## 1

#### Banning one state practice only leads to others—state is a complex system

Crandall 13

[Carla Crandall, Law Clerk to the Honorable Carolyn Dineen King, U.S. Court of Appeals for the Fifth Circuit. J.D., J. Reuben Clark Law School, Brigham Young University, 2013 Seton Hall University School of Law¶ Seton Hall Law Review 2013 Seton Hall Law Review¶ ¶ 43 Seton Hall L. Rev. 595 “If You Can't Beat Them, Kill Them: Complex Adaptive Systems Theory and the Rise in Targeted Killing”, <http://erepository.law.shu.edu/cgi/viewcontent.cgi?article=1466&context=shlr>, \\wyo-bb]

Similarly, targeted killing also may have emerged as a means of self-organization in conjunction with the rejection of enhanced interrogation techniques. Though, as noted above, most observers would classify the tactics pursued under President Bush as torture, some argue that the Obama Administration has gone to the other extreme - instating interrogation policies that have totally neutered the process of any effectiveness. n262 Under President Obama, personnel within the Justice Department have reported, for example, that interrogators have "pulled in [their] claws" because they are "not going to defend [themselves] in terms of using interrogation techniques to acquire intelligence information that goes beyond [what President Obama has authorized], even though the law would permit it." n263 Although "dead terrorists tell no tales," n264 some argue that the rise in targeted killing has emerged in the midst of an already declining utility in interrogation. n265 Further, the debacle surrounding the government's use of enhanced interrogation techniques has created a situation whereby¶ ¶ ¶ the disincentive to capture and instead kill by standoff missile strike ... [is] reinforced by the strong desire - not just at the national policy level but also by midlevel people intensely concerned for down-the-road, backward-looking changes in the rules on ... interrogation ... that might burn them later on - not to hold anyone if at all possible. n266¶ ¶ In other words, based on the view that it is better to kill than torture, the system's agents perhaps have maladapted toward a preference for targeted killing.¶ Though in discussing these issues commentators have not described the increase in targeted killings as a form of self-organizing behavior per se, they at least conceptually have recognized that the practice has emerged as a means of achieving order within the complex system of national security law. One scholar has suggested, [\*639] for example, that the Obama "Administration's opposition to Guantanamo and to enhanced interrogation has led it to see even more clearly the convenience of taking the fight to the enemies' homes and hideouts and killing them before they come within the purview of the U.S. justice system." n267 In this way, the expansion of the drone program has resulted from what has been called a ""balloon effect' in national security law," which is to say that it has emerged "as the result of squeezing out what many experts ... regard as effective wartime domestic policies, such as those permitting detention at Guantanamo and enhanced interrogation techniques." n268¶ Whether this behavior is described with the imagery of squeezing a balloon or squeezing Jell-O, the reality may be that these adaptations toward equilibrium within the realm of national security are representative of the property of self-organization that is inherent in all complex adaptive systems. To the extent this is true, as Professor Anderson alluded to, targeted killing may simply have "popped out" as a result of the "squeeze" being placed on the government's detention policies. n269 Stated differently, the increase in targeted killing via drones arguably has emerged as an unintended consequence of efforts to grant detainees greater rights.¶ Of course while this might suggest that humans have no control over system behaviors, it is worth repeating that humans can influence system outcomes. This, however, evidently is not what has happened with targeted killing, as "senior administration officials say that no policy determination has been made to emphasize kills over captures." n270 Rather, the expanded use of drones seems to have occurred without the deliberative decision-making process one would hope to see as the United States engages in such practices. In other words, the rise of the drone, and the government's emphasis on targeted killing, perhaps is simply an archetypical example of the law of unintended consequences wreaking havoc on the co-evolving complex adaptive systems of war and law.

#### That masks the laws foundation as the cause of violence

BERMAN (Prof of Law at Brooklyn Law School) 2004

[Nathaniel, “Privleging Combat?”, Columbia Journal of Transnational Law, p. ln //wyo-tjc]

**Through examining the legal doctrines crucial to defining the combatants' privilege**, in my view the key concept of jus in bello, **this Article seeks to undo the circumlocutions that often block frank discussion of the relationship of law to war. Contrary to conventional wisdom**, I argue that it is misleading to seelaw's relationship **to war** as **primarily** one of **the** limitation **of organized violence, and even more misleading to see the laws of war as historically progressing toward an ever-greater** **limitation of violence. n6** Instead, I put forward three central propositions. First, **rather than standing in opposition to war,** law has long been directly involved in the construction of war **- the construction of war as a separate sphere of human activity in [\*5] which the "normal" rules of social life, codified, for example, in the domestic criminal law regulating violence, do not operate. n7** Rather than opposing violence**, the** legal construction of war **n8 serves to** channel violence into **certain** forms **of** activity engaged in by certain kinds of people, while excluding other forms engaged in by other people. n9

#### The Alternative is to write against the state.

Neocleous 2003

[Mark, Teaches politics @ Brunel, Imagining the state, Philadelphia: Open University Press, 6-7/uwyo-ajl]

The last point should indicate to the reader that this is a polemical book about a polemical topic. As such, I should be clear about my intentions. If a hidden agenda seems nasty, then an exposed one looks downright impudent.13 Writers these days increasingly like to stand aside from the affray. This is nowhere more obvious than in books in which affray is a central issue-namely books on issues such as the state, power and capital. On the one hand, this is no doubt due to the fate of the academy in contemporary capitalism-academic research assessment exercises which seem to have knocked the political stuffing out of seemingly political writers (best not write anything too political about this political topic, in case it damages one's promotion prospects). On the other hand, it is also clearly connected to the demise of any coherence the Left once had. Writers on the Left appear to be happier to retreat into ever more exegetical work on text after text, with little sense as to the purpose of reading political writers in the first place. Or, worse, they have bought into the stunningly naive socio-political claim that we have moved into a world in which there is politics without enemies.4 (And if there are no enemies, then there is no ground for any fundamental disagreement and thus no real need to say anything interesting at all.) Too many intellectuals on the Left have thus developed an instrumental inability to think beyond the instructions and parameters provided for them by the state and one of its key ideological apparatuses - the university. So let me say that this book is written from outside the statist political imaginary (or at least as much as one can be outside it), and also against it. To write against the statist imaginary is thus intended as an act of resistance - though admittedly not the bravest act of resistance one might imagine, since the state aims to dominate the thought of even those who oppose it (indeed, one might say especially those who oppose it). Pierre Bourdieu has argued that `to endeavour to think the state is to risk either taking over, or being taken over by, the thought of the state','~ and as I argue in Chapter 2, as part of its administration of civil society the state aims to structure the way we view the world by generating the categories through which citizens come to imagine collective identity and thus their own political subjectivity. One of the implications of this is that the statist political imaginary has assisted the state in setting limits on the theoretical imagination, acting as a block on the possibility of conceiving of a society beyond the state.This is a book that tries to think the state without either taking over or being taken over by the thought of the state. It therefore rests on a different political imaginary, one which I mention here and return to only briefly at the very end of the book, which arises out of the tradition of the oppressed which teaches us that the `state of exception' in which we live is not the exception but the rule. As Walter Benjamin recognized, to write against the state of exception in this way is to aim to bring about a real state of emergency which imagines the end of the state, and thus an end to the possibility of fascism.

## 2

#### The Executive Branch of the United States should issue an executive order to establish an intra-executive drone tribunal with jurisdiction over targeted killing orders that approves or rejects drone strikes based on a strict scrutiny test.

#### CP solves independence, accountability, public scrutiny/transparency

Radsan & Murphy 2010

[Richard Murphy is the AT&T Professor of Law, Texas Tech University School of Law. Afsheen John Radsan is a Professor, William Mitchell College of Law. He was assistant general counsel at the Central Intelligence Agency from 2002-2004., MEASURE TWICE, SHOOT ONCE: HIGHER CARE FOR CIA TARGETED KILLINGhttp://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1625829, uwyo//amp]

The CIA’s Inspector General (IG) is charged with investigating the legality of CIA actions.182 He or she is experienced with protecting classified information. His or her independence is protected by a statute that permits only the president to remove the IG.183 And he or she has a dual reporting line to the CIA Director and to the congressional oversight committees.184 The CIA’s IG is thus our preferred candidate. The CIA’s IG should review all the CIA’s targeted killings for reasoned decision making. Based on this review, an IG could recommend internal discipline, compensation to unwarranted victims of a strike, or, in an extreme case of abuse, referral to the Department of Justice for criminal proceedings. The IG should also be involved in reviewing the CIA’s internal procedures on target selection and execution of attacks. IG’s due process, so to speak, substitutes for what otherwise might come from the courts. To enhance accountability, the IG could prepare public reports detailing as much information on strikes as reasonably consonant with national security. Such reports would need to balance the interests of accountability against the CIA’s need to enable foreign governments to keep their role in assisting U.S. intelligence a secret. They would also need to avoid excessive revelations of sensitive sources and methods. Given the limited number of CIA strikes, the dangers this program poses to peaceful civilians now and in the future, and the extensive data concerning each strike, it is feasible for the IG to conduct an investigation of all CIA drone strikes. These investigations will not guarantee perfection. Nothing can. But they will help ensure the accuracy and the legality of strikes, curb abuses, and provide a modicum of accountability for a shadow war. Because they are feasible under the laws of war, IHL requires them.

## 3

#### Obama won’t negotiate now strengthens his hand – plan is a loss the saps capital and emboldens republicans

Christopher Flavelle, member of Bloomberg View's editorial board, “Flavelle: Barack Obama may have to cave on debt ceiling,” 9/25, 2013

President Obama says he won't negotiate with Republicans over the debt ceiling. That may be a good bargaining tactic, but if push comes to shove, is it good policy? There's no question that Obama strengthens his hand by saying, as he has over and over again, that he won't let Republicans use the debt ceiling to extract concessions from Democrats, whether it's Obamacare, the Keystone XL pipeline, spending cuts or anything else. In theory, that should make Republicans think twice about failing to raise the debt ceiling, by reducing their expectations of winning the fight. But what if the tactic doesn't work? What if House Republicans make good on their promise not to raise the debt ceiling without getting something in return, and on Oct. 17 Obama has to choose between caving in or letting the country renege on its obligations? To be sure, caving has all sorts of unpleasant consequences. Politically, it hurts the president's remaining credibility, emboldens Republicans and leads to policy outcomes that Democrats don't want (though what level of concessions would be required is unclear).

**Plan’s a perceived as a loss**

**Loomis 7** Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context**, In a system where a President has limited formal power, perception matters**. The reputation for **success**—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—**is the most valuable resource a chief executive can have**. Conversely, the widespread **belief that the Oval Office occupant is on the defensive, on the wane** **or without the ability to win under adversity can lead to disaster**, **as individual lawmakers calculate who will be on the winning side and negotiate accordingly.** In simple terms, winners win and **losers lose more often than not**. **Failure begets failure**. In short**, a president experiencing declining amounts of political capital has diminished capacity to advance his goals**. As a result**, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority**. **A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies**. The central point of this review of the presidential literature is that the sources of **presidential influence**—and thus their prospects for enjoying success in pursuing preferred foreign policies—**go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic**.

#### Obama’s leadership in refusing negotiation is key to prevent economic catastrophe

Jason Linkins, “The Only Way To Show Leadership In A Debt Ceiling Crisis Is To Refuse To Negotiate On The Debt Ceiling,” Huffington Post, 9/26/13

