### Acct

#### Drones don’t solve terrorism---scattering and new enemies outweigh the benefits

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

Yet the evidence that drones inhibit the operational latitude of terrorist groups and push them towards collapse is more ambiguous than these accounts suggest. 57 In Pakistan, the ranks of Al-Qaeda have been weakened significantly by drone strikes, but its members have hardly given up the fight. Hundreds of Al-Qaeda members have fled to battlefields in Yemen, Somalia, Iraq, Syria and elsewhere. 58 These operatives bring with them the skills, experience and weapons needed to turn these wars into fiercer, and perhaps longer-lasting, conflicts. 59 In other words, pressure from drone strikes may have scattered Al-Qaeda militants, but it does not neutralize them. Many Al-Qaeda members have joined forces with local insur - gent groups in Syria, Mali and elsewhere, thus deepening the conflicts in these states. 60 In other cases, drones have fuelled militant movements and reordered the alliances and positions of local combatants. Following the escalation of drone strikes in Yemen, the desire for revenge drove hundreds, if not thousands, of Yemeni tribesmen to join Al-Qaeda in the Arabian Peninsula (AQAP), as well as smaller, indigenous militant networks. 61 Even in Pakistan, where the drone strikes have weakened Al-Qaeda and some of its affiliated movements, they have not cleared the battlefield. In Pakistan, other Islamist groups have moved into the vacuum left by the absence of Al-Qaeda, and some of these groups, particularly the cluster of groups arrayed under the name Tehrik-i-Taliban Pakistan (TTP), now pose a greater threat to the Pakistani government than Al-Qaeda ever did. 62 Drone strikes have distinct political effects on the ecology of militant networks in these countries, leaving some armed groups in a better position while crippling others. It is this dynamic that has accounted for the US decision gradually to expand the list of groups targeted by drone strikes, often at the behest of Pakistan. Far from concentrating exclusively on Al-Qaeda, the US has begun to use drone strikes against Pakistan’s enemies, including the TTP, the Mullah Nazir group, the Haqqani network and other smaller Islamist groups. 63 The result is that the US has weakened its principal enemy, Al-Qaeda, but only at the cost of earning a new set of enemies, some of whom may find a way to strike back. 64 The cost of this expansion of targets came into view when the TTP inspired and trained Faisal Shahzad to launch his attack on Times Square. 65 Similarly, the TTP claimed to be involved, possibly with Al-Qaeda, in attacking a CIA outpost at Camp Chapman in the Khost region of Afghanistan on 30 December 2009.66

#### No circumvention

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

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

### S

#### Normal means waives sovereign immunity

Steve 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, 3/18/13, “The Laws Governing Targeted Killing and Non-traditional Warfare,” panel discussion at Fordham’s Center on National Security. Card begins at ~6:13. http://centeronnationalsecurity.org/node/539

So, I have the, I think, unenviable task of trying to tie together Jeh Johnson’s speech this morning, the last panel, and what we’re supposed to cover in this panel. And so I thought what I might try to do, and do that all in five minutes, is to use the shell of one of my favorite law review articles from when I was actually, you know, learning about this stuff for the first time. So in 1988 in the Columbia Law Review, John Hart Ely published an article titled “Suppose Congress wanted a War Powers Act that worked.” Needless to say, John was a little skeptical that the Congress had in fact done that. So I’m going to sort of call my remarks “Suppose Congress wanted a drone court that worked.” Indeed, I have a very simple seven-step program that I can sell to you on how this can work, contra the suggestions this morning by the former DOD General Counsel. ¶ So first, step one. If you wanted a drone court that worked, that is to say, if you wanted a meaningful judicial remedy to put the drone program on more firm legal footing, it seems to me that the first priority is that review be after the fact, at least in addition to, if not entirely exclusive of, ex ante review. So Jeh Johnson’s remarks this morning were primarily about the shortcomings that you would see from both a policy and legal perspective with review of a drone strike before it happens. I think those concerns largely evaporate in the context of after-the-fact review, which, if you think about it, courts constantly are asked after the fact whether something the government did was justified by the imminent threat, whether a law enforcement officer was justified in using lethal force, these are questions that are much easier to resolve afterwards and, indeed, we do it all the time. So after the fact review, step one.¶ Step two. It should be a cause of action for damages, as opposed to a new court. So in other words, step two of my seven-step proposal for a drone court is “no court.” You don’t need a new court, you have courts, what you need is a cause of action. And if you think it might be strange for Congress to pass a cause of action, as opposed to a new court system, for super-secret programs, consider that in section 110 of the Foreign Intelligence Surveillance Act, or FISA, Congress – which in the rest of FISA had created a brand new super-secret court to hear foreign intelligence surveillance search warrant applications – created a free-standing damages cause of action for those who were aggrieved by violations of FISA, and then sent them into the regular courts. Right, so step two: damages cause of action modeled on FISA.¶ Step three. If in fact the drone strikes are being carried out under color of law, then make the United States the defendant. Rather than have these proceed as officer suits, waive the federal government’s sovereign immunity, substitute them as the defendant, and that way there can’t be any of this “He was just following orders” nonsense, right? This is the model that the Congress followed in 1988 in the Westfall Act, which provides that in any court suit against the federal government arising out of a federal officer’s employment, the US is substituted as the defendant. So step three, US as defendant.

