# 1nc

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#### Using the law to restrain its own war power authority only re-centralizes power --- Voting neg to reject the 1AC’s institutional war power narrative is the most productive political act

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Despite such democratic concerns, a large part of what makes today’s dominant security concept so compelling are two purportedly objective sociological claims about the nature of modern threat. As these claims undergird the current security concept, by way of a conclusion I would like to assess them more directly and, in the process, indicate what they suggest about the prospects for any future reform. The first claim is that global interdependence means that the U.S. faces near continuous threats from abroad. Just as Pearl Harbor presented a physical attack on the homeland justifying a revised framework, the American position in the world since has been one of permanent insecurity in the face of new, equally objective dangers. Although today these threats no longer come from menacing totalitarian regimes like Nazi Germany or the Soviet Union, they nonetheless create of world of chaos and instability in which American domestic peace is imperiled by decentralized terrorists and aggressive rogue states.187 Second, and relatedly, the objective complexity of modern threats makes it impossible for ordinary citizens to comprehend fully the causes and likely consequences of existing dangers. **Thus, the best response is** the **further entrenchment** of Herring’s national security state, with the U.S. **permanently mobilized militarily** to gather intelligence and to combat enemies wherever they strike – at home or abroad. Accordingly, modern legal and political institutions that privilege executive authority and insulated decisionmaking are simply the necessary consequence of these externally generated crises. Regardless of these trade-offs, the security benefits of an empowered presidency (one armed with countless secret and public agencies as well as with a truly global military footprint)188 greatly outweigh the costs. Yet, although these sociological views have become commonplace, the conclusions that Americans should draw about security requirements are not nearly as clear cut as the conventional wisdom assumes. In particular, a closer examination of contemporary arguments about endemic danger suggests that such claims are **not objective empirical judgments** but rather are socially complex and **politically infused interpretations**. Indeed, the openness of existing circumstances to multiple interpretations of threat implies that the presumptive need for secrecy and centralization is not self-evident. And as underscored by high profile failures in expert assessment, claims to security expertise are themselves **riddled with ideological presuppositions and subjective biases**. All this indicates that the gulf between elite knowledge and lay incomprehension in matters of security may be far less extensive than is ordinarily thought. It also means that **the question of who decides** – and with it the issue of how democratic or insular our institutions should be – remains open as well. Clearly technological changes, from airpower to biological and chemical weapons, have shifted the nature of America’s position in the world and its potential vulnerability. As has been widely remarked for nearly a century, the oceans alone cannot guarantee our permanent safety. Yet, in truth they never fully ensured domestic tranquility. The nineteenth century was one of near continuous violence, especially with indigenous communities fighting to protect their territory from expansionist settlers. 189 But even if technological shifts make doomsday scenarios more chilling than those faced by Hamilton, Jefferson, or Taney, the mere existence of these scenarios tells us little about their likelihood or how best to address them. Indeed, these latter security judgments are inevitably permeated with subjective political assessments, assessments that carry with them preexisting ideological points of view – such as regarding how much risk constitutional societies should accept or how interventionist states should be in foreign policy. In fact, from its emergence in the 1930s and 1940s, supporters of the modern security concept have – at times unwittingly – reaffirmed the political rather than purely objective nature of interpreting external threats. In particular, commentators have repeatedly noted the link between the idea of insecurity and America’s post-World War II position of global primacy, one which today has only expanded following the Cold War. In 1961, none other than Senator James William Fulbright declared, in terms reminiscent of Herring and Frankfurter, that security imperatives meant that “our basic constitutional machinery, admirably suited to the needs of a remote agrarian republic in the 18th century,” was no longer “adequate” for the “20th- century nation.”190 For Fulbright, the driving impetus behind the need to jettison antiquated constitutional practices was the importance of sustaining the country’s “preeminen[ce] in political and military power.”191 Fulbright held that greater executive action and war-making capacities were essential precisely because the United States found itself “burdened with all the enormous responsibilities that accompany such power.”192 According to Fulbright, the United States had both a right and a duty to suppress those forms of chaos and disorder that existed at the edges of American authority. Thus, rather than being purely objective, **the American condition of permanent danger was itself deeply tied to political calculations about** the importance of global **primacy**. What generated the condition of continual crisis was not only technological change, but also the belief that the United States’ own ‘national security’ rested on the successful projection of power into the internal affairs of foreign states. The key point is that regardless of whether one agrees with such an underlying project, the **value** **of this project** is ultimately **a**n open **political question**. This suggests that whether distant crises should be viewed as generating insecurity at home is similarly as much an interpretative judgment as an empirically verifiable conclusion.193 To appreciate the open nature of security determinations, one need only look at the presentation of terrorism as a principal and overriding danger facing the country. According to the State Department’s Annual Country Reports on Terrorism, in 2009 “[t]here were just 25 U.S. noncombatant fatalities from terrorism worldwide” (sixteen abroad and nine at home).194 While the fear of a terrorist attack is a legitimate concern, these numbers – which have been consistent in recent years – place the gravity of the threat in perspective. Rather than a condition of endemic danger – requiring ever increasing secrecy and centralization – such facts are perfectly consistent with a reading that Americans do not face an existential crisis (one presumably comparable to Pearl Harbor) and actually enjoy relative security. Indeed, the disconnect between numbers and resources expended, especially in a time of profound economic insecurity, highlights the political choice of policymakers and citizens to persist in interpreting foreign events through a World War II and early Cold War lens of permanent threat. In fact, the continuous alteration of basic constitutional values to fit ‘national security’ aims highlights just how entrenched Herring’s old vision of security as pre-political and foundational has become, regardless of whether other interpretations of the present moment may be equally compelling. It also underscores a telling and often ignored point about the nature of modern security expertise, particularly as reproduced by the United States’ massive intelligence infrastructure. To the extent that political assumptions – like the centrality of global primacy or the view that instability abroad necessarily implicates security at home – shape the interpretative approach of executive officials, what passes as objective security expertise is itself intertwined with contested claims about how to view external actors and their motivations. This means that while modern conditions may well be complex, the conclusions of the presumed experts may not be systematically less liable to subjective bias than judgments made by ordinary citizens based on publicly available information. It further underscores that the question of who decides cannot be foreclosed in advance by simply asserting deference to elite knowledge. If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own very dramatic political and legal pathologies. In recent years, the country has witnessed a variety of security crises built on the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers as a method of shaping the public debate.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm – the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’ – marked fundamentally by epistemological uncertainty as opposed to verifiable fact – than policymakers admit. If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that **the central problem** with the **procedural solutions** offered by constitutional scholars – emphasizing new statutory frameworks or greater judicial assertiveness – is that they **mistake a question of politics for one of law**. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants – danger too complex for the average citizen to comprehend independently – it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to **challenge the current framing** of the relationship between security and liberty **must begin by challenging the underlying assumptions** about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements to become ever more entrenched.

#### Centralized institutionalizion causes genocide and extinction

HINDMARSH 2005 - Professor at the Australian School of Environmental Studies—Griffith University (Richard Hindmarsh, April 2005, Green Biopolitics & the Molecular Reordering of Nature, <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/granada/ws16/Hindmarsh.pdf>)

The first usage of the term ‘biopolitics’ that Braun and Gottweis (2004) refer to aligns to my longstanding analysis of the genetic engineering context. Unconnected to the traditional Foucauldian concept of **‘biopolitics’**, it ‘refers to the new public policy area of biotechnology policy which has co-evolved with the development of the life sciences’ to refer to transformations in medicine and health, or in food, agriculture and the environment. Here, biopolitical analysis is predominantly on biotechnology regulation and bioscientific-technological development. In turn, the second usage refers to the historical tradition of Foucauldian inquiry, which describes and analyses two forms of control and administration (the ‘art of government’) that emerged from the sixteenth century onwards. The first form concerns the disciplining, especially through institutionalisation, of individuals, or collections of individuals, for their usefulness (or performance) for integration into systems of **‘efficient and economic controls’** (Foucault 1990 [French version 1976]: 139). The second form is concerned with administering the biological processes and resources (or subjugation and control) of the species body or populations in general: namely their bodies, and reproduction. This is achieved through their productive engagement with the then emerging scientific methods such as, for example, statistics, in what Foucault calls the investment of the body of the population and its valorization. Typically, this area tackles the urban space, the habitat, the natural resources and their distribution, and within this, public health. Scientists and engineers, deemed holders of ‘**expert knowledges’**, carry out this **disciplining and administration** on behalf of the government (Foucault 1977, Rutherford 1999). This aims to ‘**normalize’ the knowledge** of the experts vis-à-vis other knowledges, although this is not a given but is achieved in a relational way. As such, systems of knowledge-power instead **negotiate and mediate society** and its directions. Forms of knowledge-power to ‘administer life’ (govern) and normalize governmentality, Foucault (1990: 143) refers to as ‘bio-power’, applied as a regime of power within the social body, rather from above it. This is carried out through the application of tactical elements (‘discourses’) or ‘discursive practices’: ‘practices of talk, text, writing, cognition, argumentation, and representation generally’ (Clegg 1989: 151). The exercise of power is thus not understood as a ‘single, all-encompassing strategy’ (Foucault 1990: 103), but, as Clegg (1989: 154) recognises, as ‘a more or less stable or shifting network of alliances extended over a shifting terrain of practice and discursively constituted interests. Points of resistance will open up at many points in the network. Their effect will be to fracture alliances, constitute regroupings and reposit strategies’. Such practices applied to the **administration of resources in managing human populations also introduces the notion of the environment and its control**, and thus the Cartesian body-mind or nature-culture dichotomy — which has been described as ‘the drawing apart of the human subject, or “experiencer”, and the world experienced’ (Pratt et al. 2000: 7). Much environmental thought has since ascribed this divide as the main cause of today’s environmental problems (as discussed below). The Cartesian divide paralleled the emergence of bio-power, during the Enlightenment, with logical links extended to the control of human populations through it partitioning and regulation, the focus of Foucault’s inquiry. Yet, in introducing the broader environmental context, my attention is almost immediately drawn to the point in Foucault’s conceptualisation of bio-power of his recognition that the techniques of the administration of life cannot effect total control, that ‘it [life] constantly escapes them’. Thus, even though Foucault’s focus is on human life and its regulation, where ‘escape’ equates to resistance, ‘escape’, in reference to the management of natural resources where the Foucauldian gaze is also upon the health of the people, institutional and/or technological failure of administration **can instead cause environmental breakdown** that instead exposes human health to undue risk and hazard, the opposite of health**.** This, I would posit, is posed by Foucault, although rather opaquely, in The Will To Knowledge (1990: 137), Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone … the decision that initiates them and the one that **terminates them** are in fact increasingly informed by the naked question of survival … **The atomic situation is now at the end point** of this process: **the power to guarantee an individual’s existence.** The principle underlying the tactics of battle — **that one has to be capable of killing in order to go on living** — **has become the principle that defines the strategy of states**. But the existence in question is no longer the juridical existence of sovereignity; **at stake is the biological existence** of a population. **If genocide is indeed the dream of modern powers**, this is not because of a recent return of the ancient right to kill**; it is because power is situated and exercised at the level of life,** the species, the race, and the large-scale phenomena of population.

### T – prohibition

#### **the affirmative does not prohibit the ability of the President to make a military decision in one of the following areas mentioned in the topic – it merely requires a process or disclosure for the President to go through before exercising his commander and chief power**

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

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

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

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

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

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

#### Vote neg---Only prohibitions on authority guarantee neg ground---their interpretation lets affs no link the best neg offense like deference

### 1nc

#### The President of the United States should request his Counsel and the Office of Legal Counsel for coordination over his war powers authority on targeted killing operations. The President should not assert immunity from judicial review and allow for judiciary 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.

#### The plan would uniquely decimate Obama and the military’s ability to calm alliances and deter enemies ---- makes terrorism and global nuclear war more likely --- INDEPENDENTLY prevents ability to negotiate Iranian miscalc

WAXMAN 2013 - law professor at Columbia Law School, co-chairs the Roger Hertog Program on Law and National Security (Matthew Waxman, “The Constitutional Power to Threaten War,” August 27, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777)

As a prescriptive matter, Part II also shows that examination of threatened force and the credibility requirements for its effectiveness calls into question many orthodoxies of the policy advantages and risks attendant to various allocations of legal war powers, including the existing one and proposed reforms.23 Most functional arguments about war powers focus on fighting wars or hostile engagements, but that is not all – or even predominantly – what the United States does with its military power. Much of the time it seeks to avert such clashes while achieving its foreign policy objectives: to bargain, coerce, deter.24 The President’s flexibility to use force in turn affects decision-making about threatening it, with major implications for securing peace or dragging the United States into conflicts. Moreover, constitutional war power allocations affect potential conflicts not only because they **may constrain U.S. actions** but because **they** maysend **signal**s **and shape** other states’ (including adversaries’) expectations of U.S. actions.25 That is, most analysis of war-powers law is inward-looking, focused on audiences internal to the U.S. government and polity, but thinking about threatened force prompts us to look outward, at how war-powers law affects external perceptions among adversaries and allies. Here, extant political science and strategic studies offer few clear conclusions, but they point the way toward more sophisticated and realistic policy assessment of legal doctrine and proposed reform. More generally, as explained in Part III, analysis of threatened force and war powers exposes an under-appreciated relationship between constitutional doctrine and grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as legal scholars are often tempted to do, this Article in the end denies the tenability of any such claim. Having identified new spaces of war and peace powers that legal scholars need to take account of in understanding how those powers are really exercised, this Article also highlights the extent to which any normative account of the proper distribution of authority over this area depends on many matters that cannot be predicted in advance or expected to remain constant.26 Instead of proposing a policy-optimal solution, this Article concludes that the allocation of constitutional war powers is – and should be –geopolitically and strategically contingent; the actual and effective balance between presidential and congressional powers over war and peace in practice necessarily depends on fundamental assumptions and shifting policy choices about how best to secure U.S. interests against potential threats.27 I. Constitutional War Powers and Threats of Force Decisions to go to war or to send military forces into hostilities are immensely consequential, so it is no surprise that debates about constitutional war powers occupy so much space. But one of the most common and important ways that the United States uses its military power is by threatening war or force – and the constitutional dimensions of that activity receive almost no scrutiny or even theoretical investigation. A. War Powers Doctrine and Debates The Constitution grants Congress the powers to create military forces and to “declare war,”28 which the Supreme Court early on made clear includes the power to authorize limited uses of force short of full-blown war.29 The Constitution then vests the President with executive power and designates him commander in chief of the armed forces,30 and it has been well-accepted since the Founding that these powers include unilateral authority to repel invasions if the United States is attacked.31 Although there is nearly universal acceptance of these basic starting points, there is little legal agreement about how the Constitution allocates responsibility for the vast bulk of cases in which the United States has actually resorted to force. The United States has declared war or been invaded only a handful of times in its history, but it has used force – sometimes large-scale force – hundreds of other times.32 Views split over questions like when, if ever, the President may use force to deal with aggression against third parties and how much unilateral discretion the President has to use limited force short of full-blown war. For many lawyers and legal scholars, at least one important methodological tool for resolving such questions is to look at historical practice, and especially the extent to which the political branches acquiesced in common practices.33 Interpretation of that historical practice for constitutional purposes again divides legal scholars, but most would agree at least descriptively on some basic parts of that history. In particular, most scholars assess that from the Founding era through World War II, Presidents and Congresses alike recognized through their behavior and statements that except in certain narrow types of contingencies, congressional authorization was required for large-scale military operations against other states and international actors, even as many Presidents pushed and sometimes crossed those boundaries.34 Whatever constitutional constraints on presidential use of force existed prior to World War II, however, most scholars also note that the President asserted much more extensive unilateral powers to use force during and after the Cold War, and many trace the turning point to the 1950 Korean War.35 Congress did not declare war in that instance, nor did it expressly authorize U.S. participation.36 From that point forward, presidents have asserted broad unilateral authority to use force to address threats to U.S. interests, including threats to U.S. allies, and that neither Congress nor courts pushed back much against this expanding power.37 Concerns about expansive presidential war-making authority spiked during the Vietnam War. In the wind-down of that conflict, Congress passed – over President Nixon’s veto – the War Powers Resolution,38 which stated its purpose as to ensure the constitutional Founders’ original vision that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”39 Since then, presidentialists have argued that the President still retains expansive authority to use force abroad to protect American interests,40 and congressionalists argue that this authority is tightly circumscribed.41 These constitutional debates have continued through the first decade of the 21st century. Constitutional scholars split, for example, over President Obama’s power to participate in coalition operations against Libya without congressional authorization in 2011, especially after the War Powers Resolution’s 60-day clock expired.42 Some argue that President Obama’s use of military force without specific congressional authorization in that case **reflects the broad constitutional discretion presidents** now **have** to protect American interests, at least short of full-blown “war”, while others argue that it is the latest in a long record of presidential violations of the Constitution and the War Powers Resolution.43 B. Threats of Force and Constitutional Powers These days it is usually taken for granted that – whether or not he can make war unilaterally – the President is constitutionally empowered to threaten the use of force, implicitly or explicitly, through diplomatic means or shows of force. It is never seriously contested whether the President may declare that United States is contemplating military options in response to a crisis, or whether the President may move substantial U.S. military forces to a crisis region or engage in military exercises there. To take the Libya example just mentioned, is there any constitutional limitation on the President’s authority to move U.S. military forces to the Mediterranean region and prepare them very visibly to strike?44 Or his authority to issue an ultimatum to Libyan leaders that they cease their brutal conduct or else face military action? Would it matter whether such threats were explicit versus implicit, whether they were open and public versus secret, or whether they were just a bluff? If not a constitutional obstacle, could it be argued that the War Powers Resolution’s reporting requirements and limits on operations were triggered by a President’s mere ultimatum or threatening military demonstration, insofar as those moves might constitute a “situation where imminent involvement in hostilities is clearly indicated by the circumstances”? These questions simply are not asked (at least not anymore).45 If anything, most lawyers would probably conclude that the President’s constitutional powers to threaten war **are not just expansive but largely beyond Congress’s authority** to regulate directly. From a constitutional standpoint, to the extent it is considered at all, the President’s power to threaten force is probably regarded to be at least as broad as his power to use it. One way to look at it is that the power to threaten force is a lesser included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression not only directed against U.S. territories but also against third parties,46 then it might seem easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly, for example, to include only limited unilateral authority to repel attacks against U.S. territory,47 then one might expect objections to arguably excessive presidential power to include his unilateral threats of armed intervention. Another way of looking at it is that in many cases, threats of war or force might fall within even quite narrow interpretations of the President’s inherent foreign relations powers to conduct diplomacy or his express commander in chief power to control U.S. military forces – or some combination of the two – depending on how a particular threat is communicated. A President’s verbal warning, ultimatum, or declared intention to use military force, for instance, could be seen as merely exercising his role as the “sole organ” of U.S. foreign diplomacy, conveying externally information about U.S. capabilities and intentions.48 A president’s movement of U.S. troops or warships to a crisis region or elevation of their alert level could be seen as merely exercising his dayto- day tactical control over forces under his command.49 Generally it is not seriously contested whether the exercise of these powers alone could so affect the likelihood of hostilities or war as to intrude on Congress’s powers over war and peace.50 We know from historical examples that such unilateral military moves, even those that are ostensibly pure defensive ones, can provoke wars – take, for example, President Polk’s movement of U.S. forces to the contested border with Mexico in 1846, and the resulting skirmishes that led Congress to declare war.51 Coming at the issue from Congress’s Article I powers rather than the President’s Article II powers, the very phrasing of the power “To declare War” puts most naturally all the emphasis on the present tense of U.S. military action, rather than its potentiality. Even as congressionalists advance interpretations of the clause to include not merely declarative authority but primary decision-making authority as to whether or not to wage war or use force abroad, their modern-day interpretations do not include a power to threaten war (except perhaps through the specific act of declaring it). None seriously argues – at least not any more – that the Declare War Clause precludes presidential threats of war. This was not always the case. During the early period of the Republic, there was a powerful view that beyond outright initiation of armed hostilities or declaration of war, more broadly the President also could not unilaterally take actions (putting aside actual military attacks) that would likely or directly risk war,52 provoke a war with another state,53 or change the condition of affairs or relations with another state along the continuum from peace to war.54 To do so, it was often argued, would usurp Congress’s prerogative to control the nation’s state of peace or war.55 During the Quasi-War with France at the end of the 18th century, for example, some members of Congress questioned whether the President, absent congressional authorization, could take actions that visibly signaled an intention to retaliate against French maritime harassment,56 and even some members of President Adams’ cabinet shared doubts.57 Some questions over the President’s power to threaten force arose (eventually) in relation to the Monroe Doctrine, announced in an 1823 presidential address to Congress and which in effect declared to European powers that the United States would oppose any efforts to colonize or reassert control in the Western Hemisphere.58 “Virtually no one questioned [Monroe’s proclamation] at the time. Yet it posed a constitutional difficulty of the first importance.”59 Of course, Monroe did not actually initiate any military hostilities, but his implied threat – without congressional action – risked provoking rather than deterring European aggression and by putting U.S. prestige and credibility on the line it limited Congress’s practical freedom of action if European powers chose to intervene.60 The United States would have had at the time to rely on British naval power to make good on that tacit threat, though a more assertive role for the President in wielding the potential for war or intervention during this period went hand in hand with a more sustained projection of U.S. power beyond its borders, especially in dealing with dangers emanating from Spanish-held Florida territory.61 Monroe’s successor, John Quincy Adams, faced complaints from opposition members of Congress that Monroe’s proclamation had exceeded his constitutional authority and had usurped Congress’s by committing the United States – even in a non-binding way – to resisting European meddling in the hemisphere.62 The question whether the President could unilaterally send militarily-threatening signals was in some respects a mirror image of the issues raised soon after the Constitution was ratified during the 1793 Neutrality Controversy: could President Washington unilaterally declare the United States to be neutral as to the war among European powers. Washington’s politically controversial proclamation declaring the nation “friendly and impartial” in the conflict between France and Great Britain (along with other European states) famously prompted a back-and-forth contest of public letters by Alexander Hamilton and James Madison, writing pseudonymously as “Pacificus” and “Helvidius”, about whether the President had such unilateral power or whether it belonged to Congress.63 Legal historian David Currie points out the irony that the neutrality proclamation was met with stronger and more immediate constitutional scrutiny and criticism than was Monroe’s threat. After all, Washington’s action accorded with the principle that only Congress, representing popular will, should be able to take the country from the baseline state of peace to war, whereas Monroe’s action seemed (at least superficially) to commit it to a war that Congress had not approved.64 Curiously (though for reasons offered below, perhaps not surprisingly) this issue – whether there are constitutional limits on the President’s power to threaten war – has almost vanished completely from legal discussion, and that evaporation occurred even before the dramatic post-war expansion in asserted presidential power to make war. Just prior to World War II, political scientist and presidential powers theorist Edward Corwin remarked that “[o]f course, it may be argued, and has in fact been argued many times, that the President is under constitutional obligation not to incur the risk of war in the prosecution of a diplomatic policy without first consulting Congress and getting its consent.”65 “Nevertheless,” he continued,66 “the supposed principle is clearly a maxim of policy rather than a generalization from consistent practice.” In his 1945 study World Policing and the Constitution, James Grafton Rogers noted: [E]xamples of demonstrations on land and sea made for a variety of purposes and under Presidents of varied temper and in different political climates will suffice to make the point. The Commander-in-Chief under the Constitution can display our military resources and threaten their use whenever he thinks best. The weakness in the **diplomatic weapon** is the possibility of **dissidence at home** which may cast doubt on our serious intent. The danger of the weapon is war.67 At least since then, however, the importance to U.S. foreign policy of threatened force has increased dramatically, while legal questions about it have receded further from discussion. In recent decades a few prominent legal scholars have addressed the President’s power to threaten force, though in only brief terms.

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**Exec Power DA – 1NC [3/5]**