The thing about the debt ceiling is that it's not in any way, shape, or form a "partisan" issue. There's no "position" to take on it. It is not a liberal or a conservative "idea." And raising the debt ceiling confers no privileges or advantages on anyone -- it doesn't advance any policy or philosophy, and it doesn't even permit new debt. Congress has passed laws and appropriated monies. Having done so, certain obligations must be met. Raising the debt ceiling says only, "We plan on honoring our obligations." Not raising the debt ceiling means you are saying, "We would like to cause the collapse of what is colloquially known as 'the economy.'" You signed a lease. You promised to pay rent. Maybe you don't like your rent increase. Maybe it wrecks your carefully calculated budget. Know what? You have options. Move if you want. Zero out another budget item to secure the money. Do whatever you like. Regardless, on the first of the month, you pay what you owe, or you may be forcibly evicted. The debt ceiling works the same way. If you're concerned by how high it's getting, there is nothing but ample opportunity to have debates, make cuts, raise revenue, and right the budget. If the vote doesn't go your way, you go out on the campaign trail and you make your case to the electorate. Next time, the vote maybe goes your way. But on the appointed date, you raise the debt ceiling. A lot of people these days are suggesting that it's natural to make big budget deals when the debt ceiling needs to be raised. This is what we call "erroneous." Here's Jonathan Chait, enumerating the two central errors: Error No. 1: As Richard Kogan points out, since the Reagan administration began, Congress has raised the debt ceiling 45 times. Only seven of those times were attached to significant budget legislation. Basically, when Congress does a budget deal, it usually attaches a debt-ceiling hike onto it. But it doesn’t make the debt-ceiling hike contingent on the deal. Error No. 2: Boehner is not proposing a “deal,” as in a deal involving the swapping of concessions. Indeed, all the previous agreements he cites involved the two sides making mutually agreeable policy bargains. None of them, save the 2011 debt-ceiling ransom, involved Congress threatening debt default in order to extract concessions. Boehner isn’t looking for a deal, except in the sense that Richie Aprile was looking for a deal with Beansie to share the profits from his restaurant. On Thursday, Chait sized up the House GOP's "offer" on the debt ceiling. It boils down to: Implement the economic policies that Mitt Romney and Paul Ryan ran on, or else you get default. You may remember Mitt Romney and Paul Ryan from their past masterworks, which include "Losing The 2012 Election." It's impossible to take this seriously. And not just in the sense that it's unreasonable to expect the winners of a presidential election to implement the policies they opposed on the way to that win. There's a second level of pure, mountain-grown unseriousness that Josh Barro points out, having examined this same offer: the GOP's demands -- which include blocking net neutrality regs and building the Keystone pipeline -- "have little or no connection to the federal debt." This is just a list of things Republicans would like to do if they ran the government. But they don't run the government. Instead, they are contending that it is a valid legislative strategy to use the leverage of the debt ceiling—which will cause an economic crisis if it is not increased—to demand their way on any unrelated issue. The pretense that debt limit fights are about the public debt is over. Well, I wish that this was the case, but unfortunately, the odd notion that the occasion of raising the debt ceiling is an appropriate time to extract unreasonable demands has been normalized. It's now baked into the Beltway Conventional Wisdom. And along with that comes the odd notion that navigating nihilist demands -- not simply rejecting them -- is the new way that a president shows leadership. Right now, if the House GOP demanded that John Boehner be allowed to amputate Barack Obama's legs with a rusty band saw in exchange for a debt ceiling hike, the Beltway commentariat would light up with talk about how irresponsible it would be for Obama to not, at the very least, consider it. Maybe just one and a half legs. It would be a big "win" for the White House to be left with half a gangrenous stump. So instead of this moment of clarity that Barro rightly suggests should happen, here's what's going to take place. The Beltway Conventional Wisdom mavens are going to go on the offensive, and castigate the administration for its current, correct, position on the debt ceiling, which is: "There will be no negotiations on the debt ceiling." Obama's failure to properly offer some ransom to economic terrorists will be met with scorn. And here's a simple truth about all of this: Obama does, definitely, share in the blame. As Matt Yglesias points out: The absolute worst mistake Obama has made as president came back in 2011 when Republicans first pulled this stunt. At that time, Obama desperately wanted a bargain over long-term fiscal policy. So he tried a bit of too-clever-by-half political jujitsu in which GOP debt ceiling hostage taking became a pretext to start negotiations over long-term budgeting. All manner of evils have fallen forth from that fateful decisions, including an economic weak patch in 2011 the ongoing mess of sequestration, and worst of all the setting of a precedent for future crises. "A terrible monster was let out of the box in 2011," says Yglesias, "and the best thing Obama can possibly do for the country at this point is to stuff it back in and hopefully kill it." I've long wondered why, exactly, Obama decided to allow this monster to escape from the box. Part of it may have to do with his own history on debt ceiling votes. See, in the past, presidents have always gotten a clean debt ceiling hike from Congress, but it was traditional for the opposition party to allow a few of its members to rail at the president for his policies and cast votes against it. Not so many votes that it threatened the eventual outcome, just enough to make a point. And during George W. Bush's presidency, then-Sen. Obama was one of the people to vote against raising the debt ceiling. So some small part of his desire to engage in deal-making may stem from his need to be internally consistent. But it's pretty clear that he's been largely motivated by a desire to satisfy the Beltway Conventional Wisdom mavens, show "leadership" on the issue, and achieve a big, shiny Grand Bargain on the long-term budget trajectory. But Obama made two miscalculations. First, he made the mistake of presuming that the GOP would be willing to bargain, to literally exchange concessions. Second, he made the mistake of assuming that once it became clear that a bargain wasn't possible, the party refusing to bargain would be held accountable. Fortunately, this is one mistake that the White House has not seemed willing to repeat, and its current "no negotiations" stance is correct. And as Greg Sargent points out, refusing to negotiate doesn't diminish Obama's opposition at all: Democrats are not asking Republicans to give up anything in requesting that they support a debt limit hike. They are not asking Republicans to agree to more spending. They are not asking for new taxes. They are simply asking Republicans to join them in making it possible for Congress to pay obligations it has already incurred, and in so doing, avert economic catastrophe for the whole country. There is no rationale for giving Republicans anything in return for this. Indeed, this is true. If Republicans do the responsible thing, and offer a clean debt ceiling hike, they will have conceded nothing. They will still be free to block spending, deny revenue increases, stage debates on their preferred policies, enter into bargains, and use the traditional campaign cycle to make the case for whatever the legislative process denies them. There is simply no reason to use the occasion of the debt ceiling to force anyone's hand with the threat of a default apocalypse. (In fact, the willingness to act responsibly when the occasion demands and put the country first only strengthens one's bargaining position.) The truth is that by taking this "no negotiations" stance, Obama is doing the GOP a great service. See, it is an inevitability that one day, there will be a Republican president. It is similarly inevitable that this future Republican president will have to seek a debt ceiling rise from a legislature in which the Democrats have sufficient potency to stage a hostage crisis. I truly want to believe that "making government work" is so central to the Democratic Party's "brand" that it would never consider these same apocalyptic posturings. But in my experience, these parliamentary battles, when left unchecked, tend only to escalate. And the roots of vengeance run deep. It is up to Obama to break this cycle of violence (and this is perhaps fitting, since he played such a major role in unleashing it in the first place). Remember, the debt ceiling is not a partisan issue. Anyone who tells you there is a "liberal" or "conservative" position on the debt ceiling is a grand fool. It is not "liberal" to raise the debt ceiling, nor is it "conservative" to not raise the debt ceiling. Raising it is simply a necessity -- a necessity that does not negate either side's ability to debate budget levels or priorities. The refusal to raise it is simple nihilism. By holding this line, Obama is truly engaging in an act of bipartisanship. He puts the monster back in the box. He preserves basic institutional governance for both parties. He protects future presidents, Democrats and Republicans alike, from having to face the constant threat of economic apocalypse. The media will pillory him for holding firm on this. All of the old arguments, that Obama is "failing to lead," will gain new currency. But it was according those arguments some validity that got us into the mess in the first place. So hold firm he must, because it is the one and only way a president can "lead" on this issue.

#### Nuclear war

Friedberg and Schoenfeld 8

Aaron, Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute, and Gabriel, Senior Editor of Commentary and Wall Street Journal, “The Dangers of a Diminished America” <http://online.wsj.com/article/SB122455074012352571.html>

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

## 4

#### Deference to the executive now

Bazzle, J.D., Georgetown University Law Center, ‘12

[Timothy, “SHUTTING THE COURTHOUSE DOORS:¶ INVOKING THE STATE SECRETS PRIVILEGE TO THWART¶ JUDICIAL REVIEW IN THE AGE OF TERROR”, Civil Rights Law Journal, Vol. 23, No. 1, 2012, RSR]

The war on terror has led to an increased use of the state secrets¶ privilege by the Executive Branch—to dismiss legal challenges to¶ widely publicized and controversial government actions—ostensibly¶ aimed at protecting national security from terrorist threats.1¶ Faced¶ with complaints that allege indiscriminate and warrantless surveillance,2¶ tortious detention, and torture that flouts domestic and international law,3¶ courts have had to reconcile impassioned appeals for¶ private justice with the government’s unyielding insistence on protecting national security. Courts, almost unanimously, have cast their lot¶ with national security, granting considerable deference to government¶ assertions of the state secrets principle. This deference to state secrets¶ shows no signs of abating; indeed, the growing trend is for courts to¶ dismiss these legal challenges pre-discovery,4¶ even before the private¶ litigants have had the chance to present actual, non-secret evidence to¶ meet their burden of proof. Although many looked optimistically at¶ President Obama’s inauguration as a chance to break decisively from¶ the Bush Administration’s aggressive application of the state secrets privilege,5¶ the Obama Administration has largely disappointed on the¶ state-secrets front, asserting the privilege with just as much fervor—if¶ not as much regularity6¶ —as its predecessor.7¶ Judicial deference to such claims of state secrecy, whether the¶ claims merit privileged treatment, exacts a decisive toll on claimants,¶ permanently shutting the courthouse doors to their claims and interfering with public and private rights.8¶ Moreover, courts’ adoption of a¶ sweeping view of the state secrets privilege has raised the specter of¶ the government disingenuously invoking state secrets to conceal government misbehavior under the guise of national security.9¶ By granting greater deference to assertions of the state secrets privilege, courts¶ share responsibility for eroding judicial review as a meaningful check¶ on Executive Branch excesses. This Article argues for a return to a¶ narrowly tailored state secrets privilege—one that ensures that individuals who allege a credible claim of government wrongdoing retain¶ their due process rights.

#### A drones ruling would break deference based upon the political question doctrine

Rosen 2011 (Richard D. Rosen, Professor of Law and Director, Center for Military Law and Policy, Texas Tech University School of Law. Colonel, U.S. Army (retired), “Drones and the U.S. Courts,” http://repository.law.ttu.edu/handle/10601/1918)

Even if a plaintiff establishes standing to sue, the political question doctrine will almost certainly block judicial review of the nation's targeted-killing policy. The Supreme Court, in Baker v.¶ Carr,7 delineated the attributes of political questions, finding that¶ they involve at least one of the following six factors:¶ [1] a textually demonstrable constitutional commitment¶ of the issue to a coordinate political department; or [2] a¶ lack ofjudicially discoverable or manageable standards for¶ resolving it; or [3] the impossibility of deciding without an¶ initial policy determination of a kind clearly for¶ nonjudicial discretion; or [4] the impossibility of a court's¶ undertaking independent resolution without expressing¶ lack of the respect due coordinate branches of the¶ government; or [5] an unusual need for unquestioning¶ adherence to a political decision already made; or [6] the¶ potentiality of embarrassment from multifarious¶ pronouncements by various departments on one¶ 28 question.¶ The quintessential political question case is one challenging a¶ military or foreign policy decision,9 which necessarily implicates¶ virtually every Baker factor, particularly the constitutional¶ commitment of the issues to Congress and the President and the¶ lack of judicially discoverable or manageable standards for deciding¶ the issues."o Thus, federal courts have refused to review damages¶ claims arising out of cruise missile strikes against a suspected al¶ Qaeda chemical-weapons plant in the Sudan," losses suffered¶ because the United States mined a Nicaraguan harbor, injuries incurred from U.S. actions in connection with the Soviet Union's¶ shoot down of a Korean airliner, damages sustained because of¶ U.S. involvement in the Chilean coup,34 injuries caused by the U.S.-¶ 35 supported Guatemalan army, property lost from the creation of a¶ U.S. naval base on Diego Garcia, and deaths caused by equipment¶ sold to Israel under the military-sales program. Similarly, courts¶ have refused to review the legitimacy of the Government's combat¶ operations in Cambodia,3 mining of Vietnam's Haiphong¶ Harbor,3¶ " decision to go to war in Iraq,4 placement of cruise¶ 41 42 missiles in Great Britain, and testing of nuclear weapon.¶ While not all cases implicating foreign or military policies are¶ nonjusticiable, a complaint that seeks to preclude the United¶ States from engaging a particular military target or to enjoin the¶ President from employing a particular weapons system is at the¶ core of the political-question doctrine,4 especially because drones¶ are the only effective means of reaching al Qaeda and the Taliban in their Pakistani sanctuaries.

#### Non-deferential judicial review kills military readiness

Chensey 9 (Robert M. is a Professor at University of Texas School of Law, NATIONAL SECURITY FACT DEFERENCE, VIRGINIA LAW REVIEW, 17 September 2009, http://www.virginialawreview.org/content/pdfs/95/1361.pdf, pg. 1426-1428)

Advocates of deference at times also emphasize the collateral ¶ consequences that non-deferential judicial review of executive ¶ branch factual judgments might have on related government operations or activities. On this view, the benefits of judicial review—¶ measured in terms of enforcement of separation of powers values ¶ or even enhancement of accuracy—in some circumstances may be ¶ outweighed by collateral costs entailed by the very process of nondeferential, or insufficiently deferential, review. ¶ When precisely does this argument come into play? Advocates ¶ of deference do not contend that collateral costs outweigh potential benefits in all national security related litigation. Indeed, the ¶ argument played no significant role in most of the examples surveyed in Part I. Most if not all judicial review of government action, after all, entails some degree of disruption to government operations. Government personnel, for example, often are obliged to ¶ spend some amount of time and resources participating, directly or ¶ indirectly, in the process of litigation, whether by serving as witnesses in a formal sense, gathering and reviewing documents, ¶ speaking informally with attorneys or investigators, and so forth. ¶ These litigation related activities to some extent are bound to disrupt the performance of ordinary government functions. ¶ But some such disruptions are more serious than others. Disruption of military activity, for example, may impose unusually high ¶ costs. So said Justice Jackson in Johnson v. Eisentrager,¶ 218 a postWorld War II decision denying habeas rights to a group of Ger-[page 1427] mans convicted of war crimes and detained in a U.S. controlled facility in Germany. Jackson gave many reasons for the decision, but ¶ placed particular emphasis on the undesirable practical consequences that would, in his view, follow from permitting any judicial ¶ review in this setting. These included: disruption of ongoing military operations, expenditure of scarce military resources, distraction of field commanders, harm to the prestige of commanders, and ¶ comfort to armed enemies.219 The government not surprisingly emphasized such concerns in the Hamdi litigation as well, though with ¶ much less success; and similar arguments continue to play a significant role today as courts grapple with still unresolved questions regarding the precise nature of habeas review of military determinations of enemy combatant status.220¶ But even in the enemy combatant setting, where disruption concerns arguably are near their zenith, this argument does not necessarily point in the direction of fact deference as the requisite solution. It did not persuade the Supreme Court in Hamdi to defer to ¶ the government’s factual judgment, nor did it do so in the more recent decision in Boumediene v. Bush dealing with noncitizen detainees held at Guantánamo. The impact of the argument in those ¶ cases instead was to prompt the Court to accept procedural innovations designed to ameliorate the impact of judicial review, rather ¶ than seeking to avoid that impact via deference.221 This is a useful ¶ reminder that even when the executive branch raises a legitimate ¶ concern in support of a fact deference argument, it does not follow ¶ automatically that deference is the only mechanism by which the ¶ judiciary can accommodate the concern. ¶ This leaves the matter of secrecy. Secrecy relates to the collateral consequences inquiry in the sense that failure to maintain secrecy with respect to national security information can have extralitigation consequences for government operations—as well as for [page 1428] individuals or even society as a whole—ranging from the innocuous ¶ to the disastrous. Without a doubt this is a significant concern. But, ¶ again, it is not clear that deference is required in order to address ¶ it. Preservation of secrecy is precisely the reason that the state secrets privilege exists, of course, and it also is the motive for the ¶ Classified Information Procedures Act, which establishes a process ¶ through which judges work with the parties to develop unclassified ¶ substitutes for evidence that must be withheld on secrecy ¶ grounds.222

#### Military readiness key to heg

Donnelly 3 (Thomas, resident fellow at AEI, The Underpinnings of the Bush Doctrine, February 1, <http://www.aei.org/article/foreign-and-defense-policy/the-underpinnings-of-the-bush-doctrine/>) ap

The preservation of today's Pax Americana rests upon both actual military strength and the perception of strength. The variety of victories scored by U.S. forces since the end of the cold war is testament to both the futility of directly challenging the United States and the desire of its enemies to keep poking and prodding to find a weakness in the American global order. Convincing would-be great powers, rogue states, and terrorists to accept the liberal democratic order--and the challenge to autocratic forms of rule that come with it--requires not only an overwhelming response when the peace is broken, but a willingness to step in when the danger is imminent. The message of the Bush Doctrine--"Don't even think about it!"--rests in part on a logic of preemption that underlies the logic of primacy.