#### Ex post solves court deference

Paul Taylor 13, Senior Fellow at the Center for Policy & Research with a focus on national security policy, international relations, targeted killings, and drone operations, JD from Seton Hall University School of Law, “A FISC for Drones?” http://transparentpolicy.org/2013/02/a-fisc-for-drones/

Judges would likely be much more comfortable with ex post review. Ex post review would free them from any implication that they are issuing a “death warrant” and would place them in a position that they are much more comfortable with: reviewing executive uses of force after the fact. While there are clearly parallels that could be drawn between the ex ante review proposed here and the search and seizure warrants that judges routinely deal with, there are also important differences. First and foremost is that this implicates not the executive’s law enforcement responsibility but its war-making and foreign relations responsibilities, with which courts are loath to interfere, but are sometimes willing to review for abuse.¶ Additionally, in search and seizure warranting, there an ex post review will eventually be available. That will likely not be the case in drone strikes and other targeted killings unless such a process is specifically created. There are simply too many hurdles to judicial review (including state secrets, political questions, discovery problems, etc) for the courts to create such an opportunity without congressional action.¶ Chesney also noted that executive officials involved in the nomination process would prefer an ex ante review to shield them from unexpected civil liability by the victims or their families. I’m sure that it is true that administration officials would like to have “certainty ex ante that they would not face a lawsuit.” However, this is not a guarantee that the courts can provide to the executive. As noted above, as with search and seizure warrants, there are issues to consider after the approval of the executive action. Ex ante review does not allow for inquiry into important ancillary issues, such as the balancing of risk to civilian bystanders. Also, it provides no assurances that new, exculpatory intelligence forces a reassessment of the targeting decision. Only ex post review would achieve this.¶ There is also the problem that typified the FISC: permissiveness. Of the tens of thousands of FISA warrant requests, only a handful have been rejected. When allowing for modification of the requests, it is not clear whether any have been finally rejected. There is little reason to believe that the proposed “drone court” will be much different. It is far too likely that a court will hesitate to impede an operation that the executive believes is required to protect out national security. Once the operation is complete, however, the court will not be inclined to hold back its criticism on all manner of aspects of the operation, from the initial targeting decision to the final execution.

### T TK

#### Targeted killing includes signature strikes

Rosa Brooks 13, 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, 4/22/2013, “Drones and the New Way of War,” Panel discussion at the Cato Institute, moderated by Malou Innocent, Foreign Policy analyst for Cato. Card begins at ~30:00. http://www.cato.org/events/drones-new-way-war

And that’s the reason that we have seen a significant expansion of the use of targeted killings, predominantly, although yes, not exclusively, via drone. I mean, in theory, you could could have targeted killing by slingshot, right, it doesn’t really matter the technology, but the technology enables the increased use of a particular approach. Targeted killing, referring to the killing of specific individuals, whether identified by name or as a result of their observed patterns of activity, in a foreign country, inside the territory of a foreign sovereign state. So what we’ve seen, over the course of the last – just over a decade – has been the use of drones for targeted killing purposes has gone from occasional, and restricted largely to target those who were perceived as extremely high-value targets, high up in the al Qaeda food chain, to increasingly, the use of targeted killing both in more in more geographic regions, expanding from Yemen and Pakistan to Somalia and perhaps to other states as well such as Mali and the Philippines. We’ve also seen the use of targeted killing to go after a wider and wider range of potential targets, who are more and more distant from, you know, al Qaeda Central and the upper echelons of al Qaeda Central. Several analyses, both by the New America Foundation, of which I’m a fellow, but also several newspaper analyses, have looked, apparently, at some leaked CIA documents, have concluded that the percentage of those killed in targeted killings in recent years, that only a very small fraction of those killed have been identifiable as senior level al Qaeda operatives or even operatives and associates of al Qaeda, and larger and larger numbers are, you know, unknown foreign militants suspected of being affiliated with an affiliate of an affiliate.

#### No distinction – we target individuals and add them to kill/capture lists using signatures

Derek Gregory 12, Prof of Geography and Peter Wall Distinguished Professor at the University of British Columbia, PhD from the University of Cambridge, “Targeted killings and signature strikes,” Nov 6 2012, http://geographicalimaginations.com/2012/11/06/targeted-killings-and-signature-strikes/

Garrett’s discussion clearly refers to ‘personality strikes’, but – second – the distinction between the evidential/inferential apparatus used for a ‘personality strike’ and for a ‘signature strike’ is by no means clear-cut. Kate Clark‘s report for the Afghan Analysts Network describes the attempted killing of Muhammad Amin, the Taliban deputy shadow governor of Takhar province. On 2 September 2010 ISAF announced that a ‘precision air strike’ earlier that morning had killed him and ‘nine other militants’. The target had been under persistent surveillance from remote platforms – what Petraeus later called ‘days and days of the unblinking eye’ – until two strike aircraft repeatedly bombed the convoy in which he was travelling. Two attack helicopters were then ‘authorized to re-engage’ the survivors. The victim was not the designated target, however, but Zabet Amanullah, the election agent for a parliamentary candidate; nine other campaign workers died with him. Clark’s painstaking analysis clearly shows that one man had been mistaken for the other, which she attributed to an over-reliance on ‘technical data’ – on remote signatures. Special Forces had concentrated on tracking cell phone usage and constructing social networks. ‘We were not tracking the names,’ she was told, ‘we were targeting the telephones.’¶ This is unlikely to be an isolated incident. Here for example is Gareth Porter:¶ ‘…the link analysis methodology employed by intelligence analysis is incapable of qualitative distinctions among relationships depicted on their maps of links among “nodes.” It operates exclusively on quantitative data – in this case, the number of phone calls to or visits made to an existing JPEL target or to other numbers in touch with that target. The inevitable result is that more numbers of phones held by civilian noncombatants show up on the charts of insurgent networks. If the phone records show multiple links to numbers already on the “kill/capture” list, the individual is likely to be added to the list.’

### T Restr

#### The authority to authorize without judicial permission is a war powers authority---we restrict it---FISA proves

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.

#### Restriction means a limit or qualification---it 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

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.

#### Restrictions can happen after the fact

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).

#### Authority is what the president may do not what the president can do

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.