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Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70 Jefferson Powell, who generally takes a more expansive view than Henkin of the President’s war powers, argues by contrast that “[t]he ability to warn of, or threaten, the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.”71 For Powell, the President is constantly taking actions as part of everyday international relations that carry a risk of military escalation, and these are well-accepted as part of the President’s broader authority to manage, if not set, foreign policy. Such brief mentions are in recent times among the rare exceptions to otherwise barren constitutional discussion of presidential powers to threaten force. That the President’s authority to threaten force is so well-accepted these days as to seem self-evident is not just an academic phenomenon. It is also reflected in the legal debates among and inside all three branches of government. In 1989, Michael Reisman observed: Military maneuvers designed to convey commitment to allies or contingent threats to adversaries … **are matters of presidential competence**. Congress does not appear to view as within its bailiwick many low-profile contemporaneous expressions of gunboat diplomacy, i.e., the physical interposition of some U.S. war-making capacity as communication to an adversary of United States’ intentions and capacities to oppose it.72 This was and remains a correct description but understates the pattern of practice, insofar as even major and high-profile expressions of coercive diplomacy are regarded among all three branches of government as within presidential competence. In Dellums v. Bush – perhaps the most assertive judicial scrutiny of presidential power to use large-scale force abroad since the end of the Cold War – the district court dismissed on ripeness grounds congressmembers’ suit challenging President George H. W. Bush’s intended military operations against Iraq in 1991 and seeking to prevent him from initiating an offensive attack against Iraq without first securing explicit congressional authorization for such action.73 That at the time of the suit the President had openly threatened war – through ultimatums and deployment of several hundred thousand U.S. troops – but had not yet “committed to a definitive course of action” to carry out the threat meant there was no justiciable legal issue, held the court.74 The President’s threat of war did not seem to give the district court legal pause at all; quite the contrary, the mere threat of war was treated by the court as a non-issue entirely.75 There are several reasons why constitutional questions about threatened force have dropped out of legal discussions. First, the more politically salient debate about the President’s unilateral power to use force has probably swallowed up this seemingly secondary issue. As explained below, it is a mistake to view threats as secondary in importance to uses of force, but they do not command the same political attention and their impacts are harder to measure.76 Second, the expansion of American power after World War II, combined with the growth of peacetime military forces and a set of defense alliance commitments (developments that are elaborated below) make at least some threat of force much more common – in the case of defensive alliances and some deterrent policies, virtually constant – and difficult to distinguish from other forms of everyday diplomacy and security policy.77 Besides, for political and diplomatic reasons, presidents rarely threaten war or intervention without at least a little deliberate ambiguity. As historian Marc Trachtenberg puts it: “It often makes sense … to muddy the waters a bit and avoid direct threats.”78 Any legal lines one might try to draw (recall early attempts to restrict the President’s unilateral authority to alter the state of affairs along the peacetime-wartime continuum) have become blurrier and blurrier. In sum, if the constitutional power to threaten war ever posed a serious legal controversy, it does so no more. As the following section explains, however, threats of war and armed force have during most of our history become a greater and greater part of American grand strategy, defined here as long-term policies for using the country’s military and non-military power to achieve national goals. The prominent role of threatened force in U.S. strategy has become the focus of political scientists and other students of security strategy, crises, and responses – but constitutional study has not adjusted accordingly.79 C. Threats of Force and U.S. Grand Strategy While the Korean and Vietnam Wars were generating intense study among lawyers and legal scholars about constitutional authority to wage military actions abroad, during that same period many political scientists and strategists – economists, historians, statesmen, and others who studied international conflict – turned their focus to the role of threatened force as an instrument of foreign policy. The United States was building and sustaining a massive war-fighting apparatus, but its security policy was not oriented primarily around waging or winning wars but around deterring them and using the threat of war – including demonstrative military actions – to advance U.S. security interests. It was the potential of U.S. military might, not its direct application or engagement with the enemy, that would do much of the heavy lifting. U.S. military power would be used to deter the Soviet Union and other hostile states from taking aggressive action. It would be unsheathed to prompt them to back down over disputes. It would reassure allies that they could depend on U.S. help in defending themselves. All this required that U.S. willingness to go to war be credible in the eyes of adversaries and allies alike. Much of the early Cold War study of threatened force concerned nuclear strategy, and especially deterrence or escalation of nuclear war. Works by Albert Wohlstetter, Herman Kahn, and others not only studied but shaped the strategy of nuclear threats, as well as how to use limited applications of force or threats of force to pursue strategic interests in remote parts of the globe without sparking massive conflagrations.80 As the strategic analyst Bernard Brodie wrote in 1946, “Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them.”81 Toward that end, U.S. government security and defense planners during this time focused heavily on preserving and improving the credibility of U.S. military threats – while the Soviet Union was doing likewise.82 The Truman administration developed a militarized version of containment strategy against the Soviet empire, emphasizing that stronger military capabilities were necessary to prevent the Soviets from seizing the initiative and to resist its aggressive probes: “it is clear,” according to NSC-68, the government document which encapsulated that strategy, “that a substantial and rapid building up of strength in the free world is necessary to support a firm policy intended to check and to roll back the Kremlin's drive for world domination.”83 The Eisenhower administration’s “New Look” policy and doctrine of “massive retaliation” emphasized making Western collective security both more effective and less costly by placing greater reliance on deterrent threats – including threatened escalation to general or nuclear war. As his Secretary of State John Foster Dulles explained, “[t]here is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power.”84 As described in Evan Thomas’s recent book, Ike’s Bluff, Eisenhower managed to convince Soviet leaders that he was ready to use nuclear weapons to check their advance in Europe and elsewhere. In part due to concerns that threats of massive retaliation might be insufficiently credible in Soviet eyes (especially with respect to U.S. interests perceived as peripheral), the Kennedy administration in 1961 shifted toward a strategy of “flexible response,” which relied on the development of a wider spectrum of military options that could quickly and efficiently deliver varying degrees of force in response to foreign aggression.85 Throughout these periods, the President often resorted to discrete, limited uses of force to demonstrate U.S. willingness to escalate. For example, in 1961 the Kennedy administration (mostly successfully in the short-run) deployed intervention-ready military force immediately off the coast of the Dominican Republic to compel its government's ouster,86 and that same year it used military exercises and shows of force in ending the Berlin crisis;87 in 1964, the Johnson administration unsuccessfully used air strikes on North Vietnamese targets following the Tonkin Gulf incidents, failing to deter what it viewed as further North Vietnamese aggression.88 The point here is not the shifting details of U.S. strategy after World War II – during this era of dramatic expansion in asserted presidential war powers – but the central role of credible threats of war in it, as well as the interrelationship of plans for using force and credible threats to do so. Also during this period, the United States abandoned its long-standing aversion to “entangling alliances,”89 and committed to a network of mutual defense treaties with dependent allies. Besides the global collective security arrangement enshrined in the UN Charter, the United States committed soon after World War II to mutual defense pacts with, for example, groups of states in Western Europe (the North Atlantic Treaty Organization)90 and Asia (the Southeast Asia Treaty Organization,91 as well as a bilateral defense agreement with the Republic of Korea,92 Japan,93 and the Republic of China,94 among others). These alliance commitments were part of a U.S. effort to “extend” deterrence of Communist bloc aggression far beyond its own borders.95 “Extended deterrence” was also critical to reassuring these U.S. allies that their security needs would be met, in some instances to head off their own dangerous rearmament.96 Among the leading academic works on strategy of the 1960s and 70s were those of Thomas Schelling, who developed the theoretical structure of coercion theory, arguing that rational states routinely use the threat of military force – the manipulation of an adversary’s perceptions of future risks and costs with military threats – as a significant component of their diplomacy.97 Schelling distinguished between deterrence (the use of threats to dissuade an adversary from taking undesired action) and compellence (the use of threats to persuade an adversary to behave a certain way), and he distinguished both forms of coercion from brute force: “[B]rute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage to come that can make someone yield of comply. It is latent violence that can influence someone’s choice.”98 Alexander George, David Hall, and William Simons then led the way in taking a more empirical approach, reviewing case studies to draw insights about the success and failure of U.S. coercive threats, analyzing contextual variables and their effects on parties’ reactions to threats during crises. Among their goals was to generate lessons informed by history for successful strategies that combine diplomatic efforts with threats or demonstrations of force, recognizing that the United States was relying heavily on threatened force in addressing security crises. Coercive diplomacy – if successful – offered ways to do so with minimal actual application of military force.99 One of the most influential studies that followed was Force Without War: U.S. Armed Forces as a Political Instrument, a Brookings Institution study led by Barry Blechman and Stephen Kaplan and published in 1977.100 They studied “political uses of force”, defined as actions by U.S. military forces “as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continued contest of violence.”101 Blechman and Kaplan’s work, including their large data set and collected case studies, was important for showing the many ways that threatened force could support U.S. security policy. Besides deterrence and compellence, threats of force were used to assure allies (thereby, for example, avoiding their own drive toward militarization of policies or crises) and to induce third parties to behave certain ways (such as contributing to diplomatic resolution of crises). The record of success in relying on threatened force has been quite mixed, they showed. Blechman and Kaplan’s work, and that of others who built upon it through the end of the Cold War and the period that has followed,102 helped understand the factors that correlated with successful threats or demonstrations of force without resort or escalation to war, especially the importance of credible signals.103 After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten any conceivable adversary with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.111 D. The Disconnect Between Constitutional Discourse and Strategy There is a major disconnect between the decades of work by strategists and many political scientists on American security policy and practice since the Second World War and legal analysis and scholarship of constitutional war powers during that period. Lawyers and strategists have been relying on not only distinct languages but distinct logics of military force – in short, when it comes to using U.S. military power, lawyers think in terms of “going to war” while strategists focus on potential war and processes leading to it. These framings manifest in differing theoretical starting points for considering how exercises of U.S. military might affect war and peace, and they skew the empirical insights and normative prescriptions about Presidential power often drawn from their analyses. 1. Lawyers’ Misframing Lawyers’ focus on actual uses of force – especially engagements with enemy military forces – as constitutionally salient, rather than including threats of force in their understanding of modern presidential powers tilts analysis toward a one-dimensional strategic logic, rather than a more complex and multi-dimensional and dynamic logic in which the credible will to use force is as important as the capacity to do so. As discussed above, early American constitutional thinkers and practitioners generally wanted to slow down with institutional checks decisions to go to war, because they thought that would make war less likely. “To invoke a more contemporary image,” wrote John Hart Ely of their vision, “it takes more than one key to launch a missile: It should take quite a number to start a war.”112 They also viewed the exercise of military power as generally a ratchet of hostilities, whereby as the intensity of authorized or deployed force increased, so generally did the state of hostilities between the United States and other parties move along a continuum from peace to war.113 Echoes of this logic still reverberate in modern congressionalist legal scholarship: the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with legislative checks.114 Modern presidentialist legal scholars usually respond that rapid action is a virtue, not a vice, in exercising military force.115 Especially as a superpower with global interests and facing global threats, presidential discretion to take rapid military **action** – endowed with what Alexander Hamilton called “[**d]ecision, activity, secrecy, and dispatch**”116 – **best protects American interests**. In either case the emphasis tends overwhelmingly to be placed on actual military engagements with adversaries. Strategists and many political scientists, by contrast, view some of the most significant use of military power as starting well before armed forces clash – and including important cases in which they never actually do. Coercive diplomacy and strategies of threatened force, they recognize, often involve a set of moves and countermoves by opposing sides and third parties before or even without the violent engagement of opposing forces. It is often the parties’ perceptions of anticipated actions and costs, not the actual carrying through of violence, that have the greatest impact on the course of events and resolution or escalation of crises. Instead of a ratchet of escalating hostilities, the flexing of military muscle can increase as well as decrease actual hostilities, inflame as well as stabilize relations with rivals or enemies. Moreover, those effects are determined not just by U.S. moves but by the responses of other parties to them – or even to anticipated U.S. moves and countermoves.117 Indeed, as Schelling observed, strategies of brinkmanship sometimes operate by “the deliberate creation of a recognizable risk of war, a risk that one does not completely control.”118 This insight – that effective strategies of threatened force involve not only great uncertainty about the adversary’s responses but also sometimes involve intentionally creating risk of inadvertent escalation119 – poses a difficult challenge for any effort to cabin legally the President’s power to threaten force in terms of likelihood of war or some due standard of care.120 2. Lawyers’ Selection Problems Methodologically, a lawyerly focus on actual uses of force – a list of which would then commonly be used to consider which ones were or were not authorized by Congress – vastly undercounts the instances in which presidents wield U.S. military might. It is already recognized by some legal scholars that studying actual uses of force risks ignoring instances in which President contemplated force but refrained from using it, whether because of political, congressional, or other constraints.121 The point here is a different one: that some of the most significant (and, in many instances, successful) presidential decisions to threaten force do not show up in legal studies of presidential war powers that consider actual deployment or engagement of U.S. military forces as the relevant data set. Moreover, some actual uses of force, whether authorized by Congress or not, were preceded by threats of force; in some cases these threats may have failed on their own to resolve the crisis, and in other cases they may have precipitated escalation. To the extent that lawyers are interested in understanding from historical practice what war powers the political branches thought they had and how well that understanding worked, they are excluding important cases. Consider, as an illustration of this difference in methodological starting point, that for the period of 1946-1975 (during which the exercise of unilateral Presidential war powers had its most rapid expansion), the Congressional Research Service compilation of instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests – which is often relied upon by legal scholars studying war powers – lists only about two dozen incidents.122 For the same time period, the Blechman and Kaplan study of political uses of force (usually threats) – which is often relied upon by political scientists studying U.S. security strategy – includes dozens more data-point incidents, because they divide up many military crises into several discrete policy decisions, because many crises were resolved with threat-backed diplomacy, and because many uses of force were preceded by overt or implicit threats of force.123 Among the most significant incidents studied by Blechman and Kaplan but not included in the Congressional Research Service compilation at all are the 1958-59 and 1961 crises over Berlin and the 1973 Middle East War, during which U.S. Presidents signaled threats of superpower war, and in the latter case signaled particularly a willingness to resort to nuclear weapons.124 Because the presidents did not in the end carry out these threats, these cases lack the sort of authoritative legal justifications or reactions that accompany actual uses of force. It is therefore difficult to assess how the executive branch and congress understood the scope of the President’s war powers in these cases, but historical inquiry would probably show the executive branch’s interpretation to be very broad, even to include full-scale war and even where the main U.S. interest at stake was the very credibility of U.S. defense commitments undergirding its grand strategy, not simply the interests specific to divided Germany and the Middle East region.

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Of course, one might argue that because the threatened military actions were never carried out in these cases, it is impossible to know if the President would have sought congressional authorization or how Congress would have reacted to the use of force; nonetheless, it is easy to see that in crises like these a threat by the President to use force, having put U.S. credibility on the line in addition to whatever other foreign policy stakes were at issues, would have put Congress in a bind. 3. Lawyers’ Mis-Assessment Empirically, analysis of and insights gleaned from any particular incident – which might then be used to evaluate the functional merits of presidential powers – looks very different if one focuses predominantly on the actual use of force instead of considering also the role of threatened force. Take for example, the Cuban Missile Crisis – perhaps the Cold War’s most dangerous event. To the rare extent that they consider domestic legal issues of this crisis at all, lawyers interested in the constitutionality of President Kennedy’s actions generally ask only whether he was empowered to initiate the naval quarantine of Cuba, because that is the concrete military action Kennedy took that was readily observable and that resulted in actual engagement with Soviet forces or vessels – as it happens, very minimal engagement.125 To strategists who study the crisis, however, the naval quarantine is not in itself the key presidential action; after all, as Kennedy and his advisers realized, a quarantine alone could not remove the missiles that were already in Cuba. The most consequential presidential actions were threats of military or even nuclear escalation, signaled through various means including putting U.S. strategic bombers on highest alert.126 The quarantine itself was significant not for its direct military effects but because of its communicative impact in showing U.S. resolve. If one is focused, as lawyers often are, on presidential military action that actually engaged the enemy in combat or nearly did, it is easy to dismiss this case as not very constitutionally significant. If one focuses on it, as strategists and political scientists often do, on nuclear brinkmanship, it is arguably the most significant historical exercise of unilateral presidential powers to affect war and peace.127 Considering again the 1991 Gulf War, most legal scholars would dismiss this instance as constitutionally a pretty uninteresting military conflict: the President claimed unilateral authority to use force, but he eventually sought and obtained congressional authorization for what was ultimately – at least in the short-run – a quite successful war. For the most part this case is therefore neither celebrated nor decried much by either side of legal war powers debates,128 though some congressionalist scholars highlight the correlation of congressional authorization for this war and a successful outcome.129 Political scientists look at the case differently, though. They often study this event not as a successful war but as failed coercive diplomacy, in that the United States first threatened war through a set of dramatically escalating steps that ultimately failed to persuade Saddam Hussein to withdraw from Kuwait.130 Some political scientists even see U.S. legal debate about military actions as an important part of this story, assessing that adversaries pay attention to congressional arguments and moves in evaluating U.S. resolve (an issue taken up in greater detail below) and that congressional opposition to Bush’s initial unilateralism in this case undermined the credibility of U.S. threats.131 Whether one sees the Gulf War as a case of (successful) war, as lawyers usually do, or (unsuccessful) threatened war, as political scientists usually do, colors how one evaluates the outcome and the credit one might attach to some factors such as vocal congressional opposition to initially-unilateral presidential moves. Notice also that legal analysis of Presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake, as though those interests are purely contextual and exogenous to U.S. decision-making and grand strategy. In justifying President Obama’s 2011 use of force against the Libyan government, for example, the Justice Department’s Office of Legal Counsel concluded that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest,” and it then went on to detail the U.S. security and foreign policy interests.132 The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions.133 The President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions.134 The U.S. security interests in carrying through on threats are partly endogenous to the strategy embarked upon to address crises (consider, for example, that once President George H.W. Bush placed hundred of thousands of U.S. troops in the Persian Gulf region and issued an ultimatum to Saddam Hussein in 1990, the credibility of U.S. threats and assurances to regional allies were put on the line).135 Moreover, interests at stake in any one crisis cannot simply be disaggregated from broader U.S. grand strategy: if the United States generally relies heavily on threats of force to shape the behavior of other actors, then its demonstrated willingness or unwillingness to carry out a threat and the outcomes of that action affect its credibility in the eyes of other adversaries and allies, too.136 It is remarkable, though in the end not surprising, that the executive branch does not generally cite these credibility interests in justifying its unilateral uses of force. It does cite when relevant the U.S. interest in sustaining the credibility of its formal alliance commitments or U.N. Security Council resolutions, as reasons supporting the President’s constitutional authority to use force.137 The executive branch generally refrains from citing the similar interests in sustaining the credibility of the President’s own threats of force, however, probably in part because doing so would so nakedly expose the degree to which the President’s prior unilateral strategic decisions would tie Congress’s hands on the matter. \* \* \* In sum, lawyers’ focus on actual uses of force – usually in terms of armed clashes with an enemy or the placement of troops into hostile environments – does not account for much vaster ways that President’s wield U.S. military power and it skews the claims legal scholars make about the allocation of war powers between the political branches. A more complete account of constitutional war powers should recognize the significant role of threatened force in American foreign policy. II. Democratic Checks on Threatened Force The previous Parts of this Article showed that, especially since the end of World War II, the United States has relied heavily on strategies of threatened force in wielding its military might – for which credible signals are a necessary element – and that the President is not very constrained legally in any formal sense in threatening war. Drawing on recent political science scholarship, this Part takes some of the major questions often asked by students of constitutional war powers with respect to the actual use of force and reframes them in terms of threatened force. First, as a descriptive matter, in the absence of formal legal checks on the President’s power to threaten war, is the President nevertheless informally but significantly constrained by democratic institutions and processes, and what role does Congress play in that constraint? Second, as a normative matter, what are the strategic merits and drawbacks of this arrangement of democratic institutions and constraints with regard to strategies of threatened force? Third, as a prescriptive matter, although it is not really plausible that Congress or courts would ever erect direct legal barriers to the President’s power to threaten war, how might legal reform proposals to more strongly and formally constrain the President’s power to use force indirectly impact his power to threaten it effectively? For reasons discussed below, I do not consider whether Congress could legislatively restrict directly the President’s power to threaten force or war; in short, I set that issue aside because assuming that were constitutionally permissible, even ardent congressionalists have exhibited no interest in doing so, and instead have focused on legally controlling the actual use of force. Political science insights that bear on these questions emerge from several directions. One is from studies of Congress’ influence on use of force decisions, which usually assume that Congress’s formal legislative powers play only a limited role in this area, and the effects of this influence on presidential decision-making about threatened force. Another is international relations literature on international bargaining138 as well as literature on the theory of democratic peace, the notion that democracies rarely, if ever, go to war with one another.139 In attempting to explain the near-absence of military conflicts between democracies, political scientists have examined how particular features of democratic governments – electoral accountability, the institutionalized mobilization of political opponents, and the diffusion of decision-making authority regarding the use of force among executive and legislative branches – affect decision-making about war.140 These and other studies, in turn, have led some political scientists (especially those with a rational choice theory orientation) to focus on how those features affect the credibility of signals about force that governments send to adversaries in crises.141 My purpose in addressing these questions is to begin painting a more complete and detailed picture of the way war powers operate, or could operate, than one sees when looking only at actual wars and use of force. This is not intended to be a comprehensive account but an effort to synthesize some strands of scholarship from other fields regarding threatened force to inform legal discourse about how war powers function in practice and the strategic implications of reform. The answers to these questions also bear on raging debates among legal scholars on the nature of American executive power and its constraint by law. Initially they seem to support the views of those legal scholars who have long believed that in practice law no longer seriously binds the President with respect to war-making.142 That view has been taken even further recently by Eric Posner and Adrian Vermeule, who argue that “[l]aw does little constraint the modern executive” at all, but also observe that “politics and public opinion” operate effectively to cabin executive powers.143 The arguments offered here, however, do more to support the position of those legal scholars who describe a more complex relationship between law and politics, including that law is constitutive of the processes of political struggle.144 That law helps constitute the processes of political struggles is true of any area of public policy, though, and what is special here is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too. Democratic Constraints on the Power to the Threaten Force Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to threatened force, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress vocally **oppose a use of force, they undermine the president’s ability to convince** foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, **allies may be reluctant to contribute** to a military campaign, **and adversaries are likely to fight harder and longer** when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests. 145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policy relevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more **immediate** and informed **impact** on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing¶ threats in the first place, making only those commitments that would not incite¶ widespread political opposition should the threat be carried through.151 Political¶ opponents within a legislature also have few electoral incentives to collude in an¶ executive’s bluff, and they are capable of expressing opposition to a threatened use of¶ force in ways that could expose the bluff to a threatened adversary.152 This again narrows¶ the President’s range of viable policy options for brandishing military force. Counter-intuitively, given the President’s seemingly unlimited and unchallenged¶ constitutional power to threaten war, it may in some cases be easier for members of¶ Congress to influence presidential decisions to threaten military action than presidential¶ war decisions once U.S. forces are already engaged in hostilities. It is widely believed¶ that once U.S. armed forces are fighting, congress members’ hands are often tied: policy¶ opposition at that stage risks being portrayed as undermining our troops in the field.153¶ Perhaps, it could be argued, the President takes this phenomenon into account and¶ therefore discounts political opposition to threatened force; he can assume that such¶ opposition will dissipate if he carries it through. Even if that is true, before that point¶ occurs, however, members of Congress may have communicated messages domestically¶ and communicated signals abroad that the President will find difficult to counter.154 The bottom line is that a body of recent political science, while confirming the¶ President’s dominant position in setting policy in this area, also reveals that policymaking¶ with respect to threats of force is significantly shaped by domestic politics and¶ that Congress is institutionally positioned to play a powerful role in influencing those¶ politics, even without exercising its formal legislative powers. Given the centrality of¶ threatened force to U.S. foreign policy strategy and security crises, this suggests that the¶ practical war powers situation is not so imbalanced toward the President as many assume. B. Democratic Institutions and the Credibility of Threats A central question among constitutional war powers scholars is whether robust¶ checks – especially congressional ones – on presidential use of force lead to “sound”¶ policy decision-making. Congressionalists typically argue that legislative control over¶ war decisions promotes more thorough deliberation, including more accurate weighing of¶ consequences and gauging of political support of military action.155 Presidentialists¶ usually counter that the executive branch has better information and therefore better¶ ability to discern the dangers of action or inaction, and that quick and decisive military¶ moves are often required to deal with security crises.156 If we are interested in these sorts of functional arguments, then reframing the¶ inquiry to include threatened force prompts critical questions whether such checks also¶ contribute to or detract from effective deterrence and coercive diplomacy and therefore¶ positively or negatively affect the likelihood of achieving aims without resort to war.¶ Here, recent political science provides some reason for optimism, though the scholarship¶ in this area is neither yet well developed nor conclusive. To be sure, “soundness” of policy with respect to force is heavily laden with¶ normative assumptions about war and the appropriate role for the United States in the¶ broader international security system, so it is difficult to assess the merits and¶ disadvantages of constitutional allocations in the abstract. That said, whatever their¶ specific assumptions about appropriate uses of force in mind, constitutional war powers¶ scholars usually evaluate the policy advantages and dangers of decision-making¶ allocations narrowly in terms of the costs and outcomes of actual military engagements¶ with adversaries. The importance of credibility to strategies of threatened force adds important new¶ dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations –¶ that institutional centralization and secrecy of decision-making might better equip nondemocracies¶ to wield threats of force. As Quincy Wright speculated in 1944, autocracies¶ “can use war efficiently and threats of war even more efficiently” than democracies,157¶ especially the American democracy in which vocal public and congressional opposition¶ may undermine threats.158 Moreover, proponents of democratic checks on war powers¶ usually assume that careful deliberation is a virtue in preventing unnecessary wars, but¶ strategists of deterrence and coercion observe that perceived irrationality is sometimes¶ important in conveying threats: “don’t test me, because I might just be crazy enough to¶ do it!”159 On the other hand, some political scientists have recently called into question this¶ view and concluded that the institutionalization of political contestation and some¶ diffusion of decision-making power in democracies of the kind described in the previous¶ section make threats to use force rare but especially credible and effective in resolving¶ international crises without actual resort to armed conflict. In other words, recent¶ arguments in effect turn some old claims about the strategic disabilities of democracies¶ on their heads: whereas it used to be generally thought that democracies were ineffective¶ in wielding threats because they are poor at keeping secrets and their decision-making is¶ constrained by internal political pressures, a current wave of political science accepts this¶ basic description but argues that these democratic features are really strategic virtues.160 Rationalist models of crisis bargaining between states assume that because war is¶ risky and costly, states will be better off if they can resolve their disputes through¶ bargaining rather than by enduring the costs and uncertainties of armed conflict.161¶ Effective bargaining during such disputes – that which resolves the crisis without a resort¶ to force – depends largely on states’ perceptions of their adversary’s capacity to wage an¶ effective military campaign and its willingness to resort to force to obtain a favorable¶ outcome. A state targeted with a threat of force, for example, will be less willing to resist¶ the adversary’s demands if it believes that the adversary intends to wage and is capable of¶ waging an effective military campaign to achieve its ends. In other words, if a state¶ perceives that the threat from the adversary is credible, that state has less incentive to¶ resist such demands if doing so will escalate into armed conflict. The accuracy of such perceptions, however, is often compromised by¶ informational asymmetries that arise from private information about an adversary’s¶ relative military capabilities and resolve that prevents other states from correctly¶ assessing another states’ intentions, as well as by the incentives states have to¶ misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries¶ increase the potential for misperception and thereby make war more likely; war,¶ consequentially, can be thought of in these cases as a “bargaining failure.”163 Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166 Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President. Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – **provides more information to adversaries** regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace. Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169 In some cases, Congress may communicate greater willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down. The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force. Nevertheless, at the very least, strands of recent political science scholarship cast significant doubt on the intuition that democratic checks are inherently disadvantageous to strategies of threatened force. Quite the contrary, they suggest that legislative checks – or, indeed, even the signaling functions that Congress is institutionally situated to play with respect to foreign audiences interpreting U.S. government moves – can be harnessed in some circumstances to support such strategies. C. Legal Reform and Strategies of Threatened Force Among legal scholars of war powers, the ultimate prescriptive question is whether the President should be constrained more formally and strongly than he currently is by legislative checks, especially a more robust and effective mandatory requirement of congressional authorization to use force. Calls for reform usually take the form of narrowing and better enforcement (by all three branches of government) of purported constitutional requirements for congressional authorization of presidential uses of force or revising and enforcing the War Powers Resolutions or other framework legislation requiring express congressional authorization for such actions.175

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As applied to strategies of threatened force, generally **under these proposals the President would lack authority to make good on them** unilaterally (except in whatever narrow circumstances for which he retains his own unilateral authority, such as deterring imminent attacks on the United States). Whereas legal scholars are consumed with the internal effects of war powers law, such as whether and when it constrains U.S. government decision-making, the analysis contained in the previous section shifts attention externally to whether and when U.S. law might influence decision-making by adversaries, allies, and other international actors. In prescriptive terms, if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of war powers reform on policy outcomes and longterm interests should include the important secondary effects on deterrent and coercive strategies – and how U.S. legal doctrine is perceived and understood abroad.176 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and if so would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the signaling effects of dissent within Congress, beyond those effects already resulting from open political discourse? These are difficult questions, but the analysis and evidence above helps generate some initial hypotheses and avenues for further research and analysis. One might ask at this point why, though, having exposed as a hole in war powers legal discourse the tendency to overlook threatened force, this Article does not take up whether Congress should assert some direct legislative control of threats – perhaps statutorily limiting the President’s authority to make them or establishing procedural conditions like presidential reporting requirements to Congress. This Article puts such a notion aside for several reasons. First, for reasons alluded to briefly above, such limits would be very constitutionally suspect and difficult to enforce.177 Second, even the most ardent war-power congressionalists do not contemplate such direct limits on the President’s power to threaten; they are not a realistic option for reform. Instead, this Article focuses on the more plausible – and much more discussed – possibility of strengthening Congress’s power over the ultimate decision whether to use force, but augments the usual debate over that question with appreciation for the importance of credible threats. A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued: In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps **the *most* important** of all the powers in our constitutional armory to prevent confrontations that could **carry nuclear implications**. … [I]t is the **diplomatic power the President needs** most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179 In his veto statement on the War Powers Resolution, President Nixon echoed these concerns, arguing that **the law would undermine the credibility of U.S. deterrent** and coercive threats in the eyes of both adversaries and allies – they would know that presidential authority to use force would expire after 60 days, so absent strong congressional support they could assume U.S. withdrawal at that point.180 In short, those who oppose tying the president’s hands with mandatory congressional authorization requirements to use force sometimes argue that doing so incidentally and dangerously ties his hands in threatening it. A critical assumption here is that presidential flexibility, preserved in legal doctrine, enhances the credibility of presidential threats to escalate.

#### Iran miscalc would spark nuclear war

Ben-Meir, 2/6/2007 (Alon – professor of international relations at the Center for Global Affairs, Ending iranian defiance, United Press International, p. lexis)

That Iran stands today able to challenge or even defy the United States in every sphere of American influence in the Middle East attests to the dismal failure of the Bush administration's policy toward it during the last six years. **Feeling emboldened and unrestrained**, Tehran may, however, miscalculate the consequences of its own actions, which could **precipitate a catastrophic regional war**. The Bush administration has less than a year to rein in Iran's reckless behavior if it hopes to prevent such an ominous outcome and achieve, at least, a modicum of regional stability. By all assessments, Iran has reaped the greatest benefits from the Iraq war. The war's consequences and the American preoccupation with it have provided Iran with an historic opportunity to establish Shiite dominance in the region while aggressively pursuing a nuclear weapon program to deter any challenge to its strategy. Tehran is fully cognizant that the successful pursuit of its regional hegemony has now become intertwined with the clout that a nuclear program bestows. Therefore, it is most unlikely that Iran will give up its nuclear ambitions at this juncture, unless it concludes that the price will be too high to bear. That is, whereas before the Iraq war Washington could deal with Iran's nuclear program by itself, now the Bush administration must also disabuse Iran of the belief that it can achieve its regional objectives with impunity. Thus, while the administration attempts to stem the Sunni-Shiite violence in Iraq to prevent it from engulfing other states in the region, Washington must also take a clear stand in Lebanon. Under no circumstances should Iranian-backed Hezbollah be allowed to topple the secular Lebanese government. If this were to occur, it would trigger not only a devastating civil war in Lebanon but a wider Sunni-Shiite bloody conflict. The Arab Sunni states, especially, Saudi Arabia, Egypt and Jordan, are terrified of this possible outcome. For them Lebanon may well provide the litmus test of the administration's resolve to inhibit Tehran's adventurism but they must be prepared to directly support U.S. efforts. In this regard, the Bush administration must wean Syria from Iran. This move is of paramount importance because not only could Syria end its political and logistical support for Hezbollah, but it could return Syria, which is predominantly Sunni, to the Arab-Sunni fold. President Bush must realize that Damascus' strategic interests are not compatible with Tehran's and the Assad regime knows only too well its future political stability and economic prosperity depends on peace with Israel and normal relations with the United States. President Bashar Assad may talk tough and embrace militancy as a policy tool; he is, however, the same president who called, more than once, for unconditional resumption of peace negotiation with Israel and was rebuffed. The stakes for the United States and its allies in the region are too high to preclude testing Syria's real intentions which can be ascertained only through direct talks. It is high time for the administration to reassess its policy toward Syria and begin by abandoning its schemes of regime change in Damascus. Syria simply matters; the administration must end its efforts to marginalize a country that can play such a pivotal role in changing the political dynamic for the better throughout the region. Although ideally direct negotiations between the United States and Iran should be the first resort to resolve the nuclear issue, as long as Tehran does not feel seriously threatened, it seems unlikely that the clergy will at this stage end the nuclear program. In possession of nuclear weapons Iran will intimidate the larger Sunni Arab states in the region, bully smaller states into submission, threaten Israel's very existence, use oil as a political weapon to blackmail the West and instigate regional proliferation of nuclear weapons' programs. In short, if unchecked, Iran could **plunge the Middle East into** a deliberate or inadvertent **nuclear conflagration**. If we take the administration at its word that it would not tolerate a nuclear Iran and considering these regional implications, Washington is left with no choice but to warn Iran of the severe consequences of not halting its nuclear program.

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#### The President of the United States should issue an executive order transferring lead executive authority for non-battlefield targeted killing from the Central Intelligence Agency to the Joint Special Operations Command. The United States federal government should appoint an Independent Reviewer of drone strike policy, modeled after the British Independent Reviewer of Terrorism Legislation.

#### An Independent Reviewer solves accountability –

Bashir 12 (Omar S. Bashir 12, is a Ph.D. candidate in the Department of Politics at Princeton University and a graduate of the Department of Aeronautics and Astronautics at MIT, September 24th, 2012, "Who Watches the Drones?" Foreign Affairs,[www.foreignaffairs.com/articles/138141/omar-s-bashir/who-watches-the-drones](http://www.foreignaffairs.com/articles/138141/omar-s-bashir/who-watches-the-drones))

At least one other country faced with a similar dilemma, though, has arrived at a different solution. The United Kingdom struggled with terrorism well before 9/11. Over the years, its government has had to develop a way to demonstrate to citizens that it is not abusing counterterrorism powers. The answer is simply an [appointed individual](http://bit.ly/uIOOjh) who has both legal expertise and a reputation for principled behavior and political impartiality. The independent reviewer of terrorism legislation, or "[wise old man](http://bit.ly/L2OzlZ)," as Benjamin Wittes and Paul Rosenzweig at Lawfare have dubbed the figure, is paid at a daily rate and is not financially dependent on the state. In preparing reports for Parliament and the public about his opinions -- [sometimes critical](http://bit.ly/NhP8rC) -- the reviewer is allowed access to any classified information he desires. But he is expected to keep the information secret. If the government impedes the reviewer's access to information, he can raise a red flag. And if the government appoints a shill to the position, **the credibility of the whole system evaporates**. At election time, citizens can reward or punish their political leaders based on the reviewer's pattern of assessments.¶ The independent reviewer model is palatable to governments because it enables accountability without necessarily increasing transparency (although greater transparency seems to have been a positive side effect in Britain). And the model has been successful enough that Australia has implemented it as well. ¶ The United States can feasibly adopt the British model for its targeted killing programs. Drone warfare lends itself especially well to thorough monitoring, a fact that has been largely overlooked. The defining characteristic of unmanned aerial vehicles is that pilots execute their missions from a distance. Intermediaries, also out of harm's way, can thus safely be allowed to witness strikes occasionally to ensure that actual operations and decision-making procedures match what they see in the official record. At the very least, intermediaries might review video evidence, as the UN special rapporteur on counterterrorism and human rights [recently urged](http://ind.pn/NV96t2).¶ If the United States appointed an intermediary, he could confirm or reject official counts of the number of civilians killed in attacks without revealing the government's intelligence on each intended target. That would mitigate the need to choose between largely inconsistent after-the-fact estimates of civilian casualties provided by organizations such as the Bureau of Investigative Journalism and the New America Foundation. If the government's rules for counting civilian deaths are as thoughtless as many suspect them to be, the intermediary would be able to sound the alarm while also indicating whether there is strategic justification for keeping the grim accounting under wraps. Only a government serious about its moral obligations would agree to such an arrangement, and that is part of its value.