**Solves escalation of global hotspots- retrenchment causes bickering internationally over leadership and prevents cooperation**

**Brzezinski 2012** Zbigniew K. Brzezinski (CSIS counselor and trustee and cochairs the CSIS Advisory Board. He is also the Robert E. Osgood Professor of American Foreign Policy at the School of Advanced International Studies, Johns Hopkins University, in Washington, D.C. He is cochair of the American Committee for Peace in the Caucasus and a member of the International Advisory Board of the Atlantic Council. He is a former chairman of the American-Ukrainian Advisory Committee. He was a member of the Policy Planning Council of the Department of State from 1966 to 1968; chairman of the Humphrey Foreign Policy Task Force in the 1968 presidential campaign; director of the Trilateral Commission from 1973 to 1976; and principal foreign policy adviser to Jimmy Carter in the 1976 presidential campaign. From 1977 to 1981, Dr. Brzezinski was national security adviser to President Jimmy Carter. In 1981, he was awarded the Presidential Medal of Freedom for his role in the normalization of U.S.-China relations and for his contributions to the human rights and national security policies of the United States. He was also a member of the President’s Chemical Warfare Commission (1985), the National Security Council–Defense Department Commission on Integrated Long-Term Strategy (1987–1988), and the President’s Foreign Intelligence Advisory Board (1987–1989). In 1988, he was cochairman of the Bush National Security Advisory Task Force, and in 2004, he was cochairman of a Council on Foreign Relations task force that issued the report Iran: Time for a New Approach. Dr. Brzezinski received a B.A. and M.A. from McGill University (1949, 1950) and Ph.D. from Harvard University (1953). He was a member of the faculties of Columbia University (1960–1989) and Harvard University (1953–1960). Dr. Brzezinski holds honorary degrees from Georgetown University, Williams College, Fordham University, College of the Holy Cross, Alliance College, the Catholic University of Lublin, Warsaw University, and Vilnius University. He is the recipient of numerous honors and awards) February 2012 “After America” http://www.foreignpolicy.com/articles/2012/01/03/after\_america?page=0,0

For **if America falters**, the world is unlikely to be dominated by a single preeminent successor -- not even China. International uncertainty, **increased tension** among global competitors, **and** even outright **chaos** **would be** far more **likely** outcomes. While a sudden, massive crisis of the American system -- for instance, another financial crisis -- would produce a fast-moving chain reaction leading to global political and economic disorder**, a steady drift by America into** increasingly pervasive **decay** or endlessly widening warfare with Islam **would be unlikely to produce**, even by 2025, **an effective global successor**. No single power will be ready by then to exercise the role that the world, upon the fall of the Soviet Union in 1991, expected the United States to play: the leader of a new, globally cooperative world order. **More probable would be a protracted phase of rather inconclusive realignments of both global and regional power, with no** grand **winners and many more losers, in a setting of international uncertainty and even of potentially fatal risks to global well-being**. Rather than a world where dreams of democracy flourish, a Hobbesian world of enhanced national security based on varying fusions of authoritarianism, nationalism, and religion could ensue. RELATED 8 Geopolitically Endangered Species The leaders of the world's second-rank powers, among them **India, Japan, Russia, and** some **European countries, are already assessing the potential impact of U.S. decline** on their respective national interests. The Japanese, fearful of an assertive China dominating the Asian mainland, may be thinking of closer links with Europe. Leaders in India and Japan may be considering closer political and even military cooperation in case America falters and China rises. **Russia**, while perhaps engaging in wishful thinking (even schadenfreude) about America's uncertain prospects, **will almost certainly have its eye on the independent states of the former Soviet Union. Europe**, not yet cohesive, **would likely be pulled in several directions:** Germany and Italy toward Russia because of commercial interests, France and insecure Central Europe in favor of a politically tighter European Union, and Britain toward manipulating a balance within the EU while preserving its special relationship with a declining United States. **Others may move more rapidly to carve out their own regional spheres:** Turkey in the area of the old Ottoman Empire, Brazil in the Southern Hemisphere, and so forth. **None of these countries, however, will have the requisite combination of economic, financial, technological, and military power even to consider inheriting America's leading role.** China, invariably mentioned as America's prospective successor, has an impressive imperial lineage and a strategic tradition of carefully calibrated patience, both of which have been critical to its overwhelmingly successful, several-thousand-year-long history. China thus prudently accepts the existing international system, even if it does not view the prevailing hierarchy as permanent. It recognizes that success depends not on the system's dramatic collapse but on its evolution toward a gradual redistribution of power. Moreover, the basic reality is that **China is not yet ready to assume in full America's role in the world**. Beijing's leaders themselves have repeatedly emphasized that on every important measure of development, wealth, and power, China **will still be a modernizing and developing** state **several decades from now, significantly behind not only the United States but also Europe and Japan in the major per capita indices of modernity and national power**. Accordingly, **Chinese leaders have been restrained in laying any overt claims to global leadership.** At some stage, **however, a more assertive Chinese nationalism could arise** and damage China's international interests**. A swaggering, nationalistic Beijing would unintentionally mobilize a powerful regional coalition against itself.** None of China's key neighbors -- India, Japan, and Russia -- is ready to acknowledge China's entitlement to America's place on the global totem pole. **They might even seek support from a waning America to offset an overly assertive China. The resulting regional scramble could become intense, especially given the similar nationalistic tendencies among China's neighbors. A phase of acute international tension in Asia could ensue. Asia** of the 21st century **could then begin to resemble Europe of the 20th century -- violent and bloodthirsty.** At the same time, **the security of a number of weaker states** located geographically next to major regional powers also **depends on the international status quo reinforced by America's global preeminence** -- and would be made significantly more vulnerable in proportion to America's decline. The states in that exposed position -- **including Georgia, Taiwan, South Korea, Belarus, Ukraine, Afghanistan, Pakistan, Israel, and the greater Middle East** -- are today's geopolitical equivalents of nature's most endangered species. **Their fates are closely tied to the nature of the international environment left behind by a waning America, be it ordered and restrained or, much more likely, self-serving and expansionist. A faltering United States could also find its strategic partnership with Mexico in jeopardy.** America's economic resilience and political stability have so far mitigated many of the challenges posed by such sensitive neighborhood issues as economic dependence, immigration, and the narcotics trade. **A decline in American power, however, would likely undermine the health and good judgment of the U.S. economic and political systems. A waning United States would likely be more nationalistic, more defensive about its national identity, more paranoid about its homeland security, and less willing to sacrifice resources for the sake of others' development**. The worsening of relations between a declining America and an internally troubled Mexico could even give rise to a particularly ominous phenomenon: the emergence, as a major issue in nationalistically aroused Mexican politics, of territorial claims justified by history and ignited by cross-border incidents. **Another consequence of American decline could be a corrosion of the generally cooperative management of the global commons** -- **shared interests such as sea lanes, space, cyberspace, and the environment, whose protection is imperative to the long-term growth of the global economy and the continuation of basic geopolitical stability.** In almost every case, **the potential absence of a constructive and influential U.S. role would fatally undermine the essential communality of the global commons because the superiority and ubiquity of American power creates order where there would normally be conflict**. None of this will necessarily come to pass. Nor is the concern that America's decline would generate global insecurity, endanger some vulnerable states, and produce a more troubled North American neighborhood an argument for U.S. global supremacy. In fact, the strategic complexities of the world in the 21st century make such supremacy unattainable. But those dreaming today of America's collapse would probably come to regret it. And as **the world after America would be increasingly complicated and chaotic,** it is imperative that the United States pursue a new, timely strategic vision for its foreign policy -- or start bracing itself for a dangerous slide into global turmoil.

## Solvency

#### US has significantly decreased strikes and has a narrow and legal use of drones –evidence from 3 days ago

FoxNews.com, “Concerns raised about fewer US drone strikes amid continuing terror attacks,” 9/26/13

New statistics from the West Point Counterterroism Center show more than 60 terror attacks across the world since July 1 -- most recently, the attack at a Kenya mall last weekend in which more than 60 people were killed.¶ Meanwhile, the number of U.S. drone strikes in Pakistan and Yemen – the hotbed for Al Qaeda and other terror groups -- appears to have decreased significantly over roughly the same period.¶ The publication The Long War Journal reports a total of 22 strikes since May in those countries.¶ The apparent trend of fewer strikes amid perceptions of a weakened Al Qaeda and diminished terror threats is drawing concern from Rep. Mike Rogers, chairman of the House Permanent Select Committee on Intelligence.¶ “It's not diminishing,” the Michigan Republican told Fox News on Tuesday. “There have been counterterrorism changes made by the administration that have concerned us all, things that we've been working on for a period of months that we're trying to work through that are very, very concerning. This is no time to retreat.”¶ The White House has not commented on the apparent decrease in drone strikes but has referred reporters to President Obama’s May 23 speech at the National Defense University in which he discussed the county’s evolving efforts to combat the war on terror.¶ The president said the United States will continue to “dismantle [terror] networks that pose a direct danger to us” but can no longer define its efforts as a “boundless global war on terror.”¶ He said the fight is entering a “new phase” in which legal and necessary drone strikes will be more narrowly focused to avoid civilian casualties and backlash in Pakistan and neighboring countries.¶ “By narrowly targeting our action against those who want to kill us and not the people they hide among, we are choosing the course of action least likely to result in the loss of innocent life,” Obama said.¶ Bill Roggio, The Long War Journal’s managing editor, said on Wednesday that the speech shows the administration “has a very narrow view of what makes up Al Qaeda and believes that killing a handful of legacy leaders involved in 9/11 will cause the collapse of the group.”¶ The magazine reports the number of recent strikes in Pakistan as: one in May, one in June, three in July, one in August and two in September.¶ The numbers in Yemen are: two in May, two in June, two in July, eight in August and zero in September.¶ Roggio points out the sharp increase in August was at about the same time a terror threat led to the temporary closure of 22 U.S. embassies and consulates across the Middle East and North Africa.¶ “But they were reactive strikes,” he said.¶ Roggio also says the US. launched 117 drone strikes in Pakistan in 2010, compared to 21 so far this year, which translates into one about every three of four days to about one every 15 days in 2013.¶ Obama repeated the U.S.’s position Tuesday at United Nations General Assembly speech, saying the county has shifted away from “a perpetual war-footing.”¶ “We have limited the use of drones so they target only those who pose a continuing, imminent threat to the United States where capture is not feasible, and there is a near certainty of no civilian casualties,” the president said.

## Norms

#### No US precedent---not causal

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

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

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

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

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

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

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

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

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

#### Zero chance that U.S. self-restraint causes any other country to give up their plans for drones

Max Boot 11, the Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations, 10/9/11, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, <http://www.commentarymagazine.com/2011/10/09/drone-arms-race/>

The New York Times engages in some scare-mongering today about a drone ams race. Scott Shane notes correctly other nations such as China are building their own drones and in the future U.S. forces could be attacked by them–our forces will not have a monopoly on their use forever. Fair enough, but he goes further, suggesting our current use of drones to target terrorists will backfire:

If China, for instance, sends killer drones into Kazakhstan to hunt minority Uighur Muslims it accuses of plotting terrorism, what will the United States say? What if India uses remotely controlled craft to hit terrorism suspects in Kashmir, or Russia sends drones after militants in the Caucasus? American officials who protest will likely find their own example thrown back at them.

“The problem is that we’re creating an international norm” — asserting the right to strike preemptively against those we suspect of planning attacks, argues Dennis M. Gormley, a senior research fellow at the University of Pittsburgh and author of Missile Contagion, who has called for tougher export controls on American drone technology. “The copycatting is what I worry about most.”