### CP

#### Cause of action requires congressional authorization---prez can’t do it

Eric A. Posner 7, the Kirkland & Ellis Professor of Law, University of Chicago Law School; and Adrian Vermuele, Professor of Law, Harvard Law School, 2007, “The Credible Executive,” https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/74.3/74\_3\_Posner\_Vermeule.pdf

For completeness, we mention that the well-motivated executive might in principle subject himself to legal liability for actions or outcomes that only an ill-motivated executive would undertake. Consider the controversy surrounding George W. Bush’s telecommunications surveillance program, which the president has claimed covers only communications in which one of the parties is overseas, not domesticto-domestic calls.103 There is widespread suspicion that this claim is false.104 In a recent poll, 26 percent of respondents believed that the National Security Agency listens to their calls.105 The credibility gap arises because it is difficult in the extreme to know what exactly the Agency is doing, and what the costs and benefits of the alternatives are. ¶ Here the credibility gap might be narrowed by creating a cause of action, for damages, on behalf of anyone who can show that domesticto-domestic calls were examined.106 Liability would be strict, because a negligence rule—whether the Agency exerted reasonable efforts to avoid examining the communication—requires too much information for judges, jurors, and voters to evaluate, and would just reproduce the monitoring problems that gave rise to the credibility gap in the first place. Strict liability, by contrast, would require a much narrower factual inquiry. Crucially, a commitment to strict liability would only be made by an executive who intended to minimize the incidence of (even unintentional and nonnegligent) surveillance of purely domestic communications. ¶ However, there are legal and practical problems here, perhaps insuperable ones. Legally, it is hardly clear that the president could, on his own authority, create a cause of action against himself or his agents to be brought in federal court. It is well within presidential authority to create executive commissions for hearing claims against the United States, for disbursing funds under benefit programs, and so on; but the problem here is that there might be no pot of money from which to fund damages. The so-called Judgment Fund, out of which damages against the executive are usually paid, is restricted to statutorily specified lawsuits.107 Even so, statutory authorization for the president to create the strict liability cause of action would be necessary,108 as we discuss shortly.109 Practically, it is unclear whether government agents can be forced to “internalize costs” through money damages in the way that private parties can, at least if the treasury is paying those damages.110 And if it is, voters may not perceive the connection between governmental action and subsequent payouts in any event.

#### Exec fiat is a voting issue---our authors take squo Prez policies as given which makes aff offense impossible---and there’s no comparative lit

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.

#### Internal fixes aren’t credible

Jack Goldsmith 13, Henry L. Shattuck Professor at Harvard Law School, May 1 2013, “How Obama Undermined the War on Terror,” <http://www.newrepublic.com/article/112964/obamas-secrecy-destroying-american-support-counterterrorism>

As a result, much of what the administration says about its secret war—about civilian casualties, or the validity of its legal analysis, or the quality of its internal deliberations—seems incomplete, self-serving, and ultimately non-credible. These trust-destroying tendencies are exacerbated by its persistent resistance to transparency demands from Congress, from the press, and from organizations such as the aclu that have sought to know more about the way of the knife through Freedom of Information Act requests.¶ A related sin is the Obama administration's surprising failure to secure formal congressional support. Nearly every element of Obama's secret war rests on laws—especially the congressional authorization of force (2001) and the covert action statute (1991)—designed for different tasks. The administration could have worked with Congress to update these laws, thereby forcing members of Congress to accept responsibility and take a stand, and putting the secret war on a firmer political and legal foundation. But doing so would have required extended political efforts, public argument, and the possibility that Congress might not give the president precisely what he wants.¶ The administration that embraced the way of the knife in order to lower the political costs of counterterrorism abroad found it easier to avoid political costs at home as well. But this choice deprived it of the many benefits of public argumentation and congressional support. What Donald Rumsfeld said self-critically of Bush-era unilateralism applies to Obama's unilateralism as well: it fails to "take fully into account the broader picture—the complete set of strategic considerations of a president fighting a protracted, unprecedented and unfamiliar war for which he would need sustained domestic and international support." ¶ Instead of seeking contemporary congressional support, the administration has relied mostly on government lawyers' secret interpretive extensions of the old laws to authorize new operations against new enemies in more and more countries. The administration has great self-confidence in the quality of its stealth legal judgments. But as the Bush administration learned, secret legal interpretations are invariably more persuasive within the dark circle of executive branch secrecy than when exposed to public sunlight. On issues ranging from proper targeting standards, to the legality of killing American citizens, to what counts as an "imminent" attack warranting self-defensive measures, these secret legal interpretations—so reminiscent of the Bushian sin of unilateral legalism—have been less convincing in public, further contributing to presidential mistrust.¶ Feeling the heat from these developments, President Obama promised in his recent State of the Union address "to engage with Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world." So far, this promise, like similar previous ones, remains unfulfilled. ¶ The administration has floated the idea of "[shifting] the CIA's lethal targeting program to the Defense Department," as The Daily Beast reported last month. Among other potential virtues, this move might allow greater public transparency about the way of the knife to the extent that it would eliminate the covert action bar to public discussion. But JSOC's non-covert targeted killing program is no less secretive than the CIA's, and its congressional oversight is, if anything, less robust. ¶ A bigger problem with this proposed fix is that it contemplates executive branch reorganization followed, in a best-case scenario, by more executive branch speeches and testimony about what it is doing in its stealth war. The proposal fails to grapple altogether with the growing mistrust of the administration's oblique representations about secret war. The president cannot establish trust in the way of the knife through internal moves and more words. Rather, he must take advantage of the separation of powers. Military detention, military commissions, and warrantless surveillance became more legitimate and less controversial during the Bush era because adversarial branches of government assessed the president's policies before altering and then approving them. President Obama should ask Congress to do the same with the way of the knife, even if it means that secret war abroad is harder to conduct.

#### Prez circumvents the CP – external oversight is key

Ilya Somin 11, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/

But I am more skeptical than Balkin that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president can almost always find respectable lawyers within his administration who will tell him that any policy he really wants to undertake is constitutional. Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and from State Department Legal Adviser Harold Koh. Bush, of course, got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration lawyers want to tell their political masters what they want to hear. It also arises from the understandable fact that administrations tend to appoint people who share the president’s ideological agenda and approach to constitutional interpretation. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough consultation with executive branch lawyers can prevent the president from undertaking actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, for the foreseeable future, the main constraints on unconstitutional presidential activity must come from outside executive branch – that is, from Congress, the courts, and public opinion. These constraints are highly imperfect. But they do impose genuine costs on presidents who cross the line. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

