigration laws for illegal aliens brought to the country as children, Obama announced that he would direct federal agencies not to enforce existing immigration laws against them. That decision is already the subject of a lawsuit by ICE agents.¶ Kavanaugh noted that the Constitution protects the President's prosecutorial discretion, but that applies only to the decision to enforce a law, not the decision to follow it. The ICE agents are suing on the grounds that the new Obama administration policy goes so far that it effectively violates existing immigration law.

### AT: Political Question Doctrine

#### Ex post doesn’t violate PQD

Paul Taylor 13, is a Senior Fellow, Center for Policy & Research. Focus on national security policy, international relations, targeted killings, and drone operations. March 23rd, 2013, “Former DOD Lawyer Frowns on Drone Court,” http://centerforpolicyandresearch.com/2013/03/23/former-dod-lawyer-frowns-on-drone-court/

Johnson also raised a very significant separation of powers concern. While the President’s duties and powers are not well enumerated in the Constitution, one thing is made clear: the President is the Commander in Chief of the Armed Forces. According to Johnson, the President therefore cannot abdicate his responsibilities as Commander in Chief to another branch of the government, nor can Congress remove those powers to itself or the Judiciary. While this is not an entirely settled question of law (note the War Powers Act and Congress’ power of the purse strings), it can be easily avoided by conducting the review ex post. After all, ex post review of the execution of nearly any of the President’s powers is fully within the authorities of the Judicial Branch. Johnson also notes that any requirement for ex ante review of a national security issue will require an exception for exigent circumstances. Johnson asks, “is it therefore worth it?” Without coming to a conclusion on this question, ex post review would obviate the concern. No exigent circumstances can occur after the the [sic] deed is done.

## CIA DA

### Doesn’t Solve Case

Jack Goldsmith 13, is the Henry L. Shattuck Professor at Harvard Law School, 3/20/13, “No More Drones for CIA,” http://www.lawfareblog.com/2013/03/no-more-drones-for-cia/

(2) Compared to CIA’s lethal drone operations, DOD’s lethal drone operations are not more transparent to the public and are less transparent to Congress. But by shifting all lethal operations from CIA to DOD, and from Title 50 to Title 10, the USG creates at least the theoretical possibility of greater transparency, for the covert action excuse for secrecy, and any promise of deniability to foreign governments, will no longer be a bar to transparency. It does not follow that DOD will in fact be more transparent, and one result of the shift might be an overall loss in public and congressional transparency. We will see.

### AT: PMCs

#### They’re inev and good

**Goure 2010** – PhD in IR from Johns Hopkins, vice president of the Lexington Institute, former Deputy Director of the International Security Program at CSIS (6/18, Daniel, Lexington Institute, “Private Contractors Still Vital To Operations In Iraq And Afghanistan”, http://www.lexingtoninstitute.org/private-contractors-still-vital-to-operations-in-iraq-and-afghanistan?a=1&c=1171, WEA)

Private contractors provide a range of critical services. Most are involved in base support operations, transportation and security. However, a significant number are engaged in critical maintenance and repair work. Particularly when new systems have been deployed, such as the Stryker brigade combat teams and the MRAPs, the military has turned to private contractors to perform critical support functions. One company, Insitu, has been providing UAV-based surveillance support to the Marine Corps in Iraq and now Afghanistan for years.

Private security contractors in Iraq and Afghanistan have raised a lot of concern. Nevertheless, there are over 20 companies with more than 10,000 armed employees that are continuing to operate in the theater. Contractors providing support services to the military are often required to hire private security companies to protect their people and facilities because the U.S. military refuses to take on that responsibility. Now the State Department is creating its own army to protect its personnel that will remain in Iraq after the U.S. withdraws all its combat forces. The State Department has requested the Pentagon to provide 24 Black Hawks, 50 bomb-resistant vehicles, heavy cargo trucks, fuel trailers, and high-tech surveillance systems. This equipment will be operated by private security contractors and maintained by other private companies, some of whom are doing the same job in Iraq today.

One company that has gotten a bad rap is KBR. There have been some problems with its performance, such as billing issues and instances of substandard performance. However, what this company was asked to do in Iraq was unprecedented. KBR essentially built and sustained the array of bases, camps and outposts which allowed the U.S. military to operate in Iraq. It provided basic services for hundreds of thousands of uniformed personnel, government civilians and contractor personnel in Iraq. The ultimate evidence of KBR’s critical role in supporting the warfighters is that the Army is continuing to employ it in Iraq under its old contract even after a new contract was issued.

The reality is that the United States will never go to war again without its “Fifth Service.” **There are certainly problems with relying on private contractors in a war zone. But the advantages of using private contractors far outweigh the disadvantages**.

## Kritik

### Alt---MUST READ

#### The public doesn’t care enough to solve

Judah A. Druck 12, Editor of the Cornell Law Review, Nov 15 2012, “Droning On: The War Powers Resolution and the Numbing Effect of Technology-Driven Warfare,” Cornell Law Review Vol. 98, No. 1, pp. 209, http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf

Naturally, some have argued that an unchecked President is not necessarily an issue at all. Specifically, in The Executive Unbound , Eric Posner and Adrian Vermeule argue that the lack of presidential con- straint is actually a rational development: we want a President who can act with alacrity, especially in a world where quick decisions may be necessary (e.g., capturing a terrorist). 153 But rather than worry about this progression, Posner and Vermeule argue that sufficient political restraints remain in place to prevent a president from acting reck- lessly, making the inability of legal constraints (such as the WPR) to curtail presidential action a moot point. 154 Specifically, a mix of “elec- tions, parties, bureaucracy, and the media” acts as an adequate con- straint on presidential action, even absent any legal checks on the executive. 155 Posner and Vermeule find that presidential credibility and popularity create a deep incentive for presidents to constrain their own power. This restraint does not arise from a sense of uphold- ing the Constitution or fear of political backlash, but from the public itself. 156 Because of these nonlegal constraints, the authors conclude that the fear of an unconstrained President (one that has the poten- tial to go so far as tyranny) is unwarranted. 157¶ The problem with such a theory is that the requisite social and political awareness that might have existed in large-scale wars has largely disappeared, allowing the President to act without any fear of diminished credibility or popularity. Specifically, Posner and Vermeule seem to rely on public attentiveness in order to check presi- dential action but do not seem to consider a situation where public scrutiny fails to materialize. The authors place an important caveat in their argument: “ As long as the public informs itself and maintains a skepti- cal attitude toward the motivations of government officials , the executive can operate effectively only by proving over and over that it deserves the public’s trust.” 158 But what happens when such skepticism and scru- tiny vanish? The authors premise their argument on a factor that does not exist in a regime that utilizes technology-driven warfare. If credibility is what controls a President, and an apathetic populace does not care enough to shift its political views based on the use of technology-driven warfare abroad, then a President need not worry about public sentiment when deciding whether to use such force. This in turn means that the theory of self-restraint on the part of the President fails to account for contemporary warfare and its social im- pact, making the problem of public numbing very pertinent. 159