This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.

The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example. In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.

Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected assassination of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone?

While a decision on our part to stop drone strikes would be unlikely to alter Russian or Chinese thinking, it would have one immediate consequence: al-Qaeda would be strengthened and could regenerate the ability to attack our homeland. Drone strikes are the only effective weapon we have to combat terrorist groups in places like Pakistan or Yemen where we don’t have a lot of boots on the ground or a lot of cooperation from local authorities. We cannot afford to give them up in the vain hope it will encourage disarmament on the part of dictatorial states.

#### China won’t use drones to resolve territorial disputes – fears international backlash and creating a precedent for U.S. strikes in the area

Erickson, associate professor at the Naval War College and Associate in Research at Harvard University's Fairbank Centre, and Strange, researcher at the Naval War College's China Maritime Studies Institute and graduate student at Zhejiang University, 5-29-13 (Andrew and Austin, China has drones. Now how will it use them? Foreign Affairs, McClatchy-Tribune, 29 May 2013, http://www.nationmultimedia.com/opinion/China-has-drones-Now-how-will-it-use-them-30207095.html, da 8-3-13) PC

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.

#### China won’t provoke a war- multiple warrants

-economy

-vulnerable military

-few outposts in Spratlys

-Not pumping oil

-Taiwan has more to lose

-Empirics

-Patrol ships are unarmed

Goldstein, associate professor in the China Maritime Studies Institute at the U.S. Naval War College in Newport, ‘11

[Lyle, He is co-editor of the recent volumes China, the United States and 21st-Century Sea Power: Defining a Maritime Security Partnership and Chinese Aerospace Power: Evolving Maritime Roles. “The South China Sea's Georgia Scenario,” <http://www.foreignpolicy.com/articles/2011/07/11/the_south_china_seas_georgia_scenario?page=0,2>]

Washington's focus on "freedom of navigation," which has inexplicably become the main pillar of current U.S. policy in the region, is actually rather absurd. China, the world's largest maritime trading nation by almost any measure, is very unlikely to threaten navigational freedoms -- its own economy is almost wholly reliant on those very freedoms. The claim that China's opposition to regular U.S. military surveillance activities in the South China Sea threatens "freedom of navigation" is likewise disingenuous and represents an unfortunate tendency to reach for the clever sound bite. In fact, such U.S. surveillance activities all along China's coasts are excessive to the point of seriously disrupting the bilateral relationship and should thus be decreased, especially if linked to concrete progress on Chinese military transparency. The alleged Chinese threat to ASEAN states, moreover, turns out to be more hype than fact. Much has been said about China's new nuclear submarine base on Hainan Island, but the surprise is that up to now Beijing has had only one nuclear submarine base (Qingdao) -- quite paltry when compared with the four operated by the U.S. Navy in the Pacific area. Similarly, the basing of a ballistic missile submarine and even China's first aircraft carrier at Hainan would more likely represent weakness than strength. After all, alternative basing in north China simply means these high-value assets would be closer and hence more vulnerable to the impressive striking power of both the Japanese and U.S. fleets that are based primarily in Northeast Asia. Those viewing Chinese "aggression" as the impetus for current tension might reasonably be asked why Beijing has only six outposts in the Spratlys (compared with 29 occupied by Vietnam), why Beijing is one of the only claimant states not currently pumping oil out of the South China Sea, and why the largest island in the Spratlys archipelago is actually occupied by Taiwan. In fact, China's policy in the South China Sea has been largely reactive in both present and historical circumstances, which indeed explains a good bit of the incoherence of China's present policy. China has settled the majority of its border disputes peacefully and is largely relying on unarmed patrol cutters to enforce its claims in the South China Sea -- clearly a sign that it does not seek escalation to armed conflict.

#### No impact to china drones – far behind

**Zhou 2013** [Dillon columnist for PolicyMic, January, 2013, “China Drones Prompt Fears of a Drone Race With the US,” PolicyMic, http://www.policymic.com/articles/19753/china-drones-prompt-fears-of-a-drone-race-with-the-us]

There are several facts that provide some solace to the U.S. as **China's drones are far from being a real challenge**

**to the American drone program.¶ First, the Chinese drones are nowhere as sophisticated as U.S. drones in their range and proper hardware for optic systems and motors to power the "dragons."** **The DSB report notes that the U.S. technical systems are almost unrivaled at present.¶ Second, China lacks the manpower to properly support their new fleet of drones. Whereas the U.S. has been training and honing a large force of UAV pilots, technicians and operation managers for 15 years.¶ Finally, the U.S. drone program is about 20 years ahead of the Chinese program. The current models on show are considered to be prototypes and not finished products. The Chinese also have not had a chance to gain real experience with their drones during real operation.**

## Pakistan

#### Limiting targeted killings in Pakistan causes a shift to ground assaults---turns the case and collapses the Pakistani government

Richard Weitz 11, Senior Fellow and Director of the Center for Political-Military Analysis at the Hudson Institute, 1/2/11, “WHY UAVS HAVE BECOME THE ANTI-TERROR WEAPON OF CHOICE IN THE AFGHAN-PAK BORDER,” http://www.sldinfo.com/why-uavs-have-become-the-anti-terror-weapon-of-choice-in-the-afghan-pak-border/

Perhaps the most important argument in favor of using UAV strikes in northwest Pakistan and other terrorist havens is that alternative options are typically worse.

The Pakistani military has made clear that it is neither willing nor capable of repressing the terrorists in the tribal regions. Although the controversial ceasefire accords Islamabad earlier negotiated with tribal leaders have formally collapsed, the Pakistani Army has repeatedly postponed announced plans to occupy North Waziristan, which is where the Afghan insurgents and the foreign fighters supporting them and al-Qaeda are concentrated.

Such a move that would meet fierce resistance from the region’s population, which has traditionally enjoyed extensive autonomy. The recent massive floods have also forced the military to divert its assets to humanitarian purposes, especially helping the more than ten million displaced people driven from their homes.

But the main reason for their not attacking the Afghan Taliban or its foreign allies based in Pakistan’s tribal areas is that doing so would result in their joining the Pakistani Taliban in its vicious fight with the Islamabad government.

Yet, sending in U.S. combat troops on recurring raids or a protracted occupation of Pakistani territory would provoke widespread outrage in Pakistan and perhaps in other countries as well since the UN Security Council mandate for the NATO-led International Security Assistance Force (ISAF) in Afghanistan only authorizes military operations in Pakistan.

On the one known occasion when U.S. Special Forces actually conducted a ground assault in the tribal areas in 2008, the Pakistanis reacted furiously. On September 3, 2008, a U.S. Special Forces team attacked a suspected terrorist base in Pakistan’s South Waziristan region, killing over a dozen people. These actions evoked strong Pakistani protests. Army Chief of Staff Gen. Ashfaq Kayani, who before November 2007 had led Pakistan’s Inter-Services Intelligence (ISI), issued a written statement denying that “any agreement or understanding [existed] with the coalition forces” [in Afghanistan] allowing them to strike inside Pakistan.” The general pledged to defend Pakistan’s sovereignty and territorial integrity “at all cost.” Prime Minister Yousaf Raza Gilani and President Asif Ali Zardari also criticized the U.S. ground operation on Pakistani territory. On September 16, 2008, the Pakistani army announced it would shoot any U.S. forces attempting to cross the Afghan-Pakistan border.

On several occasions since then, Pakistani troops and militia have fired at what they believed to be American helicopters flying from Afghanistan to deploy Special Forces on their territory, though there is no conclusive evidence that the U.S. military has ever attempted another large-scale commando raid in Pakistan after the September 2008 incident.

Further large-scale U.S. military operations into Pakistan could easily rally popular support behind the Taliban and al-Qaeda. It might even precipitate the collapse of the Islambad government and its replacement by a regime in nuclear-armed Pakistan that is less friendly to Washington.

Given these alternatives, continuing the drone strikes appears to be the best of the limited options available to deal with a core problem, giving sanctuary to terrorists striking US and coalition forces in Afghanistan and beyond.

#### Drones are the best option and save civilian lives overall – new oversight not necessary

Meservey 12 (Josh, writing for Fletcher forum of world affairs at Tufts university, second year MALD candidate focusing on International Security. He is interested in non-state armed groups and counterinsurgency, particularly in Africa, November 16 “Drones: The Best Option We’ve Got” http://www.fletcherforum.org/2012/11/16/meservey/)

Moreover, the United States’ use of drones raises the troubling question of civilian casualties. A recent report released by the Stanford and New York University law schools concluded that the U.S. drone policy is “damaging and counterproductive,” in part because of its “harmful impacts” on Pakistani civilians. Beyond the obvious tragedy of the loss of human life, civilian deaths are also a serious blow to any counterinsurgency campaign; killing civilians is one of the quickest ways to alienate the very population whose loyalty is critical in defeating an insurgency. There is no doubt that drone strikes that kill innocent people in the Federally Administered Tribal Areas (FATA) make it easier for terrorist organizations to recruit there.¶ Despite these challenging realities, however, the U.S. must continue its drone strikes in the FATA, because ending them would mean the loss of the United States’ only effective weapon against the deadly array of armed groups that have clustered there. Remote, rugged, and notoriously inhospitable to governmental authority, the FATA serves as a conduit for anti-Coalition fighters into Afghanistan, a safe haven for al-Qaeda and the Afghan and Pakistani Talibans, a base for the Haqqani network, and a graveyard for thousands of Pakistani soldiers. The region presents an urgent national security problem for both the United States and Pakistan, but ultimately one that only the Pakistani government can fully solve, as the problems in the FATA are fundamentally political.¶ The government has long neglected the area, ruling it with colonial-era laws that have contributed to its current isolation. Until the Pakistani government incorporates the FATA into the broader Pakistani polity, it will remain welcoming territory for extremists. The government has taken a few hesitant steps toward the sorts of far-reaching, structural reforms necessary to erode the terrorists’ base of support, but they are insufficient.¶ Furthermore, while the Pakistani army has begun fighting the confusing tangle of terrorist organizations in the area, it has made only incremental progress. The Pakistani army is still largely a conventional force ill-suited to wage the sort of counterinsurgency campaign necessary, and questions remain over its dedication to the fight. For instance, its military intelligence branch, the ISI, has well-documented links with the Afghan Taliban currently sheltering in the FATA.¶ With the Pakistani government unable and perhaps unwilling to address the problem in the FATA, the U.S. is left with few options. It could suspend drone attacks and allow the FATA to function as a true safe haven, or it could launch a full-scale incursion into Pakistani territory. Neither of these choices is realistic or desirable, and no other solutions are readily apparent. Drones, then, are the best option.¶ Drones are an effective and useful tool for a place like the FATA. In the chaotic struggle within the area, drones are likely the most precise weapon ever used—in 2010, Amnesty International estimated that the fighting between the Pakistani army and militants killed 1,363 civilians, while the New America Foundation’s highest estimates for civilian deaths by drones in 2009 was 223. Drone strikes are now subjected to rigorous levels of oversight, and there has been a marked decline in civilian deaths in 2012, perhaps because General Petraeus, who recently resigned as Director of the CIA, literally wrote the book on counterinsurgency and understood the importance of not alienating the local population. In fact, if one were able to add up the number of civilians that would have been killed by the terrorists that have been killed by drone strikes in the FATA, drones almost certainly save civilian lives.¶ And frankly, drones are very good at what they do. The list of high-level terrorists that have been killed by drones gets longer and longer, and includes some truly violent individuals, such as al-Qaeda and Taliban bomb makers, WMD experts, and very senior leaders. There is simply no other tactic that has had anywhere near this level of success against high-level terrorist targets in the FATA.

#### Pakistan instability inevitable – economy, education, poor governance

Javaid ’11 (Umbreen, Director Center of Asian Studies & Chairperson Department of political science University of Punjab, “Thriving Fundamentalism and Militancy in Pakistan An Analytical Overview of their Impact on the Society,” South Asian Studies, Vol. 26 No. 1. Pg. 16-17)  
 ‘The recent increase of violence by jihadi groups, including suicide bombing of ¶ innocent bystanders as well attacks on the police and military, has perhaps brought ¶ more Pakistanis to consider how to strike a new balance between Islam and ¶ politics’ (Oldenburg, 2010: 158). ‘The Pakistani people also need to change their ¶ attitude, especially their outlook on religion. Suffered with anti-Americanism and ¶ religious fervor, Pakistanis are filtering their worldview through the prism of ¶ religion and the tensions between Islam and the West, making them to the radical ¶ propaganda and paralyzing their will to act against forces of extremism’ (Hussain, ¶ 2009: 11). mbreen Javaid Thriving Fundamentalism and ¶ 17¶ It is not only the task of the government to control this growing ¶ fundamentalism but the whole society needs to completely shun off these ¶ extremists. The political parties, intellectuals, sectarian and religious parties and ¶ the masses all have to openly condemn the extremists, so that they do not find any ¶ space to flourish. ‘Much still needs to be done on the home front curb religious ¶ zealotry and sectarianism, policies towards minorities, revision of school curricula, ¶ reconstructing ‘official’ history, promotion of universal education, and ¶ overhauling of the madrassah system’ (Niaz, 2011: 181). The best way to curtail the thriving fundamentalism in Pakistan is to look ¶ deeply into its causes. The whole society and especially the government needs to ¶ put in serious efforts in controlling on checking the causes if not diminishing ¶ them. It should also be understand that the issue of fundamentalism is very ¶ complex which entails number of factors which are playing their part. These ¶ include economic disparity, lack of education, religious ignorance, unemployment, ¶ extremism, judicial system, poor governance, ethnicity and sectarianism, ¶ corruption and alignment with United States, each of these have played their role ¶ separately and also a combined mix of all in flourishing militant fundamentalism ¶ in Pakistan. To control fundamentalism is not an easy task especially when it is ¶ now combined with militancy. Another major challenge for the government is that ¶ earlier the various militant extremist groups were operating separately and had ¶ divergent aims and objectives from each other but lately various local groups, AlQaeda and Taliban have all joined hands and helping each other irrespective of ¶ their particular objectives. These alignments have made these militant groups more ¶ lethal, thus making things more difficult for the government. ¶ Militant fundamentalism not only has the ability to destabilize Pakistan but it ¶ can, if not controlled, bring about serious security concerns for the region and also ¶ towards the global security and peace.