### DA---Flex

#### Oversight stops arbitrariness but not flex

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Concerted efforts to shirk and deflect responsibility, moreover, provide an illuminating context in which to reconsider Vice President Dick Cheney's mantra, "The risks of inaction are far greater than the risk of action." n41 The risks of inaction, in Cheney's worldview, are the risks of being "strangled by law," n42 in Jack Goldsmith's phrase, of being hamstrung by due process of law and constitutional checks and balances. Cheney's warnings about the hazards of failing to act, therefore, suggest that the metaphor of a tradeoff between liberty and security is not as anti-dogmatic and anti-hysterical as one might have initially thought. Behind the associated images of balances and scales, we find in fact that a spurious urgency is being invoked to justify a psychological or ideological unwillingness to submit proposed policies to a nonpartisan and professionally conducted cost-benefit analysis. This is the ultimate paradox of the anti-liberal approach to national security. The misleading hypothesis of a tradeoff between liberty and security has been used, surreptitiously, to prevent the application of cost-benefit thinking to alternative proposals for managing [\*321] the risk of terrorism, including nuclear terrorism.¶ Cheney's maxim about the risks of inaction escapes being false only by being meaningless. Given the scarcity of resources, every action is an inaction; heightening security in one respect opens up security vulnerabilities along other dimensions. For example, assigning the majority of the CIA's Arabic speakers to Iraq means withdrawing them from other missions; if the attention of high-level officials is devoted to one problem, it will not be devoted to another.¶ And here is another familiar example. American intelligence agencies reportedly hesitate to hire native Farsi-or Pashto-or Arabic-speaking agents because the best-qualified candidates have relatives in Muslim countries, where reliable background checks are difficult to carry out. n43 This is a serious problem because only CIA and FBI agents fluent in these languages are capable of recruiting and handling informants. n44 This example, too, illustrates that the real tradeoffs in the war on terror do not involve a sacrifice of liberty for security, but rather a willingness to increase one risk in order to reduce another risk. In this case, American intelligence has to run the risk of hiring compromised personnel n45 in order to reduce the risk of failing to understand the enemy. The tradeoffs necessary in the war on terror, as I have been arguing, almost always involve this sort of gamble. The question is: who has the right to choose the set of security risks that we, as a country, would be better off running?¶ Policymakers misunderstand worst-case reasoning when they use it to hide from themselves and others the opportunity costs of their risky choices. The commission of this elementary fallacy by Vice President Cheney and other architects of the U.S. response to 9/11 has been extensively documented by Ron Suskind. n46 Allocating national-security resources without paying attention to opportunity costs is equivalent to spending binges under soft budget constraints, an arrangement notorious for its unwelcome consequences. One cannot reasonably multiply "the magnitude of possible harm from an attack" (for example, a nuclear sneak attack by al Qaeda using WMD supplied by Saddam Hussein) by the low "probability of such an attack" n47 and then conclude that one must act immediately to preempt that remote threat without [\*322] first scanning the horizon and inquiring about other low-probability catastrophic events that are equally likely to occur. One cannot say that a one-percent possibility of a terrifying Saddam-Osama WMD handoff justifies placing seventy percent of our national-security assets in Iraq. But this seems to be how the Bush administration actually "reasoned," perhaps because of its go-it-alone fantasies, as if scarce resources were not a problem. Or, perhaps those responsible for national security during the Bush years succumbed to commission bias, namely, the overpowering feeling, in the wake of a devastating attack, that inaction is intolerable. This uncontrollable urge to act is often experienced in emergencies, namely, in situations where decision makers need to do something but do not know what to do.¶ Among President Bush's many unfortunate bequests to President Obama is the desperate "readiness" problem that afflicts the American military, overstretched in Iraq and Afghanistan and therefore unprepared to meet a third crisis elsewhere in the world. This problem was a direct result of the Bush administration's failure to take scarcity of resources and opportunity costs into account. What secret and unaccountable executive action made possible, it turns out, was not flexible adaptation to the demands of the situation but rather profligacy, arbitrariness and a failure to set priorities in a semi-rational way. Defenders of the half-truth that the capacity to adapt is increased when rules are bent or broken seem to have a weak grasp of the elementary distinction between flexibility and arbitrariness.¶ The Founders, by contrast, understood quite well the difference between the flexible and the arbitrary. The ground rules for decision making that they built into the American constitutional structure were meant to maximize the first while minimizing the second. From their perspective, therefore, the question "Can there be too much power to fight terrorism?" is poorly formulated. The right question to ask is: can there be too much arbitrary executive action in the United States' armed struggle with al Qaeda, potentially wasting scarce resources that could be more usefully deployed in another way? And the answer to this second question is obviously "yes."

#### Judicial review enhances expert decision-making---game theory proves

Tiberiu Dragu 13, Assistant Prof in the Dept of Politics at NYU, PhD in Poli Sci from Stanford University, and Oliver Board, associate in the Corporate Department of Wachtell, Lipton, Rosen & Katz, former Assistant Prof of Economics at the University of Pittsburgh, D.Phil. in Economics from the University of Oxford, J.D. from NYU School of Law, “On Judicial Review in a Separation of Powers System,” June 3 2013, https://files.nyu.edu/tcd224/public/papers/judicial.pdf