**Transferring authority boosts transparency and intel without restricting strikes – solves the aff**

**Zenko 13**¸ Micah, Douglas Dillon fellow with the Center for Preventive Action at the Council on Foreign Relations, “Clip the Agency's Wings: Why Obama needs to take the drones away from the CIA,” April 16th, http://www.foreignpolicy.com/articles/2013/04/16/clip\_the\_agencys\_wings\_cia\_drones?utm\_source=feedly

Last month, Daniel Klaidman reported that three senior officials had told him that President Obama would gradually transfer targeted killings to the Pentagon during his second term. Other journalists report that this is not a certainty or that "it would most likely leave drone operations in Pakistan under the CIA," making any transition meaningless since over 80 percent of all U.S. targeted killings have occurred in Pakistan. But if Obama is serious about reforming targeted killing policies, as he has stated, then he needs to **sign an executive order transferring lead executive authority for non-battlefield targeted killings from the CIA to the Defense Department**. Doing this has three significant benefits for U.S. foreign policy. First, it would increase the transparency of targeted killings, including what methods are used to prevent civilian harm. Strikes by the CIA are classified as Title 50 "covert action," which under law are "activities of the United States Government...where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include traditional...military activities." CIA operations purportedly allow for deniability about the U.S. role, though this rationale no longer applies to the highly-publicized drone campaign in Pakistan, which Obama personally acknowledged in January 2012. Beyond adjectives in public speeches ("methodical," "deliberate," "not willy-nilly"), the government does not, and cannot, describe the procedures and rules for CIA targeted killings. JSOC operations in Somalia and Yemen, on the other hand, fall under the Title 10 "armed forces" section of U.S. law, which the White House reports as "direct action" to Congress. The United States has also acknowledged clandestine military operations to the United Nations "against al-Qaida terrorist targets in Somalia in response to on-going threats to the United States." Moreover, JSOC operations are guided by military doctrine, available to the public in Joint Publication 3-60 (JP 3-60): Joint Targeting. (While the complete 2007 edition can be found online, only the executive summary of the most-recent version, released on January 31, is available. If the Joint Staff's J-7 Directorate for Joint Force Development posted this updated edition in its entirety -- or fulfilled my FOIA request [case number 13-F-0514] -- that would be appreciated.) JP 3-60 matters because it details each step in the targeting cycle, including the fundamentals, processes, responsibilities, legal considerations, and methods to reduce civilian casualties. This degree of transparency is impossible for CIA covert actions. Second, it would focus the finite resources and bandwidth of the CIA on its primary responsibilities of intelligence collection, analysis, and early warning. Last year, the President's Intelligence Advisory Board -- a semi-independent executive branch body, the findings of which rarely leak -- reportedly told Obama 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." This is not a new charge, since every few years an independent group or congressional report determines that "the CIA has been ignoring its core mission activities." But, as Mark Mazzetti shows in his indispensable CIA history, the agency has evolved from an organization once deeply divided at senior levels about using armed drones, to one that is a fully functioning paramilitary army. As former senior CIA official Ross Newland warns, the agency's armed drones program "ends up hurting the CIA. This just is not an intelligence mission." There is no longer any justification for the CIA to have its own redundant fleet of 30 to 35 armed drones. During White House debates of CIA requests in 2009, Gen. James Cartwright, the vice chairman of the Joint Chiefs of Staff, repeatedly asked: "Can you tell me why we are building a second Air Force?" Obama eventually granted every single request made by then-Director of Central Intelligence Leon Panetta, adding: "The CIA gets what it wants." With this year's proposed National Intelligence Program budget scheduled to fall by 8 percent, an open checkbook for Langley is not sustainable or strategically wise.

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#### AUMF strong now- Congress supports a broad interpretation

Brooks, 13 -- Georgetown University law professor

[Rosa, New America Foundation Schwartz senior fellow, served as a counselor to the U.S. defense undersecretary for policy from 2009 to 2011 and previously served as a senior advisor at the U.S. State Department, "Mission Creep in the War on Terror," Foreign Policy, 3-14-13, www.foreignpolicy.com/articles/2013/03/14/mission\_creep\_in\_the\_war\_on\_terror, accessed 8-24-13, mss]

"When you're not near the girl you love, love the girl you're near," sang Frank Sinatra. The U.S. government seems to have its own variant: When you're not near the terrorist you're supposed to target, target the terrorist you're near. To accommodate this desire, both the Bush and Obama administrations have had to gradually stretch the AUMF's language to accommodate an ever-widening range of potential targets, ever more attenuated from the 9/11 perpetrators. The shift has been subtle, and for the most part **Congress** has **aided and abetted it**. In the 2006 and 2009 Military Commissions Acts, for instance, Congress gave military commissions jurisdiction over individuals who are "part of forces associated with al Qaeda or the Taliban," along with "those who purposefully and materially support such forces in hostilities against U.S. Coalition partners." This allowed the Bush and then the Obama administration to argue that in the original 2001 AUMF, Congress must have implicitly authorized the use of force against al Qaeda and Taliban "associated forces." That is, if Congress considers it appropriate for U.S. military commissions to have jurisdiction over al Qaeda and Taliban associates, Congress must believe the executive branch has the authority to detain such associates, and the authority to detain must stem from the authority to use force. This suggests that Congress must believe the AUMF should be read in the context of traditional law-of-war authorities, which include the implied authority to use force against (or detain) both the declared enemy and the enemy's "co-belligerents" or "associated forces." By 2009, the Obama administration was arguing in court that, at least when it comes to detention, the AUMF implicitly authorizes the president "to detain persons who were part of, or substantially supported, Taliban or al Qaeda forces or associated forces that are engaged in hostilities against the United States or its coalition partners" (my emphasis). Note how far this has shifted from the original language of the AUMF: The focus is no longer merely on those who were directly complicit in the 9/11 attacks, but on a far broader category of individuals. This broadened understanding of executive detention authority was later given the congressional nod in the 2012 National Defense Authorization Act, which used virtually identical language.

#### DRONES - Executive drone strike authority is authorized by AUMF

Crowley, 12 -- TIME Washington bureau chief and senior correspondent

[Michael, previously covered foreign policy for The New Republic, "Revisiting a Key Legal Basis for Obama’s Anti-Terrorism Drone Strikes," 6-12-12, swampland.time.com/2012/06/12/revisiting-a-key-legal-basis-for-obamas-anti-terror-drone-strikes/, accessed 9-23-13, mss]

Revisiting a Key Legal Basis for Obama’s Anti-Terrorism Drone Strikes

After I wrote a short piece for last week’s magazine that, among other things, chastised the Obama Administration for not doing more to discuss the pros and cons of its heavy reliance on drone strikes against suspected terrorists, an Administration official groused that I hadn’t credited public comments on the subject by various Obama officials. He specifically cited an April 30 speech by the White House’s counterterrorism point man, John Brennan, outlining the laws, rules and ethics that guide the drone campaign. It’s a pretty good speech and definitely worth reading if you care about these issues. But Brennan doesn’t really address the point of my article, which is the danger that drone strikes could have a counterproductive effect. The civilian casualties and general resentment they breed in places like Pakistan and Yemen clearly threaten to undermine long-term American interests in those countries, even if we are nailing some top al-Qaeda figures in the short term. But reading Brennan’s remarks drove home a point that virtually no one discusses, but that is a little startling when you step back and contemplate it. It is the Obama Administration’s heavy reliance on a law enacted by Congress three days after the Sept. 11 attacks that justified an extremely broad range of military action in the name of fighting terrorism. Here’s Brennan: First, these targeted strikes are legal. Attorney General Holder, Harold Koh and Jeh Johnson have all addressed this question at length. To briefly recap, as a matter of domestic law, the Constitution empowers the President to protect the nation from any imminent threat of attack. The Authorization for Use of Military Force — the AUMF — passed by Congress after the Sept. 11 attacks authorizes the President “to use all necessary and appropriate force” against those nations, organizations and individuals responsible for 9/11. There is nothing in the AUMF that restricts the use of military force against al-Qaeda to Afghanistan.

#### Decreasing AUMF authorizations snowballs- causes judicial rollback of the AUMF

Barnes, 12 -- J.D. Candidate, Boston University School of Law

[Beau, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2150874, accessed 8-21-13, mss]

**The scope of** the **AUMF is** also **important for** any **future judicial opinion** that might rely in part on Justice Jackson’s Steel Seizure concurrence.23 Support from Congress places the President’s actions in Jackson’s first zone, where executive power is at its zenith, because it “includes all that [the president]~~he~~ possesses in [their]~~his~~ own right plus all that Congress can delegate.”24 Express or **implied congressional disapproval, discernible by identifying the outer limits of** the **AUMF’s authorization, would place the President’s “power . . . at its lowest ebb**.”25 In this third zone, executive claims “must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.”26 Indeed, Jackson specifically rejected an overly powerful executive, observing that the Framers did not intend to fashion the President into an American monarch.27 Jackson’s concurrence has become the **most significant guidepost** in debates over the constitutionality of executive action in the realm of national security and foreign relations.28 Indeed, some have argued that it was given “the status of law”29 by then-Associate Justice William Rehnquist in Dames & Moore v. Regan.30 Speaking for the Court, Rehnquist applied Jackson’s tripartite framework to an executive order settling pending U.S. claims against Iran, noting that “[t]he parties and the lower courts . . . have all agreed that much relevant analysis is contained in [Youngstown].”31 More recently, Chief Justice John Roberts declared that “Justice Jackson’s familiar tripartite scheme provides the accepted framework for evaluating executive action in [the area of foreign relations law].”32 Should a future court adjudicate the nature or extent of the President’s authority to engage in military actions against terrorists, an applicable statute would confer upon such executive action “the strongest of presumptions and the widest latitude of judicial interpretation.”33 The AUMF therefore exercises a profound legal influence on the future of the United States’ struggle against terrorism, and its precise scope, authorization, and continuing vitality matter a great deal.

#### That shifts US doctrine to international self-defense- expanded *jus ad bellum* collapses global firebreak on use-of-force

Barnes, 12 -- J.D. Candidate, Boston University School of Law

[Beau, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2150874, accessed 9-19-13, mss]

In a world without a valid AUMF, the United States could base its continued worldwide counterterrorism operations on various alternative domestic legal authorities. All of these alternative bases, however, carry with them significant costs—detrimental to U.S. security and democracy. The foreign and national security policy of the United States should rest on “a comprehensive legal regime to support its actions, one that [has] the blessings of Congress and to which a court would defer as the collective judgment of the American political system about a novel set of problems.”141 Only then can the President’s efforts be sustained and legitimate. 2. Effect on the International Law of Self-Defense A failure to reauthorize military force would lead to significant negative consequences on the international level as well. Denying the Executive Branch the authority to carry out military operations in the armed conflict against Al Qaeda would force the President to find authorization elsewhere, most likely in the international law of selfdefense— the jus ad bellum.142 Finding sufficient legal authority for the United States’s ongoing counterterrorism operations in the international law of self-defense, however, is problematic for several reasons. As a preliminary matter, relying on this rationale usurps Congress’s role in regulating the contours of U.S. foreign and national security policy. If the Executive Branch can assert “self-defense against a continuing threat” to target and detain terrorists worldwide, it will almost always be able to find such a threat.143 Indeed, the Obama Administration’s broad understanding of the concept of “imminence” illustrates the danger of allowing the executive to rely on a self-defense authorization alone.144 This approach also would inevitably lead to dangerous “slippery slopes.” Once the President authorizes a targeted killing of an individual who does not pose an imminent threat in the strict law enforcement sense of “imminence,”145 there are few potential targets that would be off-limits to the Executive Branch. Overly malleable concepts are not the proper bases for the consistent use of military force in a democracy. Although the **Obama** Administration has **disclaimed** this manner of **broad authority because the AUMF “does not authorize** military **force** **against anyone** the Executive labels a ‘terrorist,’”146 **relying solely on** the **international** law of **self** **defense would** likely **lead to precisely such a result**. The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, **the result would be chaos**.”148

### 1nc

#### Short shutdown now- extension causes quick market collapse

**Reinhart et al 10-1**-13 [Vincent Reinhart, chief US economist, Morgan Stanley, Harm Bandholz, chief US economist, UniCredit, Aroop Chatterjee, FX strategist, Barclays, Vincent Chaigneau, rates strategist, Société Générale, Daniel Tenengauzer, US economist, Standard Chartered, Allan von Mehren, chief analyst at Danske, Trevor Greetham, director of asset allocation, Fidelity, “US shutdown reaction: ‘Odds favour a short event’,” <http://www.ft.com/cms/s/0/5bda1eb2-2a67-11e3-ade3-00144feab7de.html#axzz2gYttdnTn>]

The US government began shutting down a range of services on Tuesday after the Republican-controlled House of Representatives and the Democratic Senate failed to agree a short-term budget extension. The lack of an agreement by US politicians will lead to about 800,000 federal employees being placed on unpaid leave, a process known as furloughing. The following is a round-up of strategist and economist reaction:¶ Vincent Reinhart, chief US economist, Morgan Stanley:¶ The heat will build on politicians from constituents who were furloughed, inconvenienced, or fearful of market consequences. That is why we believe the odds favour a short event – over in one week.¶ Harm Bandholz, chief US economist, UniCredit:¶ I think it is only a matter of days, maybe hours, until the majority of Republicans will eventually free themselves from the pressure of the Tea Party minority and vote along with Congressional Democrats to reopen the government. But don’t forget, the government shutdown is merely the prelude to a much bigger issue, namely the forthcoming debt limit fight.¶ Aroop Chatterjee, FX strategist, Barclays:¶ In and of itself, the government shutdown appears to be a limited market event. The indirect effect, however, is on the other main risk scenario for markets – the deal on the debt ceiling. For example, a government shutdown could lead to a sharp increase in the public disapproval of Congress’s handling of fiscal matters and allow for a smoother agreement on the debt ceiling issue. Or on the flip side, it could embolden both sides to become more entrenched in their positions.¶ Vincent Chaigneau, rates strategist, Société Générale:¶ Keep calm and carry on. So it seems that is the message from the markets just now. The US government is going into partial shutdown for the first time in 17 years. This will hurt the economy, though not much if it’s short. Negotiations may keep us on tenterhooks for a couple more weeks, as we approach the debt ceiling. But there has been no sign of financial stress overnight.¶ Daniel Tenengauzer, US economist, Standard Chartered:¶ A shutdown lasting a few days would shave only a few decimal points off fourth-quarter economic growth. The hit to growth would come mainly from the impact of the furloughs on consumption – a similar event to the summer and the sequester-related furloughs of federal employees – and a potential hit to business confidence. The main risk to this expectation is that the shutdown continues for longer, potentially until or beyond the October 17 debt ceiling deadline.¶ Allan von Mehren, chief analyst at Danske:¶ The next FOMC [the monetary policy-setting Federal Open Market Committee] meeting is on 29-30 October. It is now more unlikely that tapering will start at this meeting as the Fed will probably wait to see the consequences of the increased uncertainty and effects of the shutdown. This strengthens our call that Fed tapering won’t start until December. If the shutdown drags out and has more negative effects on the economy the risk is tapering could start even later.¶ Given the increased uncertainty it also raises the odds of a further correction in stock markets. The reaction so far has been fairly muted. But given that markets have been technically overbought we think it’s likely we will see further declines in coming weeks. This should also add to downside pressure on bond yields. In the short term the risk is also that the dollar could weaken further.¶ Trevor Greetham, director of asset allocation, Fidelity:¶ We do not expect the fiscal stand-off in Washington to have a lasting impact and stock market weakness presents a buying opportunity.¶ The dispute has the power to depress economic activity temporarily and it will play havoc with the economic release calendar. But the US is four years into a steady, self-sustaining recovery and the Federal Reserve stands ready to offset any marginal fiscal tightening that may come out of the negotiations.

#### Capital is key to get a deal

CNN 10/1/13 (Interview with Rick Lazio, Former US Congressman, Transcript: Anderson Cooper 360 Degrees, "Government Shutdown; Views of Obamacare Shaped by Misinformation; Is Losing Good for Kids?"

LAZIO: Getting back to the earlier point about entitlements and out- year spending, here's -- Democrats will criticize Republicans on obsessing on Obamacare. Republicans will say why doesn't the president lead on the most pressing fiscal issue that faces the country over the next 20 or 30 years?  You have got an explosion of seniors, 10,000 seniors retiring every single day in America. The program Social Security was created, signed by FDR into law, average life expectancy was 64 years old, eligibility 65, pretty good deal. But now...  BLOW: But, Rick, you're pretending that they never tried to do that.   Last time we got close to the debt ceiling, they got very close to a global deal, and it fell apart at the last minute. It's not as if the president has never gone to Boehner and tried to figure out how to do this.   LAZIO: But the president has to provide cover for moderate Democrats who want to get a deal done. And that's what he's failed to do. He's got to engage.   He's got to lead. And he's got to address some of these big picture issues. That's when you get a win-win out of this thing. If you could get both sides to come together and say we're going to really try and solve at least part of this entitlement picture, we will create some momentum, some trust, and that's a way forward.   (CROSSTALK)  BROWN: ... what exactly Obama right now is supposed to really do? When we talk about him engaging and him doing -- what actually is he supposed to do? Who's he supposed to call? How does it work at this moment in this particular situation?   LAZIO: I think you start to go and you speak to individual senators. He's done this with Bob Corker and other people where he's tried to court them and bring them in.  I think you have got to have some agenda, you have got to be somewhat flexible. You have got to say, OK, what do you think is doable? This is an area where obviously I have got limited flexibility, but let's get something significant done and I will help provide some air cover.

#### DRONES - Plan reignites turf battles

Munoz, 13 -- The Hill staff writer, covering Defense and National Security

[Carlo, "Turf battle builds quietly in Congress over control of armed drone program," The Hill, 4-9-13, thehill.com/homenews/administration/292501-turf-battle-builds-quietly-over-control-of-armed-drone-program-, accessed 5-23-13, mss]

The fight is a typical battle over who on Capitol Hill will retain power over the program, according to several analysts, who described it as predictable. ¶ “There is always going to be a turf battle” when dealing with congressional oversight, said Lawrence Korb, a former DOD official and defense analyst at the liberal-leaning Center for American Progress. ¶ But that battle could become particularly heated, given the high-profile nature of the drone program, which since the Sept. 11, 2001, attacks has become a huge factor in shaping counterterrorism policy, given its success, Korb said. ¶ For congressional panels, the fight over who will control the drone program will have a say in the relevancy of the two committees. ¶

#### Economic collapse causes nuclear war

Merlini 11

[Cesare Merlini, nonresident senior fellow at the Center on the United States and Europe and chairman of the Board of Trustees of the Italian Institute for International Affairs (IAI) in Rome. He served as IAI president from 1979 to 2001. Until 2009, he also occupied the position of executive vice chairman of the Council for the United States and Italy, which he co-founded in 1983. His areas of expertise include transatlantic relations, European integration and nuclear non-proliferation, with particular focus on nuclear science and technology. A Post-Secular World? DOI: 10.1080/00396338.2011.571015 Article Requests: Order Reprints : Request Permissions Published in: journal Survival, Volume 53, Issue 2 April 2011 , pages 117 - 130 Publication Frequency: 6 issues per year Download PDF Download PDF (357 KB) View Related Articles To cite this Article: Merlini, Cesare 'A Post-Secular World?', Survival, 53:2, 117 – 130]

Two neatly opposed scenarios for the future of the world order illustrate the range of possibilities, albeit at the risk of oversimplification. The first scenario entails the premature crumbling of the post-Westphalian system. One or more of the acute tensions apparent today evolves into an open and traditional conflict between states, perhaps even **involving the use of nuclear weapons**. The crisis might be triggered by a collapse of the global economic and financial system, the vulnerability of which we have just experienced, and the prospect of a second Great Depression, with consequences for peace and democracy similar to those of the first. Whatever the trigger, the unlimited exercise of national sovereignty, exclusive self-interest and rejection of outside interference would likely be amplified, emptying, perhaps entirely, the half-full glass of multilateralism, including the UN and the European Union. Many of the more likely conflicts, such as between Israel and Iran or India and Pakistan, have potential religious dimensions. Short of war, tensions such as those related to immigration might become unbearable. Familiar issues of creed and identity could be exacerbated. One way or another, the secular **rational approach would be sidestepped** by a return to theocratic absolutes, competing or converging with secular absolutes such as unbridled nationalism.

## Case

## Solvency

#### Courts can’t shape drone policy- even judges agree

**Lohmann 1-28**-13 [Julia, director of the Harvard Law National Security Research Committee, BA in political science from the University of California, Berkeley, “Distinguishing CIA-Led from Military-Led Targeted Killings,” <http://www.lawfareblog.com/wiki/the-lawfare-wiki-document-library/targeted-killing/effects-of-particular-tactic-on-issues-related-to-targeted-killings/>]

Moreover, the judiciary’s oversight over CIA covert actions—as well as judicial review of the Executive’s compliance with CAS—is also quite limited. In particular, strict standing requirements, the political question doctrine, the state secrets privilege, and courts’ invocation of “equitable discretion” are likely impediments to the success of any challenge to a CIA covert action in U.S. courts.¶ Consider, for instance, the case of Al-Aulaqi v. Obama, 727 F. Supp. 2d 1 (2010). At issue in that case was the U.S. government’s then-alleged placement of Anwar Al-Aulaqi, a dual U.S.-Yemeni citizen hiding in Yemen and with purported ties to al Qaeda in the Arabian Peninsula, on one of its targeted killing lists. Al-Aulaqi’s father challenged that action, seeking to enjoin the U.S. government from targeting his son. The district court, however, dismissed his case, finding that he had no standing to sue and that, in any event, the case was non-justiciable under the political question doctrine. In particular, the court felt that “[j]udicial resolution of the ‘particular questions’ posed” would require [it] to decide complex issues such as “whether … Anwar Al–Aulaqi’s alleged terrorist activity render[ed] him a concrete, specific, and imminent threat to life or physical safety” and “whether there are means short of lethal force that the United States could reasonably employ to address any threat that Anwar Al–Aulaqi poses to U.S. national security interests.” These questions, the court said, would require the court take into account military, strategic, and diplomatic considerations – e.g. to “assess the merits of the President’s (alleged) decision to launch an attack on a foreign target” – that it was simply not competent to handle.

#### Obama ignores restrictions- tons of loopholes

**Kumar 3-19**-13 [Anita, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>]

President Barack Obama came into office four years ago skeptical of pushing the power of the White House to the limit, especially if it appeared to be circumventing Congress.¶ Now, as he launches his second term, Obama has grown more comfortable wielding power to try to move his own agenda forward, particularly when a deeply fractured, often-hostile Congress gets in his way.¶ He’s done it with a package of tools, some of which date to George Washington and some invented in the modern era of an increasingly powerful presidency. And he’s done it with a frequency that belies his original campaign criticisms of predecessor George W. Bush, invites criticisms that he’s bypassing the checks and balances of Congress and the courts, and whets the appetite of liberal activists who want him to do even more to advance their goals.¶ While his decision to send drones to kill U.S. citizens suspected of terrorism has garnered a torrent of criticism, his use of executive orders and other powers at home is deeper and wider.¶ He delayed the deportation of young illegal immigrants when Congress wouldn’t agree. He ordered the Centers for Disease Control and Prevention to research gun violence, which Congress halted nearly 15 years ago. He told the Justice Department to stop defending the Defense of Marriage Act, deciding that the 1996 law defining marriage as between a man and a woman was unconstitutional. He’s vowed to act on his own if Congress didn’t pass policies to prepare for climate change.¶ Arguably more than any other president in modern history, he’s using executive actions, primarily orders, to bypass or pressure a Congress where the opposition Republicans can block any proposal.¶ “It’s gridlocked and dysfunctional. The place is a mess,” said Rena Steinzor, a law professor at the University of Maryland. “I think (executive action) is an inevitable tool given what’s happened.”¶ Now that Obama has showed a willingness to use those tactics, advocacy groups, supporters and even members of Congress are lobbying him to do so more and more.¶ The Center for Progressive Reform, a liberal advocacy group composed of law professors, including Steinzor, has pressed Obama to sign seven executive orders on health, safety and the environment during his second term.¶ Seventy environmental groups wrote a letter urging the president to restrict emissions at existing power plants.¶ Sen. Barbara Mikulski, D-Md., the chairwoman of the Appropriations Committee, sent a letter to the White House asking Obama to ban federal contractors from retaliating against employees who share salary information.¶ Gay rights organizations recently demonstrated in front of the White House to encourage the president to sign an executive order to bar discrimination based on sexual orientation or gender identity by companies that have federal contracts, eager for Obama to act after nearly two decades of failed attempts to get Congress to pass a similar bill.¶ “It’s ridiculous that we’re having to push this hard for the president to simply pick up a pen,” said Heather Cronk, the managing director of the gay rights group GetEQUAL. “It’s reprehensible that, after signing orders on gun control, cybersecurity and all manner of other topics, the president is still laboring over this decision.”¶ The White House didn’t respond to repeated requests for comment.¶ In January, Obama said he continued to believe that legislation was “sturdier and more stable” than executive actions, but that sometimes they were necessary, such as his January directive for the federal government to research gun violence.¶ “There are certain issues where a judicious use of executive power can move the argument forward or solve problems that are of immediate-enough import that we can’t afford not to do it,” the former constitutional professor told The New Republic magazine.¶ Presidents since George Washington have signed executive orders, an oft-overlooked power not explicitly defined in the Constitution. More than half of all executive orders in the nation’s history – nearly 14,000 – have been issued since 1933.

## Accountability

### A2 pakistan

#### They don’t solve judicial review- requires ex ante rulings and the plan is ex post

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

Second, this section discusses how social psychology findings regarding the potential of skewed risk assessment manifests the need such a judicial mechanism of accountability. These findings suggest that government officials who know they will be accountable reach better-reasoned decisions and avoid many of the problems associated with skewed risk assessment, which can create enormous consequences in the context of targeted killings of US citizens. This paper thus does not argue that targeted killing should be illegal under all circumstances. As some have pointed out, it has proven to be a vital tool in the ongoing conflict with Al Qaeda. Rather, it argues for the creation of a structure to adjudicate the legality of specific targeted killings ex ante. This institution would acknowledge the military concerns that necessitate targeting as a use of force while affording U.S. citizens a basic level of process and protections associated with baseline international humanitarian law norms.

#### Boyle is about sovereignty- not oversuse

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

#### No Pakistan collapse and it doesn't escalate

Dasgupta 13

Sunil Dasgupta is Director of the University of Maryland Baltimore County Political Science Program at the Universities at Shady Grove and non-resident Senior Fellow at the Brookings Institution, East Asia Forum, February 25, 2013, "How will India respond to civil war in Pakistan?", http://www.eastasiaforum.org/2013/02/25/how-will-india-respond-to-civil-war-in-pakistan/

As it is, India and Pakistan have gone down to the nuclear edge four times — in 1986, 1990, 1999 and 2001–02. In each case, India responded in a manner that did not escalate the conflict. Any incursion into Pakistan was extremely limited. An Indian intervention in a civil war in Pakistan would be subject to the same limitations — at least so long as the Pakistani army maintains its integrity.

Given the new US–India ties, the most important factor in determining the possibility and nature of Indian intervention in a possible Pakistani civil war is Washington. If the United States is able to get Kabul and Islamabad to work together against the Taliban, as it is trying to do now, then India is likely to continue its current policy or try to preserve some influence in Afghanistan, especially working with elements of the Northern Alliance.

India and Afghanistan already have a strategic partnership agreement in place that creates the framework for their bilateral relationship to grow, but the degree of actual cooperation will depend on how Pakistan and the Taliban react. If Indian interests in Afghanistan come under attack, New Delhi might have to pull back. The Indian government has been quite clear about not sending troops to Afghanistan.

If the United States shifts its policy to where it has to choose Kabul over Islamabad, in effect reviving the demand for an independent Pashtunistan, India is likely to be much more supportive of US and Afghan goals. The policy shift, however, carries the risk of a full-fledged proxy war with Pakistan in Afghanistan, but should not involve the prospect of a direct Indian intervention in Pakistan itself.

India is not likely to initiate an intervention that causes the Pakistani state to fail. Bill Keller of the New York Times has described Pakistani president Asif Ail Zardari as overseeing ‘a ruinous kleptocracy that is spiraling deeper into economic crisis’. But in contrast to predictions of an unravelling nation, British journalist-scholar Anatol Lieven argues that the Pakistani state is likely to continue muddling through its many problems, unable to resolve them but equally predisposed against civil war and consequent state collapse. Lieven finds that the strong bonds of family, clan, tribe and the nature of South Asian Islam prevent modernist movements — propounded by the government or by the radicals — from taking control of the entire country.

Lieven’s analysis is more persuasive than the widespread view that Pakistan is about to fail as a state. The formal institutions of the Pakistani state are surprisingly robust given the structural conditions in which they operate. Indian political leaders recognise Pakistan’s resilience. Given the bad choices in Pakistan, they would rather not have anything to do with it. If there is going to be a civil war, why not wait for the two sides to exhaust themselves before thinking about intervening? The 1971 war demonstrated India’s willingness to exploit conditions inside Pakistan, but to break from tradition requires strong, countervailing logic, and those elements do not yet exist. Given the current conditions and those in the foreseeable future, India is likely to sit out a Pakistani civil war while covertly coordinating policy with the United States.