#### No Indo-Pak war

Mutti 9— Master’s degree in International Studies with a focus on South Asia, U Washington. BA in History, Knox College. over a decade of expertise covering on South Asia geopolitics, Contributing Editor to Demockracy journal (James, 1/5, Mumbai Misperceptions: War is Not Imminent, http://demockracy.com/four-reasons-why-the-mumbai-attacks-wont-result-in-a-nuclear-war/)

Fearful of imminent war, the media has indulged in frantic hand wringing about Indian and Pakistani nuclear arsenals and renewed fears about the Indian subcontinent being “the most dangerous place on earth.” As an observer of the subcontinent for over a decade, I am optimistic that war will not be the end result of this event. As horrifying as the Mumbai attacks were, they are not likely to drive India and Pakistan into an armed international conflict. The media frenzy over an imminent nuclear war seems the result of the media being superficially knowledgeable about the history of Indian-Pakistani relations, of feeling compelled to follow the most sensationalistic story, and being recently brainwashed into thinking that the only way to respond to a major terrorist attack was the American way – a war. Here are four reasons why the Mumbai attacks will not result in a war: 1. For both countries, a war would be a disaster. India has been successfully building stronger relations with the rest of the world over the last decade. It has occasionally engaged in military muscle-flexing (abetted by a Bush administration eager to promote India as a counterweight to China and Pakistan), but it has much more aggressively promoted itself as an emerging economic powerhouse and a moral, democratic alternative to less savory authoritarian regimes. Attacking a fledgling democratic Pakistan would not improve India’s reputation in anybody’s eyes. The restraint Manmohan Singh’s government has exercised following the attacks indicates a desire to avoid rash and potentially regrettable actions. It is also perhaps a recognition that military attacks will never end terrorism. Pakistan, on the other hand, couldn’t possibly win a war against India, and Pakistan’s military defeat would surely lead to the downfall of the new democratic government. The military would regain control, and Islamic militants would surely make a grab for power – an outcome neither India nor Pakistan want. Pakistani president Asif Ali Zardari has shown that this is not the path he wants his country to go down. He has forcefully spoken out against terrorist groups operating in Pakistan and has ordered military attacks against LeT camps. Key members of LeT and other terrorist groups have been arrested. One can hope that this is only the beginning, despite the unenviable military and political difficulties in doing so. 2. Since the last major India-Pakistan clash in 1999, both countries have made concrete efforts to create people-to-people connections and to improve economic relations. Bus and train services between the countries have resumed for the first time in decades along with an easing of the issuing of visas to cross the border. India-Pakistan cricket matches have resumed, and India has granted Pakistan “most favored nation” trading status. The Mumbai attacks will undoubtedly strain relations, yet it is hard to believe that both sides would throw away this recent progress. With the removal of Pervez Musharraf and the election of a democratic government (though a shaky, relatively weak one), both the Indian government and the Pakistani government have political motivations to ease tensions and to proceed with efforts to improve relations. There are also growing efforts to recognize and build upon the many cultural ties between the populations of India and Pakistan and a decreasing sense of animosity between the countries. 3. Both countries also face difficult internal problems that present more of a threat to their stability and security than does the opposite country. If they are wise, the governments of both countries will work more towards addressing these internal threats than the less dangerous external ones. The most significant problems facing Pakistan today do not revolve around the unresolved situation in Kashmir or a military threat posed by India. The more significant threat to Pakistan comes from within. While LeT has focused its firepower on India instead of the Pakistani state, other militant Islamic outfits have not. Groups based in the tribal regions bordering Afghanistan have orchestrated frequent deadly suicide bombings and clashes with the Pakistani military, including the attack that killed ex-Prime Minister Benazir Bhutto in 2007. The battle that the Pakistani government faces now is not against its traditional enemy India, but against militants bent on destroying the Pakistani state and creating a Taliban-style regime in Pakistan. In order to deal with this threat, it must strengthen the structures of a democratic, inclusive political system that can also address domestic problems and inequalities. On the other hand, the threat of Pakistani based terrorists to India is significant. However, suicide bombings and attacks are also carried out by Indian Islamic militants, and vast swaths of rural India are under the de facto control of the Maoist guerrillas known as the Naxalites. Hindu fundamentalists pose a serious threat to the safety of many Muslim and Christian Indians and to the idea of India as a diverse, secular, democratic society. Separatist insurgencies in Kashmir and in parts of the northeast have dragged on for years. And like Pakistan, India faces significant challenges in addressing sharp social and economic inequalities. Additionally, Indian political parties, especially the ruling Congress Party and others that rely on the support of India’s massive Muslim population to win elections, are certainly wary about inflaming public opinion against Pakistan (and Muslims). This fear could lead the investigation into the Mumbai attacks to fizzle out with no resolution, as many other such inquiries have. 4. The international attention to this attack – somewhat difficult to explain in my opinion given the general complacency and utter apathy in much of the western world about previous terrorist attacks in places like India, Pakistan, and Indonesia – is a final obstacle to an armed conflict. Not only does it put both countries under a microscope in terms of how they respond to the terrible events, it also means that they will feel international pressure to resolve the situation without resorting to war. India and Pakistan have been warned by the US, Russia, and others not to let the situation end in war. India has been actively recruiting Pakistan’s closest allies – China and Saudi Arabia – to pressure Pakistan to act against militants, and the US has been in the forefront of pressing Pakistan for action. Iran too has expressed solidarity with India in the face of the attacks and is using its regional influence to bring more diplomatic pressure on Pakistan.

**War won’t go nuclear**

**Enders 2** (Jan 30, David, Michigan Daily, “Experts say nuclear war still unlikely,” http://www.michigandaily.com/content/experts-say-nuclear-war-still-unlikely)

**\* Ashutosh Varshney – Professor of Political Science and South Asia expert at the University of Michigan**

**\* Paul Huth – Professor of International Conflict and Security Affairs at the University of Maryland**

**\* Kenneth Lieberthal – Professor of Political Science at the University of Michigan. Former special assistant to President Clinton at the National Security Council**

University political science Prof. Ashutosh **Varshney** becomes animated **when asked about the likelihood of nuclear war between India and Pakistan.¶ "Odds are close to zero," Varshney said forcefully**, standing up to pace a little bit in his office. "**The assumption that India and Pakistan cannot manage their nuclear arsenals as well as the U.S.S.R. and U.S. or Russia and China concedes less to the intellect of leaders in both India and Pakistan than would be warranted."¶** The worlds two youngest nuclear powers first tested weapons in 1998, sparking fear of subcontinental nuclear war a fear Varshney finds ridiculous.¶ "**The decision makers are aware of what nuclear weapons are, even if the masses are not," he said.**¶ "Watching **the evening news**, CNN, I think they **have vastly overstated the threat of nuclear war,"** political science Prof. Paul **Huth said.¶ Varshney added that there are numerous factors working against the possibility of nuclear war.¶ "India is committed to** a **n**o-**f**irst-**s**trikepolicy**," Varshney said. "It is virtually impossible for Pakistan to** go for a **first strike, because the retaliation would be gravely dangerous."¶** Political science Prof. Kenneth **Lieberthal,** a former special assistant to President Clinton at the National Security Council, **agreed**. "Usually a country that is in the position that **Pakistan** is in **would not shift to a level that would ensure their total destruction,**" Lieberthal said, making note of India"s considerably larger nuclear arsenal.¶ "**American intervention is another reason not to expect nuclear war," Varshney said. "If anything has happened since September 11, it is that the command control system has strengthened. The trigger is in very safe hands."**

## 2NC

#### Intra-executive drone tribunals solves-ensures accountability and prevents errors while maintaining the legitimacy of national security secrets

Crandall, 2012

[Carla, Law Clerk to the Honorable Laura Denvir Stith, Supreme Court of Missouri and the author was previously employed by the National Geospatial-Intelligence Agency, READY . . . FIRE . . . AIM! A CASE FOR APPLYING AMERICAN DUE PROCESS PRINCIPLES BEFORE ENGAGING IN DRONE STRIKES, April, 2012 Florida Journal of International Law 24 Fla. J. Int'l L. 55, Lexis] /Wyo-MB

4. CSRTs as a Framework for Governing the Use of Drones

Ultimately, then, the inquiry into whether more robust procedural protections are in order before the U.S. government engages in future drone attacks may rest on the Boumediene Court's signal that the answer depends on "whether there are suitable alternative processes in place." n176 Arguably, regarding drone strikes, these are lacking; but they do appear feasible. Indeed, in practically implementing the general principles outlined above in the context of a drone strike, the procedures of the CSRTs-foreshadowed in broad strokes by the Hamdi Court, and at least tacitly supported in Boumediene n177 -might offer a general framework under which the United States might operate in order to legitimize drone strikes.In suggesting the possibility of creating a pre-strike review tribunal, there are several threshold matters to be addressed. Most fundamentally, while it may indeed be unreasonable for a terrorist himself to appear before a tribunal to challenge his status as a legitimate drone target, it does not appear unreasonable to require the executive to develop internal procedures affording a limited parallel. For example, given that the individuals listed on the U.S. strike list are subject to unlimited military force, n178 the government arguably ought to be required to prove before a tribunal that listed persons are in fact legitimate drone targets. As with CSRTs, it appears to make imminent sense that pre-strike reviews be conducted entirely within the executive. While one "could envision a system where the judiciary would review the discretion of the attacker" n179 to launch a drone strike, such a scheme ignores the realities of the war on terror and the role of the executive in commanding wartime military operations. n180 It would not appear prudent, for example, to force the government to publicly disclose its methods and sources in submitting evidentiary proof against a particular suspect. Moreover, as noted above, the Boumediene Court arguably signaled support for an intra-executive review process related to drone targeting [\*87] methods. n181In order to ensure that the government is in fact meeting its burden of proof, however, the executive could appoint an ombudsman or personal representative with advocacy responsibilities for each potential drone target. n182 An advocacy role for such an individual-in contrast to the limited role of a CSRT Personal Representative-would be necessary in light of the absence during the proceeding of the suspect himself. To state it another way, given that the potential target would essentially be "tried" in absentia, these advocates would bear the responsibility of contesting the evidence of the government, and ensuring that the United States in fact met its burden of proving that it possessed enough evidence to warrant use of a drone against a particular individual. While this proceeding would obviously not afford the same protections as habeas review, the reality is that such review is plainly impossible if drones are to be used at all. A "drone tribunal" at least provides some level of review to correct potential errors in the target identification process.

**Other countries solve the impact— US not key**

**Benvenisti 8**

–Professor of Law, Tel Aviv University (Eval, “Reclaiming Democracy: The Strategic Uses Of Foreign And International Law By National Courts,” 102 A.J.I.L. 241, http://law.bepress.com/cgi/viewcontent.cgi?article=1061&context=taulwps)

It wasn’t so long ago that the overwhelming majority of courts in democratic countries shared a reluctance to refer to foreign and international law. These courts conformed to a policy of avoiding any application of foreign sources of law that would clash with the position of their domestic governments. For many jurists, recourse to foreign and international law is inappropriate.1 But even the supporters of the reference to external sources of law share the thus-unexplored assumption that reliance on foreign and international law is inevitably in tension with the value of national sovereignty. Hence the scholarly debate is framed along the lines of the well-known broader debate on “the counter-majoritarian difficulty.”2 This Article questions this assumption of tension. It argues that **for courts in most democratic countries – even if not for U.S. courts at present – referring to foreign and international law has become an effective instrument for empowering the domestic democratic processes by shielding them from external economic, political and even legal pressures**. Citing international law, therefore, actually bolsters domestic democratic processes and reclaims national sovereignty from the diverse forces of globalization. Stated differently, **most national courts**, seeking to maintain the vitality of their national political institutions and to safeguard their own domestic status vis-à-vis the political branches, **cannot afford to ignore** foreign and **international law. In recent years, courts in several democracies have begun to engage quite seriously in the interpretation and application of international law and to heed the constitutional jurisprudence of other national courts.**

#### Object of the resolution is “authority” not “war powers”--restricting authority requires reducing the permission to act, not the ability to act.