Our analysis has relevance for existing debates on the scope of judicial review in the context of terrorism prevention. The polemic whether drone strikes and other counterterrorism policies should be subjected to judicial oversight is framed as a tradeoff between the legal accountability benefits of judicial oversight and the public policy harms of reviewing expert counterterrorism policy by non-expert judges. But starting the debate on these terms already assumes that (non-expert) judicial review can only have a negative effect on (expert) governmental policy. As such, it glosses over the prior question of what is the effect of legal review on the information available for counterterrorism policy-making. To answer this question one needs to assess the counterfactual of how informed counterterrorism policy decisions are in the absence of judicial review as compared to the scenario in which a court can review the legality of those policies. Our game-theoretical analysis provides this counterfactual analysis, an otherwise difficult task to effect, and thus contributes to the current debates regarding the appropriateness of judicial review in the context of terrorism prevention. It suggests that judicial checks can lead to more informed counterterrorism policy-making if one considers the internal structure of the executive and the electoral incentives of the president, conditions which we discuss in more detail below.¶ First, the argument that judicial review of drone strikes, and counterterrorism policy more generally, has a detrimental effect on expert policy-making overlooks the internal ecology of the executive branch. When asserting the superior expertise of the executive branch, scholars and commentators treat the executive as a unitary actor, or perhaps consider its internal structure to be incidental to the expertise rationale for limiting judicial review. However, as the description of the drone policy suggests, there is a separation between expertise and policy-making: the president (and his closest advisers) decides on counterterrorism policy, while lower-level bureaucrats provide the expertise and intelligence to make informed decisions. This separation of expertise from policy-making is not unique to counterterrorism. Rather this is a general fact of modern-day government, and scholars of bureaucratic politics, going back to Max Weber, have attempted to unravel its myriad implications for democratic governance (Rourke 1976; Wilson 1991).¶ Second, the president, like all elected representatives, is a politician making choices under the pressure of re-election and public opinion, and such incentives are going to shape his counterterrorism choices. When it comes to the electoral incentives of public officials, scholars have noted that the political costs of not reacting aggressively enough in matters of terrorism prevention and national security are going to be higher than the costs of overreaction (Cole 2008; Fox and Stephenson 2011; Ignatieff 2004; Richardson 2006; Swire 2004). This observation implies that the president and other elected officials have an electoral bias to engage in counterterrorism policies that are more aggressive than what would be necessary on the basis of available information regarding the terrorist threat.36 Inside accounts of the decision-making process within executive branch (Goldsmith 2007), empirical analyses (Merolla and Zechmeister 2009), and newspaper reports,37 they all document such electoral incentives to appear tough on terrorism. The former Vice-President Dick Cheney forcefully depicts this electoral bias in his articulation of the so-called one percent doctrine, which states that if there was even a one percent chance of terrorists getting a weapon of mass destruction, then the executive must act as if it were a certainty (Suskind 2007). In Cheney's view, “it is not about analysis; it's about our response... making suspicion, not evidence, the new threshold for action."38 The run-up to the invasion in Iraq provides a stark illustration of the one percent doctrine in action, the conflict between intelligence officials and policy-makers, and the issue of politicized expertise in the context of national security (Pillar 2011).¶ Our results suggest that (non-expert) judicial review has the potential to induce more informed counterterrorism decisions when the president makes security policy under the veil of public expectations to respond forcefully to terrorist threats. Courts are not immune to public opinion, of course, but precisely because judges are not elected, they are more insulated from public opinion than elected officials. This implies that, all else equal, the courts are less likely to prefer counterterrorism measures that respond to public expectations to be tough on terrorism. Under these conditions,39 our theory suggests a mechanism by which counterterrorism policy-making with judicial oversight can be superior to counterterrorism policy-making without it, even if courts are relatively ill-equipped to review executive decisions. Judicial review can serve as a commitment device to better align the preferences of policymakers with their experts, with the effect of inducing more information for counterterrorism decisions. This observation is missing from current public and scholarly discussions about the role of judicial review in the context of drone strikes and other counterterrorism policies. As such, our analysis has policy implications for ongoing debates on how to design the institutional structure of liberal governments when the social objective is terrorism prevention.

### DA---TK Good

#### Plan solves kick-out

Micah Zenko 13, CFR Douglas Dillon Fellow in the Center for Preventive Action, PhD in Political Science from Brandeis University, “Reforming U.S. Drone Strike Policies,” CFR Special Report 65, January 2013

The choice the United States faces is not between unfettered drone use and sacrificing freedom of action, but between drone policy reforms by design or drone policy reforms by default. Recent history demonstrates that domestic political pressure could severely limit drone strikes in ways that the CIA or JSOC have not anticipated. In support of its counterterrorism strategy, the Bush administration engaged in the extraordinary rendition of terrorist suspects to third countries, the use of enhanced interrogation techniques, and warrantless wiretapping. Although the Bush administration defended its policies as critical to protecting the U.S. homeland against terrorist attacks, unprecedented domestic political pressure led to significant reforms or termination. Compared to Bush-era counterterrorism policies, drone strikes are vulnerable to similar—albeit still largely untapped—moral outrage, and they are even more susceptible to political constraints because they occur in plain sight. Indeed, a negative trend in U.S. public opinion on drones is already apparent. Between February and June 2012, U.S. support for drone strikes against suspected terrorists fell from 83 percent to 62 percent—which represents less U.S. support than enhanced interrogation techniques maintained in the mid-2000s.65 Finally, U.S. drone strikes are also widely opposed by the citizens of important allies, emerging powers, and the local populations in states where strikes occur.66 States polled reveal overwhelming opposition to U.S. drone strikes: Greece (90 percent), Egypt (89 percent), Turkey (81 percent), Spain (76 percent), Brazil (76 percent), Japan (75 percent), and Pakistan (83 percent).67 ¶ This is significant because the United States cannot conduct drone strikes in the most critical corners of the world by itself. Drone strikes require the tacit or overt support of host states or neighbors. If such states decided not to cooperate—or to actively resist—U.S. drone strikes, their effectiveness would be immediately and sharply reduced, and the likelihood of civilian casualties would increase. This danger is not hypothetical. In 2007, the Ethiopian government terminated its U.S. military presence after public revelations that U.S. AC-130 gunships were launching attacks from Ethiopia into Somalia. Similarly, in late 2011, Pakistan evicted all U.S. military and intelligence drones, forcing the United States to completely rely on Afghanistan to serve as a staging ground for drone strikes in Pakistan. The United States could attempt to lessen the need for tacit host-state support by making significant investments in armed drones that can be flown off U.S. Navy ships, conducting electronic warfare or missile attacks on air defenses, allowing downed drones to not be recovered and potentially transferred to China or Russia, and losing access to the human intelligence networks on the ground that are critical for identifying targets.¶ According to U.S. diplomats and military officials, active resistance— such as the Pakistani army shooting down U.S. armed drones— is a legitimate concern. In this case, the United States would need to either end drone sorties or escalate U.S. military involvement by attacking Pakistani radar and antiaircraft sites, thus increasing the likelihood of civilian casualties.68 Beyond where drone strikes currently take place, political pressure could severely limit options for new U.S. drone bases. For example, the Obama administration is debating deploying armed drones to attack al-Qaeda in the Islamic Maghreb (AQIM) in North Africa, which would likely require access to a new airbase in the region. To some extent, anger at U.S. sovereignty violations is an inevitable and necessary trade-off when conducting drone strikes. Nevertheless, in each of these cases, domestic anger would partially or fully abate if the United States modified its drone policy in the ways suggested below.