#### No loose nukes

Cohen & Zenko 12 (Michael and Micah, Fellow at the Century Foundation AND Fellow in the Center for Preventive Action at the Council on Foreign Relations, “Clear and Present Safety,” Foreign Affairs, Vol. 91, Iss. 2, EBSCO)

Pakistan represents another potential source of loose nukes. The United States' military strategy in Afghanistan, with its reliance on drone strikes and cross-border raids, has actually contributed to instability in Pakistan, worsened U.S. relations with Islamabad, and potentially increased the possibility of a weapon falling into the wrong hands. Indeed, Pakistani fears of a U.S. raid on its nuclear arsenal have reportedly led Islamabad to disperse its weapons to multiple sites, transporting them in unsecured civilian vehicles. But even in Pakistan, the chances of a terrorist organization procuring a nuclear weapon are infinitesimally small. The U.S. Department of Energy has provided assistance to improve the security of Pakistan's nuclear arsenal, and successive senior U.S. government officials have repeated what former Secretary of Defense Robert Gates said in January 2010: that the United States is "very comfortable with the security of Pakistan's nuclear weapons."

### A2 Yemen – 1nc

#### US-Saudi relations are high now – counter terrorism cooperation is critical to the alliance

Riedel 8/21/13 (Bruce, Senior Fellow, Foreign Policy, Saban Center for Middle East Policy, Brookings Institution, "US and Saudis Share Needs If Not Values")

America's alliance with Saudi Arabia began with F.D.R. in 1945, and for almost 70 years the kingdom has been our most reliable ally in the Muslim world. It has fought the Soviets, Saddam, Khomeini and Bin Laden with us while providing critical backing to the Arab-Israeli peace process.¶ With its vast oil resources and command of Mecca, the House of Saud is a formidable ally. But the alliance has always been based on shared threat assessments, not shared values. The King is the world's last absolute monarchy. There is no pretense of democracy or pluralism in the Kingdom.¶ The Saudis have led the counter revolution to the Arab Awakening, occupying Bahrain, controlling change in Yemen and backing the army coup d'etat in Egypt with money and royal approval. The king personally has embraced General Sisi and the crackdown on the Brotherhood. Even in Syria, where Riyadh backs the rebels, they want a Sunni strong man to replace Assad not a democracy.¶ Washington and Riyadh still need each other. Many of **our interests still over lap**. Saudi assistance helps our allies like Jordan and Morocco.Saudi intelligence was key to foiling the last two al Qaeda plots to attack the American homeland and is critical to the battle in Yemen against the terrorists. Saudi Arabia is also central to keeping pressure on Iran through sanctions by replacing Iranian oil on the market.¶ America has much to lose and little to gain if the Arab revolutions spread to the kingdom itself. So we face the challenge of being the Saudis' ally while we disagree on core values.

#### The plan would crush US-Saudi relations – a hardline stance against AQAP is critical to Saudi legitimacy

Eakin 12 (Hugh, IRP Gatekeeper Editor, May 21 2012 The New York Review, "Saudi Arabia and the New US War in Yemen"

What seems clear is that Saudi Arabia has become a key backer—and at times coordinator—of the accelerating US drone war and special operations offensive in Yemen, partly for its own security interests. Interior Ministry officials in Riyadh speak enthusiastically about the US drone program, and on May 12, drone strikes allegedly killed some eleven AQAP suspects, [two of them Saudi nationals](http://www.voanews.com/content/drones_in_yemen_kill_11_militants/566327.html). (It is worth noting, following the controversial killing of US citizen Anwar al-Awlaki, that Saudi Arabia does not appear to have many qualms about killing its own citizens in Yemen.)¶ Perhaps most important for the Saudi government, a successful counterterrorism policy carries enormous political value amid the upheavals of the Arab Spring. Even more than democratization or regime change in the region, the Saudi rulers seem to fear instability and unpredictability: though they have reluctantly supported the transition of power in Yemen, they are particularly nervous about the kind of extremism that has emerged in neighboring countries like Iraq, Yemen, and now Syria, when uprisings turn into violent conflict or authority breaks down entirely—places where Saudi jihadists have often found new causes. “Syria will be tempting to al-Qaeda,” Abdulrahman Alhadaq, a Saudi counter terrorism official, said in a briefing in Riyadh. “We need to avoid another Iraq.”¶ But Saudi counterterrorism efforts are also an important element **in achieving** consensus and **legitimacy** for the Saudi regime itself. Many young Saudis are growing increasingly impatient with their government’s oppressive status quo, and not a little of their ire is directed against the Interior Ministry, which has been blamed for arbitrary arrests of activists and human rights lawyers. Yet many I spoke to also seem to fear the chaos and violence that has engulfed so many of the country’s neighbors. In the early 2000s, when the Saudi government sponsored national dialogues to bring together activists, reformers, conservatives, and Islamists from across the ideological spectrum to suggest avenues of change, the country’s counterterrorism approach was one issue on which there was near universal agreement. (Participants in one of these dialogues explicitly endorsed a strategy of repentence and reconciliation for extremists.)¶ Turning Saudi Arabia into the US’s indispensable ally in Yemen—while making Yemen the central conflict in the US-led war against terrorism—has considerable strategic value for Crown Prince Nayef, who was named the heir apparent to King Abdullah last fall. As US-Saudi collaboration on security and counterterrorism has increased, the regime has largely avoided US pressure on human rights and domestic reforms. And while it keeps the terror threat at bay, at least within its own borders, the Interior Ministry can hold up Yemen as the example of what might happen at home if its broad powers were curbed. Whether that argument will continue to assuage the country’s youth remains an open question.

#### That causes Saudi nuclearization

Rozen ‘11 [Laura, the chief foreign policy reporter for Politico, quoting Patrick Clawson, a Persian Gulf expert at the Washington Institute for Near East Policy and Marc Lynch, a Middle East expert at George Washington University, Arab spring setbacks in the shadow of complicated U.S.-Saudi alliance, 4/18/11, <http://news.yahoo.com/s/yblog_theenvoy/20110418/ts_yblog_theenvoy/optimism-for-arab-spring-fades-in-face-of-complicated-u-s-saudi-alliance>]

**Riyadh, alarmed by** the **Obama** administration's failure to prop up its ally of three decades Egyptian President Hosni Mubarak, **is sending signs of its displeasure and interest in exploring alternative security arrangements**. Last month, former Saudi envoy to Washington now Saudi national security chief Prince **Bandar** **went to Pakistan, ostensibly to discuss the possibility of recruiting Pakistani troops** to help Sunni Gulf allies suppress Bahraini unrest. But some Washington **Middle East analysts interpreted the visit as a signal of possible Saudi interest in exploring being protected by a Pakistani nuclear security umbrella, or acquiring Pakistani nuclear weapons, if Washington doesn't sufficiently assure Riyadh that it will protect it from a nuclear Iran**. "The big problem we face is that at the very least the **Saudis** and [United Arab Emirates] **wonder to what extent we are committed to their most vital interests**," said Patrick Clawson, a Persian Gulf expert at the Washington Institute for Near East Policy. "Prince Bandar's visit to Pakistan is a shot across our bow of what the Saudis may feel is necessary if the U.S. is not providing an effective security guarantee.... The rumors in the region have long been that the Saudis paid a fair chunk of the bill" for Pakistan's nuclear program. "The momentum of the Arab revolutions has stalled, and the old Middle East is reasserting itself," said Marc Lynch, a Middle East expert at George Washington University who frequently consults with the Obama administration. In the current strategic malaise, Lynch said, "the Israelis and Palestinians are saying, 'what about us?' **The 'contain Iran' crowd is saying, 'don't forget about Iran.'" And the Saudis are playing up rising Sunni-Shiite tensions in the region, which "gives them an excuse," he added, to push their contain-Iran agenda, as well as to "equate Iranian subversion for use against their own Shia population**. Any time Saudi Shia make demands for political rights, they are accused of being Iranian agents."

#### Causes nuclear war and turns terrorism

Edelman ‘11 [Fellow at the Center for Strategic and Budgetary Assessments. Former Undersecretary for Defense—AND—Andrew Krepinevich—President of the Center for Strategic and Budgetary Assessments—AND—Evan Montgomery—Research Fellow at the Center for Strategic and Budgetary Assessments (Eric, The dangers of a nuclear Iran, FA 90;1, <http://www.csbaonline.org/wp-content/uploads/2010/12/2010.12.27-The-Dangers-of-a-Nuclear-Iran.pdf>]

There is, however, at least one state that could receive significant outside support: Saudi Arabia. And if it did, proliferation could accelerate throughout the region. Iran and Saudi Arabia have long been geopolitical and ideological rivals. Riyadh would face tremendous pressure to respond in some form to a nuclear-armed Iran, not only to deter Iranian coercion and subversion but also to preserve its sense that Saudi Arabia is the leading nation in the Muslim world. The Saudi government is already pursuing a nuclear power capability, which could be the first step along a slow road to nuclear weapons development. And concerns persist that it might be able to accelerate its progress by exploiting its close ties to Pakistan. During the 1980s, in response to the use of missiles during the Iran-Iraq War and their growing proliferation throughout the region, Saudi Arabia acquired several dozen CSS-2 intermediate-range ballistic missiles from China. The Pakistani government reportedly brokered the deal, and it may have also offered to sell Saudi Arabia nuclear warheads for the CSS-2S, which are not accurate enough to deliver conventional warheads effectively. There are still rumors that Riyadh and Islamabad have had discussions involving nuclear weapons, nuclear technology, or security guarantees. This "Islamabad option" could develop in one of several different ways. Pakistan could sell operational nuclear weapons and delivery systems to Saudi Arabia, or it could provide the Saudis with the infrastructure, material, and technical support they need to produce nuclear weapons themselves within a matter of years, as opposed to a decade or longer. Not only has Pakistan provided such support in the past, but it is currently building two more heavy-water reactors for plutonium production and a second chemical reprocessing facility to extract plutonium from spent nuclear fuel. In other words, it might accumulate more fissile material than it needs to maintain even a substantially expanded arsenal of its own. Alternatively, Pakistan might offer an extended deterrent guarantee to Saudi Arabia and deploy nuclear weapons, delivery systems, and troops on Saudi territory, a practice that the United States has employed for decades with its allies. This arrangement could be particularly appealing to both Saudi Arabia and Pakistan. It would allow the Saudis to argue that they are not violating the NPT since they would not be acquiring their own nuclear weapons. And an extended deterrent from Pakistan might be preferable to one from the United States because stationing foreign Muslim forces on Saudi territory would not trigger the kind of popular opposition that would accompany the deployment of U.S. troops. Pakistan, for its part, would gain financial benefits and international clout by deploying nuclear weapons in Saudi Arabia, as well as strategic depth against its chief rival, India. The Islamabad option raises a host of difficult issues, perhaps the most worrisome being how India would respond. Would it target Pakistan's weapons in Saudi Arabia with its own conventional or nuclear weapons? How would this expanded nuclear competition influence stability during a crisis in either the Middle East or South Asia? Regardless of India's reaction, any decision by the Saudi government to seek out nuclear weapons, by whatever means, would be highly destabilizing. It would increase the incentives of other nations in the Middle East to pursue nuclear weapons of their own. And it could increase their ability to do so by eroding the remaining barriers to nuclear proliferation: each additional state that acquires nuclear weapons weakens the nonproliferation regime, even if its particular method of acquisition only circumvents, rather than violates, the NPT. N-PLAYER COMPETITION Were Saudi Arabia to acquire nuclear weapons, the Middle East would count three nuclear-armed states, and perhaps more before long. It is unclear how such an n-player competition would unfold because most analyses of nuclear deterrence are based on the U.S.-Soviet rivalry during the Cold War. It seems likely, however, that the interaction among three or more nuclear-armed powers would be more prone to miscalculation and escalation than a bipolar competition. During the Cold War, the United States and the Soviet Union only needed to concern themselves with an attack from the other. Multi-polar systems are generally considered to be less stable than bipolar systems because coalitions can shift quickly, upsetting the balance of power and creating incentives for an attack. More important, emerging nuclear powers in the Middle East might not take the costly steps necessary to preserve regional stability and avoid a nuclear exchange. For nuclear-armed states, the bedrock of deterrence is the knowledge that each side has a secure second-strike capability, so that no state can launch an attack with the expectation that it can wipe out its opponents' forces and avoid a devastating retaliation. However, emerging nuclear powers might not invest in expensive but survivable capabilities such as hardened missile silos or submarine-based nuclear forces. Given this likely vulnerability, the close proximity of states in the Middle East, and the very short flight times of ballistic missiles in the region, any new nuclear powers might be compelled to "launch on warning" of an attack or even, during a crisis, to use their nuclear forces preemptively. Their governments might also delegate launch authority to lower-level commanders, heightening the possibility of miscalculation and escalation. Moreover, if early warning systems were not integrated into robust command-and-control systems, the risk of an unauthorized or accidental launch would increase further still. And without sophisticated early warning systems, a nuclear attack might be unattributable or attributed incorrectly. That is, assuming that the leadership of a targeted state survived a first strike, it might not be able to accurately determine which nation was responsible. And this uncertainty, when combined with the pressure to respond quickly, would create a significant risk that it would retaliate against the wrong party, potentially triggering a regional nuclear war. Most existing nuclear powers have taken steps to protect their nuclear weapons from unauthorized use: from closely screening key personnel to developing technical safety measures, such as permissive action links, which require special codes before the weapons can be armed. Yet there is no guarantee that emerging nuclear powers would be willing or able to implement these measures, creating a significant risk that their governments might lose control over the weapons or nuclear material and that nonstate actors could gain access to these items. Some states might seek to mitigate threats to their nuclear arsenals; for instance, they might hide their weapons. In that case, however, a single intelligence compromise could leave their weapons vulnerable to attack or theft.

#### AQAP dead- drone strikes effective

Berger & Rowland ’13 (Peter Bergen and Jennifer Rowland, Peter Bergen is CNN's national security analyst, a director at the New America Foundation and the author of "Manhunt: The Ten-Year Search for bin Laden -- From 9/11 to Abbottabad." Jennifer Rowland is a program associate at the New America Foundation, “Al Qaeda in Yemen: On the ropes”, <http://www.cnn.com/2013/07/18/opinion/bergen-al-qaeda-yemen/index.html?hpt=op_t1>, July 18, 2013)

(CNN) -- On Wednesday, al Qaeda's virulent Yemeni affiliate which is known as al Qaeda in the Arabian Peninsula (AQAP) confirmed the death of the group's deputy leader and co-founder, Saeed al-Shihri, in a video message posted to jihadist websites. It was a confirmation of what was long suspected: that Shihri was killed in a U.S. drone strike several months ago. And it also amounted to a concession that the al Qaeda affiliate is under an enormous amount of pressure. In the past three years more than 30 al Qaeda leaders and other senior operatives in Yemen have been killed by U.S. drone strikes, according to a count by the New America Foundation. The militants killed by those drone strikes included Anwar al-Awlaki, the fiery Yemeni-American preacher who served as a key ideologue for the group and has been an inspiration for a wide range of militants living in the West, including the Tsarnaev brothers who are accused of bombing the Boston Marathon in April. Not all of the drone strikes in Yemen have found their targets. New America Foundation's review of reliable media reporting of those strikes found that somewhere between 38 and 71 of the casualties were civilians, which included Awlaki's 16-year-old son. A Yemeni tribal leader close to AQAP says the drone strikes have sown mistrust within the group, where there is "a feeling that the Americans have infiltrated its ranks, especially with the killing of several of its leaders." A Yemeni's story from the drone war Al-Shihri, a Saudi who spent six years at the Guantanamo Bay detention facility, was first reported killed in January. The Yemeni government quickly confirmed Shihri's death, but until now AQAP had denied it. AQAP's video message confirming Shihri's death was delivered by Ibrahim al-Rubaish, another Saudi who was also formerly held at Guantanamo Bay. In the 11½-minute video, which we have reviewed, Rubaish gushes about Shihri's devotion to al Qaeda's cause. Rubaish says Shihri was "searching for martyrdom," trumpeting his combat against U.S. forces in Afghanistan where he suffered serious injuries to his hands and legs, and lost an eye. Shihri was released from Guantanamo in November 2007, and entered a Saudi rehabilitation program and was then released. Rubaish says Shihri subsequently planned an attack on the U.S. Embassy in the Yemeni capital, Sanaa, which killed 10 Yemeni policemen and civilians. But Shihri grew complacent. "Lax security measures during his telephone calls enabled the enemy to identify and kill him," Rubaish declared in his eulogy. Shihri's death in the U.S. drone strike is part of larger story of AQAP decline over the past two years. In 2011, AQAP had gained significant territory in Yemen as it exploited the popular uprising against longtime Yemeni president Ali Abdullah Saleh. Its core membership grew from approximately 300 members in 2009 to around 1,000 three years later, according to Gregory Johnsen, the author of the authoritative book "The Last Refuge: Yemen, al-Qaeda, and America's War in Arabia". But the jihadist group lost all of these gains within about a year. An offensive by the Yemeni army that was supported by U.S. intelligence last year pushed AQAP out of the central Yemeni province of Abyan, forcing AQAP's fighters to flee to the remote desert province of Hadramaut. The group has since been reduced to carrying out much smaller attacks; nothing compared to the massive suicide bombing it was able to conduct in the heart of the Yemeni capital in May 2012, which killed upwards of 100 soldiers as they rehearsed for a military parade. And despite its focus on attacking U.S. targets, AQAP has not tried to attack one since its October 2010 attempt to plant bombs hidden in printer cartridges on cargo planes destined for the United States. (Last year AQAP plotted to send an operative with explosives in his underwear aboard a plane bound for the United States, but that operative was actually secretly working for the British and Saudi intelligence services, so the plot was never a real threat.) Despite all the losses AQAP has suffered its capable chief bomb maker, Ibrahim al-Asiri, remains at large. Al-Asiri was the brains behind AQAP's failed "underwear bomb" attempt to bring down a Detroit-bound U.S. airliner on Christmas Day 2009. AQAP's overall leader, Nasser al-Wuhayshi also remains at large, Wuhayshi is AQAP's founder and his continued survival is surely important for the organization. AQAP could regenerate, particularly if Yemen sees more upheaval, but for now, the group is on the run from the Yemeni army and U.S. drone strikes, fearful of spies in its midst, is unable to launch large-scale attacks, and boasts a dwindling cadre of leaders. AQAP, in short, is struggling to survive.

## Norms

### A2 drone prolif

#### Prolif is inevitable- no one models US restraint

**Etzioni ‘13** [Amitai, professor of international relations at George Washington University, “The Great Drone Debate,” March-April, <http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20130430_art004.pdf>]

Other critics contend that by the United States using drones, it leads other countries into making and using them. For example, Medea Benjamin, the cofounder of the anti-war activist group CODEPINK and author of a book about drones argues that, “The proliferation of drones should evoke reﬂection on the precedent that the United States is setting by killing anyone it wants, anywhere it wants, on the basis of secret information. Other nations and non-state entities are watching—and are bound to start acting in a similar fashion.”60 Indeed scores of countries are now manufacturing or purchasing drones. There can be little doubt that the fact that drones have served the United States well has helped to popularize them. However, it does not follow that United States should not have employed drones in the hope that such a show of restraint would deter others. First of all, this would have meant that either the United States would have had to allow terrorists in hardto-reach places, say North Waziristan, to either roam and rest freely—or it would have had to use bombs that would have caused much greater collateral damage. Further, the record shows that even when the United States did not develop a particular weapon, others did. Thus, China has taken the lead in the development of anti-ship missiles and seemingly cyber weapons as well. One must keep in mind that the international environment is a hostile one. Countries—and especially non-state actors— most of the time do not play by some set of selfconstraining rules. Rather, they tend to employ whatever weapons they can obtain that will further their interests. The United States correctly does not assume that it can rely on some non-existent implicit gentleman’s agreements that call for the avoidance of new military technology by nation X or terrorist group Y—if the United States refrains from employing that technology.

#### Drone prolif doesn’t escalate or cause terrorism

**Singh ’12** [Joseph Singh is a researcher at the Center for a New American Security, an independent and non-partisan organization that focuses on researching and analyzing national security and defense policies, also a research assistant at the Institute for Near East and Gulf Military Analysis (INEGMA) North America, is a War and Peace Fellow at the Dickey Center, a global research organization, “Betting Against a Drone Arms Race,” 8-13-12, <http://nation.time.com/2012/08/13/betting-against-a-drone-arms-race/>]

Bold predictions of a coming drones arms race are all the rage since the uptake in their deployment under the Obama Administration. Noel Sharkey, for example, argues in an August 3 op-ed for the Guardian that rapidly developing drone technology — coupled with minimal military risk — portends an era in which states will become increasingly aggressive in their use of drones.¶ As drones develop the ability to fly completely autonomously, Sharkey predicts a proliferation of their use that will set dangerous precedents, seemingly inviting hostile nations to use drones against one another. Yet, the narrow applications of current drone technology coupled with what we know about state behavior in the international system lend no credence to these ominous warnings.¶ Indeed, critics seem overly-focused on the domestic implications of drone use.¶ In a June piece for the Financial Times, Michael Ignatieff writes that “virtual technologies make it easier for democracies to wage war because they eliminate the risk of blood sacrifice that once forced democratic peoples to be prudent.”¶ Significant public support for the Obama Administration’s increasing deployment of drones would also seem to legitimate this claim. Yet, there remain equally serious diplomatic and political costs that emanate from beyond a fickle electorate, which will prevent the likes of the increased drone aggression predicted by both Ignatieff and Sharkey.¶ Most recently, the serious diplomatic scuffle instigated by Syria’s downing a Turkish reconnaissance plane in June illustrated the very serious risks of operating any aircraft in foreign territory.¶ States launching drones must still weigh the diplomatic and political costs of their actions, which make the calculation surrounding their use no fundamentally different to any other aerial engagement.¶ This recent bout also illustrated a salient point regarding drone technology: most states maintain at least minimal air defenses that can quickly detect and take down drones, as the U.S. discovered when it employed drones at the onset of the Iraq invasion, while Saddam Hussein’s surface-to-air missiles were still active.¶ What the U.S. also learned, however, was that drones constitute an effective military tool in an extremely narrow strategic context. They are well-suited either in direct support of a broader military campaign, or to conduct targeted killing operations against a technologically unsophisticated enemy.¶ In a nutshell, then, the very contexts in which we have seen drones deployed. Northern Pakistan, along with a few other regions in the world, remain conducive to drone usage given a lack of air defenses, poor media coverage, and difficulties in accessing the region.¶ Non-state actors, on the other hand, have even more **reasons to steer clear** of drones:¶ – First, they are wildly expensive. At $15 million, the average weaponized drone is less costly than an F-16 fighter jet, yet much pricier than the significantly cheaper, yet equally damaging options terrorist groups could pursue.¶ – Those alternatives would also be relatively more difficult to trace back to an organization than an unmanned aerial vehicle, with all the technical and logistical planning its operation would pose.¶ – Weaponized drones are not easily deployable. Most require runways in order to be launched, which means that any non-state actor would likely require state sponsorship to operate a drone. Such sponsorship is unlikely given the political and diplomatic consequences the sponsoring state would certainly face.¶ – Finally, drones require an extensive team of on-the-ground experts to ensure their successful operation. According to the U.S. Air Force, 168 individuals are needed to operate a Predator drone, including a pilot, maintenance personnel and surveillance analysts.¶ In short, the doomsday drone scenario Ignatieff and Sharkey predict results from an excessive focus on rapidly-evolving military technology.

Instead, we must return to what we know about state behavior in an anarchistic international order. Nations will confront the same principles of deterrence, for example, when deciding to launch a targeted killing operation regardless of whether they conduct it through a drone or a covert amphibious assault team.

Drones may make waging war more domestically palatable, but they don’t change the very serious risks of retaliation for an attacking state. Any state otherwise deterred from using force abroad will not significantly increase its power projection on account of acquiring drones.

What’s more, the very states whose use of drones could threaten U.S. security – countries like China – are not democratic, which means that the possible political ramifications of the low risk of casualties resulting from drone use are irrelevant. For all their military benefits, putting drones into play requires an ability to meet the political and security risks associated with their use.

Despite these realities, there remain a host of defensible arguments one could employ to discredit the Obama drone strategy. The legal justification for targeted killings in areas not internationally recognized as war zones is uncertain at best.

Further, the short-term gains yielded by targeted killing operations in Pakistan, Somalia and Yemen, while debilitating to Al Qaeda leadership in the short-term, may serve to destroy already tenacious bilateral relations in the region and radicalize local populations.

Yet, the past decade’s experience with drones bears no evidence of impending instability in the global strategic landscape. Conflict may not be any less likely in the era of drones, but the nature of 21st Century warfare remains fundamentally unaltered despite their arrival in large numbers.

#### China won’t use drones aggressively- rationality checks

**Erickson and Strange 5-29**-13 [Andrew Erickson is an associate professor at the Naval War College and an Associate in Research at Harvard University's Fairbank Centre, Austin Strange is a researcher at the Naval War College's China Maritime Studies Institute, “China has drones. Now how will it use them?” <http://www.nationmultimedia.com/opinion/China-has-drones-Now-how-will-it-use-them-30207095.html>]

Drones, able to dispatch death remotely, without human eyes on their targets or a pilot's life at stake, make people uncomfortable - even when they belong to democratic governments that presumably have some limits on using them for ill. (On May 23, in a major speech, US President Barack Obama laid out what some of those limits are.) An even more alarming prospect is that unmanned aircraft will be acquired and deployed by authoritarian regimes, with fewer checks on their use of lethal force.¶ Those worried about exactly that tend to point their fingers at China. In March, after details emerged that China had considered taking out a drug trafficker in Myanmar with a drone strike, a CNN blog post warned, "Today, it's Myanmar. Tomorrow, it could very well be some other place in Asia or beyond." Around the same time, a National Journal article entitled "When the Whole World Has Drones" teased out some of the consequences of Beijing's drone programme, asking, "What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea?"¶ Indeed, the time to fret about when China and other authoritarian countries will acquire drones is over: they have them. The question now is when and how they will use them. But as with its other, less exotic military capabilities, Beijing has cleared only a technological hurdle - and its behaviour will continue to be constrained by politics.¶ China has been developing a drone capacity for over half a century, starting with its reverse engineering of Soviet Lavochkin La-17C target drones that it had received from Moscow in the late 1950s. Today, Beijing's opacity makes it difficult to gauge the exact scale of the programme, but according to Ian Easton, an analyst at the Project 2049 Institute, an American think-tank devoted to Asia-Pacific security matters, by 2011 China's air force alone had over 280 combat drones. In other words, its fleet of unmanned aerial vehicles is already bigger and more sophisticated than all but the United States'; in this relatively new field Beijing is less of a newcomer and more of a fast follower. And the force will only become more effective: the Lijian ("sharp sword" in Chinese), a combat drone in the final stages of development, will make China one of the very few states that have or are building a stealth drone capacity.¶ This impressive arsenal may tempt China to pull the trigger. The fact that a Chinese official acknowledged that Beijing had considered using drones to eliminate the Myanmar drug trafficker, Naw Kham, makes clear that it would not be out of the question for China to launch a drone strike in a security operation against a non-state actor. Meanwhile, as China's territorial disputes with its neighbours have escalated, there is a chance that Beijing would introduce unmanned aircraft, especially since India, the Philippines and Vietnam distantly trail China in drone funding and capacity, and would find it difficult to compete. Beijing is already using drones to photograph the Senkaku/Diaoyu islands it disputes with Japan, as the retired Chinese major-general Peng Guangqian revealed earlier this year, and to keep an eye on movements near the North Korean border.¶ Beijing, however, is unlikely to use its drones lightly. It already faces tremendous criticism from much of the international community for its perceived brazenness in continental and maritime sovereignty disputes. With its leaders attempting to allay notions that China's rise poses a threat to the region, injecting drones conspicuously into these disputes would prove counterproductive. China also fears setting a precedent for the use of drones in East Asian hotspots that the United States could eventually exploit. For now, Beijing is showing that it understands these risks, and to date it has limited its use of drones in these areas to surveillance, according to recent public statements from China's Defence Ministry.¶ What about using drones outside of Chinese-claimed areas? That China did not, in fact, launch a drone strike on the Myanmar drug criminal underscores its caution. According to Liu Yuejin, the director of the anti-drug bureau in China's Ministry of Public Security, Beijing considered using a drone carrying a 20-kilogram TNT payload to bomb Kham's mountain redoubt in northeast Myanmar. Kham had already evaded capture three times, so a drone strike may have seemed to be the best option. The authorities apparently had at least two plans for capturing Kham. The method they ultimately chose was to send Chinese police forces to lead a transnational investigation that ended in April 2012 with Kham's capture near the Myanmar-Laos border. The ultimate decision to refrain from the strike may reflect both a fear of political reproach and a lack of confidence in untested drones, systems, and operators.¶ The restrictive position that Beijing takes on sovereignty in international forums will further constrain its use of drones. China is not likely to publicly deploy drones for precision strikes or in other military assignments without first having been granted a credible mandate to do so. The gold standard of such an authorisation is a resolution passed by the UN Security Council, the stamp of approval that has permitted Chinese humanitarian interventions in Africa and anti-piracy operations in the Gulf of Aden. China might consider using drones abroad with some sort of regional authorisation, such as a country giving Beijing explicit permission to launch a drone strike within its territory. But even with the endorsement of the international community or specific states, China would have to weigh any benefits of a drone strike abroad against the potential for mishaps and perceptions that it was infringing on other countries' sovereignty - something Beijing regularly decries when others do it. The limitations on China's drone use are reflected in the country's academic literature on the topic. The bulk of Chinese drone research is dedicated to scientific and technological topics related to design and performance. The articles that do discuss potential applications primarily point to major combat scenarios -such as a conflagration with Taiwan or the need to attack a US aircraft carrier - which would presumably involve far more than just drones. Chinese researchers have thought a great deal about the utility of drones for domestic surveillance and law enforcement, as well as for non-combat-related tasks near China's contentious borders. Few scholars, however, have publicly considered the use of drone strikes overseas.¶ Yet there is a reason why the United States has employed drones extensively despite domestic and international criticism: it is much easier and cheaper to kill terrorists from above than to try to root them out through long and expensive counterinsurgency campaigns. Some similar challenges loom on China's horizon. Within China, Beijing often considers protests and violence in the restive border regions, such as Xinjiang and Tibet, to constitute terrorism. It would presumably consider ordering precision strikes to suppress any future violence there. Even if such strikes are operationally prudent, China's leaders understand that they would damage the country's image abroad, but they prioritise internal stability above all else. Domestic surveillance by drones is a different issue; there should be few barriers to its application in what is already one of the world's most heavily policed societies. China might also be willing to use stealth drones in foreign airspace without authorisation if the risk of detection were low enough; it already deploys intelligence-gathering ships in the exclusive economic zones of Japan and the United States, as well as in the Indian Ocean.¶ Still, although China enjoys a rapidly expanding and cutting-edge drone fleet, it is bound by the same rules of the game as the rest of the military's tools. Beyond surveillance, the other non-lethal military actions that China can take with its drones are to facilitate communications within the Chinese military, support electronic warfare by intercepting electronic communications and jamming enemy systems, and help identify targets for Chinese precision strike weapons, such as missiles. Beijing's overarching approach remains one of caution - something Washington must bear in mind with its own drone programme.