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

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

#### This is a core legal distinction

Rob Jenkins.—associate professor of English at Georgia Perim¶ 27-year veteran of higher education, as both a faculty member and an administrator April 3, 2012, 12:22 pm¶ How Much Do You Work? <http://chronicle.com/blogs/onhiring/author/rjenkins/page/5>. Gender edited

Anytime the President of the United States sends American servicemen and women into harm’s way, politicians and pundits are sure to argue over whether or not [s]he has the authority to do so. I’m not qualified to participate in that kind of constitutional debate. But I can offer the following observation: whether or not the President has the authority to deploy troops in a given situation, [s]he certainly has the power to do so. That’s because authority and power are not the same thing, even though many leaders fail to grasp the distinction. In particular, an alarming number of academic administrators these days don’t seem to understand the difference between exercising duly constituted authority and merely wielding power. Authority is essentially the capacity to carry out one’s duties and responsibilities. Faculty members have the authority to assign final grades, because doing so is one of their responsibilities. Likewise, department chairs have authority to evaluate faculty members, deans have authority to assign faculty lines, presidents have authority to determine budgets, and so on. For authority to be valid, it must be ceded, which is to say derived from something larger than itself. The officers of a college, for instance, typically derive their authority from elected or appointed boards. At an institution that truly embraces the principles of shared governance, other stakeholders are also ceded authority in certain areas by the properly constituted bylaws and policies of the institution–for example, the faculty’s authority over curricular issues. Even a college president does not have the authority, outside of the policies by which all are bound, to tell faculty members how to teach, how to conduct research, or what to write. However, this does not mean that presidents and other administrators do not sometimes take such authority upon themselves. They can do so, even if illegitimately, because of the enormous power they wield. Power is something quite different from authority. It tends to be seized rather than ceded. It is essentially the ability to force others to conform to one’s wishes, whether they want to or not, because of what might happen to them if they don’t. People with power can make other people’s lives miserable, prevent them from getting promotions and raises, perhaps cost them their jobs–even when such actions are not strictly within their properly ceded authority.

**Zero chance of precedent setting – other countries don’t act based on the United States policy**

**Wright 12**

(Robert Wright, finalist for the Pulitzer Prize, former writer and editor at The Atlantic, “The Incoherence of a Drone-Strike Advocate” NOV 14 2012, <http://www.theatlantic.com/international/archive/2012/11/the-incoherence-of-a-drone-strike-advocate/265256/>, KB)

Naureen **Shah** of Columbia Law School, a guest on the show, had **raised the possibility that America is setting a dangerous precedent with drone strikes.** If other people start doing what America does--fire drones into nations that house somebody they want dead--couldn't this come back to haunt us? And haunt the whole world? Shouldn't the U.S. be helping to establish a global norm against this sort of thing? Host Warren Olney asked Boot to respond.¶ Boot started out with this observation:¶ I think **the precedent setting argument is overblown, because I don't think other countries act based necessarily on what we do** and in fact we've seen lots of Americans be killed by acts of terrorism over the last several decades, none of them by drones but they've certainly been killed with car bombs and other means.¶ That's true--no deaths by terrorist drone strike so far. But I think a fairly undeniable premise of the question was that **the arsenal of terrorists and other nations may change as time passes.** So answering it by reference to their current arsenal isn't very illuminating. In 1945, if I had raised the possibility that the Soviet Union might one day have nuclear weapons, it wouldn't have made sense for you to dismiss that possibility by noting that none of the Soviet bombs dropped during World War II were nuclear, right?¶ As if he was reading my mind, Boot immediately went on to address the prospect of drone technology spreading. Here's what he said:¶ You know, **drones** **are** a pretty high tech instrument to employ and they're **going to be outside the reach of most terrorist groups and even most countries.** But **whether we use them or not, the technology is propagating** out there. **We're seeing Hezbollah operate Iranian supplied drones over Israel**, for example, **and our giving up our use of drones is not going to prevent Iran or others from using drones on their own**. So I wouldn't worry too much about the so called precedent it sets..."

#### Self restraint won’t ensure others follow

Boot 11 (Max Boot, Jeane J. Kirkpatrick Senior Fellow in National Security Studies at the Council on Foreign Relations in New York, leading military historian and foreign-policy analyst, “We Cannot Afford to Stop Drone Strikes,” Commentary Magazine, October 9, 2011, <http://www.commentarymagazine.com/2011/10/09/drone-arms-race/)>

This is a familiar trope of liberal critics who are always claiming we should forego “X” weapons system or capability, otherwise our enemies will adopt it too. We have heard this with regard to ballistic missile defense, ballistic missiles, nuclear weapons, chemical and biological weapons, land mines, exploding bullets, and other fearsome weapons. Some have even suggested the U.S. should abjure the first use of nuclear weapons–and cut down our own arsenal–to encourage similar restraint from Iran.¶ The argument falls apart rather quickly because it is founded on a false premise: that other nations will follow our example. In point of fact, Iran is hell-bent on getting nuclear weapons no matter what we do; China is hell-bent on getting drones; and so forth. Whether and under what circumstances they will use those weapons remains an open question–but there is little reason to think self-restraint on our part will be matched by equal self-restraint on theirs. Is Pakistan avoiding nuking India because we haven’t used nuclear weapons since 1945? Hardly. The reason is that India has a powerful nuclear deterrent to use against Pakistan. If there is one lesson of history it is a strong deterrent is a better upholder of peace than is unilateral disarmament–which is what the New York Times implicitly suggests.¶ Imagine if we did refrain from drone strikes against al-Qaeda–what would be the consequence? If we were to stop the strikes, would China really decide to take a softer line on Uighurs or Russia on Chechen separatists? That seems unlikely given the viciousness those states already employ in their battles against ethnic separatists–which at least in Russia’s case already includes the suspected [assassination](http://www.independent.co.uk/news/world/europe/former-chechen-rebel-boss-assassinated-in-dubai-1657758.html) of Chechen leaders abroad. What’s the difference between sending a hit team and sending a drone

#### US isn’t the key model – regional threat perceptions are all that matters

Metz 2013 [Steven Metz is a defense analyst and the author of "Iraq and the Evolution of American Strategy." His weekly WPR column, Strategic Horizons, appears every Wednesday 27 Feb 2013 World Politics Review “Strategic Horizons: The Strategy Behind U.S. Drone Strikes” <http://www.worldpoliticsreview.com/articles/12747/strategic-horizons-the-strategy-behind-u-s-drone-strikes>]

Both of these arguments are shaky. There is little or no evidence that nations facing a serious enemy base their response on U.S. actions. States do what they feel they have to do. The implication that if the United States did not use drones against insurgents other nations would not simply defies common sense. On the second point, there is no doubt that drone strikes create anger. Unfortunately, this does tend to be directed at the United States rather than at the extremists who elected to use human shields in the first place. But again there is no evidence that a significant number of potential terrorists or terrorist supporters were motivated exclusively or primarily by American drone strikes.

**1. 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.

**No Senkaku or Asian conflict- empirically denied, economic interdependence checks, and China avoids nationalism.**

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At times in the past few months, **China and Japan** have **appeared** almost **ready to** do **battle over** the **Senkaku (Diaoyu)** Islands **-**-which are administered by Tokyo but claimed by both countries -- and to ignite a war that could be bigger than any since World War II. Although Tokyo and Beijing have been shadowboxing over the territory for years, the standoff reached a new low in the fall, when the Japanese government nationalized some of the islands by purchasing them from a private owner. The decision set off a wave of violent anti-Japanese demonstrations across China. In the wake of these events, the conflict quickly reached what political scientists call a state of equivalent retaliation -- a situation in which both countries believe that it is imperative to respond in kind to any and all perceived slights. As a result, it may have seemed that armed engagement was imminent. **Yet,** months later, **nothing has happened.** And **despite** their **aggressive posturing** in thedisputed territory, **both** sides **now show** glimmers of **willingness to** dial down hostilities and to **reestablish stability.** Some analysts have cited North Korea's recent nuclear test as a factor in the countries' reluctance to engage in military conflict. They argue that the detonation, and Kim Jong Un's belligerence, brought China and Japan together, unsettling them and placing their differences in a scarier context. Rory Medcalf, a senior fellow at the Brookings Institution, explained that "the nuclear test gives the leadership in both Beijing and Tokyo a chance to focus on a foreign and security policy challenge where their interests are not diametrically at odds." The nuclear test, though, is a red herring in terms of the conflict over the disputed islands. **In truth, the roots of the conflict -- and** the **reasons it has not** yet **exploded -- are much deeper**. Put simply, **China cannot afford** military **conflict with any** of its **Asian neighbors.** It is not that China believes it would lose such a spat; the country increasingly enjoys strategic superiority over the entire region, and it is difficult to imagine that its forces would be beaten in a direct engagement over the islands, in the South China Sea or in the disputed regions along the Sino-Indian border. **However, Chinese officials see that even the most pronounced victory would be outweighed by** the **collateral damage** that such a use of force would cause **to Beijing's two most fundamental national interests --** economic **growth and preventing the escalation of** radical **nationalist sentiment at home. These constraints, rather than any external deterrent, will keep** Xi Jinping**, China's new leader, from** authorizing the use ofdeadly **force** in the Diaoyu Islands theater. **For over three decades, Beijing has promoted** peace and **stability in Asia to facilitate** conditions amenable to **China's economic development.** The origins of the policy can be traced back to the late 1970s, when Deng Xiaoping repeatedly contended that to move beyond the economically debilitating Maoist period, China would have to seek a common ground with its neighbors. Promoting cooperation in the region would allow China to spend less on military preparedness, focus on making the country a more welcoming destination for foreign investment, and foster better trade relations. All of this would strengthen the Chinese economy. Deng was right. Today, China's economy is second only to that of the United States. The fundamentals of Deng's grand economic strategy are still revered in Beijing. But any war in the region would erode the hard-won, and precariously held, political capital that China has gained in the last several decades. It would also disrupt trade relations, complicate efforts to promote the yuan as an international currency, and send shock waves through the country's economic system at a time when it can ill afford them. There is thus little reason to think that China is readying for war with Japan. At the same time, the **specter of rising Chinese nationalism, although often seen as a promoter of conflict, further limits the prospects for armed engagement.** This is because Beijing will try to discourage nationalism if it fears it may lose control or be forced by popular sentiment to take an action it deems unwise. **Ever since the Tiananmen Square** massacre put questions about **the** Chinese Communist Party's right to govern before the population**, successive generations of Chinese leaders have carefully negotiated a balance** between promoting nationalist sentiment and preventing it from boiling over. In the process, they cemented the legitimacy of their rule. A war with Japan could easily upset that balance by inflaming nationalism that could blow back against China's leaders. Consider a hypothetical scenario in which a uniformed Chinese military member is killed during a firefight with Japanese soldiers. Regardless of the specific circumstances, the casualty would create a new martyr in China and, almost as quickly, catalyze popular protests against Japan. Demonstrators would call for blood, and if the government (fearing economic instability) did not extract enough, citizens would agitate against Beijing itself. Those in Zhongnanhai, the Chinese leadership compound in Beijing, would find themselves between a rock and a hard place. It is possible that Xi lost track of these basic facts during the fanfare of his rise to power and in the face of renewed Japanese assertiveness. It is also possible that the Chinese state is more rotten at the core than is understood. That is, party elites believe that a diversionary war is the only way to hold on to power -- damn the economic and social consequences. But Xi does not seem blind to the principles that have served Beijing so well over the last few decades. Indeed, although he recently warned unnamed others about infringing upon China's "national core interests" during a foreign policy speech to members of the Politburo, he also underscored China's commitment to "never pursue development at the cost of sacrificing other country's interests" and to never "benefit ourselves at others' expense or do harm to any neighbor." Of course, wars do happen -- and still could in the East China Sea. Should either side draw first blood through accident or an unexpected move, Sino-Japanese relations would be pushed into terrain that has not been charted since the middle of the last century. However, understanding that war would be a no-win situation, China has avoided rushing over the brink. This relative restraint seems to have surprised everyone. But it shouldn't**. Beijing** will continue to disagree with Tokyo over the sovereign status of the islands, and will not budge in its negotiating position over disputed territory. However, it **cannot take the risk of going to war over a few rocks** in the sea. On the contrary**, in the coming months it will quietly** seek a way to **shelve the dispute in return for** securing **regional stability,** facilitating **economic development, and keeping a lid on** the Pandora's box of rising **nationalist sentiment. The ensuing peace,** while unlikely to be deep, or especially conducive to improving Sino-Japanese relations**, will be enduring.**

**Politics checks china drone use**

**Anderson ‘13** [Brian, former Legal Assistant at ZS Associates, editor for Motherboard, “Just a Little Heads Up: China Can Also Kill People with Drones,” March, <http://motherboard.vice.com/blog/china-can-also-kill-people-with-drones>]

When the US decides to engage weaponized drones in its shadow wars throughout Pakistan, Yemen, Somalia, or wherever else, it does so by bringing those government's to the table, by seeking their support (or at the least, their begrudging, behind-closed-doors approval) of its targetted killing plans. Failing that, it goes ahead with the strikes anyway by claiming that, say, Pakistan's government won't play ball or is simply too inept, militarily, to smash threats. ¶ China could've done the same with a drone hit on Naw Kham, the Myanmese drug lord suspected of being behind the 2011 river attacks. It could have either sought the support of Naypyidaw or "credibly claimed," as J. Dana Stuster points out at Foreign Policy, that Myanmar, to borrow language from the Obama administration memo, was "unwilling or unable to suppress the threat posed by the individual being targeted."¶ So too could it have pulled the imminency card. Kham is a ruthless drug trafficker by all accounts. As Liu Yuejin, director of the public security ministry's anti-drug bureau, told the Global Times, Kham was at-large somewhere in the opium-producing Golden Triangle at the time of China's mulling over whether to use an unmanned aerial vehicle to pulverize the region with 20kg of TNT. For as much sleep China already loses over shoring up its homeland security, it could've easily undergirded a lethal strike with the white paper's nebulous and much-criticized definition of an "imminent threat of violent attack" on domestic soil. ¶ True, China presumably would've drawn the rebuke of the West had it actually gone through with drone-striking Kham, though it's not like the People's Republic has ever really cared much for marching to anything but its own drum when it comes to, well, just about anything. With Beidou and the Wing Loon, China's global-positioning service and Reaper-style hunter-killer drone, respectively, growing sharper and sharper, the opportunity was there for the taking. ¶ But the only thing to stop China was China itself. The plan to use the killer drone to track and kill Kham was axed "because we were ordered to catch him alive," Liu told the Global Times. Kham, who was captured last April, now faces the death penalty. ¶ If anything, pulling the plug suggests that China still would rather take pains to capture bad guys alive than kill them outright. Beijing may just end up killing Kham in the end, of course, after who knows what sort of interrogations or jailtime handlings.¶ But the initial restraint is pretty remarkable. Whereas the US probably would've gone the other way--indeed, it's doing so more and more, insisting that its drone strikes abroad are permissible because nine times out of 10 capture simply is not feasible--Chinese authorities trekked out into the bush outside the country's borders to find the man. To think: for all the well-warranted criticism China gets for human rights abuses and agressive behaviors along its borders, it comes out here looking cleaner than the U.S., turning down the quick-and-painless drone option in favor of capturing a suspect and bringing him before the courts, justice served, thank you very much. It could've taken a page from the Obama's administration drone memos, but it didn't.