#### Chance of acquiring one is 1 in 3.5 billion

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

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

### DA---Iran Rd 5

#### PC not key---Reid can delay sanctions

AP 11/15—http://abcnews.go.com/Politics/wireStory/health-care-dispute-delay-iran-sanctions-20901920

Four Republican senators — New Hampshire's Kelly Ayotte, Florida's Marco Rubio, Texas' John Cornyn and Illinois' Mark Kirk — wrote to Obama on Friday expressing serious concerns that the United States was considering sanctions relief for Iran "valued at up to $20 billion - and, in exchange, Iran would not be required to dismantle a single centrifuge, close a single facility or ship outside its borders a single kilogram of enriched uranium."¶ The four talked about working with other senators on increased penalties on Iran. Sen. Bob Casey, D-Pa., said in a statement Thursday, "At this time, I see no reason to let up the pressure," while 63 House Republicans and Democrats wrote to Senate leaders urging them to act quickly on sanctions.¶ Republican and Democratic aides said Friday that debate on the annual defense bill could be delayed until later next week, in part because of Senate action on a separate pharmaceutical bill. Senators are expected to press for a vote on Iran sanctions as part of the defense bill, but that vote could slip until December.¶ Sen. David Vitter, R-La., wanted a vote during consideration of the pharmaceutical legislation on his measure to make lawmakers disclose which of their aides are enrolling in the president's new health care law as part of an ongoing effort to discredit "Obamacare."¶ Time spent on that bill could give Reid time to delay the defense bill and a likely vote on tough, new penalties on Iran just as negotiators are sitting down in Switzerland.

#### No arms race

James A. Russell 6/27/13, PhD in War Studies from the University of London and associate Professor in the Department of National Security Affairs at Naval Postgraduate School, where he is teaching courses on Middle East security affairs, terrorism, and national security strategy, 6/27/13, "NUCLEAR REDUCTIONS AND MIDDLE EAST STABILITY: ASSESSING THE IMPACT OF A SMALLER US NUCLEAR ARSENAL," The Nonproliferation Review, Vol. 20 No.2

\*GCC= Gulf Cooperation Council

Neither Saudi Arabia nor the rest of the GCC states could realistically build their own weapons because they lack the human and industrial infrastructure necessary for such a massive undertaking. Moreover, all the GCC states continue to abide by—and take quite seriously—their NPT commitments. Some, however, believe that Saudi Arabia would either purchase or simply station a Pakistani device on its territory if Iran becomes a nuclear weapon state.34¶ While the regional states view Iran's nuclear program with alarm and would certainly not welcome Iran's entry into the nuclear club, it is nonetheless difficult to imagine these states changing their nuclear posture and withdrawing from the NPT in response to such a development. There would be significant political costs to such a step, which would threaten the continued political and economic integration of these states into the global community. The GCC states are principally interested in making money in international energy markets and need stable and peaceful political relationships to underpin their customer relationships. Changing their nuclear status could put these relationships at risk and disrupt the revenue generating activities upon which the regimes—and their continued survival—depend. Perhaps most importantly, changing their nuclear status could permanently alter their security relations with the United States, which protects all these states from external threats—a mission that none of the GCC regimes have ever taken particularly seriously despite spending billions on defense equipment. Outsourcing that protection to the United States remains a good deal politically, economically, and militarily for the GCC.

#### No Israel war

Schramm 11 Madison Schramm is a program associate at the Council on Foreign Relations. "Hey America, Iran still isn't threat No. 1" Oct 12 www.csmonitor.com/Commentary/Opinion/2011/1012/Hey-America-Iran-still-isn-t-threat-No.-1/(page)/3

Iran and Israel have never directly engaged in combat. Although Iran does sponsor Hezbollah and Hamas, Tehran is not directly calling the shots within those organizations. Israel actually provided Iran with weapons during the Iran-Iraq War. Tehran’s condemnation of Israel vis-à-vis the Palestinians is primarily a political platform for Iranian influence in the region. Iran happily accepted Israeli aid when it served Tehran’s more immediate interests.

Additionally, the Middle East at large isn’t interested in Iran’s brand of Islam. Iran, as a Persian Shiite state, is the minority in an Arab Sunni region. The Iran doctrine is well contained. But by continuing to label an intractable country as "evil," policymakers in Washington have turned a red herring into a Goliath.

#### Obama won’t fight the plan

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

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

#### Plan’s key to counter rogue states

Audrey Cronin 13, Distinguished Service Professor at the School of Public Policy, George Mason University, DPhil in IR from Oxford, “Why Drones Fail,” Foreign Affairs Vol 92 Issue 4, July/Aug 2013, ebsco

In this environment, it is understandable that Americans and the politicians they elect are drawn to drone strikes. But as with the fight against al Qaeda and the conservation of enemies, drones are undermining U.S. strategic goals as much as they are advancing them. For starters, devoting a large percentage of U.S. military and intelligence resources to the drone campaign carries an opportunity cost. The U.S. Air Force trained 350 drone pilots in 2011, compared with only 250 conventional fighter and bomber pilots trained that year. There are 16 drone operating and training sites across the United States, and a 17th is being planned. There are also 12 U.S. drone bases stationed abroad, often in politically sensitive areas. In an era of austerity, spending more time and money on drones means spending less on other capabilities -- and drones are not well suited for certain emerging threats.¶ Very easy to shoot down, drones require clear airspace in which to operate and would be nearly useless against enemies such as Iran or North Korea. They also rely on cyber-connections that are increasingly vulnerable. Take into account their high crash rates and extensive maintenance requirements, and drones start to look not much more cost effective than conventional aircraft.