### A2 Legitimacy

#### Legitimacy’s inevitable and not key to heg

Brooks and Wohlforth, 9 (Stephen Brooks and William Wohlforth, both are professors of Government at Dartmouth, “Reshaping the world order: how Washington should reform international institutions,” Foreign Affairs, March-April)

FOR ANALYSTS such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States' ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a fixed resource that can be obtained only under special circumstances. The political scientist G.John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good. But this view is mistaken. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action - such as the Vietnam War or the invasion of Iraq - may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the first time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan's first term, when he called the Soviet Union an "evil empire." Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies,oversaw a marked improvement in relations with France, Germany, and India in recent years - even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France. Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration's approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled wherewithal to produce public goods that reinforce the benefits of its global role. No other state has any claim to leadership commensurate with Washington's. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system's leader hinges on whether the system's members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected. Moreover, history provides abundant evidence that past leading states - such as Spain, France, and the United Kingdom - were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spainfashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe's preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure oflucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways - notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly affecting the development of new rules by defining the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world's agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the UnitedStates today has the necessary legitimacy to shepherd reform of the international system.

#### There are no cred silver bullets- takes years to escape legacies

**Gray ’11** [Colin S, Professor of International Politics and Strategic Studies at the University of Reading, England, and Founder of the National Institute for Public Policy, “Hard Power And Soft Power: The Utility Of Military Force as An Instrument Of Policy In The 21st Century,” April, <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1059>]

It bears repeating because it passes unnoticed that culture, and indeed civilization itself, are dynamic, not static phenomena. They are what they are for good and sufficient local geographical and historical reasons, and cannot easily be adapted to fit changing political and strategic needs. For an obvious example, the dominant American strategic culture, though allowing exceptions, still retains its principal features, the exploitation of technology and mass.45 These features can be pathological when circumstances are not narrowly conducive to their exploitation. Much as it was feared only a very few years ago that, in reaction to the neglect of culture for decades previously, the cultural turn in strategic studies was too sharp, so today there is a danger that the critique of strategic culturalism is proceeding too far.46 The error lies in the search for, and inevitable finding of, “golden keys” and “silver bullets” to resolve current versions of enduring problems. Soft-power salesmen have a potent product-mix to sell, but they fail to appreciate the reality that American soft power is a product essentially unalterable over a short span of years. As a country with a cultural or civilizational brand that is unique and mainly rooted in deep historical, geographical, and ideational roots, America is not at liberty to emulate a major car manufacturer and advertise an extensive and varied model range of persuasive soft-power profiles. Of course, some elements of soft power can be emphasized purposefully in tailored word and deed. However, foreign perceptions of the United States are no more developed from a blank page than the American past can be retooled and fine-tuned for contemporary advantage. Frustrating though it may be, a country cannot easily escape legacies from its past.

#### Hard power solves all their impacts

**Keck 7-24**-13 [Zachary, associate editor for The Diplomat, MA in International Relations and National Security Studies from George Mason University, “The Hard Side of Soft Power,” <http://thediplomat.com/the-editor/2013/07/24/the-hard-side-of-soft-power/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+the-diplomat+%28The+Diplomat+RSS%29>]

Joe Nye’s soft power has perhaps eclipsed Fukuyama’s End of History theory in terms of its influence in the policy debate in the U.S. and elsewhere. As Secretary of State, Hillary Clinton became a particularly strong proponent of the concept—or at least its close cousin smart power, which seeks to integrate hard power and soft power into a coherent strategy. Indeed, Clinton began and ended her tenure as Secretary of State by touting a smart power approach to the world, and took some notable steps in between to realize this goal.¶ Soft power was recently back in the news owing to last week’s Pew Global Research poll of the world’s views of China and the United States. This conversation was by design as Pew included in the poll a charting comparing America and China’s soft power, which it measured by how well the U.S. and China were viewed in five areas: science and technology; music, movies and television; ways of doing business; ideas about democracy; ideas and customs spreading.¶ Pew is hardly alone in using these types of measurements to define soft power. Indeed, soft power is almost always discussed as being synonymous with “soft” instruments of a national power—namely, things besides military and economic power.¶ This is not entirely unreasonable. Joe Nye himself has argued that “The soft power of a country rests heavily on three basic resources: its culture (in places where it is attractive to others), its political values (when it lives up to them at home and abroad), and its foreign policies (when others see them as legitimate and having moral authority).”¶ But commentators err when defining soft and hard power solely in terms of the types of instruments being used. Thus, Nye has also observed that soft power’s “wide usage has sometimes meant misuse of the concept as a synonym for anything other than military force.”¶ Indeed, rather than instruments, the distinction between hard and soft power is between the ways in which they influence (or attempt to influence) the behavior of others. Hard power, for instance, tries to induce (carrots) or coerce (sticks) others to take or not take certain actions.¶ Often military and economic power are the most appropriate instruments for wielding this type of power, such as when the U.S. tries to coerce Iran into putting more restrictions on its nuclear program through economic sanctions and threats of military force, or when the U.S. tries to induce Israel to negotiate with the Palestinians through promises of military or economic aid. ¶ But there’s no reason instruments we usually associate with soft power could not be used in hard power ways. For instance, had the U.S. threatened to disseminate its values to the Soviet population through mediums like Voice of America unless the Soviet Union agreed to an arms control proposal, or if it offered to end Voice of America broadcasts in Soviet states if the Soviet Union agreed to the proposal, the U.S. would have been using its values to exercise hard power.¶ In fact, President Obama’s speech to Israeli youth earlier this year was arguably a way of him using a soft instrument of national power (appeals to universal rights, including for Palestinians) in a hard power way, at least to the extent that it increased pressure on Benjamin Netanyahu to seek a two-state solution with the Palestinians.¶ Soft power, on the other hand, influences another’s behavior through attraction, legitimacy or agenda-setting. As the Nye quote above argues, this is usually and perhaps best done through the soft instruments of national power. Yet it is far more common for hard instruments of power to be used for soft power purposes then vice versa.¶ In fact, the United States has often used its military power for soft power ends. In rare instances, this is done in sweeping ways such as when the U.S. used its military superiority after WWII to transform Japan and Germany into democratic states. Originally this was done through pure coercion, but eventually the Japanese and German populations came to accept democratic values (and U.S. leadership) as legitimate. ¶ More frequently, the U.S. military is used more subtly for soft power ends. For instance, after the devastating 2004 Indian Ocean tsunami, U.S. naval assets allowed the U.S. to be one of the first organizations on the scene helping in the rescue effort. The same was true after the 3/11 disasters in Japan. This undoubtedly made the U.S. in general, and the U.S. military’s presence in the region in particular, more attractive in the eyes of local populations who benefitted significantly from them being there.¶ Similarly, when the U.S. military is used to fight piracy or uphold freedom of navigation in international waters, it is using both soft and hard power. It is using hard power towards the pirates and whichever party is threatening free navigation, by coercing or forcing them to seize their actions, but it is using soft power towards other populations who view the U.S. military’s presence in their neighborhood as legitimate thanks to these actions, and are attracted to the U.S. for its commitment to uphold freedom of navigation (assuming they are in favor of this.)¶ China, too, I would argue uses hard instruments of power, particularly economic power, for soft power purposes. This is probably most evident in the developing world, particularly Africa.¶ While China’s economic activities in Africa can produce a backlash among local populations, there is good reason to believe China’s overall economic success has increased its soft power in Africa. After all, not too long ago China was a developing nation (it would claim it still is) on par with many of the African states, and one that had suffered under foreign tutelage as well. By uplifting itself from those conditions, on emerging on the world stage as a near-equal of the United States, it very likely gains soft power among some Africans who see it as a model for their countries to emulate. ¶ Similarly, while American values are a much bigger soft power asset than China’s, China’s authoritarian political structure can also enhance its soft power among certain audiences.¶ In particular, China’s values could act as soft power among political elites in other authoritarian states. In this scenario, an African authoritarian leader (for example) may be attracted to China precisely because he believes that by emulating China’s example of opening up and reforming economically, while remaining politically autocratic, would help him and his supporters stay in power in their own countries.¶ Thus, as in most things in life, the distinction between soft and hard power is not so clean cut as comparing apples with oranges.

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#### Independent reviewer solves the concern for public accountability

Bashir 12 (Omar S. Bashir 12, is a Ph.D. candidate in the Department of Politics at Princeton University and a graduate of the Department of Aeronautics and Astronautics at MIT, September 24th, 2012, "Who Watches the Drones?" Foreign Affairs,[www.foreignaffairs.com/articles/138141/omar-s-bashir/who-watches-the-drones](http://www.foreignaffairs.com/articles/138141/omar-s-bashir/who-watches-the-drones))

The system would also address the American public's concern that the United States unleashes drones against targets too readily, especially as technological improvements continue to lessen the danger that each attack poses to surrounding civilians. An intermediary would watch to ensure that the president and his advisers give weight to alternative options. He would be able to alert the public if the difficulty of non-lethal options were oversold, or if the small risk posed by a target merited no action at all.

#### Transparency’s a prerequisite to drone leadership

**Ingersoll and Kelley 13**, Geoffrey, writes for Business Insider, Masters in Journalism from New York University, English Degree from Penn State, and Michael, writes for Business Insider, Master’s in Journalism from Medill, BA in Philosophy from Northwestern, “America Is Setting A Dangerous Precedent For The Drone Age,” January 9th, <http://www.businessinsider.com/america-is-setting-a-dangerous-precedent-for-the-drone-age-2013-1#ixzz2ZctC6wBI>

The decisions America makes today regarding drone policy could come back to haunt it sooner than later. Micah Zenko of the Council of Foreign Relations makes this argument in a new report: A major risk is that of proliferation. Over the next decade, the U.S. near-monopoly on drone strikes will erode as more countries develop and hone this capability. In this uncharted territory, U.S. policy provides a powerful precedent for other states and nonstate actors that will increasingly deploy drones with potentially dangerous ramifications. Jim Michaels of USA Today reports that 75 countries, including Iran and China, have developed or acquired drone technology in the wake of America's prolific program. The situation places the U.S. in a possibly very brief window of leadership — and transparency is the key first step to this leadership. U.S. policy is to consider "all military-age males in a strike zone as combatants ... unless there is explicit intelligence posthumously proving them innocent." America targets these individuals using a "disposition matrix" that serves to keep track of the ever-evolving procedures and legal justifications for placing suspects on the U.S. "kill list." And the Obama administration refuses to reveal its methods or justifications for bombing a target, indicated by a recent ruling to deny a FOIA request regarding the targeted killing of the 16-year-old American-born son of former Al-Qaeda propagandist Anwar al-Awlaki. From Judge Colleen McMahon's opinion: I find myself stuck in a paradoxical situation in which I cannot solve a problem because of contradictory constraints and rules - a veritable Catch-22. I can find no way around the thicket of laws and precedents that effectively allow the Executive Branch of our Government to proclaim as perfectly lawful certain actions that seem on their face incompatible with our Constitution and laws, while keeping the reasons for their conclusion a secret. So the U.S. has the benefit of the doubt, even when it carries out "signature strikes" in which the identities of those killed on the ground is unknown and the decision to strike hinges upon recognition of certain undisclosed behaviors and tendencies. That's a powerful precedent. Imagine China conducting strikes inside Japan, or its own borders (e.g. Tibet) while using the current administration's same opaque, one-size fits all statement that each strike only happens after "rigorous standards and process of review" — essentially, "nevermind the evidence, trust us." That wouldn't fly, but right now America is not in a very strong position to criticize such a situation. That's why, as Zenko argues, the U.S. must reform its policies or risk losing its moral and strategic advantage. A few months ago, the election spurred Obama to codify its rules and regulations regarding drone strikes because "there was concern that the levers might no longer be in our hands," one anonymous official told Scott Shane of the New York Times. Well that time is approaching, and it won't be a Mitt Romney or Marco Rubio in control. It'll be North Korea's Kim Jung Un, China's Hu Jintao, or Iran's Ahmed Ahmadinejad. Which means that **it may be time to show the drone "playbook"** so extrajudicial killings don't become a blindly accepted aspect of international foreign policy.

#### it outweighs legal restrictions

Roberts 13 (Kristin, When the Whole World Has Drones, National Journal, 21 March 2013, http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321, da 8-1-13) PC

But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions.¶ A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs.¶ Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists.¶ The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

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### Alt – Drone Specific

#### Only the alt solves- drones are a minor facet of the militaristic war on terror

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[Devon, "Beyond Drones: Combating the System of Militarism and Imperialism," Foreign Policy Journal, 8-7-13, www.foreignpolicyjournal.com/2013/08/07/beyond-drones-combating-the-system-of-militarism-and-imperialism/, accessed 8-30-13, mss]

On September 11th, I will be attending an anti-drone demonstration in Union Square, NYC. This will be my first protest and I am quite excited. Obviously, the main goal of this demonstration is to protest against the use of drones around the world which kill innocents under the guise of attacking terrorists. While I welcome this protest, we must realize that this demonstration is not enough; that focusing on drones is not enough. We must battle the ‘War On Terror’ overall, as drones are only a small part of that. The global drone attacks started under Bush and have continued and massively expanded under Obama, with Obama going so far as to assassinate four US citizens (officially speaking). Yet, while this is extremely problematic, it is a symptom of America’s global militarism. Contrary to popular thinking, this global militarism didn’t start in the Bush era, but rather in the time of FDR, with World War II, and has continued and intensified since then. The US has, overtly, either already been involved in or started new wars/conflicts every single decade since the 1940s. This has created destruction all over the world, not just physically in terms of destroyed infrastructure, but mentally[1], historically[2], economically[3], and socially[4]. However, the problems go beyond just the military sphere. It has leaked into American society, and specifically into the social realm and how the American people relate to our government. Socially, this militarism has gone and allowed Islamophobia and anti-Arab racism to flourish in American society. It can be seen in everything, from attacks on mosques[5] to anti-Muslim ads[6]. This hatred and racism has heavily infected every part of our society to the point where it is seen as “OK” for TV pundits to spew anti-Muslim hatred. Americans’ relationship with their government has greatly changed ever since the ‘War on Terror’ was launched. While the government had previously spied on American citizens[7] (and even assassinated some[8]), it was mainly on those whom the government deemed a threat to the status quo. Now, the situation has become much more drastic, with the government spying on all US citizens[9], and has given itself the legal authority to not only indefinitely detain them without trial[10], but also to assassinate them (Assassination on US soil is still possible, given the fact that there are problems with Attorney General Holder’s letter to Rand Paul.[11]). At every level, the very people who are supposed to represent Americans have been complicit in allowing Americans to be spied upon and their civil liberties to be destroyed.[12] There has been such a breakdown in the rule of law that there are even secret interpretations of law[13] that the American people can be subjected to, but not know of. This growing authoritarianism must be confronted as well. Economically, corporations have profited quite handsomely[14] from the continuous wars of aggression around the world, as well as from the business of spying on Americans[15]. They are only able to do this because there is an economic incentive to create weapons of war and espionage, and to use those to great effect. In order to fight against militarism more broadly, such companies should be targeted for boycotts, and information campaigns should reveal to the public exactly who these companies are and how they are profiting off exploiting their customers’ information. There is a psychological battle to be held as well. The American people have become accustomed to their country being in a perpetual state of war. In many ways, some have become complacent at best, and, at worst, will actually support the ‘humanitarian interventions’ launched by the Obama administration. Just like with the drone debate, we should also work to have people realize that, while the names and terminology may have changed, the death and destruction have remained the same. This is especially important for those on the left, as there are many liberals whose hypocrisy has been revealed by condemning Bush’s wars of aggression, but support interfering in the affairs of sovereign nations now that Obama is at the helm. We must combat these hypocritical and uninvolved minds, lest we allow these problems to perpetuate. We must combat what Martin Luther King Jr. called “the giant triplets of racism, militarism, and economic exploitation” if we are to mount a truly successful attack on the drone war. The drone wars are a byproduct of the ‘War on Terror’ and its associated effects at home and abroad. **If we do not look at this interconnected system, we will**, in a way, **be wasting our time as we will only be cutting off a branch of a tree rather than getting to the roots**. We must go beyond drones.

### Pariah weapons link

#### Pariah weapons regulation backfires- normalizes centralized militarism and leads to worse forms of violence

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[Neil, PhD from University of Kent at Canterbury, University of Bradford Associate Dean for Research for the School of Social and International Studies, "Humanitarian Arms Control and Processes of Securitization: Moving Weapons along the Security Continuum," Contemporary Security Policy, Vol 32, Issue 1, 2011, tandfonline, accessed 9-5-13, mss]