#### Pakistan unstable – economy, education, blackouts, water, floods, inadequate growth

Bruce Riedel, Senior Fellow, Foreign Policy, Saban Center for Middle East Policy, Center for 21st Century Security and Intelligence, “Pakistan’s Impossible Year: Elections, Army Intrigue, and More,” December 29, 2012.

If Sharif returns to the prime minister's job for a third time, it will be a remarkable next turn in his own odyssey. Sharif was removed from the office in 1999 in an illegal coup and barely escaped alive to go into exile in Saudi Arabia. His decision to withdraw Pakistan's troops in 1999 during the Kargil War prompted his fall from power, but it also may have saved the world from nuclear destruction. It was a brave move. I remember talking to him and his family in the White House the day after he made the decision to pull back. You could see in his eyes that he knew the Army would defame him, but he knew he was in the right.¶ But many Pakistanis want a new face to lead their country. Out of desperation, some are turning to cricket star Imran Khan to save Pakistan. The ISI is probably helping his campaign behind the scenes to stir up trouble for the others. He is a long shot at best. He is much more anti-American, anti-drone, and ready to make deals with the Taliban to stop the terror at home. Yet he understands well that Pakistan is a country urgently in need of new thinking.¶ Whoever wins will inherit an economy and government that is in deep trouble. Two thirds of the 185 million Pakistanis are under 30; 40 million of the 70 million ages 5 to 19 years old are not in school. Fewer than 1 million Pakistanis paid taxes last year. Power blackouts are endemic. Clean water is increasingly scarce, even as catastrophic floods are more common. Growth is 3 percent, too little to keep up with population demand.

#### Pakistan failed state by 2030

Bruce Riedel, Senior Fellow, Foreign Policy, Saban Center for Middle East Policy, Center for 21st Century Security and Intelligence, “Pakistan’s Impossible Year: Elections, Army Intrigue, and More,” December 29, 2012.

Bilawal Bhutto Zardari, son of Pakistan President Asif Ali Zardari and former prime minister Benazir Bhutto, stepped onto the national stage for the first time this week, to give a speech marking the fifth anniversary of Benazir's murder. Still too young to run for office, the 24-year-old Bhutto's coming out adds more drama to what will be a pivotal year for Pakistan. National elections, turnover at the top military position, and the denouement in the war in Afghanistan all promise to make 2013 a critical year for a country that is both under siege by terrorism and the center of the global jihadist movement.¶ Bilawal's grandfather, uncles, and mother all were murdered in political violence. Zulfikar Bhutto was hung in 1979 by Gen. Mohammad Zia ul-Haq, his two uncles died in mysterious plots, and his mother was assassinated by al Qaeda and the Taliban. His family story resembles Pakistan's reality. Pakistan is a country in the midst of a long and painful crisis. Since 2001, according to the government, 45,000 Pakistanis have died in terrorist-related violence, including 7,000 security personnel. Suicide bombings were unheard of before the 9/11 attacks; there have been 300 since then. The country's biggest city, Karachi, is a battlefield. One measure of Pakistan's instability is that the country now has between 300 and 500 private-security firms, employing 300,000 armed guards, most run by ex-generals. The American intelligence community's new global estimate rates Pakistan among the most likely states in the world to fail by 2030.

#### Pakistan instability inevitable – Afghan wars

Bruce Riedel, Senior Fellow, Foreign Policy, Saban Center for Middle East Policy, Center for 21st Century Security and Intelligence, Panel “THE BROOKINGS INSTITUTION¶ THE UNITED STATES, INDIA, AND PAKISTAN:¶ TO THE BRINK AND BACK,” Brookings, February 26, 2013.

MS. BROWN: How much has the war in Afghanistan been a bad thing ¶ for Pakistan? If you talk to certain people who are friendly towards Pakistan they say, ¶ well, so much of their turbulence and instability and terrorism has been caused by ¶ refugees coming from Afghanistan, radical elements coming from Afghanistan. Is there ¶ any truth in that?¶ MR. RIEDEL: There is, there's a lot of truth.¶ We see this as a war that's now 10 years old. Afghans and Pakistanis ¶ see this as a war that's 30 years old. If you look at it in those terms, Pakistan has ¶ suffered tremendously. The coalition across culture that dominates Pakistani cities today ¶ that makes places like Quetta or Karachi murder capitals of the world is a product of the ¶ spillover from all of these Afghan wars. Not just the current one, but all of these Afghan ¶ wars.

#### Relations resilient – Oct 23 talks strengthen cooperation

Saeed Shah, “Pakistan Presses On With Iran Gas Pipeline Plan, Criticizes U.S. Drones,” Wall Street Journal, 9/26/13

Mr. Sharif, who came to power in June after the first democratic transition of power in Pakistan’s history, also said he hopes to use his visit to the U.N. headquarters in New York for a meeting with Manmohan Singh, the prime minister of India, Pakistan’s traditional enemy. Mr. Sharif said he hopes to restart the peace process with India that he had pursued when he was last in office, in the late 1990s.¶ In the interview, Mr. Sharif acknowledged frictions with the U.S. but said he believed that the issues could be overcome. “President Obama was very kind to call me up immediately after my election and express his desire to work with Pakistan. I also want to work with the United States of America,” he said.¶ The White House said Thursday that President Barack Obama and Mr. Sharif will meet Oct. 23 at the White House, part of what officials said was a broader effort to deepen ties.¶ A White House statement said terrorism and the economy will be among the topics discussed, but didn’t mention the controversial pipeline. “The visit will highlight the importance and resilience of the U.S.-Pakistan relationship and provide an opportunity for us to strengthen cooperation on issues of mutual concern, such as energy, trade and economic development, regional stability, and countering violent extremism,” the White House said in a statement.¶ The meeting in Washington will follow Secretary of State John Kerry’s trip to Pakistan in August, in which he offered assurances that the U.S. won’t abandon Pakistan after U.S. troops leave neighboring Afghanistan next year.¶

## 1NR

#### Turns Case- Deference key to successful policies, complete reform, court legitimacy, and successful norms – this turns case

Kavanagh 10 (Aileen, Reader in Law, University of Oxford and Fellow of St Edmund Hall, University of Toronto Law Journal, Volume 60, Number 1, Winter 2010, Judicial restraint in the pursuit of justice, Project MUSE, p. 28 – 29)

One can identify at least four institutional reasons for judicial restraint. These are concerns about (1) judicial expertise, (2) the incrementalist nature of judicial law making, (3) institutional legitimacy, and (4) the reputation of the courts. Let us go through these one by one. The constraint of ‘limited expertise’ reflects the epistemic limitations of the courts in evaluating certain issues. In situations where judges do not know (or are unsure about) how a particular issue should be resolved or, indeed, are unsure what consequences will follow from a particular decision, such uncertainty may warrant a degree of judicial restraint.13 The second reason for restraint arises from the incrementalist nature of judicial law making. While legislators are relatively free to initiate legislation on any topic and can engage in radical, root-and-branch reform of a whole area of law, judges are much more constrained. In general, judicial law reform tends to be incremental and piecemeal – filling in gaps in existing legal frameworks, tackling one single legislative provision at a time rather than reforming an entire statute or a whole area of law. This presents what Joseph Raz has called ‘the dilemma of partial reform’14 – a dilemma, because the courts often have to choose between leaving a legislative provision intact (i.e., not interfering with it) or reforming it in a necessarily piecemeal or partial way. Judges are aware that partial reform can be fraught with danger because it carries the risk of being counter-productive or failing to achieve the hoped-for aim.15 This concern may give rise to judicial restraint. The third reason for restraint reflects concerns about relative institutional legitimacy. Sometimes, the courts exercise restraint before interfering with primary legislation out of a concern that a decision that changed the law would not be accepted by the public or indeed by the other branches of government due to the courts’ perceived lack democratic legitimacy and accountability. While this has attracted some controversy in UK public law scholarship,16 judicial dicta to the effect that courts should respect decisions made by the elected legislature due to its¶ superior democratic legitimacy are not hard to come by.17 The fourth reason is grounded in reputational concerns. When handing down their decisions, judges have to do so in a way that preserves the reputation of the courts and inspires public confidence in them as impartial, fair decision makers. The courts must ensure, to the extent¶ that they can, that their decisions are respected – both by the other political organs of government (Parliament and the executive) and by the public at large – and should strive to avoid decisions that would bring the courts into disrepute. This reason for restraint will be discussed in more detail later in the paper.

#### Turns Terror- Judicial deference to the executive is key to prevent global risks of terrorism and nuclear disasters

Gelev ‘11

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of the Australian State of Victoria, “Checks and balances of risk management: precautionary logic and the judiciary,” 10.14.2011. //wyo-hdm]

In the early 21st century governments across the world have gone further than ever before in taking measures to prevent catastrophic events because to react after an event is seen as inadequate: governments proscribe organisations and blacklist individuals, increase border controls and surveillance within national borders, impose control orders and detain people without trial.1 Most International Relations (IR), and some legal, scholars have strongly criticised such government practices. They have either ignored the judiciary or put their faith in a judiciary acting as a check on the other two branches of government. On the basis of the history of judicial deference during earlier periods of crisis, as chronicled by other legal scholars, the author’s hypothesis is that it is naïve to expect that in the period since 11 September 2001 the judiciary will take on a role to curb executive power in all or even in most cases. The courts may have the power but not necessarily the willingness to restrict executive or parliamentary excesses. Since the publication of Ulrich Beck’s book Risk Society discussions of risk have become ubiquitous in many diﬀerent disciplines.9 According to Beck, today we live in a ‘risk society’ characterised by uncontrollable risks, which are human-made and beyond boundaries,10 global and universal.11 Nobody is safe against risk society’s ‘bads’ carrying potentially catastrophic or irremediable eﬀects:12 pollution, global pandemics, or nuclear disasters.13 One of risk society’s key ideas is that decision-makers should take precautionary measures to prevent or minimise harm where there is uncertainty about the nature and extent of the relevant risk.14 After 9/11 Beck added terrorism to the list of ‘dimensions’ of risk society.15 The principles of precaution should now apply to decisions relating to terrorism. When taken to its extreme, this logic dictates that decision-makers should act based on nothing more than ‘actionable suspicion’, or a 1 per cent chance, that a disaster may occur.

#### Turns Rule of Law- Judicial interference undermines the rule of law and threatens democracy

Siegel ‘10

[Neil S., Professor of Law and Political Science, Duke University School of Law. “INTERRING THE RHETORIC OF JUDICIAL ACTIVISM,” <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2754&context=faculty_scholarship>>//wyo-hdm]

[J]udicial power must be exercised with deference towards State and local officials; it must not expand at the expense of our representative institutions. It is not a judicial function to reorder the economic, political, and social priorities of our nation. The intrusion of the courts into such areas undermines the stature of the judiciary and erodes respect for the rule of law. Where appropriate, we support congressional efforts to restrict the jurisdiction of federal courts. We commend the President for appointing federal judges committed to the rights of law-abiding citizens and traditional family values. We share the public’s dissatisfaction with an elitist and unresponsive federal judiciary. If our legal institutions are to regain respect, they must respect the people’s legitimate interests in a stable, orderly society. In his second term, President Reagan will continue to appoint Supreme Court and other federal judges who share our commitment to judicial restraint.2 Today, there appear to be two primary ways of understanding the Republican rhetoric of judicial activism. First, the charge may be that judicial activists fail to show proper deference to the will of popular majorities. Second, and increasingly at present, the accusation may be that judicial activists allow their merely personal views, and not the law, to dictate outcomes in cases. The quotation with which I began this inquiry espouses both conceptions of the Republican critique. “Judicial activism,” the 2008 Republican Platform instructs, “is a grave threat to the rule of law because unaccountable federal judges are usurping democracy, ignoring the Constitution and its separation of powers, and imposing their personal opinions upon the public.”86 Frames of unaccountability, usurpation of democracy, and disrespect of separation-of-powers limits on judicial authority seem primarily to condemn judges who fail to accord proper deference to popular majorities. Charges of ignoring the Constitution and imposing personal views seem predominantly to express concern about judges who are unfaithful to the law. I now analyze each conception of judicial activism in turn.