#### Solves the DA

Robert P. Haffa Jr. 12, nonresident Senior Fellow at the Center for Strategic and Budgetary Assessments, Ph.D. in Political Science from MIT, former Professor of Political Science at the US Air Force Academy, Oct 12 2012, “Full-Spectrum Air Power: Building the Air Force America Needs,” http://www.heritage.org/research/reports/2012/10/full-spectrum-air-power-building-the-air-force-america-needs

These force planning contingencies should not be taken lightly. While the military balance measured against Iran and North Korea may seem to favor the United States and its allies when compared with the increasing capability of China, regarding these rogue states simply as lesser-included cases would be a mistake. RAND’s Project Air Force has conducted in-depth research on what they have defined as nuclear-armed regional adversaries: “countries that pursue policies that are at odds with the United States and its security partners, whose actions run counter to broadly accepted norms of state behavior, and whose size and military forces are not of the first magnitude.”[26] That research led to an important conclusion that deterring the use of nuclear weapons by either North Korea or a newly armed Iran “could be highly problematic in any plausible conflict situations…for the simple reason that adversary leaders may not believe that they will be any worse off having used nuclear weapons than if they were to forego their use.”[27]¶ The implications of the RAND findings for this paper and for building Air Force capabilities and capacities is that the United States military needs to offer high assurance that it can prevent these would-be adversaries from using nuclear weapons, rather than deter them, as is the case with China. This calls for a modern conventional military force that in contested airspace can hold at risk enemy command and control, WMD, and their delivery systems. It requires high-caliber reconnaissance-strike systems that can locate, pinpoint, and attack hardened fixed targets as well as identifying and attacking targets on the move. In perhaps the most important difference between planning a force to prevent, rather than deter, active defenses will be required to destroy delivery vehicles after their launch, but before they can strike regional bases and ports.

#### Independently solves extinction

Peter Hayes 11, Prof of IR at the Royal Melbourne Institute of Technology University, Ph.D. in energy and resources from UC Berkeley, and Michael Hamel-Green, Dean of and Professor in the Faculty of Arts, Education and Human Development at Victoria University, Melbourne,

The consequences of failing to address the proliferation threat posed by the North Korea developments, and related political and economic issues, are serious, not only for the Northeast Asian region but for the whole international community.¶ At worst, there is the possibility of nuclear attack1, whether by intention, miscalculation, or merely accident, leading to the resumption of Korean War hostilities. On the Korean Peninsula itself, key population centres are well within short or medium range missiles. The whole of Japan is likely to come within North Korean missile range. Pyongyang has a population of over 2 million, Seoul (close to the North Korean border) 11 million, and Tokyo over 20 million. Even a limited nuclear exchange would result in a holocaust of unprecedented proportions.¶ But the catastrophe within the region would not be the only outcome. New research indicates that even a limited nuclear war in the region would rearrange our global climate far more quickly than global warming. Westberg draws attention to new studies modelling the effects of even a limited nuclear exchange involving approximately 100 Hiroshima-sized 15 kt bombs2 (by comparison it should be noted that the United States currently deploys warheads in the range 100 to 477 kt, that is, individual warheads equivalent in yield to a range of 6 to 32 Hiroshimas).The studies indicate that the soot from the fires produced would lead to a decrease in global temperature by 1.25 degrees Celsius for a period of 6-8 years.3 In Westberg’s view:¶ That is not global winter, but the nuclear darkness will cause a deeper drop in temperature than at any time during the last 1000 years. The temperature over the continents would decrease substantially more than the global average. A decrease in rainfall over the continents would also follow…The period of nuclear darkness will cause much greater decrease in grain production than 5% and it will continue for many years...hundreds of millions of people will die from hunger…To make matters even worse, such amounts of smoke injected into the stratosphere would cause a huge reduction in the Earth’s protective ozone.4

#### Health care and laundry list pound the DA

Michael D. Shear 11/14/13, The New York Times, "Health Law Rollout’s Stumbles Draw Parallels to Bush’s Hurricane Response," http://www.nytimes.com/2013/11/15/us/politics/parallels-to-bush-in-toxic-political-mix-threatening-obama.html?hpw&rref=us&\_r=0

WASHINGTON — Barack Obama won the presidency by exploiting a political environment that devoured George W. Bush in a second term plagued by sinking credibility, failed legislative battles, fractured world relations and revolts inside his own party. President Obama is now threatened by a similar toxic mix. The disastrous rollout of his health care law not only threatens the rest of his agenda but also raises questions about his competence in the same way that the Bush administration’s botched response to Hurricane Katrina undermined any semblance of Republican efficiency.¶ But unlike Mr. Bush, who faced confrontational but occasionally cooperative Democrats, Mr. Obama is battling a Republican opposition that has refused to open the door to any legislative fixes to the health care law and has blocked him at virtually every turn. A contrite-sounding Mr. Obama repeatedly blamed himself on Thursday for the failed health care rollout, which he acknowledged had thrust difficult burdens on his political allies and hurt Americans’ trust in him.¶ “It’s legitimate for them to expect me to have to win back some credibility on this health care law in particular and on a whole range of these issues in general,” Mr. Obama said. The president did not admit to misleading people about whether they could keep their insurance, but again expressed regret that his assurances turned out to be wrong.¶ “To those Americans, I hear you loud and clear,” Mr. Obama said as he announced changes intended to allow some people to keep their insurance.¶ But earning back the confidence of Americans, as he pledged to do, will require Mr. Obama to right more than just the health care law. At home, his immigration overhaul is headed for indefinite delay, and new budget and debt fights loom. Overseas, revelations of spying by the National Security Agency have infuriated American allies, and negotiations over Iran’s nuclear arsenal have set off bipartisan criticism.¶ For the first time in Mr. Obama’s presidency, surveys suggest that his reserve of good will among the public is running dry. Two polls in recent weeks have reported that a majority of Americans no longer trust the president or believe that he is being honest with them.¶ “When you start losing the trust and confidence, not only of Congress, but the American people, that makes it even more difficult,” said Senator Joe Manchin III, Democrat of West Virginia. “You can work yourself out. But you have to be sincere, and you have to be honest.”¶ The difficulties have put Mr. Obama on the defensive at exactly the moment he might have seized political advantage in a dysfunctional Washington. If not for the health care disaster, the two-week shutdown of the government last month would have been an opportunity for Mr. Obama to sharpen the contrast with Republicans. Democratic lawmakers expressed growing frustration on Thursday with the opportunities the party had missed to hammer home the ideological differences between the two parties. The lawmakers say there is intensifying anxiety within the Democratic caucus that the poor execution of the health care law could bleed into their 2014 re-election campaigns.