In this account of contemporary HAC, powerful actors who aim to uphold the status quo principally have a role as agents of resistance to control agendas, not as actors in the production of control regimes. This certainly reﬂects important aspects of contemporary campaigns to regulate pariah weapons but, as I suggest below, it offers a rather incomplete account. Moreover, if such accounts did indeed provide a complete understanding of the dynamics underpinning these control agendas it would certainly represent a novel development, not least because the long history of pariah weapons regulation illustrates the way that weapons taboos frequently reﬂect the interests of the powerful. For example, one factor in the virtual eradication of the gun in 17th and 18th century Japan was that it represented a threat to the warrior class when in the hands of the lower classes.48 The same was true of the rather less successful attempt of the Second Lateran Council to ban the crossbow – a ban partly motivated by the fact that crossbows could pierce the armour of the knight – and a ban that was notably not extended to use against non-Christians.49Similarly, whilst the restrictions on the slave, arms, and liquor trade to Africa embodied in the 1890 Brussels Act were certainly grounded in an ethical discourse, the restrictions imposed on the trade in ﬁrearms were primarily rooted in concerns about the impact of the trade on colonial order. As one British colonial ofﬁcial noted at the time, the restrictions on the small arms trade to Africa reﬂected imperial concern to ‘avoid the development and paciﬁcation of this great continent ... [being] carried out in the face of an enormous population, the majority of whom will probably be armed with ﬁrst-class breechloading riﬂes’.50 The history of pariah weapons regulation would therefore appear to demonstrate a persistent link between the material and political interests of states and / or powerful elites and the emergence of pariah weapons regulation. To be sure, the material and political interests of the same, or other, powerful actors also provide countervailing pressures – the immediate interests of nobles in winnings wars with crossbows mostly won out over their broader class interests,51 whilst colonial competition to secure arms proﬁts and local allies mitigated the impact of the various restrictions on the ﬁrearms trade in the late 19th century.52 But the point is that whilst the genesis of earlier attempts at pariah regulation may, in part, be explained by reference to particular securitizing moments of intervention, the impact of such interventions can only be understood by locating them in particular political economies of power. What is surprising therefore about accounts of post-Cold War humanitarian arms control is that this long history has largely failed to prompt consideration of the way in which contemporary regulation might also reﬂect the interests of powerful states and other actors, albeit in ways that are subject to similar countervailing pressures – an issue that will be taken up below. Pariah Weapons, Heroic Weapons, and Legitimized Military Technology A further recurring theme in the history of pariah regulation is the way in which **restrictions on pariah weapons are** often **related** in some way **to the construction of a broad arena of legitimized military tech**nology**.** A particularly extreme example of this is the way in which pariah weapons are sometimes constructed as the antithesis of the ‘heroic weapon’ – a weapon deemed to embody positive values such as honour and / or which is deemed central to national defence. Thus, the series of relatively successful Acts implemented in England between 1508 and 1542 banning crossbows were largely rooted in a concern to preserve the use of the heroic longbow, deemed central to a long line of English military successes.53 The Japanese ban on the gun was similarly connected to the romanticization of the heroic samurai sword as the visible form of one’s honour, as associated with grace of movement in battle and even its status as a work of art.54 In effect both the crossbow in 16th century England and the gun in 17th and 18th century Japan became the ‘other’ which deﬁned legitimized military technologies and militarism. Redford makes much the same point about English attitudes to the submarine, which was constructed as an ‘other’ partly because of the British romanticization of the battleship (‘the upper class or aristocracy of warships’)55 as central to British security and linked to British notions of valour and honour in the conduct of war. This highlights the ways in which the security meaning associated with particular sets of weapons technology are not just a function of the framings speciﬁc to that technology but are also relational, with the representation of one weapon playing an important role in constituting the meaning of another (albeit in sometimes unexpected ways), and vice versa. Not surprisingly perhaps, similar themes also help explain the contemporary taboos constructed around particular sets of military technology such as cluster munitions. Cluster Munitions What is particularly striking about the campaign against cluster munitions is not its success in banning an inhumane weapon but the fact that this success was achieved at a moment in history when, in absolute terms at least, cluster munitions use had fallen from the peak years of use during the Vietnam era (see Table 2). In the latter period cluster bombs such as the CBU-24 represented a ‘major increase in battleﬁeld lethality’ yet its development and deployment was ‘accomplished with no public debate and relatively little subsequent protest’.56 Indeed, for the American military, ‘CBUs were categorised as a standard weapon, to be taken off the shelf – “conventional ironmongery”.57 This is not to suggest that American use of cluster munitions in this period went unremarked. There were certainly some critics at the time who argued that such weapons were inhumane.58 There were also attempts, sponsored by the International Committee of the Red Cross (ICRC) and Sweden in particular, to promote restrictions on cluster munitions in negotiations in the 1970s on the Additional Protocols to the 1949 Geneva Conventions.59 The point is however, that these efforts never achieved traction either with diplomats or with a wider public in the way that the issue would 30 years later. The labels attached to cluster munitions and also landmines only changed dramatically as the move into the post-Cold War era occurred when they moved from being treated as unproblematic elements in global military arsenals to a form of ‘technology non grata’ – weaponry deemed immoral, inhumane, and indiscriminate. Crucially, such a successful process of stigmatization was only made feasible in the context of a post-Cold War widening of the security label to incorporate the notion of human security as a referent object; by the turn to casting security interventions in humanitarian terms; and the representation of modern weaponry as humane because of its perceived capacity to better discriminate between civilians and combatants. The widening and deepening of the security label created the permissive environment necessary for activists to reframe cluster munitions (and APMs) as threats to the human. At the same time, the discussion of intervention in humanitarian terms60 and of precision weapons as instruments of humane warfare61 created a legitimized discursive space into which campaigners could insert a re-representation of landmines and cluster munitions technology as inhumane. Indeed, such a re-representation only exerted a powerful appeal because it was consonant with both the predominant framing of security threats in a postCold War world and a new divide between good and odious military technology. This is not to suggest that such developments reﬂected some teleology in which security and arms control practice progressively evolved to be more humane. As Krause and Latham have noted, for example, whilst the post-Cold War era concern with the impact of ‘inhumane weapons’ represents a notable shift compared with the Cold War arms control agenda, it does have similarities with the late 19th century when a Western discourse of civilized warfare was also prominent. One corollary of this – then as now – was a concern to specify what constituted an ‘inhumane weapon’62 manifest, for example, in the negotiations in the Hague conferences over problem technologies such as the dum dum bullet. As Michael Howard has suggested though, whilst initiatives such as the Hague conferences achieved notable successes, they also reﬂected the fact that liberal internationalists had ‘abandoned their original objects of preventing war and building peace in favour of making war more humane for those actually ﬁghting it’.63 The prohibitions on cluster munitions and also APMs can be understood as similarly ambiguous developments. On the one hand, the legitimizing discourse of Western militaries and arms ﬁrms was turned against them in order to generate powerful taboos against particular categories of weapons – even in the face of opposition from these militaries. The language of state security was coopted to promote human security, to preserve life, and prevent threats to its existence. On the other hand, the same prohibitions can ultimately be understood less as progressive initiatives imposed on foot-dragging states by the bottom-up power of global civil society and more as performative acts that simultaneously function to codify aspects of a new set of criteria for judging international respectability in a post-Cold War era, to reinforce the security framings of the era and to legitimize those categories of weapons successfully constructed as precise, discriminate, and thus humane. Indeed, **to the extent** that states such as **the U**nited **S**tates have been able to **circumscribe their commitments** on landmines etc. **they** have been able to **beneﬁt** **from the** broader **legitimizing effects of** speciﬁc **weapons taboos without being unduly constrained** **by** the **speciﬁc regulatory requirements** they have given rise to. Moreover, as already noted, the presence of pariah weapons regulation is not necessarily a sign of a more general shift to the tighter regulation of the arms trade – quite the reverse in some cases. Thus, **any evaluation of the overall impact of such regulation** on global and local security also has to take into account the broader system of arms regulation in which it is located, and the relationship that exists between pariah regulation and this broader system. The next two sections will offer some observations on these issues. Models of Economy and Models of Arms Trade Regulation The approach adopted to the regulation of the arms trade in general does not only reﬂect the security labels attached to particular kinds of technology or the direct interests powerful actors may have in constraining such technology. Regulatory approaches to the arms trade are also a function of the particular paradigms of political economy that dominate in speciﬁc era. In part this is because they link into particular understandings of what constitutes economic security. But the link between regulation and the paradigms of political economy go beyond this, reﬂecting a much more fundamental common sense about economy and trade. For example, the rise of mercantilism from about the 1600s meant the previous dominance of private arms traders was replaced by that of government arsenals64 and the emphasis on autarky encouraged a more restrictive approach to the regulation of arms transfers.65 In England for example, Queen Elizabeth I issued an order in 1574 restricting the number of guns to be cast in England to those ‘for the only use of the Realm’66 and further Ordnances restricting the export of arms were passed in 1610 and 1614.67 In contrast, the shift in economic ideology from mercantilism to capitalism led to the more laissez-faire approach to the regulation of arms transfers in the late 19th century already described above. Britain moved to a more laissez-faire basis from 1862 onwards, France passed legislation in 1885 reinstituting the private manufacture of arms and also repealed the law prohibiting exports.68 Indeed, this was an era in which the Prussian government did not even feel able to compel Krupp to abjure exports to Austria on the eve of war with that country in 1866.69 Economic philosophy also shaped both discourse and practice on the regulation of the arms trade in the aftermath of World War I. Against the background of what Buzan and Waever have described as a broader attempt to ‘construct war as a threat to civilisation’ after World War I70 private arms manufacturers were particularly castigated for the role they had supposedly played in fomenting war fever to promote sales, a role facilitated by their alleged control over the press in many countries.71 This partly explained the attempts in 1919 and 1925 to develop international agreements on the regulation of the arms trade, although in reality a broader set of international order and security concerns were also at work (see below). However, the 1919 and 1925 agreements never received the necessary ratiﬁcations to come into force (although they did have important legacy effects) and the laissez faire approach to the arms trade still predominated throughout the 1920s. It was only in the 1930s that concern about the activities of the arms manufacturers gained particular salience in both the media and policy circles. In part this may have been a function of the deteriorating international situation, but as Harkavy has argued, it was also a function of the fact that the Great Depression had prompted widespread doubts about the general viability of the capitalist system.72Consequently, nationalization and greater government oversight of the arms industry was presented by campaigners and, indeed, some governments, as a vehicle to ensure arms proﬁts were not pursued at the expense of either state interests or world peace. Although nationalization was, with the exception of France73 mostly avoided, by the mid-1930s most of the major arms producing states had begun to develop formal defence export licensing systems.74 In other words, this was the moment when the institutions and processes were established that would produce the many thousands of ordinary extraordinary export licensing decisions that now occur on a weekly basis, the point of genesis for a particular habitus of a particular set of security professionals. This shift was not solely a function of debates about the role of arms merchants in World War I, nor was it purely a consequence of the doubts about unmanaged capitalism sowed by the Great Depression. Issues of power and security as well as the moments of intervention represented by successive attempts to agree international arms regulation all played their role in this shift (see below). Nevertheless, attitudes to economy were an important part of the mix. In the Cold War, the regulation of arms transfers was structured so that it was simultaneously permissive vis-a`-vis transfers to allies and highly restrictive vis-a`-vis allies of the Soviet Union. In the West at least, these security rationales overlapped with the dominance of Keynesian approaches to the economy in which the preservation of defence production emerged not only as a strategic imperative but as a form of welfare militarism – aimed at maintaining jobs, stimulating economies in times of recession, and preserving key technology sectors. This implied the further extension of government oversight of arms sales (albeit principally on a national basis rather than through international negotiation) and government’s role in the promotion of arms sales. It also meant that arms sales were pursued primarily (if not exclusively) for political rather than economic reasons. This contrasted sharply with the late 19th century and even inter-war years when private industry and the search for arms proﬁts were the principle factors driving supply. However, the end of the Cold War coincided with (and reinforced) underlying shifts in conceptions of economy and security that inﬂuenced the debate on arms transfer control. In terms of economy, the neoliberal agenda had already been thoroughly mainstreamed in the policy discourse of governments. Greed was good, proﬁt was better and market principles were the order of the day. In terms of domestic defence procurement policies this was reﬂected in a shift to the much wider application of competition policy, particularly in the United States and the United Kingdom.75 In terms of the approach to major arms transfers it underpinned the shift to a more commercial attitude that had been gradually evolving from the 1960s onwards. Already by 1988 one analyst could note that ‘the political factors that dominated the arms trade in the recent past are yielding to market forces... the arms trade is returning to its patterns prior to World War II, when the trade in military equipment was not dramatically different from the trade in many other industrial products’.76The comparison with the pre-World War II era is perhaps exaggerated – not least because the frameworks of national oversight and national export promotion are far more extensive, as are the frameworks of international regulation. Nevertheless, whilst one feature of the post-Cold War era has been the proliferation of international or regional initiatives to ostensibly restrain arms proliferation, an equally notable feature has been the relaxation of restrictions on arms supplies, particularly to allies. Both the Clinton and George W. Bush administrations in the United States have attempted to ease restrictions on exports to key allies, most notably in the form of defence trade cooperation treaties with Australia and the United Kingdom announced in 2007, although these have yet to be ratiﬁed by the Senate.77 The effect of these agreements will be to permit the licence-free transfer of defence goods between the United States and each of the signatories.78 The Obama administration has, in addition, committed itself to a radical overhaul of the American export control system to make it easier to export weapons to American allies and to emerging markets such as China. For example, the administration has claimed that in the case of items related to tanks and military vehicles, the new rules would remove 74 per cent of the items currently on the US Munitions List.79 In other words, the export of brake pads for tanks may no longer be subject to a regime of extraordinary measures. Similar processes have been at work in other countries. For example, in 2002 the United Kingdom announced changes to its methodology for assessing licence applications for components to be incorporated into military equipment for onward export, a reform generally interpreted as opening ‘a signiﬁcant export licensing loophole’,80 whilst in 2007 the French government announced it would ease restrictions on products moving within the European Union.81 At the same time as this occurred NGOs became more focussed on the security outcomes stemming from the trade in small arms and landmines. To the extent that NGOs and academics have engaged with the issue of major conventional arms transfers, they have tended to follow the lead set by government and industry by engaging with the economic rationale for defence exports – albeit in an attempt to debunk them.82The combined effect of this has been to give a more central place to a technocratic discourse on major weapons transfers focussed on their economic costs and beneﬁts to suppliers. This is not to suggest that strategic rationales for arms transfers have disappeared completely – they still remain important factors in speciﬁc cases, particularly post-9/11. Nevertheless, as Hartung has noted, with the end of the Cold War, the economic rationales for arms sales ‘moved to the forefront’.83One corollary of this greater emphasis on the economics of arms sales has been the post-Cold War deproblematization of major arms transfers84 at least in terms of debates about their security outcomes. Today, such sales are primarily discussed (by exporters at least, if not by recipients and their neighbours) in the language of the technocrat and the banker - the language of jobs, ﬁnancing terms, market share, and performance evaluation. Indeed, both government and NGO security concerns about the negative effects of the arms trade have bifurcated – with concern focussed either on the problem of weapons of mass destruction (WMD) (problematized primarily in terms of their potential acquisition by rogues) or, at the other end of the scale, on issues such as small arms (primarily problematized in terms of the illicit rather than the legal trade in such weapons). Arms Trade Regulation and the Security Problematique If neoliberalism has facilitated a more permissive approach to arms transfer regulation then this raises the question of why any limits have been introduced at all? As already noted above, one part of the answer is rooted in the relationship between legitimized and heroic weapons and those military technologies that lie outside the boundaries of the heroic and the legitimized. Being the ‘other’ of legitimized military technology facilitates successful problematization and indeed ‘extra-securitisation’. Additionally however, the architecture of global arms trade regulation has been transformed in the post-Cold War era along with the transformation in the objects of security that accompanied the end of the Cold War. During the Cold War, the global architecture of conventional arms trade regulation, like arms control more generally, was principally focussed on managing East –West tensions. One consequence was a substantial extension of the range of dual-use goods invested with security labels in relation to trade with Eastern Europe, most manifest in debates in the early 1950s between the United States and European states over the operation of CoCoM (Coordinating Committee for Multilateral Export Controls).85 In contrast, the developing world was merely an object of security competition between the superpowers and therefore a site for the supply of arms to allies. With the dissolution of the Soviet threat the focus has turned more to the management of North–South relations as the developing world has been reconstructed as the source of diverse security threats86 and as humanitarian intervention has resurrected similar concerns with the maintenance of order in the developing world that animated the arms restrictions in the Brussels Act. One manifestation of this has been in the reframing of small arms as instruments of disorder rather than the means to shore up Cold War allies. A further example is the replacement of the CoCom regime with the Wasennaar Arrangement, focussed particularly on restricting transfers to pariah regimes in the global South. This shift in focus is also manifest in the signiﬁcant rise in the use of arms embargoes in the post-Cold War era. For example, between 1945 and 1990 only two mandatory embargoes were imposed globally, on Rhodesia and Africa, respectively. Since the 1990s there have been two voluntary and 27 mandatory cases of sanctions, the vast majority of which have been aimed at actors in Africa.87 Sanctions, just like the efforts to control arms to Africa in the late 19th century have not been hugely successful in reducing the supply of weapons to combatants. Nevertheless, they can be understood as animated by much the same desire to maintain order in the peripheries of the world, particularly in a context where Western powers have once again taken on a greater responsibility for policing and managing instability in the developing world. Thus, the post-Cold War regulation of the conventional arms trade is simultaneously characterized by a relatively more permissive approach to arms transfers in general but also a redirection of controls away from the governance of East – West relations and towards the governance of North –South relations and particularly the disciplining of those actors framed as rogue or pariah in the security narratives of dominant actors. The campaign to promote an arms trade treaty may yet produce a more meaningful architecture of arms transfer control – the jury is out. However the framing of the Arms Trade Treaty to the defence industry is perhaps instructive. For example, the UK’s Ambassador for Multilateral Arms Control has noted, the ATT ‘... is about ... export controls that will stop weapons ending up in the hands of terrorists, insurgents, violent criminal gangs, or in the hands of dictators’.88 It should also be noted that current efforts to develop a global agreement on the arms trade echo late 19thth and early 20thth century initiatives to govern the international arms trade, most notably: the Brussels Act, the 1919 St Germain Convention for the Control of the Trade in Arms and Ammunition, and the 1925 Arms Trafﬁc Convention. Although the latter two never received the necessary ratiﬁcations to come into force both were animated by the same imperial concern to prevent disorder in the colonies that had underpinned the Brussels Act. As Stone has noted with regards to the St Germain convention for example, ‘there was little doubt among representatives in Paris [where the Convention was signed] that keeping arms out of African and Asian hands was St Germain’s chief task’.89Accordingly, the convention imposed far stricter restrictions on sales to these areas as well as a ban on arms shipments to ‘any country which refuses to accept the tutelage under which it has been placed’.90 Indeed, although the convention never came into being, European powers nevertheless agreed informally to carry out its provisions in Africa and the Middle East.91 The 1925 convention similarly imposed more severe restrictions on exports to special zones that covered most of Africa and parts of what had been the Ottoman Empire.92 Thus, viewed against this broader history of arms regulation, negotiations on a putative Arms Trade Treaty (rather like action on APMs or cluster munitions) do not represent a novel post-Cold War development that symbolizes progress on an emancipatory human security agenda consonant with the promotion of local and global peace. Instead, it reﬂects the emergence of particular sets of relationships between power, interest, economy, security, and legitimized military technologies that in turn create the conditions of emergence for historically contingent architectures of global regulation. Conclusion The preceding analysis has a number of implications for campaigners, but also speaks to the debates about the utility of the securitization framework outlined at the start of this article. First, it provides support for Abrahamson’s notion of the security spectrum. Viewed in a more historical perspective, what is notable about the post-Cold War emergence of a humanitarian arms control agenda is the way in which action on landmines, cluster munitions, and even small arms have been made possible by a quite dramatic transformation in the way such technology is represented. They have, in Abrahamson’s formulation, been moved along the ‘spectrum of security’ from normal, run-of-the mill, unproblematic technologies of killing, to ones of extra special concern. Conversely, one of the features of the post-Cold War era is the way in which the security labels attached to major weapons transfers have, in general, actually moved in the other direction. Whilst such transfers still remain clearly within the domain of security it is, nevertheless, possible to conceive the post-Cold War trade in major weapons as having been relatively desecuritized. Second, the analysis highlights the relational elements that can be involved in processes of securitization and desecuritization. In the case of the landmines ban this manifested itself in the way campaigners engaged in simultaneous processes of securitization of APMs (with respect to the human as referent object) and (relative) desecuritization (with respect to the state as referent object) that worked to mutually reinforce the case for a ban. In the case of pariah weapons generally, whilst there are a number of factors that explain their stigmatization, one factor can be the way their particular qualities are depicted as the antithesis of those possessed by legitimized and particularly heroic weapons. Conversely, the stigmatization of pariah weapons works to delineate other weapons as normal and legitimate. There is therefore a process of mutual constitution that is at work in the way different sets of weapons technology are framed and understood. Third, the preceding analysis illustrates the relevance of Floyd’s argument that processes of securitization or desecuritization can be positive and negative, particularly when considered in terms of their emancipatory effects. As noted above, in the case of landmines a process of relative desecuritization vis-a`-vis the state combined with a process of extra-securitization vis-a`-vis the human to bring about the production of a ban widely considered to have produced positive security outcomes for individuals, communities, and the human as a collective. In contrast, the relative desecuritization of major weapons transfers represents a much more ambiguous development. It could, of course, be argued that such a change in the security labels attached to the weapons holdings of neighbouring states would not only reﬂect but reinforce a move to more peaceable relations. In addition, the relative deproblematization of defence transfers might be conceived as a positive development, particularly for states that possess minimal domestic defence industrial capacity, and are threatened by hostile neighbours. At the same time however, such a shift along the spectrum of security arguably represents a quite regressive development when applied to the issue of arms transfers. This is particularly the case given that, irrespective of the powerful ways in which the security labels attached to major weapons are shaped by discourse and other forms of representation, they still possess a residual materiality, however thin, that is characterized by their capacity to facilitate the organized prosecution of violence. More generally, the transfer of such technologies can also be viewed as symptomatic of a world characterized by deeply problematic higher order paradigms of security and economy. At the very least then, the relative (if not complete) desecuritization of major arms transfers would appear to raise further questions about the Copenhagen School’s normative commitment to desecuritization. Although more accurately, it highlights the effects that come from ratcheting down the security labels attached to ‘normal’ arms transfers and subjecting them to the kind of standard bureaucratic routines highlighted by Bigo, albeit the routines of the export licencing process in this case. One consequence, is that the many thousands of export licences granted for the transfer of weapons other than landmines, cluster munitions, and small arms are far less likely to become the object of public scrutiny or become subject to intense public and political contestation about the security effects of such exports. In this sense at least, the switch from a Cold War arms transfer system where security motivations for exports often predominated to one where economic motivations are more to the fore, has also been accompanied by a corresponding depoliticization of contemporary transfers, a phenomenon that highlights the problematic nature of the neat division between politicized and securitized issues outlined in the CS conception of securitization and one that highlights the downside of even partial moves towards the desecuritization end of the security spectrum. Fourth, the success of campaigns on landmines and cluster munitions demonstrates how ‘moments of intervention’ undertaken on behalf of the voiceless by supposedly weak securitizing actors such as NGOs can, nevertheless, produce quite effective securitizations – in this case, the hyper-securitization of particular weapons technologies. Both campaigns also highlighted the ways in which actors can utilize media images and, through survivor activism that extended to the conference room, provide a context for the body to speak security. Moreover, the success of these campaigns highlights the ways in which the language of threat, survival, and security can be deployed to achieve positive security outcomes. At the same time however, the success of the humanitarian arms control agenda around landmines and cluster munitions in particular was only achieved because NGOs adopted exactly the same discourse around humanitarianism, human security and weapons precision that has been deployed to legitimize post-Cold War liberal peace interventionism and in the marketing of new weapons developments. On one reading, this might point to the potential for actors to deploy dominant forms of security speech in order to achieve progressive ends. On a more pessimistic reading however, it also highlights the profound limits involved in such approaches. To the extent that the extra-securitization of pariah technologies such as landmines has facilitated the relative **desecuritization of major** conventional **weapons transfers it has** also **made the current framework of control look** like an example of **ethical**

advance at the same time as creating space for the deproblematization of arms transfers in general. Ultimately then, the moments of **intervention** represented by the campaigns on landmines and cluster munitions were successful because they did not threaten, and in many ways were quite consistent with, the dominant security paradigm and security narratives of the post-Cold War era. Equally, whilst the regularized routines and working practices of the security professionals of the export licensing process are certainly important in understanding the treatment of defence transfers, this body of professionals were themselves, brought into being as a result of historical changes in the fundamental assumptions about security and economy. Moreover, their very working practices and modes of behaviour are currently being altered as a result of similar fundamental shifts in the paradigms of security and economy which, in turn, are a function of particular combinations of power and interest. Although these shifts certainly predated the post-Cold War era, they have become particularly concretized in this era. One consequence of all this is that a loud ethical discourse around the restriction of landmines, cluster munitions, and small arms has gone hand in hand with recent rises in both global military expenditure and arms transfers. For example, overall, world defence expenditure in 2008 was estimated to be $1,464 billion (of which NATO countries accounted for 60 per cent and OECD countries 72 per cent) representing a 45 per cent increase in real terms since 1999,93whilst global arms sales were 22 per cent higher in real terms for the period 2005– 2009 than for the preceding period 2000– 2004.94 Moreover, largely because of the dominance of American and European defence spending, the defence trade is increasingly concentrated in the hands of the United States and to a lesser extent, European companies. For example, in 2006 American and European companies accounted for an estimated 92.7 per cent of the arms sales of the world’s 100 largest defence companies.95 Most arms trade NGOs have largely neglected issues such as the rises in defence expenditure in major weapons states such as the United States, intra-northern trade in arms, and the dominant role played by Western companies in the arms trade, in favour of an agenda that conceives the South – and in particular pariah actors in sub-Saharan Africa – as the primary object of conventional arms trade regulation.96With regard to transfers of small arms and major conventional weapons it might be argued that this, at least, also requires impressive self-abnegation from arms trade proﬁts on the part of powerful states in the international system. In practice however, international initiatives such as the EU Code or the Wassennaar Arrangement, national export regulations of the major weapons states and the local initiatives of client states mostly combine to produce a cartography of prohibition that corresponds more closely with the disciplinary geographies advocated by the powerful rather than any global map of militarism and injustice. One illustration of this is the way in which a recent review of British defence export legislation downgraded long-range missiles and the ‘heroic’ Unmanned Aerial Vehicle (UAV – the Maxim gun of modern imperial wars) from a category A classiﬁcation (goods such as cluster munitions whose supply is prohibited) to the less restrictive category B,97 whilst in 2010, the Afghan government proscribed the import, use, and sale of Ammonium Nitrate Fertilizer because it is one of the elements used in the making of IEDs.98 More generally, as one recent econometric analysis of major weapons transfers from the Britain, France, Germany, and the United States concluded, despite much rhetoric about the need for a more ethical approach to arms sales from governments in all these countries: Neither human rights abuses nor autocratic polity would appear to reduce the likelihood of countries receiving Western arms, or reduce the relative share of a particular exporter’s weapons they receive. In fact, human rights abusing countries are actually more likely to receive weapons from the US, while autocratic regimes emerge as more likely recipients of weaponry from France and the UK.99 Of course, arms trade NGOs have often been the ﬁrst to highlight such hypocrisies and the work of most organizations include, to a greater or lesser extent, elements of critique or advocacy that might be considered transformational. However, one of the principle features of arms trade activism in the post-Cold War era is the extent to which many NGOs have downgraded radical critique in exchange for insider inﬂuence and government funding.100 Instead, activism has largely been aimed at promoting tactical reform within an overarching economic and security paradigm that justiﬁes intervention, regulation, and transformation of the South whilst (with the exception of token action on landmines, etc.) leaving the vast accumulation of Western armaments largely unproblematized. The logic of this analysis then, is that there needs to be a far greater problematization of military expenditure by the major powers, of the so-called ‘legitimate’ trade in defence goods, including intraNorthern trade, and a problematization of the predominance of Western defence companies in global arms markets. In short, campaigners needs to return to a strategic contestation of global militarism rather than searching for tactical campaign victories dependent on accommodation with the language and economic and security paradigms of contemporary military humanism.

### Drone warfare link

#### Drones are a minor symptom of US militarism- the aff’s myopic focus solves nothing but obscures the bigger picture and enables militaristic escalation

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[Daniel, "Drones are a symptom, not a cause," 5-23-12, slouchingcolumbia.wordpress.com/2012/05/23/drones-are-a-symptom-not-a-cause/, accessed 9-2-13, mss]

Drones have yet to be used in a situation where a pilot of a manned strike platform would have been at serious risk from something besides a plane crash. In practice, in these kinds of campaigns the most vulnerable people are those operating on the ground to support drone operations, and more of them, not fewer of them, are brought in to support so-called drone wars. But does the lack of accident threat increase bellicosity? Not really, since again, in virtually all theaters of drone use, drone strikes occur where manned strikes or manned ISR support is also occurring. These aircraft are also at accident risk, yet they are often used alongside drones or to fulfill missions that drones also carry out. While again, on paper, drones remove these risk, in practice the kind of missions policymakers employ drones with does not suggest drones have significantly changed their calculus towards waging standoff strike campaigns. Policymakers are relying on drones The United States is only “relying” on drones in Pakistan, and even then, in Pakistan it’s also operating Counterterrorism Pursuit Teams on the ground and other proxy militia forces, and very likely receiving the kind of manned ISR support that drones very frequently do in Afghanistan (along with strike support in that theater, of course). The “unique capabilities” of drones do not change the calculus to actually initiate military action, they just change the relative logistical load of the operation. That’s not a revolution and that’s hardly enough evidence to suggest it significantly effects U.S. bellicosity or the accountability of warmaking by giving policymakers a cost free option for prosecuting strikes. In Yemen and Somalia, policymakers almost certainly are not relying on drones. The first drone strikes in Somalia did not occur until years after the U.S. had begun using JSOC ground forces, helicopters, gunships, and naval aircraft and ship fires to target the ICU and later al Shabaab. Even then, drones have yet to actually take over the duties of strike missions, as the F-15E squadron in Djibouti suggests. In Yemen, the strikes have generally been a mix of platforms that has ranged from drones, to seaborne fire missions, to manned aircraft. So it’s certainly not an undisputed fact that policymakers are relying on drones, even if this factor is publicly played up by the media and government alike. If anything, drones are over-emphasized to hide the very many people operating on the ground and in manned supporting strike and ISR platforms that are involved in these wars. It’s absolutely false to suggest that it’s casualty aversion or drone expendability which enables these conflicts, or otherwise policymakers would not be using manned missions in Yemen and Somalia (and they would probably be more willing to conduct high-value strikes when Pakistan clamps down on strikes). Farley suggests that policymakers are not casualty tolerant of air wars. This is false. In fact, the utter air superiority of U.S. forces has been invoked for the ease of conducting U.S. airpower interventions in the Balkans and Iraq after 1991. There’s significant evidence to suggest that policymakers consider aerial and naval assets writ large, along with deniable and covert SOF assets, more expendable than regular ground troops from the Army and the USMC. The record of U.S. military interventions suggests this. Casualty aversion from ground troops did not prevent the growth of an airpower mystique among policymakers which allowed for interventions in Bosnia, Kosovo, Iraq between 1991-2003, and later, Libya. The punitive use of aerial and standoff fires is extended to virtually all aerial assets, and in many cases policymakers are more eager to send manned aircraft against enemy air defenses than they are to send unmanned strike aircraft into contested areas. If Farley was arguing, as many other commentators have, that there is a general airpower mystique, that would be a much more plausible argument. But the conduct of U.S. military interventions since 1991 suggests that policymakers are not very worried about pilot casualties (even after the shoot-down of an F-16 in Bosnia and an F-117 in the Kosovo War), and drone strikes rarely occur when there’s a real threat of pilot casualties beyond the accidents that can afflict the manned strike and ISR assets used alongside them. Drones make policymakers more prone to use force This is highly unlikely. As I have noted, in Yemen, Somalia, and Pakistan, drone use has been dependent on both militarily and diplomatically permissive environments, and they are generally used alongside [non-drone]~~manned~~ assets, proxy forces, special operations, and security force assistance to other states. In other words, there are a variety of militarized options which are employed concomitantly which all suggest drone strikes were not the limiting factor in the U.S. choosing to find a variety of direct and indirect methods for covertly and overtly killing foes determined to be hostile to the country. Secondly, the fact that the U.S. also uses the Pursuit Teams and other covert actors in Pakistan suggests that the U.S. would still be trying to kill its enemies across the borders if drones were not available. In Yemen there isn’t convincing evidence that drones are the reason the U.S. chose to militarize its policy there, as the increase in strikes starting in 2009 came with an increase in [non-drone]~~manned~~ and naval strikes. In Somalia, drones are definitively not the reason the U.S. chose to militarize its counterterrorism policy there, as U.S. strikes in support of the American-backed Ethiopian invasion in 2006 were all of a manned variety. Thirdly, there’s little suggestion that drones are blinding policymakers to the virtues of riskier means of force, an example of which that Farley cites is SOF. But SOCOM has expanded enormously alongside the growth of the drone program, and SOCOM and JSOC are operating on the ground in far far more countries than we use drones! Not only that, but JSOC, CIA SAD operators, and proxy forces such as contractors, militia groups and foreign military forces are all in play in Yemen, Somalia, and Pakistan. Standoff strikes are always and everywhere just one prong of the U.S. counterterrorism strategy – even the kinetic aspects. If anything, the biggest advantage to policymakers of drones, in terms of initiating and continuing use of force, is that they allow policymakers to obscure and misinform the public and the international community – and each other – as to the extent of the military and covert campaign. But that’s not drones eluding accountability and enabling bellicosity, it’s secrecy and the management of public perceptions. The CIA had methods of doing this thing before today’s remotely-operated weapons were invented. Back in the day, when you wanted to avoid the bad publicity of USAF or USN platforms getting formally involved in “shadow wars” (and they often were anyway, as they very obviously are now), you started a secret air force. Former USAF or USN airframes, crewed and often even supported by foreign nationals or deniable covert operators. This was what happened in Cuba and the Congo. **Drones make very little difference in the ability of policymakers to militarize** U.S. **foreign policy** approaches. They are insufficient for action in military impermissive airspace, and they are almost always used alongside manned assets, and they are always used alongside covert ground or proxy forces. This is why I greatly admire the work of national security journalists (the first coming to mind being Jeremy Scahill and Marc Ambinder and D.B. Grady) who sketch out not simply the new hotness that is killer robots, but the full spectrum of direct and indirect methods that are by necessity and by preference used along side drone attacks, such as SOF, manned platforms, naval assets, spies, mercenaries, unsavory foreign security services, militias, warlords, and even terrorists previously targeted by the U.S. to attack America’s real and imagined enemies in places like Yemen and Somalia. **Criticism that exalts the mythical capabilities of drones** to conduct cost-free, casualty-free campaigns in fact **enables** to prosecution of **unaccountable wars**. Why? Because it’s not having the option of drones which make the policymakers responsible for determining the mission and demanding warheads put to foreheads decide to do so. If it was, then we’d see being drones used in the expendable, cost-free ways that our comprehensive strike campaigns and covert wars suggest is not occurring. Instead, the exaltation of these game-changing features of drones, which will be eagerly swallowed by the broader public, if not by critics of the war on terror, is often parroted by the fears of drone critics, which give policymakers the ability to obscure the extent of the “drone wars” and what is really going on**. It’s not drones that** decrease accountability or **increase bellicosity. It’s secrecy and bureaucratic politics**. Drones don’t truly offer any advantages in terms of secrecy or bureaucratic politics that did not already exist or are not being cultivated alongside drones by other branches

of the military and intelligence community. Even the much-vaunted ability that drones give the CIA to conduct military-grade “secret wars” was pioneered aerially by the “instant air forces” of the Cold War that it set up, as well as other proxy assets with which the CIA can emply and is now employing in its modern shadow conflicts. The very same compartmentalization and secrecy that protect the drone campaign also protects the activities of [non-drone]~~manned~~ strike missions, SOCOM, CIA assets, and U.S.-backed proxy forces. Drones only marginally alter the kind of impunity that U.S. air superiority gave American policymakers to launch its airpower interventions of the 1990s and 2000s (themselves, as Carl Schmitt foresaw in the 1950s, an outgrowth of naval technology). What’s at least slightly novel about these campaigns is the way in which bureaucracies and secrecy have been utilized to obscure policymakers use of all manner of overt and covert strike, ground, intelligence and proxy assets from proxy criticism, even though even this was essentially cultivated during the Cold War. Perhaps some day in the future drone capabilities will improve enough that they will actually encourage the lack of accountability and bellicosity that critics blame for them. But the record of drone usage so far suggests that the evasions of accountability and enablings of bellicosity in question are equally available to [non-drone]~~manned~~ assets, standoff naval assets, and deniable covert assets. Drones have yet to be responsible for a single militarization of a U.S. CT campaign that would not have been militarized by the concomitant use of other assets. **They’re a symptom** of the post-Iraq decision to conduct comprehensive shadow conflicts against AQAM ( arguably pioneered in the Horn of Africa long before strike drones showed up), **not** from what we can observe in the conduct of drones so far, **a cause** of its direction. They are a useful instrument in the toolbox. But **it’s the toolbox, not any one tool** in it, **that’s shaping policy**. Giving the **drones** the kind of **hype** they receive **from critics** and proponents alike shifts debate **obscures what’s really** **allowing policymakers to conduct** today’s **wars.**

[Matt note: gender-modified]

### FW

#### Framework links – it’s a performative example of how they bracket outcertain perspectives in favor of hegemonic ones – It’s not just about simulating debate but who has the best method for making debates inclusive and productive

Sparks 3(Holloway, asst prof of political science, Penn State, Queens, Teens, and Model Mothers Race and the Politics of Welfare Reform (Paperback) by Sanford F. Schram (Editor), Joe Soss (Editor), Richard C. Fording (Editor))

In spite of the participatory principles embodied in these theories, some deliberative democrats have given **inadequateattention** to the **barriers**to public sphereparticipation confronted by marginalized citizens. Activists, dissidents,, racial and ethnic minorities, and particularly poor citizensareregularly excluded fromboth decision making and deliberative venues, but this problem is often **sidestepped**in the mainstream theoretical literature by theorists who **downplay**the effects of social and economic inequality on public participation(see, e.g., Barber 1984; Cohen 1989; Dryzek '99°). The claim that we can effectively bracket inequality in the public sphere, however, has been strongly criticized recently by a group of theorists explicitly concerned with problems of democratic inclusion. These scholars, including James Bohman ('996), Nancy Fraser (r7), Jane Mansbridge (i5ir, 1999), and his Young (1993, 1996, woo), have emphasized the fact that formal political equality **does not guarantee equal authority**in or even **access to the public realm**. Iris Young, for example, has identified two forms of exclusion that prevent citizens from fully participating in democracies. What she calls external exclusion "names the many ways that individuals and groups that ought to be included are purposely or inadvertently left out of fora for discussion and decision making" (zooo, 53 54). External exclusion can be as blatant as deliberately failing to invite certain groups to important meetings, or can take more subtle forms such as the way economic inequalities affect access to political institutions. As Nancy Fraser has noted, in societies like the United States in which the publication and circulation of political views depends on media organizations that are privately owned and operated for profit, those citizens who lack wealth will also generally "lack access to the material means of equal participation". This criticism has obvious salience for families living on welfare budgets. On a more basic level, money and time are also necessary for participation in putatively "free" political institutions. Poor parents with young children, for example, might not have the resources to purchase child care in order to attend a town council meeting at which important political decisions are made.3 Internal exclusions, in contrast, "concernwaysthat people **lack effective opportunityto influence the thinking of others even when they have access to**fora and **procedures of decisionmaking**" (Young 2000, 55; emphasis added). Citizens may find that "others **ignore**or **dismiss**or **patronize**their statements and expressions. Though formally included in forum or process, people may find that their claims are **not taken seriously**and may believe that they are not treated with equal respect" (fl).Internal exclusion can take the form of public ridicule or face to face inattention (Bickford 5996), but it can also stem from less obvious sources, such as the norms of articulateness, dispassionateness, and orderliness that are often privileged in political discussions (Young 2ooo, 6). As Young observes, In many formal situations the better educated white middle class people often act as though they have a right to speak and that their words carry authority, whereas those of other groups often feel intimidated by the argument requirements and the formality and rules of parliamentary procedure, so they do not speak, or speak only in a way that those in charge find "disruptive." . . . The dominant groups, moreover, often failentirely to notice this devaluation and silencing, while the less privileged often feel put down or frustrated, either losing confidence in themselves or becoming angry. (5996, 114) Since "unruly" forms of speech tend to be used primarily by women, racial minorities, and working class people, large groups of citizens face the devaluation of their political participation.