#### Judicial deference on presidential war powers resilient- history and current trends prove

Wheeler ‘09

[Darren A., assistant professor of political science at Ball State University. He is the author of Presidential Power in Action: Implementing Supreme Court Detainee Decisions (2008). “Checking Presidential Detention Power in the War on Terror: What Should We Expect from the Judiciary?” 12.2009. <<http://search.proquest.com/docview/215686073>>//wyo-hdm]

The final reason one should not look to the courts to check presidential detention power is that the judiciary has, over time, developed a culture of deference to the president in matters of war powers and foreign affairs (Fisher 2005; Howell 2003; Koh 1990; Rossiter and Longaker 1976; Scigliano 1971). While this deference may have developed in part because the Constitution provides for no express role for the judiciary in war powers matters, some scholars have argued that judicial supervision of the presidency in such matters has been haphazard, with courts only likely to rule against the president when Congress and public opinion are against him, or when the president tries to limit the review power of the judiciary (Cronin and Genovese 2004; Pious 2007). This deferential trend has been especially pronounced since the second half of the twentieth century (Fisher 2004; Koh 1990), but U.S. history is replete with examples that illustrate this general point. In the Prize Cases, the Supreme Court ruled in favor of President Lincoln's military blockade of the South even absent a congressional declaration of war. World War II precedents such as Korematsu v. U.S. and Ex Parte Quirin placed the Court's stamp of approval on executive actions that detained thousands of Japanese Americans and allowed Nazi saboteurs to be tried by military commissions. While there are cases in which the Court has actually said no to presidential power, such as Youngtown Sheet & Tube Co. v. Sawyer, the definite trend has been one of deference. The courts often decline to hear cases, citing threshold issues such as standing, mootness, or the political nature of the questions before them (Adler and George 1996; Fisher 2005; Genovese 1980; Howell 2003; Koh 1990). Or they simply find a way to rule in favor of the executive on the merits of the issues before the court (Ducat and Dudley 1989; Fisher 2005; Howell 2003). A better case can be made that the president received considerable judicial deference in the Hamdi and Padilla cases. In Padilla, as noted earlier, the Supreme Court refrained from ruling on the constitutional issues in Padilla's claim, opting instead to defer the matter. This deference was reinforced when the Court declined to review Padilla's case a second time, opting instead to let the criminal justice system handle the matter. One could argue that the Court should have reviewed the merits of Padilla's case for at least two reasons. First, all of the lower courts reached a decision on the merits of Padilla's constitutional claims. More importantly, they were divided. The Second and Fourth Circuit Courts of Appeals reached very different conclusions on the scope of the president's authority to hold American citizens as enemy combatants.17 Such a division between circuits is often grounds for the Supreme Court to step in and provide clarity on a particular issue (O'Brien 2005). Second, the issue in question - presidential power to detain American citizens as enemy combatants without rights - is an exceptionally important one, arguably important enough that it should be addressed by the land's highest court. Justice Ruth Bader Ginsburg argued as much in her dissent from the Court's refusal to hear Padilla's case the second time around. Despite these conflicting lower court decisions, the Bush administration never repudiated the position that it had complete power and discretion to detain citizens as enemy combatants. The Bush administration has passed from the scene, but there is no guarantee that the Obama administration - or some other future administration - will nor adopt comparable policies and positions regarding the detention of suspected terrorists. The Obama administration emulated the Bush administration's treatment of José Padilla in February 2009 when it transferred Ali Saleh al-Marri, a legal alien held in indefinite military custody as an enemy combatant, to civilian custody and filed criminal charges against him a month before the Supreme Court was set to hear oral arguments in his case. The Obama administration asked the Supreme Court to dismiss the pending case against Al-Marri, a request the Court granted.18 While the Court also vacated the pro-government Fourth Circuit Court of Appeals decision that was in question, the Obama administration was very careful to avoid renouncing the Bush administration's position that the president has the power to indefinitely detain enemy combatants in military custody (Liptak 2009). Again, a president skillfully maneuvered detainee legal claims away from Supreme Court review. In Hamdi, the Court affirmed the president's right to detain American citizens as enemy combatants by taking an expansive view of presidential power under the AUMF passed shortly after 9/1 1. Even though the AUMF did not specifically mention detaining suspected terrorists (let alone American citizens), a plurality ruled that detaining terror suspects as enemy combatants was incident to the president's power to use military force, a power that the AUMF spelled out in quite broad terms. The Hamdi decision also effectually recognized that the president was using his war powers in detaining enemy combatants (Yoo 2006b). The Bush administration eagerly focused on this aspect of the Court's decision. Shortly after the decision, a Justice Department spokesman said that "[t]he Justice Department is pleased that the U.S. Supreme Court today upheld the authority of the President as Commander-in-Chief of the armed forces to detain enemy combatants, including U.S. citizens. This authority is crucial in times of war" (Lane 2004).

#### [4] Military Deference Doctrine means courts don’t get involved now

McFadden, 8 (Daniel, an econometrician who shared the 2000 Nobel Memorial Prize in Economic Sciences with James Heckman, Boston College Law Review, 2008, 49 B.C. L. Rev 1131, Lexis)

In "vertical" cases, which consider the degree to which the Constitution restrains government regulation of persons, property, or objects properly under military control, the Supreme Court has, since the 1970s, applied what is frequently termed the "Military Deference Doctrine." n162 The doctrine recognizes that, although the subjects of military control have constitutional rights, the degree to which courts may intervene to protect those rights is more limited than the protection afforded to comparable rights of a person under purely civil authority. n163 The Court has suggested three justifications for this proposition. n164 First, the Constitution grants Congress and the executive the authority to govern the military and is silent on the role of the judiciary in this regard. n165 By implication, the judiciary's constitutional authority to review Congress's judgments regarding military matters is somewhat limited. n166 Second, military judgments necessarily require [\*1154] expertise that may be lacking in the judiciary. n167 Consequently, prudential concerns counsel that this lack of judicial competence justifies more limited intervention in military affairs. n168 Third, the military is a specialized society that cannot properly function without uncommon devotion to obedience, discipline, and conformity. n169 These needs are inconsistent with the constitutional protections typically available to civilians, and, therefore, some lesser degree of protection is necessary to permit the military to effectively advance national interests. n170 Despite these concerns, the Court will provide some substantive review of alleged violations of the constitutional rights of a person who is properly the subject of military authority. n171 The Court will also apply at least one of three techniques in order to reduce the scope of those rights and promote deference to the political branches' authority over military matters. n172 First, the Court may apply a more lenient standard of review to the constitutional claim. n173 Second, if the proper standard [\*1155] of review involves a balancing test, the Court may amplify the magnitude of the government's interest in regulating conduct. n174 Third, the Court may limit the availability of various causes of action to servicemembers. n175 The application of such techniques results in heightened judicial deference to the government's assessment of the magnitude of its own interest in regulating military activity. n176

#### Detention cases haven’t derailed deference

(Entin 12) Jonathan L. Entin, Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University., “WAR POWERS, FOREIGN AFFAIRS, AND THE COURTS: SOME INSTITUTIONAL CONSIDERATIONS” CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW - VOL. 45 2012, <http://heinonline.org.proxy.library.umkc.edu/HOL/Page?collection=journals&handle=hein.journals/cwrint45&type=Text&id=451>

Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive's position, it generally has done so on relatively narrow grounds. Consider the Espionage Act cases that arose during World War I. Schenck v. United States,' which is best known for Justice Holmes's 58. Id. (citing U.S. CONST. art. I, § 7, cl. 2 ("If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress, by their adjournment prevent its return, in which Case it shall not be a Law. announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant's having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that "the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out.""4 The circumstances in which the speech took place affected the scope of First Amendment protection: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right."@6 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort6 and of Eugene Debs for a speech denouncing the war.67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States,68 but only Justice Brandeis agreed with his position.69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes's opinions for the Court in the earlier cases.70 Similarly, the Supreme Court rejected challenges to the government's war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs.7 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts.71 In addition, the Court upheld the validity of the Japanese internment program.73 Of course, the Court did limit the scope of the program by holding that it did not apply to "concededly loyal" citizens.74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated.5 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees.76 The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region." The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy,78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone.79 The few lower courts that addressed the merits of challenges 1 to the legality of the Vietnam War consistently rejected those challenges. The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch's position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld" held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O'Connor's plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force" and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. citizens.' Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute," which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi's detention was unlawful and that he should be released on habeas corpus," whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief."6 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government's detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality's remand order.87 Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld," the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees.9 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case.' Congress responded to that suggestion by enacting the Military Commissions Act of 2006,91 which sought to endorse the executive's detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush," the Supreme Court again rejected the government's position. First, the statute did not suspend the writ of habeas corpus.93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate." At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism 15 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit.96 Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought.97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene.9" About a month after this symposium took place, in Hamdan v. United States" the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld.100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment.'01 It remains to be seen how broadly the decision will apply. Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft,'02 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States. 103 And in Mohamed v. Jeppesen Dataplan, Inc.,"'0 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen.' Unlike Arar, in which the defendants were federal officials,'o this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture.10 Although at least four judges on the en banc courts dissented from both rulings,0 the Supreme Court declined to review either case.109

#### Court rulings on drones violate the political questions doctrine--- reverses deference

Duhaime 2013 (Daniel Duhaime, March 13, 2013, “Policy Memo: How to Use a Drone,” Brown Political Review, http://www.brownpoliticalreview.org/2013/03/policy-memo-how-to-use-a-drone/)

In order to judge the validity of the targeted killing program, we should evaluate your administration’s constitutional and legal claims on the basis of their narrow scope. First, the white paper does not address the minimum requirements necessary to permit targeted killing. Rather, it applies only to the unique case of an American citizen who: (1) is a “senior operational leader” affiliated with al-Qaida or another belligerent group in the War on Terror; (2) is engaged in an armed conflict as recognized by precedent; (3) is operating in foreign territory where capture is infeasible; and (4) has been determined by a “high-level government official” to pose an “imminent threat” of violent attack. Certainly your administration selected this construction deliberately, since articulating some minimum threshold would codify limits on the executive’s power and expose its conduct to external scrutiny. While such a scope may not encompass every targeted killing conducted on an American citizen, the ensuing debate over the legality and constitutionality of that action cannot occur in the abstract—the American people need to know what makes a drone strike legal. Operating under this premise, the government’s interest-balancing approach to constitutional challenges is the most effective and pragmatic means to deal with such a U.S. citizen. Furthermore, the uncertainty surrounding the geographic, statutory and constitutional limits on presidential authority will undermine the effectiveness of proposals to subject targeted killings to judicial scrutiny.¶ Precedent and long-since codified legal principles dictate that the United States Supreme Court should extend constitutional and statutory deference to the executive, particularly in regard to the military and foreign affairs. Article II of the U.S. Constitution vests the president with “the executive Power” and places the president as “Commander in Chief of the Army and Navy of the United States.” With respect to foreign affairs, Article II §2 further empowers the president “to make Treaties” and “appoint Ambassadors,” and §3 compels the president to “receive Ambassadors.” In aggregate, these powers constitute an explicit delegation of constitutional primacy over the country’s external affairs to the political process. “Prominent on the surface of any case held to involve a political question,” the majority explains in Baker v. Carr, “is found a textually demonstrable constitutional commitment of the issue to a coordinate political department…or a lack of judicially discoverable and manageable standards for resolving it.” The executive’s authority over the nation’s external affairs is in fact the quintessential constitutional commitment for the purposes of the political question doctrine, a premise furthered by the judiciary’s inability to effectively discover or manage the exercise of such authority. As a result, the executive should be afforded expansive deference over these inherently political questions such that if its construction is rationally concluded, it is permissible. Similarly, the Court extended statutory deference to the executive in Chevron v. NRDC. In that case, the majority reasoned that where statutory language is ambiguous, the executive’s interpretation should stand, so long as it constitutes a permissible construction of the statute. Thus, the executive ought to enjoy elastic deference over the judiciary if the president neither thwarts the statutorily expressed will of Congress nor violates the limits of the constitutional commitment by transgressing the textual authority of coordinate branches.

#### [3] Drones are key to warfighting – they are the future of combat

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(Daniel, Drones: The Future of Warfare?, www.e-ir.info/2012/04/10/drones-the-future-of-warfare/)

Since President Obama took office, the use of and hype surrounding drones has greatly increased. Obama has conducted more than three times as many drone strikes per year compared to his predecessor in the White House. The increase use of drones points to a potential revolution in warfare, or at least a shift in the perspective of how wars will be fought in the future. As robotics expert P.W. Singer argues, “the introduction of unmanned systems to the battlefield doesn’t change simply how we fight, but for the first time changes who fights at the most fundamental level. It transforms the very agent of war, rather than just its capabilities.” The three major reasons drones are seen as the future of warfare are: they remove the risk to our soldiers, they make fewer mistakes than other weapons platforms, and technology will continue to improve such that drones become even more precise, efficient, and infallible in the future, thus rendering less precise, efficient and fallible human forms of war obsolete. Drones are thus seen as marking “a step forward in humanitarian technology,” and viewed as “a weapon of choice for future presidents, future administrations, in future conflicts and circumstances of self-defense and vital national security of the United States.” Yet, there has been much criticism of these assertions. Journalists challenge the claim that there are diminished civilian deaths from drone strikes, while just war scholars suggest that drones loosen the moral restraints on the use of force and legal scholars grapple with the relation between drones and international law. Notwithstanding these ethical and legal challenges, and despite what advocates say about their place in the future of armed combat, drones are, like any weapons platform, inherently limited in what they can do. In this brief article, I make three claims to contextualize the idea that drones are the future of war to shed light on the circumscribed role they might play in the foreseeable future. First, that drones are an improvement – in terms of providing surveillance capabilities and satisfying the rules of war – compared to previous technology. Their technical advantages (loitering capacity, removal of risk to pilots, and precision) make them an important addition to any military arsenal.