#### Sanctions will pass

Max Fisher 11/14/13, Washington Post foreign affairs blogger, master's degree in security studies from Johns Hopkins, "Obama’s approaching an Iran deal. Here’s why Congress might stop it," http://www.washingtonpost.com/blogs/worldviews/wp/2013/11/14/obamas-approaching-an-iran-deal-heres-why-congress-might-stop-it/

Here's where Congress comes in: If the United States does strike some kind of deal, eventually Congress will have to approve a reduction, whether permanent or temporary, in Iran sanctions. In the meantime, the White House has asked lawmakers not to pass any new sanctions, which would undercut U.S. diplomacy and risk sending the message to Tehran that they can't trust the Americans to deliver on their end of any bargain, either because Washington isn't negotiating in good faith or because Obama is powerless to deliver. No one is sure how Iran would react, but given that even talking to the United States is deeply controversial in Tehran, there's good reason to worry that Iranians would walk away.¶ Congress, being Congress, has ignored this and is pushing ahead with new sanctions anyway. The Obama administration is so worried that it dispatched Secretary of State John Kerry to try to talk them out of it.¶ Members of Congress who support imposing new sanctions right now have offered a less-than-persuasive case: first, that Congress should punish Iran for failing to unilaterally roll back its nuclear program, which is strange as it's not clear why Tehran would want to weaken its own position going into negotiations, and; second, that if sanctions brought Iran to the negotiating table, then more sanctions will keep them there. That last point would seem to contradict basic principles of negotiation, in which escalation normally pauses during talks, to demonstrate good faith and avoid pushing away your partner.¶ Okay, you might be saying, so far this post is not expressing much sympathy for Congress. But U.S. lawmakers are facing four dilemmas on Iran sanctions. On their own, these are all pretty minor, but taken together you might start to get a sense why lawmakers are so hesitant to follow the White House on Iran sanctions.¶ First, and maybe most importantly, U.S. sanctions on Iran are about more than just the nuclear stuff that's currently on the negotiating table.¶ "Those sanctions, in almost every case, are predicated not just on Iran's nuclear activities but also on their support for international terrorism, their opposition to the Middle East peace process and a whole list of other things," Kenneth Pollack, an Iran scholar at the Brookings Institution, told me recently. Pollack warned, "I think it's going to be very hard for the president to go to Congress" and ask for sanctions relief just on the specific nuclear issue, as those issues are left unaddressed.¶ The dilemma here is that the only way for Iran to address all of these issues at once would be in a grand bargain. Given how hard it is just for Tehran and the Western powers to come together on the nuclear issue, a grand bargain probably isn't likely. At least not all at once; if Congress wants all of these Iranian issues addressed, it will probably need to go through them one at a time.¶ Second, as Tufts University professor and Foreign Policy magazine blogger Dan Drezner points out, members of Congress might be validly concerned about "the Obama administration's distinguished record of bollixing up its Middle East diplomacy." (I wrote earlier on that record, and how the administration's internal politics might explain it.) In other words, a member of Congress who sees the administration's vacillating approach to Syria or Egypt might worry that, even if Congress holds back on sanctions to help out the administration's diplomacy, the administration might not come through on its end and then sanctions will have been paused for nothing.¶ Third, also from Drezner, Iran has earned something of a reputation for "evading" the International Atomic Energy Agency (the United Nations nuclear watchdog) on inspections. So lawmakers are weighing their willingness to trust Tehran in their calculations. Of course, Congress doesn't need to actively trust Iran to hold off on passing new sanctions -- lawmakers can always just do it later -- but its members do at least need to temper their feelings of mistrust.¶ Fourth, and most simply, Iran is very unpopular in the United States. Republicans are already signaling that they may use the Obama administration's Iran outreach as a political weapon in coming elections. Any lawmaker who votes against new sanctions, even if it is for very sound foreign policy reasons, is taking a big political risk. Democrats risk being targeted as part of a broader political campaign in 2014 or 2016. Maybe so do Republicans, who are already worried about getting on the wrong side of a conservative wing that's been perfectly happy to unseat legislators who don't toe the line.¶ It's not hard to see how legislators could conclude that, if Iran becomes a big political issue in coming elections, it won't matter whether U.S. diplomacy works, or if holding back on new sanctions was the right call. Even if a deal does succeed, all the political credit would likely go to the Obama administration.

#### Obama waivers solve

Eric Auner 11/15/13, a senior analyst at Guardian Six Consulting, "In Congress, Obama Administration Faces Uphill Battle on Iran Sanctions," World Politics Review,http://www.worldpoliticsreview.com/trend-lines/13386/in-congress-obama-administration-faces-uphill-battle-on-iran-sanctions

Whether or not the Obama administration can convince Congress to hold off on new sanctions, the administration still has room to maneuver in offering some limited short-term relief to ease negotiations forward. Kenneth Katzman of the Congressional Research Service wrote in Al-Monitor in August that there is a “vibrant debate among experts” on whether the administration “has the latitude to ease U.S. sanctions to the point where a nuclear deal with Iran can be concluded.” Many of the sanctions give “substantial waiver authority” to the president, according to Katzman, though the standards for issuing such waivers have been steadily increased by Congress.¶ “In a first-phase agreement, sanctions relief would be limited and unlikely to address the core of the [congressionally mandated] sanctions in place, which are on the banking and oil sectors,” said Kelsey Davenport of the Arms Control Association in an email interview. This could take place “over the six months following a first-phase agreement.” Measures could also be taken to “ease restrictions on precious metals and petrochemicals, as well as parts for the automotive and airline industries,” she said. Waivers on some sanctions “could be implemented almost immediately,” said Ali Vaez of the International Crisis Group in an email interview.