### Epistemology

#### State anti-epistemolies makes testing the aff impossible- the imperial executive rigs the game

Pugliese, 13 -- Macquarie University Cultural Studies professor

[Joseph, Macquarie University MMCCS (Media, Music, Communication and Cultural Studies) research director, *State Violence and the Execution of Law: Biopolitcal Caesurae of Torture, Black Sites, Drones,* 3-15-13, ebook accessed via EBL on 8-30-13, mss]

A constitutively incomplete scholarship: redactions, foreclosures, fragments

The work that unfolds in the chapters that follow is inscribed by a constitutively **incomplete** **scholarship**. This incompleteness is not due to the standard limitations imposed by time, word length and the other practical exigencies that impact on the process of scholarly research. Rather, this incompleteness is constitutive in quite another way. It is an incompleteness determined by the power of the state to impose fundamental omissions of information through the redaction of key documents, through the legal silencing of its agents and through the literal obliteration of evidence. **These** are all **techniques** of foreclosure that **establish the** **impossibility of disclosure**. In rhetorical terms, the redactions that score the legal texts that I examine operate as aposiopetic ﬁgures; ﬁgures that, in keeping with Greek etymology of the term, demand the keeping of silence. In their liquidation of linguistic meaning, they establish voids of signiﬁcation. Through the process of institutionalized censorship, they order into silence the voices of those subjects who might proceed to name the violence they perpetrated, while also nullifying the voices of the tortured. As rectilinear bars of blackness, the redactions that score the state’s declassiﬁed texts occlude the victims of state violence even as they neatly geometrize the disorder of torn flesh and violated bodies. The slabs of redaction encrypt the disappeared victims of torture in their textual black coffins. As such, they graphically exemplify the obliterative violence of law. These aposiopetic tracts are the textual and symbolic equivalent of the physical violence that is exercised by the state in order to silence its captives. Perhaps the most graphic incarnation of this transpired at Guantanamo, where a detainee, after an interrogation session, ‘began to yell (in Arabic): “Resist, Resist with all your might.”’102 The Interrogation Control Element Chief for Joint Task Force 170# GTMO ordered the detainee to be silenced with duct tape. In their Summarized Witness Statement, an unnamed agent recounts what they witnessed: "˜When I arrived at the interrogation room. I observed six or seven soldiers (or persons I believed were soldiers) laughing and pointing at something inside the room. When I looked inside I noticed a detainee with his entire head covered in duct tape . . . When I asked how he planned to take the tape off without hurting the detainee (the detainee had a beard and longer hair) [redacted] just laughed" The reduction of the detainee to a figure of bondage - short-shackled to the floor and manacled - is not adequate in confirming his status as captive. His face and voice, evidence of his human status, must be physically redacted. The taping of his entire head transmutes him into a faceless papier-machê mannequin. Even the most minimal sign of resistance, such as the exercise of the voice, IIILISI be subju- gated. The corporal economies of torture oscillate between the exercise of violence in order to extort confessions from broken bodies finally rendered docile and the exercise of violence to silence those insurgent bodies that refuse the order to be silent. The duct taping of the head of the detainee emblematizes the deployment of two violent modalities of torture: instrumental and gratuitous. Instrumental violence is produced by the direct application of tools and technologies - such as cables, pliers. electrodes and so on ~ onto the body of the victim in order to inflict pain. In this case the duct taping of the detainee's entire head directly produces a terrifying sense of asphyxiation. Gratuitous violence is a type of supplementary violence that results indirectly, after the fact of the application of instrumental violence. In this instance, the instrumentalized application of duct tape was principally driven by the desire to silence and subjugate the detainee. The ripping off of the duct tape and the tearing of his hair and beard will generate a violence that is wanton, augmenting the pain of having one's facial apertures sealed up. The end result is to confirm the detainee's status as subjugated object of violence. The US government’s power to withhold or destroy information runs the full gamut of censorial practices -- from the ludicrous to the indefensible. The CIA, for example, has exercised an impressive commitment to linguistic probity by insisting on the redaction of such disturbing terms as ‘rot,’ ‘shithole’ and ‘urinal’ from the testimony of one its former interrogators.104 It has also overseen the wholesale destruction of 92 videos that document the torture practices inflicted on their victims; torture practices that allegedly ‘went even beyond those approved by the expansive Yoo and Bybee Torture Memos.’105 **These censorial practices have fundamentally determined the very material conditions of possibility of** my **research**. They have produced a complex textual field inscribed by gaps,

silences and the contingent fragments of knowledge that have managed to enter the public domain despite the censorial power of the state. And I refer here to the extraordinary work of individuals - such as Bradley Manning, who is himself now a victim of the state`s punitive regime of cruel and degrading punishment - or organizations, such as WikiLeaks, that have defied the censorial power of the state in order to make public texts that document the full extent of the state's violent practices and that compel its witnesses to call it to account. The work of these whistle- blowers and activists evidences the fact that the state is not an impervious monolith of repressive power but that, on the contrary, much as it strives to be unilateral in its actions and monologic in its enunciations, the state cannot completely master its heterogeneous agents or silence its heteroglossic voices. In the chapters that follow, I draw heavily on the texts that document the operations of the state in executing and exceeding its laws. I also, however, take the time to reflect critically on the materiality of the absences that mark my field of study by focusing specifically on the redactions that score a number of the key state documents to which I refer. These redactions, as I argue in Chapter 5, visibly signify both the sovereign power of the state and its insecurity. I read these redactions as techniques designed to manage, control and, where necessary, to obliterate knowledge altogether. In effect, these **redactions** function to **constitute the opposite of epistemology: they generate official systems of unknowing, anti-epistemologies that consign the reading subject to** **ignorance and unknowledge**. Faced with these lacunae, I attempt to unsettle the anti-epistemological practices of redaction by reading the very processes of redaction as symbolic instantiations of state violence: they reproduce, textually, their own figural black sites that effectively occlude the names of the agents responsible for the torture practices, even as they also become the black holes to which are dispatched the victims of such practices. Against the grain, then, I read these black sites of redaction as the textual and symbolic equivalent to the material black site prisons run by the state. The anti-epistemological violence of these sites of redaction works in tandem with the ontological violence that the state visits upon its embodied subjects.

## Case

#### Social science proves no modeling- US signals are dismissed

Zenko ‘13 [Micah, Council on Foreign Relations Center for Preventive Action Douglas Dillon fellow, "The Signal and the Noise," Foreign Policy, 2-2-13, www.foreignpolicy.com/articles/2013/02/20/the\_signal\_and\_the\_noise, accessed 6-12-13, mss]

Later, Gen. Austin observed of cutting forces from the Middle East: "Once you reduce the presence in the region, you could very well signal the wrong things to our adversaries." Sen. Kelly Ayotte echoed his observation, claiming that President Obama's plan to withdraw 34,000 thousand U.S. troops from Afghanistan within one year "leaves us dangerously low on military personnel...it's going to send a clear signal that America's commitment to Afghanistan is going wobbly." Similarly, during a separate House Armed Services Committee hearing, Deputy Secretary of Defense Ashton Carter ominously warned of the possibility of sequestration: "Perhaps most important, the world is watching. Our friends and allies are watching, potential foes -- all over the world." These routine and unchallenged assertions highlight what is perhaps the most widely agreed-upon conventional wisdom in U.S. foreign and national security policymaking: the inherent power of signaling. This psychological capability rests on two core assumptions: All relevant international audiences can or will accurately interpret the signals conveyed, and upon correctly comprehending this signal, these audiences will act as intended by U.S. policymakers. Many policymakers and pundits fundamentally believe that the Pentagon is an omni-directional radar that uniformly transmits signals via presidential declarations, defense spending levels, visits with defense ministers, or troop deployments to receptive antennas. A bit of digging, however, exposes cracks in the premises underlying signaling theories. There is a half-century of social science research demonstrating the cultural and cognitive biases that make communication difficult between two humans. Why would this be any different between two states, or between a state and non-state actor? Unlike foreign policy signaling in the context of disputes or escalating crises -- of which there is an extensive body of research into types and effectiveness -- policymakers' claims about signaling are merely made in a peacetime vacuum. These signals are never articulated with a precision that could be tested or falsified, and thus policymakers cannot be judged misleading or wrong. Paired with the faith in signaling is the assumption that policymakers can read the minds of potential or actual friends and adversaries. During the cycle of congressional hearings this spring, you can rest assured that elected representatives and expert witnesses will claim to know what the Iranian supreme leader thinks, how "the Taliban" perceives White House pronouncements about Afghanistan, or how allies in East Asia will react to sequestration. This self-assuredness is referred to as the illusion of transparency by psychologists, or how "people overestimate others' ability to know them, and...also overestimate their ability to know others." Policymakers also conceive of signaling as a one-way transmission: something that the United States does and others absorb. You rarely read or hear critical thinking from U.S. policymakers about how to interpret the signals from others states. Moreover, since U.S. officials correctly downplay the attention-seeking actions of adversaries -- such as Iran's near-weekly pronouncement of inventing a new drone or missile -- wouldn't it be safer to assume that the majority of U.S. signals are similarly dismissed? During my encounters with foreign officials, few take U.S. government pronouncements seriously, and instead assume they are made to appease domestic audiences.

# 1nr

#### We control terminal impact uniqueness- war taboo strong and effective now. Norms matter- prevents miscalc and escalation

Beehner, 12 – Council on Foreign Relations senior writer; Truman National Security Project fellow

[Lionel, "Is There An Emerging ‘Taboo’ Against Retaliation?" The Smoke Filled Room, 7-13-12, thesmokefilledroomblog.com/2012/07/13/is-there-an-emerging-taboo-against-retaliation/, accessed 9-22-13, mss]

The biggest international news in the quiet months before 9/11 was the collision of a U.S. Navy spy aircraft and a PLA fighter jet in China, during which 24 American crew members were detained. Even though the incident was lampooned on SNL, there was real concern that the incident would blow up, damaging already-tense relations between the two countries. But it quickly faded and both sides reached an agreement. Quiet diplomacy prevailed. Flash-forward a decade later and we have a similar border incident of a spy plane being shot down between Turkey and Syria. Cue the familiar drumbeats for war on both sides. To save face, each side has ratcheted up its hostile rhetoric (even though Syria’s president did offer something of an admission of guilt). But, as in the spring of 2001, I wouldn’t get too worried. One of the least noted global norms to emerge in recent decades has been the persistence of state restraint in international relations. Retaliation has almost become an unstated taboo. Of course, interstate war is obviously not a relic of previous centuries, but nor is it as commonplace anymore, despite persistent flare-ups that have the potential to escalate to full-blown war. Consider the distinct cases of India and South Korea. Both have sustained serious attacks with mass casualties in recent years: South Korea saw 46 of its sailors killed after the Cheonan, a naval vessel, was sunk by North Korea; India saw 200 citizens killed by the Mumbai attacks, orchestrated by Islamist groups with links to Pakistani intelligence. Yet neither retaliated with military force. Why? The short answer might be: Because a response may have triggered a nuclear war (both Pakistan and North Korea are nuclear-armed states). So nukes in this case may have acted as a deterrent and prevented an escalation of hostilities. But I would argue that it was not the presence of nuclear weapons that led to restraint but rather normative considerations. South Korea and India are also both rising democratic powers with fast-growing economies, enemies along their peripheries, and the military and financial backing of the United States. Their leaders, subject to the whims of an electorate, may have faced domestic pressures to respond with force or suffer reputational costs. And yet no escalation occurred and war was averted. Again, I argue that this is because there is an emerging and under-reported norm of restraint in international politics. Even Russia’s invasion of Georgia in August 2008, which may at first appear to disprove this theory, actually upholds it: The Russians barely entered into Georgia proper and could easily have marched onto the capital. But they didn’t. The war was over in 5 days and Russian troops retreated to disputed provinces. Similarly, Turkey will not declare war on Syria, no matter how angry it is that Damascus shot down one of its spy planes. Quiet diplomacy will prevail. In 1999, Nina Tannenwald made waves by proclaiming the emergence of what she called a “nuclear taboo” – that is, the non-use of dangerous nukes had emerged as an important global norm. Are we witnessing the emergence of a similar norm for interstate war? Even as violence rages on in the form of civil war and internal political violence all across the global map, interstate conflict is increasingly rare. My point is not to echo Steven Pinker, whose latest book, The Better Angles of Our Nature, painstakingly details a “civilizing process” and “humanitarian revolution” that has brought war casualties and murder rates down over the centuries. I’m not fully convinced by his argument, but certainly agree with the observation that at the state level, a norm of non-retaliation has emerged. The question is why. Partly, war no longer makes as much sense as in the past because capturing territory is no longer as advantageous as it once was. We no longer live in a world where marauding throngs of Dothraki-like bandits – or what Mancur Olson politely called “non-stationary bandits” – seek to expand their writ over large unconquered areas. This goes on, of course, at the intrastate level, but the rationale for interstate war for conquest is no longer as strong. Interstate wars of recent memory — the Eritrea-Ethiopia conflicts of 1999 and 2005, the Russia-Georgia War of 2008 — upon closer inspection, actually look more like intrastate wars. The latter was fought over two secessionist provinces; the former between two former rebel leaders-turned-presidents who had a falling out. But if we have reached a norm of non-retaliation to threats or attacks, does that mean that deterrence is no longer valid? After all, if states know there will be no response, why not step up the level of attacks? I would argue that the mere threat of retaliation is enough, as evidenced by Turkish leaders’ harsh words toward Syria (there is now a de facto no-fly zone near their shared border). Still, doesn’t restraint send a signal of weakness and lack of resolve? After all, didn’t Seoul’s non-response to the Cheonan sinking only invite Pyongyang to escalate hostilities? Robert Jervis dismisses the notion that a tough response signals resolve as being overly simplified. The observers’ interpretation of the actor and the risks involved also matter. When Schelling writes about the importance of “saving face,” he describes it as the “interdependence of a country’s commitments; it is a country’s reputation for action, the expectations other countries have about its behavior.” Others note that the presence of nuclear weapons forces states, when attacked, to respond with restraint to avoid the risk of nuclear escalation. Hence, we get “limited wars” rather than full-blown conflicts, or what some deterrent theorists describe as the “stability-instability paradox.” This is not a new concept, of course: Thucydides quoted King Archimadus of Sparta: “And perhaps then they see that our actual strength is keeping pace with the language that we use, they will be more inclined to give way, since their land will still be untouched and, in making up their minds, they will be thinking of advantages which they still possess and which have not yet been destroyed.” There will be future wars between states, of course. But **the days when an isolated incident, such as a spy plane being shot down or a cross-border incursion, can unleash a chain of events that lead to interstate wars** I believe are largely over **because of the emergence of restraint as a powerful norm**ative force in international politics, not unlike Tannenwald’s “nuclear taboo.” Turkey and Syria will only exchange a war of words, not actual hostilities. To do otherwise would be a violation of this existing norm.

#### Causes global hotspots to go nuclear

Obayemi, 6 -- East Bay Law School professor

[Olumide, admitted to the Bars of Federal Republic of Nigeria and the State of California, Golden Gate University School of Law, "Article: Legal Standards Governing Pre-Emptive Strikes and Forcible Measures of Anticipatory Self-Defense Under the U.N. Charter and General International Law," 12 Ann. Surv. Int'l & Comp. L. 19, l/n, accessed 9-19-13, mss]

The United States must abide by the rigorous standards set out above that are meant to govern the use of preemptive strikes, because today's international system is characterized by a relative infrequency of interstate war. It has been noted that developing doctrines that lower the threshold for preemptive action could put that accomplishment at risk, and exacerbate regional crises already on the brink of open conflict. n100 This is important as O'Hanlon, Rice, and Steinberg have rightly noted: ...countries already on the brink of war, and leaning strongly towards war, might use the doctrine to justify an action they already wished to take, and the effect of the U.S. posture may make it harder for the international community in general, and the U.S. in particular, to counsel delay and diplomacy. Potential **examples abound**, ranging from Ethiopia and Eritrea, to China and Taiwan, to the Middle East. But perhaps the clearest case is the India-Pakistan crisis. n101 The world must be a safe place to live in. We cannot be ruled by bandits and rogue states. There must be law and order not only in the books but in enforcement as well. No nation is better suited to enforce international law than the United States. The Bush Doctrine will stand the test [\*42] of time and survive. Again, we submit that nothing more would protect the world and its citizens from **nuclear weapons**, terrorists and rogue states than an able and willing nation like the United States, acting as a policeman of the world within all legal boundaries. This is the essence of the preamble to the United Nations Charter.

#### Shift from AUMF to *jus ad bellum* turns case- collapses cred and US leadership

Barnes, 12 -- J.D. Candidate, Boston University School of Law

[Beau, “Reauthorizing the ‘War on Terror’: The Legal and Policy Implications of the AUMF’s Coming Obsolescence,” Military Law Review, Vol 211, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2150874, accessed 9-19-13, mss]

Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration’s national security policy, sapping U.S. credibility. The Administration’s National Security Strategy emphasizes U.S. “moral leadership,” basing its approach to U.S. security in large part on “pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests.”149 Defense Department General Counsel Jeh Johnson has argued that “[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.”150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States “must not make [legal authority] up to suit the moment.”151 The Obama Administration’s global counterterrorism strategy is to “adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy” of “turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation.”152 Widely accepted legal arguments also facilitate cooperation from U.S. allies, especially from the United States’ European allies, who have been wary of expansive U.S. legal interpretations.153 Moreover, U.S. strategy vis-à-vis China focuses on binding that nation to international norms as it gains power in East Asia.154 The United States is an international “standard-bearer” that “sets norms that are mimicked by others,”155 and the Obama Administration acknowledges that its drone strikes act in a quasi-precedential fashion.156 Risking the **obsolescence of the AUMF would force** **the U**nited **S**tates **into an “aggressive interpretation” of international legal authority**,157 **not just discrediting its** **own rationale, but facilitating that rationale’s destabilizing adoption by nations around the world**. 158 United States efforts to entrench stabilizing global norms and oppose destabilizing international legal interpretations—a core tenet of U.S. foreign and national security policy159—would undoubtedly be hampered by continued reliance on self defense under the jus ad bellum to authorize military operations against international terrorists. Given the presumption that the United States’s armed conflict with these terrorists will continue in its current form for at least the near term, ongoing authorization at the congressional level is a far better choice than continued reliance on the jus ad bellum. Congress should reauthorize the use of force in a manner tailored to the global conflict the United States is fighting today. Otherwise, the United States will be forced to continue to rely on a statute anchored only to the continued presence of those responsible for 9/11, a group that was small in 2001 and, due to the continued successful targeting of Al Qaeda members, is rapidly approaching zero.

#### Turns drone prolif- broader legal principle of war triggers the impact

Odle, 13 -- Emory International Law Review managing editor

(John, J.D. Candidate, Emory University School of Law (2013); M.A., George Washington University (2007); B.A., Johns Hopkins University (2003), “Targeted Killings in Yemen and Somalia,” http://www.law.emory.edu/fileadmin/journals/eilr/27/27.1/Odle.pdf)

The legal theory the United States uses to justify using drones to target individuals in foreign countries is important for the future of counterterrorism and the law of nations. UAVs are cheaper alternatives to expensive fighter jets; other countries such as China, Russia, and Israel are starting to build their own drones.400 The United States’ justification for using drones against terrorists in countries such as Somalia and Yemen are not made in vacuum and other countries might also use similar justifications to use drones abroad.401

### Link

#### The affirmative limits AUMF by constraining it with international limitations- the court ruling against Al-Bihani *increased* AUMF by saying AUMF power super-ceded international rules

Dehn 10

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The post-Boumediene habeas litigation has raised concerns regarding whether the courts are equipped to determine the substantive and procedural rules governing preventive detention pursuant to the Authorization for the Use of Military Force of 18 September 2001 (AUMF). Before the January 5th D.C. Circuit panel opinion in Al-Bihani v. Obama, no court had questioned the relevance of international laws governing war to the issue. I believe that the courts are certainly competent to determine these issues so long as they observe applicable international law in construing the AUMF. The panel opinion’s suggestion that international law is irrelevant to the preventive detention inquiry ignores over 200 years of precedent in this area. Contrary to the general approach taken by the district courts, the al-Bihani panel concluded: [A]ll of [al-Bihani’s claims] rely heavily on the premise that the war powers granted by the AUMF and other statutes are limited by the international laws of war. This premise is mistaken. There is no indication in the AUMF, the Detainee Treatment Act of 2005…, or the MCA of 2006 or 2009, that Congress intended the international laws of war to act as extra-textual limiting principles for the President’s war powers under the AUMF.

Mem. Op. at 7. Concurring with the panel opinion, Judge Brown said: The Supreme Court in Boumediene and Hamdi charged this court and others with the unprecedented task of developing rules to review the propriety of military actions during a time of war, relying on common law tools. We are fortunate this case does not require us to demarcate the law’s full substantive and procedural dimensions. But as other more difficult cases arise, it is important to ask whether a court-driven process is best suited to protecting both the rights of petitioners and the safety of our nation. Concur. Op. at 1. Another D.C. district court judge is reported to have expressed similar concerns from the bench regarding the conduct of the courts and the need for congressional action: “It is unfortunate that the legislative branch of our government and the executive branch have not moved more strongly to provide uniform, clear rules and laws for handling these cases.” He noted that his fellow judges hearing detainee cases essentially created “different rules and procedures … different rules of evidence … [and] substantive law. Interestingly, this “unprecedented task” is not unprecedented at all. Early in U.S. history, federal courts determined the rights of individuals against the U.S. government in prize cases and faced precisely these problems. Prize cases involved the capture and condemnation of the ships and commercial cargo of enemy nationals (and also of U.S. nationals engaging in commerce with them) in congressionally designated general or limited (a.k.a. “partial”, or “quasi”) wars. While prize captures are no longer permitted by international law, its case law is instructive to preventive detention questions. Similar to Boumediene but much earlier in our nation’s history, the Supreme Court somewhat (but less) controversially found that the constitutional and statutory grants of admiralty jurisdiction conferred jurisdiction over prize cases on the federal courts. In The Amiable Nancy, 16 U.S. 546, 557-58 (1818) the Court stated that “[t]he jurisdiction of the district court to entertain this suit, by virtue of its general admiralty and maritime jurisdiction, and independent of the special provisions of the prize act of the 26th of June 1812…has been so repeatedly decided by this court, that it cannot be permitted again to be judicially brought into doubt.” With frequent conflict between our fledgling country and both England and France, the federal courts became deeply involved in this then-significant aspect of armed conflict. Identifying the ships or property of enemy nationals on the high seas was often difficult. Ships would cloak their affiliation and throw log books and other evidence overboard when approached. Crew members were frequently unavailable to the courts or lacked specific knowledge. The federal courts were uncertain what substantive and procedural rules to use in this unique legal environment. Writing for the Court in The Schooner Adeline, 13 U.S. 244, 284 (1815)(emphasis added), Justice Story attempted to assist them by clarifying that: “No proceedings can be more unlike than those in the Courts of common law and in the admiralty. In prize causes, in an especial manner, the allegations, the proofs and the proceedings are, in general, modelled [sic] upon the civil law, with such additions and alterations as the practice of nations and the rights of belligerents and neutrals unavoidably impose. The Court of prize is emphatically a Court of the law of nations; and it takes neither its character nor its rules from the mere municipal regulations of any country.” Just two years later, the Supreme Court added an appendix to a very cursory opinion in The London Packet, 15 U.S. 371 (1817) (appendix), which began: I[n] the Appendix to the first volume of these Reports… a summary sketch was attempted of the practice in prize causes in some of its most important particulars. It has been suggested that a more enlarged view of the principles and practice of prize courts might be useful, and in case of a future war, save much embarrassment to captors and claimants. With this view the following additional sketch is submitted to the learned reader. The Court then provided, in what might be viewed as in part an advisory opinion on the law and in part a promulgation of rules of procedure, to deliver a heavily referenced mini-treatise (32 Lexis© download pages!) of the internationalrules governing prize practice, including substantive rules, evidentiary standards and modes of proof. The panel opinion in al-Bihani both embraces and ignores this tradition. The above discussed and related precedent lends support to the Supreme Court’s belief, expressed in both Hamdi and Boumediene, that the procedures to be used in preventive detention habeas cases related to armed conflict need not be the same as would govern domestic habeas litigation. This view was heartily embraced by the al-Bihani panel. Mem. Op. at 14-25. With that said, the panel also ignores this history by suggesting that international laws regulating war are irrelevant to its inquiry into which individuals are subject to indefinite detention. The Supreme Court has consistently stated precisely the opposite of this view. In Talbot v. Seeman, 5 U.S. 1, 28 (1801), Chief Justice Marshall stated that “Congress may authorize general hostilities, in which case the general laws of war apply to our situation; or partial hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed.” (emphasis added) Just three years later in Murray v. The Schooner Charming Betsy, 6 U.S. 64, 118 (1804), when finding – against the determination of a U.S. naval commander – that a certain vessel and its cargo were not subject to condemnation as prize, Justice Marshall again clarified that “that an act of Congress [in this case, the authority to engage in limited hostilities/armed conflict against France] ought never to be construed to violate the law of nations if any other possible construction remains….” Nearly 100 years later in the prize case of The Paquete Habana, 175 U.S. 677, 700 (1900), the Supreme Court reaffirmed the notion that “where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations….” (emphasis added) And in United States v. Curtiss-Wright Export Corporation, 299 U.S. 304, 318 (1936) the Supreme Court noted that “operations of the nation in …[foreign] territory must be governed by treaties, international understandings and compacts, and the principles of international law.” As I note in a draft article, now posted on SSRN (comments on this still very rough-in-spots draft are welcome), the Supreme Court has consistently “implied from …[congressional authorization to engage in general or limited armed conflict] a scope of authority consistent with the congressional act and any relevant international law. Indeed, the application of Charming Betsy to a congressional declaration of war or other AUMF necessarily yields this result.” My research reveals that this same approach also permeates Supreme Court precedent and U.S. practice withregard to laws of war on land both extraterritorially and, to a less certain extent, territorially. What is clear in this long line of precedent is that the Court does not always “make” domestic federal common law from international law, it applies or observes existing international law in appropriate cases in the absence of an applicable domestic law or other controlling public act of the government. In other words, as Paquete Habana, 175 U.S. at 700, attempted to make clear, international law “must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.” Additionally, customary international laws governing war were not applied “by analogy” in non-international armed conflict. The U.S. view was that they also governed the U.S. Civil War and other non-international armed conflicts, a view gradually taking hold in the international community after the ICTY appellate decision in Prosecutor v. Tadic. In Winthrop’s treatise, though, there is a clear implication that U.S. practice also established a domestic common law of war in purely internal armed conflicts. No doubt, the panel opinion’s authors align with those who believe that Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938) requires state law to govern cases in federal courts “[e]xcept in matters governed by the Federal Constitution or by acts of Congress” – taking this to mean that international law may never provide a rule of decision in a federal court unless implemented by the states or federal political branches. After extensive research into this understanding of Erie, it is clear that both pre- and post-Erie Supreme Court precedent contradicts such claims with regard to international laws governing armed conflict. (I will present this and its theoretical basis in forthcoming scholarship.) It is equally clear from above-cited cases and related precedent (as the al-Bihani opinion noted) that Congress may establish national policy that violates international law. If that happens, this federal law must be applied by U.S. courts. However, Charming Betsy-related precedent also requires the courts to determine either that Congress’s intent to do so is expressly stated, or that such intent can be clearly implied from enacting a law irreconcilable with applicable international law. See e.g.Dehn, Why Article 5 Status Determinations are not ‘Required’ at Guantánamo, 6 J. INT’L CRIM. JUST. 371 (2008)(discussing related precedent and its effect on the Military Commissions Act of 2006 when compared to Articles 4 & 5 of the Geneva Convention Relative to the Treatment of Prisoners of War). The al-Bihani opinion completely reverses this longstanding approach. Effectively overturning the Charming Betsy as if it were the fictitious Poseidon cruise ship, it requires a finding of congressional intent to comply with international laws governing armed conflict before the court will look to them when interpreting the AUMF and related statutes. One hopes an en banc rehearing will right the ship, sparing the district courts from being forced to reorient to this topsy-turvy legal environment and claw their way to daylight. Whether one views Charming Betsy as a canon of statutory construction or as a conflict of laws decision, international law is clearly relevant to interpreting the scope of preventive detention authority granted by the AUMF. It is relevant both to the general nature of war powers exercised and to any particular limits on those powers. It is unlikely that the Supreme Court would issue another mini-treatise appendix to an opinion outlining the rules, though the precedent for doing so exists. Thus, the courts must continue their difficult but not insurmountable task by determining and observing the content of relevant international law in preventive detention habeas proceedings. Congressional action is of only limited value here. More precisely, a “preventive detention act” would not relieve the courts of their Charming Betsy requirement to look to relevant international law when interpreting both the AUMF and any new law(s) expressly outlining executive detention authority in this or any other armed conflict.

#### AND- We control uniqueness- there’s court deference in counter-terror now- because of congressional signals

Schuck, 13 -- Yale Law School Simeon E. Baldwin law professor

[Peter, "The Courts and National Security: A False Hope," Huffington Post, 7-3-13, www.huffingtonpost.com/peter-h-schuck/national-security\_b\_3543312.html, accessed 9-21-13, mss]

Our federal courts have played a central role in safeguarding our precious constitutional values from encroachments by government and other power centers. But history teaches that where Congress and the president have invoked plausible national security interests, **the courts have almost always deferred** to them, for better and for worse. In the infamous Dred Scott case, the Supreme Court upheld a system of slavery that the Buchanan administration argued was necessary to hold the nation together. During and after World War I, the Court upheld government efforts to suppress criticism; recall that the great defenses of free speech in those cases were written by the losing side. In World War II, the Court upheld the execrable Japanese internment programs. This pattern of deference to national security claims continues to today -- **especially where the president's actions appear grounded in congressional action**, as with FISA and military court prosecution of suspected terrorists. Deference continues even in detention cases, which are closer to traditional judicial functions than the NSA and targeting decisions. The fact that courts have little or no role to play in these latter efforts is no cause for dismay. Placing them at the center of such decisions would tend to tarnish them, as is now occurring with the FISA court. If they could significantly improve that process, the risk might be worth taking, but they cannot.

#### War on terror jurisprudence is congress-centric- the Court looks to congressional signals to determine war on terror authorizations

D.C. Circuit Review, 12 ["Judge Kavanaugh on War-on-Terror Jurisprudence," 6-20-13, dccircuitreview.com/2012/06/20/judge-kavanaugh-on-war-on-terror-jurisprudence/, accessed 9-21-13, mss]

Judge Kavanaugh articulated a **Congress-centric war powers jurisprudence**: What’s the big picture of where we are right now in terms of federal courts, separation of powers, war powers? I would start with, in the wake of September 11th, Congress authorizing two wars: it authorized the war against Al-Qaeda and the Taliban, and authorized the war in Iraq. . . . A President, who in the future tries to engage in an unauthorized ground war of any significance, will be faced with those precedents used against them. President Bush obtained authorization for those two wars. Second– . . . Congress has regulated the Executive’s conduct of war in many respects, both before and after September 11th. We tend to forget that and sometimes think, well this is all just the Executive Branch operating in kind of a free zone, free from congressional restraint. And in fact, whether it’s interrogation or detention, surveillance, a number of particulars of how the Executive goes about the war effort, Congress has been deeply involved, including in the wake of September 11th. . . . I start with background notions of judicial restraint in times of war . . . [I]f Congress hasn’t put a restriction in and if the Executive action is not something that’s concrete or our history talks about, or is contrary to something that the Executive has done before may a court reach out and say, we’re going to restrain the Executive nonetheless, because we think it’s contrary to international law? Although he stood by his concurrence in the denial of rehearing en banc in Al-Bihani v. Obama, Judge Kavanaugh opined that the political branches should heed international law even when it is not binding from the perspective of domestic law. [T]he Executive Branch and Congress should, as I said upfront in my concurrence, should pay attention to international law obligations when thinking about what to put in the statutes. And when the Executive Branch is exercising its discretion pursuant to an authorization for the use of military force, or the President’s Article II authority. . . . Congress, on many occasions, has taken international law principles and put them into federal statutes, sometimes directly, by borrowing from the principle that’s at hand, sometimes by just having a reference, as in Hamdan, to international law or the laws of war more generally or the law of nations more generally. . . . I think it’s a good thing when the Executive pays attention to international law principles for purposes of our international relations and otherwise. During Q&A, Trevor Morrison suggested that the approach in Al-Bihani most consistent with judicial restraint would have been to take no position on whether the Executive’s power under the AUMF is constrained by international law and to simply accept the Government’s concession that it is so constrained for the limited purpose of the case at hand. In response, Judge Kavanaugh defended his statement that “Courts must be careful before enshrining [the Executive's] concessions [on legal questions affecting government power] into binding judicial precedent protected by stare decisis that a future Executive could not readily undo.” I thought it was an important point . . . to reemphasize . . . the central role of Congress in war powers issues, which is not necessarily something that was evident in the immediate wake of September 11th . . . . When Congress imposes limits on the Executive Branch’s conduct of war, courts will enforce those limits . . . . But when Congress has not put something into the statute . . . how should the courts then act? . . . . The Chief had just said this, in Free Enterprise v. PCAOB, . . . –the Executive may want to tie its own hands, but it can’t tie the hands of future presidents. . . . In terms of deferring to the Executive, . . . [i]f they think they’re detaining someone in violation of international law, they can release the person, but to the extent they come to court, it’s usually up to the courts to decide . . . the tools of statutory construction and the like.

[Matt note: Kavanaugh = Brett Kavanaugh, federal judge on the United States Court of Appeals for the D.C. Circuit]

#### Court is deferential now because of congressional signals- the plan unravels that

Lederman, 12 -- Department of Justice’s Office of Legal Counsel Deputy Assistant Attorney General

[Martin, "War, Terror and the Federal Courts, Ten Years After 9/11," American University Law Review, Vol 61, 2012, aulawreview.org/pdfs/61/61-5/Conference.website.pdf, accessed 9-21-13, mss]

Marty Lederman: Correct. So this is something to be on the watch for, both what the Executive Branch says and what the courts say in these two areas. You brought up that comment by Justice Kennedy at the end of Boumediene. It reminded me of Justice O’Connor’s similar comment in her plurality opinion in Hamdi. I think the theme of those cases—O’Connor’s and Kennedy’s lesson, as it were, was something like the following. “To the extent you, the Executive Branch and Congress, are acting more or less in accord with the way things have been done in the past and in pursuance of international law norms and practices that the United States has historically engaged in, we will sit to review it but we’re going to be pretty deferential. But to the extent you start deviating and doing things that are unprecedented or seem to be out of step with the international law, in Justice O’Connor’s words, ‘this conclusion may unravel.’” She doesn’t explain whether she means “unravel” as a matter of statutory interpretation, which is nominally what she was doing in Hamdi, or some sort of constitutional limit on the political branches.

#### There’s no extra-AUMF threats- the government is only chasing AQAP and that doesn’t challenge the AUMF

Daskal, 13 -- Georgetown University’s Center on National Security and the Law fellow and professor

[Jennifer, counsel to the Assistant Attorney General for National Security at the Department of Justice from 2009-2011, served on the joint Attorney General and Secretary of Defense-led Detention Policy Task Force, prior to joining DOJ Jen was the senior counterterrorism counsel at Human Rights Watch, and also previously worked as a staff attorney at the Public Defender Service for the District of Columbia, and Steve Vladeck, professor of law and the associate dean for scholarship at American University Washington College of Law, "After the AUMF: A Response to Chesney, Goldsmith, Waxman, and Wittes," Lawfare, 3-17-13, www.lawfareblog.com/2013/03/after-the-aumf/, accessed 8-23-13, mss]

First, it is not clear that any splinter terrorist groups pose the kind of threat to the United States that justify a congressional authorization of military force—or the application of law-of-war tools. In the recently released Intelligence Community Worldwide Threat Assessment, only al Qaeda in the Arabian Peninsula (“AQAP”) is described as having the intent and capacity to launch attacks on the U.S. homeland. But as CGWW themselves acknowledge, AQAP is one group that appears to fall neatly within the definition of “associated forces” that both the Obama Administration and Congress (in the FY2012 National Defense Authorization Act) have deemed covered by the AUMF, i.e., “an organized, armed group that has entered the fight alongside al-Qaeda” and that is a “co-belligerent with al-Qaeda in hostilities against the United States or its coalition partners.” Thus, the threat posed by AQAP appears to be squarely covered by the AUMF as currently interpreted, and it is not clear why any new authorities are needed for them.

### Circum

#### Label terrorist

Amira ’12 (Dan Amira, NY Mag, “Obama Adminstration Limits Civilian Deaths From Drone Strikes by Labeling Everyone a Terrorist”, <http://nymag.com/daily/intelligencer/2012/05/obamas-self-serving-drone-policy.html>, May 29, 2012)

President Barack Obama talks on the phone with British Prime Minister David Cameron in the Oval Office, Feb. 13, 2012. (Official White House Photo by Pete Souza) This official White House photograph is being made available only for publication by news organizations and/or for personal use printing by the subject(s) of the photograph. The photograph may not be manipulated in any way and may not be used in commercial or political materials, advertisements, emails, products, promotions that in any way suggests approval or endorsement of the President, the First Family, or the White House. Obama always turns off the lights for his toughest decisions. Drone strikes have proven to be one of the Obama administration's most successful tools in the war on terrorism, or the "overseas contingency operation," or whatever it's supposed to be called now. But they can also be a legal and logistical mess. Today the Times takes the deepest look yet at President Obama's process for determining which suspected terrorists are candidates for targeted assassinations and whether to give the go-ahead for a particular strike. It's a tricky business, balancing national security with respect for due process and the likelihood of collateral damage. For example, what if a high-value target is surrounded by other, possibly innocent people? Do you pull the trigger anyway? The story portrays this as a particular concern of Obama's: If the agency did not have a “near certainty” that a strike would result in zero civilian deaths, Mr. Obama wanted to decide personally whether to go ahead. Not too much of a concern, though. Because when it's unclear whether people in the vicinity of a terrorist target are fellow combatants or innocent civilians — terrorists don't usually wear "I ♥ Al-Qaeda" t-shirts, after all — Obama errs on the side of guilt. ... Mr. Obama embraced a disputed method for counting civilian casualties that did little to box him in. It in effect counts all military-age males in a strike zone as combatants, according to several administration officials, unless there is explicit intelligence posthumously proving them innocent. Counterterrorism officials insist this approach is one of simple logic: people in an area of known terrorist activity, or found with a top Qaeda operative, are probably up to no good.

## DA

### UQ

#### US Saudi counter terror cooperation high now- AQAP incentives

Katulis 9/18 (Brian, is a Senior Fellow at the Center for American Progress, September 18, 2013, “Understanding the Threat to the Homeland from Al Qaeda in the Arabian Peninsula

Testimony Before the Subcommittee on Counterterrorism and Intelligence, Committee on Homeland Security”, <http://www.americanprogress.org/issues/security/report/2013/09/18/74604/understanding-the-threat-to-the-homeland-from-al-qaeda-in-the-arabian-peninsula////TS>)

AQAP maintains a strong regional focus—particularly against the governments of Yemen and Saudi Arabia. Yemeni and Saudi officials have been the targets of AQAP attacks since the group’s formation in 2009, most notably an attempt against Saudi Arabia’s then-counterterrorism chief Prince Mohammed bin Nayef. Saudi intelligence also played a crucial role in disrupting a May 2012 AQAP plot to bomb a U.S.-bound airliner with an improved underwear explosive. The threats posed by AQAP produced incentives for several countries in the region to work more closely with the United States on counterterrorism efforts, most notably Saudi Arabia, which hosts a drone base from which the United States conducts operations against AQAP in Yemen.

#### Relations are key to counterterror- cooperation isn’t guaranteed – means if we win a risk that Saudi disagrees with our counter terror policies the link turns the case

Byman 11—Prof in the Security Studies Program at the School of Foreign Service at Georgetown. Research Director at the Saban Center for M.E. Policy at Brookings (Daniel, What's Next for Yemen?, 22 March 2011, <http://www.brookings.edu/opinions/2011/0322_yemen_byman.aspx>)

**Saudi Arabia may destabilize things even further. Riyadh views Yemen as the kingdom's backyard and worries that instability there could spread north**. Saudi Arabia has often tried, and often failed, to play kingmaker in Yemen. Should a new ruler in Sanaa try to hew an independent line from Riyadh, as Saleh did, the Saudis may give financial and other support to his enemies. **For the United States, the biggest worry is terrorism**. Osama Bin Laden could take advantage of additional instability to channel more resources to Yemen. No matter what, AQAP will take advantage of any easing of pressure to plan more attacks and build their organization. A new government, like Saleh's, would probably see AQAP as a relatively minor threat and would focus its intelligence services and political energies on its domestic enemies and rivals, leaving counterterrorism a distant second. **There is only so much cooperation the United States can buy. U.S. influence in Yemen is quite limited. The United States can try**, like Saudi Arabia does, **to support its favored local factions against their rivals. This may put Washington crossways with Riyadh if we have different favorites**. An even bigger problem is that **the United States lacks the intelligence for such deft dancing and would likely be manipulated by local players**.

#### Current aid is not perceived – American policy appears divided due to Saudi appeasement

Thomas **Carothers** is vice president for studies at the Carnegie Endowment for International Peace and the author of the report "Democracy Promotion Under Obama: Revitalization or Retreat?" **February 8**, 2012. “Obama bows to Arab royalty in democracy push,” http://www.japantimes.co.jp/text/eo20120208a4.html

Just after the first anniversary of the onset of the Arab Spring, the Obama administration announced in December an enormous arms sale to Saudi Arabia, with a price tag greater than the annual gross domestic product of more than half the countries in the world. The administration hailed the sale as a "historic achievement" that "reinforces the strong and enduring relationship between the United States and Saudi Arabia." The close juxtaposition of the anniversary and the apparent repair of the temporary rough patch in U.S.-Saudi relations highlights crucial overlooked realities about the Arab Spring and the U.S. response. Although accounts of the Arab Spring often refer to a wave of political change washing across the Middle East, the reality is otherwise. The wave has bisected the region, swamping one half while leaving the other barely damp. Governments in the majority of the region's republics, namely Tunisia, Egypt, Libya, Syria and Yemen, have been toppled or have faced serious domestic siege. In startling contrast, however, all of the region's monarchies appear secure, with the possible exception of Bahrain. Most have enough oil money to keep their citizens well off, and some have a special religious legitimacy. We should keep in mind that the various autocrats in the region who fell from power last year also looked to be well-entrenched, for all sorts of solid and frequently elaborated reasons, right up until the moment they no longer were. In this time of political surprises, which often stem from sudden, roiling popular protests, betting on reliable autocrats is more perilous than ever. U.S. President Barack Obama says that he recognizes this reality. He declared in May that "after decades of accepting the world as it is in the region, we have a chance to pursue the world as it should be" and that it will be "the policy of the United States to promote reform across the region." And it is true that where political upheaval has hit, the U.S. has usually backed democratic change, sometimes actively, as in Libya; sometimes hesitantly, as in Egypt. But where autocratic stability continues to reign, the administration sticks to the decades-old U.S. policy of uncritical support for friendly dictators who are helpful on matters of security and economics. When the government of Bahrain cracked down harshly on the massive protest movement within its borders last spring, the administration basically folded. The U.S. was unwilling to risk jeopardizing the convenient Persian Gulf home of the U.S. Navy's 5th Fleet for the sake of its commitment to Arab democracy. Saudi Arabia's military participation in Bahrain's crackdown and its steadfast opposition to even a glimmer of liberalization within its own borders has not deterred the administration from enthusiastically reaffirming the intimacy of U.S.-Saudi ties. Consider also that, despite having taken no serious steps toward democratic reform in response to popular demands for change, Jordan's King Abdullah has received only praise and aid from Washington. A **stark division** underlies U.S. policy in the Middle East. Serious efforts to bolster democratic transitions in parts of the region are carried out alongside firm support for most of the remaining nondemocratic governments. This **two-faced stance**, little remarked on in Washington but **glaringly evident in the region**, badly undercuts the persuasiveness of our democracy promotion efforts.

### Link

A. Our drone policy is centered around protecting Saudi security – they make all of the drone targeting decisions

LarouchePac 2/9/13 ("Brennan's Lies About US-Saudi Drone Attacks on Yemen Exposed")

Of all the theaters in which the Obama Administration is conducting drone strikes, Yemen seems to be John Brennan's favorite. And no wonder: earlier this week, when it was reported that the U.S. drone strikes in Yemen are launched from a U.S. base in neighboring Saudi Arabia, the Washington Post also reported that Brennan, a former CIA station chief in Saudi Arabia, had played a key role in negotiations with the Saudi government over the base, which was set up two years ago. And it seems clear that the Saudis also play a key role in targeting decisions, since most of those targeted pose much more a threat to the Saudi and Yemeni regimes, than to the United States.

#### The plan is a thinly veiled threat to the regime – going against Saudi will in Yemen is viewed as a challenge

Terrill 11 (Dr. W. Andrew, Strategic studies Institute, Jan 2011"The Conflicts in Yemen and US National Security")

A key country that must be considered in formulating Yemen policy is Saudi Arabia. Riyadh is Yemen’s chief aid donor and often considers itself to have a special relationship with Yemen that affords it an elevated and privileged role in providing external guidance to Sana’a. Some observers suggest that **Saudi Arabia views** this role as **so important** that challenging Saudi interests in Yemen is sometimes viewed as equally offensive as interfering in Saudi domestic politics. Riyadh has become especially sensitive about Yemen issues **in recent years** and even intervened militarily on the side of the Yemeni government in the most recent phase of the Houthi war in Sa’ada province. The Saudis are also deeply involved with Yemen in the struggle against al-Qaeda due in part to a 2009 merger of the Saudi and Yemeni branches of this organization. The merger occurred following the decision of Saudi al-Qaeda members to flee to Yemen to rebuild their battered organization. Saudi Arabia’s special relationship with Yemen can both help and hinder U.S. objectives for that country.

#### And, the alliance is fragile – drone cooperation is the only thing keeping the peace in light of US support for rising Arab Spring democracies

The Washington Post 2/6/13 (Max Fisher, Post Foreign Affairs Blogger, MA in Security Studies, John Hopkins, "Beyond Secret Drones: The Roots of the Awkward, Improbable, Contradictory US-Saudi Relationship")

That cooperation appears to have deepened after September 2001, but it has also suffered some blows since the Arab uprisings began in early 2011. The Saudi government, which tightly restricts civil liberties and political rights, is deeply skeptical of pro-democracy movements. The United States’s very public support for protesters in the Arab world, and its pressure on the remaining authoritarian regimes to reform, has put it at odds with the Saudi royal family. That’s not just because the Saudis likely fear popular unrest, but because the Arab Spring has threatened their own influence in the region.¶ One particularly awkward flashpoint has been Bahrain, a Shia-majority Gulf nation that is ruled by a Sunni monarchy closely allied with both Riyadh and Washington. The United States has been noticeably silent on Bahrain’s pro-democracy movement and on the monarchy’s continued imprisonment of several high-profile activists. There are probably several reasons for this – the United States houses an entire naval fleet in Bahrain – but analysts often portray it as [a cost of the Saudi alliance](http://www.theatlantic.com/international/archive/2011/06/time-to-disband-the-bahrain-based-us-fifth-fleet/240243/). In 2011, Saudi troops [entered Bahrain](http://www.guardian.co.uk/world/2011/mar/14/saudi-arabian-troops-enter-bahrain) to help quell the largely peaceful protests.¶ The two years of secrecy surrounding the U.S. drone base in Saudi Arabia, perhaps almost as much as the base itself, highlight the contradictions in the U.S.-Saudi relationship. The Obama administration has requested that news organizations not report on the base in part because, according to the Washington Post’s reporting, it believed the disclosure could “potentially damage counterterrorism collaboration with Saudi Arabia.”¶ The Saudi government, in other words, seems to believe that the U.S. drones make their country safer. But it also seems to fear that public Saudi knowledge of the drones could be dangerous. The same might be said for the Saudi government’s view of the U.S. troops deployed to its soil in 1991 to protect against Hussein and again in 2003 to topple him. The United States faces a contradiction of its own, as it strives to publicly support Middle Eastern pro-democracy movements while closely collaborating with an authoritarian government that opposes them.¶ Analysts, including Coll, have wondered how long the United States and Saudi Arabia could possibly maintain an alliance with such glaring contradictions. But as American drones fly out of Saudi Arabia, and as a former Riyadh station chief potentially takes over the CIA, it seems that both countries are still, despite it all, committed to one another.

#### B. Perception matters --- Riyadh wants to be the king-maker --- they’ll perceive the plan as the US backing out

Joseph Logan, 6/18/2011. “Analysis: Yemen crisis puts Saudi in powerbroker's bind.” http://www.reuters.com/article/2011/06/18/us-saudi-yemen-idUSTRE75H16T20110618

Fearing both civil war and sweeping political reform as results of the crisis in Yemen, Saudi Arabia is struggling with its role as **regional kingmaker**. While publicly backing Yemeni President Ali Abdullah Saleh, still in a Saudi hospital after being wounded in fighting in the capital Sanaa after months of protests aimed at ousting him, Riyadh has also tried to broker a succession on its own terms. That has entailed forging relationships with tribal chieftains, politicians and army officers long cultivated by the Saudis as counterweights to Saleh's 33-year rule, but they are too many and too fractious to provide a ready-made successor. And the very process of negotiating a political exit for a neighboring ruler it no longer supports has raised talk of representative government, feared by the kingdom that is the world's top oil exporter. "It (Saudi Arabia) will try to stop a move to any real democratic system in the country," political analyst Ahmed al-Zurqa said. "This is the problem." The Saudi-dominated Gulf Cooperation Council (GCC) mediated three aborted deals with Yemeni opposition parties under which Saleh would step down and be spared prosecution for misconduct including bloody crackdowns on protesters who took to the streets as pro-democracy activism swept the Arab world. Each time, Saleh backed out at the last minute. His last demurral, in May, triggered two weeks of fighting with the al-Hashed tribal confederation led by the al-Ahmar family, culminating in a June 3 attack on Saleh's palace. That may have sealed Saleh's fate for the Saudis, said Sheila Carapico, a Yemen expert and political science professor at the American University of Cairo. "We don't even know if he'll be well enough to go back (from Saudi Arabia), but apart from that, I think they've lost faith in him," she said. SON, NEPHEWS NOT JUMPING SHIP Saudi and Yemeni state media still stress Riyadh's relationship with Saleh. Wary that Yemen could slip into further chaos, Saudi Arabia has begun shipments of a grant of 3 million barrels of oil to alleviate fuel shortages now gripping Yemen. At the same time, flirtation with his enemies is evident. Sadeq al-Ahmar, a leading al-Hashed figure, said after a round of clashes which devastated parts of the capital that he was keeping a truce only out of respect for Saudi King Abdullah. Opposition parties ranging from socialists to Islamists of both the Sunni and Zaydi Shi'ite sects, and which signed off on the GCC deals, lost credibility with "Arab Spring"-inspired youths who have emerged as a separate Yemeni constituency. "We believed, and still believe, that the Gulf states do not want the youth revolution to succeed in Yemen, so that its effects won't spread to the other states of the region," said democracy activist Omar Abdelqader. The opposition parties have participated in negotiations with Yemen's acting leader, Vice President Abd-Rabbu Mansour Hadi, in which the absent president's fate was not broached. U.S. diplomats helped broker those talks. But with Washington apparently preparing to pursue attacks on al Qaeda in Yemen with more use of CIA-operated drones, analysts believe it may have satisfied its needs in Yemen, and will leave kingmaking to the Saudis. "I don't think the U.S. has a policy on Yemen," Carapico said. "One part is we back the Saudis and whatever they want is good enough for us, and then the other part of it is we really, really don't like al Qaeda."

#### C. The Saudis would hate the plan – they’d lose their leverage with Washington

Canada Free Press 4/30/13 (Cliff Kincaid, "Another Cover-Up for the Saudis?")

The Post finally blew the whistle on its own cover-up, acknowledging that “an informal arrangement among several news organizations” had been in existence to protect the Saudi role in the drone attacks.¶ The paper [said](http://www.washingtonpost.com/blogs/erik-wemple/wp/2013/02/06/news-orgs-had-informal-arrangement-not-to-mention-saudi-drone-base/) that it “had refrained from disclosing the location at the request of the administration, which cited concern that exposing the facility would undermine operations against an al-Qaeda affiliate regarded as the network’s most potent threat to the United States, as well as potentially damage counterterrorism collaboration with Saudi Arabia.”¶ Anwar al-Awlaki in Yemen, an American citizen, was said to be the first target of a Saudi-based American drone strike. His son, also an American citizen, was later killed in a drone attack.¶ The Saudis claim they are cooperating with the U.S. They say that in October 2010, Saudi intelligence officials provided key information to American officials that foiled an attempted terrorist plot involving bombs heading to the United States that originated in Yemen.¶ But the Saudi role in the drone attacks gives the Saudi regime leverage over the Obama Administration. It might come in handy if Saudis were implicated and detained in terrorist attacks on the United States.¶ The Saudis and their U.S. allies, especially in the oil business, are heavy hitters in Washington, D.C.

#### Saudi wants a weak Yemen

Knickmeyer, staff for Pulitzer Center, 2011 [Ellen, July 6, “Trouble Down South”, http://pulitzercenter.org/articles/riyadh-saudi-arabia-yemen-abdullah-saleh-king-abdul-aziz]

For Yemenis, suffering under worsening shortages of food, water, gasoline, and electricity in a country adrift, the answer to the question of what comes next in the stalemate lies partly with Saleh, partly with themselves, and partly with Saudi Arabia. Critics for decades have accused Saudi Arabia of purposefully fostering a Yemeni government too immature to ever pose a state threat to Saudis. "Keep Yemen weak," King Abdul Aziz is supposed to have told his sons on his deathbed, in one of two such warnings the founder of the modern Saudi state handed down to his sons and grandsons. In interviews, Saudi officials and their supporters insist that even if Saudi Arabia once favored a Yemen that was neither too stable nor unstable, its position has changed: Saudi Arabia now wants a Yemeni government strong enough to quell the country's internal chaos. "Saudis more than anyone else don't like chaos. Change they can deal with; they don't like chaos.... For the Saudis, Yemen is a problem to manage. It's not a problem to be fixed," said a Western diplomat. The kingdom's supporters maintain that Saudi Arabia deserves credit for pushing a Gulf Cooperation Council (GCC) plan that would force out Saleh -- a longtime Saudi ally, though an unreliable one -- and bring new elections in Yemen. But can Saudi Arabia, among the most risk-adverse of states, tolerate the kind of unruly transition to democracy that demonstrators in Yemen's streets have been demanding for the past five months? Even in Saudi Arabia, many doubt it.

### Impact

#### Long term Saudi realignment with China is slow and inevitable – the plan drastically accelerates the switch

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In a tag team maneuver King Abdullah sent long time American ambassador Prince Bandar and his successor Prince Turki al-Faisal on a series of meetings to Beijing. The result has been a **steady series** of energy, trade, and securityagreements. As recently as a month ago Saudi Arabia and China inked a major civil nuclear cooperation agreement that has heralded much speculation about the future of Saudi nuclear ambitions and the extent of Chinese cooperation. While in the backdrop of the escalating tensions in the Persian Gulf and increasing economic pressure on Iran, the Saudi's have been engaging in a **mini-version of shuttle diplomacy** with China. Earlier this month the Saudi's assured Asian oil partners, but China in particular, that Saudi Arabia's reserve production capacity was more than enough to cover an Iranian shortfall. The goal being to leverage China from its protective stance over Iran, and join in the oil embargo or at least not impede further action by the United Nations Security Council. The flowering of the Sino-Saudi relationship has been remarkable both for its rapidity and the depth of some its connections. **However, there are significant stumbling blocks** for the development of a permanent alliance, and questions over what the goals of the relationship are. At the end of the day Saudi Arabia is still incredibly dependent upon the United States and the Western powers for its security guarantee. This is easily evidenced by the quantity of US bases in the region, the willingness of the US to deploy significant assets to the Gulf, and of course the nearly US$60 billion arms deal announced late last year. There is also a relative confluence of policy aims between Saudi Arabia and the United States over Iran, Syria, and Lebanon, something not evident with Beijing especially in light over their veto of the United Nations security council resolution on Syria. Indeed, it could be said that a growing Sino-Saudi relationship could reap dividends for the United States in the short to medium term. If Saudi Arabia can use its oil weight to leverage China out of its protective embrace of Iran, or to abandon its objections to a Syria intervention, Washington would uncork some champagne bottles. The use of Saudi crude to effect a more cooperative outlook on regional policy would be a major coup, and is a clear goal of the current diplomatic offensive by Riyadh. The real danger for the United States, and where Saudi Arabia may be hedging its bets, is **in the long term**. As Chinese power rises and it may in the coming decades become a viable replacement for the US security guarantee. This would afford Riyadh with what it has always dreamed of, a powerful and compliant protector. An alliance of the autocrats would relieve Saudi Arabia of the ceaseless pressures to reform, to end crackdowns, and to restrain its foreign policy - returning those decisions exclusively to the royal court instead. **More immediately**, the decision to forge ties with China may serve as a hedge against current pressures from the United States. Washington may **not want to push the envelope with Saudi Arabia**, if it believes it will push the al-Saud further into the Chinese orbit. This gives Riyadh wiggle room in its relationship with the United States, and gives China a risk free way to influence US regional policy objectives. Saudi Arabia has never had a duality in its foreign relations, it has been tethered to the United States virtually since the modern state was founded in the early 1930s, a relationship cemented by a state visit from President Roosevelt in 1945. The creation of a countervailing force with China as an ally is a new game for Saudi Arabia, and a relatively new one for China as well. It is also proving to be an increasingly useful tool for both, and will likely define the regional dynamic in the coming decade.

#### Near-term realignment spurs domestic debate in China, threatening the political transition

Meidan ’12 – an analyst in Eurasia Group’s Asia practice (Michal Meidan, March 13, 2012. “China's fast-growing Middle East problem,” http://eurasia.foreignpolicy.com/posts/2012/03/13/chinas\_fast\_growing\_middle\_east\_problem)

But Beijing's Middle East strategy is hardly the coherent, well-thought-out doctrine that some believe. Instead, it's the product of a number of (sometimes competing) domestic interests that must be coordinated **each time a crisis unfolds**. Worryingly for Beijing, as China's commercial ties to the Middle East increase, it will inexorably become more involved in the region's politics. In the process, the risk of antagonizing an important commodity supplier, getting on the wrong side of Washington, or fueling unwanted domestic debates will become more costly and more complicated. Some argue, simplistically, that when China blocks pressure on Iran to protect its commercial relations with that country, it pays no price for it. The reality is not nearly that simple. First, Beijing's decisions on Iran and Syria have clearly irked Washington. Secretary of State Hillary Clinton dubbed the Syria veto "despicable." Moreover, ongoing oil trading between China and Iran has already led Washington to slap sanctions on a Chinese trader. In a year of presidential elections in the U.S. and political turnover in China, when both sides are trying to keep tensions at bay, Middle East politics will burden an already complicated relationship with an unwelcome irritant. But Beijing has more than the United States to worry about. Take China's ties with Saudi Arabia, which provides China with almost one fifth of its oil. Beijing's reluctance to support Western-led sanctions on Iran isn't going down well in Riyadh either. Nor has China's decision to veto the U.N. Security Council's Syria resolution, a choice that Beijing claims was intended to prevent the situation on the ground from escalating further. Finally, several diplomatic principles -- non-interference in a third country's sovereignty, support for non-proliferation, China's rise as a responsible stakeholder -- are increasingly being called into question by other governments. The decision to veto the U.N. Security Council resolution on Syria may have been motivated by diplomatic principles of non-interference in a country's sovereignty and by Beijing's desire to prevent the situation from getting worse, but it has plainly damaged popular perceptions of China elsewhere in the region, and Premier Wen Jiabao's criticism of the Iranian nuclear program rings hollow to Western ears. When thinking about its foreign policy goals, does Beijing really want to provide the **security framework** for the Middle East? These are difficult debates that Chinese leaders must have, but they will certainly want to **postpone them until after Beijing's leadership transition is complete next year**.

#### Failure of reform causes multiple nuclear wars

Yee and Storey 2 (Herbert Yee, Professor of Politics and International Relations at the Hong Kong Baptist University, and Ian Storey, Lecturer in Defence Studies at Deakin University, 2002 (The China Threat: Perceptions, Myths and Reality, RoutledgeCurzon, pg 5)

The fourth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in **territorial fragmentation, civil war and waves of refugees** pouring into neighbouring countries. Naturally, any or all of these scenarios would have a **profoundly negative impact** on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialisation and pollution. These problems are putting a strain on the central government's ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China's neighbours. A fragmented China could also result in another nightmare scenario - nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords.'2 From this perspective, a disintegrating China would also pose a **threat to** its neighbours and **the world**.